

\$~17, 19 & 21

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

+ W.P.(C) 11215/2018

KANTA SHARMA

..... Petitioner

Through: Mr. Ankur Garg, Mr. Siddharth
Sharma and Ms. Shruti Arora, Advs.

Versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
AND ANR

..... Respondents

Through: Ms. Pooja Saigal and Mr. Akshay
Gupta, Adv. for R-1.

AND

+ W.P.(C) 11248/2018

SANTOSH KUMAR

..... Petitioner

Through: Mr. Amit Sharma and Mr. Sumit
Nagpal, Advs.

Versus

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
AND ANR

..... Respondents

Through: Ms. Pooja Saigal and Mr. Akshay
Gupta, Advs.

AND

+ W.P.(C) 11266/2018

SANJIB SANGHI

..... Petitioner

Through: Mr. Sandeep Bajaj, Mr. Arjun
Asthana, Mr. Soayib Qureshi and Mr.
Devender Jain, Advs.

Versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA AND ANR

..... Respondents

Through: Ms. Pooja Saigal and Mr. Akshay
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

16.10.2018

CM No.43586/2018 in W.P.(C) 11215/2018, CM No.43684/2018 in W.P.(C) 11248/2018 & CM No.43755/2018 in W.P.(C) 11266/2018 (all for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

W.P.(C) 11215/2018 & CM No.43585/2018 (for stay), W.P.(C) 11248/2018 & CM No.43683/2018 (for stay) & W.P.(C) 11266/2018.

3. These petitions, though not on the Roster of this Bench, have been received at about 1235 hours in terms of General Direction dated 15th October, 2018 of Hon'ble the Chief Justice, owing to the Roster Bench Judge being on leave.

4. W.P.(C) No.11215/2018, under Article 226 of the Constitution of India, impugns the communication dated 9th October, 2018 of the Returning Officer and Secretary of the respondent No.1 Institute of Chartered Accountants of India (ICAI) to the petitioner, in exercise of powers under Rule 12(10)(a)(iv) of the Chartered Accountants (Election to the Council) Rules, 2006, rejecting the nomination of the petitioner for election to the 24th Central Council of the respondent No.1 ICAI, for the reason of non-compliance with Rule 9(3)(i) of the said Rules.

5. The counsel for the petitioner in W.P.(C) No.11215/2018 contends (i) that the petitioner did not retain with herself the copy of the nomination form filled by her; (ii) that the petitioner had signed the column requiring

“Signature of Candidate”; (iii) however the signatures were appended not above the line prescribed for the signatures but below the line and immediately above the line against the column “Name in Full”; (iv) that the rule of substantial compliance should be followed and the failure of the petitioner to sign the nomination form at the specified place is technical non-compliance on account of which the nomination of the petitioner should not be rejected.

6. The counsel for the respondent No.1 ICAI appearing on advance notice has handed over in the Court three nomination forms submitted by the petitioner and has stated that, while two of the nomination forms were not signed, the third nomination form also did not contain the signature of the petitioner. It is stated that against the column “Name in Full”, the petitioner had originally written her name as ‘Kanta Sharma’ but subsequently deleted the word ‘Kanta’ and wrote the word ‘Kanta’, after the word ‘Sharma’ and put her initials in the margin in support of the said correction. It is stated that the same cannot take the place of the requirement of signature of the candidate.

7. On enquiry, the counsel for the respondent No.1 ICAI states that it is permissible under the Rules for a candidate to submit multiple nomination forms not exceeding ten.

8. The counsel for the petitioner has been shown the original forms and has contended that even if one form is in order, the same is sufficient and has further reiterated his contentions aforesaid, particularly the contention that the deficiency is technical.

9. A photocopy of the relevant page of the original form handed over by the counsel for the respondent No.1 ICAI in Court has been made and is taken on record and for the sake of identification Ex.C-1 is put thereon in today's date. As would be evident from a perusal of Ex.C-1, the petitioner has clearly not put her signatures on the form and has put the signatures which are now sought to be relied upon only to authenticate the correction carried out as aforesaid. Similar correction at other places in the form, photocopy of which also is taken and for the sake of identification Ex.C-2 & C-3 is put thereon, have also been authorised by signatures as put against the subject correction. The petitioner has clearly failed to append her signatures at the places earmarked therefor in the form.

10. At this stage, the counsel for the petitioner withdraws W.P.(C) No.11215/2018.

11. W.P.(C) No.11215/2018 is dismissed as withdrawn.

12. W.P.(C) No.11248/2018, under Article 226 of the Constitution of India, impugns the communication dated 9th October, 2018 of the Returning Officer and Secretary of the respondent No.1 ICAI to the petitioner, in exercise of powers under Rule 12(10)(a)(iv) of the Chartered Accountants (Election to the Council) Rules, 2006 rejecting the nomination of the petitioner for election to the 23rd Northern India Regional Council of the respondent No.1 ICAI for non-compliance with Regulation 134(6)(i) of the Chartered Accountants Regulations, 1988.

13. The counsel for the petitioner in W.P.(C) No.11248/2018 has drawn attention to the proforma nomination form from pages 27 to 34 of the paper *W.P.(C) Nos.11215/2018, 11248/2018 & 11266/2018*

book and has contended that the petitioner omitted to sign against the column “Signature of Candidate” at page 29 of the paper book, though has signed against the column “Signature of Candidate” at page 34 of the paper book. It is argued that the signatures at page 29 are required to be appended only to undertake to abide by the provisions of the Chartered Accountants Act, 1949, the Chartered Accountants (Election to the Council) Rules, 2006 (Election Rules) and the Chartered Accountants Regulations and to certify the consent to stand for election and the payment of charges therefor and omission to sign the same is immaterial as it is the signatures at page 34 which are in pursuance to Regulation 134(6)(a). Reliance is placed on ***Saroj Vs. Delhi State Election Commission*** MANU/DE/1258/2017, where a Coordinate Bench of this Court held that the failure to mention the gender of the candidate in the nomination form to the Municipal Election was a technical deficiency and resultantly holding the rejection of such nomination to be bad. Attention is also drawn to Rule 12(10)(b) of the Election Rules which provides that “The Panel shall not reject a nomination paper on the ground of a technical defect which is not of a substantial character”.

14. Per contra, the counsel for the respondent No.1 ICAI appearing on advance notice has drawn attention to Rule 12(10)(a) of the Election Rules, which is as under:

“(10) (a) The Panel shall reject a nomination if it is satisfied that: –

- (i) the candidate was ineligible to stand for election under rule 7; or*
- (ii) the proposer or the seconder was not qualified to subscribe to the nomination of the candidate in the approved Form; or*

- (iii) *the signature of the candidate or of the proposer or the seconder is not genuine; or*
- (iv) *there has been a failure to comply with the provisions of rule 9, rule 10 or rule 11.”*

15. As far as the contention of the counsel for the petitioner, of the deficiency in nomination being a technical one and not a substantial one is concerned, it cannot be lost sight of that the elections being held are to a premium professional body which is entrusted with certification of affairs of others and in whom trust is reposed to verify accounts of others and such deficiency on the part of the petitioner cannot be called a technical one and the petitioner cannot be permitted to, in contravention of the Rules, contest the elections. Merit is also found in the contention of the counsel for respondent No.1 that a reading of Regulation 12(10)(a)&(b) in entirety does indicate that the failure to comply with Rules 9, 10 & 11 is a defect of substantial character and not a technical one. Failure to sign the undertaking, to abide by the Act, Rules and Regulations, otherwise also has to be viewed as of a serious character and shows that the petitioner, in the event of being elected, did not intend to comply with the Act, Rules and Regulations.

16. Even otherwise, the election process having begun, the Court ought not to interfere in the same.

17. Besides this, there is another factor. The other persons who have filed nomination have not been impleaded as party to the petition and they also have a right to be heard on a challenge made by the petitioner to rejection of his/her nomination. An order interfering with the rejection will certainly

affect the rights of the said other persons.

18. As far back as in *Jyoti Basu Vs. Debi Ghosal* (1982) 1 SCC 691 it was held that the right to contest elections is neither a fundamental right nor a common law right and is pure and simple, a creation of statute and is governed by and subject to limitations prescribed in the statute. Once the statute provides for rejection of the nomination for non-compliance with Rules 9, 10 & 11, the question of the petitioner being permitted to now contest the election does not arise.

19. I have enquired from the counsel for the petitioner, whether any *mala fide* has been imputed to anyone.

20. The counsel for the petitioner replies in the negative.

21. There is no merit in the petition.

22. W.P.(C) No.11248/2018 is dismissed.

23. W.P.(C) 11266/2018 under Articles 226 & 227 of the Constitution of India impugns the communication dated 9th October, 2018 of the Returning Officer and Secretary of the respondent No.1 ICAI, in exercise of powers under Rule 12(10)(a)(iv) of the Chartered Accountants (Election to the Council) Rules, 2006, rejecting the nomination of the petitioner for election to 23rd Eastern India Regional Council of respondent No.1 ICAI for the reason of failure to comply with Regulation 134(7) and (7A) of the Chartered Accountant Regulations, 1988 i.e. for the reason of the nomination form of the petitioner being not accompanied with the requisite fee and security deposit.

24. The counsel for the petitioner in W.P.(C) No.11266/2018 contends that the petitioner, along with the ten nomination forms filled up by him had enclosed a demand draft of Rs.22,500/- towards fee as well as the security deposit and had in the form, also mentioned the particulars of the said demand draft. Copy of the demand draft as well as letter from the ICICI Bank whose demand draft was forwarded confirming that the petitioner was issued the subject demand draft on 15th September, 2018, is also annexed to the petition. It is stated that the nomination form of the petitioner was received by the respondent no.1 ICAI on 25th September, 2018; the last date for submission of nominations was 27th September, 2018; that the respondent no.1 ICAI sent acknowledgment of receipt of nomination on 3rd October, 2018 and on 9th October, 2018 rejected the nomination. It is contended that the petitioner, immediately on learning of the rejection, on 9th October, 2018 itself sent another demand draft to the respondent no.1 ICAI which was received by the respondent no.1 ICAI on 12th October, 2018. It is yet further argued that the last date for withdrawal of nominations is 19th October, 2018 and nobody will suffer a prejudice if the nomination of the petitioner along with the demand draft is accepted.

25. While the counsel for the petitioner states that the demand draft was enclosed with the nomination forms, the counsel for the respondent no.1 ICAI appearing on advance notice reiterates the reason given in the rejection letter, of the ten nomination forms being not accompanied with the demand draft, particulars of which were mentioned in the nomination form.

26. The question, whether the petitioner had forwarded the demand draft or not and whether the demand draft was lost at the end of the respondent no.1 ICAI is a question of fact and which cannot be adjudicated without evidence. The contention of the counsel for the petitioner that at the time of acknowledgment, he was not informed that the demand draft was missing, cannot be accepted inasmuch as though the proviso to Rule 9(3)(ii) provides for an acknowledgment of delivery to be issued but there is no rule which provides for such acknowledgment to intimate of the deficiencies in the nomination submitted. The stage for scrutiny is reached only subsequently, under Rule 12. Thus, merely from the factum of acknowledgment having been issued, inference cannot be drawn that the demand draft must have been contained in the registered envelope through which the nomination is claimed to have been sent from Calcutta.

27. On enquiry, whether all the ten nomination forms were contained in one envelope or in different envelopes, it is stated that the ten nomination forms were sent in ten different envelopes. Subsequently, it is stated they were sent in one envelope only along with one demand draft only.

28. When ten nomination forms are sent in one envelope, it cannot be said that the absence of demand draft would be immediately noticed.

29. Rather, I have enquired from the counsel for the respondent no.1 ICAI, the need for a professional body as the ICAI to provide for submission of nomination forms in multiples, that too with a maximum of ten. Again, it appears that when the election is to the apex body of a highly educated body

of persons, the provision for submission of nomination forms in multiple, is not required. The respondent no.1 ICAI is directed to consider the said aspect and take a decision thereon.

30. The counsel for the respondent no.1 ICAI points out, that of the ten forms, nine forms were incomplete and only one form was complete.

31. The counsel for the petitioner has relied on para 24 of *Nandiesha Reddy Vs. Kavitha Mahesh* (2011) 7 SCC 721 where it has been observed that it is bounden duty of the Returning Officer to receive the nomination, peruse it, point out defects if any and allow the candidate to rectify the defects and when the defects are not removed, then alone the question of rejection of nomination would arise. However, the said observation came to be made in the context of election under the Representation of the People Act, 1951 and the said observation cannot be of any assistance in the context of subject elections which are governed by the Rules thereof.

32. At this stage counsel for petitioner in W.P.(C) No.11266/2018 withdraws the petition.

33. W.P.(C) No.11266/2018 is dismissed as withdrawn.

RAJIV SAHAI ENDLAW, J.

OCTOBER 16, 2018

bs/pp..