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

+ W.P.(C) No.9296/2015, CM No.21402/2015 (for stay), CM No.26067/2015 (for modification of order dated 29th October, 2015), CM No.26068/2015 (for additional prayers) & CM No.26069/2015 (for restraining respondent no.4).

ATUL GOEL & ORS.

..... Petitioners

Through: Mr. Anil K. Aggarwal with Mohd. Imteyaz, Advs.

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. K.C. Mittal and Ms. Ruchika Mittal, Advs. for R-2,5,6&7.
Mr. Pradyuman Singh, Adv. for R-3&4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.01.2016

1. The petition was filed by 21 persons claiming to be members of the respondent no.2 Institution of Valuers (Institution) seeking mandamus to ensure that the election of the Council of the respondent no.2 Institution of Valuers are held under the control and command of a former Judge of this Court to be appointed as Observer and seeking authorisation in favour of the said Observer to amend and modify the Rules/Regulations/Bye-laws of the respondent no.2 Institution and to constitute afresh a Board of Scrutinisers from amongst the Fellow members of the respondent no.2 Institution.
2. Notice of the petition was issued and a short reply was filed by the respondent no.2 Institution and its General Secretary, Joint General Secretary, Convenor, Member and Registrar & Member Board of

Scrutinisers impleaded as respondents no.3 to 7.

3. During the hearing on 29th October, 2015 the counsel for the petitioners after some arguments confined the prayer in the writ petition to the appointment of an Observer to oversee the counting process of the election to the Council of the respondent no.2 Institution.

4. The counsel for the respondents no.2 to 7 without prejudice to his contention that a writ petition against the respondent no.2 Institution does not lie, consented thereto.

5. Accordingly an Observer was appointed by this Court. However the petitioners subsequently filed an application for cancelation of the appointment of the Observer whose appointment was sought by the petitioners themselves. The said application was allowed on 4th November, 2015.

6. However the petitioners along with the application aforesaid also filed an application for amendment of the writ petition and notice whereof was issued.

7. The respondents no.2 to 7 have filed a reply to the aforesaid application.

8. I have however enquired from the counsel for the petitioners that the petitioners having confined the relief in the petition to the appointment of an Observer and having themselves withdrawn the said relief also, what survives in this petition for an application for amendment to be considered therein.

9. The counsel for the petitioners agrees and states that the petition should have been dismissed for the said reason on 4th November, 2015 and

having not been so dismissed and notice of the application for amendment having been issued, now the amendment should be considered.

10. He further states that the question whether the writ petition is maintainable against the respondent no.2 Institution needs to be decided.

11. On enquiry whether the reduced amount directed to be paid to the Observer has been paid, the counsel for the petitioners states that the same could not be paid because the share of each of the petitioners is being collected.

12. The petition is liable to be dismissed on this ground alone. Though an opportunity has been given to the petitioners to undertake to pay the said amount as directed by this Court but the counsel states that he has no instructions to give such undertaking also.

13. The petitioners cannot be permitted to avail of the process of this Court, obtain orders and thereafter not comply therewith.

14. I therefore opt to dismiss the petition on this ground alone, of the petitioners from their conduct having disentitled themselves to any relief. Axiomatically the application for amendment is also dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 19, 2016

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