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

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Pronounced on: 12.04.2017

+ LPA 368/2016 & CM. No.31009/2016

M/S AFFORDABLE EXPORTS

..... Appellant

Through Mr.Vinit Trehan, Advocate.

Versus

APPAREL EXPORT PROMOTION

COUNCIL AND ORS.

..... Respondents

Through Mr.Krishnan Venugopal, Sr.
Advocate with Mr.Siddhartha and Mr.Shivendra
Singh, Advocates for R-1.

Mr.Amit Mahajan, CGSC with Mr.Krishanu Baru,
Adv. for R-2 to 4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This Intra Court Appeal is filed seeking to impugn the order dated 21.04.2016 by which order the learned Single Judge disposed of the writ petition of the appellant holding that there is no cause of action in favour of the appellant to continue the petition.
2. The appellant filed the writ petition seeking a writ of certiorari for quashing the provisions of security deposit of Rs.1 lakh under Section 160

of the Companies Act, 2013 to be made by the contestants for the post of Executive Committee Members of the respondent. Other various reliefs were also sought.

3. The bone of contention is the said security deposit of Rs.1 lakh. As per the rules formed by the respondent No.1 i.e. “Rules for Elections of Members to the Executive Committee of Apparel Export Promotion Council” a member is to deposit Rs. 1 lakh if interested to contest the post of Executive Committee Member. The amount is refundable to the candidate who is elected/attains 25% of the votes polled. It is stated that the above rules were approved in the 236th meeting of the Executive Committee of respondent No. 1. It is claimed that the rules so framed are ultra vires Section 160 of the Companies Act and the same are also arbitrary and unreasonable. It stated that vide notification dated 05.06.2015 the pre-condition of deposit of Rs. 1 lakh is not applicable to companies registered under Section 8 of the Companies Act, 2013

4. The respondent filed the counter affidavit before the learned Single Judge. It was stated that respondent No.1 Council is a company incorporated under Section 8 of the Companies Act, 2013(erstwhile Section 25 of the Companies Act, 1956). It is neither owned nor controlled or substantially financed by the Government and in essence, is not a State and not an instrumentality of the State. It is stated that the condition for deposit of Rs.1lakh at the stage of filing of nomination papers is justified and rational. It is also in terms of the Articles of Association and Section 160 of the Companies Act, 2013.

5. By the impugned order, the learned Single Judge noted that the appellant has participated in the election process though he remained

unsuccessful. He however, in view of the stipulations regarding refund, got refund of the deposit made by him and hence, has not suffered any real injury to have a locus standi to continue with the challenge. It further held that the appellant cannot take up cudgels on behalf of others who according to the appellant were unable to contest the elections being unable to make the deposit. As the locus standi of the appellant to continue with the challenge ceased to exist, the learned Single Judge dismissed the writ petition. Some other miscellaneous reliefs which were sought were also rejected.

6. We have heard learned counsel for the parties. Learned counsel for the appellant has essentially submitted that the pre-condition for deposit of sum of Rs.1 lakh for a candidate proposing to contest the post of Executive Committee Member is entirely arbitrary and illegal being contrary to the Companies Act, 2013 and otherwise also oppressive.

7. In our opinion, learned Single Judge rightly concluded that there is no locus standi in favour of the appellant to pursue the writ petition. The appellant having already contested the elections, having lost and having received refund of the security amount of Rs. 1 lakh, no prejudice has been caused to the appellant. As noted by the learned Single Judge, the appellant cannot persist with having an academic exercise carried out by the court.

8. Even otherwise, the appellant has not been able to urge any cogent grounds on the basis of which it can be held that the condition of pre-deposit of Rs.1 lakh prior to contesting the elections is arbitrary, illegal or void. In fact in this context reference may be had to the judgment of the Division Bench of the Gujarat High Court in the case of **Raju V.B. vs. Chief Electoral Officer, State of Gujarat & Anr., AIR 1976 Guj. 66** where a

challenge had been laid to Section 34 of the Representation of the People Act, 1951 which provides for pre-deposit for contesting elections to the Lok Sabha and State Legislative Assembly. In the contest of the said statutory provision, the Division Bench held as follows:-

“ 7. ...The first contention, therefore, that in so far as Section 33(1) , pertaining to nomination paper, and Section 34, pertaining to making of deposit, and Section 158, pertaining to forfeiture of deposit, abridge the right of a person to contest election, they are ultra vires Art. 84 of the Constitution, is completely misconceived. The said sections in so far as they prescribe a person desiring to contest election to file nomination paper or to make deposit or in case of his failure to obtain prescribed percentage of votes at the election the consequence of forfeiture of his deposit are merely procedure prescribed for the conduct of Election. They are as a matter of fact different formalities, which the Parliament has prescribed for purposes of conducting and completing the elections in an orderly manner. To urge that a person should be allowed to contest election without filing nomination paper, or without making a deposit, or without subjecting him to the liability of forfeiture of deposit in case of his failure to obtain a prescribed percentage of votes at the election, would, if accepted, result in a complete chaos. The Parliament or the Legislature has prescribed these different formalities for the elections only with a view to see that the elections are conducted in an orderly manner so as to avoid any confusion that may ensue in the process itself.”

9. The admitted position is that respondent No.1 is a body/association of exporters which was incorporated in 1978. The condition for pre-deposit of Rs.1 lakh prior to contesting the elections has been formulated to ensure orderly conduct of the elections. It is to ensure that non-serious players are kept at bay. The said condition is neither arbitrary nor illegal nor void.

10. There are no reasons to interfere with the impugned order. The present appeal is dismissed.

11. All pending applications also stand dismissed.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

APRIL 12, 2017/rb

