

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.23309 of 2015

and

M.P.No.1 of 2015

Solomon, D.

...Petitioner

- Vs -

1. The Union of India
Represented by its Secretary to Government,
Ministry of Human Resources Development,
Shastri Bhavan,
New Delhi.

2. Indian Institute of Architects,
Represented by its Tamil Nadu Chapter,
No.4, III Floor,
No.72, Marshalls Road,
Egmore, Chennai-600 008.

Having H.O., represented by its Joint Hon.Secretary,
V Floor, Prospect Chambers Annexe,
Dr.D.N.Road, Fort, Mumbai-400 001.

3. Council of Architecture,
Represented by its President & Registrar,
India Habitat Centre,
COVA 6A, I Floor,
Lodhi Road, New Delhi-110 003.

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue Writ of Mandamus, directing
the 2nd and 3rd respondent to set aside the Election for Southern
Region notified on 15.06.2015 vide 'Nomination for IIA Representative

to COA-2015-2018' and consequently direct them to conduct fresh election for the post of 'IIA Representative to COA' after obtaining an approval for E-voting system from all the members of the 2nd respondent.

For Petitioner : Mr.V.T.Gopalan
Sr.C. for M/s. Nathan & Asso.

For 1st Respondent : Mr.N.Vijaya Baskar, ACGSC

For 2nd Respondent : Mr.P.H.Aravind Pandian, AAG
Assisted by Mr.V.Anand

For 3rd Respondent : Mr.A.Sheik Peer

O R D E R

Heard both sides.

2. The petitioner, who is a member of the third respondent, has come forward to file this Writ Petition on two grounds, the first ground, being that electoral role has been prepared and published not in accordance with law, the second ground being that for the first time E-voting system has been introduced without authority and no link number has been given.

3. The learned Senior counsel appearing for the petitioner has submitted that admittedly, the Tribunal, as contemplated under Section 5 (2) read with Rule 26 of the Architects Act, 1972 has not been constituted. Therefore the Writ Petition is maintainable. He has also placed reliance on the Judgment of Apex Court in Yogendra Singh Tomar Versus Bar Council for Uttarakhand and others reported in (2014) 2 SCC 524.

4. Per contra, the learned counsel for the respondents 2 and 3 has submitted that the petitioner, if aggrieved, will have to work out his remedy before the Tribunal and this writ petition filed is pre mature as the results of the elections are not declared. The petitioner does not have any constitutional right and the right of the petitioner is at best be a statutory right as the electoral process has commenced and concluded. Hence, no interference under Article 226 of the Constitution of India is required. He has further

submitted that of the five chapters, a grievance has been made against the southern chapter alone. The elections has been concluded in the remaining four chapters. The petitioner, following the same procedure, being an individual cannot come forward to file this Writ petition as it is not known whether the candidate he proposes to vote is selected or not. The learned counsel placed reliance on the following decisions:

(i) Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and another Versus State of Maharashtra and others reported in AIR 2001 SC 3982

(ii) Balbir Verma versus The Indian Institute of Architects and others (W.P. (C)No.6422/2015, CM No.11695/2015 & CM No.11696/2015 dated 07.07.2015)

5. The learned counsel for the first respondent submitted that if a request is made by the third respondent, the Tribunal will be constituted within a reasonable time as stipulated by this Court.

6. Section 3 defines the Constitution of Council of Architecture. Section 3 (3) (c) speaks about five persons elected from among themselves by heads of architectural institutions in India imparting full-time instruction for recognized qualifications.

7. Section 5 speaks about Mode of Elections. A perusal of Section 5(2) would show that if any dispute arises regarding any such election, it 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 is final.

8. Coming to Rule 26, it speaks that when any dispute arises as a result of the election to the Council, the aggrieved party shall, within thirty days from the date of declaration of the result of the election, make an application giving full particulars of the facts supported by documentary evidence, if any, to the Secretary of the Council, who shall refer the matter to the Tribunal appointed by the Central Government under Sub Section (2) of Section 5.

9. Thus, a conjoint reading of the above mentioned provisions makes it very clear that it is for the concerned person, that too after the declaration of the results of the elections to make out the grievance to the third respondent which inturn shall refer the matter to the Central Government in constituting the Tribunal.

10. The aforesaid provisions make two things very clear. Firstly, prior to the election, there is no mechanism available under the Act. Secondly, such a mechanism shall be activated on the request made by the respondent No.3 to the Central Government. Thus, this Court is of the view that the decision relied upon by the learned counsel for the petitioner does not have any application to the facts of the case. Even otherwise, it is very clear that the petitioner has got an alternate remedy by way of approaching the Tribunal. Thus, it would be appropriate to permit the petitioner to make an application to the third respondent which inturn shall refer the same to the first respondent, who on receipt of the same shall constitute the Tribunal. More or less very same view has been taken by the Apex Court in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and another Versus State of Maharashtra and others reported in AIR 2001 SC 3982. Paragraph 12 of the said Judgment reads as under:

"12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal."

11. Governing the very same provisions, the Delhi High Court in W.P. (C)No.6422/2015, CM No.11695/2015 & CM No.11696/2015 dated 07.07.2015 has held as follows:

"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 fora 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* MANU/SC/0144/1982: (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."

12. Thus this Court is not inclined to continue the interim order so as to facilitate the petitioner to agitate his grievance before the Tribunal constituted if any. The petitioner is the only single voter. In other four chapters the elections are over, the issues raised by the petitioner and the impact that would be caused

by his non voting are the matters to be decided by the Tribunal. Therefore, this Court is inclined to vacate the interim order granted so that results could be published. Upon the results to be published, the petitioner, if so advised, can make a request to the third respondent, within a period of two weeks from the date of publication of the results and the third respondent on receipt of the same, shall refer the dispute to the first respondent. The first respondent on receipt of the same shall constitute the Tribunal within a period of four weeks thereafter. The Tribunal after its constitution and after the dispute if any to be raised is received, shall adjudicate upon the same and decide it within a period of three months thereafter.

This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Union of India,
Ministry of Human Resources Development,
Shastri Bhavan,
New Delhi.

2. Joint Hon. Secretary,
Indian Institute of Architects,
Tamil Nadu Chapter,
No.4, III Floor,
No.72, Marshalls Road,
Egmore, Chennai-600 008.
Having H.O.,
V Floor, Prospect Chambers Annexe,
Dr.D.N.Road, Fort, Mumbai-400 001.

3. President & Registrar,
Council of Architecture,
India Habitat Centre,
COVA 6A, I Floor,
Lodhi Road, New Delhi-110 003

1 CC to Mr.N.Vijayabaskar, Advocate SR.No. 46578

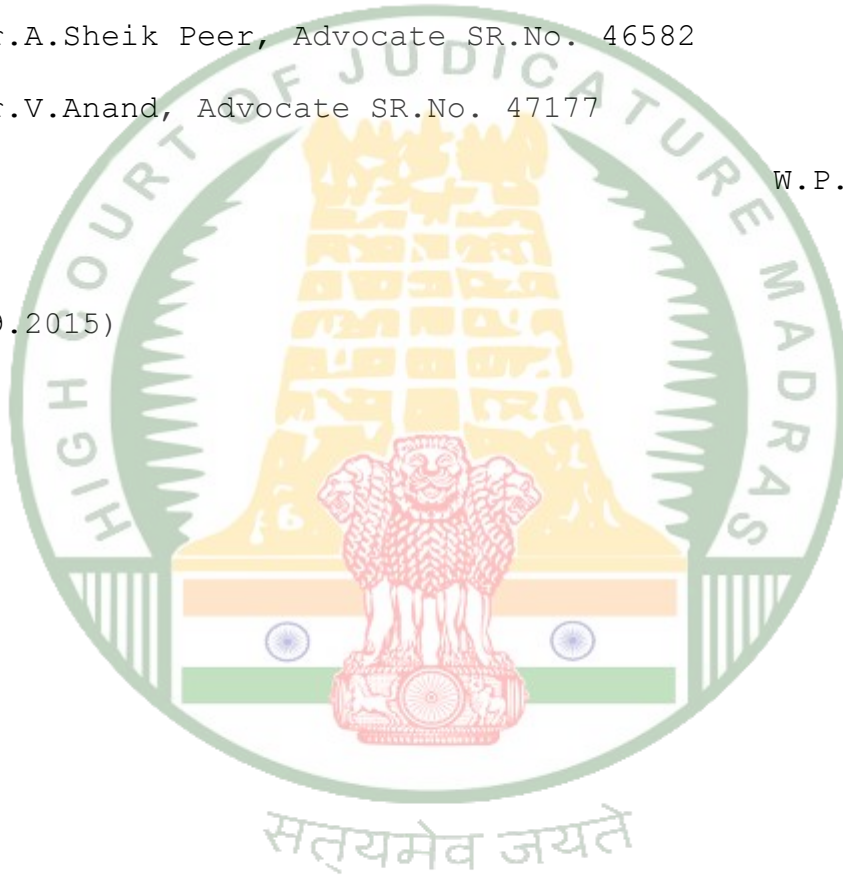
1 CC to M/s. Nathan & Asso., Advocate SR.No. 46774

1 CC to Mr.A.Sheik Peer, Advocate SR.No. 46582

1 CC to Mr.V.Anand, Advocate SR.No. 47177

W.P.No.23309 of 2015

RV (CO)
PSI (03.09.2015)



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