

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

% Judgment reserved on: 06.07.2011
Judgment delivered on: 08.07.2011

+ **CM (M) No. 1502/2007**

PRAVEEN KUMAR petitioner
Through: Mr. P.D. Gupta, Mr. Kamal
Gupta and Mr. Abhishek
Gupta, Advocates.

Versus

MOHD. NAUSHAD & OTHERS Respondents
Through: Mr. Ujjwal K. Jha & Mr.
Kanwal Jeet Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1 The order impugned is the order dated 13.11.2007 whereby the application of the applicant/respondent No. 4/ Praveen Kumar filed under Rule 81 of the Delhi Municipal Council (Election of Councilors) Rules (hereinafter referred to as the said Rules) and Sections 15 & 17 of the Delhi Municipal Corporation Act, 1948 (DMCA) read with Order 7 Rule 11 of the Code of Civil Procedure

(hereinafter referred to as the 'Code') had been dismissed.

2 Briefly stated the petitioner Mohd. Naushad along with respondent No. 4 had contested the election in the MCD Ward No. 76 (Deputy Ganj), Delhi. Respondent No. 4 had been declared as the successful elected candidate. The petitioner had lost the election; he had filed the present election petition contending that respondent No. 4 had malafidely concealed certain facts; he was in fact disqualified for the membership; prayer was that the election of respondent No. 4 be set aside.

3 Before filing the written statement the applicant/respondent No. 4 had filed the aforementioned application. His contention was that the mandatory provisions of Sections 15(3) & 15(4) of the DMC Act have been contravened as also the provisions of Rule 81 of the said Rules. It was pointed out that besides the petitioner, respondents No. 4 to 13 as also three more persons had filed their nominations; those three persons had subsequently withdrawn their nominations but in terms of Rule 15 (3) they were necessary parties as they were duly nominated candidates at the election and non-joinder of these necessary parties has gone to the root of the matter; election petition was liable to be dismissed. Further contention was that the petition has not been verified in

accordance with the provisions of Section 15 (4)(c) of the DMC
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Act.

4 In the reply filed to the aforementioned application it was not disputed by the petitioner that three more persons apart from respondents No. 4 to 13 had also filed their nominations; contention was that since they had withdrawn their candidature, they were not necessary parties.

5 The respective contentions of the parties had been considered in the impugned order which had dismissed the application of the applicant.

6 On behalf of the petitioner, it has vehemently been contended that the law has been formulated by a Bench of this Court in AIR 1985 Delhi 8 Dr. V.P. Dhingra Vs. Nihal Singh & others wherein it has been categorized that the provisions of Section 15 (3) of the DMC Act are mandatory and even a candidate who has withdrawn his candidature is a necessary party; non-joinder of such a party would lead to the dismissal of the petition.

7 Arguments have been rebutted. Reliance has been placed upon AIR 1954 SC 210 Jagan Nath Vs. Jaswant Singh & others; it is submitted that non-joinder of necessary party is not necessarily fatal to the election petition; it is pointed out that in this judgment

the Apex Court had examined the provisions of Section 82 of the CM (M) No.1502/2007

Representation of the People Act, 1951 which is paramateria the provisions Section 15 of the DMC Act. Reliance has also been placed upon AIR 1978 SC 1583 Shiv Chand Vs. Ujagar Singh & another; it is submitted that in this case also the Apex Court had noted the provisions of Section 82 of the Representation of the People Act and had reiterated the ratio that non-compliance of this provision would not necessarily lead to the dismissal of the election petition. It is submitted that the impugned judgment in no manner calls for any interference.

8 The Apex Court in 1987 (Supp) SCC 663 Samar Singh Vs. Kedar Nath while dealing with an election petition under the provisions of Representation of the People Act had noted that an election petition which does not disclose any cause of action can be dismissed summarily under Order 7 Rule 11 of the Code either at the threshold of the proceedings or at any subsequent stage of the proceedings; this would be in the interest of justice to parties in the petition and to the constituency as well as also in the public interest. In the case of Dr. V.P. Dhingra (Supra) a Bench of this Court while dealing specifically with the provisions of Section 15 (3) of the DMC Act had noted that Rule 79 contained in Chapter I of the said Rules are to be treated for all purposes of construction

as if they are in the Act or a part of the Act; the word 'candidate'

in Rule 79 is wide enough to cover all persons who enter the election arena by seeking nomination; it includes persons who are either validly nominated or in case their nominations are rejected, still claim to have been duly nominated; there is no warrant to give a limitation on this meaning because of the use of expression “at the election” used in Section 15 (3) of the DMC Act. The judgment relied upon by learned counsel for the respondent reiterated in Jagan Nath (Supra) had been examined in the case of Dr. V.P. Dhingra (Supra); Jagan Nath was on the construction of Section 82 of the Representation of the People Act prior to its amendment; after the amendment by the Amending Act of 1956 the Election Tribunal is now enjoined to dismiss the election petition which does not comply with the provisions of Section 82 which is mandatory. Relevant extract of this judgment herein reads as under:-

“14 Rule 91 of the Rules similarly lays down that if the provision; of Section 15 or Rule 89 are not complied with, the Court shall dismiss the petition. The non-compliance of the provisions is made penal and hence has to be construed as mandatory.

15 Section 15(3) of the Act requires a petition to join as respondents to his petition all the candidates at the election. Under Rule 82(2) any candidate not already a respondent shall, upon an application made by him to the Court within fourteen days from the date fixed for the respondents to appear and subject to the provisions of Rule 89, be entitled to be joined as a respondent.

These provisions, and no other lay down the candidates who may be joined as respondents so an election petition. Section 15(3) obliges the petitioner to join as respondents all the candidates at the election. While under Rule 82(2) any candidate not already a respondent may seek and when he applies, is entitled to be joined as a respondent. The parties' to the election petition are statutorily named and are the election petitioners and all the candidates at the election. The procedure of joining the respondents is also provided in the statute. The legislature has provided in Rule 82(2) one mode of curing the defect or omission to join as respondent at the time of presenting the election petition. The petition would be bad and defect fatal if not cured at the instance of a candidate in the manner and within the time prescribed."

9 Provisions of Rule 15 (3) are mandatory. Section 15 (3) obliges the petitioner to join all candidates at the election; under Rule 82 (2) any candidate not a respondent; on an application made by him within 14 days from the date fixed for the respondent to appear and subject to the provisions of Rule 89 will be entitled to join as a respondent. The parties to the election petition are statutorily named as election petitioners and are all candidates at the election; if certain candidates are not joined the procedure contained in Rule 82 (2) may be adhered to; this provides only one mode of curing this defect or omission; if this is fulfilled the mandatory requirement of Section 15 (3) is satisfied and to this extent this defect of non-joinder can be cured within this period of limitation.

10 Admittedly no application has been filed by aforementioned three

candidates who had withdrawn their candidature for being treated as necessary parties. Admittedly these 3 candidates who had withdrawn their candidature had also not been joined by the petitioner. Mandatory provisions of Section 15 (3) of the DMC Act not having been adhered to, the necessary consequences is that the election petition is liable to be dismissed. No purpose would be served in continuing with such a futile litigation. The parties cannot be relegated to a litigation which is fruitless; even on a specific query put to learned counsel for the respondent as to what would be the outcome of such a litigation, he has no answer. A gross injustice would in fact be suffered by the parties if they are put to such a useless trial which can bear no fruit. A patent illegality has been committed which has to be rectified. The impugned order call for interference.

11 Petition is allowed. Election petition stands dismissed.

INDERMEET KAUR, J.

JULY 08, 2011

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