



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Special Appeal (Writ) No. 1029/2024

Rajasthan State Dental Council, Jaipur, RUHS College of Dental Sciences, Subhash Nagar, Jhotwara Road, Jaipur through its Registrar Dr. Sankalp Mittal S/o Dr. Sitaram Mittal, Aged About 49 Years.

----Appellant/Respondent No.3

Versus

1. Lalit Jelia S/o Shri Nondi Lal Jelia, Aged About 45 Years, R/o Village Bajaria, District Sawai Madhopur, Rajasthan.
---Respondent/Writ Petitioner
2. The State of Rajasthan, through the Principal Secretary, Department of Medical and Health, Government of Rajasthan, Secretariat, Jaipur (Rajasthan)
3. Director, Department of Medical and Health, Government Of Rajasthan, Secretariat, Jaipur (Rajasthan)

----Respondents

For Appellant(s) : Mr.M.S.Singhvi, Sr. Adv. assisted by Mr.Abhishek Mehta, Adv.
For Respondent(s) : Mr.N.S.Rajpurohit, AAG assisted by Ms.Anita Rajpurohit, Adv.
Dr.Abhinav Sharma, Adv. through VC
Mr.Ashwani Gupta, Adv.

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Order

Order Reserved on : 23.10.2024

Order Pronounced on : 24.10.2024

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[Per Hon'ble Mr. Justice Munnuri Laxman]:

- 1) The present Special Appeal is filed challenging the ex-parte interim order dated 01.10.2024 passed by the learned Single Judge in S.B. Civil Writ Petition No.16194/2024, whereby



the election process commenced in pursuance of Election Notification dated 04.09.2024 was stayed.

2) The present appeal has been filed by the respondent No.3 in the writ petition.

3) The grievance of the appellant/respondent No.3 is that the order granting stay of election process was contrary to the well settled principles by the Apex Court dealing with the elections. Learned Senior Counsel appearing for the appellant submitted that once the election process has been commenced, the Court in normal circumstance would not interfere unless the extraordinary circumstance is made out, which is absent in the present case.

4) The learned Senior Counsel appearing for the appellant further contended that the nomination of the petitioner was submitted by post and in the nomination papers, the second Proposer signature was untallied with the signature which is available with dental council in the form of application which was submitted by Second Proposer for membership in Dental Council. Upon such variation, the Scrutiny Officer called the second proposer and obtained his signature which is tallied with signature on membership application but untallied with the signature on the nomination papers. In the said background, the Returning Officer after scrutiny, rejected the nomination, which is in tune with the rules.

5) It is also contended by learned Senior Counsel appearing for the appellant/respondent No.3 that the learned counsel for the writ-petitioner made certain submissions before the learned Single Judge, which were not found in the pleadings and such



contentions, influenced the learned Single Judge to stay the election process, which process reached very advanced stage.

6) The learned Senior counsel further contended that there is an alternative remedy under the Dentists Act, 1948 to challenge any dispute relating to elections and such a petition can lie to the State Government under Section 26 of the Act of 1948 r/w the Rajasthan State Dental Council Rules, 2008 (hereinafter referred to as, "the Rules of 2008").

7) In support of his arguments, learned Senior Counsel has relied upon the decision rendered by the Apex Court in the case of **Shaji K. Josheph Vs. V.Viswanath & Ors.**, reported in (2016) 4 Supreme Court Cases 429.

8) The learned counsel appearing for the respondent No.1/writ petitioner has submitted that the petitioner had sent his nomination papers by post duly signed by the first Proposer and the second Proposer. It is not the case of the Returning Officer that the second Proposer was not present when the scrutiny was done, however, the rejection was made arbitrarily when it is no one's case that signature was forged. According to him, the rejection suffers from arbitrary exercise of powers by Returning Officer. When such arbitrary powers have been exercised in order to deprive the writ petitioner chances of contest in election, there is no bar for the High Court to interfere in such a arbitrary exercise of power. Non-interference is only caution but that will not prevent the High Court from interfering the election process.

9) Learned counsel appearing for the respondent No.1/writ petitioner has relied upon the judgment of Apex Court rendered in the case of **Union Territory of Ladakh & Ors. Vs. Jammu and**



Kashmir National Conference and & Ors., reported in 2023
SCC OnLine SC 1140.

10) We have considered the rival submissions and perused the impugned order as well as material available on record.

11) The undisputed facts in the present case reveals that Election Notification was issued on 04.09.2024 for elections of 04 members of Part-A and 04 Members of Part-B of the Rajasthan State Dental Council. The notification schedule reveals that the last date for nominations was 19.09.2024. The date of scrutiny of nominations was 20.09.2024. The date of dispatch of voting paper was 30.09.2024. The last date of receiving of ballot papers was 21.10.2024 and the date of counting of votes is 22.10.2024.

12) This Court on 21.03.2024 passed interim order modifying the order impugned in this special appeal to the extent that counting should go on, however, result shall not be declared without permission of this Court.

13) The grievance of the writ-petitioner is that he filed his nomination for contesting the election of Group-A Member. He sent the nomination papers by post duly signed by himself, Proposer and the second Proposer. The scrutiny of nominations was done on 20.09.2024. After scrutiny, nomination of 1st respondent/writ-petitioner was rejected on the ground that the second Proposer signature on the nomination papers were not tallied with the signature of second proposer on his membership application.

14) The case of the appellant/respondent No.3 is that the signature of second Proposer on the nomination papers on scrutiny was not tallied with signature of second Proposer



maintained with the Dental Council in the application submitted by the second Proposer for membership in the Dental Council. The Returning Officer also secured the presence of the second Proposer during the scrutiny and obtained his signature and his signature was tallied with the signature found on his application for membership in Dental Council. However, the signature on the nomination papers was not found tallied with signature on membership application of second Proposer in the Dental Council or signature obtained by the Returning Officer during the scrutiny process. On the basis of such findings, the Returning Officer rejected the nomination of the writ petitioner. Such rejection was made by the Returning Officer while exercising power under Rule 12 of the Rules of 2008.

15) In order to decide the rival contentions, it is appropriate to refer to Rules 9, 10 and 12, which reads hereunder:-

"9. Nomination papers.- (1) Every nomination paper shall be signed by two electors as proposer and Seconder and sent by registered or otherwise post so as to reach the Returning officer on or before the date fixed by him which shall not be less than four weeks before, the date, appointed for the poll: Provided that no elector shall sign more nomination papers than there are seats to be filled up: Provided further that if more than the prescribed number of nomination papers are signed by the same elector, the prescribed number of nomination papers, first received by Returning officer, shall if otherwise are in order, be held to be valid and if more than the prescribed number of nomination papers signed by the same elector are received simultaneously by the Returning officer, all such nomination papers shall be held to be invalid.

(2) On receipt of each nomination paper. The Returning officer shall forthwith endorse thereon the date and time of receipt."

"10. Rejection of nomination papers.- Nomination papers which are not received by the Returning officer before the date and the time appointed in that behalf shall be rejected."



"12. Scrutiny of nomination papers.- (1) On the date and at the time appointed by Returning officer for the scrutiny of nomination papers, the candidates and the proposer and Seconder of each candidates may attend the office to the Returning officer, who shall allow them to examine the nomination papers of all the candidates which have been received by him.

(2) The Returning officer shall examine the nomination papers and decide all questions which may arise as to the validity of any nomination and his decision thereon shall be final."

16) A reading of Rule 9 makes it clear that every nomination paper shall be signed by two electors as Proposer and Seconder apart from candidate. Such nomination papers shall be sent by registered post or otherwise than registered post to the Returning Officer on or before the date fixed by him for receiving such nominations. Sub-rule (1) of the Rule 12 allows attendance of the candidates, the Proposer and Second proposer before the Returning Officer in the process of scrutiny of nomination papers if they choses. Sub-rule (2) of the Rule 12 enable the Returning Officer to decide all questions that may arise as to the validity of the nomination papers and his decision thereon shall be final.

17) The admitted position is that the nomination papers of the petitioner was sent by post. There was no physical presentation in the presence of the Returning Officer. It is also admitted that the signature of the second Proposer on the nomination paper was not tallied with the signature of such a person on his membership application available in Dental Council. It is also undisputed fact that the Returning Officer has called the second Proposer during the course of scrutiny in the light of mismatch of his signature on the nomination papers and his membership application, the signature was obtained, which was untallied with the signature



found on the nomination papers. In the said background the Returning Officer has rejected the nomination papers.

18) From the contention raised before the learned Single Judge, it appears that it was not the case of the writ-petitioner that second Proposer was not present before the Returning Officer or did not sign the nomination papers. The appellant/respondent No.3 pleadings clearly show that the Returning Officer called the second Proposer and obtained his signature, which was tallied with his signature on membership application but the signature was not tallied with his signature on nomination papers. The fact is that the writ-petitioner did not physically sign the nomination paper before the Returning Officer along with the Proposer and second Proposer. If that was the case, the result would have been otherwise. In the entire pleadings, there was no reference of presence of candidate, proposer and the second Proposer when the scrutiny was done. However, even there was presence of candidate and the second Proposer, prima facie, we are of the view that if the nomination papers were physically presented, signed by the candidate, the Proposer and the second Proposer in the presence of the Returning Officer, the mismatch of signature of the second Proposer with the signature on his membership application, hardly had insignificance. However, if it was sent through registered post, the presence of candidate, Proposer and the second Proposer at the time of scrutiny has any significance. The reason would be that the nomination papers could have actually signed by the second Proposer or his signature could have been forged. In such circumstance, subsequent acceptance of his





signature by second Proposer at the time of the scrutiny has become insignificance.

19) In the facts of the above case, we are of the opinion that the petitioner has no prima facie case so as to grant interim order.

20) The learned Senior counsel appearing for the appellant/respondent No.3 submitted that the Court shall not interfere in the election process after the commencement of election, except in rarest of rare case and the facts in the present case would not fall under the rarest of rare case. In support of contention, learned Senior Counsel has relied upon the para Nos.15, 16 and 17 of the judgment in the case of **Shaji K. Josheph** (cited supra):-

“15. 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 programme on 27-1-2011 and more particularly when an alternative statutory remedy was available to Respondent 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 1 for contesting the election is concerned, though prima facie it appears that Respondent 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 the 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 aforesaid



reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.

16. This Court, in *N.P. Ponnuswami v. Returning Officer* 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*.

17. 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 [*Shaji K. Joseph v. Viswanath*, 2011 SCC OnLine Ker 1676] and direct that the result of the election should be published. We are sure that due to interim relief granted by this Court, Respondent 1 must not have been permitted to contest the election. It would be open to Respondent 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 1 initiates an action under Section 5 of the Act within four weeks from today."

21) The learned Senior Counsel also relied upon Section 26 of Dentist Act, 1948 and Rule 23 of the Rules of 2008 to contend that there is an alternative remedy to deal with the election dispute, which is not resorted.

22) The Apex court in the case of **Union Territory of Ladakh & Ors.** (cited supra) relied upon by the learned counsel for the respondent No.1/writ petitioner, particularly in para Nos.37 and 39 observed as follows:-

"37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions *supra*, in election matters to the extent that once a notification is issued and the election process starts,





the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power *per se* of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order."

"39. This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that-misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding."

23) A reading of the above two decisions, it is clear that normal rule is minimal interference by the Court once election process is commenced. However, if the extraordinary circumstance



is made out and action of the respondent is found to be so arbitrary or unjust executive action, there is no bar to interfere in the election process. It is preposterous to hold at this juncture whether extraordinary circumstances exist or not since the challenge in the present appeal is only to interim order. Therefore, we are disinclined to consider such a contention at this stage.

24) In the above circumstance, the present Special Appeal is allowed and ex-parte stay order dated 01.10.2024 passed by the learned Single Judge is set aside. The parties are relegated to learned Single Judge to raise all questions of facts and law in the main writ petition itself.

25) Any observation made hereinbefore shall not come in the way of disposal of the writ petition.

(MUNNURI LAXMAN),J

(DR.PUSHPENDRA SINGH BHATI),J

NK/-