

ORDER ON EMERGENT MOTION

HIRSH V. SINGH and SINGH FOR GOVERNOR,

Appellants,

v.

ELECTION LAW ENFORCEMENT COMMISSION OF NEW JERSEY,

Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3555-16
BEFORE: PART B
JUDGES: MARIE E. LIHOTZ
MARY GIBBONS WHIPPLE

EMERGENT MOTION FILED: 05/01/17 BY: Stephen J. Edelstein, Esq.
Attorney for Appellants
ANSWER FILED: 05/02/17 BY: Edwin R. Matthews, Esq.
Attorney for Respondent

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 4th DAY OF MAY, 2017, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR FINAL REVIEW OF AGENCY DECISION

GRANTED	DENIED	OTHER
(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)

SUPPLEMENTAL: Appellants, Hirsh V. Singh and Singh For Governor (Singh), challenge the decision of respondent Election Law Enforcement Commission (ELEC), which denied Singh's late filed request to participate in Republican primary debates on May 9 and May 18. Singh initially filed an action in the Law Division on April 24, 2017. Construing the matter as an appeal of a final agency decision, the Law Division transferred this matter to this court under Rule 2:2-3(a). We granted Singh's request for emergent review.

Singh submitted forms to the ELEC to run for Governor on February 23, 2017, and publically declared his candidacy for Governor on March 1, 2017. He is a first-time candidate for public office and is a non-publically financed candidate. All candidates who wish to qualify to participate in debates were required to submit, no later than April 3, 2017, the final date to file primary petitions, Form G-1A, "Candidate Certification for Public Financing and Debate Participation" along with documentation certifying the candidate had deposited \$430,000 in contributions and expended or committed to spend \$430,000, by the deadline. N.J.S.A. 19:44A-45; N.J.A.C. 19:25-16.38. Singh failed to do so. On April 17, 2017, Singh corresponded with ELEC requesting acceptance of his late-filed Form G-1A. On April 18, 2017, ELEC denied Singh's request to accept his late filed form seeking to participate in the debates.

ELEC's action is a final agency determination, review of which rests with this court. R. 2:2-3(a). Our review of a final agency determination is limited. Brady v. Bd. of Review, 152 N.J. 197, 210 (1997). We will not disturb an agency's action, unless it is "arbitrary, capricious, or unreasonable." Ibid.

Singh concedes he filed the requisite document for debate participation two weeks past the statutory deadline. Other than pointing to his status as a first-time candidate for public office, he offers no rationale for his tardy submission, despite attending a training session, which specifically addressed the requisites for debate participation. Moreover, Singh only recently provided financial information, which does not demonstrate he satisfied the threshold requirements for deposited contributions by April 3, 2017. He has not submitted any evidence regarding threshold expenditures. N.J.A.C. 19:25-16.38.

Singh argues N.J.A.C. 19:25-1.4 permits ELEC to relax its regulations upon notice to other candidates in the interests of justice. Singh believes this regulation should govern to allow his participation in the scheduled debates. We are not persuaded.

Participation in debates is optional, but any candidate desiring to participate must file the requisite documents by the established deadline, which is not optional. N.J.S.A. 19:44A-45; N.J.S.A. 19:44A-3(m)(3). We remain mindful our election laws "are to be liberally construed so as to effectuate their purpose. They should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons." N.J. Democratic Party v. Samson, 175 N.J. 178, 186 (2002) (quoting Kilmurray v. Gilfert, 10 N.J. 435, 440-41 (1952)). However, ELEC's

decision does not end Singh's candidacy. Nor does his failure to meet the requisites of the statute by the deadline jeopardize his placement on the primary election ballot. See Catania v. Haberle, 123 N.J. 438, 442-43 (1991) ("[A]bsent some public interest sufficiently strong to permit the conclusion that the Legislature intended strict enforcement, statutes providing requirements for a candidate's name to appear on the ballot will not be construed so as to deprive the voters of the opportunity to make a choice."). Rather, he simply will not be permitted to participate in debates among other candidates seeking the office prior to the party primary. Because this decision does not deprive voters of the opportunity to choose Singh as the Republican nominee in the primary, we are constrained to apply the law as written. See Arons v. New Jersey Network, 342 N.J. Super. 168, 178 (App. Div. 2001) ("We also note that our legislature, in providing for debates among gubernatorial candidates, has drawn the applicable statutes in such a manner that not all independent candidates have a right to participate.").

We conclude ELEC's decision was not "arbitrary, capricious, or unreasonable." Brady, supra, 152 N.J. at 210. We find no basis to interfere.

Affirmed.

FOR THE COURT:



MARIE E. LIHOTZ, P.J.A.D.