

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

Pronounced on: September 22, 2015

+ LPA No.546/2015 & CM No.15704/2015 (stay)

BALBIR VERMA

..... Appellant

Through: Mr.Guru Krishna Kumar, Sr.Adv. along
with Mr.D. Verma, Ms.Sneha Iyer and
Ms.Aparna Iyer, Adv.

Versus

THE INDIAN INSTITUTE OF
ARCHITECTS & ANR

..... Respondents

Through: Mr.Akhil Sibal along with Mr.Vedanta
Verma, Adv. for R-1.
Mr.Ripu Daman Bhardwaj, CGSC along
with Mr.T.P. Singh, Adv. for r-2/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

G. ROHINI, CHIEF JUSTICE:

1. The unsuccessful petitioner in W.P.(C) No.6422/2015 is the appellant before us.
2. The said writ petition was filed assailing the order of the Indian Institute of Architects (IIA) / Respondent No.1 herein declaring the nomination filed by the writ petitioner / appellant herein for election to the Council of Architecture for the term 2015-2018 as invalid / ineligible and seeking a direction to IIA to permit the writ petitioner to contest the said election.

3. Sub-section (5) of Section 6 of the Architects Act, 1972 (for short 'the Act') provides, "*the Members of the Council shall be eligible for re-election or re-nomination, but not exceeding three consecutive terms*". The appellant's nomination was rejected declaring him as ineligible in the light of sub-section (5) of Section 6 of the Act. The appellant / writ petitioner assails the action of the IIA in rejecting his nomination contending *inter alia* that the election process in the year 2007 never culminated in issuance of the notification and, therefore, the fact that he had contested the elections in the year 2007 and was elected cannot be taken into consideration for the purpose of Section 6(5) of the Act.

4. Having regard to the fact that the election process had already commenced, the learned Single Judge held that the process of election cannot be interfered and that the direction sought in the writ petition to allow the petitioner to contest the election subject to the outcome of the petition would also be a direction interfering with the election.

5. Having noticed the well settled principle of law 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, the learned Single Judge had also opined that the relief prayed for cannot be granted in a writ petition under Article 226 of the Constitution of India.

6. However, the learned Single Judge proceeded to consider the matter on merits and the writ petition was dismissed by the order under appeal dated 07.07.2015 rejecting the petitioner's contention that he was not elected in the year 2007 for the reason of his name had not been published as an elected person in the Official Gazette.

7. The said order is assailed before us by the writ petitioner primarily on the ground that having opined that the writ petition is not maintainable in the light of the alternative remedy available for raising the election dispute, the learned Single Judge ought not to have adjudicated the matter on merits of the case. It is also submitted by the learned counsel that the election disputes are to be adjudicated by the Tribunal constituted under Section 5(2) of the Act and that by virtue of the order under appeal, the appellant/writ petitioner is denied of his statutory right.

8. The learned counsel appearing for respondent No.1 / IIA vehemently contended that having invited an order on merits of the case, the appellant cannot now turn around and contend that the matter should not have been decided on merits.

9. A perusal of the order under appeal shows that the learned Single Judge found that the principles laid down in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, **AIR 1952 SC 64** and *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi*, **(1978) 1 SCC 405** and the other later decisions while dealing with Parliamentary and Municipal elections that the election disputes to be decided by the election petition, would equally apply to the elections to the Council of Architecture also.

10. That being so, it appears to us that the proper course would have been to leave it open to the appellant / writ petitioner to avail the remedy of election petition. It also appears to us that the matter involves certain issues the determination of which may require appreciation of oral/documentary evidence.

11. Therefore, the order under appeal, to the extent of the findings recorded on merits of the case, is hereby set aside and the appeal is disposed of granting liberty to the appellant/writ petitioner to file an election petition in accordance with law.

12. Appeal is accordingly disposed of.

CHIEF JUSTICE

JAYANT NATH, J.

SEPTEMBER 22, 2015

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