

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9401 OF 2022
IN
WRIT PETITION NO. 12395 OF 2017
WITH
WRIT PETITION NO. 12395 OF 2017

KISAN LAXMAN GAIKWAD AND ANOTHER

VERSUS

THE UNION OF INDIA THROUGH ITS SECRETARY
AND OTHERS

Advocate for Applicants : Mr. V.D. Hon Sr. Counsel
h/f. Mr. A.V. Hon

Advocate for Respondent No. 1 : Mr. Bhushan Kulkarni
Advocate for Respondent Nos. 2 to 7 : Mr. V.D. Sapkal Sr. Counsel
i/b. Mr. D.S. Manorkar and Mr. V.S.R. Krishna

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 27 JUNE, 2022.

ORDER :-

By this application, the applicants (original petitioners) are seeking an order prohibiting respondent Nos. 3 to 7 and others from participating in the 96th General Body Meeting of the Indian Nursing Council (INC) which is scheduled to be held on 30 June, 2022, at New Delhi.

In the alternative, the applicants are seeking direction to the first respondent for appointment of an Independent Returning Officer of the Government of India, for updating the list of voters all over India as per the provisions of the Indian Nursing Council Act, 1947 ('1947 Act' for short), and to declare elections of the President, Vice President and the Members of the Executive Committee of INC within one month thereafter.

2. We have heard the learned counsel for the parties.

3. The dispute pertains to the election to the post of the President, Vice President and the Members of the Executive Committee of the Indian Nursing Council. The substantive petition is challenging the order dated 14 July, 2017, passed by the Government of India, Ministry of Health and Family Welfare, New Delhi, thereby, refusing to entertain the representation / dispute, referred to the Central Government by the petitioners in accordance with Section 5 of the said Act. That election pertains to the Members of the Executive Committee of the INC in the year 2016-17.

4. Upon hearing the learned counsel for the parties, we find that the present application is in respect of a separate cause of action as now the election to the post of President, Vice President and the Members of the Executive Body for the subsequent period is scheduled to be held on 30 June, 2022.

5. Learned Senior Counsel for respondent Nos. 2 to 7 is right, in

urging that this application cannot be entertained in the main petition. That apart the contention on behalf of the applicant is that the voters list has not been properly drawn and there are some members in the voters list who are ineligible to be the voters, as per the provisions of the said Act. Secondly, it is contended that the relevant provisions contemplate a thirty days' notice and the notice dated 30 May, 2022, issued by the Secretary of the Council (page No. 19 of the compilation), does not confirm to the said provisions.

6. Learned Senior Counsel Mr. Sapkal for respondent Nos. 2 to 7 has placed reliance on the decision of the Supreme Court in *Shaji K. Joseph Versus V. Vishwanath and others*, (2016) 4 SCC 429, which involved a similar challenge to the election of the Indian Dental Council as per the provisions of Section 3 (a) of the Dentists Act, 1948 ('1948 Act' for short).

7. We find that Section 5 of the 1948 Act, is in *pari materia* with Section 5 of the Indian Nursing Council Act, 1947. Section 5 of the Indian Nursing Council Act, 1947, reads thus :

“Section 5 : Mode of elections.

(1) Elections under sub-section (1) of section 3 by State Councils shall be conducted in accordance with rules made in this behalf by the respective State Governments, and where any dispute arises regarding any such election, it shall

be referred to the State Government concerned whose decision shall be final.

(2) Other elections under that sub-section shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Central Government whose decision shall be final.”

It can thus be seen that Sub-Section 2 of Section 5 envisages the dispute pertaining to the election, being referred to the Central Government for decision. The Supreme Court in the context of the similar provision under the 1948 Act in Shaji K. Joseph (supra) in paragraph No. 14 has observed thus :

“14. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election program on 27th January, 2011 and more particularly when an alternative statutory remedy was available to Respondent no.1 by way of referring the dispute to the Central Government as per the provisions of [Section 5](#) of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent no.1 for contesting the election is concerned, though prima facie it appears that Respondent no.1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the

High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without court's order. Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforestated reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election."

(Emphasis supplied)

8. We find that the observations would squarely apply to the present application also. Therefore, we decline to entertain the application.
9. The learned Senior Counsel for the applicant states that a representation is made to the Central Government on 28 June, 2022.
10. Learned counsel for respondent No. 1 states that the said

representation shall be decided on its own merits and in accordance with law. We express no opinion in the case. The Civil Application stands disposed off.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.