

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13109 OF 2018

Omkar Vilas Deosthale ... Petitioner

Versus

The Institute of Company Secretaries
of India and Ors. ... Respondents

Mr.Akshay Petkar for the Petitioner.

Mr. Chirag Dave a/w Mr. Kaushal Parsekar a/w Legosis for the
respondents.

**CORAM : B.P. DHARMADHIKARI &
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 05, 2018

ORAL JUDGMENT (Per Dharmadhikari,J.):

Rule. Rule made returnable forthwith and taken up with
consent.

2. Heard learned counsel for the petitioner and respondents.

Reply affidavit tendered by the respondents is taken on record.

3. This court has while issuing the notice in the matter on 21st
November, 2018 in paragraph 3 has observed thus :

*“Prima facie it appears that on 19/09/2018 name of
petitioner has been restored to the Register as Fellow
Member of the Institute w.e.f. 01/09/2018. Question is
whether impugned communication dated 16/10/2018*

overlooks this fact. The Respondent shall look into communication dated 19/09/2018 and correct error if any in the meanwhile.”

4. Learned counsel for the respondents submits that when 31/8/2018 was the last date for paying the membership subscription, petitioner did not pay it within time and thereafter brought ante dated cheque and forced the employee of Pune Chapter namely Mr. Tale to accept that cheque that too in back date. Shri Tale under pressure did so and again courier agency was managed to show that the fees were sent to Head office at Delhi in back date. The cheque was not honoured as the signatures did not match. The respondents therefore, state that looking to this conduct, petitioner is not entitled to any relief at the hands of this court.

5. The counsel for the petitioner submits that the so called conduct attributed to the petitioner is a disputed issue. He points out the communication dated 19/9/2018 written by the Head Office which accepts the payment by condoning the delay and restores the status of the petitioner as fellow member of the institute with effect from 1/9/2018 and puts an end to the controversy. The Head office has still not withdrawn that communication. It is added that after the cheque was returned for

the alleged mismatch of signatures, by way of abundant precaution, petitioner submitted an application independently and the decision dated 19/9/2018 is on that application. Therefore, it has got nothing to do with the alleged conduct of the petitioner. Counsel for the petitioner states that when the name is restored with effect from 1/9/2018, it follows that on 1/4/2018 name of the petitioner was very much on the role and in terms of Rule 7 of the Company Secretaries (Election to councils) Rules 2006, the petitioner is entitled to contest. Rejection of his nomination paper on 16/10/2017 is therefore, contrary to rule 7.

6. Counsel for the respondents submits that the communication dated 19/8/2018 was not in existence on 10/09/2018 when the list of members was finalized. As such the contention raised by the petitioner is erroneous and petition is liable to be dismissed.

7. After hearing the respective counsel, we find that as per rule 7 supra, member who is fellow on the first day of April of the financial year, in which the election is to take place and whose name continues to be borne on the register on the last date of scrutiny of the nominations, is eligible to stand for election to the council from the regional constituency in which he is eligible to

vote.

8. Petitioner has submitted his nomination form for election to regional council from the Western India Regional constituency on 26/09/2018. It appears that the scrutiny of the nomination has been undertaken on 16/10/2018 and on that date the impugned communication has been issued. The provisions and observations noted supra show that the name of the petitioner continued to be borne on the last date of scrutiny of nomination and that date, in these facts appears to be 16/10/2018.

9. Hence, after 19/9/2018 name of the petitioner continues to be borne on the register and he is also a fellow on 1st April, 2018. Polling is scheduled on 14/12/2018.

10. As already observed supra, it was open to the respondents to take cognizance of the grievance made by Mr. Tale and thereafter to withdraw the communication dated 19/09/2018. That has not been done. Rule 6 of the above rules dealing with the list of voters permits correction of the clerical mistakes or omissions at any time by issuing suitable corrigendum. Here by condoning the delay on this occasion and with a hope that the petitioner will make payment of annual membership fees in future within stipulated time, a conscious decision has been taken by the Head Office to

give the petitioner one opportunity. We therefore, find no substance in the defence as raised. Accordingly we direct the respondents to issue necessary corrigendum and to add the name of the petitioner to the voters list and also to accept his nomination papers so as to enable him to participate in the elections to the regional council from the Western India Regional Constituency.

11. Rule is made absolute accordingly. No order as to costs.

(SARANG V. KOTWAL, J.)

(B.P. DHARMADHIKARI, J.)