

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 509 of 2023

Rusha Podder & Ors.

vs.

The State of West Bengal & Ors.

For the petitioners	:	Mr. Aniruddha Chatterjee, Adv. Mr. Rahul Karmakar, Adv. Ms. Gargi Goswami, Adv. Mr. Rishabh Ahmed Khan, Adv.
For the State	:	Mr. Tapan Kumar Mukherjee, Adv. Ms. Debdooti Dutta, Adv.
For the respondent no. 2	:	Mr. Saptangshu Basu, Adv. Ms. Roma Roy, Adv.
For the respondent no. 6	:	Mr. Kishore Dutta, Adv. Mr. Soham Banerjee, Adv. Mr. Parashar Baidya, Adv.
Last Heard on	:	22.02.2023.
Delivered on	:	28.02.2023.

Moushumi Bhattacharya, J.

1. The four petitioners before the Court are registered pharmacists under the West Bengal Pharmacy Council. The petitioners seek quashing of a

notice published by the West Bengal Pharmacy Council on 20th December, 2022 announcing the final list of accepted/rejected candidates after scrutiny in the West Bengal Pharmacy Council Elections-2022. The petitioners are aggrieved by the rejection of their nominations by the Council which were for the elections to the West Bengal Pharmacy Council for 2022.

2. Learned counsel appearing for the petitioners invites the Court to interfere in the impugned rejections on the ground that the reasons given for rejection of the nominations of the candidates were not indicated in the prescribed Form. Counsel submits that the petitioners were also deprived of the remedy provided under the relevant Rule as notified on 22nd July, 1966. It is also submitted that the petitioners took due steps under Rule 5(1) of the said Rules for redressal of their grievance but this was denied to the petitioners.

3. Learned counsel appearing for the Registrar/respondent no. 6 places the relevant dates to submit that the petitioners were aware of the reasons for the rejection at the time of scrutiny but sent mails to the Council asking for the same feigning ignorance of the information which was already available to the petitioners. Counsel submits that final list of candidates was published on 23rd December, 2020 in accordance with the Election Rules and that the petitioners sent mails for reconsideration of their candidatures only on 1st January, 2023. Counsel submits that the writ petition is not maintainable since the election process commenced with the issuance of the Election Notice on 14th September, 2022 and culminated with the declaration of results.

4. The contentions made on behalf of the Registrar of the Council are adopted by learned counsel appearing for the Council and the State. According to counsel, the writ petitioner nos. 1, 2 and 4 were present at the time of scrutiny and were aware of the rejection of their nominations. It is submitted that the writ petitioners did not raise any objection under Rule 5(1) of the Rules and only sent an enquiry much later. It is submitted that the election process should not be stalled as the election had already commenced with the publication of the Election Notice in September, 2022. It is also submitted that the petitioners have a mechanism for redressal under the Rules where the State Government shall decide on any question as to the construction of the Rules including the validity of the election.

5. The controversy in the present writ petition is centred on the construction of Rule 5(1) of the Rules for the election members of the West Bengal Pharmacy Council and the Executive Committee as notified by the State Department of Health on 22nd July, 1966. These Rules were framed under section 46(2) of The Pharmacy Act, 1948. Rule 5(1) is set out below.

“5. (1) On the date and at the time as fixed for the scrutiny of nominations by the notification under rule 2, the Returning Officer shall scrutinise all the nomination papers strictly with reference to the final electoral roll and decide which of them are in order and which are not. Nomination papers which do not comply with the requirements of rule 3 shall be rejected. If there be any objection by any candidate to the decision of the Returning Officer, it must be made forthwith, and the objection shall be heard by the Returning Officer and two members of the Council, not being candidates for the election, appointed by the President, and their decision thereon shall be final.”

6. Several points may be gleaned from the extracted Rule:

(i) The nomination may be rejected for non-compliance of Rule 3 of the Rules.

(ii) A candidate may object to the decision of the Returning Officer forthwith.

(iii) The objection shall be heard by the Returning Officer and two members of the Council constituted in the manner prescribed under Rule 5(1).

7. The reason given for the impugned rejections was published by the Council on 20th December, 2022. For the petitioner no. 1, the rejection was due to non-compliance in respect of professional address and the date of birth recorded in the First Register of the Council. For the petitioner no. 2, the non-compliance related to residential and professional address; the petitioner no. 3 for submission of incorrect Form-C and for the 4th petitioner for non-submission any ID proof for verification.

8. Rule 3 for which a nomination may be rejected under Rule 5(1), provides under sub-Rule (2) that nominations of candidates shall be made in Form-C with a proposer and a seconder. Rule 3(2) provides that every nomination paper shall be fully filled in with all the particulars “as stated” in Form-C. Rule 3 contains other requirements with regard to the proposer and the seconder which are not relevant for the present adjudication.

9. The prescribed Form-C which was filled in by each of the petitioners are part of records. There are no slots/spaces in the said Form for filling in professional address or date of birth. In other words, the nomination paper of a candidate in the prescribed Form-C under Rule 3(2) does not require

candidates to give any information with regard to the date of birth or professional address. Absence of this information however was made the ground of rejection for the 1st and 2nd petitioners. The other grounds relate to “non-compliance” in respect of residential address (for petitioner no. 2), non-submission of any ID proof for verification (petitioner no. 4) and submission of incorrect Form-C (petitioner no. 3). The Forms/documents of the petitioner nos. 3 and 4 do not support the grounds of rejection.

10. Hence, on the basis of the material disclosed before the Court, the grounds given for the impugned rejection are not supported by Rule 3 of the Rules. Non-compliance with the requirements of Rule 3 is the only basis for rejection of a candidature under Rule 5(1).

11. The second issue is on the controversy around the word “forthwith” used in Rule 5(1). Rule 5(1), set out above, does not qualify the word “forthwith” inasmuch as to indicate a specific time frame within which a candidate must object to the decision of the Returning Officer. Without any such clarification, it is to be presumed that a candidate must object to the decision of the Returning Officer immediately, i.e., without wasting unnecessary time.

12. In the present case, the petitioners filed their nominations on 15th December, 2022 and were informed that their nominations had been rejected on 19th December, 2022. The petitioners sent mails to the Registrar of the Council seeking reasons for their rejection on 19th December, 2022 at 4.44 p.m itself. The impugned rejections were made public on the next day

i.e., 20th December, 2022. The petitioners sent detailed mails to the President of the Council thereafter on 1st January, 2023. The present writ petition was filed on 5th January, 2023.

13. Although the respondents rely on the alleged delay from 20th December, 2022 when the reason for rejection was published to 1st January, 2023 when the petitioners wrote to the President objecting to the reasons, the steps taken by the petitioners in writing to the Registrar on 19th December, 2022 even before the reasons were made known to the petitioners, cannot be discounted.

14. The first reason for not accepting the contention of the respondents is that Rule 5(1) does not specify the nature or form of the objection which is to be made by an aggrieved candidate. Hence, even if the petitioners' mails of 19th December, 2022 which only sought for the reasons for the rejection, are seen to be just that and nothing more, the mails served as precursors to the more fleshed-out objections sent by the petitioners on 1st January, 2023. Second, when the word "forthwith" in Rule 5(1) does not indicate a time limit within which an objection must be taken, counsel cannot use the ambiguity in Rule 5(1) to the detriment of a candidate who is unhappy with the decision of the Returning Officer.

15. The silence as regards a time-limit in Rule 5(1) is all the more significant when compared to Rules 6 and 7 where "three days" have specifically been indicated as the time limit for withdrawal of candidature and declaration of a candidate as elected, in that order. Just as the Court

cannot read into the object of excluding a time-limit in Rule 5(1) for filing an objection, the time-limits prescribed in the Rules following Rule 5(1) cannot also be taken as the uniform window for those Rules where the exclusion noticeably stands out. Hence, the argument that the 3 days in Rules 6 and 7 should be imported in Rule 5(1) is rejected.

16. The petitioners have also pleaded in the supplementary affidavit that the Registrar of the Council refused to take the written objection on record and the petitioners were constrained to file a case before the High Court. Hence, the petitioners' mails of 19th December, 2022 even before the communication of reasons for rejection to the petitioners read with the mails of 1st January, 2023 satisfies the requirements under Rule 5(1) and on the "forthwith" issue.

17. The petitioners were also admittedly deprived of the remedy under Rule 5(1). The Returning Officer along with two members of the Council who are not candidates for the election as appointed by the President is to hear a complaint made by a candidate. The Council failed to provide this redressal to the petitioners. Rules 23 and 25, as contented by the State, are not relevant to the facts of the present case since those Rules would apply in cases where the validity of the election is called into question. In such a case, the State Government is empowered to decide the issue. The present case is on the question of nomination and the petitioners hence cannot be brought within Rules 23 and 25.

18. *Shaji K. Joseph vs. V. Viswanath; (2016) 4 SCC 429* has been cited by the respondents to urge that a High Court should not interfere with an election process where the election process had already commenced on the publication of election programme and where an alternative statutory remedy was available to the respondent no. 1 before the Supreme Court. This decision however, proceeded on the fact that an alternative statutory remedy was available to one of the parties before the Supreme Court and dealt with the Dental Council (Election) Regulations, 1952. Regulation 9 of the said Regulations relates to scrutiny of nomination papers and is substantially different in form and procedure to Rule 5(1) of the Rules for election to the West Bengal Pharmacy Council. The rejection of the present controversy must turn solely on the construction of the Pharmacy Council Rules as has been discussed above. On the other hand, the Supreme Court in *Maharashtra Chess Association vs. Union of India; (2020) 13 SCC 285* reiterated that Article 226(1) of the Constitution confers the power to issue writs on High Courts for enforcement of fundamental rights in Part III of the Constitution or “for any other purpose”. The Supreme Court relied on the *James Bagg’s case, (1572) 11 Co Rep 93b* and on *U.P. State Sugar Corporation Ltd. vs. Kamal Swaroop Tondon; (2008) 2 SCC 41* and held that the power under Article 226 can be exercised by the High Court “to reach injustice wherever it is found”. This decision can be called upon to inspire the High Court (and this Court) to fulfill its constitutional mandate to uphold the rule of law and to take a less inflexible route to reach and correct the injustice.

19. This Court is hence of the view that the petitioners have been wronged by the impugned rejection. Apart from the information solicited by the Council not being part of the information to be provided in the prescribed Form, the petitioners' objections to the impugned rejections are also held to be within the parameters of Rule 5(1) of the Rules framed under section 46 of The Pharmacy Act, 1948. WPA 509 of 2023 is accordingly allowed and disposed of for the above reasons and the foregoing discussion by directing the Registrar of the West Bengal Pharmacy Council/respondent no. 6 to reconsider the nominations filed by the four petitioners in accordance with the Act and the Rules including Rule 5(1) within a period of three weeks from the date of delivery of this judgment. The Council will give effect to the final list/ notice published on 20th December, 2022 only after the direction given above has been complied with. Since the last election of the Council was held in 2007 with the tenure of the officers expiring in 2013, this Court sees no prejudice if the question of the petitioners' candidatures is decided within the time directed.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)