

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

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Date of decision: 7th July, 2015

+ **W.P.(C) No.6422/2015, CM No.11695/2015 (for stay) & CM No.11696/2015 (for exemption)**

BALBIR VERMA

..... Petitioner

Through: Mr. D. Verma and Ms. Arpana Iyer,
Advs.

Versus

**THE INDIAN INSTITUTE OF ARCHITECTS
AND ANR.**

..... Respondents

Through: Mr. Ripu Daman Bhadwaj, CGSC
with Mr. T.P. Singh, Adv. for R-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the decision of the respondent no.1 The Indian Institute of Architects (IIA) declaring the nomination filed by the petitioner for election to the Council of Architecture for the term 2015-2018 as invalid/ineligible and seeks a direction to the respondent no.1 IIA to permit the petitioner to contest the said election.

2. It is the case of the petitioner:-

(i) that the term of office of an elected member of the Council of Architecture (the Council), as per Section 6(1) of The

Architects Act, 1972 (the Act) is of three years from the date of his election or until his successor has been duly elected or nominated, whichever is later and that as per Section 6(5), the Members of the Council are eligible for re-election but for not exceeding three consecutive terms;

- (ii) that in the year 2004, the petitioner was elected for the first time as one of the five members of the Council;
- (iii) that in terms of Section 3(3)(a) of the Act and Rule 4 of the Council of Architecture Rules, 1973 (the Rules), the publication of the names of the members elected is necessary;
- (iv) accordingly, a Gazette Notification dated 30th August, 2004 notifying the names of the members elected was issued;
- (v) that elections were again held in the year 2007 and the petitioner contested the said elections and was one of the successful candidates;
- (vi) however in view of a writ petition filed in the Madras High Court assailing the election process, the names of the members elected in the year 2007 were never gazetted;

- (vii) the Council also, vide its letter dated 11th July, 2007, to the respondent no.2 Union of India rejected the result of the said election;
- (viii) that in view of the said dispute and in the absence of the Notification with respect to the elections of the year 2007 being issued, the members elected and notified in the year 2004 continued to hold office in terms of Section 6(1) of the Act;
- (ix) that the litigation aforesaid before the Madras High Court continued from the Single Judge to the Division Bench and ultimately to the Supreme Court and was disposed of issuing certain directions for holding of prompt election afresh;
- (x) in accordance with the aforesaid directions, elections were held in 2012 and which the petitioner contested and was elected;
- (xi) that elections for the term 2015-18 were notified on 15th June, 2015; and,
- (xii) though the petitioner filed his nomination for the said election but in the list of eligible candidates declared on 30th June, 2015 his name did not find mention and on enquiry he has been

informed on 3rd July, 2015 that his nomination was rejected since he had already held the position of a member of the Council of Architecture for three consecutive terms.

3. The counsel for the petitioner has argued that, (a) the petitioner has not been elected for three consecutive terms; (b) that the petitioner, prior to the elections due for the year 2015, was elected only in the years 2004 and 2012; (c) that though he had contested the elections in the year 2007 and was also elected therein but the said election process never culminated in issuance of the Notification and thus the election of the year 2007 is not to be counted; reliance in this regard is placed on ***Rajendra Agricultural University Vs. Ashok Kumar Prasad*** (2010) 1 SCC 730; (d) that the continuance of the petitioner as a member of the Council from 2007 till 2012 was not in pursuance to any election but in pursuance to Section 6(1) of the Act and owing to his successor having not been duly elected; and, (e) that though he functioned as a member of the council from 2007 to 2012 but not in pursuance to the elections of 2007 and others who had been elected for the first time in the year 2007, did not at any time function as members.

4. As per the Schedule of Election, a) the date for display of the final list of candidates is 7th July, 2015 i.e. today; b) the date for sending of e-ballots

to the members is 13th July, 2015; c) and the e-voting lines open on 27th July, 2015; d) the receipt of postal ballot paper and E-voting is to close at 1700 hours on 29th July, 2015; e) the scrutiny, counting of votes and declaration of election result is to take place on 30th July, 2015. It has as such been enquired from the counsel for the petitioner as to how, the election process which has admittedly begun, can be interfered with.

5. The counsel for the petitioner states that the *mala fides* of the IIA vis-a-vis the petitioner are evident from the fact that no time has been left for the petitioner to impugn the rejection of his nomination. He has further argued that in his application for interim relief, he is not seeking for the election process to be stalled but is only seeking a direction that his name be included in the final list of candidates and he be allowed to contest the election and the result of the election be made subject to the outcome of this petition. Reliance in this regard is placed on ***Deoraj Vs. State of Maharashtra*** (2004) 4 SCC 697 (para 12). It is contended that the action of the respondents being illegal, they should not be allowed to take advantage of the same and if the election is permitted to proceed, the situation would become irreversible.

6. I may at the outset notice that Section 5(1) of the Act lays down that election under Chapter-II of the Act to the Council of Architecture shall be

conducted in such manner as may be prescribed by the Rules. Section 5(2) provides that where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government by Notification in the Official Gazette in this behalf and the decision of the Tribunal shall be final. The Act thus provides for a forum for adjudication of the disputes regarding election. The dispute raised by the petitioner undoubtedly is a dispute regarding election and the counsel for the petitioner has not argued to the contrary.

7. It has been famously said in *Jyoti Basu Vs. Debi Ghosal* (1982) 1 SCC 691 that a right to elect or to be elected, fundamental though it is to democracy, is anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore subject to statutory limitation. An election dispute is a special jurisdiction and has always to be exercised in accordance with the statute creating it.

8. It thus follows, that an election dispute has to be raised in the manner and before a fora, provided in the statute and the general law will not apply thereto.

9. The Act and the Rules aforesaid, under which the Council is constituted and which also provide for the conduct of elections to the Council having also provided for the fora before which a dispute regarding election is to be raised and for the manner in which the dispute is to be raised, the petitioner cannot be permitted to raise the dispute otherwise.

10. Coupled with this is the consistent view of the Courts that the Courts will not interfere in the process of election once begun. Merely a play of words in claiming the interim relief will not make any difference. The direction sought, to allow the petitioner to contest the election subject to the outcome of the petition, would also be a direction interfering with the election and which is not permissible.

11. As far back as in ***N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency*** AIR 1952 SC 64, it was held that the law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by

invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India and another after they have been completed, by means of an election petition. Carrying on the said principle further, it was held in ***Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi*** (1978) 1 SCC 405 that knowing the supreme significance of speedy elections, the law, by implication has postponed all election disputes to election petitions and tribunals. Following the said principle, the Supreme Court in ***S.T. Muthusami Vs. K. Natarajan*** (1988) 1 SCC 572 set aside the judgment of the Division Bench of the High court entertaining a writ petition under Article 226 and dismissed the writ petition. The same law was reiterated in ***Manda Jaganath Vs. K.S. Rathnam*** (2004) 7 SCC 492.

12. The aforesaid principles, though laid down in relation to Parliamentary and Municipal elections, would in my opinion apply to the elections to the Council of Architecture also. I may in this regard refer to ***K.K. Shrivastava Vs. Bhupendra Kumar Jain*** (1977) 2 SCC 494 which though concerned Bar Council election but the Supreme Court still held that where there is a proper or equally efficacious remedy, the Court should keep its hands off – this is more particularly so where the dispute relates to an election – still more so, where there is a statutory prescribed remedy, which

reads into mandatory terms. Similar view was taken in respect of election of members of the Sikh Gurudwara Management Committee in *Avatar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee* (2006) 8 SCC 487. The Supreme Court held that no exceptional and extraordinary circumstance having been disclosed for taking recourse to constitutional remedy under Article 226, the writ petition should not have been entertained and the petitioner should have been relegated to an election petition only. I also find a Division Bench of Madras High Court to have in *Ar. Vijay Garg Vs. Ar. P. Satheeshkumar* AIR 2009 Mad 135 (and which perhaps is the judgment pertaining to the 2007 elections supra) to have held a writ petition to be not maintainable (reversing the judgment of the Single Judge) in view of provisions of Section 5(2) of the Act supra.

13. The reliance placed by the counsel for the petitioner on *Deoraj* supra is misconceived. Though *Deoraj* supra concerned election of the Chairman of a Cooperative Society under the Maharashtra Cooperative Societies Act, 1960 but the challenge in that case was to the deferment by the Returning Officer of a meeting in which the petitioner, who alone had filed the nomination, was to be declared elected. The relief claimed in the writ petition was thus, of declaration of the petitioner having been elected. It was

in this situation and for the reason that the term for which the petitioner had been elected was of one year only and part of which was already over and finding that there was no opposition to the grant of the interim relief that the Supreme Court held that interim relief in the mandatory form could be granted. It would thus be seen that the relief claimed in *Deoraj* supra was not of interference with the election but in aid of election.

14. Thus no relief at this stage can be granted to petitioner.

15. I have also considered whether keeping this petition pending or issuing notice thereof would serve any purpose and am of the considered opinion that if this Court, at this stage, is not to interfere with the elections, then no purpose would be served in keeping this petition pending in as much as once the elections have been held and the result thereof has been declared, the fora for adjudication of the dispute would be the Tribunal aforesaid and not this Court.

16. That brings me to the merits of the case made by the petitioner.

17. Section 3(3)(a) of the Act supra provides that the Council shall consist *inter alia* of five Architects possessing recognized qualifications elected by

the Indian Institute of Architects from amongst its members. Section 5, titled “Mode of Elections” is as under:

“5.(1) Elections under this Chapter shall be conducted in such manner as may be prescribed by rules.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government by notification in the Official Gazette in this behalf, and the decision of the Tribunal shall be final.

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.”

and thereafter Sections 6 and 7 of the Act which are found to be relevant for the present purpose are as under:

“6.(1) Subject to the provisions of this Section, an elected or nominated member shall hold office for a term of three years from the date of his election or nomination or until his successor has been duly elected or nominated whichever is later.

(2) An elected or nominated member may, at any time, resign his membership by writing under his hand addressed to the President, or in his absence, to the Vice-President, and the seat of such member shall thereupon become vacant.

(3) A member shall be deemed to have vacated his seat-

- (i) if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council; or
 - (ii) if he ceases to be a member of the body referred to in clause(a), clause (g) or clause (h) of sub-section (3) of section 3 by which he was elected or nominated, as the case may be; or
 - (iii) in the case where he has been elected under clause (c) of sub-section (3) of section 3, if he ceases to hold his appointment as the head of an institution, as referred to in the said clause.
- (4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person so elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.
- (5) Members of the Council shall be eligible for re-election or re-nomination, but not exceeding three consecutive terms.
7. No act or proceeding of the Council or the Executive Committee or any other committee shall be invalid merely by reason of –
- (a) any vacancy in, or defect in the constitution of, the Council, the Executive Committee or any other committee, or
 - (b) any defect in the election or nomination of a person acting as a member thereof, or
 - (c) any irregularity in procedure not affecting the merits of the case.”

18. Rule 4 on which reliance is placed is as under:

“4. Intimation of name of elected person to Central Government – The name of the elected person shall be intimated by the Secretary to the Indian Institute of Architects to the Central Government who shall take steps to publish the name of the elected person in the Official Gazette.

Election to the Council under clause (c) of sub-section (3) of section 3”.

and Rules 20 and 22 which are also found to be of relevance are as under:

“20. Declaration of result –

- (1) When the counting of the votes has been completed, the Returning Officer shall draw up a list of candidates in the order of highest votes polled by each and shall declare the result of the successful candidates in that order according to the number of seats to be filled up.
- (2) When an equality of votes is found to exist among any candidates and there is difficulty in declaring the result, the determination of the person or persons who shall be deemed to have been elected shall be made by lot to be drawn by the Returning Officer or any other officer authorized by him and in such manner as he may determine.
- (3) The Returning Officer as soon as the result is declared shall inform the successful candidate by letter of his being elected to the Council.

22. **Result of election** – The Returning Officer shall intimate the name of the elected candidates to the Central Government.”

19. From the Scheme of the election, as can be deciphered from the aforesaid provisions, what emerges is that the argument of the petitioner of his having not been elected in the year 2007 for the reason of his name having not been published as an elected person in the Official Gazette is misconceived. Rules 4 and 22, which provide for intimation to the Central Government and publication in the Official Gazette, use the expression “elected person” or “elected candidate”. The same is indicative of the person / candidate being already “elected” before an obligation is placed on the Secretary of the Indian Institute of Architects or on the Returning Officer of the election, to give intimation to the Central Government which is further obliged to publish the name, again, of the “elected person” in the Official Gazette.

20. This is further supported by,

- a) Section 6(1) of the Act which commences the term of three years of the elected member “from the date of his election”

and not from the date of publication of his name as an elected candidate / person in the Official Gazette.

- b) Rule 20 which requires the Returning Officer to declare the “result” and inform the successful candidate of his being “elected” to the Council and does not make the same also dependent on or subject to publication in the Official Gazette.
- c) The proviso to Section 5(2) of the Act which commences the period of 30 days for raising an election dispute, from the date of declaration of the result of the election and not from the date of publication in the Official Gazette.
- d) Section 6(3) of the Act which, while providing for the eventualities in which a member so elected shall be deemed to have vacated his seat, does not provide for the eventuality of non publication of his name in the Official Gazette. The Supreme Court, in ***Charan Lal Sahu Vs. Giani Zail Singh*** (1984) 1 SCC 390 held that an election can be called in question and set aside on those grounds

only which are prescribed in the statute and not on any other ground.

21. The Scheme of the Act and the Rules thus unequivocally is, of the process of election being complete upon the Returning Officer declaring the result and intimating the successful candidate and which stage according to the petitioner also was reached. In my opinion, the non intimation even if any of the list of elected candidates to the Government of India or non publication of their names in the Official Gazette would not take away from such persons having been “elected” as the member of Council. Even if it were to be held that the intimation of the petitioner having been elected as a member of the Council in the year 2007 was not given to the Central Government and there was no publication of his name as an elected member in the Official Gazette, the same would at best constitute a defect in the election or defect in constitution of Council, which as per Section 7 of the Act is of no avail. It is not the case of the petitioner that his election, in the proceeding aforesaid was set aside. The petitioner rather has shied away from placing before this Court the judgments of the Single Judge and the Division Bench of the Madras High Court or of the Supreme Court in

the dispute with respect to the elections of the year 2007. The counsel for the petitioner even during the hearing has not been able to produce the same. We thus do not know as to what were the findings of the Court with respect to the validity or otherwise of the said election. It is well-nigh possible that the election was held to be valid and directions for holding the elections were issued merely because the same were due under the Statute also. The conduct of the petitioner of not producing the said judgment in any case raises presumption against the petitioner.

22. Once under the Act and the Rules, the Returning Officer of the election has been empowered to declare the result and to inform the successful candidate of his being elected to the Council, till such election of the successful candidate is set aside by an order of the Court / appropriate fora, it cannot be said that the candidate was not elected. The petitioner having admitted that he was so elected and having neither pleaded nor shown any order of the Court or Tribunal or any other fora of his election having been set aside, cannot be heard to say that he was not elected in the year 2007 or that his election of the year 2007 should not be counted in the three consecutive terms after which he admittedly is ineligible for re-election.

23. The plea of the petitioner of the Council also, vide its letter dated 11th July, 2007 to the Union of India, having rejected the result of the election of the year 2007, also is of no avail. The Act and the Rules do not empower the Council to have any say in the result of the election or to reject the result of the election. A perusal of the copy of the said letter dated 11th July, 2007 annexed to the petition shows the same to be referring to an order dated 28th July, 2007 of the Madras High Court but which the petitioner as aforesaid has failed to produce. Moreover, the said order appears to have been set aside in appeal, by the Division Bench, as is evident from *Ar. Vijay Garg* supra. Similarly, the plea of the petitioner, of other members elected for the first time in the year 2007 having not acted as members of the Council and the members elected in the year 2004 only having continued to act, would also be of no avail. Such pleas cannot take away the effect of the petitioner having been elected as a member in the elections of the year 2007.

24. In my view, Rules 4 & 22 supra providing for intimation of the name of the elected person or the elected candidate to the Central Government and publication of the said names in the official gazette are at best directory and not mandatory. No consequence of non-intimation of the names to the Central Government or non-publication of the names in the official gazette

has been provided. The High Court of Madras in ***Dr. George Paul Vs. Union of India*** MANU/TN/1840/2010 and the Division Bench of the High Court of Punjab & Haryana in ***Swaran Kaur Vs. State of Punjab*** MANU/PH/3036/2012 have also held similar provisions in Dentists Act, 1948 and in Punjab Panchayati Raj Act, 1994 respectively to be not mandatory. Reliance by the counsel for the petitioner in this respect on ***Rajendra Agricultural University*** supra, holding that a University Statue required by Section 36 of the Bihar Agricultural Universities Act, 1987 to be published in Official Gazette, if not published was unenforceable, is not apposite.

25. There is another aspect of the matter. The provision in Section 6(5) of the Act supra, limiting the number of times a person can seek election as the member of the Council to three consecutive terms of three years each i.e. for a period of nine years is with a purpose. A Division Bench of the High Court of Bombay in ***Shivaji Ramchandra More Vs. State of Maharashtra*** AIR 1988 Bom 315 held that when persons came to be elected in administrative positions for an abnormally long term, it gives rise to creation of a power centre and misuse of position and power, adversely affecting the institution. It was held that it is in public interest to limit the term of office to

a reasonable period. It was also held to be necessary for giving chance to new talents and to avoid creation of vested interests. The same sentiment was expressed by a Single Judge of this Court in *Narinder Batra Vs. Union of India* MANU/DE/0372/2009. The petitioner admittedly has functioned as a member of the Council from the year 2004 till the year 2015 i.e. for a period of eleven years. In my opinion, the continuance of the petitioner for another three years would be contrary to the spirit of Section 6(5) and the petitioner is not entitled to any discretionary relief for this reason also.

26. Faced therewith the counsel for the petitioner contends that another person, Mr. Deshmukh who was also elected in the year 2004 and who had unsuccessfully contested the election of 2007 but who also continued to function as a member of the Council from 2007-2012 and was re-elected in the year 2012 has been allowed to contest the election. He contends that the respondent no.1 has thus discriminated between him and Mr. Deshmukh.

27. In my view, it cannot be said that the petitioner and Mr. Deshmukh are identically placed. While the petitioner after 2004 was re-elected in the year 2007, Mr. Deshmukh admittedly was not. I have also enquired from the counsel for the petitioner whether the petitioner in accordance with the opportunity given in the Election Notification dated 15th June, 2015 supra

raised any objection to the eligibility of Mr. Deshmukh. The answer is in the negative. The petitioner having not raised any objection to the eligibility of Mr. Deshmukh in accordance with the procedure of election, cannot be now permitted to contend that Mr. Deshmukh is not eligible.

28. The petition therefore fails and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 07, 2015

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(Corrected and released on 29th July, 2015)