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

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W.P.(C) 1276/2019

CS VUMMENTHALA AHALADA RAO

..... Petitioner

Through Mr.Judy James, Mr.Subrahmanyam  
BKV and Mr.Abhhishek Sharma,  
Advs.

versus

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA  
(ICSI) AND ANR.

..... Respondent

Through Mr.A.S.Chandhiok, Senior Advocate  
with Mr.Ritesh Kumar, Mr.Rushab  
Aggarwal and Mr.Tejasvi, Advs. for  
R-1  
Mr.Anurag Ahluwalia, CGSC,  
Mr.Kartikeya Rastogi, Advocate for  
UOI (R-2).

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**

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**28.03.2019**

**CM Appl. No. 5726/2019, 8635/2019, 12447/2019, 14251/2019**

1. Though the main matter is listed on 10.04.2019 but yet application viz. CM Appl. No. 5726/2019, 8635/2019, 12447/2019 and 14251/2019 have been moved.
2. CM Appl. 5726/2019 is to suspend the functioning of newly elected President and Vice-President of respondent no.1 and not to hold the office of the President and Vice-President; CM Appl.12447/2019 is for staying of the 259<sup>th</sup> Central Council meeting to be held on 16.03.2019 and CM Appl.8635/2019 is for adding respondent no.3 and 4 viz. the newly elected President and Vice President of the respondent no.1 in the array of the parties.
3. CM Appl. 14251/2019 is also moved for setting aside of 259<sup>th</sup>

meeting of the Central Council held on 16.03.2019.

4. Since the arguments are heard substantially it would be appropriate to dispose of this main writ petition along with these applications.

5. This writ petition is filed by the petitioner herein with the following prayers:

*“a. To issue the Writ of Mandamus or any appropriate writ against the Respondent No.1 and 2 setting aside 258th meeting of the Central Council held on 19.01.2019 as the same is illegal, arbitrary and unconstitutional and further .*

*b. To issue the Writ of Mandamus or any appropriate writ against the Respondent No.1 and 2 setting aside the elections to the post of President and Vice- President of ICSI for the year 2019*

*c. To issue the Writ of Mandamus or any appropriate writ and declaring the Petitioner as the President of the Respondent No.1 Institute as per the resolution dated 19.01.2009 passed in 185<sup>th</sup> Central Council Meeting.*

*d. Pass such and further order as this Hon'ble Court may deem fit in the facts and circumstance of the case, and in the interests of justice.”*

6. It is the case of the petitioner, a notice was issued to him for 258<sup>th</sup> meeting of the Council of the Institute of Company Secretaries of India (ICSI) to be held on 19.01.2019 at 11:30 AM at ICSI House, 22, Institutional Area, Lodhi Road, New Delhi. The agenda of the meeting was circulated on 11.01.2019. Item no. 7 and 8 of the agenda was to elect the President and Vice President for the year 2019.

7. The learned counsel for the petitioner quoted item no.7 of the agenda to elect the President for the year 2019 as follows :

Section 12(4) of the Companies Secretary Act 1980 which provide on *the expiry of the duration of the council or of*

*the term of the office of the President and the Vice-President thereof the President and the Vice-President shall continue to hold office until such time as a new President and the Vice-President is elected and takes over charge of their duties.*

*"Accordingly, CS Makarand Lele will continue to hold office of the President until such time a new President is elected and takes over charge of his duties.*

*The Council in its 185<sup>th</sup> meeting held on 19<sup>th</sup> January 2009, adopted the procedure for election of the Vice President of the Council of the Institute by means of single transferable vote, copy placed at Annexure- 7.1,1 , Page No.28. for information and reference. In the said procedure at point no.1, it was mentioned that "as per convention being followed in the Institute, the current Vice-President is elected as the President of the Council of the Institute. However, in the event the Vice-President is not available for election to the post of the President of the Council of the Institute ..."*

*The following procedure will also be followed for election to the Post of the President of the Council of the Institute. The Council is requested to elect the President for a period of one year with effect from 19th January, 2019.*

8. The learned counsel for the petitioner then referred to a letter dated 01.08.2011 issued by the Ministry of Corporate Affairs qua following up of the practice relating to the Vice President becoming President in the Councils of the three professional institutions. However, such letter was later withdrawn by the Ministry on 25.02.2015.

9. Nevertheless it was alleged by the learned counsel for the petitioner since the procedure as was being followed since the year 1968 for election of President and Vice President was not followed this year in their elections, hence such elections be held as null and void. It was further submitted per section 12(4) of The Companies Secretaries Act, till the new President is elected it is obligatory upon

respondent no.1 to appoint the Vice President i.e. the petitioner as its President.

10. The learned senior counsel for the respondent on the other hand had argued on the maintainability of the writ petition stating inter alia this petition challenges the elections of the President and Vice President despite the petitioner having participated in such elections; and if the petitioner was aggrieved of the procedure being not properly followed, he ought to have absented himself from the elections but has rather willingly participated and has lost as he got only eight votes out of twenty votes and is now agitating qua the legality of the elections.

11. Admittedly, the outgoing President CS Makarand Lele himself had declared CS. Ranjeet Pandey and CS Ashish Garg as President and Vice President of respondent no.1 for the year 2019 and now the petitioner cannot allege the election process was completely hijacked when he himself had participated in such process. It appears the petitioner was confident of his victory but when he has lost the elections he has brought this lis alleging the elections being held in spurious manner and the members has clandestinely chosen to commence at the moment wherein the petitioner escorted the previous President to the exit gate and this process was completed before the petitioner arrived in the meeting hall. Thus the grievance of the petitioner is before he returned to the meeting hall the voting was completed by the Returning Officer. Strangely enough the petitioner had not made either the returning officer or the duly elected office bearers as parties to this petition. If the petitioner alleges fraud being

committed upon him or the recognised procedure was not adopted he ought to have filed an election petition or a civil suit against the Returning Officer, and the office bearers, so elected. Alleging of committing an illegality by the candidates who have been selected and/or allegation of corrupt practices adopted by them need evidence and cannot be challenged in this writ petition. Even otherwise, Section 12(1) of the Company Secretaries Act 1980 is relevant in this context.

**12. President and Vice-President**

*(1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President falls vacant, the Council shall choose a person to be the President or the Vice-President, as the case may be :*

*Provided that the President of the Council of the dissolved company shall continue to hold such office after the commencement of this Act, until such time as a President is elected under the provisions of this sub-section.*

*(2) to (5) ...*

12. The aforesaid section stresses upon the word *choose* and not upon the word *elect*. Hence once the members of the council had chosen a person to be the President or the Vice President in its council's meeting, in which the petitioner had also participated and rather contested the election, he cannot later wriggle out and challenge the procedure adopted for such elections as illegal, when was a willing participant. Hence, with liberty to the petitioner to seek appropriate remedy, the writ petition is dismissed.

**YOGESH KHANNA, J**

**MARCH 28, 2019/DU**