

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

+ W.P.(C) 7262/2014

Pronounced on: 03.02.2015

PRINCE KUMAR & ORS. Appellant
Through: Mr.Anil Sapra, Sr.Adv. with
Mr.Tarun Kumar Tiwari, Mr.Mukesh Sukhija,
Ms.Rupali Kapoor, Advs.

Versus

THE INSTITUTE OF COMPANY
SECRETARIES OF INDIA & ANR. Respondents
Through: Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.R.D.Makheeja, Adv. for R-1.
Ms.Monika Arora, CGSC with Mr.Abhishek
Choudhary, Mr.Rajeev Kumar Yadav, Adv. for
R-2/UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI **ENDLAW**

JUDGMENT

: Ms.G.ROHINI, CJ

1. The petitioners claim to be the registered Associate Members of the Institute of Company Secretaries of India (hereinafter referred to as 'the Institute') constituted under the Company Secretaries Act, 1980.
2. This petition is filed with a prayer to quash Regulation 114 of the Company Secretaries Regulations, 1982 read with Rule 7 of the Company Secretaries (Election to the Council) Rules, 2006 declaring the same as arbitrary, illegal and discriminatory. The petitioners also sought a direction

to provide an opportunity to the Associate Members of the Institute to stand for election to the Council of the Institute proposed to be held under the election notification dated 09.09.2014 on par with the Fellow Members of the Institute.

3. The Company Secretaries Act, 1980 has been enacted to make provision for the regulation and development of the profession of Company Secretaries. Section 3(2) of the Act provides for incorporation of the Institute of Company Secretaries of India and states that the Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property movable or immovable and shall by its name sue or be sued.

4. The Company Secretaries Act, 1980 came into force w.e.f. 01.01.1981. In terms of Section 31, on commencement of the said Act the Company known as the Institute of Company Secretaries of India registered under the Companies Act, 1956 stood dissolved and as per Section 32 all the assets and liabilities of the said dissolved company stood transferred to and vested in the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. Section 31(b) further made it clear that the right of every member to or in respect of the dissolved company shall be extinguished and thereafter no member of that company shall make any claims or demands in respect of that company except as provided in the Company Secretaries Act, 1980.

5. As per sub-section (1) of Section 3 of the Company Secretaries Act, 1980, all persons whose names are entered in the Register of the dissolved company immediately before the commencement of the Act and all persons

who may hereinafter have their names entered in the Register maintained under the Company Secretaries Act, 1980 are constituted a body corporate by the name of the Institute of Company Secretaries of India and all such persons shall be known as members of the Institute.

6. Section 5(1) provides that the members of the Institute shall be divided into two classes designated respectively as Associates and Fellows. Section 5(3) further provides that a person being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow.

7. As per Section 9(1) of the Company Secretaries Act, 1980, there shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under the Act. Section 9(2) provides that such Council shall be comprised of not more than 15 persons who are elected by the members of the Institute from amongst the Fellows of the Institute chosen from Regional Constituencies and not more than five persons nominated by the Central Government.

8. Section 23 of the Act provides for constitution and functions of the Regional Councils according to which for the purpose of advising and

assisting the Council on matters concerning its functions, the Council may constitute such Regional Councils as and when it deems fit for one or more of the Regional Constituencies that may be notified by the Central Government under Section 9(2)(a) of the Act.

9. In exercise of the powers conferred by Section 38A(2)(a) read with Section 9(2)(a) of the Act, the Central Government made the Rules called the Company Secretaries (Election to the Council) Rules, 2006 (for short 'the Rules'). As per Rule 3 of the said Rules, the Regional Constituencies shall comprise of such States or Union Territories as listed out in Schedule 1 to the Rules and in turn Schedule 1 provides that the electorate for the purpose of election to the Council shall be constituted into four Regional Constituencies, namely, Western India Regional Constituency, Southern India Regional Constituency, Eastern India Regional Constituency and Northern India Regional Constituency comprising the States specified therein.

10. Rule 4 of the Rules provides that the election to the Council shall be held on a date to be determined by the Council which shall not be less than one month before the expiry of the term of the existing Council. Rule 5 provides for the members eligible to vote and Rule 6 read with Schedule-2 provides for preparation and publication of a list of members eligible to vote separately for each Regional Constituency. As per Rule 7, only such a member who is a Fellow on the first day of April of the Financial Year in which an election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations shall be eligible to stand for election to the Council from the Regional Constituency in which he is eligible to vote.

11. Section 39(1) of the Act empowers the council to make regulation for the purpose of carrying out the provisions of the Act and in exercise of the said power, the Council made the Company Secretaries Regulations, 1982 (hereinafter referred to as 'the Regulations').

12. Chapter III of the said Regulations (consisting of Regulations 111 to 141) specifically deals with Regional Councils. Regulation 111 provides that the regional council for every regional constituency shall *inter alia* consist of such number of members elected from the region as provided in Regulation 115(1) & (2). So far as the conduct of the elections to the Regional Councils are concerned, Regulation 114(1) provides that the same shall be held by the Council and the Company Secretaries (Election to the Council) Rules, 2006 shall apply to elections to the Regional Councils *mutatis mutandis*.

13. In terms of the above noticed provisions of the Act, Rules and the Regulations, the Council issued the Notification dated 09.09.2014 fixing the schedule for conduct of elections to the Council and Regional Councils in the year 2014 since the duration of the 11th Council and Regional Councils would expire on 18.01.2015. As per the said Notification, only the Fellow Members of the Institute are eligible to stand for election to the Regional Councils.

14. Aggrieved by the same, the present petition is filed contending *inter alia* that the action of the respondents in barring the 'Associate Members' from contesting and getting elected to the Regional Councils is arbitrary, illegal and violative of Article 14 of the Constitution of India.

15. It is to be noticed that there was an amendment to the Regulations of 1982 by the Company Secretaries (Amendment) Regulations, 2010 vide Notification dated 26.07.2010. Prior to the said amendment dated 26.07.2010, the Regulations of 1982 contained Chapter VIII dealing with constitution of the Council and Chapter IX dealing with election to the Council. That apart, Regulation 116 in Chapter XII provided that every Associate or Fellow shall be entitled to vote in and stand for election to the Regional Council. Regulation 114 (1) as it stood prior to the amendment dated 26.07.2010, provided that the elections to the Regional Councils shall be held by the Council and the Regulations in Chapter IX relating to elections to the Council shall apply *mutatis mutandis*. In terms of the above provisions, prior to Amendment dated 26.07.2010, the Associate Members were also eligible on par with Fellow Members to vote in and stand for election to the Regional Councils.

16. However, by virtue of the Amendment dated 26.07.2010, Regulation 116 in Chapter XII was omitted. That apart, Chapters VIII and IX in entirety were omitted and there was a corresponding amendment to Regulation 114(1) to the effect that the elections to the Regional Councils shall be held by the Council and that the Company Secretaries (Election to the Council) Rules, 2006 shall apply *mutatis mutandis*.

17. The vires of Regulation 114(1) as substituted by Amendment dated 26.07.2010 and Rule 7 of the Rules, which provides for members who are eligible to contest, is questioned in this petition. The said provisions are reproduced hereunder for ready reference:

114. Conduct of Elections:-

(1) Except to the extent provided in this Chapter, the elections to the Regional Councils shall be held by the Council and the Company Secretaries (Election to the Council) Rules, 2006 shall apply to elections to the regional Councils *mutatis mutandis*.

(2) Notwithstanding anything ”

“Rule 7. Members eligible to stand for election-

Subject to other provisions of these Rules, a Member who is a fellow on the first day of April of the financial year in which an election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations under sub-rule (2) of Rule 4, shall be eligible to stand for election to the Council from the regional constituency in which he is eligible to vote.

Provided that ”

18. As a result of the abovesaid amendments to the Regulations by Notification dated 26.07.2010 and in terms of Rule 7 of the Rules, only Fellow Members are made eligible to stand for election to the Regional Councils and the Associate Members are made ineligible. Accordingly, pursuant to the election Notification dated 09.09.2014, the nominations are accepted only from the Fellow Members.

19. The said action of the respondents is assailed contending, *inter alia*, that the distinction sought to be drawn between the Fellow Members and the Associate Members under the Act is only for the purpose of eligibility for appointment as Members of the Council and that no such distinction can be

drawn so far as the Regional Councils are concerned since the Regional Councils are only advisory bodies under the scheme of the Act.

20. It is further contended that the amendment to Regulation 114(1) of the Regulations thereby making applicable to the Regional Councils the provisions of the Company Secretaries (Election to the Council) Rules, 2006, particularly Rule 7 is in defiance of the express provisions of the Company Secretaries Act, 1980. The further contention is that the impugned action of the respondents resulted in violation of the fundamental rights of the petitioners/Associate Members to have equality of status and class to contest the elections to the Regional Councils. It is also contended that since all the members of the Institute, i.e., both Fellow members and Associate members are eligible to cast their votes in the elections for the Regional Councils, there is no justifiable reason to disentitle the Associate members to stand for election.

21. Having heard the learned counsel for both the parties and having given our thoughtful consideration to the issues raised, we find it difficult to grant any of the reliefs sought in the petition for the following reasons:

- (i) The right to contest the election to the Regional Councils, being a statutory right created by the Companies Secretaries Act, 1980 and the Rules and Regulations made thereunder, it is subject to qualifications and disqualifications prescribed therein. The law in this regard is well settled and has been reiterated in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors.*, **AIR 1952 SC 64**, *Jagan Nath v. Jaswant Singh & Ors.* **AIR 1954 SC 210**, *Jyoti*

Basu v. Debi Ghosal & Ors., (1982) 1 SCC 691 and Javed v. State of Haryana & Ors., (2003) 8 SCC 369, as under:

“A right to elect, 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 be elected. 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.”

The learned Senior Counsel for the respondent No.1 in this regard has also drawn our attention to the judgment of the Division Bench of this Court in ***Ashish Maddha vs. Institute of Company Secretaries of India AIR 2011 Delhi 126***. We may also refer to ***Supreme Court Bar Association Vs. B.D. Kaushik*** (2011) 13 SCC 774 wherein it was reiterated that the right to vote is not an absolute right and the right to vote or to contest elections is neither a fundamental right nor a common law right, but it is a purely statutory right governed by the statute, rules or regulations. It was further held by the Supreme Court in the said decision that the right to contest an election and to vote can always be restricted or abridged, if statute, rules or regulations prescribe so. Following the said principle, the challenge to the amendment of the rules of the *Supreme Court Bar Association* prohibiting non-active members and associate members i.e. members who were not regularly practicing in the Supreme Court from contesting the election to the office of the office bearers of the association or from voting therein, was negatived. A Division Bench of this Court also followed the said view in ***Apparel Export***

Promotion Council Vs. All India Garment Exporters Common Cause Guild 186 (2012) DLT 783.

In the light of the above-noticed settled principle of law, the petitioners can neither claim an absolute right to stand for election to the Regional Councils nor contend that their right to contest the election is defeated by stipulating that the Fellow Members alone are eligible to stand for election to the Regional Councils.

- (ii) Admittedly, Associate Members and Fellow Members belong to two different classes. Even according to the petitioners, the Fellow Members stand on a higher footing than the Associate Members. As stipulated in Section 5(3) of the Act, an Associate Member who has been in continuous practice as a Company Secretary for at least five years or an Associate Member who possesses such qualifications or practical experience as the council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as Company Secretary are only entitled to be entered in the Register as Fellow Members. Thus, it is clear that the Fellow Members and Associate Members constitute two different classes. The concept of equality and equal protection under Article 14 of the Constitution of India is that persons who are in fact equals cannot be treated as unequals except where the classification is reasonable classification. In other words, the principle is that there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same. Having regard to the admitted fact that the Fellow Members belong to a different class and that even

according to the petitioners the Fellow Members are more experienced and knowledgeable, the impugned provisions in making only the Fellow Members eligible to stand for election to Regional Councils cannot be held to be discriminatory and violative of Article 14 of the Constitution of India.

- (iii) Section 9(2) of the Act provides for election of 15 persons from amongst the Fellows chosen from the Regional Constituencies. Thus, the legislative intendment is clear that the Council shall be composed of only the Fellow Members. However, Regulation 116 of the Regulations (as it stood prior to Amendment dated 26.07.2010) while dealing with the Regional Councils provided that both Associate Members and Fellow Members are entitled to stand for election to the Regional Councils. The same being contrary to the intendment of the Act, the Regulation 116 was rightly omitted by amendment dated 26.07.2010. The omission of Chapters VIII & IX and the substitution of Regulation 114(1) are only corresponding amendments that have been made to remove the inconsistency between the Act and the Regulations. May be that petitioners are made ineligible to contest the election as a result of the impugned amendment, however, while testing the vires of such statutory provision, the Court cannot proceed on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed.
- (iv) There is always a presumption in favour of the Constitutionality of an enactment and the burden is upon the person who attacks it to show that there has been a clear transgression of the Constitutional principles. In the case on hand, the petitioners failed to discharge the

said burden and no case could be made out to show that Regulation 114(1) is violative of Article 14 or Article 19 of the Constitution of India.

- (v) In fact, all the provisions of the Act and the Regulations have consistently drawn a distinction between the Fellow Members and Associate Members. The fact that they belong to two different classes is not disputed even by the petitioners. It is also clear from Section 9(1) of the Act that only those Associate Members who have been in continuous practice in India for at least five years and who have been the Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary are entitled to be enrolled as Fellow Members. That being so, the elimination of the Associate Members from contesting and getting elected to the Regional Councils cannot be held to be arbitrary, unreasonable or discriminatory on any ground whatsoever.
- (vi) It may also be added that the Institute of Company Secretaries is a body corporate with persons holding a diploma in company secretaryship awarded by the Government of India or having other qualifications as prescribed in Section 4 of the Act as members thereof. The law is well settled that no citizen has a fundamental right under Article 19(1)(c) to become a member of a cooperative society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory

right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and bye-laws and is subject to its operation. The stream cannot rise higher than the source (vide *State of U.P. & Another Vs. C.O.D. Chheoki Employees Co-operative Society Ltd. and Others* (1997) 3 SCC 681). Reiterating the said legal position, it was further held in *Supreme Court Bar Association's* case (supra):

“52. In matters of internal management of an association, the Courts normally do not interfere, leaving it open to the association and its members to frame a particular bye-law, rule or regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said association. It is well-settled legal proposition that once a person becomes a member of the association, such a person loses his individuality qua the association and he has no individual rights except those given to him by the rules and regulations and/or bye-laws of the association.”

22. For the aforesaid reasons, there is no merit in any of the contentions of the petitioners. The writ petition is, therefore, devoid of any merit and the same is accordingly dismissed. There shall be no order as to costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

FEBRUARY 03, 2015

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