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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/160/2023
IA NO.GA/1/2023
DINESH KUMAR BIRLA

-Versus-

INSTITUTE OF COST ACCOUNTANTS
OF INDIA AND ANR.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 14th June, 2023

Appearance :

Mr.K.R. Thaker, Adv.

Ms.Aasia Hasan, Adv.

Mr.Vikram Wadehra, Adv.

Ms.Swagata Roy, Adv.

..for the appellant.

Mr.Suddhasatva Banerjee, Adv.

Mr.Aditya Sarkar, Adv.

...for the respondent.

The Court : This intra-court appeal by the writ petitioner/appellant is directed against an order dated 19th May, 2023 in WPO 1082 of 2023. The appellant is a cost accountant by profession and presently a Member of the Council from the Western Region of the Institute of Cost Accountants of India. The writ petitioner/appellant was aggrieved by a communication sent by the Returning Officer dated 30th April, 2023 of the

first respondent by which the appellant's nomination for the election to the Council for the period 2023-27 was rejected. According to the appellant, the rejection was on the basis that an amount of Rs.472/- was standing as dues payable to the Ahmedabad Chapter of the Institute and the amount not having been settled despite a debit note issued by the Chapter, the appellant would suffer a disqualification from contesting in the election in terms of the Cost and Works Accountants (Election to the Council) Rules, 2006 as amended in 2011 hereinafter referred to as the Rules. The Rule 7 of the Rules deals with members eligible to stand for election. It states that subject to other provisions of those Rules, a Member who is a fellow and whose entrance fees, annual membership fees and other dues are not in arrears on the 1st day of October of the year immediately previous to the year in which an election took place and the name continues to be borne on the register on the last date of scrutiny of nomination under sub-Rule 2 of Rule 4 shall be eligible to stand for election to the Council for the Regional Constituency in which he is liable to vote. It is the contention of the appellant that a sum of Rs.472/- for which a debit note has been raised by the Chapter will not fall within the definition of other dues though such word has not been specifically defined under the dues. It is pointed out by the learned advocate appearing for the appellant that Rule 5 which deals with Members eligible to vote is *pari materia* with Rule 7 and in terms of the notification issued by the respondent Council, the appellant's name finds place in serial no.72 of the list of Members who are eligible to vote and, therefore, if the appellant is not found ineligible to vote in terms of Rule 5, the same cannot be put

against the appellant from contesting the elections by referring to Rule 7 of the Rules.

The learned advocate appearing for the appellant has also invited the attention of this Court to the Bye-laws which were framed by the Regulations in exercise of its powers conferred under Regulation 146 of the of the Cost and Works Accountants Regulations, 1959, by which the Cost Accountants Chapters Bye-law, 2019 was notified with effect from 13th February, 2019 modifying the earlier Bye-laws. It is submitted that in Bye-law 9 which deals with membership. In the proviso 2 Bye-law 9(1) it has been stated that the name of such members whose name has been removed from the register of members of the Institute or who has not cleared his dues shall not be allowed to continue the membership or be admitted as a member of the Chapter and the Institute shall, not later than 31st October every year, issue list of members, who clears their dues within 30th September of the year and such lists shall be valid till 30th September of the subsequent year. Our attention was also drawn to Bye-law 9(2) which deals with the Member eligible to vote and stand for election and it states that every Member of the Chapter who is a Member of the Institute and who is otherwise not disqualified to continue as a Member under clause 9 or clause 10 of the Bye-laws and whose respective entrance fees, annual membership fees and other dues to the Institute are not in arrears on the 1st day of October of the year immediately previous to the year in which election to the Managing Committee of Chapter is to take place. It is submitted that the debit note which has been issued for Chapter for Rs.472/- was not

construed to be other dues in terms of Bye-law 9 of the Chapter Bye-laws and for four years the appellant continues to be remain a Member of the Chapter. Therefore, it is submitted that the rejection of the nomination of the appellant was wholly arbitrary and unreasonable.

The first hurdle of the appellant is to cross with regard to the maintainability of the writ petition. Admittedly, the election process has commenced with the issuance of the notification by the Council on 31st March, 2023. The last date and time for receipt of the nominations was 21st April, 2023, the date of scrutiny was fixed on 29th April, 2023 and 30th April, 2023 and the last date for withdrawal of the nomination was fixed on 10th May, 2023 and the polling date has been fixed on 1st July, 2023 and 2nd July, 2023 at Delhi and 1st July, 2023 at all other places. The notification also stipulates that other dates and events which are to take place. Thus, the election notification having been issued, the question would be as to whether if a challenge to the rejection of a nomination is entertained, would it tantamount to interdicting an election process. The interpretation which is sought to be put forth before this Court is undoubtedly an interpretation which requires examination into facts. It has to be seen whether the term 'other dues' occurring both under the Rules as well as under the Bye-laws can encompass the dues raised by way of debit note by the Chapter. The other issue would be if the Chapter has not disqualified the appellant from continuing as a Member of the Chapter, can it be said that it will operate as a disqualification in terms of Rule 7 of the Rules of election. All these issues involve examination into facts and interpretation of the election rules as well

as the Chapter Bye-laws. Therefore, if we are called upon to examine these issues and ultimately if the appellant is to succeed then the entire election schedule has to be redrawn and the list of valid nominations which have been declared so far has to be revised and all other consequential steps have to be taken which would undoubtedly affect the election schedule. Therefore, we are of the view that the case as projected by the appellant if examined and if any relief has to be granted would clearly amount to interdicting the election process and would also amount to calling an election in question which a Writ Court is not entitled to do. Therefore, we are of the view that the writ petition was not maintainable on the grounds raised by the appellant and it is for the appellant to challenge the rejection of his nomination before the Tribunal after the conclusion of the election and such remedy undoubtedly is an effective and efficacious alternative remedy. This, at this juncture, we do not propose to interfere with the order passed by the learned Single Bench and decline to entertain this appeal.

We make it clear that in the event the appellant is to approach the Tribunal, the findings rendered by the learned Writ Court and the observations made by us in this judgment and order will in no manner prejudice the rights of the appellant in canvassing all grounds before the Tribunal.

The learned advocate appearing for the appellant submits that in the event the appellant approaches the Tribunal, he has a genuine apprehension that the matter will be indefinitely prolonged and it may even extend to a period beyond the term of office of four years. In our view, the

appellant need not have any apprehension because the Tribunal may not have several applications on its board to consider. In any event, we are of the view that an expeditious decision should be taken by the Tribunal considering the fact that the elections are to have a professional body. Therefore, in the event the appellant files application before the Tribunal, we would request the learned Tribunal to take up the application and endeavour to dispose of the same as expeditiously as possible preferably within a period of three months from the date on which such application is filed.

With the above observations, the appeal stands disposed of. Consequently, the connected application stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/