

# Institute Of Chartered Accountants ... vs Inder Chand Jain on 10 September, 1991

**Equivalent citations: 1991 SCR (3) 921, 1992 SCC SUPL. (1) 433, AIR ONLINE 1991 SC 255**

**Author: M.H. Kania**

**Bench: M.H. Kania, N.M. Kasliwal, M. Fathima Beevi**

PETITIONER:

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND ANOTHER

Vs.

RESPONDENT:

INDER CHAND JAIN

DATE OF JUDGMENT 10/09/1991

BENCH:

KANIA, M.H.

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KANIA, M.H.

KASLIWAL, N.M. (J)

FATHIMA BEEVI, M. (J)

CITATION:

1991 SCR (3) 921

1992 SCC Supl. (1) 433

JT 1991 (4) 39

1991 SCALE (2) 598

ACT:

Chartered Accountants Act, 1949--Section 30---Chartered Accountants Regulations--Regulation 87(2)--."So as to reach him, not later than 5.00 P.M. on the specified date"--Construction of

Chartered Accountants Act, 1949---Section 30--Chartered Accountants Regulations--Regulations 82, 87---Nominations for election to the Council of the Institute of Chartered Accountants of India sent by registered post on 17.5. 1991 and 18.5. 1991 received by the Secretary on 23.5. 1991 and 27.5. 1991, respectively and not by the specified time and date, (5.00 P.M. on 21.5.1991)--Liable to be rejected.

HEADNOTE:

The Respondent forwarded his nominations for election to the Council of the appellant No. 1--Institute by registered post to the Secretary, Appellant No. 1, on May 17, 1991, and May 18, 1991. They were received on May 23, 1991, and May 27, 1991 respectively and were rejected on the ground that they were received after the time and date fixed for the receipt of the nominations, i.e., 5.00 p.m. on May 21, 1991.

Being aggrieved, the respondent filed a writ petition in the High Court seeking a writ of certiorari to quash the order rejecting his nominations.

The Division Bench of the High Court allowed the writ petition holding that once the Secretary was satisfied that a nomination had been duly forwarded by the registered post to him at least 48 hours before the specified date and time, it must be deemed to have been received within the time provided.

The Institute and its Secretary filed the SLP in this Court contending that under Regulation 87(2), the nominations must be forwarded by registered post and must reach the Secretary of the Council not later

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than 5.00 p.m. on the specified date, i.e., May 21, 1991; that the proviso came into play only when a nomination was delivered to the Secretary against an acknowledgement before the specified time and specified date and the Secretary was satisfied that a valid nomination had been duly forwarded by registered post to him at least 48 hours before the specified date and time; and that the High Court had erred in disregarding the opening part of the proviso which read "Provided that a nomination delivered against an acknowledgement before the aforesaid time and date..."

The respondent contended that what was intended to be prescribed by the use of expression, "so as to reach him not later than 5.00 p.m. on the specified date" in clause (ii) of sub-regulation (2) of Regulation 87, was that the nominations which had been forwarded by registered post to the Secretary 48 hours before the specified time and date of the election must be deemed to have reached the Secretary in time.

Allowing the appeal, this Court,

HELD: 1. The entire scheme of sub-regulation (2) of Regulation 87 and the proviso shows that one of the main pre-conditions required before a nomination can be said to have been duly received, is that a valid nomination must be received by the Secretary before the specified time and date. [926C]

2. It is true that the rule, in terms, requires that the nominations should be sent by registered post, but taking into account the fact that such a nomination might not be received by the Secretary even though posted more than 48 hours before the specified time and date, it was provided that if the nomination was delivered by hand to the Secretary before the specified time and date against acknowledge-

ment, that nomination would be treated as having been validly received provided the Secretary was satisfied that the nomination was forwarded by registered post to him by the candidate 48 hours prior to the specified time and date. [926D-E]

3. What is meant by the use of the expression, "so as to reach him not later than 5.00 p.m. on the specified date" in sub-regulation (2) of Regulation 87, is that the nomination must be forwarded by registered post to the Secretary so as to reach him in fact or actually reach him not later than 5.00 p.m. on the specified date. The rigour of the rule is relaxed by the proviso under which if a proper nomination was

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delivered against an acknowledgement before the specified time and date, it would be deemed to have been forwarded and to have reached within the time prescribed provided the Secretary was satisfied that the nomination had been duly forwarded by the registered post at least 48 hours before the specified time and date. [926G-927A]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3573 of 1991.

From the Judgment and Order dated 25.6.1991 of the Bombay High Court in W.P. No. 1926 of 1991.

G. Ramaswamy, Attorney General, K.K. Jain, G. Banerjee, Pramod Dayal and Ajay K. Jain for the Appellants. S.V. Mehta, A.K. Sanghi, Manjul Bajpai and S. Grover for the Respondent.

Gopal Subramaniam, Manjul Bajpai and S. Grover for the Intervenor.

The Judgment of the Court was delivered by KANIA, J. Leave granted. Counsel heard.

This appeal is being disposed of, by consent, at the stage of granting of special leave in view of the urgency. Appellant No. 1 is the Institute of Chartered Accountants of India, a body incorporated under the Chartered Accountants Act, 1949, (hereinafter referred to as "the Act"). Appellant No. 2 is the Secretary of Appellant No.1, Institute. Appellant No. 1 was formed with the object of regulating the profession of the Chartered Accountants. Section 9 of the Act provides for the constitution of the Council of Appellant No.1, Institute, and prescribes that the affairs of the said Institute shall be managed by the said Council which comprises not more than 24 persons elected by the fellows of the Institute and 6 persons nominated by the Central Government. Sub-section (1) of Section 10 of the Act provides that the election of the said Council shall be conducted in the prescribed manner. Section 30 of the Act confers powers upon the Council to make regulations for the purpose of carrying out the objects of the Act. In exercise of the said powers, the Council framed regulations known as "the Chartered Accountants Regulations" (hereinafter referred to as "the Regulations").

Chapter VI of the said Regulations deals with the topic of "Elections". Regulation 82 provides that the Council shall notify in the Gazette of India, at least three months before the 'date of an election, the dates fixed for various stages of election of the members of the Council, like receipt of nominations, scrutiny of nominations, withdrawal of nominations, polling dates and so on. Regulation 87(1) provides that the Council shall publish in the Gazette of India a notice, setting out the number of members to be elected and calling for nominations of candidates for election by a specified date, at least three months prior to the date of election. Sub-regulation (2) of Regulation 87 which is the regulation coming up for construction before us reads as follows:

(2) The nomination of a candidate shall be

(i) In the appropriate form duly signed by the candidate and by the proposer and the seconder both of whom shall be persons entitled to vote in the election in the relevant regional constituency; and

(ii) forwarded by registered post to the Secretary by name so as to reach him not later than 5 p.m. on the specified date.

Provided that a nomination delivered against an acknowledgement before the aforesaid time and date shall be deemed to have been so forwarded and so having reached if the Secretary is satisfied that the nomination has been duly forwarded by registered post at least 48 hours before the aforesaid time and date." Sub-regulation (3) of Regulation 87 provides inter alia for the contents of the nominations. We are not concerned with the rest of the regulations for the purpose of this appeal.

The final time for the receipt of the nominations, was fixed as 5.00 p.m. on 20th May, 1991, and it was extended to 5.00 p.m. on 21st May, 1991.

The respondent forwarded his nominations by registered post to the Secretary on May 17, 1991, and May 18, 1991, respectively. The nominations, however, did not reach the Secretary by 5.00 p.m. on May 21, 1991, being the final time and date prescribed for the receipt of the nominations. Actually, they were received by the Secretary of the Council by registered post on May 23, 1991, and May 27, 1991, respectively. These nominations were rejected on the ground that they were received after the time fixed for the receipt of the nominations and the name of the respondent was not included in the list of the candidates who had filed their nominations for election to the Council. Being aggrieved, the respondent filed a writ petition in the Bombay High Court seeking a writ of certiorari to quash the order rejecting his nominations. The Division Bench of the Bombay High Court, which decided the writ petition, took the view that a plain reading of subregulation (2) of Regulation 87 made it clear that the only mode prescribed by the Regulations is to tender the nomination by registered post and the rigour of the rule that the nominations must reach before the specified date and specified time, was relieved by the insertion of the proviso. It was held by the Division Bench that once the Secretary was satisfied that a nomination had been duly forwarded by registered post to him at least 48 hours before the specified date and time, it must be deemed to have been received within the time provided. On the basis of this conclusion the High Court made the rule absolute. It is the correctness of this decision which is sought to be challenged before us.

It was submitted by learned 'Attorney General who appeared on behalf of the appellants that under sub-regulation (2) of Regulation 87, the general rule is that the nominations must be forwarded by registered post and must reach the Secretary of the Council not later than 5.00 p.m. on the specified date, the specified date in this case being May 21, 1991. It was further urged by him that the proviso which, to a certain extent, relaxed this rule came into play only where a nomination was delivered to the Secretary against an acknowledgement before the specified time and specified date and the Secretary was satisfied that a valid nomination had been duly forwarded by registered post to him at least 48 hours before the specified date and time. It was contended by learned Attorney General that the learned Judges of the Bombay High Court had erred in disregarding the opening part of the proviso which read "provided that a nomination delivered against an acknowledgement before the aforesaid time and date..... "

In our view, there is a considerable force in the submission of learned Attorney General. It is trite to say that in construing any regulation or rule it would not be proper to ignore any part of it except in special circumstances. Moreover, accepting the construction placed by the Bombay High Court on the said proviso would lead to a startling result; for example, a nomination might have to be treated as received within the specified time and date even though it might never have reached the Secretary at all or might reach the Secretary after the date of the election, merely because the Secretary is satisfied that the nomination had been duly forwarded to him by registered post at least 48 hours before the specified time and date. It is not unknown that the letters sent by registered post are occasionally received after a long delay of several weeks and on some occasions they do not reach at all. If the construction placed on the said proviso in the impugned judgment were accepted, in such a case as aforesaid the entire election would have to be set aside leading to great confusion and hardship. This consequence must necessarily follow if the view taken by the Bombay High Court were to be accepted in our opinion, the entire scheme of sub-regulation (2) and the proviso shows that one of the main pre-conditions required before a nomination can be said to have been duly received, is that a valid nomination must be received by the Secretary before the specified time and date.

It is true that the rule, in terms, requires that the nominations should be sent by registered post, but taking into account the fact that such a nomination might not be received by the Secretary even though posted more than 48 hours before the specified time and date, it was provided that if the nomination was delivered, let us say, by hand to the Secretary before the specified time and date against acknowledgement, that nomination would be treated as having been validly received provided the Secretary was satisfied that the nomination was forwarded by registered post to him by the candidate 48 hours prior to the specified time and date. It was contended on behalf of the respondent that in the light of the proviso to sub-regulation (2) of Regulation 87 what was intended to be prescribed by the use of the expression so as to reach him not later than 5.00 p.m. on the specified date in clause (ii) of sub-regulation (2) of Regulation 87, was that the nominations which had been

forwarded by registered post to the Secretary 48 hours before the specified time and date of the election must be deemed to have reached the Secretary in time. In our view, this contention is fallacious. What is meant by the use of the aforesaid expression in sub-regulation (2) of Regulation 87 is that the nomination must be forwarded by registered post to the Secretary so as to reach him in fact or actually reach him not later than 5.00 p.m. on the specified date. The rigour of the rule is relaxed by the proviso under which if the nomination was delivered against an acknowledgement before the specified time and date, it would be deemed to have been forwarded and to have reached as provided in clause (ii) of sub-regulation (2) referred to earlier provided the Secretary was satisfied that the nomi-

nation had been duly forwarded by registered post at least 48 hours before the aforesaid time and date. In view of the reasoning set out earlier, we set aside the judgment and order passed by the Bombay High Court and we hold that the nomination of the respondent was liable to be rejected on the ground that it was not received in time, as the respondent had failed to deliver to the Secretary against an acknowledgment a nomination before the specified time and date. However, we find that, in the present case, the elections have already been postponed and the proposed dates for elections will now to be probably fixed in October or November, 1991. In these circumstances, we direct that all the nominations received upto the end of August 1991 must be treated as received in time provided that the Secretary is satisfied that they were forwarded by registered post 48 hours before the time and date specified earlier. The Council may fix the elections on any date they consider proper. The appeal is allowed to the extent aforesaid. Looking to the facts and circumstances of the case, there will be no order as to costs.

We may suggest that if the Council so thinks, the regulations may be suitably amended so as to leave no room for ambiguity, a difficult task indeed.

V.P.R.  
allowed.

Appeal