

18.09.2024
Item No.33
gd/ssd

MAT/1792/2023

SUMANTRA GUHA
VS
UNION OF INDIA AND ORS.
IA NO: CAN/1/2023

Mr. Surajit Samanta,
Ms. Anindita Roy,
Ms. Sohini Samanta
..for the Appellant.

Mr. Ranjan Bachawat,
Mr. Rudraman Bhattacharya,
Mr. Sourajit Dasgupta,
Mr. Akash Munshi,
Mr. Bhavesh Garodia,
Mr. Souvik Majumdar
..for the Respondent Nos.2 to 4.

1. This intra court appeal by the writ petitioner is directed against the order dated 20th July, 2023 in WPA 16252 of 2023.

2. This writ petition was filed by the appellant challenging an order passed by the tribunal for deciding the election disputes to the 25th Council of the Institute of Chartered Accountants of India held in December, 2021.

3. The order passed by the tribunal is dated 07.06.2023.

4. The tribunal, in our view, has passed a reasoned order and rejected the dispute raised by the

appellant. The initial dispute which is raised by the appellant was slightly on a different ground alleging that the e-mails were sent to the wrong address, what was more seriously canvassed by the appellant before the tribunal was the additional grounds for which the leave was granted by the tribunal.

5. The learned counsel appearing for the appellant has drawn our attention to the additional grounds which were raised before the learned tribunal.

6. On perusal of the same, we find that the apprehension of the appellant is that the person, who was in-charge of the ballot boxes, ought to have reached Kolkata and deposited the ballot boxes in the strong room latest by 5th of December, 2021 i.e. 24 hours after the conclusion of the polling on 4th December, 2021 at 8 p.m. However, he has reached Kolkata only on the 6th evening and not on the 5th afternoon and this, according to the appellant, raises doubts as to what the said person was doing for so long in Odisha with the ballot boxes.

7. Therefore, the appellant alleged in the additional grounds that there is every possibility that the said person, who was a data entry operator of ICAI, may have manipulated/tampered/changed the ballot boxes in connivance with or at the behest of the person who would benefit from the said act.

8. With this pleading the appellant sought for a forensic investigation to be done and a report to be submitted before the election tribunal.

9. Firstly, we need to point out that the allegation made against the data entry operator of ICAI, who was entrusted with the responsibility of carrying the ballot boxes, is absolutely vague and not substantiated by the appellant. Furthermore, from the affidavit filed by the respondents in this appeal we find that the ballot boxes were obtained from the Election Commission of India and the ballot boxes had a specialized lock which once sealed and signed cannot be tampered and only has to be broken open before counting. The regulations permit the candidates to be physically present at the time when the ballot boxes are opened before counting, in their absence they are also entitled to authorize a representative to be present.

10. The learned Single Bench specifically has considered this aspect and has rightly noted that the appellant did not avail such opportunity. Furthermore, the tribunal has examined the entire election process and by a speaking order rejected the election dispute raised by the appellant.

11. We find that there is no error in the decision making process for a writ court to interfere with the factual matters. That apart, the election tribunal is constituted by the Ministry of Corporate Affairs and

undoubtedly it is an independent body and there is no allegation of any malafides against the election tribunal except to state that the election tribunal did not pass orders within six months. However, the concerned regulation does not mandate so but states that as far as possible the election tribunal shall dispose of the matter within six months from the date on which the complaint was filed.

12. Thus, we find that the learned Single Bench after considering all these aspects had rightly not interfered with the decision of the tribunal more particularly noting the scope of interference in the writ petition.

13. The learned advocate for the appellant submitted that in the affidavit which has been filed by the ICAI in this appeal, brings certain facts for the first time before the court.

14. We have perused the affidavit filed on behalf of the ICAI and we find what has been stated therein is the procedure which had been adopted. Apart from mentioning that the ballot boxes are special kind secured in the Election Commission of India. This aspect has also been rightly noted by the learned Single Bench.

15. Thus, we find that the appellant has not made out any grounds to interfere with the order passed by the learned Single Bench.

16. Accordingly, the appeal fails and stands dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)