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

\+ LPA 239/2015

Pronounced on : 10th July, 2015

PARAS JAIN. ..... Appellant
Through: Appellant in person

Versus

INSTITUTE OF COMPANIES SECRETARIES OF INDIA THR ITS CHIEF EXECUTIVE ..... Respondent
Through: Mr.R.D.Makheeja, Adv.

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

JUDGMENT

MS.G.ROHINI, CHIEF JUSTICE

1. This appeal is preferred against the order of the learned Single Judge dated 20.03.2015 in W.P.(C) No.6703/2014. The writ petition was filed with a prayer to get the answer key to the guidelines answer and also the answer attempted by the petitioner to Question No.6 in the paper of Financial, Treasury and Forex Management re-examined through an independent expert under the supervision of this Court.

2. The learned Single Judge by the order under appeal disposed of the writ petition directing that an independent expert be appointed by the respondent/ICSI who shall examine the reasons provided by the petitioner in support of his answers and submit a report justifying his opinion as to whether the guidelines answer or the answer provided by the petitioner is correct.

3. The said order is assailed before us by the writ petitioner contending *inter alia* that the learned Single Judge, in the facts and circumstances of the case, ought not to have directed the respondent to appoint its own expert. According to the appellant, by virtue of the direction of the learned Single Judge the respondent has been allowed to become a judge in its own case which is clearly in violation of the principles of natural justice.

4. The appellant who appeared in person contended that while the relief sought in the writ petition is to appoint an independent expert, i.e., a third person, the learned Single Judge had erroneously directed the respondent to appoint an expert of its choice.

5. When the matter was listed before us for the first time on 20.04.2015, Sh.R.D.Makheeja, the learned counsel who accepted notice on behalf of the respondent/ICSI submitted on instructions that in terms of the directions of the learned Single Judge in the order under appeal, two independent experts have already been appointed and that they have examined the issue and submitted their report. The learned counsel undertook to place before this Court the said report and for the said purpose the matter was adjourned to 27.04.2015. On 27.04.2015, Sh.Makheeja has placed before this Court in a sealed cover the report of the expert committee.

6. A perusal of the said report shows that the Expert Committee group constituted by the respondent in terms of the order of the learned Single Judge met on 07.04.2015 and it opined as under:-

> "1). The candidate has attempted to solve the problem on differential cash flow basis which is not justified considering two different situations:
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> a) In case No.1: only extraction cost is to be considered to compute the new cash inflow.

b) In case No.2: cash cost i.e. Rs.100 per ton is to be considered, in addition to the extraction cost.

Hence, there are two different situations given as mentioned above. That is the justification of Point No.(1).

2) Depreciation in total Rs.20,00,000 Per Year on straight line basis has been considered as expenses for computing the tax, but the candidate has not added back Rs.20,00,000 (i.e. non-cash expenditure). Rather added only tax benefit Rs.6,00,00 i.e. 30% of Rs.20,00,000, thus he had to be added Rs.20,00,000 to compute net cash flow for the year.

3) The candidate has not computed present value of net cash inflow of two different cases as mentioned above correctly. He has computed net cash flow on incremental cash basis, which is justified as mentioned in Point No.1.

4) The working capital assumed to be recovered at the end of the Project, but the candidate has not taken into consideration the recovery of working capital after end of the project.

5) The candidate has lack of conceptual knowledge to deal with the given problem, which is of professional and applied nature, justified the professional competency.

6) While going through the guideline answers, it is opinioned that although the above question can be solved by using more than one approach, yet the said guideline answer is correct.

Conclusively, it was observed that the situation as given by Student is wrong as per capital budgeting/capital expenditure decision (NPV Method)."

7. We have also noticed that the Expert Committee constituted by the respondent comprised Prof.(Dr.) Amar Nath Jha, Professor and In-Charge,

Department of Management, B.I.T. Off Campus, Lalpur, Ranchi (Jharkhand) and Dr.Narendra Kothari, Associate Professor, Department of B.F.E, J.N.V. University, Jodhpur, Rajasthan. Since both the members of the Expert Committee are from different Institutions situated in other States, we do not find any substance in the contention of the appellant that the opinion of the Expert Committee in terms of the order of the learned Single Judge cannot be termed as an opinion by an independent expert.

8. For the aforesaid reasons, the appeal is devoid of any merit and accordingly, the same is dismissed.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JULY 10, 2015
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