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

Date of decision: 08th FEBRUARY, 2023

IN THE MATTER OF:

\+ **LPA 60/2023 & CM APPL.3385/2023**

KAMAL BHASIN ..... Appellant

Through: Appellant-in-person

versus

ELECTION TRIBUNAL OF ICAI & ORS ..... Respondents

Through:

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. Aggrieved by the Order dated 14.11.2022 passed by the learned Single Judge in W.P.(C) 7625/2018 dismissing the writ petition, the Appellant has filed the instant LPA. The Appellant has filed the instant LPA praying for the following reliefs:-

> *"a) Allow the instant Appeal and set -aside the impugned order dated 17-11-2022 passed by Ld Single Judge in the Writ Petition (Civil) no.7625/2018.*
>
> *b) Call the records and files from the respondent -2 with regard to the disposal of the complaint of the appellant against respondent -3 referred to in the petition.*
>
> *c) Direct the respondent -2 to take the required disciplinary action against the respondent -3 for submitting a false affidavit at the time filing of his nomination form to the Election to the council of the institute held in the June, 2015 in violation of code of conduct duly notified by the returning officer and*

> *Guidelines of the Hon'ble Supreme Court and ruling of the Delhi High court on elections to the Statutory body alike ICAI.*
>
> *d) Pass any such order or direction that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. It is the case of the Appellant that on 23.05.2015, he had filed a complaint against Respondent No.3 for filing a false affidavit along with nomination form for election to the Northern India Regional Council of the Institute of Cost Accountants of India (ICMAI).

3. It is stated that in pursuance of the said complaint, on 29.05.2015 the Secretary-cum-Returning Officer issued a show cause notice directing Respondent No.3 to submit his stand within seven days. Since no action was forthcoming from the Returning Officer, i.e. Respondent No.2 herein, the Appellant filed an RTI application with ICMAI to ascertain the status of the proceedings/action to be taken in the case.

4. It is stated that the Public Information Officer of the ICMAI returned the application stating that there is no scope of giving any reply as the matters are pending adjudication before the appropriate authority of ICMAI.

5. It is stated that Respondent No.2 *vide* letter dated 28.03.2016 closed the complaint stating that the issue raised by the Appellant does not fall within the purview of the violation of Election Code of Conduct, Election Rules and Notifications.

6. It is stated that on receipt of the said letter, Appellant took the matter with the Joint Secretary-cum-Government Nominee on the Council of ICMAI. It is stated that the Appellant tried to pursue the matter with the Secretary, Ministry of Corporate Affairs and filed an appeal with the Ministry of Corporate Affairs against the decree dated 28.03.2016 closing

the complaint. It is stated that on the advice of Ministry of Corporate Affairs, the Returning Officer referred the case to the Election Tribunal.

7. The Election Tribunal *vide* Order dated 16.03.2018 upheld the decision dated 28.03.2016 of the Returning Officer refusing to entertain the complaint on the ground that it is not a violation of the Election Code of Conduct, Rules and Notifications.

8. The Appellant, therefore, approached this Court by filing a writ petition. The learned Single Judge by the Order impugned herein observed that the Appellant was neither a member of the ICMAI nor has he contested elections but the Appellant insisted that the matter is still alive and the Court must not only set aside the Order dated 28.03.2016 passed by Respondent No.2 refusing to entertain the complaint but also proceed against the ICAI for not proceeding against filing of a false declaration by Respondent No.3.

9. The learned Single Judge held that the Appellant is not a person aggrieved under the Cost and Works Accountants (Election Tribunal) Rules, 2006 to maintain the petition before the Returning Officer. It was also held that the order of the Returning Officer cannot be faulted. Aggrieved by the same, the instant LPA has been filed.

10. A perusal of the material on record shows that as observed by the learned Single Judge, a complaint can be entertained under the Cost and Works Accountants (Election Tribunal) Rules, 2006 when the complaint is made by a person who has contested the elections. Rule 2(b) of the Cost and Works Accountants (Election Tribunal) Rules, 2006 read as under:-

> *"(b) "aggrieved person" means a person who contested that election to the Council to which the dispute pertains;"*

11. Undoubtedly, the Appellant has not contested the elections, and, therefore, the order of Respondent No.2 in not proceeding ahead with the complaint cannot be faulted.

12. Further, the list of dates filed by the Appellant shows that after the decision of the Election Tribunal on 16.03.2018 refusing to entertain the appeal filed by the Appellant against the decision dated 28.03.2016 taken by Respondent No.2, the Appellant chose to keep quiet for more than four years for which there is no explanation at all.

13. A perusal of the order passed by the learned Single Judge shows that the Election Tribunal has also declined to entertain the appeal only on the ground of lack of jurisdiction as the Appellant is not an aggrieved party.

14. In view of the above, this Court does not find any infirmity with the order passed by the learned Single Judge. As has been observed by the learned Single Judge, this Court is also not rendering any opinion on the complaints made by the Appellant against Respondent No.3 and it is always open for him to take such steps as permitted to him under law.

15. There is no merit in the appeal and the same is dismissed, along with pending application(s), if any, with the above observations.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 08, 2023
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