

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.14447 of 2023

**DR. KUNAL SAHA
Vs.
Registrar, WEST BENGAL MEDICAL COUNCIL (WBMC)
and Another**

Petitioner in person	:	Dr. Kunal Saha (in person)
For the WBMC	:	Mr. Sakya Sen, Mr. Sunil Gupta
Hearing concluded on	:	17.11.2023
Judgment on	:	20.11.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner has challenged the election of the West Bengal Medical Council which culminated on November 1, 2022. Although the reliefs sought in the writ petition pertain to dissolving the entire Council, the arguments advanced and the pleadings contained in the writ petition primarily assail the election of the President and the Vice President of the Council.
2. The petitioner, appearing in person with leave of Court, argues that Section 11(1) of the Bengal Medical Act, 1914 (hereinafter referred to, "the 1914 Act") stipulates that the term of office of a member of the Council nominated or elected under Section 4 or nominated under

Section 5 shall commence on such date as may be notified in this behalf by the State Government in the Official Gazette.

3. Section 11A(1) provides that the members of the Council shall convene their first meeting after the notification referred to in Section 11(1) and recommend the names of three persons for being nominated as President, upon which the State Government shall nominate one of such persons to be the President of the Council.
4. Similarly, under Section 11B(1), the members shall at their first meeting as referred to above elect among themselves a Vice President.
5. In the present case, the notification under Section 7 and under Section 11(1) of the 1914 Act was published in the Official Gazette only on November 3, 2022 but the newly formed Council held the meeting as envisaged under Sections 11A and 11B on November 1, 2022 itself, the date on which the Council was formed. It is argued that thus, the said meeting or the nomination of President and Vice President before the date of publication of the Notification is violative of Sections 11A and 11B and ought to be set aside.
6. The petitioner further submits that it was physically impossible to inform and gather all the members of the newly elected Council on the date of the formation of the Council itself, that is, November 1, 2022, since the members are spread over different parts of West Bengal and could not be possibly assemble on such short notice.
7. Hence, it is argued that henchmen having political leanings towards the State Government were hand-picked in hot haste by flouting the provisions of law.

8. Learned senior counsel for the Medical Council takes a preliminary objection as to the *locus standi* of the petitioner. It is argued that the petitioner is an Oversees Citizen of India (OCI). Section 7A of the Citizenship Act, 1955 provides for registration of OCI card holders. Section 7B confers rights on OCI card holders. Sub-section (2) of Section 7B stipulates that an OCI shall not be entitled to the rights conferred on a citizen of India under the provisions as mentioned therein. Clause (a) of sub-section (2) of Section 7B mentions rights under Article 16 of the Constitution with regard to equality of opportunity in matters of public employment and clause (f) speaks of rights under Section 16 of the Representation of the People Act, 1950 in regard to registration as a voter. Section 7B (2), it is argued, debars an OCI card holder from participating in any election process in the country. Hence, the petitioner being an OCI cannot prefer a challenge to an election to which he could not be a party.
9. On the issue of *locus standi*, learned senior counsel for the Medical Council further argues that Section 4(1) specifies the modalities of election/nomination of the members of the Medical Council. The proviso thereto stipulates that no registered practitioner shall be entitled to vote or stand as a candidate for election at an election of members under the said Clause unless he –
 - (i) is a citizen of India; and
 - (ii) either resides or carries on his profession or is employed in West Bengal.

It is submitted that although the petitioner is a registered medical practitioner in West Bengal, he is neither a citizen of India nor resides in India; thus ineligible to vote or stand as a candidate for the election which he is challenging. Hence, the petitioner does not have any legal right which can be said to have been infringed. It is highlighted that the present writ petition is not a Public Interest Litigation and thus, the petitioner does not have any personal cause of action.

- 10.** Learned senior counsel thirdly argues that the petitioner is not a member of the body of members which elects a President or Vice President of the Council and, as such, cannot throw a challenge to the election/nomination of the President or Vice President.
- 11.** On merits, it is submitted that the notification-in-question was issued on November 1, 2022 and circulated to all the members of the newly elected Council. Only the publication in the Official Gazette took place on November 3, 2022. However, in the last paragraph of the said Notification it is stated that in exercise of the power conferred by sub-section (1) of Section 11 of the 1914 Act, the Governor is pleased to notify November 1, 2022 as the date on which the term of the office of the members of the West Bengal Medical Council shall commence. Thus, for all practical purposes, although the Official Gazette publication took place on November 3, 2022, the members commenced in office with retrospective effect from November 1, 2022 even as per the said notification. Thus, it is argued, there was no bar

on the members electing the President and the Vice President on the self-same date.

12. It is submitted that, as stated in the affidavit-in-opposition, in view of a previous direction of this Court to complete the fresh election so that the newly elected council can start functioning effectively on and from November 1, 2022, the members of the newly elected Council were requested to stay in and around Kolkata to facilitate proper compliance of the said order. As such, there was no absurdity in the Council acting jointly on November 1, 2022 itself, to recommend three persons for one of them to be nominated as President and to elect a Vice President among themselves.
13. The petitioner, in reply, submits that the entire process of the election is vitiated and several other challenges by medical practitioners and others are pending against the fresh election. A contempt application was filed by the petitioner in that regard, which was disposed of with liberty to the petitioner to file the present writ petition.
14. The petitioner also cites *Gulf Goans Hotels Company Limited and another Vs. Union of India and others*, reported at (2014) 10 SCC 673, where it was observed by the Supreme Court that it is essential that what is claimed to be a law must be notified or made public in order to bind the citizen. Natural justice requires that before a law can become operative it must be promulgated or published. The Supreme Court held that so far as the mode of publication is concerned, it has been consistently held by the said court that such mode must be as prescribed in the statute. In the event the statute does not contain

any prescription and even under the subordinate legislation there is silence in the matter, the legislation will take effect only when it is published through the customarily recognized official channel, namely, the Official Gazette.

15. The petitioner also cites *Union of India and others Vs. G.S. Chatha Rice Mills and another*, reported at 2020 SCC OnLine SC 770 [equivalent to (2021) 2 SCC 209], in support of his argument.
16. The issue of *locus standi* is being dealt with first before entering into the other aspects of the challenge.
17. The question of *locus standi* was raised previously, *inter alia*, in WPA 8140 of 2022 which was decided on June 29, 2022 whereby the previous Council was dissolved, directing appointment of an ad hoc committee to oversee the election process which culminated in the present election. In the said judgment, such objection was turned down. In paragraph 20 of the judgment, it was held that in *Dr. Kunal Saha Vs. The State of West Bengal and another* [2016 SCC OnLine Cal 72] and in another judgment between the same parties, reported at AIR 2015 Cal 370, a Division Bench of this Court had held that the petitioner had *locus standi* to raise such issues as the present one.
18. In any event, it is not in dispute that the petitioner is a registered medical practitioner having licence to practice medicine in India.
19. The reliance of the Council on the proviso to Section 4 of the 1914 Act is misplaced. It is stipulated there that no registered practitioner shall be entitled to vote or stand as a candidate for election at an election of members under the clause unless he is a citizen of India and either

resides or carries on his profession or is employed in West Bengal. Insofar as the second criterion is concerned, the petitioner, being a registered medical practitioner, is entitled to carry on his profession in India including West Bengal.

- 20.** For ascertaining whether the petitioner has rights as a citizen of India, we are to look into Section 7B of the Citizenship Act, 1955 (for short, “the 1955 Act”). Sub-section (2) of the said Section disentitles OCI card holders to certain specific rights pertaining to elections.
- 21.** Clause (a) of the said sub-section relates to equality of opportunity in matters of public employment. The present challenge is not one relating to public employment but to honorary posts, to be precise, relating to the election of President and Vice President of a Medical Council.
- 22.** Clause (f) of sub-section (2) of Section 7B pertains to Section 16 of the Representation of the People Act, 1950 in regard to registration as a voter for general elections to the Assembly/Lok Sabha and does not govern elections to Medical Councils. In fact, none of the clauses of Section 7B (2) of the 1955 Act are applicable to the present case. Hence, the petitioner as an OCI is entitled to assert rights on similar footing as a citizen of India within the meaning of the proviso to Section 4 of the 1914 Act.
- 23.** That apart, a larger issue is involved in the present case. Any citizen of India can very well bring to the notice of the Court a patent illegality in the functioning of a Medical Council of a State. The petitioner, being a registered medical practitioner having the right to practice in

West Bengal, definitely has a right to so practice in an unfettered and proper manner. Illegalities in the election process of the very Medical Council which governs such practice definitely infringe the rights of the petitioner, both on a legal footing and on a Constitutional perspective.

24. The other argument regarding *locus standi* to the effect that the petitioner not being a member of the body which elects a President does not find support in the 1914 Act itself. Section 11 A(1) merely stipulates that the members of the Council shall at their first meeting recommend three names out of which the President will be nominated. The present writ petition seeks to challenge the modality in which the said provision was allegedly flouted. Thus, the argument as to the petitioner not being a part of the Council is rather irrelevant does not fetter the present challenge in any manner.
25. Hence, the petitioner has the *locus standi* to prefer the instant challenge.
26. Moving on to the next issue, the objection raised by the petitioner is based on the expression “after the notification” in Section 11A(1) of the 1914 Act. The said Section refers back to Section 11(1) which provides that the term of office of a member of the Council shall commence on such date as may be notified in this behalf by the State Government in the Official Gazette, thereby indicating that the notification contemplated therein has to be in the Official Gazette and not otherwise.

- 27.** Sub-section (1) of Section 11A does not make it mandatory that the first meeting of the members of the Council has to be held after the date of publication of the notification. The stress of the said sub-section is not that the first meeting has to be held after the publication of the notification but that valid members of the Council shall recommend three names in their first meeting, out of which one person shall be nominated as President by the State Government.
- 28.** In the present case, the election had already taken place. The notification-in-question was dated November 1, 2022 but was actually published on November 3, 2022, that is, two days thereafter. In the notification, it was clearly mentioned that November 1, 2022 was the date on which the term of office of the members of the West Bengal Medical Council shall commence, within the contemplation of Section 11(1) of the 1914 Act.
- 29.** Hence, on November 1, 2022, the members of the Council had already been elected/selected when, later on in the day at 3 p.m., the said members met to recommend three names for the purpose of being nominated as President. Thus, it cannot be argued that the members were otherwise not eligible to so recommend.
- 30.** More importantly, although the physical publication of the notification in the Official Gazette took place only on November 3, 2022, in the said publication itself, the notification number and date were given. Such date was clearly mentioned to be November 1, 2022. Hence, the “date” of the notification as contemplated in Section 11A (1) was November 1, 2022 itself, though published in the Official Gazette later.

- 31.** The language used in Section 11A(1) is that the members of the Council shall at their first meeting after the notification referred to in sub-section (1) of Section 11 proceed to recommend the names for President. Section 11(1), on the other hand, states that such notification shall be in the Official Gazette. In the present case, however, the notification published on November 3, 2022 was stated in the Gazette itself to be dated November 1, 2022. Hence, one of the possible interpretations is that the first meeting of the members of the Council under Section 11A (1) took place at 3 p.m. on November 1, 2022 after the notification on the same day.
- 32.** The second judgment cited by the petitioner is *G.S. Chatha Rice Mills (supra)*, which stipulates that the precise time when the Gazette is published in the electronic mode assumes significance. The said ratio does not have any relevance in the present context.
- 33.** In any event, Section 11A (1) does not couch the requirement of the first meeting being after the notification in mandatory language. The said provision is not in negative form, saying that the first meeting cannot be held in any circumstance before the date of publication of the notification in the Official Gazette or, if so conducted, the meeting would be rendered null.
- 34.** Insofar as the ratio laid down in *Gulf Goans Hotels Company Limited (supra)* is concerned, the same does not clinch any issue in the present case. The Supreme Court simply observed that a law must be notified or made public in order to bind the citizen. Such principle is not directly applicable here, as we are not dealing with a law as such

or any set of guidelines having the force of law but merely the formation of a Council and appointment of its office bearers. In any event, since the petitioner has argued on the provisions of Section 11A (1) of the 1914 Act, the said general ratio of the cited report is not required to be invoked, as the law itself stipulates the requirement of publication of a Gazette notification here.

- 35.** The principle of *factum valet* also comes into play, since there was no substantial illegality in the first meeting of the members of the newly elected Council being held on the same date as the date of notification although prior to publication of the same in the Official Gazette. The newly-elected Council has already functioned with its President and Vice President for just over a year and has taken several decisions in the interregnum. Thus, a subsequent challenge at this juncture on a purely technical ground, if sustained, would set the clock back and might undo several decisions of the Council taken in the meantime, affecting numerous persons and activities. As held above, at the worst, a minor technical irregularity took place as the first meeting of the members was held not after the date of publication of the notification, although after the date of the notification as mentioned in the Official Gazette publication itself.
- 36.** Apart from the above, the petitioner has not made out any strong case to the effect that the Rules framed under Section 33 of the 1914 Act and/or any of the other provisions of the 1914 Act was violated in the election process itself. The plinth of the attack in the present writ

petition is the nomination of the President and election of Vice President, which has been discussed at length above.

37. In view of the above observations, I do not find any gross illegality in the process of recommending and nominating the President and electing the Vice President or the election process of the new West Bengal Medical Council sufficient to upset the apple cart at this belated stage.
38. However, since no substantial arguments were advanced by the petitioner on other aspects of the election, it is made clear that those aspects have not been gone into by this Court.
39. Accordingly, WPA No.14447 of 2023 is dismissed on contest without any order as to costs.
40. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)