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

Date of Decision: 13.12.2017

+ LPA 374/2016 & CM No.22224/2016

HITENDER KUMAR MEHTA Appellant
Through: Mr. J.K. Mittal and Mr. Rajeev
Singh, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jasmeet Singh, CGSC and
Mr. Srivats Kaushal, Adv. for UOI.
Mr. R.D. Makheeja, Adv. for R-2.
Mr. Desh Ratan Nigam, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J.(ORAL)

1. The appellant claims to be aggrieved by an order of the Single Judge who affirmed the findings of the Election Tribunal established under Section 10B of the Company Secretaries Act, 1980. The grievance articulated in the writ proceeding was that the respondent – a successful candidate for the membership of the Council (Central Council of the Institute) had secured his registration as “Fellow Member” contrary to the regulation and had therefore acted in an arbitrary manner disentitling him to offer candidature.

2. The Tribunal after considering the circumstances concluded that the respondent candidate was undoubtedly registered or enrolled as an Advocate but was not “engaged in that profession”. It is also a matter of record that the appellant’s complaint with respect to professional misconduct is under enquiry and investigation by the Disciplinary Committee of the Institute. In these circumstances, the Tribunal – and subsequently the Single Judge found that since Section 10A provides for disputes settlement with respect to elections held under Section 9(2)(a) and Section 10B, the allegations could not have been investigated and adverse finding rendered without casting aspersions upon the respondent’s conduct which was the subject matter of the disciplinary proceedings.

3. Mr. Mittal, learned counsel submitted that the Single Judge fell into error. It was contended that the Single Judge misinterpreted the provisions in holding that the onus of proving that the elected candidate was, in fact, practising, was upon the complainant. It was submitted that once the Tribunal was made aware that candidate was registered or enrolled as a lawyer, his status as “Fellow Member” was immediately suspect and could not have been given effect to for the purpose of election. It was also submitted that the judgments relied upon were not relevant or germane to the issue.

4. Rule 7 of the Company Secretaries (Election to the Council) Rules, 2006, i.e. the governing norm in this case, reads as follows:-

“7. Members eligible to stand for election

Subject to other provisions of these Rules, a member who is a fellow on the first day of April of the financial year in which an election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations under sub-rule (2) of rule 4, shall be eligible to stand for election to the Council from the regional constituency in which he is eligible to vote:

Provided that no person shall be eligible to stand for election to the Council, if -

(a) he has been found guilty of any professional or other misconduct and his name is removed from the register or he has been awarded penalty of fine as provided in proviso to clause (a) of sub-section (2) of section 9 of the Act;

(b) he is holding a post under the Central or State Government as provided in sub-section (3) of section 9 of the Act;

(c) he has been auditor of the Institute during the last three year as provided in sub-section (4) of section 9 of the Act;

(d) he has held the office for more than two consecutive terms as provided in first proviso to section 10 of the Act; or

(e) he has been elected as President under sub-section (1) of section 12 of the Act as provided in second proviso to section 10 of the Act.

For the purpose of this rule -

(i) the penalties awarded to a person before coming into force of the Company Secretaries (Amendment) Act, 2006 or penalties awarded to a person after coming into force of the Company Secretaries (Amendment) Act, 2006 for offences committed before the coming into force of the same, shall also be taken account for the purpose of attracting disqualification under clause (a) of the proviso above.

(ii) [omitted]

(iii) for a person who has been the auditor of the Institute before coming into force of the Company Secretaries (Amendment) Act, 2006, the three year period limitation provided under Sub-section (4) of Section 9 of the Act shall also include the period between his ceasing to be an auditor and the coming into force of the Company Secretaries (Amendment) Act, 2006.

(iv) the number of term(s) of Office held by a person as a member of the Council either under clause (a) or under clause (b) or partly under clause (a) and partly under clause (b) of sub-section (2) of section 9 of the Act, prior to coming into force of the Company Secretaries (Amendment) Act, 2006, shall not be taken into account for

reckoning of the two consecutive terms for the purpose of disqualification under clause (d) of the proviso above.

(v) the holding of the office of the President of the Institute under sub-section (1) of Section 12 of the Act, prior to coming into force of the Company Secretaries (Amendment) Act, 2006, shall also be taken into account for the purpose of attracting disqualification under clause (e) of the proviso above.”

5. A plain reading of the proviso to Rule 7 makes it apparent that the disqualifying conditions are spelt out in clauses (a) to (e). For the purpose of determining whether the candidate fell within any of those conditions so as to confer jurisdiction upon the Tribunal, the enquiry had to necessarily be focused and limited to those five conditions. In the present case, the appellant's grievance is that the continued treatment or status of the candidate as a "Fellow Member" is not cluttered and consequently he made a fraudulent declaration disentitling his candidature. On this aspect, the Election Tribunal rendered clear findings that the respondent was not engaged in the profession as an Advocate but was merely enrolled. Besides this finding of fact, the Court is cognizant of the circumstance that the issue as to whether the candidate had, in fact, committed misconduct is the subject matter of an enquiry before the competent Tribunal i.e. the Disciplinary Committee.

In these circumstances, the findings rendered by the Tribunal and the Single Judge are not erroneous.

6. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

DECEMBER 13, 2017

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