IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

WPO 1082 of 2023

Dinesh Kumar Birla
Vs.
Institute of Cost Accountants of India and Anr.

For the petitioners	:	Mr. Jishnu Saha, Sr. Adv. Ms. Aasia Hasan, Adv. Ms. Swagata Roy, Adv.
For the UOI	:	Mr. Tilok Bose, Sr. Adv. Mr. Suddhasatva Banerjee, Adv. Mr. Subhojit Roy, Adv. Mr. Aditya Sarkar, Adv.
Last Heard on	:	17.05.2023.
Delivered on	:	19.05.2023.

Moushumi Bhattacharya, J.

1. The petitioner is a Cost Accountant by profession and is presently a Council Member from the Western Regions of the Institute of Cost Accountants of India / respondent no. 1. The petitioner is aggrieved by a communication

dated 30.4.2023 by which the petitioner's nomination for Election to the Council for 2023-2027 from the Western India Regional Constituency was rejected by the Panel for Scrutiny and the Nominations constituted for Election to the Council and the Regional Councils at its meeting held on 29.1.2023. According to learned counsel appearing for the petitioner, the rejection is on the basis of an amount due and the arrear in question is of Rs. 472/- which, apart from being a nominal amount was also not intimated to the petitioner at the relevant point of time. Counsel submits that the petitioner offered to pay this amount by way of a mail dated August, 2019 but the Ahmedabad Chapter of the Institute did not make any arrangement to collect the amount from the petitioner. Counsel submits that the petitioner's name was reflected in the list of nominations dated 22.4.2023, but was significantly absent from the subsequent list dated 30.4.2023. Counsel places The Costs and Works Accountants (Election to the Council) Rules, 2006 to urge that the arrears in question is not of a substantial character and hence the Panel could not have rejected the nomination of the petitioner on that ground. Counsel prays that the petitioner's name be included in the list of nominations for election to the Council for 2023 until the matter is heard out on affidavits.

2. Learned counsel appearing for the Institute places a series of Notifications relevant to the present proceeding to show that each and every decision / announcement of the Institute is taken out by way of a Notification which would be evident from the Lists published for election to the Council. Counsel submits that the petitioner has sought for relief against the impugned

rejection without challenging the concerned Notification or the relevant Rule for that matter. Counsel places the schedule of the dates of election to the Council and the Regional Councils to urge that the last date for receipt of nominations was 21.4.2023 and the date for scrutiny of nominations was 29.4.2023 and 30.4.2023. Counsel submits that a three-member Panel is appointed for scrutiny of nomination papers under Rule 12 of the 2006 Rules and that the petitioner's nomination was found to be defective and irregular by the said Panel under Rule 7 of the Rules. It is submitted that the process for the election cannot be reversed at this stage.

3. The election for which the petitioner is concerned is to the Council for the Institute of Cost Accountants, India (ICAI) for 2023-2027. The Court has been given to understand that this is the Central Council of ICAI as opposed to the Regional Councils of the Institute. The petitioner is a serving Council Member from the Western region of the respondent no. 1 / ICAI. The reason for the rejection is the petitioner's non-fulfillment of Rule 7 of The Costs and Works Accountants (Election to the Council) Rules, 2006 (the Rules). The decision was made by a Panel for scrutiny of the nominations which was constituted for election to the Council and the Regional Councils. The Panel took the impugned decision at its meeting held on 29.4.2023. The impugned decision was communicated to the petitioner under Rule 12(11) of the Rules. The reason is quoted in the impugned letter and states that the Ahmedabad Chapter by its mail dated 21.4.2023 and confirmed by the Director (Finance) vide note dated 25.4.2023 informed that the petitioner has other dues amounting to Rs. 472/-

since 12.7.2019 which is also reflected in the annual accounts of Ahmedabad Chapter and admitted by the petitioner by mail dated 17.7.2019.

4. Rule 7 of the 2006 Rules which sets out the eligibility of Members to stand for the Election is the relevant Rule for the purpose of the present proceeding is. Under the said Rule, a Member who is a fellow and whose entrance fees, membership fees and other dues are, not in arrears on the 1st day of October of the year immediately preceding the year of the election and whose name continues to be in the Register on the last date of scrutiny of nominations under Rule 4(2), shall be eligible to stand for the Election to the Council from the Regional Constituency in which he is eligible to vote.

5. The Proviso to Rule 7 sets out the other conditions which would disqualify the Member from standing for the Election. October, 2022 is the relevant year in this case and the consideration is that dues must not be in arrears. Hence, in order to be eligible for standing for the Election for the Council there should not be other dues in arrears as on 1.10.2022 reflected in the Register on the last date of Scrutiny of Nominations under Rule 4(2). Rule 4 deals with dates of elections and sub-Rule (2) casts an obligation on the Returning Officer to notify in the Gazette of India at least 3 months before the date/s of Election inter alia the date and place of scrutiny of nominations (Rule 4(2)(b)).

6. The question before the Court is first, whether the Costs and Works Accountants (Election to the Council) Rules, 2006 provide for any discretion in

the matter of reversing a decision taken by the Panel for Scrutiny and second whether the procedure initiated for the Election is irreversible.

7. It is also relevant to state that each of the Notices issued by the respondent no. 1 Institute including for the election for Managing Committee Members of the Institute dated 29.3.2023, the announcement of the election dates for both the Council and Regional Council dated 31.3.2023, the number of Members to be elected to the Council as per the Rule of the Regional Council under the Rules issued on the same day, Constitution of the 4 Regional Councils, list of voters eligible to vote from the various constituency for election to the Council, list of Members to the Western Indian Regional Council (all the aforesaid of 31.3.2023), list of nominations received till the last date published on 22.4.2023 and the list of valid nominations for the Western Regional Constituency published on 30.4.2023 were by way of by Gazette Notifications save and except the first Notification of 29.3.2023.

8. These Notifications constitute laws as defined in Article 13(3)(a) of the Constitution of India. Significantly, the petitioner has not challenged any of the Notifications for the purpose of assailing the impugned communication dated 30.4.2023. The argument that the petitioner is not required to challenge any of the Notifications or the Election Rules, 2006 is not acceptable since the petitioner intends to mount the challenge on the interpretation of Rule 7 in particular and the Election Notifications in general. Since all the relevant announcements/ communications of the Institute have been made by way of

Notifications, it is arguable whether the petitioner can seek quashing of the impugned communication without challenging the parent Notifications concerning the Central Council Elections.

9. Even on a plain reading of Rule 7, which deals with eligibility to stand for elections, it is clear that the condition of other dues not being in arrears and the Member's name being in the register as on the last date of Scrutiny of nomination is a mandatory condition. This would also be evident from use of the word *"shall"* in the said Rule. The Rule does not contemplate an exit route from this requirement and the conditions therein are also non-disjunctive. Rule 12 provides for Scrutiny of nominations and Explanation I thereto can be viewed as the only possible dilution of the rigour of Rule 7 where the Panel is prohibited from rejecting nomination paper on a ground of a technical defect which is not of a substantial character. The petitioner's dues being in arrears form part of the mandatory requirements for a Member's eligibility to stand for elections and cannot be seen as an insubstantial or technical defect. Explanation II to Rule 12 is also not applicable in the present case since that would be relevant to Rule 9 which deals with *inter alia* maximum numbers of nominations.

10. The quantum of the arrears is not the issue; Rule 7 lays down the points for disqualification and does not provide a breather in respect of the ineligibility under the said Rule. A literal interpretation of Rule 7 would also mean that even a Rs. 1/- being in arrear would attract Rule 7. Hence, the question of

curing the ineligibility by making payment of Rs. 472/- or the arrear being of a nominal amount does not arise. The conclusion is that there is no element of discretion built into the Rules. The Court cannot therefore import any such discretion in the scheme of the Rules.

11. The respondent Institute says that the process is irreversible. This contention partly follows from the above conclusion on the lack of discretion. The Notification dated 31.3.2023 announcing the dates of elections to the Council and the Regional Councils show that the last date for receipt of nominations, the date and place of Scrutiny of nominations, the last date and time for withdrawal of nominations, the last date for receipt of application for permission to vote by post are already over. The next date is 1.7.2023 which is the designated last date for receipt by post of ballot papers from the voters. The counting of votes is due to start from 7.7.2023 and the results are to be declared on 12.7.2023.

12. Hence, the argument made on behalf of the Institute that the process for the election is already well under way is believable. Permitting the petitioner to interrupt that process on importing discretion in the Rules would turn the clock back which cannot be done any more since the cut-off dates announced in the Schedule cannot be re-wound.

13. Although the petitioner has relied on the mail dated 19.8.2019 asking the Ahmedabad Chapter of the Institute to send a person to collect amount of Rs. 472/-, the fact remains that the petitioner did not take any steps after

August, 2019 till 1.10.2022. The possibility of the petitioner's oversight in repaying the amount would however not cure the ineligibility under Rule 7. The petitioner wanting to make good the arrears at the relevant point of time ceases to be a material consideration in the absence of discretion in the Rules.

14. Rule 4(3) provides for changing the dates notified under sub-rule (2) but only for compelling reasons and that too in the opinion of the Returning Officer. In the present case, the impugned rejection refers to the Panel for Scrutiny of the nominations deliberating on the petitioner's nomination at the meeting held on 29.4.2023. The reason for the decision to reject the petitioner's nomination has also been quoted in the impugned letter. The impugned letter makes it clear that the designated Panel constituted for Scrutiny of the nomination came to an independent finding based on Rule 7 of 2006 Rules. Therefore, the allegation of *mala fides* or extraneous considerations does not appear to have any factual basis.

15. This Court is accordingly of the view that the petitioner has not been able to make out a case for arbitrary or unreasonable conduct on the part of the respondent no. 1 Institute which would call for interference. The 2006 Rules framed for Election to the Council of the Cost and Works Accountants further restricts the scope of interference.

16. WPO 1082 of 2023 is accordingly dismissed without any order as to costs.

Urgent Photostat certified copies of this judgment, if applied for be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)