

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-48 OF 2020**

Delia D'Souza ... Petitioner

Vs

State of Goa & Ors. ... Respondents

Shri V. Rodrigues with Shri Vithal Naik, Advocate for the Petitioner.

Shri D. Pangam, Advocate General with Shri Deep Shirodkar, Additional Government Advocate for Respondents No.1,2,6,7 & 8.

Mrs. A. Agni, Senior Advocate with Ms. J. Sawaikar, Advocate for Respondents No.3 & 4.

Shri P. Sawant, Advocate for Respondent No.5.

Shri Dattaprasad Lawande with Shri Ashish Kuncoliencar and Shri P. Dangui, Advocates for Respondent No.9.

**Coram :- DAMA SESHADRI NAIDU &
M.S. JAWALKAR, JJ.**

Date :- 23rd JUNE 2020

P.C. :

The 9th respondent was appointed as an examiner for the fifth consecutive time. The petitioner has a grievance about it. She makes serious allegations about this selection process and alleges that the 9th respondent himself is the selecting Authority. Besides recommending his own name, he has also directed the authorities concerned not to consider the petitioner's name. Thus goes the allegation.

2. In response, the learned Advocate General has, first, contended that in any event the petitioner is not qualified. Once she is not qualified, she has no standing to complain about the selection process. In other

words, any other eligible, aggrieved person could have come before this Court, but not the petitioner. The learned Advocate General has also submitted that now the written examinations have already been over, and only two more practical examinations remain. Amid this process, no interim direction could be given. To elaborate, the learned Advocate General stresses that the examiner that has conducted the written examinations alone must take care of the practical examinations, too, as the practice suggests.

3. On the other hand, the learned Senior Counsel for the 3rd respondent asserts that it is not the 9th respondent who has handpicked himself. According to her, he has no role to play in his own selection. In this context, the learned Senior Counsel submits that the 9th respondent's name stands recommended by a panel of experts. Thus, she reminds the Court that the Supreme Court has time and again has held that in the matters involving academic expertise, the courts should adopt a 'hands-off' approach.

4. *Prima facie* we reckon that there is some force in the petitioner's contentions. Though the Regulations mandate that an examiner shall 'ordinarily' be appointed for not more than two consecutive terms, we see that the 9th respondent has been appointed for five consecutive terms. Regrettably, we cannot accept the contention of the learned Senior Counsel for the 3rd respondent that the courts ought not to substitute the experts' views with their own. That said, a decision, as in this case,

involving qualifications to hold a post may lie in the realm of academic expertise. But that decision taken and the selection criteria fixed, it certainly lies in the judicial province to decide whether a particular person is qualified according to the norms already fixed.

5. The learned counsel for the 9th respondent, too, denies the arguments advanced by the petitioner's counsel.

6. Under these circumstances, though we are not inclined to stay the process of examinations, we nevertheless strongly feel that the issue needs to be examined deeper. It cannot be swept under the temporal carpet on the premise that the matter has become *fait accompli* or infructuous. Nor can the issue be treated as academic or moot—not worth talking about.

7. First, the petitioner has demonstrated—true, only *prima facie*—before us that she is qualified and has been aggrieved. Second, the petitioner alleges that the 9th respondent has been part of the selection team that has eventually selected none other than the 9th respondent himself, the doctrine of bias thus coming into play. Third, the Regulations felt it desirable not to allow a person to be an examiner ‘ordinarily’ more than two times. Here, the 9th respondent has been appointed an examiner for the fifth time.

8. For want of timely information, an aggrieved person may not challenge well in advance what could be an illegal or improper appointment. If there is not much gap between the appointment of an

examiner and the conduct of the examination, every time a challenge to that appointment becomes infructuous. And it may become an annual affair. Let there be a quietus to this issue.

9. The petitioner's counsel, at this juncture, informs the Court that the petitioner has just secured the documents revealing the role the 9th respondent played in his own appointment. He seeks the Court's leave to amend the pleadings for a comprehensive adjudication. Leave granted subject to the respondents' objections.

10. The learned Standing Counsel for the Medical Council of India seeks time to file a reply.

Post the matter in two weeks.

M.S. JAWALKAR, J.

DAMA SESHADRI NAIDU, J.

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