IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.07.2022

+ **EL. PET. 1/2021 and IA Nos. 535/2021, 536/2021, 2819/2021,6189/2021 & 15271/2021**

ROHITASH ..... Petitioner

versus

THE CHIEF ELECTORAL OFFICER OF DELHI AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.
For the Respondents : Ms Shalini Nair, Ms Anjana Gosain & Ms Ritika Khanagwal, Advs. for R-1 and 3.
Mr Gautam Narayan, ASC & Ms Asmita Singh, Advs. for R-2.
Ms Ayesha Jamal Advocate for R-4.
Mr Anupam Srivastava and Ms Sarita Pandey, Advocates for R-5.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the above-captioned election petition under the Representation of the People Act, 1951 impugning the election of respondent no.5 as a Member of the Legislative Assembly

of the National Capital Territory of Delhi from the Assembly Constituency – 48, South (SC), NCT of Delhi. The petitioner further prays that the 2020 elections to the Assembly of NCT of Delhi from Assembly Constituency – 48, South (SC), NCT of Delhi be declared as null and void and directions be issued to respondent nos. 1 and 3 for conducting fresh elections to the Legislative Assembly of NCT of Delhi from the constituency in question.

2. Respondent no.5 had successfully contested the Assembly Elections of Delhi (Vidhan Sabha) 2020 from the Assembly Constituency – 48, Ambedkar Nagar (SC), NCT of Delhi held on 08.02.2020, as a candidate belonging to the Aam Adami Party. He was declared as the elected candidate from the said constituency on 11.02.2020.

3. The petitioner claims that the assembly election in respect of the said constituency is required to be declared as void under Section 100(d)(i) and 100(d)(iv) read with Section 125A of the Representation of the People Act, 1951

4. The present petition is premised on the assertion that respondent no.5 had intentionally given false information in the affidavit filed in Form no. 26, inasmuch as he had affirmed that there were no Government dues payable by him in respect of Government accommodation.

5. The petitioner claims that respondent no. 5 was allotted office space at Community Centre, H-Block, Dakshin Puri, New Delhi by

the Delhi Urban Shelter Improvement Board (hereafter '**DUSIB**') and as on 31.12.2016, an amount of ₹2,77,650/- was due and payable for occupation of the said property to DUSIB (arrayed as respondent no.4).

6. Respondent no.5 has contested the aforesaid assertion but he does not dispute that he had occupied the office space at Community Centre, H-Block, Dakshin Puri, New Delhi. He disputes that any amount is payable by him for occupying the said office. He denies that he has provided any false information in the affidavit filed by him.

7. Respondent no.5 as well as respondent no.2 (The Secretary, Delhi Legislative Assembly) have also contested the present petition on the grounds that (a) it is not verified as required under Section 83(1)(c) the Representation of the People Act, 1951 and therefore, the petition is liable to be rejected; (b) the petitioner is precluded from challenging respondent no.5's election and/or seeking that the election in question be countermanded on the ground of improper acceptance of nomination of respondent no.5 because the petitioner has not raised any such objection with the Returning Officer; and (c) even if it is accepted that an incorrect declaration was made by respondent no.5 in his affidavit, the same is not of substantial character so as to constitute any corrupt practice.

8. In view of the rival assertions, the following issues fall for consideration before this Court:

(a) Whether it is established that respondent no.5 has made a false declaration, as claimed by the petitioner, in Column 8 (ii) of Part A of the affidavit in Form no. 26 to the effect that he had no dues in respect of the occupation/accommodation of the Government property?

(b) If the aforesaid question is answered in the affirmative, whether respondent no.5's election to the Delhi Legislative Assembly is liable to be set aside?

9. The present petition was listed on 29.03.2022. On that date, the petitioner, appearing in person, stated that if the documents produced and relied upon by him are admitted and he did not wish to lead any evidence. The petitioner also admitted the documents disclosed and relied upon by the respondents. The learned counsel appearing for the respondents admitted the documents produced by the petitioner. The parties requested that the matter be finally heard as none of them desired to lead any further evidence except relying on the documents produced by them. Accordingly, the petition was finally heard on that date.

10. The undisputed facts are as under:

10.1 On 14.01.2020, respondent no.1 had issued a notification setting out the General Election Schedule for the Legislative Assembly of National Capital Territory of Delhi, 2020;

10.2 The last date for filing the nominations was 21.01.2020;

10.3 Respondent no.5 had filed his nomination for contesting the said election from Assembly Constituency no. 48, Ambedkar Nagar (SC), NCT of Delhi;

10.4 Respondent no. 5 had along with his nomination furnished an affidavit in Form no. 26, *inter alia,* declaring that there were no dues to departments dealing with Government accommodation in Column no.8 (ii) in Paragraph 'A' of the said affidavit;

10.5 The polling for the General Elections of Delhi (Vidhan Sabha) 2020 was conducted on 08.02.2020 and respondent no.5 was declared as the returned candidate / winning candidate from Assembly Constituency no. 48, Ambedkar Nagar (SC), NCT of Delhi;

10.6 Prior to his election, respondent no.5 was allotted an office at the Community Centre, South-1, Block-H, Dakshin Puri, Ambedkar Nagar, New Delhi by DUSIB (respondent no.4);

10.7 Respondent no.5 did not pay any charges for occupation of the said office;

10.8 On 17.01.2020, DUSIB had issued a Demand Notice to respondent no.2 (The Secretary, Delhi Legislative Assembly) regarding dues in relation to allotment of office spaces allotted to various MLA's including respondent no.5;

10.9 DUSIB had demanded a sum of ₹25,000/- plus license fee of ₹2,04,100/- along with interest at the rate of 18% computed at ₹81,130/-;

10.10 According to DUSIB, after adjusting the deposit of ₹32,580/-, a total sum of ₹2,77,650/- was due and payable by respondent no. 5 upto 31.12.2016;

10.11 The Demand Notice dated 17.01.2020 indicates that the area of the office allotted to respondent no. 5 was 785 sq. ft. and DUSIB was claiming license fee at the rate of ₹5/- per sq. ft. computed at ₹3,925/-;

10.12 The Demand Notice dated 17.01.2020 also indicates that the office in question was handed over on 27.08.2015 and the dues have been calculated from that date; and

10.13 The Demand Notice dated 17.01.2020 was for a sum of ₹16,31,877/- in respect of six separate offices allotted to various MLA's.

11. The petitioner has premised his case on the basis of the Demand Notice dated 17.01.2020. He claims that a sum of ₹2,77,650/- was due and payable by respondent no.5 in respect of the office allotted by DUSIB and therefore, his declaration that no dues were payable to the Government in respect of Government accommodation, is false.

12. Mr. Bhupesh Sharma, Deputy Secretary, Legislative Assembly, National Capital Territory of Delhi, has affirmed an affidavit on behalf of respondent no.2. He has affirmed that by a letter dated 07.05.2015, the Hon'ble Speaker of the Delhi Legislative Assembly requested the Hon'ble Chief Minister of Delhi to approve a proposal for providing adequate office space to Members of the Legislative Assembly

(MLAs) in each constituency with requisite infrastructure and manpower for discharge of their duties. The spaces were to be identified as "Offices of Assembly Constituency". It is stated that the Hon'ble Chief Minister accorded his, in principle approval to the aforesaid proposal by a letter dated 15.06.2015 and suggested that working spaces measuring 700 to 1000 sq. ft. be provided at convenient locations.

13. Respondent no.2 has produced the said letter dated 15.06.2015, which is not disputed. By a letter dated 25.08.2015 addressed to respondent no.2, DUSIB communicated that it had allowed various offices (eight in number) at different locations to the MLAs elected from the respective constituencies. The allotment was on a specific condition that the premises would be used for specific purposes and would not be transferred or let out without prior permission of the competent authority of DUSIB. In addition, it was also subject to the condition that the office of the Delhi Legislative Assembly would undertake the "*day-to-day repair, fitting and fixtures and [keep] the same in serviceable and good conditions*".

14. It is confirmed on behalf of respondent no.2 that the allotment was at the instance of the Delhi Legislative Assembly and the offices allotted to the MLAs were to be used as offices of the Assembly Constituency. The liability to pay the license fee for the same rested with respondent no.2 (the Delhi Legislative Assembly) and not on the respective MLAs, who had been allotted the said constituency offices. The Demand Notice dated 17.01.2020, which was relied upon by the

petitioner, was addressed to respondent no.2. Respondent no.2 had responded to the said notice by a letter dated 20.01.2020 confirming that dues in respect of the Constituency Offices would be settled by the Assembly Secretariat after completion of the due formalities. Respondent no.2 also produced another letter dated 21.01.2020 addressed to the Members of the Legislative Assembly clarifying that the Constituency Offices were allotted to the MLAs on behalf of the Assembly Secretariat and dues pertaining to rent, license fee etc. shall be paid by the Assembly Secretariat to the concerned department / agency after completion of the codal formalities. As stated above, the letters produced by the respondents were duly admitted.

15. It is respondent no.5's case that the office allotted to him was the office of the Assembly Constituency and he is not liable to pay any license fee for the same. The documents produced by respondent no.2 indicate that the license fee in respect of the office space allotted by DUSIB to respondent no.5 is not his liability and is required to be discharged by respondent no.2. Respondent no.2 has admitted his liability to DUSIB. The Demand Notice, which is the fulcrum on which the petitioner's case rests, is also not addressed to respondent no.5 but to respondent no.2. There is no communication on record which is addressed to respondent no.5, whereby DUSIB had demanded any license fee in respect of the office space allotted to respondent no.5. The learned counsel appearing for DUSIB has also not disputed that the license fee for the office space in question is liable to be paid by the Legislative Assembly of Delhi.

16. In view of the above, the petitioner has failed to establish that the declaration made by respondent no.5 to the effect that no amounts are due from him in respect of the Government accommodation, is a false statement. Thus, the question framed in Paragraph 8 (a) is answered in the negative.

17. The petition is, accordingly, dismissed. All pending applications stand disposed of.

18. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JULY 07, 2022
RK/gsr