Shaji K Joseph vs V.Viswanath & Ors on 22 February, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1094, 2016 (4) SCC 429, (2016) 2 SCT 83, (2016) 3 BOM CR 322, AIR 2016 SC (CIVIL) 1218, (2016) 161 ALLINDCAS 154 (SC), (2016) 1 CLR 688 (SC), (2016) 5 SERVLR 263, (2016) 3 ALL WC 2718, (2016) 2 SCALE 614, (2016) 2 PAT LJR 330, (2016) 4 MAD LW 154, (2016) 2 JLJR 202, (2016) 121 CUT LT 715, 2016 (117) ALR SOC 5 (SC), 2016 (1) KLT SN 124.2 (SC), 2016 (2) KCCR SN 128 (SC)

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Bench: Adarsh Kumar Goel, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1629 OF 2016
(Arising out of S.L.P.(C) No.22902 of 2011)

Shaji K. Joseph ... Appellant

Versus

V. Viswanath & Ors. ... Respondents

J U D G M E N T

ANIL R. DAVE, J.

Leave granted.

Heard the learned counsel for the parties.

The issue involved in this appeal is with regard to election of a member to the Dental Council of India under Section 3 (a) of the Dentists Act, 1948 [hereinafter referred to as 'the Act'] and Dental Council (Election) Regulations, 1952 [hereinafter referred to as 'the Regulations']. Respondent no.1 herein wanted to contest the election, but as his name was not in the electoral roll in Part A of the register of dentists for the State, his nomination form had not been accepted by the Returning Officer, Respondent no.3 herein. In these circumstances, Respondent no.1 preferred Writ Petition (C) No.4075 of 2011 before the High Court of Kerala at Ernakulam challenging the validity of rejection of his nomination paper. The Learned Singe Judge of the High Court vide judgment dated 23rd May, 2011 allowed Respondent no.1's Writ Petition by setting aside the order passed by the

Returning Officer, rejecting nomination in respect of candidature of Respondent no.1 and directed the Returning Officer to conduct the election afresh after including name of Respondent no.1 and to declare the result on the basis of such election to be conducted afresh from the stage after submission of the nominations.

Being aggrieved by the aforestated judgment delivered in the writ petition, the present appellant preferred Writ Appeal No.806 of 2011 assailing the validity and correctness of the said judgment rendered by the Learned Single Judge of the High Court. The Division Bench of the High Court dismissed the Writ Appeal by its judgment dated 18th July, 2011 and therefore, the appellant has approached this Court by way of this appeal.

The learned counsel appearing for the appellant submitted that on 3rd May, 2010, the Returning Officer had published preliminary electoral roll as specified in Regulation 3(1) of the Regulations and the last date for preferring claims and objections relating to the entries or omissions in the preliminary electoral rolls was 30th July, 2010. However, the said last date was extended up to 31st August 2010. Ultimately, the Final Electoral Roll was published in the Extra-ordinary Gazette no.35 on 10th January, 2011. The election programme was notified in the Gazette on 27th January, 2011, whereby it was notified that the last date for receiving nomination papers was 7th February, 2011 and the scrutiny of the nomination papers was to take place on 9th February, 2011. The schedule prescribed the last date for withdrawal of the nomination as 16th February, 2011 and the election was to take place on 18th March, 2011. Counting was to take place on 19th March, 2011. The aforestated facts are not in dispute.

The learned counsel further submitted that after the process of election had started by publication of the election programme on 27th January, 2011, the High Court should not have entertained the petition filed by Respondent no.1, especially when he was not even an elector/voter and that nomination of Respondent no.1 was rightly rejected by the Returning Officer because his name was not in the electoral roll.

In the circumstances, the learned counsel submitted that the appeal should be allowed especially in view of the law laid down by this Court in the case of N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. and others, AIR 1952 SC 64, Nanhoo Mal and others v. Hira Mal and others 1976 (3) SCC 211 and Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others 2001 (8) SCC 509. He submitted that the aforestated judgments of this Court have laid down the law to the effect that once the process of election starts, no court should interfere with the election process. He further added that in view of the fact that Section 5 of the Act read with Regulation 20 of the Regulations, specifically provides that whenever any dispute arises in the course of election, it should be referred to the Central Government, whose decision shall be final. Section 5 of the Act read with Regulation 20 of the Regulations thereunder reads thus:-

> “Section 5. Mode of elections: - Elections under this Chapter 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.

Regulation 20. Procedure for setting aside election.-

Before setting aside an election under Section 5, the Central Government shall give an opportunity to all the parties concerned to show cause why the election should not be set aside.

A decision under Section 5 may be given on the inquiry and report of any person appointed by the Central Government in that behalf." In view of the aforestated provisions of the Act and the Regulations, the High Court should not have interfered with the process of the election as it was open to Respondent no.1 to raise the election dispute before the Central Government after completion of the election. The learned counsel, therefore, submitted that the impugned judgment should be set aside.

On the other hand, the learned counsel for Respondent no.1 submitted that Respondent no.1 was competent to contest the election though his name was not registered in Part A of the State register. Respondent no.1 was to be elected by the Dentists whose names were registered as Dentists in Part A of the State register and for the purpose of contesting the election, it was not necessary that his name should be in Part A of the State register. To contest the election one must be a registered Dentist possessing a recognised dental qualification and in fact Respondent no.1 was having qualification of a Dentist and he was registered as a Dentist. In these circumstances, according to the learned counsel appearing for Respondent no.1, non-inclusion of name of Respondent no.1 in Part A of the State register was not relevant.

He referred to the provisions of Section 3 of the Act, relevant portion whereof reads as under:

"Section 3. Constitution and composition of Council.- The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely:-

(a) One registered dentist possessing a recognized dental qualification elected by the dentists registered in Part A of each (State) register;

(b) ....." According to him, a registered Dentist possessing recognised Dental qualification can contest election and as Respondent no.1 is a registered Dentist, he was competent to contest election even though he was not registered in Part A of the State register. Thus, according to him, to become a member of Dental Council of India one need not be in the electoral roll or need not be registered in Part A of register of dentists for the State.

12. According to the learned counsel, the High Court had rightly intervened by setting aside the order passed by the Returning Officer of rejecting nomination paper of Respondent no.1 and

therefore, the appeal deserved to be dismissed.

13. We have heard the learned counsel for the parties at length and have considered the provisions of the Act and the judgments referred to hereinabove.

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.

15. This Court, in Ponnuswami v. Returning Officer (supra) has held that once the election process starts, it would not be proper for the courts to interfere with the election process. Similar view was taken by this Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra (supra).

16. Thus, in view of the aforestated settled legal position, the High Court should not have interfered with the process of election. We, therefore, set aside the impugned judgment and direct that the result of the election should be published. We are sure that due to interim relief granted by this Court, Respondent no.1 must not have been permitted to contest the election. It would be open to Respondent no.1 to approach the Central Government for referring the dispute, if he thinks it proper to do so. No issue with regard to limitation will be raised if Respondent no.1 initiates an action under Section 5 of the Act within four weeks from today.

17. For the aforestated reasons, we allow the appeal with no orders as to costs.

.....J. (ANIL R. DAVE) .....J. (ADARSH KUMAR GOEL)
NEW DELHI;

FEBRUARY 22, 2016.