

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

+ **W.P.(C) Nos.12858/2009**

VINAY MITTAL ALIAS MITTAL VINAY Petitioner
Through Mr. Amit Khemka, Adv.

VERSUS

THE INSTITUTE OF CHARTED ACCOUNTANTS OF INDIA AND ORS

..... Respondent Through
Mr. C.S. Vaidyanathan, Sr. Adv. with Mr. Rakesh Agarwal,
Adv. for R-3.

**CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**ORDER
05.11.2009**

1. The petitioner, Mr. Vinay Mittal has impugned the order dated 9th October, 2009 passed by the returning officer and Secretary rejecting the claim of the petitioner for election to the Central India Regional Council. Counsel for the petitioner submits that the petitioner had filed an appeal under regulation 134(9) of the Chartered Accountants Regulations, 1988, but the returning officer has refused to accept and act upon on the decision and the directions given by the Appellate Authority, namely, the President of the Institute of Chartered Accountants of India.

2. Regulation 134(9) of the Chartered Accountants Regulations, 1988, reads as under:-

“134(9) Where any dispute arises regarding any election to a Regional Council, the matter shall be referred within thirty days from the date of the declaration of the result of the election, to the President and his decision shall be final.”

3. Right to move under the aforesaid Regulations, when any dispute arises regarding election, is available only after declaration of the results and not before. The President cannot entertain any request under Regulation 134 (9) before the election results are declared. In these circumstances, I do not think that the President of the Institute of Chartered Accountants of India was competent to entertain the request/complaint of the petitioner and adjudicate and decide on the order dated 9th October, 2009, passed by the returning officer and the Secretary rejecting the nomination of the petitioner. The admitted position is that the elections are still to be held and are fixed on 4th and 5th December, 2009.

4. Counsel for the petitioner submitted that the nomination of the petitioner has been wrongly rejected in view of the Regulation 89(10), explanation 1, which stipulates that nomination will not be rejected for a technical defect, which is not of a substantial character. Counsel appearing for

the respondent No.3 states that the aforesaid Regulation has been replaced and substituted by the Chartered Accountants (Election to the Council) Rules, 2006. However, it is noticed that Rule 12(10)(b) corresponds and is identical worded and stipulates that the panel will not reject a nomination paper on the ground of a technical defect, which is not of a substantial character. The panel referred to consist of three persons, which includes the returning officer and two other persons nominated by the Council in terms of the Rule 2(2) of the aforesaid Rules.

5. As per the stand taken by the panel, the defects in the nomination form are substantial and, therefore, are not covered under regulation 12(10) (b) of the aforesaid Rules. In this connection, counsel for the respondent No.3 has drawn my attention to the photocopy of the nomination form (annexure P-3) and the statement made by the petitioner therein that he has agreed to stand for elections to 21st council. It is pointed out that the election of the regional council are also due and to be held on 4th and 5th December, 2009 and the said declaration made by the petitioner is in prescribed nomination form for standing in the 21st election of the regional council and not 20th elections to the Central India Regional Council. The two councils are separate.

6. I need not enter into the controversy about technical defect of substantial nature at this stage because the petitioner will be entitled to

question and challenge the elections after the results are declared in terms of Regulation 134(9) quoted above. It is well settled that after election process is set in motion, Courts should not interfere and interdict in the same and the parties should be left to challenge and question the elections after the elections are held. In this connection, counsel for the respondent No.3 has drawn my attention to the judgments of the Supreme Court in cases of university elections and elections of cooperative societies. Reference in this regard can be made to **Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others** (2006) 8 SCC 487 and **Shir Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others** (2001) 8 SCC 509 . He has drawn my attention to a judgment of a Division Bench of this Court in **Ashwani Kathpalia Vs. The Institute of C.A. of India**, W.P.(C) No.16204/2006, wherein the Court had refused to entertain the writ petition on the ground that the petitioner has an alternate efficacious remedy under the Chartered Accountants (Election to the Council) Rules, 2006 and the Chartered Accountants Regulations, 1988. My attention is also drawn to the decision of the Bombay High Court in the writ petition No.8851/2009 titled **C.A. Pagaria Ashokkumar Nensukh & Anr Vs. The Institute of Chartered Accountants of India & Anr**, wherein the Bombay High Court refrained from

entertaining the writ petition in view of the relevant rules holding that they are mandatory.

7. Counsel for the petitioner has relied upon a decision of the Bombay High Court in case of **Inder Chand Jain Vs. The Institute of Chartered Accountants of India & Anr**, AIR 1992 BOMBAY 31 holding that courts can intervene while the election process is still on. It is noticed that the final directions in this case were upset by the Supreme Court in **the Institute of Chartered Accountants of India & Anr Vs. Inder Chand Jain**, 1992 Supp (1) SCC 433.

8. In view of the decisions of the Supreme Court, Delhi High Court and Bombay High Court mentioned above, I do not think that it will be appropriate to entertain the present writ petition. I refrain from entertaining the present writ petition. It will be open to the petitioner to raise his grievance in accordance with law, if required, at a subsequent stage. In the facts and circumstances of the case, there will be no order as to cost.

SANJIV KHANNA, J.

NOVEMBER 05, 2009
NA