

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

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Date of decision: 21st April, 2016

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W.P.(C) No.11201/2015

M/S AFFORDABLE EXPORTS

..... Petitioner

Through: Mr. Vinit Trehan, Adv.

versus

**APPAREL EXPORT PROMOTION COUNCIL
& ORS**

..... Respondents

Through: Mr. K. Venugopal, Sr. Adv. with
Mr. Siddharth Shivendra and Mr.
Saurabh Malhotra, Adv. for R-1.
Mr. Amit Mahajan, CGSC with Mr.
Sidhartha Dev, Adv. for R-2 and 4.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition was filed (i) impugning the condition imposed by the AGM of the respondent no.1 Apparel Export Promotion Council (AEPC) in the meeting held on 18th December, 2015 for deposit of Rs.1 lac for contesting the election for the membership to the Executive Committee of the respondent no.1 AEPC; (ii) impugning the election rules framed by the Executive Committee of the respondent no.1 AEPC in the meeting held on 6th November, 2015 to the extent also providing for such deposit; and, (iii) seeks direction for initiating the process of holding the election *de novo* under supervision of an observer to be appointed by this Court.
2. The petition came up before this Court first on 2nd December, 2015 when the stay of election sought by way of interim relief was denied in view

of the settled principle of law that the election process once begun cannot be interfered with.

3. Pleadings have since been completed and the matter is ripe for hearing.

4. The counsel for the petitioner states that the petitioner, aggrieved from non-grant of interim relief by the learned Single Judge, had approached the Division Bench of this Court by way of LPA No.876/2015, which by order dated 4th December, 2015 made the result of the election so held subject to the outcome of the present writ petition. A copy of the order of the Division Bench is handed over in the Court and is taken on record.

5. The counsel for the petitioner has next drawn attention to Section 160 of the Companies Act, 2013 (and on enquiry informs that the same was notified in the year 2014) and states that though the said provision as originally enacted provided for such a deposit but was amended w.e.f. 5th June, 2015 whereby such a condition of pre-deposit for contesting the election was removed. It is contended that the said provision having been amended, the respondent no.1 AEPC could not have, after the said amendment, still imposed such a condition.

6. The senior counsel for the respondent no.1 AEPC has at this stage intervened to inform that the petitioner inspite of having filed this writ petition deposited the sum of Rs.1 lacs as per the condition impugned in this petition and contested the election but could not succeed and in accordance with the terms of the condition, the sum of Rs.1 lac was refunded to the petitioner.

7. On enquiry, whether respondent no.1 AEPC intends to for future election (informed to be due in December,2016) change the election rules and

the condition of deposit as has been done vide amendment to Section 160 supra, the senior counsel states that though he has no instructions in this regard but expects the same to happen.

8. It has as such been enquired from the counsel for the petitioner as to how the cause of action for pursuing the challenge to the Election Rule/condition survives. It appears that upon the petitioner having not been deprived of contesting the election owing to the impugned condition and having also not forfeited the deposit of Rs.1 lac, the petitioner cannot now seek the relief of setting aside of the election which may have been possible in the event the petitioner had not been able to deposit the amount and had not contested the election or had forfeited the deposit so made.

9. The counsel for the petitioner states that since the result of the election was made subject to the outcome of the petition by the Division Bench, merely because the petitioner was in a position to deposit the amount should not disentitle the petitioner from challenging the Rule which comes in the way of members of the respondent no.1 AEPC who are unable to afford forfeiture of the deposit, from contesting the election, resulting in the management of respondent no.1 AEPC having remained in the hands of a few over the years.

10. It is settled law that the cause of action, even though available on the date of institution of the proceedings, can disappear during the pendency of the proceeding and if so happens, the proceedings need not be pursued further. I, relying upon earlier judgments of the Supreme Court, held so in ***Pushpawati Vs. Narain Prasad Gupta*** MANU/DE/4435/2013 (SLP(C) CC 5468/2014 whereagainst was dismissed on 11th April, 2014) and speaking for the Division Bench of this Court in ***Guru Gobind Singh Indraprastha***

University Vs. Smt. Rajput MANU/DE/1356/2015. It was held, the Court does not indulge in academic exercise and that if by subsequent events the original proceeding has become infructuous, it is the duty of the Court to dispose of the *lis* as infructuous and continuation thereof will amount to abuse of process of the Court.

11. As far as the legality of Election Rule is concerned, qua the same also Supreme Court in ***Kusum Ingots & Alloys Ltd Vs. Union of India*** (2004) 6 SCC 254 followed by the Division Bench of this Court in ***Federation of Indian Mineral Industries Vs. Union of India*** MANU/DE/3251/2014 has held that the legality is not to be tested in vacuum and in the absence of cause of action. The principle is that though it is possible to bring an action for declaration that a particular statute or action under it is *ultra vires* or unconstitutional, it depends on the fundamental fact that the declaration must disclose a real injury already occasioned or about to be occasioned.

12. The petitioner, having participated in the election process, though remaining unsuccessful and having also got refund of the deposit made by him, has not suffered any real injury to have a *locus standi* to continue with the challenge. This proceeding cannot be used by the petitioner to have a second chance to convince the electorate to elect him or have the election of the candidate elected set aside.

13. The petitioner cannot take up cudgels on behalf of others who according to petitioner were unable to contest the election for the reason of being unable to make the deposit. This is not a Public Interest Litigation (PIL).

14. As far as the future election is concerned, a direction to the respondent no.1 AEPC to, well before the same, take a decision on the subject election rule and to publish the same so that all have notice thereof and if so desire, impugn the same well in advance to be able to contest the future election, will suffice.

15. The counsel for the petitioner has next argued that the petitioner has also challenged the monopoly being exercised in the management of respondent no.1 AEPC. However upon being asked to show the pleadings in this respect he draws attention only to ground 'A' but which is with respect to condition of pre-deposit of Rs. 1 lac only and does not deal with the argument orally urged.

16. The counsel for the petitioner has next drawn attention to grounds 'H' and 'I' and has contended that the petitioner has also challenged the Election Rule 26(b) which confers in the Chairman of the Executive Committee of the respondent no.1 AEPC the power to declare a vote valid or invalid i.e. to accept or reject a vote. It is contended that the Chairman can exercise the said power in favour of his favourite amongst the candidates contesting the election.

17. On enquiry as to in whom the said power should be vested, it is stated that the said power should be vested in the scrutiniser required to be appointed under the Rules. On further enquiry as to who appoints the scrutiniser, it is stated that it is the Executive Committee who appoints the scrutiniser. On yet further enquiry, whether the petitioner is aggrieved from any decision of the Chairman in this regard, the answer is in the negative.

18. Again the principle aforesaid applies. The petitioner has no cause of action to challenge the rule supra.

19. Accordingly the petition is disposed of with a direction to the respondent no.1 AEPC to on or before 31st July, 2016 take a decision qua the Rule imposing the condition of a pre-deposit of Rs.1 lac to contest the election for the membership of the Executive Committee of the respondent no.1 AEPC and to advertise its said decision by putting the same on its website by the said date.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

APRIL 21, 2016

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