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

+ **W.P. (C) No.3059/2017 & C.M. No.13375/2017 (for stay)**

RAVINDER NEGI

..... Petitioner

Through: Mr. Kavin Gulati, Senior Advocate
along with Mr. Rahul Pratap, Mr.
K.R. Anand, Mr.Avi Tandon, Ms.
Vasudha Zutshi, Mr. Mukul Singh,
Mr.Ravi Chandra Prakash,
Mr.Sudhakar Kumar & Mr.Abhai
Verma, Advocates.

versus

STATE ELECTION COMMISSION & ANR. Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel & Mr.Siddhartha Nagpal,
Advocate for respondent No.1.
Mr. Rajanish Singh, Returning
Officer Ward 10E, in person.

+ **W.P. (C) No.3060/2017 & C.M. No.13377/2017 (for stay)**

RENU NEGI

..... Petitioner

Through: Mr. Kavin Gulati, Senior Advocate
along with Mr. Rahul Pratap, Mr.
K.R. Anand, Mr.Avi Tandon, Ms.
Vasudha Zutshi, Mr. Mukul Singh,
Mr.Ravi Chandra Prakash,
Mr.Sudhakar Kumar & Mr.Abhai
Verma, Advocates.

versus

STATE ELECTION COMMISSION & ANR. Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel & Mr.Siddhartha Nagpal,
Advocate for respondent No.1.

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Mr. Rajanish Singh, Returning
Officer Ward 10E, in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

08.04.2017

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The aforesaid writ petitions are directed against the orders passed by the Returning Officer dated 05.04.2017 rejecting the nomination of the petitioners on the same ground. Since the background facts in which these petitions have been preferred, and the issue involved is the same, and learned counsels have advanced the same set of arguments, they are taken up for consideration and disposal by this common order.

The petitioner – Ravinder Negi offered his nomination from Ward No. 10-E (VINOD NAGAR) for the forthcoming elections to the Municipal Corporation. The petitioner – Renu Negi also offered her nomination for the same Ward.

The petitioners filed their respective nominations on the last date of filing i.e. 03.04.2017 along with their requisite affidavits. The nomination papers of the petitioners have been rejected by the Returning Officer on the ground that the respective petitioners had not affixed their signatures on the nomination form No.2, which is the statutory form for filing nomination papers under Rule 17 of the Delhi Municipal Corporation/Election of Councillors) Rules, 2012. By not signing the nomination form, each of the petitioners had not declared the following facts:

- (i) What is the age of the candidate?
- (ii) What is the gender of the candidate?

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(iii) Candidate has been set up by which recognized political party?

Consequently, the Returning Officer held that the petitioners could not be treated as qualified candidates as per Section 8 of the Delhi Municipal Corporation Act, 1957.

In these writ petitions, notice was issued on 07.04.2017 to the respondents on the premise that the failure of the respective petitioners to affix their signature at one place on the nomination form on account of oversight could not have been a reason good enough to reject the nomination form by the Returning Officer, since the information contained on the said page of the nomination form (which had not been signed due to inadvertence) was furnished in the form of an affidavit by the respective petitioners.

During the course of arguments, it has been pointed out that the aforesaid submission of the petitioner is not entirely correct inasmuch, as, the petitioners have not made a declaration "*that to the best of my knowledge and belief, I am qualified and not also disqualified for being chosen to fill the seat in the East Delhi Municipal Corporation*".

Sections 8 and 9 of the Delhi Municipal Corporation Act, 1957 contain the stipulation with regard to the qualifications for councillorship, and the disqualifications for membership of corporation. The said provisions read as follows:

"8. *Qualifications for councillorship - A person shall not be qualified to be chosen as a councillor unless he has attained the age of twenty-one years and his name is registered as an elector in the electoral roll for a ward:*

Provided that in the case of a seat reserved for the

Scheduled Castes, a person shall not be so qualified unless he is also a member of any of the said castes:

Provided further that in the case of a seat reserved for woman, no person other than a woman shall be qualified to be chosen as a councillor.

9. *Disqualifications for membership of Corporation (1) A person shall be disqualified for chosen as, and for being, a councillor, ***—*

(a) if he is of unsound mind and stands so declared by a competent court;

(b) if he is an undischarged insolvent;

(c) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(d) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislative Assembly of the National Capital Territory of Delhi;

(e) if he is so disqualified by or under any law made by the Legislative Assembly of the National Capital Territory of Delhi;

(f) if he holds any office of profit under the Corporation;

(g) if he holds any office of profit under the Government or Central Government;

(h) if he is a licensed architect, draughtsman, engineer, plumber, surveyor or town planner or is a partner of a firm of which any such licensed person is also a partner;

(i) if he is interested in any subsisting contract made with, or any work being done for, the Corporation except as a shareholder (other than a director) in an incorporated company or as a member of a co-operative society;

(j) if he is retained or employed in any professional capacity either personally or in the name of a firm of which he is a partner or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Corporation or any of the municipal authorities is interested or

concerned;

(k) if he, having held any office under the Government, a Corporation or any other authority, has been dismissed for corruption or disloyalty to the State unless a period of four years has elapsed since his dismissal or the disqualification has been removed by the Election Commission;

(l) if he fails to pay any arrears of any kind due by him, otherwise than as an agent, receiver, trustee or an executor, to a Corporation within three months after a notice in this behalf has been served upon him.

(2) Notwithstanding anything contained in sub-section (1),—

(b) a person shall not be deemed to have incurred any disqualification under clause (f) or clause (g) of that sub-section by reason only of his receiving —

(i) any pension; or

(ii) any allowance or facility for serving as the Mayor or Deputy Mayor or as a councillor ***; or

(iii) any fee for attendance at meetings of any committee of a Corporation;

(c) a person shall not be deemed to have any interest in a contract or works such as is referred to in clause (i) of that sub-section by reason only of his having a share or interest in—

(i) any lease, sale, exchange or purchase of immovable property or any agreement for the same; or

(ii) any agreement for the loan of money or any security for the payment of money only; or

(iii) any newspaper in which any advertisement relating to the affairs of a Corporation is inserted; or

(iv) the sale to a Corporation or to any municipal authority or any officer or other employee of the Corporation on behalf of the Corporation, of any article in which he regularly trades or the purchase from a Corporation or from any such authority, officer or other employee on behalf of a Corporation, of any

article of a value in either case not exceeding five thousand rupees in the aggregate in any year during the period of the contract or work; or

(v) the letting out on hire to a Corporation or the hiring from a Corporation of any article of a value not exceeding two thousand rupees in the aggregate in any year during the period of the contract or work; or

(vi) any agreement or contract with a Corporation or any municipal authority for any goods or services which a Corporation may generally supply.

(3) If a person sits or votes as a member of a Corporation when he knows that he is not qualified or that he is disqualified for such membership, he shall be liable in respect of each day on which he so sits or votes to a penalty of three hundred rupees to be recovered as an arrear of tax under this Act”.

Reliance placed by the petitioners on their respective affidavits filed along with their respective nomination forms, to submit that they contained all the relevant information, which is covered by the aforesaid declaration, is misplaced. A perusal of the affidavits filed by the petitioners shows that they do not address all the grounds for disqualification for membership of the corporation.

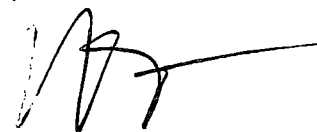
A declaration by a candidate to the effect that to the best of his knowledge and belief, he is qualified and also not disqualified for being chosen to fill the seat in the Municipal Corporation implicitly contains a positive and categorical assertion by the candidate that he meets the requirement of Section 8 of the Delhi Municipal Corporation Act, 1957, and also that he does not fall under any of the disqualifications enumerated in Section 9 of the said Act. A perusal of the affidavits of the petitioners, which are so heavily relied upon by the petitioners, shows that the same do

not contain a declaration, inter alia, in respect of the disqualification enumerated in any of the clauses (a) to (l) of Section 9(1) of the said Act.

The omissions on the part of the petitioners are clearly an omission of a substantial nature. It has been argued on behalf of the petitioners that during scrutiny, the concerned ARO should have got the form signed by the petitioners at the time of scrutiny. There is no provision pointed out in the relevant election rules which authorizes the returning officer to permit the candidate to make up the deficiencies of this nature beyond the closing time of filing of nominations. The petitioner has himself/herself to blame for the aforesaid failure which is a failure of a substantial nature.

For the aforesaid reasons, in my view, there is no merit in this petition and the impugned orders passed by the Returning Officer in the case of the petitioners appear to be clearly justified. The petitions are, accordingly, dismissed. *Done Under Signature of Court Master.*

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VIPIN SANGHI, J

APRIL 08, 2017

sr/sl