

DENTAL COUNCIL OF INDIA AND ANR. ETC.

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v

DR. H.R. PREM SACHDEVA AND ORS. ETC.

OCTOBER 14, 1999

[DR. A.S. ANAND, CJ., S. RAJENDRA BABU AND R.C. LAHOTI, JJ.]

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*Dentist Act, 1948/Dental Council (Election) Regulation, 1952:*

*Ss.2(g), 3, 6, 7(1)/Regulation 23—Dental Council—Elected/nominated members—Tenure—Held, elections/nominations to the Council should normally be held/made once in five years—If for some valid reasons elections could not be held during the term of five years, it should be held within a reasonable time thereafter and continuance in office after expiry of the term should only be a stop gap arrangement to avoid a vacuum—Act and Regulations are silent about the period during which elections/nominations should be held/made and about consequences of not holding elections or making nominations within five year term or soon thereafter—Authorities concerned to take appropriate measures in this regard.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10232-33 of 1995 Etc.

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From the Judgment and Order dated 31.8.95 of the Delhi High Court in C.W.P. Nos. 302 and 3023 of 1995.

Harish N. Salve, A. Mariarputham, Ms. Pratibha M. Singh, Ms. Kavita Wadia and Maninder Singh for the appellants in C.A. Nos. 10232-33/95.

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Vikas Singh, Yunus Malik, Reetesh Singh, Richa Kachhwaha and L.R. Singh for the appellant in C.A. No. 10234/95 and Res. No. 2 in G.A. Nos. 10232-33/95.

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The following Order of the Court was delivered :

Both these appeals, by special leave arise out of the judgment and order of the High Court of Delhi in CWP No. 3021 and 3023 of 1995, decided on 31st August, 1995.

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A Although for all practical purposes, these appeals, it is admitted by learned counsel for the parties, have been rendered infructuous and we need not detain ourselves to deal with the facts of the case leading to the filing of the appeals but there is one matter which has caused us some concern.

B Section 3 of the Dentist Act, 1948 (hereinafter referred to as the 'Act') provides that the Central Government shall constitute a Council consisting of the members detailed in sub-sections (a) to (f) thereof. Section 4 of the Act provides that the Council shall be a body corporate, having perpetual succession. Under Section 5, the elections under Chapter-II of the Act shall be conducted in the prescribed manner, and where any dispute arises regarding  
 C any such election, the same shall be referred to the Central Government whose decision shall be final. Section 2(g) defines the expression "prescribed" to mean prescribed by rules or regulations made under this Act.

Section 6(1) provides as follows :—

D "6. (1) Subject to the provisions of this section an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer;

E (Provided that a member nominated under clause (e) or clause (f) of section 3, shall hold office during the pleasure of the authority nominating him.)"

Section 7 of the Act provides as follows :—

F "7(1) The President and Vice-President of the Council shall be elected by the members thereof from among themselves:

Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the functions of the President:

G Provided further that for five years from the first constitution of the Council, the President shall, if the Central Government so decides, be a person nominated by the Central Government who shall hold office during the pleasure of the Central Government, and where he is not already a member, shall be a member of the Council in addition to the members referred to in section 3.

H (2) An elected President or Vice-President shall hold office as

such for a term not exceeding five years and not extending beyond the expiry of his term as member of the Council, but subject to his being a member of the Council, he shall be eligible for re-election. A

Regulation 23 of the Dental Council (Election) Regulations, 1952 (hereinafter referred to as 'the Regulations') provides as follows: B

"23. Representatives of Universities—The President shall not later than 60 days before the date of occurrence of a vacancy or vacancies forward a notice by registered post to the Registrar of each University concerned, requesting him to hold an election not later than the date specified in the notice." C

A conjoint reading of the various provisions of the Act and the Regulations referred to above, go to show that the term of office of the members of the council is *five years* from the date of the election or nomination, as the case may be. Section 6(1), however, also provides that a nominated or elected member, after the expiry of the term, may continue "until his successor has been duly elected or nominated, whichever is longer". The expression "whichever is longer" does suggest the continuation after the expiry of the term. Can it, however, be construed to mean that if the authorities fail to act as per clause (a) to (f) of Section 3, the member concerned can continue to remain in office till perpetuity? In our opinion that could not be the intention of the law makers. Regulation 23 (supra) does give an indication of what we have said above. D E

A reasonable interpretation of the provisions of the Act and the regulation would be that elections/nominations to the Council should normally be held/made once in five years. However, if for some valid reasons the elections cannot be held during the term of five years, the same should be held within a reasonable time thereafter and the continuance in office of the elected/nominated members should not go on for perpetuity. The continuance in office, after the expiry of the term, should only be a stop gap arrangement to avoid a vacuum. The obligation to nominate/hold elections is of various authorities obliged to elect/nominate members to the Council under Clauses (a) to (f). The Act and the Regulations are, silent about the period during which elections/nominations should be made/held as also about the consequences of not holding the elections or making nominations within the five year term or soon thereafter and this lacuna gives rise to unnecessary litigation. We hope that the authorities concerned shall take appropriate measures by amending the provisions of the Statute or the Regulations or H

A frame appropriate rules so that the ambiguity regarding the maximum period, after the expiry of the five year term, during which election/nomination should be held/made is removed.

With the aforesaid observations the appeals are disposed of. No Costs,

B R.P.

Appeals disposed of.