

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.15189 of 2020
and W.M.P.No.18993 of 2020

V.G.Selvaraja

..Petitioner

-vs-

1. The Secretary,
Ministry of Corporate Affairs,
Government of India,
New Delhi.
2. The Secretary,
The Institute of Cost Accountants of India,
No.8, Sudder Street,
Kolkata - 700 016.
3. The Chairman and Election Officer,
Southern India Regional Council,
The Institute of Cost Accountants of
India, CMA Bhavan, No.4, Montieth
Lane, Egmore, Chennai 600 008.

4. S.Papa Rao

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that provision under Regulation 114 of Cost and Works Accountants Regulations, 1959, so far as it relates to the term "Council" is inconsistent with the other provisions of the said Regulations and thereby declare that the term "Council" mentioned in Regulation 114 of the Cost and Works Accountants Regulations, 1959, would only mean Regional Council and not Council (Centre).

For Petitioner

: Mr.T.Ramesh
assisted by
Ms.R.Sri Visvapriya
R1:Mr.N.Ramesh SPL

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Heard Mr.Ramesh, learned counsel for the petitioner, assisted by Ms.Sri Visvapriya.

2.The challenge raised in this petition is for a declaration that the term "Council" mentioned in Regulation 114 of the Cost and Works Accountants Regulations, 1959, framed under the provisions of Cost and Works Accountants Act, 1959, should be read as confined to the Regional Council insofar as it relates to the election of officers of the Regional Council.

3.The background in which the dispute appears to have arisen is that one Mr.Sunkara Paparao, came to be elected as a member of the Twentieth Council of the Institute of Cost Accountants of India (Central Council) in terms of Cost and Works Accountants (Election to the Council) Rules, 2006. A notification was published on 08.07.2019 where the name of the said Mr.Sunkara Paparao appears at Sl.No.5 against Clause B of the Southern India Regional Constituency.

4.Under the provisions of 1959 Act, the word "Council" has to be understood separately when it comes to the Council of the Institute as defined under Section 9 thereof, which is the Central Council.

5.Chapter VI of the said Act contains the constitutions and functions of Regional Councils. Thus, Regional Council has a separate constitution under Section 23, wherein under sub-section (2), the Regional Council has to be constituted in such manner and exercise such functions as may be prescribed. Section 39(1) (h) prescribes the manner in which the elections to the Regional Council may be held for which regulations can be framed. Accordingly, regulations relating thereto have been framed under Chapter XI of the Regulations. Regulation 114 prescribes the constitution of the Regional Council as, a) consisting of elected members representing the region; b) nominated members belonging to the region; and c) not less than six members to be elected by the members in a certain proportion as provided therein. This is followed by a proviso that in the event of short fall of the membership, further nominations can be made. Regulation 114 (1) and (2) are extracted hereinunder:-

"114.Constitution of Regional Council. - (1) The Council may by notification in the Journal of the Institute, constitute a Regional Council for any region, which shall be known by such name as may be

specified in such notification.

(2) A Regional Council shall consist of -

- (a) the elected members of the Council representing the region;
- (b) the nominated members of the Council belonging to the region;
- (c) not less than 1 six members who shall be elected by the members of the Institute representing the region from amongst themselves at the rate which shall bear the same proportion to 1 thirty two as the number of members in the region bears to the number of members in all the regions, fractions exceeding half being counted as one and fractions equivalent to or less than half being omitted;

Provided that if the number of members elected to Regional Council is less than the number of persons to be elected to that Regional Council, the remaining vacancies may be filled up by co-option by the Council from amongst the members to be nominated in this behalf by the Regional Council concerned. A member so co-opted shall hold office till the expiry of the duration of the said Regional Council."

6. The conduct of elections and the manner thereof as well as disputes regarding elections are also prescribed to be resolved and for the purpose of an election dispute, Regulation 119 is relevant, which is extracted hereinunder:-

"119. Disputes regarding election - Where any dispute arises regarding any election to any of the Regional Councils, the matter shall be referred within thirty days from the date of election to the President of the Council and his decision shall be final."

7. After the elections of the Regional Council are held, Regulation 122 provides for the election of the officers of the Regional Council, which is extracted hereinunder:-

"122. Officers of the Regional Council. - (1) Every Regional Council at its first meeting after its first constitution and in subsequent years at the first meeting of the Regional Council after the Annual General Meeting of the Regional Constituency, shall elect from amongst its members a Chairman, a Vice-Chairman, a Secretary and a Treasurer thereof, and so often as any of these offices becomes vacant, the Regional Council shall choose another person from among

its members to hold that office. The said office bearers shall hold office until the first meeting of the Regional Council after the Annual General Meeting of the Regional Constituency:

Provided that the retiring office-bearers shall be eligible for re-election to any of the offices of the Regional Council if they continue to be members of the Regional Council.

(2)The first meeting of the Regional Council referred to in sub-regulation (1) shall be called and held within one month from the date of its constitution or from the date of the Annual General Meeting of the Regional Constituency, as the case may be. If within half an hour from the time appointed for the first meeting of the Regional Council referred to hereinbefore, a quorum as mentioned in Regulation 75 is not present, the said first meeting shall, notwithstanding anything contained in that Regulation, stand adjourned to the same day in the next week at the same time and place and at such adjourned meeting of the Regional Council, the members present, whatever their number, shall form the quorum and shall have power to transact all the business, which could properly have been transacted by the original meeting had the necessary quorum been present."

8.Having traced the aforesaid provisions, we find that there is no confusion or anomaly in understanding the meaning of the word "Council" as contained in the Act and the Regulations for the purpose of construing as to who shall be the members of the Regional Council. This is absolutely clear from Regulation 114 extracted hereinabove. Reading it with Regulation 122, it is further evident that the Officers of the Regional Council have to be elected from amongst the members of the Regional Council as indicated in Regulation 114. It does not mean the entire constituency of the register of members who are entitled to participate and elect the members to the Regional Council. Thus, in order to be elected as an officer of the Regional Council, one has to be an elected or a nominated member as envisaged under Regulation 114.

9.The dispute in the present case raised is that Mr.Sunkara Paparao, the respondent no.4, even though was elected as a member of the Central Council, he is not an elected member of Regional Council, the notification whereof was issued on the same day, that is, 08.07.2019. It is submitted by the learned counsel for the petitioner that only ten members were elected in the Southern India Regional Council and which does not contain the name of Mr.Sunkara Paparao. Since he is not an elected

member of the Regional Council, therefore, he cannot be elected as Chairman of the Southern India Regional council, which has now been intimated through the communication dated 12.10.2020.

10.The dispute, in essence, therefore is about the incompetence of the respondent no.4 being elected as Chairman of the Southern India Regional Council on the ground that he is not a member of the Regional Council as envisaged under Regulation 114 of the Regulations framed under Chapter XI extracted hereinabove.

11.The question as to whether he falls within any of the categories of the members of the Regional Council as envisaged under Regulation 114 or not is a question of fact, even if it is presumed for the sake of argument that his name does not find place in the list of the elected members as notified on 08.07.2019. The said fact, therefore, has to be determined as an election dispute as contemplated under Regulation 119 of the Regulations quoted hereinabove.

12.In view of the aforesaid conclusions, we find therefore no conflict for declaring Regulation 114 in the manner as prayed for by the learned counsel for the petitioner as observed hereinabove. The petitioner, in effect, is raising an election dispute of the respondent no.4 on the ground, that he not being an elected member of the Regional Council in terms of Regulation 114 of the Regulations, cannot be elected as the Chairman. This dispute can be raised by the petitioner before the forum as prescribed, and for which there is absolutely no necessity to entertain this petition for the purpose of any declaration as sought by the petitioner.

We, therefore, consign this petition without prejudice to the rights of the petitioner to raise an election dispute about the election of the respondent no.4 as Chairman before the appropriate forum in accordance with law. Consequently, W.M.P.No.18993 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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PVS (CO)
RV(20/11/2020)