

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CS(OS) No. 506/2013

+ **Date of Decision: 22nd April, 2013**

RAJYAVARDHAN SINGH RATHORE Plaintiff

Through: Mr. Maninder Singh, Sr. Adv. with
Mr. P.S. Bindra, Mr. Ketan Madan,
Mr. Ajay Bansal & Mr. Gaurav Yadav,
Advocates

versus

\$ **NATIONAL RIFLE ASSOCIATION OF INDIA ...Defendant**

Through: Mr. Prag P.Tripathi, Sr. Adv. with
Mr. Jaiveer Shergill and Mr. Ankur
Sood, Advocates

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

Col. Rajyavardhan Singh, AVSM, who had represented India in the

2004 Olympics held in Athens as a Rifle Shooter and had become the first Indian in the post independence era to have won a silver medal for the country, is now fighting a legal battle since his dream to win a berth in the Governing Body of National Rifle Association of India'('NRAI' for short), the defendant herein, which selects the teams for international shooting events, has been shattered because he has been defeated by the incumbent President of the Governing Body, who is a businessman, by denying him even the chance to gain entry into the Governing Body.

2. The plaintiff is a life member of NRAI and claims to be keenly involved in its affairs since he himself has been a shooter who had not only won silver medal for the country in the 2004 Olympics but he had in many other international events also. NRAI has a General Body comprising of four representatives from its life members who collectively constitute one of NRAI's Units called the 'Wild Life Association of India' having more than five thousand members and four representatives of annual members, who constitute another Unit called the 'Shooters Association of India'. As per the Rules & Regulations of NRAI both these Units function as the constituents and under the supervision and control of NRAI. Besides the representatives

of these two categories of members of NRAI the General Body also has representatives from Shooting Associations of different States of the country affiliated to NRAI as well as other affiliated Units and the representatives of all these constituents of NRAI constitute the electoral college for the constitution of its the Governing Body which comprises of twenty office bearers and sixteen members.

3. The tenure of the President of the Governing Body of NRAI can extend upto three terms of four years each, with or without any break, while its Secretary General can get elected for two successive terms of four years each.

4. The functions of the Governing Body of NRAI are many but the most important one is to select teams or contingents for international shooting competitions and then come the function of acquiring properties or funds by way of gifts etc. and investing the Association's funds.

5. Though the plaintiff has been the life member of NRAI for many years but earlier he had no interest in the politics of NRAI but since recently the plaintiff started gathering the impression that its affairs

were not being conducted properly by the present office bearers of its Governing Body he decided to make an attempt to get an entry into the Governing Body. To enter the Governing Body of NRAI he undisputedly had first to get elected by the members of the Wild Life Association of India, of which he is a member, as one of its four representatives in the General Body of NRAI.

6. As per the case of the plaintiff, the four year tenure of the present Governing Body, which comprised of mostly businessmen having nothing to do with the sport of shooting, was to expire on 29th March, 2013 and so to constitute a new Governing Body by way of elections from amongst the members of the General Body election date was announced for 6th April, 2013 by the present governing body in its meeting held on 1st February, 2013. Since before that election four representatives each from the Wild Life Association of India and Shooters Association of India had also to be elected from amongst NRAI's Annual Members and Life Members, elections of these two Units of NRAI were also announced in the meeting of 1st February, 2013 and the date of 4th March, 2013 was fixed for the elections.

7. The plaintiff herein attended the meeting on 4th March, 2013 in

respect of which a retired Judge of this Court had been appointed as an observer by this Court vide order dated 1st March, 2013 in a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (being O.M.P.No.207 of 2013) which had been filed by another life member of NRAI who first wanted to get entry into the General Body of NRAI by getting himself elected as one of the four nominees of the Wild Life Association of India and then to secure a berth in its Governing Body. That life member had filed the O.M.P. after election process had commenced but before 4th March, 2013, the date of the elections because he was apprehending that the existing Governing Body's office bearers and members shall not be conducting the elections in a fair and democratic manner.

8. The plaintiff though attended the meeting of 4th March, 2013 but no elections were held and it is his case that whatever proceedings were conducted that day were a complete farce inasmuch as the incumbent President of the Governing Body of NRAI Mr. Raninder Singh, who was also a candidate for the elections of the Governing body of NRAI scheduled to be held on 6th April, 2013 and had been nominated by the existing Governing Body to act as the Returning

Officer also for the elections on 4th March,2013, instead of holding elections in a democratic way by allowing members desirous of contesting the election to fill in the nomination papers etc. had thrown all the democratic norms to the winds by getting himself authorized from the members present in the meeting just before the start of election process to nominate four members of his own choice to become a part of the General Body of NRAI. The plaintiff thus stood deprived of even a chance to contest the election for being elected as one of the four representatives of the Wild Life Association of India in the General Body of NRAI and consequently he also stood deprived of his right to contest the elections for gaining an entry into the Governing Body of NRAI. The plaintiff was also aggrieved by the fact that the list of Members of NRAI had not been properly prepared/updated and it included the names of even those members who had expired long time back. The plaintiff thus approached this Court by filing the present suit on 13th March,2013 and prayed for different reliefs but the prayers which were pressed on behalf of the plaintiff during the course of hearing were for a decree of declaration that the meeting held on 4th March,2013 as also the nomination of

four representatives each from the Life and Annual Members is null and void and also for a decree of injunction restraining the defendant from holding the elections to be held on 6th April, 2013 to elect the new Governing Body of NRAI from amongst its General Body entry to which was denied to the plaintiff by its present President.

9. Alongwith the plaint an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 was also filed by the plaintiff praying for restraining the defendant from giving effect to the minutes of the meeting held on 4th March, 2013 and also from holding the elections scheduled to be held on 6th April, 2013 to elect the new Governing Body of NRAI.

10. NRAI entered appearance in the matter and opposed the suit as well as the ad interim stay application. The principal stand taken by the defendant was that the elections held on 4th March, 2013 were in accordance with the Constitution of NRAI and particularly as per Rule 3 explanation(III) applicable for the elections of four representatives each from the Wild Life Association of India and Shooters Association of India and in exercise of the power conferred upon the Governing Body it had appointed the President to conduct the elections on 4th March,

2013 and he, in turn, was authorized by the majority of the members present on that date to nominate members of his choice instead of holding formal elections which he did and so nothing was wrong in the nomination procedure adopted in that meeting.

11. On behalf of the plaintiff, Mr. Maninder Singh, learned senior counsel submitted that the defendant Association was bound to adhere to its own Rules and Regulations governing the elections of the Wild Life Association of India framed and that too in a fair and transparent manner but the incumbent President Mr. Raninder Singh had acted in a most undemocratic and unfair manner on 4th March, 2013 by not conducting the elections at all and nominating four representatives of his own choice after putting a proposal to the House to authorize him to nominate four members of his choice and getting that proposal approved from 524 out of 843 members who were present and had participated in the voting ordered by the President in respect of the proposal to authorize him to nominate four members ignoring the fact that 317 members had strongly opposed that move of his.

12. On the other hand, Mr. Prag Tripathi, learned senior counsel appearing on behalf of the defendant strongly contended that there was nothing wrong in the majority of the members who had gathered on 4th March, 2013 for elections deciding to authorize the President to nominate four members of his choice from the life members and four members from the annual members to become part of the General Body of NRAI instead of undergoing the lengthy process of formal elections by asking members desirous of contesting to submit their nominations and then asking the members to cast their votes. Mr. Tripathi also submitted that the said proposal to dispense with the holding of formal elections was moved by three members present in the meeting and then it was put to vote by way of secret ballot system and by thumping majority that proposal was accepted and only then the President was authorised to nominate four life members of his choice to represent the Wild Life Association of India and four annual members to represent the Shooters Association of India in the General Body of NRAI and so there was no illegality in the procedure of nomination adopted by the President Mr. Raninder Singh and dispensing with the normal election process. Mr. Tripathi also placed

strong reliance on the explanation (III) to Rule 3 of NRAI's Rules and submitted that since on 22nd February, 2013 the Governing Body had in exercise of its powers under this Rule authorized the President to be the Returning Officer for the elections on 4th March, 2013 and to conduct the elections and so the President was fully justified in putting the nomination proposal to vote before starting the formal election process. It was also contended that even if formal elections had been held the fate of the plaintiff and others who had opposed the nomination of members by the President would have been defeated at the hands of the majority of the members who had voted in favour of that proposal. Mr. Tripathi also submitted that this was not the first time that the representatives from the two Units of life members and annual members were chosen by way of nomination by the President of the Governing Body and, in fact, in the past also on many occasions that procedure was adopted and the plaintiff himself had been a party to that process and so now he was estopped from challenging the nomination process and his conduct in not disclosing to this Court that earlier he had not been objecting to the nomination process disentitles him to get any relief from this Court either interim or final.

13. While arguments in this case were being heard on 5th April, 2013, the O.M.P. filed by the other life member came to be rejected by another Bench vide order dated 5th April, 2013 and then Mr. Tripathi submitted that since all the objections which had been taken in the present suit on behalf of the plaintiff, including the objection that on 4th March, 2013 no elections were held and the procedure of nomination adopted by the President was not legal and in accordance with the Rules and Regulations of NRAI which had been raised in the O.M.P. also by the petitioner of that petition by moving separate application in that matter after the meeting of 4th March, 2013 and those objections stood rejected by a co-ordinate Bench I should also reject the interim stay application. Since lengthy arguments were being advanced on the stay application the same could not be concluded before the date fixed for the elections of the Governing of NRAI, I had ordered that the results of the elections to be held on 6th April, 2013 (Saturday) shall not be given effect to till the disposal of the stay application. The elections were then held on 6th April, 2013 and results were also declared same day. The President of the outgoing Governing Body came to be elected as the President for another term of four

years.

14. However, when the hearing resumed on 10th April, 2013 the defendant's advocate on record Mr. Jaiveer Shergill sought permission to wrap up the arguments from the side of the defendant and he was permitted to do that. He strongly relied upon the observations made in the order of dismissal of the O.M.P. During the course of his submissions when it was put to both the sides by me that since there appeared to be no dispute on the facts the suit itself could be disposed of instead of the interim stay application Mr. Maninder Singh and Mr. Shergill both agreed to the Court's view. Mr. Maninder Singh had confined his attack only to the nomination procedure which according to him was undemocratic and that the plaintiff was fighting to ensure that a Sports Body like NRAI functions democratically which endeavour of his had been shot down by its President who did not want to be elected in a democratic way after giving a chance to others also to stand against him. According to the learned senior counsel if the President was so confident of winning in a fair way he should have held normal elections instead of putting to vote a self serving resolution prepared by his own men. It was also his submission that the plaintiff

having not objected to the nomination procedure on some earlier occasions, as was pointed out by Mr. Tripathi, could not be a reason to reject his opposition to that procedure being not permissible under the Rules of NRI. So, the undisputed facts involved in the case, according to the learned senior counsel, did not require any formal trial and so the suit itself could be disposed of at this initial stage itself to save precious Court time. However, during the course of hearing itself that day Mr. Shergill changed his mind and submitted that it would be appropriate if the Court decides the interim application only and the suit should be disposed of after framing of issues and recording evidence of the parties.

15. After giving my thoughtful consideration to the entire aspects of the matter I am of the firm view that since there is no dispute about the facts on the basis of which the plaintiff is claiming certain reliefs the suit itself can be disposed at this stage itself and there is no necessity of framing any issues and requiring the parties to adduce evidence in support of their respective stands even though the counsel for the defendant had half heartedly submitted that regular trial should be conducted.

16. There is no dispute between the parties that the Governing Body of NRAI is constituted by way of election in which the members of its General Body only participate. The General Body comprises of representatives of various Units of NRAI like, the Wild Life Association of India, of which the plaintiff is a member, and other shooting institutions affiliated to NRAI and which have been given voting rights also as per the Rules of NRAI. As far as the elections of the Wild Life Association of India and Shooters Association of India for electing four representatives each to represent them in the General Body of NRAI are concerned explanation III to Rule 3 of the Rules and Regulations of NRAI governs the same which is being strongly relied upon by the defendant.

17. Rule 3 prescribes different categories of members of NRAI like Life Members, Annual Members, Organizational Members etc. Rule 3(f) and explanation no. III to this Rule, which only are relevant for the purpose of the present suit, read as under:

“3. Category of Membership:

(f) The present Life and Annual Members of NRAI will be grouped into two separate units namely: “Wild Life Association of India” and “Shooters Association of India” respectively and will

be given the same status and voting rights as are given to other State Associations.”

“Explanation:

III. All the present and future life and annual members of NRAI having valid membership will continue to be grouped into two separate units namely “Wild Life Association of India” and “Shooters Association of India” respectively. These will continue to be part of NRAI and will be given the same status and voting rights as are given to other State Association/Units. That both these units namely “Wild Life Association of India” and “Shooters Association of India” would for all intents and purposes continue to function as constituents of NRAI under complete supervision and control of NRAI. The election for the four representatives of General Body from each category of membership will be conducted by the NRAI in a manner decided by Governing Body of NRAI after giving notice of one month voting right to Life and Annual members will restricted only to those members who have completed one year membership in their respective category and are not disqualified by any other Rule.”

18. Now, the case of the defendant is that the elections for electing four representatives each from Life Members and Annual Members were announced by the Governing Body of NRAI on 1st February, 2013 and the date of elections was fixed as 4th March, 2013. However, the minutes of the Governing Body meeting held on 1st February, 2013, copy of which was filed by the plaintiff with the plaint and authenticity

thereof was not disputed on behalf of the defendant, show that on that date except for the announcement of the date of election on 4th March, 2013 nothing more was decided. However, thereafter an emergent meeting of the Governing Body of NRAI was held on 22nd February, 2013 in which the President of NRAI was authorized to be the Chairman/Returning Officer of the meeting to conduct the elections on 4th March, 2013. Even in that meeting the Governing Body did not resolve that the President could dispense with holding of formal elections in the event of majority of the members present at the time of the meeting on 4th March, 2013 taking a decision to that effect and requesting the President to nominate people of his choice to enter the General Body of NRAI. Nor did the President notify to the members in advance that he could resort to nomination procedure also on 4th March, 2013.

19. In fact, under the Rules and Regulations of NRAI there is no provision that elections to elect four representatives each from the Life Members and Annual Members of NRAI to become a part of its General Body can be dispensed with even by the Governing Body of NRAI. In the absence of any Rule permitting nomination procedure to

be followed the President or even by the Governing Body the President could not have put to vote any proposal authorizing him to nominate eight persons of his choice as was done by him in the meeting held on 4th March, 2013. The judgment of the Supreme Court in “ **Dinesh Prasad Yadav vs State of Bihar & others**”, 1995 Supp.(1) Supreme Court Cases 340, cited by the learned counsel for the defendant in support of the argument that election would include nomination also, is however totally misplaced since in that case the relevant Rules provided nomination of people in the Managing Committee of the Society involved in that case by the State Government. In the present case, there is no such Rule and the past practice of nomination of representatives from amongst the Life and Annual Members also cannot be a substitute for a formal Rule to that effect. In the absence of any such Rule, the decision taken by the President of NRAI to get himself authorized to nominate people of his own choice was thus clearly aimed at denying the members desirous of contesting the election the opportunity to avail of their right to contest the election which right every member of such like Associations has where democratic functioning is sacrosanct.

20. The fact that the plaintiff would not have succeeded even if he had contested because he was in the minority section of the life members was no justification for denying him the opportunity to avail of his legal right to contest the election. The result of election in a democratic set up is totally irrelevant and if this kind of practice is recognized by the Courts that would be the end of democratic functioning in such like institutions particularly which enjoy Government's patronage and backing like the NRAI which has the recognition by the Ministry of Sports, Government of India. In fact denial of the opportunity to the plaintiff to contest election by the President shows his lack of confidence in his own supporters and that appears to have led him to resort to nomination procedure. The nomination procedure adopted by the President in the meeting of 4th March, 2013 was totally undemocratic and unfair and since the President himself was going to contest election for a berth in the Governing Body for another term of four years, which he has ultimately got, his decision to resort to nomination procedure was clearly partisan also.

21. And, just because on earlier occasions also the nomination procedure was being adopted by the President without any objection from any quarters including the plaintiff, that procedure which is not a recognized procedure under the NRAI's Rules and Regulations cannot get recognition and approval of the Court without amendment in the Rules of NRAI. That conduct of the plaintiff in not opposing the nomination procedure on earlier occasions cannot disentitle him to ask this time restoration of the democratic functioning of the defendant Association and abolition of nomination practice which has been prevalent in violation of the Rules.

22. Since I have arrived at the final conclusion in the matter and not taken a prima facie view only that the nomination procedure adopted by the President of NRAI in the meeting held on 4th March, 2013 was not permissible and fair I need not go into the reasons given in the order dated 5th April, 2013 passed by my learned brother Manmohan Singh, J for dismissing the O.M.P. of another Life Member of NRAI, who had approached the Court after election process had started but elections were yet to be held while in the present case the plaintiff had waited for the elections to be held and came to Court after the

election to challenge its validity which is the correct course of action in election matters, since even according to the defendant's counsel that order is not binding in the present suit. In any event, that order was passed only on a prima facie view of the matter and that too after recognizing the difference in the scope of a petition under Section 9 and a civil suit. This is what exactly was observed in that order:

“32. This court has to decide the present petition also keeping in the mind the limits and bounds of Section 9 of the Act. It is no doubt true that the power of the Court under Section 9 of the Act is akin to power to pass injunction orders in nature of civil court. However, it is also to be realised that Section 9 petition is not the Civil Suit in the strict sense of term. The said petition is moved with the limited aim that prior to or during or after the arbitration but before enforcement some preservation of evidence or property or thing is required or it is just and convenient for the court to pass such order in the interim. The said orders of interim measures are aimed at safeguarding the right of a party to the arbitration agreement pending the arbitration or its enforcement so that no prejudice can be caused to the said party on account of pendency of the proceedings. However, the said orders of interim protection are not passed on the mere asking when there exists no possibility of safeguarding any private right of the party. In that way Section 9 is distinct from ordinary civil proceedings.”

So, this order passed in the O.M.P. cannot come in the way of the plaintiff in getting the reliefs which he has sought in this suit and which he deserves to get.

23. In the concluding session of the hearing the learned counsel for the defendant had also submitted, while withdrawing the no objection given for disposal of the suit itself finally on the basis of undisputed facts, that if at all this Court comes to the conclusion that the nomination procedure adopted by the President in the meeting held on 4th March, 2013 was not permissible for any reason and the plaintiff stood deprived of his right to contest election to gain entry in the General Body of NRAI then in that event holding of fresh meeting of the Life Members to elect four representatives to represent the Wild Life Association of India only could be ordered and in case the plaintiff decides to file his nomination papers and gets elected also his option should then be permitted to be obtained as to for which post in the Governing Body of NRAI he would be contesting so that fresh election for that post only is held and not for all the posts. I am afraid this submission also cannot be accepted for the simple reason that since this Court has already formed the opinion that the procedure of

nomination adopted in the meeting held on 4th March,2013 was not permissible under the Rules and Regulations of NRAI not only the meeting of that date and the nomination of the representatives of the choice of the President has to be held to be illegal and set aside but the elections held on 6th April,2013, results whereof have already been ordered by this Court to be kept in abeyance, also have to be held to be illegal since the members who were elected had got elected after trampling over the rights of other members to contest for a place in the General Body of NRAI and then for a place in the Governing Body. No election which has been held after depriving the persons desirous of contesting the chance to contest can be held to be a valid election and cannot be given any recognition. Those members could have legitimate expectations of making it upto the Governing Body of NRAI and the President should have voluntarily allowed them to come forward to defeat him and his supporters in the elections. It was submitted by the senior counsel for the plaintiff even if the plaintiff had lost in the democratically held election he would have accepted that defeat gracefully but he cannot take his defeat lying down without even getting a chance to contest the election. I am of the view that if

the aforesaid submission of the counsel for the defendant is accepted then this Court would be recognizing and approving of the undemocratic and unfair functioning of the members and office bearers of the outgoing Governing Body. That certainly has to be avoided at any cost and even if fresh elections are held at some cost that cost is negligible as compared to the harm which would ensue in case the election of even some of the office bearers and members of the Governing Body is allowed to remain untouched.

24. In the result, a decree of declaration is passed in favour of the plaintiff and against the defendant declaring the proceedings of the meeting of the Life Members and Annual Members of NRAI to be a nullity as also the nomination of eight members from these two categories of members by the President of NRAI as their representatives in the General Body of NRAI. Consequent upon this declaration the defendant is also restrained permanently from giving effect to the elections held on 6th April, 2013 which was an earlier interim direction given on 5th April, 2013. The defendant shall, however, be at liberty to hold fresh elections in accordance with law and its Rules and Regulations to elect four representatives of the Life Members and

four of Annual Members for being a part of the General Body of NRAI and also to elect fresh members and office bearers of its Governing Body.

Decree be drawn accordingly.

P.K. BHASIN, J

APRIL 22nd, 2013