

Dr. Raju Biswas Vs Returning Officer, West Bengal Dental Council And Others

Court: Calcutta High Court (Appellate Side)

Date of Decision: Feb. 22, 2024

Acts Referred: West Bengal Dentists Rules, 1950 " Rule 1(c), 1(d), 2, 2(1), 2(2), 4(2), 5(1), 8(2)

Dentists Act, 1948 " Section 21(a), 21(b), 25, 25(2), 26, 27, 27(1), 55

General Clauses Act, 1897 " Section 14, 21

Bengal General Clauses Act, 1899 " Section 22

Code Of Civil Procedure, 1908 " Section 148

Hon'ble Judges: Sabyasachi Bhattacharyya, J

Bench: Single Bench

Advocate: Kallol Basu, Suman Banerjee, Atreya Chakraborty, Abhratosh Majumdar, Nilotpal Chatterjee, Satyaki Banerjee, Sirsanya Bandopadhyay, Arka Kumar Nag

Final Decision: Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner in WPA No. 27846 of 2023 claims to be the President of the West Bengal Dental Council, whereas the petitioner in WPA No. 27672

of 2023, a member of the said Council. The challenge in both the writ petitions being common, those are heard together and being decided by a

common judgment and order. For the sake of convenience, the petitioner in WPA No. 27846 of 2023 shall be referred to as "the petitioner"

hereinafter.

2. The challenge in both the writ petitions is primarily two-fold. The petitioner, claiming to be the President of the West Bengal Dental Council, argues

that the Registrar, acting as Returning Officer, has no power to alter the election schedule for the Council, once published, under the Dentists Act,

1948 (hereinafter referred to as "the 1948 Act") and/or the West Bengal Dentists Rules, 1950 (in brief, "the 1950 Rules"). Thus, it is argued

that the decision of the respondent no. 1-Returning Officer to extend the dates from the stage of dispatch of ballot papers onwards is bad in law. The

last date for such dispatch, according to the schedule of elections published by the Returning Officer on June 14, 2022 in the Official Gazette, was

November 10, 2023. The respondent no. 1 called a meeting without the consent of the petitioner/President and altered the date of dispatch of the ballot

papers. Such extension is in contravention of Rule 1(d) of the Rules and Section 21(a) or (b) of the 1948 Act, it is argued.

3. In such context, the petitioner cites Strawboard Manufacturing Company Limited Vs. Gutta Mill Worker's Union, reported at (1952) 2 SCC

746.

4. It is next argued by learned counsel for the petitioner that the respondent no. 1 acted under pressure from a certain section of members of the

Council and Government dictate in altering the dates and altering the venue for dispatch of ballot papers.

5. By an e-mail dated November 7, 2023 addressed to the President, the respondent no. 1/Returning Officer stated that he had undertaken steps for

dispatch of ballot papers from the New Town Post Office and that he was physically attacked and surrounded by persons who demanded a change in

the venue of ballot dispatch. However, such initial stance was changed by the respondent no. 1 in his e-mails dated November 22, 2023, November 23,

2023 and November 24, 2023. In such subsequent e-mails, although reference was made to the verbal instructions of the Deputy Secretary,

Government of West Bengal for change of Post Office, there was no mention of the order dated November 10, 2023 whereby the Deputy Secretary

directed the respondent no. 1 to take steps as per the Rules and Regulations to ensure completion of the election process.

6. It is argued that the contents of the e-mail dated November 7, 2023 and the subsequent e-mails of November 22, November 23 and November 24,

2023 are in stark contrast to each other and cast serious doubts over the decision of the respondent no. 1 to change the venue.

7. It is argued further that Rule 5(1) of the 1950 Rules merely lays down the procedure to be followed in case any nomination paper does not comply

with the statutory Rules. The substantive phrase of the said Rule "On the date and at the time as fixed for scrutiny of nominations by the

notification under Rule 5 shall apply because the election schedule dated June 14, 2022 clearly specifies the date of scrutiny for nomination papers to

be November 10, 2023. Section 14 of the General Clauses Act, 1897 read with Rule 5(1) does, not come in aid of the respondents.

8. The petitioner places reliance on Rule 2(2) of the 1950 Rules which states that the notification shall be published 14 days before the date fixed in

the programme of time to be the last date for receiving nomination papers and except in the case of the first general election under Clause (a) or

Clause (b) of Section 21 on a date not less than 42 days and not more than 75 days before the date on which the term of office of the outgoing

members expires. Such election schedule has expired and the time specified therein cannot be extended, it is argued, unless there is a fresh notification

under Rule 2 of the 1950 Rules.

9. The next allegation of the petitioner is that the Vice-President of the Council cannot be added as a signatory for signing the cheques for the Council.

By a letter dated February 25, 1961 it was specifically stated that the outgoing President may continue to pass bills and operate the accounts of the

Council with the Bank till assumption of the charge by a new President after election.

10. Furthermore, a resolution dated January 30, 2018 was adopted by the State Dental Council deciding that the President and the Registrar shall be

joint signatories in respect of the new bank account of the Council.

11. Also, Section 25(2) of the 1948 Act prescribes that the 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 a member of the State Council, but subject to his being a member of the State Council, he shall be

eligible for re-election.

12. It is argued that the President's term of office still continues.

13. Section 27(1) of the 1948 Act, it is argued, stipulates that 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. Since the fresh elections are yet to be

conducted, the President continues to be a member of the Council and as the President.

14. Learned counsel for the petitioner next argues that the Notification dated August 26, 1963, relied on by the respondents, is not applicable. The

President has already signed cheques in respect of expenditures to be incurred for dispatch of ballot papers and there cannot be any allegation of

causing stalemate against the petitioner.

15. Any executive action under Section 26 of the 1948 Act, it is contended, cannot override statutory rules framed by the State government in exercise

of the powers under Section 55 of the Act of 1948.

16. The petitioner also alleges that the control of the CCTV was handed over to the Returning Officer long after the meeting on November 8, 2023,

which was convened unlawfully.

17. Learned counsel for the petitioner seeks to distinguish Jayantbhai Manubhai Patel and others v. Arun Subodhbhai Mehta and others, reported at

(1989) 2 SCC 484 and argues that Section 21 of the General Clauses Act, which is pari materia with Section 22 of the Bengal General Clauses Act,

was relied on to hold that the Mayor can cancel or postpone a meeting before the meeting has commenced. Again in Ravi Kiran Jain v. Bar Council

of U.P., through its Secretary and others, reported at AIR 1974 All 211, a Single Bench of the Allahabad High Court had placed reliance on Section

21 of the General Clauses Act, to hold that the Bar Council of U.P. had the power to modify, rescind or alter election schedule and that such power

does not stand extinguished merely because the election schedule stood modified.

18. The respondents contend that, read with Section 22 of the Bengal Act, the Returning Officer has the power to publish election schedule; hence, he

must also be deemed to possess the power to alter or vary the same as per the argument of the respondents. However, the petitioner controverts the

same on the strength of the judgment of the Supreme Court in Mahendra Lal Jaini v. State of Uttar Pradesh and others, reported at AIR 1963 SC

1019 where it was held that to bring about an effective amendment or cancellation of a statutory order, the order or rule effecting such amendment

must be made in the manner the original order or rule is required to be made. In the instant case, a Gazette Notification is mandatory for such

notification and without the same, there cannot be any amendment to the Election Notification.

19. By placing reliance on Strawboard Manufacturing Company Limited (supra), the petitioner argues that the power of amendment or modification, in

the absence of any clear authorization to that effect, can only be exercised prospectively during the period the original notification/order continues to

be effective, for it cannot be brought to life ex post facto after it has once ceased to exist.

20. The petitioner also challenges the addition of the Vice-President as signatory and the enlargement of time of the original election schedule by the

Returning Officer on the ground that the same is contrary to the Rules and the decision of the State Government itself.

21. Such arguments are controverted by the respondents, who submit that the Returning Officer has sufficient power under Section 21 of the General

Clauses Act and Section 22 of the Bengal General Clauses Act to enlarge the election schedule, in the absence of any bar in the 1948 Act and the

1950 Rules.

22. It is argued that the President's tenure had already expired. In terms of Section 25, the President can only act for the period of five years, which

has already elapsed, as opposed to Section 27 of the 1948 Act, which speaks about ordinary members and not the President. Moreover, the

petitioner/President has been refusing to sign the cheques, thereby stalling the election process, for which the Vice-President was added as a

signatory.

23. Section 26 empowers the State Government to finally decide on election disputes upon being referred to. The Returning Officer referred the

dispute to the State Government which took a decision that the Returning Officer shall act in terms of the Rules and the Regulations governing

election, which has been precisely done by the respondent no. 1/Returning Officer.

24. It is argued that although the respondent no. 1 initially wrote an e-mail about pressure being applied by some members, subsequently the

respondent no. 1 called a meeting and upon being guided by the State Government under Section 26 of the 1948 Act, altered the venue of his own

volition to the General Post Office (GPO), Kolkata. The said Post Office is a Central Post Office and it would be much smooth and efficient to

dispatch the ballot papers from it, as opposed to the New Town Post Office, which was the previous venue of dispatch. If vicinity is a consideration,

there are post offices which are situated closer to the office of the Dental Council than the New Town Post Office, which was the previous venue

chosen. In any event, the Returning Officer is agreeable to dispatch the ballot papers from any post office, it is submitted, if so directed by the court

and has no qualms on such count.

25. As regards the power of enlargement of time, it is argued that since the Returning Officer has the power to issue notification and hold elections,

the power to enlarge the time is implicit therein.

26. In such context, the respondent nos. 1 and 2 cites Vipulbhai Mansingbhai Chaudhary v. State of Gujarat and another, reported at (2017) 13 SCC

51.

27. Learned counsel for the respondent nos. 1 and 2 distinguishes the judgments cited by the petitioner on the question of enlargement of time. In

Strawboard Manufacturing Company Limited (supra), it was a case of the Adjudicator having become functus officio, which is quite different from

the present case since the Returning Officer retains power under the Act as the Returning Officer till the end of the election.

28. Learned counsel for the respondent nos. 1 and 2 cites Rule 1(d) and Rule 2 of the 1950 Rules in this regard. Learned counsel also relies on the

judgment of the Allahabad High Court in Ravi Kiran Jain (supra) and Jayantbhai Manubhai Patel (supra) in support of the contention that Section 21

of the General Clauses Act can be invoked to imply such power where there is no bar in extension of time.

29. Mahendra Lal Jaini (supra) and J. Mitra & Company Private Limited v. Controller of Patents & Designs and others, reported at (2008) 10 SCC

368, it is argued, also holds that the power of alteration/amendment has to be exercised in the like manner and subject to the like sanction and condition

as to the power to issue the original notification, as provided in Section 21 of the General Clauses Act and Section 22 of the Bengal General Clauses

Act. It is made clear by the respondents that they have no quarrel with the said proposition and the notice dated November 10, 2023 was a mere

precursor of such process. The Returning Officer, in any event, shall publish a notification in the Official Gazette in terms of the provisions of law for

extension of the dates and re-scheduling the election from the stage of dispatch of ballot papers.

30. Thus, it is argued that the present challenge has no legs to stand on.

31. It is also contended by the respondents that the Returning Officer is acting of his own volition in the best interests of the democratic election

process and not as per the dictates of anybody.

32. It is further argued that rule 8(2) of the 1950 Rules provides for dispatch of voting papers and does not provide anything regarding the venue. The

Returning Officer, thus, has ample power to choose a venue of his choice for dispatch of ballot papers.

33. Regarding the addition of the Vice-President as signatory, it is argued that the 1961 letter of the Government, cited by the petitioner, does not have

the force of law. By a 1963 notification, it was clearly mentioned that the Vice-President can act and exercise powers of the President if the

President is otherwise unable to do so. In the present case, the President has spent his tenure and is unwilling to sign the cheques, for which the Vice-

President was duly added as a joint signatory with the Returning Officer for the purpose of signing the cheques of the Council to hold the elections

smoothly.

34. Insofar as the continuance of the President in his post, it is argued that the President's tenure has long expired in the year 2023 and as per

Section 25 of the 1948 Act, his is not entitled to act in such capacity any further. On the other hand, the Vice-President's tenure is still continuing.

35. The petitioner has obliquely referred to the election notification no longer being in force or enforceable in view of the directive of the Central

Government to the State to frame Rules under the newly enacted(though not yet notified) National Dental Commission Act of 2023, which will replace

the 1948 Act.

36. It has been argued that since the initial notification contemplates elections both for the State Dental Council and the Central Dental Council, there

cannot be any bifurcation of the notification and since, as per the directive of the Union Government, the Central Council elections have been stopped,

the same fate should visit the State Dental Council elections as well.

37. Learned counsel for the respondents controverts such submission and argues that insofar as the election to the Central Council is concerned, the

Returning Officer has stayed his hands as per the directive. However, nothing in any directive restrains the Returning Officer from continuing with the

State Dental Council election.

38. The respondents also indicate that the petitioner/ex-President, in order to perpetuate his control over the Council, despite his tenure as President

being over, is attempting to stall the elections.

39. Upon hearing learned counsel for the parties, the court arrives at the following decision:

40. One of the issues which have been raised in the present case is whether the Vice President could be added as an additional signatory for signing

the cheques, along with the President and the Returning Officer.

41. Rule 4 (2) of the West Bengal Dentists Rules, 1950, which was notified on December 23, 1950 and came into effect from December 30, 1950,

provides that all cheques drawn on the bank of the West Bengal Dental Council shall be signed by the Registrar and the President jointly.

42. However, in this context, a subsequent Notification dated August 26, 1963 acquires importance. By it, the Governor made Rules regarding the

powers and duties of the Vice-President of the West Bengal Dental Council whereby, if the office of the President is vacant or if due to illness or any

physical incapacity or for any other reason the President is unable to exercise the powers and perform the duties of his office, the Vice-President shall

act in his place and exercise the powers and perform the duties of the President.

43. The words "for any other reason" and "is unable" clearly connote that if the President is incapacitated or unable for any reason to

perform his duties, the Vice-President "shall" act in his place.

44. In the present case, the mere refusal of the President to sign cheques may not be said to be an "inability" justifying usurpation of his power by

the Vice-President. However, the five-year term of the writ petitioner as President expired on July 16, 2023. Section 25 (2) of the Dentists Act, 1948

stipulates that an elected 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.

45. Section 27 (1) of the Act provides that an elected or nominated member of the State Dental Council 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. The said provision applies to

members of the Council, whereas Section 25 (2) pertains specifically to Presidents and Vice-Presidents.

46. Thus, even if the writ petitioner continues as an ordinary member of the Council, his tenure as President has come to an end. In such scenario, the

Notification dated August 26, 1963 is attracted as the President is no longer the President and, in view of his tenure having reached a terminus within

the contemplation of Section 25 (2) of the 1948 Act, is "unable" to perform his duties, making way for the Vice-President to assume charge in

exercising the President's powers and performing his duties, including signing of cheques.

47. To counter the above logic, the petitioner cites a purported letter dated February 25, 1961 from the Special Officer and Assistant Secretary (Ex-

Officio) of the Government of West Bengal, Department of Health, Medical Branch, to the Register, West Bengal Dental Council. Such reliance,

however, is misplaced for the following reasons:

48. First, the 1961 letter was issued prior to the 1963 Notification which empowers the Vice-President to assume charge in case of inability of the

President for any reason. Secondly, by no stretch of imagination does a letter written by a Secretary of the State Government override a formal

Notification issued by the Governor, which has the effect of law.

49. Hence, the decision to empower the Vice-President as a joint signatory to sign cheques of the Council was perfectly justified and in accordance

with law.

50. The next issue which arises is whether the change of venue for sending ballot papers of the election vitiates the election process itself. The

petitioner argues that such change was due to pressure, which is alleged to be borne out by the previous e-mail of the Returning Officer to the

petitioner. Government dictation being a reason is also insinuated. However, it is seen from the subsequent e-mails and decisions of the Returning

Officer that he does not deny his initial threat-perception but says that several members wanted the venue to be changed to the G.P.O. (General Post

Office), Kolkata.

51. By itself, the change of venue of sending the ballot papers is not vitiated merely because the same was at the instance of some of the members,

provided the decision was ultimately the Returning Officer's. There is nothing on record to show conclusively that any undue pressure or

Government dictation actuated the change of venue. The respondent no. 1, of his own volition, called meetings and decided the change of venue.

52. Even apart from that, it is to be seen whether the change contravened any law. If not, even if it was on the request of a section of members, such

fact cannot render it bad.

53. Vide Notification dated October 14, 1950, Rules for the election of the members, including the President and Vice-President of the West Bengal

Dental Council, were made.

54. Rule 8 (2) thereof provides that a voting paper shall be issued to each person whose name is borne on the Electoral Roll "by registered post",

nothing more, nothing less. There is no stipulation therein regarding the venue of issuing such ballot papers. Thus, there is no hard-and-fast rule in that

regard. The demands of convenience or efficacy may always be considered for choosing the venue at the choice of the Returning Officer.

55. The respondents argue that even the previous venue is not the nearest to the Council office. Rather, the G.P.O. is the largest and the central post

office of the city of Kolkata, which would facilitate smoother and more efficient dispatch of the voting papers.

56. The petitioner's perception of Government dictation to interfere with the autonomous activity of the Returning Officer is not vindicated by solid

evidence but is an empty apprehension. Even assuming the worst, that some of the members of the Council tried to pressurize the Returning Officer

into altering the venue, the Registrar (Returning Officer) is empowered under Section 26 of the 1948 Act to refer such dispute to the State

Government whose decision shall be final.

57. In fact, there is no reason why the said provision cannot be applied also to the Returning Officer seeking the guidance of the Government due to

the dispute as to the venue of issuing voting papers as well as the stalemate arising out of the President's tenure being over in the meantime and his

refusal to sign cheques, which resulted in the Vice-President being conferred signatory power additionally.

58. Thus, I do not find any illegality or violation of law in the change of venue. No prior consent of the members or the rest of the Council need be

taken as such, although the decision was taken formally in a meeting, since the Returning Officer is the person responsible for holding the election as

per the 1950 Rules.

59. The third issue involved here is whether the instructions issued by the Central Government to the States to frame Rules under the newly enacted

2023 Act, which would entail fresh elections for the State Council within a year, should be a deterrent to holding the elections to the State Council

now, since it would allegedly involve de novo elections involving substantial expenditure within a year.

60. I do not find any logic behind such argument. The 2023 has not yet been notified or given effect to; hence the 1948 Act still holds the field. There

cannot be any reason for perpetuating the headless state of affairs in the State Council in uncertain anticipation of future promulgation of the 2023

Act. As of now, the elections are overdue and the same should not be stalled on such vague ground.

61. Rather, such arguments go on to betray the attempt of the writ petitioner, who is the erstwhile President, to perpetuate his control over a defunct

body by avoiding the democratic process of elections.

62. The Supreme Court's decision in J. Mitra & Company Private Limited (supra) is apt in the context. The 2023 Act has not yet been proclaimed

by Notification and, as such, cannot be said to have commenced as yet. The provisions of the said Act cannot, thus, have any bearing on the present

case, which is still governed by the still-subsisting 1948 Act.

63. Hence, the said objection of the petitioner to the election process is turned down.

64. A fourth objection raised by the writ petitioner is based on the fact that the Central Government has issued instructions to keep on hold the

elections to the Dental Council of India, apparently due to the impending enactment of the new Act and Rules. The Notification issued by the

Returning Officer in the present case relates to the elections to both the Central and the State Councils. The question which arises is, whether the

process of election to the State Council, initiated by the same Notification, can be bifurcated from the stalled Central Council election and be

independently proceeded with.

65. To answer the issue, we have to look to the scheme of the Dentists Act, 1948. Chapter II thereof deals with the Dental Council of India and

Chapter III with the State Dental Councils. The provisions for the two are independent of each other, although there is substantive parity *mutatis*

mutandis in the procedures prescribed for the functioning and election of each. Each of the two Chapters, however, provide a self-sufficient,

independent eco-system, respectively for the Central and State Dental Councils.

66. As a matter of convenience, a common Notification has been issued in the present case declaring the elections to both the Councils under

Chapters II and III. However, the two processes are distinct and different from each other insofar as the procedure and the outcome are concerned,

each being governed by their respective procedures. Thus, the postponement of one cannot furnish reasons for stopping the other; all the more so,

since by specific exclusion the State Dental Council elections have been kept outside the purview of the Central Government directions. In any event,

the authorities and procedure for conducting the two are different and thus nothing prevents the bifurcation of the two processes.

67. Hence, this issue is also answered in the positive and against the writ petitioner.

68. The last and most vital question which falls for consideration is whether the Registrar of the West Bengal Dental Council, acting as the Returning

Officer, has the power to alter the Election Notification, thereby re-scheduling the dates for the various phases of the election, without issuing a fresh

Notification.

69. For a proper appreciation of the issue, the relevant provisions of law are to be considered. The Election Rules notified by the Government of West

Bengal on October 14, 1950 still hold the field in that regard.

Rule 1 (c) defines the Registrar and Rule 1 (d) provides that “Returning Officer” means, for the purpose of an election under Clause (a) or

Clause (b) of Section 21 of the 1948 Act, the Registrar.

70. Part II of the 1950 Rules prescribes the rules for election to the State Councils in terms of Section 21, Clauses (a) and (b) of the 1948 Act.

71. Under Part II, Rule 2 (1) provides, *inter alia*, that the Returning Officer shall publish in the Calcutta Gazette and in such other manner as he may

think fit a notification fixing a programme of time for the various stages according to which the election shall be held. Such notification, as per sub-

Rule (2) of Rule 2, shall be published 14 days before the date fixed in the programme of time to be the last date for receiving nomination papers.

72. In the present case, the first phase of the election process is over, up to the stage of receiving and scrutinizing the nomination papers and declaring

the candidates. What remains is that the voting papers (or ballot papers) are to be sent to the voters and the election is to be held.

73. The last date for dispatching the ballot papers, as per the Election Notification issued on June 14, 2023, was November 10, 2023. On November 8,

2023, a Special Meeting was called by the Returning Officer wherein it was resolved that the voting papers would be dispatched from the G.P.O.,

Kolkata instead of the previously designated post office in New Town. The Returning Officer then wrote to the State Government seeking to extend

the time schedule from the stage of dispatch of ballot papers till counting of votes.

74. On November 9, 2023 the Returning Officer was given liberty by the State to do the needful in terms of the Rules laid down under the 1948 Act

for holding free and fair elections.

75. Thus, there was no "dictation" on the part of the State Government as alleged by the petitioner, since the matter was treated to be a

"dispute" regarding the election under Section 26 and the Returning Officer referred it to the State Government.

76. In fact, instead of itself extending the date or directing the Returning Officer to act one way or the other, the Government merely asked the

Returning Officer to act in terms of the Rules for holding free and fair elections.

77. Of course, such advice by the State Government per se cannot confer any power on the Returning Officer to re-schedule the dates, if law

otherwise does not permit him to do so. The opinion of the State Government was in merely advisory capacity and is required to be seen as such.

78. Taking the bull by the horns, the 1950 Election Rules do not contain any specific provision empowering the Returning Officer to extend the election

dates. Only in Rule 5 (1) of the said Rules, it is provided that that Returning Officer shall examine all nomination papers and decide which are to be

rejected and which not. Such exercise has been provided to be done on the date and at the time as fixed for the scrutiny of nominations by the

notification under rule 2, "or on such other subsequent date and time as may be fixed on that behalf by the Returning Officer". Thus, a limited

power of fixing a subsequent date and time for scrutiny has been vested in the Returning Officer.

79. True, such limited power cannot be said to be a general power of extension but is restricted only to extending the date of scrutiny of the

nomination papers. However, it is sufficient to indicate that the initial time-schedule is not a hard-and-fast edict set in stone so as to prevent the

Returning Officer to extend the time at all.

80. The scheme of the 1950 Rules, framed under the 1948 Act, clearly empowers the Registrar, acting as Returning Officer, to be in total charge of

the election process, with the additional scope of referring disputes to the State Government for a decision.

81. It is to be noted that, just as there is no specific provision empowering the Returning Officer to extend the schedule of dates of holding the

elections, there is no bar in doing so either. Seen from such perspective, there is no reason why the provisions of Section 21 of the General Clauses

Act (insofar as it relates to the 1948 Act, which is a Central Act) and Section 22 of the Bengal General Clauses Act (insofar as it relates to the 1950

Election Regulations framed by the State) should not apply. Under the said provisions, where, by any Act or Regulation, a power to issue notifications,

orders, rules or bye-laws is conferred then that power includes a power to add to, amend, vary or rescind any notifications, orders, rules or bye-laws

so issued.

82. The only rider, of course, is that such power of amendment, alteration, variation, etc. is exercisable "in the like manner and subject to the like

sanction and conditions (if any) as to the power to issue the original notification". Thus, in the present case, if an alteration or amendment is made to

the Election Notification, such alteration or amendment has to be published in the Calcutta Gazette in the same manner as applies to the original

Election Notification under Rule 2 (1) of the 1950 Rules.

83. The judgments cited by the parties in such context are, thus, to be construed in such backdrop.

84. Vipulbhai Mansingbhai Chaudhary (supra), cited by the respondent nos.1 and 2, does not have relevance in the present context. There, the

Supreme Court held that where an order passed in exercise of a power conferred by a statute is set aside on the ground that such an order was

passed in breach of the principles of natural justice, the power could once again be exercised by complying with the principles of natural justice. The

Supreme Court relied on Section 14 of the General Clauses Act.

85. The instant case, however, is not on Section 14 and the question of de novo exercise of power is not in issue here. The present question relates to

the power to extend time not by a de novo issuance of Notification but by partial alteration of the same.

86. The petitioner relies on Strawboard Manufacturing Company Limited (supra). There, an adjudicator had been nominated to pass an award within a

time limit. After expiry of the same, he was held to be rendered functus officio. In such scenario, it was held that the State Government cannot extend

the time to pass award as there was no legal provision to do so. The U.P. Industrial Disputes Act, 1947, under which the nomination was made,

conferred power on the State Government to specify a fresh period of time only when it remits the award to the adjudicator for reconsideration. In the

said case, the jurisdiction of the adjudicator was itself conferred by the initial decision of the Government. After expiry of the same, the adjudicator

became functus officio and there was no scope of enlargement of time since there was nothing akin to Section 148 of the Code of Civil Procedure in

the said Act.

87. In the present case, there are two important distinctions. First, the Returning Officer has not become functus officio but retains power to hold the

election under Rule 1 (d) of the 1950 Election Rules. His tenure need not be extended, since it has not expired in the first place. Secondly, the

concerned Rules are silent as to the power of extension of timelines by amendment of the original Notification, whereas in the reported case, the

concerned statute conferred power to specify fresh period but only under certain circumstances (remittance to the adjudicator) which were not met.

88. The question in the instant case is whether the Returning Officer is entitled to extend the timelines set by the original Notification, thereby in effect

amending/altering the same. The ratio in the said reported judgment is, thus, inapplicable to the present case.

89. Rather, the decision of the Allahabad High Court in Ravi Kiran Jain (supra), where it was held that in the absence of any limitation, express or

implied, in the rules on the power of the Bar Council for exercising its power to modify, vary or rescind its notification, the same must be conceded to

it. The power of the Bar Council to fix time place and date of the election is not exhausted merely on the issue of notification of the programme but it

can alter, modify or rescind its order fixing the various dates; otherwise preposterous result would follow.

90. A similar ratio was laid down by the Supreme Court in Jayantbhai Manubhai Patel (supra) as well. There, the principles laid down in Section 21 of

the General Clauses Act were held to be fully applicable in construing Rules 4 and 6 of the Election Rules of the Bar Council and the Council was

held to have full jurisdiction to change the date of an election and to postpone it or to fix dates for holding it afresh till the elections were completed.

91. The said judgments were rendered in the light of Section 21 of the General Clauses Act, which is pari materia with Section 22 of the Bengal

General Clauses Act, both of which, as discussed above, can be construed to confer sufficient power on the Returning Officer to partially alter/extend

the timelines scheduled as per the original Notification from the dispatch of ballot papers onwards.

92. Of course, as per the said provisions as well as in terms of the ratio laid down in Mahendra Lal Jaini (supra) and J. Mitra & Company Private

Limited (supra), the power of alteration/amendment/extension has to be exercised "in the like manner and subject to the like sanction and

conditions (if any) as to the power to issue the original notification", that is, to be published in the Official Gazette.

93. The respondents do not dispute such proposition; rather, the Returning Officer contends that he has not yet finalized the re-scheduled dates but will

duly publish the same in accordance with law.

94. In fact, the impugned notice dated November 10, 2023 does not pretend to be a notification rescheduling the date but is merely an initiation of such

process.

95. In view of the above considerations, this issue is also answered against the petitioner. The Returning Officer was well within his powers to extend

the time-schedule for holding the elections by amending the original Notification dated June 14, 2023, from the date of dispatching voting papers till

counting of votes. However, the same has to be done by due notification as prescribed by Rules.

96. Another aspect of the matter cannot be lost sight of. The Dental Council has already incurred huge expenditure in initiating the election process up

to the stage of scrutiny of nominations. Only the dispatch of ballot papers and the voting is left. If at this stage the same is stalled, the democratic

process of functioning of the Council shall be hampered rather than facilitated. The existing body has exhausted its tenure and the elections are long

due. Further protraction would only serve the purpose of the existing body to continue illegally in perpetuity.

97. Thus, in view of the above observations, the present challenge fails.

98. Accordingly, WPA No. 27672 of 2023 with WPA No. 27846 of 2023 are dismissed on contest without, however, any order as to costs.

99. The respondent no. 1, that is, the Returning Officer is directed to forthwith (not later than within a fortnight from date) take steps for issuing a

proper Notification in accordance with law, by publishing the same in the Official Gazette as prescribed by the Rules, for re-scheduling the timelines of

the rest of election process for the West Bengal Dental Council from the stage of issuance of ballot papers from the G.P.O. or any other post office

at his discretion, keeping in view the smooth and efficient conduct of the election. Thereafter, the Returning Officer shall conclude the rest of the

election process as per the rescheduled timeline strictly in accordance with law and prescribed procedure.

100. CAN 1 of 2023 in WPA No. 27846 of 2023 is also disposed of accordingly.

Urgent certified copies, if applied for, be issued to the parties upon compliance of all requisite formalities.