

(2006) 10 CAL CK 0001

Calcutta High Court

Case No: Writ Petition No. 22487 (W) of 2006

Krishanu Bhattacharya

APPELLANT

Vs

Institute of Chartered
Accountants of India and Others

RESPONDENT

Date of Decision: Oct. 27, 2006

Acts Referred:

- Chartered Accountants (Election to the Council) Rules, 2006 - Rule 12(10)(a)(iv), 7
- Chartered Accountants Regulations, 1988 - Regulation 134(10)

Citation: (2007) 2 CALLT 88

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Kalyan Bandyopadhyay, Mr. Pradyumnd Sinha and Mr. Supratim Laha, for the Appellant; Anindya Mitra , Mr. Soumya Majumder for respondent No.1 Mr. Arunava Ghosh for respondent No.2, for the Respondent

Final Decision: Dismissed

Judgement

Soumitra Pal, J.

Let the affidavit of service filed in Court today be Ref with the records.

2. The petitioner, a Chartered Accountant, has filed the petition challenging order dated 20th October, 2006 whereby his nomination paper for participating in the Eastern Regional Council Election was rejected under sub-rule 10(a)(iv) of Rule 12 of the Chartered Accountants (Election to the Council) Rules, 2006 (hereinafter referred to as thr-"Rules") read with Regulation 134(10) of the Chartered Accountants Regulation 1988 as he failed to furnish the particulars in columns (h) and (i) of the nomination paper. According to Mr. Bandyopadhyay the mistake was unintentional and as envisaged under Rule 12(10)(h) it was technical in nature and not substantial. Submission has been made that in view of the statements made in paragraph 13 of the writ petition the Returning Officer may be directed by appropriate orders to

rescrutinize the nomination papers.

3. Opposing the writ petition Mr. Mitra appearing on behalf of the respondent No.1 drawing attention to Rule 7 of the Rules, submitted as the petitioner did not fill up the compulsory columns (h) and (i) in the nomination paper, the respondent was justified in passing the order,

4. Mr. Ghosh, appearing on behalf of the respondent No.2 has pointed out that the secretary was justified in passing the order of rejection since there has been a failure on the part of the petitioner to comply with the Rules regarding filing of nomination papers. Referring to the election programme it has been submitted that since the last date of scrutiny of the nomination papers is over, if directions are issued for rescrutinising the nomination papers it may jeopardize the election process.

5. It is not in dispute that the petitioner did not fill up the columns (h) and (i) of the two sets of nomination papers. The question is whether the secretary was justified in passing the order under challenge. In order to appreciate the issue it is necessary to refer to the relevant portion of Rule 7 of the Rules which is as under:

7. Members eligible to stand for election.-Subject to other provisions of these Rules, a member who is a fellow on the first day of April of the financial year in which an election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations under sub-rule(2) of rule 4, shall be eligible to stand for election to the Council from the regional constituency in which he is eligible to vote:

Provided that no person shall be eligible to stand for election to the Council, if-

(a) he has been found guilty of any professional or other misconduct and his name is removed from the register or he has been awarded penalty of fine as provided in proviso to clause (a) of sub-section (2) of section 9 of the Act;

(b) he is holding a post under the Central or State Government as provided in sub-section (3) of section 9 of the Act;

(c) he has been auditor of the Institute during the last three year as provided in sub-section (4) of section 9 of the Act;

(d) he has held the office for more than three consecutive terms as provided in first proviso to section 10 of the Act; or

(e) he has been elected as President under sub-section (1) of section 12 of the Act as provided in second proviso to section 10 of the Act.

(Emphasis supplied)

6. In this regard it is also appropriate refer to Rule 9(4) which is extracted hereunder:

(4) The nomination shall be valid only if it is accompanied by a statement signed and verified by the candidate containing information as provided in Schedule 4.

(Emphasis supplied)

7. The relevant portion of Schedule 4 as referred to in Rule 9(4) is as under:

(h)(i) Whether appointed as the auditor of the Institute and, if so, whether a period of three years had already expired after he has ceased to be the auditor of the Institute, along with date of appointment and cessation as auditor;

(ii) If that period has not yet expired, the date on which it shall expire;

(i) Details of past and present membership of the Council including the Office of the President and/or Vice-President of the Institute;

8. It is clear from a reading of the Rules and the schedule that filling up of the columns is absolutely essential since under Rule 9(4) a nomination shall be "valid only if it is accompanied by a statement signed and verified by the candidate containing information as provided in schedule 4" which is more or less a reproduction of proviso (c) (d) (e) of Rule 7 and unless the columns noted are filled up, one shall not be eligible to participate in the elections which is postulated in no uncertain terms by the language "Provided no person shall be eligible to stand for election to the Council.....". The prohibition is absolute. There is no ambiguity in the language of the said proviso to the Rule. It bars a person from participating in the election who has filed nomination without filling up the columns mentioned and as enjoined in Rule 9(4) such nomination paper is bound to be invalid. Therefore, filling up of the columns mentioned is mandatory and for this reason it is "compulsory". Hence, non-filling up of column (h) and (i) is not a technical but a substantial defect. Thus, the secretary was justified in passing the order under challenge.

Therefore, no interference is called for. Accordingly, the writ petition is dismissed.

There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the appearing parties on priority basis.