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

\+ W.P.(C) No.3128/2016 & CM No.13353/2016 (for stay)

HITENDER KUMAR MEHTA ..... Petitioner

Through: Mr. J.K. Mittal and Mr. Rajveer Singh, Advs.

Versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Jasmeet Singh, Adv. for R-1.
Mr. R.D. Makheja, Adv. for R-2.
Dr. S. Kumar, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% 26.04.2016

1. The petition (i) impugns the order dated 30th March, 2016 of the Election Tribunal established under Section 10B of the Companies Secretaries Act, 1980 on the application of the petitioner under Section 10A of the Act raising a dispute in regard to the election of respondent No.3 Mr. Rajiv Bajaj as a member of the respondent No.2 Central Council of the Institute of Company Secretaries of India (ICSI) from the Northern India Regional Constituency of the ICSI to the Central Council Election of the ICSI held in December, 2014; (ii) seeks a declaration of the election of the respondent No.3 as null and void; (iii) seeks a direction to the respondent No.2 ICSI to remove the name of the respondent No.3 from the register of

members of the respondent No.2 ICSI by declaring the respondent No.3 Rajiv Bajaj to be unfit to be the member of the respondent No.2 ICSI; and, (iv) seeks a direction to the respondents No.1&2 to make up the deficiency in the Company Secretaries (Election to the Council) Rules, 2006 to provide expressly the reasons and grounds when the Election Tribunal can exercise the power granted under Rule 8 of the said Rules.

2. The petitioner approached the Election Tribunal seeking setting aside of the election of the respondent No.3 on the ground of the respondent No.3 having contested the election based on concealment of material facts about his occupation and on submission of false information. The case of the petitioner in a nutshell is that the respondent No.3, besides being employed as a Company Secretary was simultaneously carrying on a profession of an advocate by registering himself with the Bar Council of Punjab & Haryana and was an active member of the Supreme Court Bar Association since the year 2005.

3. The Tribunal has found (i) that though the respondent No.3 claimed to have surrendered his enrolment of Bar Council of Punjab & Haryana but the same was alive and that there could be no doubt that he, at the time of filing the nomination as a candidate for election, was an advocate and could

practice in terms of the Advocates Act, 1961; (ii) that the respondent No.3 was however not expressly/mandatorily required to give details of his registration with the Bar Council at the time of filing his nomination for the election; (iii) that non-declaration by the respondent No.3 about his registration as an advocate was of no consequence as there was no provision in the Act or in the Rules invalidating an election on the said ground; (iv) that though the respondent No.3 was enrolled as an advocate but was not actively engaging himself in the profession of an advocate and thus was not guilty of making a false declaration under Rule 9(4) of the Rules; (v) that the Tribunal had no jurisdiction to deal with the allegations of the petitioner of the respondent No.3 being guilty of serious misconduct in terms of provisions of First and Second Schedule of the Act.

4. I have along with the counsel for the petitioner perused the provisions of the Act and the Rules supra and the same are nowhere found to provide for setting aside of the election on the grounds on which was sought by the petitioner.

5. The law of election is a special law and it has famously been stated by the Supreme Court 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 and is pure and simple, a statutory right, so is the right to dispute a 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 limitations. An election dispute is a special jurisdiction and has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity were held to be strangers to election law unless statutorily embodied. It was also held that the Court has no right to resort to them on considerations of alleged policy because policy in such matters is what the statute lays down.

6. The aforesaid principle, though laid down in relation to Parliamentary and Municipal elections has in ***K.K. Shrivastava Vs. Bhupendra Kumar Jain*** (1977) 2 SCC 494 been extended to Bar Council Elections and in ***Avatar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee*** (2006) 8 SCC 487 to Delhi Sikh Gurdwara Management Committee election and would thus apply to the present controversy as well.

7. I have therefore enquired from the counsel for the petitioner that howsoever abhorable the conduct of the respondent No.3 of though not permitted to simultaneously with acting as a company secretary having also

obtained the registration with the Bar Council may be, how can that be a ground for setting aside of the election, unless it is made so by the law and the rules governing the election. As Election Tribunal is not a Court of plenary jurisdiction and the exercise of its jurisdiction is controlled by the statute creating it and it can entertain an election petition only on the grounds specified in the statute. Supreme Court, in ***National Insurance Co. Ltd. Vs. Nicolletta Rohtagi*** (2002) 7 SCC 456, in the context of Motor Vehicles Act, 1988 held that a right which is creature of and contents whereof depend upon provisions of a statute, can be asserted in accordance with provisions of statute only and if permitted otherwise, it would mean adding more grounds than what the statute has specifically provided for. Reference in this regard can also be made to the recent judgment in ***Rajbala Vs. State of Haryana*** (2016) 2 SCC 445 and earlier judgments in ***P. Malaichami Vs. M. Andi Ambalam*** (1973) 2 SCC 170 and ***Satya Narain Vs. Dhuja Ram*** (1974) 4 SCC 237.

8. The counsel for the petitioner then contends that only a "fellow member" of the respondent No.2 ICSI is entitled to contest the election and the respondent No.3 obtained registration as a "fellow member" also by playing a fraud.

9. The counsel for the petitioner also states that he has also sought a direction to the respondents No.1&2 to make up the deficiency in the Election Rules and has also filed complaints of professional misconduct against the respondent No.3.

10. However, on enquiry, whether as on the date of the filing of the nomination, the respondent No.3 was recorded as a "fellow member" of the respondent No.2 ICSI or not, the answer is in the affirmative. If that be so, till the petitioner in accordance with law has the name of the respondent No.3 so removed as a "fellow member" of the respondent No.2 ICSI, it cannot be said that the respondent No.3 was not entitled to contest the election or his election should be set aside on the said ground.

11. Section 10A of the Act provides for settlement of disputes regarding election under Clause (a) of sub-section (2) of Section 9 and vide Section 10B sets up the Tribunal for settlement of the disputes under Section 10A only. Section 9(2)(a) of the Act is found to provide only for a dispute, of the person having contested the election inspite of having been found guilty of any professional or other misconduct or inspite of his name having been removed from the register or inspite of award of penalty for the offences mentioned therein. It is not the case of the petitioner that the respondent

No.3 till now has been found guilty. Rather, what the petitioner is trying to do is to have the respondent No.3 held guilty in an election dispute and which does not appear to be within the ambit of the scheme of the Act and the Rules.

12. The petitioner shall be entitled to pursue the said remedy against professional misconduct if any committed by the respondent no.3 in accordance with law. Similarly, the petitioner shall be entitled to make representation for amendment of Rules.

13. There is thus no merit in the petition.

14. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

APRIL 26, 2016
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