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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision:- 20th November, 2023.

+ **W.P.(C) 868/2023 & CM APPL. 50063/2023**

AJAY KUMAR SHARMA AND ORS. Petitioners
Through: Mr. Dhruv Madan & Mr. Saurabh
Sharma Advs. (M. 9873767313)
versus

GOVT. OF NCT OF DELHI AND ANR. Respondents
Through: Mr. Anuj Aggarwal, ASC, GNCTD
with Ms. Arshya Singh, Adv. along
with Mr. Dinesh Kumar, Deputy
Secretary, HFW.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 50063/2023 (for seeking directions) in W.P.(C)-868/2023

2. The present petition was filed by the Petitioners, who are members of the Delhi Pharmacy Council, constituted under section 24 of the Pharmacy Act, 1948. The petition sought directions to the Respondent No. 1-GNCTD for notifying the results of the election conducted on 2nd November, 2021 to the Delhi Pharmacy Council. The petition was disposed of on 15th February 2023, with the following directions:

“2.....Today, it is submitted on behalf of the GNCTD that vide order dated 25th May, 2022 in W.P.(C) 6792/2022 titled “Vikas Tushir v. Lt. Governor NCT of Delhi & Ors.”, direction was given for the hearing of a statutory appeal relating to the election to the Delhi Pharmacy Council where



the said appeal was pending before the Hon'ble Lieutenant Governor. In the said petition the following order was passed:

"1. Petitioner's appeal dated 30th November, 2021, before the Hon'ble Lieutenant Governor of Delhi, against the election of membership to Delhi Pharmacy Council under Section 24 of the Pharmacy Act, 1948, has not been decided till date. Aggrieved with this inaction, the Petitioner has filed the instant petition.

2. On 29th April, 2022, counsel for Respondents No. 1 to 3, who appeared on advance notice, sought time to obtain instructions to explain the reason as to why Petitioner's statutory appeal had not yet been decided and the time frame within which the same is likely to be decided.

3. Today, counsel for the Respondents states that she has received a communication from Deputy Secretary (Council), Health and Family Welfare Department, Govt. of NCT of Delhi, requesting for time to decide the appeal. She further submits that the Lt. Governor had resigned and the position was vacant for some time. This led to delay in deciding the appeal. She submits that now the Lt. Governor is being appointed, decision on the appeal would be taken expeditiously, not later than four weeks from today.

4. In view of the above, the present petition is disposed of and Respondents No. 1 is requested to decide the statutory appeal, referred above, preferably within a period of four weeks from today. It is made clear that the Court has not expressed any opinion on the merits of the case and the decision on the appeal be taken on its own merits.

5. In case the decision is against the Petitioner, needless to say, Petitioner would be at liberty to



take recourse against the same as is permissible under law.

6. The petition is disposed of.”

3. Ld. counsel, further, submits that pursuant to the above order, the Hon’ble Lieutenant Governor has passed order dated 2nd August, 2022 finally disposing of the appeal with the following directions:

“Therefore, the Prayer of the Petitioners to set aside the Delhi Pharmacy Council Election-2021 and also set aside the final result declared by the respondent No.4 vide Order No. F.No. 10/1844/Acad/DPSRU/2021-13215-13217 dated 02.11.2021 is hereby rejected.

However, it may be noted that the Respondents No. 1 and 2 being government servants, are duty bound to adhere to the provisions of DoPT OM11013/1/2016-Estt.A-III, dated 27.02.2020 regarding prior sanction before contesting for an elective office under Rule-15(1)(c) of CCS(Conduct) Rules, 1964. Since, there is non-compliance of this OM, it is for the concerned administrative authority of Government to take appropriate action as per applicable conduct rules. Therefore, Respondent No. 3 is directed to take notice of the above and examine the issue in accordance with rules in place on the subject for appropriate action.”

4. He submits that after the disposal of this appeal, the file has been escalated for the purposes of notifying the results of the elections. On the other hand, Mr. Gupta, Ld. Counsel submits that there has been considerable delay in the notification of the result of the elected body.

5.

6. **Admittedly, the Delhi Pharmacy Council consists of an elected body for which elections have been**



conducted, way back, on 2nd November, 2021. The returning officers have communicated the results of the elections on 25th November, 2021 to the GNCTD as also to the Registrar. There is no reason for the notification of the results to be delayed for so long. Even if this Court takes into consideration the order passed on 25th May, 2022 by the ld. Single Judge and the order of the hon'ble Lieutenant Governor dated 2nd August, 2022, almost six months have elapsed since then. The notification of results ought to have been done expeditiously and escalation of file within the government departments, cannot be a ground for delay.

7. Accordingly, it is directed that the results of the elections of the Delhi Pharmacy Council shall be declared within a period of three weeks, as requested by ld. Counsel for the GNCTD, through a gazette notification. Any further delay would be attributable to the Secretary, Health and Family Welfare GNCTD.

8. The writ petition, along with all pending applications, is disposed of in these terms. If there is any delay in the same, the Petitioner is free to approach this Court by way of an application.”

3. As per the above order, it was directed that the results of the election to the Delhi Pharmacy Council shall be declared within a period of three weeks and it was observed that escalation of files within government departments, cannot be a ground for delay.

4. Thereafter, Petitioner No. 4- Mr. Dinesh Kumar Madan moved the present application seeking directions to constitute the Delhi Pharmacy Council as the same had not yet been constituted and there were mistakes in the notification of the result by the GNCTD. Vide order dated 6th October,



2023, the Court observed that stark differences exist between the number of votes polled, as notified vide Delhi Gazette dated 26th May, 2023, and the table placed on record by the Office of the Returning Officer, Delhi Pharmacy Council Election. The relevant extracts of the order dated 6th October, 2023 is set out below:

“5. It has been brought to the notice of the Court that a notification bearing no. F.171/H&FW/2023/Council/DPC/2038 has been issued by the Health and Family Welfare Department on 26th May, 2023, mentioning the number of votes polled by various candidates. The same is contrary to the data supplied by the Office of the Returning Office, Delhi Pharmacy Council Election vide notification bearing no. F.No.10/1844/Acad/DPSRU/2021/14492-14494 dated 25th November 2021.

6. The tables have been perused by the Court and the discrepancies are stark. The table, which was sent by the Returning Officer is set out below:

| Sl. No. | Name and father's name of the Candidates | Votes polled |
|---------|--|--------------|
| 1 | Mr. Ajay Kumar Sharma | 4355 |
| 2 | Mr. Rajnish Tyagi | 4328 |
| 3 | Mr. Pankaj Gogia | 4313 |
| 4 | Mr. Dinesh Kumar Madan | 4298 |
| 5 | Mr. Madan Singh | 4273 |
| 6 | Mr. Pankaj Attray | 4221 |

7. But the number of votes polled, as notified in the Delhi Gazette dated 26th May, 2023 are as follows:

| S. No. | Name | Votes polled |
|--------|-------------------------------|--------------|
| 1 | Mr. Ajay Kumar Sharma | 4355 |
| 2 | Mr. Madan Singh | 4313 |
| 3 | Mr. Pankaj Gogia | 4309 |
| 4 | Mr. Rajnish Tyagi | 4247 |
| 5 | Mr. Dinesh Kumar Madan | 4240 |



| | | |
|---|-------------------|------|
| 6 | Mr. Pankaj Attray | 4193 |
|---|-------------------|------|

8. The differences are obvious. The Gazette publication has several errors. In addition, ld. Counsel for the Petitioner has drawn this Court's attention to a communication dated 17th July, 2023, issued by Deputy Secretary, Delhi Pharmacy Council Mr. Dinesh Kumar Gondiyani informing the President of Pharmacy Council to refrain from electing a new president and from starting day-to-day activities of Delhi Pharmacy Council until the nominated members are notified. Clearly, even though elections have been conducted, the Delhi Pharmacy Council has not been constituted, as the nominated and ex-officio members have yet to be notified.

9. The order dated 15th February, 2023 was clear that any further delay would be attributable to the Respondent No. 1-Secretary, Health and Family Welfare, GNCTD. Accordingly, the said Secretary or the Deputy Secretary of Health and Family Welfare, GNCTD shall remain present in the Court on the next date of hearing."

5. As per the above order, the Court took note of the discrepancies in the Notification of the election results and also considered the letter dated 17th July 2023 wherein the election of the new President and day-to-day activities of the Council was sought to be interdicted. Under such circumstances, the Secretary, Health & Family Welfare GNCTD was directed to be present.

6. Today, it is submitted that the corrected notification has been issued by the Delhi Government on 12th October, 2023, bearing number F. 171/H & FW/2023/Council/DPC/2600. The same has been placed on record by ld. Counsel for the Petitioners. It is also submitted that the present notification



has now corrected the differences as were visible from the previous notification dated 26th May 2023.

7. Accordingly, the candidates who secured the largest number of valid votes have been declared as members of the Delhi Pharmacy Council vide updated Delhi Gazette dated 12th October 2023. The relevant portion of the updated Delhi Gazette 12th October 2023 is set out below:

| <i>S. No.</i> | <i>Name</i> | <i>Votes Polled</i> |
|---------------|--------------------------------------|---------------------|
| 1. | <i>Mr. Ajay Kumar Sharma</i> | 4355 |
| 2. | <i>Mr. Rajnish Tyagi</i> | 4328 |
| 3. | <i>Mr. Pankaj Gogia</i> | 4313 |
| 4. | <i>Mr. Dinesh Kumar Madan</i> | 4298 |
| 5. | <i>Mr. Madan Singh</i> | 4273 |
| 6. | <i>Mr. Pankaj Attray</i> | 4221 |

8. According to Mr. Dinesh Kumar Gondyan, the Deputy Secretary of the Health and Family Welfare Department, GNCTD, who has appeared virtually and submitted that the Office of the Returning Officer, Delhi Pharmacy Council Election had sent the results of the election twice, and this led to the publication of the incorrect results in the notification bearing no. F.171/H&FW/2023/Council/DPC/2038, issued by the Respondent No. 1-GNCTD dated 26th May, 2023. The said mistake has now been rectified. A copy of the notification dated 12th October, 2023 has been placed on record. The concerned official further submits that the file is now before the Hon'ble Lieutenant Governor.

9. Considerable delay has already taken place in the constitution of the Delhi Pharmacy Council. The writ petition itself relates to notifying the results of election of the Delhi Pharmacy Council held on 2nd November, 2021. Since the newly elected body now stands notified, the Respondent No.



2023 : DHC : 8386



1-GNCTD shall constitute the Delhi Pharmacy Council within two weeks as a last and final opportunity.

10. The present application is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 20, 2023

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