

PETITIONER:
SURAT SINGH

Vs.

RESPONDENT:
KISHORI LAL & ORS.

DATE OF JUDGMENT:
22/08/1969

BENCH:

ACT:

Delhi Development Authority Act (61 of 1957), Delhi Development Authority Rules, 1958, r. 3(1)(e), Delhi Development Authority (Election of Representatives of Delhi Municipal Council) Rules, 1958, r. 2(5) and Delhi Municipal Corporation (procedure and Conduct of Business) Regulations, 1958, reg. 33-'Validly nominated', in r. 2(5) of Election of Representatives Rules-If gives power to Mayor to decide on disqualifications-Point of order, meaning of-Decision of Mayor, final-Scope of.

HEADNOTE:

The Delhi Development Authority is constituted under s. 3 of the Delhi Development Act, 1957. Two. of the members of the Authority 'are to be representatives of the Municipal Corporation of Delhi, elected by the Councillors and Aldermen of the Corporation from among themselves. Rule 3(1) of the Delhi Development Authority Rules, 1958, passed under the Act, prescribes various grounds of disqualification for being a member of the Authority. Under r. 3 (1)(e) a person is disqualified if he is interested directly or indirectly in any business of development of land in Delhi.

The appellant, first respondent, and another, filed nomination papers for being elected to the Delhi Development Authority as representatives of the Municipal Corporation of Delhi. On an objection that the first respondent was disqualified because. he was interested in the business of development of land in Delhi, the Mayor of Delhi, who presided at the meeting, rejected the nomination paper of the first respondent 'and declared the two remaining candidates elected.

The first respondent thereupon filed & writ petition in the High Court which was allowed. In appeal to this Court, it was contended: (1) That under r. 2(5) of the Delhi Development Authority (Election of Representatives of Delhi Municipal Corporation) Rules, 1958, framed under the Delhi Development Act, when the number of validly nominated candidates is equal or less than the number of representatives to be elected the Mayor shall declare all such candidates to be duly elected, and if the number of validly nominated candidates is more, a roll shall be taken, that the expression 'validly nominated candidates' implies that the Mayor has the power to determine whether a person is validly nominated, and for this purpose, the: Mayor could consider not only whether the requirements of nomination in cls. (2) and (3) are complied with, but also, whether he is subject to any disqualification; and (2) That the objection about the first respondent amounted to raising a point of

order and the decision of the Mayor on a point of order was final under reg. 33 of the Delhi Municipal Corporation (Procedure and Conduct of Business) Regulations, 1958.

HELD: (1) The Delhi Development Act and the various rules made thereunder contain no machinery for setting aside an election to the Delhi Development Authority nor do they contain an express provision authorising the Mayor to hold an inquiry and reject a nomination. In the absence of such an express provision the Mayor could not, at a meeting of the Corporation, hold an inquiry to ascertain whether a candidate was subject to any of the disqualifications set out in r. 3 of the Delhi Development Authority Rules. The expression validly nominated in r. 2(5) of the Election of Representatives Rules, implies only that a Mayor may determine whether the requirements of cls. (2) and (3) of r. 2 are satisfied and not to determine whether a candidate was under a disqualification at the date of nomination. [62. F--G--H; 63 A--B, F]

(2) A point of order is primarily intended to determine the interpretation of the rules and regulations governing a meeting and objections in relation to a meeting. It does not include an objection to the competence of a member to stand for election to a Committee. In fact, the objection to the nomination of the respondent was never raised as a point of order. [64 C--D, F]

Even if it be assumed that the objection was raised and decided by the Mayor as a point of order, the Mayor could not do so by his mere fiat without calling for evidence and without discussion. The finality contemplated by reg. 33 is only for the purpose of procedure and conduct of meetings. [64 E]

Therefore, whether the first respondent was at the date of nomination disqualified from being elected a member of the Delhi Development Authority could only be decided in an appropriate proceeding in a civil court after he was elected. [64]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2195 of 1968.

Appeal from the judgment and order dated September 12, 1968 of the Delhi High Court in Letters Patent Appeal No. 34 of 1968.

Shyamala Pappu and Vineet Kumar, for the appellant.

D.D. Chawla, Bishamber Lal and H.K. Puri, for respondent No. 1.

The Judgment of the Court was delivered by

Shah, Ag. C.J. One of the items at a meeting of the Delhi Corporation held on April 24, 1967 was the election of two of its representatives on the Delhi Development Authority. Three candidates had filed nomination papers: they were Kishori Lal, Kedar Nath Sahni and Surat Singh. It was objected that Kishori Lal was interested in the business of development of land in Delhi as a shareholder and also as a Director of Capital Land Builders (Private) Ltd. Kishori Lal denied that he was so interested. The Mayor of Delhi who presided at the meeting rejected the nomination paper on the ground that Kishori Lal was interested in the business of sale and purchase of land in Delhi and was on that account disqualified to be a member of the Delhi Development Authority. The two candidates who remained in the field were declared duly elected by the Mayor.

In a petition under Article 226 of the Constitution

filed by Kishori Lal, Deshpande, J. of the High Court of Delhi quashed

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the order of the Mayor rejecting the nomination paper of Kishori Lal and declaring illegal the election of Surat Singh and Kedar Nath Sahni as representatives of the Corporation on the Delhi Development Authority. The learned Judge directed that another election be held according to law. Against the decision of Deshpande, J. appeals were preferred by the Mayor of the Corporation of Delhi and by Surat Singh. The High Court confirmed the order passed by Deshpande, J. With certificate granted by the High Court this appeal is preferred by Surat Singh. The Mayor has not preferred any appeal.

Two contentions are urged in support of this appeal:

(1) that the Mayor was under the provisions of the Delhi Corporation Act and the rules framed thereunder competent to reject the nomination, power in that behalf having been conferred upon him; and

(2) in any case, objection against nomination amounted to raising a point of order, and the ruling of the Mayor on the point of order was by rule 33 of the Delhi Municipal Corporation (Procedure and Conduct of Business) Regulations, 1958, final.

The Delhi Development Authority is constituted under s. 3 of the Delhi Development Act 61 of 1957. Members of the Authority are elected or nominated from different sources. Two of the members of the authority are to be the representatives of the Municipal Corporation of Delhi, elected by the Councillors and Aldermen of the Corporation from among themselves. Rules were framed by the Central Government in exercise of the power conferred by s. 56 of the Delhi Development Act 61 of 1957 called the "Delhi Development Authority Rules, 1958". By rule 3 (1)(e) a person is disqualified for being chosen as, or for being, a member of the Authority if he is interested directly or indirectly in any business of development of land in Delhi. The Central Government has framed another set of rules under s. 56 of the Delhi Development Act, called the Delhi Development Authority (Election of Representatives of Delhi Municipal Corporation) Rules, 1958. Rule 2, insofar as it is relevant, provides:

"(1) The Election of the representatives of the Municipal Corporation of Delhi . . . in pursuance of clause (e) of sub-section (3) of section 3 of the Delhi Development Act, 1957 (61 of 1957), shall be held at a meeting of the Corporation in accordance with the system of

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proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) Every candidate for election as such representative shall be nominated by a nomination paper in Form 1 which shall be signed by the candidate and two other members of the Corporation as proposer and seconder and delivered to the Municipal Secretary

(3) No member of the Corporation shall sign as proposer or seconder the

nomination of more candidates than the number of representatives to be elected. Any nomination paper subscribed in contravention of this sub-rule shall be invalid and shall be declared as such by the Mayor.

(4)

(5) Where the number of validly nominated candidates is equal to, or less than, the number of representatives to be elected, the Mayor shall declare all such candidates to be duly elected as representatives of the Corporation, and where the number of validly nominated candidates is more than the number of representatives to be elected, a poll shall be taken."

Clauses (6), (7), (8), (9), (10) and (11) provide for the method of polling and the declaration of the result of the poll. But the Act and the rules contain no machinery for setting aside an election to the Delhi Development Authority.

It is common ground that the Delhi Corporation Act, 1957 and the rules framed by the Central Government under s. 56 of the Delhi Development Act, 1957 do not contain any express provision authorising the Mayor to reject the nomination. It was contended however, that the use of the expression "validly nominated candidates" in cl. (5) of r. 2 of the Delhi Development Authority (Election of Representatives of Delhi Municipal Corporation) Rules, 1958 implies that the Mayor has the power to determine whether a person is validly nominated, and in determining whether he is validly nominated the Mayor has to consider not only whether the requirements of clauses (2) & (3) are complied with, but whether the candidate nominated is subject to any disqualification. In our judgment the expression "validly nominated" occurring in sub-r. (5) of r. 2 of the Election Rules, 1958, implies that the Mayor may determine whether

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the requirements of cls. (2) and (3) are satisfied. The Mayor cannot obviously hold a detailed enquiry having regard to the terms of r. 3 of the Delhi Development Authority Rules to ascertain whether the candidate is subject to any of the disqualifications set out in that rule. The Rules provide for diverse grounds of disqualification from membership of the Authority. A person is of unsound mind and stands so declared by a competent court; if he is an undischarged insolvent; if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State; if he is a licensed architect, draughtsman, engineer, plumber, surveyor or town planner or employee of a firm of which any such licensed person is also a partner; if he is interested, directly or indirectly in any business of development of land in Delhi; if he is interested in any subsisting contract made with, or any work being done for, the Authority except as a shareholder (other than a director) in an incorporated company or as a member of co-operative society; if he is retained or employed in any professional capacity either personally or in the name of a firm of which he is a partner or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Authority is interested or concerned; if he, having held any office under the Government, has been dismissed for corruption or disloyalty

to the State within a period of four years; and if he fails to pay any arrears of any kind due by him, otherwise than as an agent, receiver, trustee or executor, to the Authority within three months after a notice in that behalf has been served upon him. By cl. (j) of r. 3 in the prescribed eventualities disqualifications do not operate. Normally the Mayor cannot in the absence of an express provision hold an enquiry in a meeting of the Corporation into the several matters contemplated by r. 3 before he accepts the nomination paper. In our judgment the High Court was right in holding that the Mayor was not competent under the Rules to determine whether a candidate was under a disqualification at the date of nomination. The other argument raised by counsel for the appellant also has no substance. Objection to the nomination of Kishori Lal was not raised and could not be raised as a point of order at the meeting. Rule 33 of the Delhi Municipal Corporation (Procedure and Conduct of Business) Regulations, 1958 provides:

"Any member may at any time during the meeting of the Corporation submit a point of order for the decision of the Mayor, but in doing so shall confine himself to stating the point and the Mayor shall decide all points of order which may arise or be referred to him and his decision shall be final".

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A point of order includes an objection raised by a member at a meeting for breaches of the Rules or regulations, to some defect in the constitution of the meeting (e.g. absence of a quorum), to the use of offensive or abusive language, or to invite the attention of the presiding officer that the motion under discussion is not within the scope of the notice, or to any similar infirmity or irregularity in the proceeding. In addition to breaches of the general or special rules use of insulting or bad language, gross accusations or insinuation and unseemly or contemptible conduct may be taken exception to in this manner. (Law and Practice Relating to Meetings. F. Shackleton. p. 97, 5th Edition). A point of order is primarily intended to determine the interpretation of the rules and regulations governing the meeting: it does not contemplate any discussion on any event. It cannot, therefore, be in the form of an objection to the competence of a member to stand for election to a Committee. By the, Delhi Development Authority Rules, existence of any of the disabilities referred to in r. 3 constitutes a disqualification. A claim that a candidate is subject to a disqualification cannot be decided without evidence and discussion: such an objection cannot, therefore, form the subject of a point of order.

Rule 33 has made the decision of the Mayor final. But it is not intended thereby that a member may be declared disqualified by an order made without calling for evidence and without discussion, and by the mere fiat of the Mayor. Nor is it intended to remove an existing disqualification of a member without evidence and without discussion.

The argument that objection to the nomination paper of Kishori Lal was raised by way of a point of order was never raised in the petition and it is clear from the proceedings of the meeting that it was not treated as a point of order. Even if it be grated that the objection was raised and decided by the Mayor as a 'point of order jurisdiction of the civil court to determine the existence of a statutory disqualification cannot on that

account be excluded. The finality is only for the purpose of the procedure and conduct of the meeting and confers no rights upon any person.

Whether Kishori Lal was at the date of nomination disqualified from being elected a member of the Delhi Development Authority will therefore have to be decided in an appropriate proceeding if he is declared elected at an election held according to law.

The appeal fails and is dismissed with costs.

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V.P.S.

Appeal

dismissed.

JUDIS