

2024:PHHC:087548



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109

CWP-10915-2024

Date of decision: 15.07.2024

JOGA SINGH AND ANOTHER

.....Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. K.P.S. Dhillon, Advocate
for the petitioner.

Mr. Gagneshwar Walia, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the entire election process of the NRI Sabha conducted for the post of President which is alleged to have been carried out in complete contravention of the bye-laws of the NRI Sabha whereby respondent No.3 has been elected as the President of the NRI Sabha.

2. Learned Counsel appearing on behalf of the petitioners has argued that the NRI Sabha, Punjab which is a registered Society under the Societies Registration Act, 1860 was formally inaugurated by the Governor of Punjab on 27.10.1996 and gave its approval to the constitution of NRI Sabha, Punjab on 05.03.1998. The Chief Minister, Punjab is the Chief patron and he can nominate one or more patrons of the Sabha. The Divisional



Commissioner, Jalandhar Division or the Commissioner NRI Affairs, as the Government deems fit, is the ex-officio Chairman of the NRI Sabha. The Divisional Commissioners in the State of Punjab are the Divisional Chairmen of the Sabha while the President of the NRI Sabha is elected from amongst the NRI members after every two years, if there is no consensus.

3. Notices for revision of electoral rolls for the post of President were published in “The Tribune” on 05.10.2023. The election was scheduled to be held on 05.01.2024 and the NRI’s were allowed to become members upto 27.10.2023. Currently, about 24000 NRI’s are stated to be the members of the Sabha. The draft electoral rolls were to remain available on the website of the Sabha upto 03.11.2023 and objection could be filed before the due date to the Additional Deputy Commissioner (Gen)-cum-Electoral Registration Officer of the respective district, by 17.11.2023. The final electoral list was to be made available on the website on 05.12.2023. The declaration of the result was to take place at 5:00 p.m.

4. It is stated that as against 24,000 members, only 168 votes were polled. 147 votes were cast in favour of Ms. Parvinder Kaur while rival secured only 14 votes. She hails from Hoshiarpur and a large number of members were not permitted to cast their vote on various grounds while some NRIs with fake ID cards were allegedly allowed to cast their vote.

5. Learned Counsel contends that the election of respondent No.3 as President of the NRI Sabha is bad and liable to be set aside *inter alia* for the following grounds:-



i) That there was a mis-declaration by respondent No.3 in her nomination form where it was concealed that she was repatriated by Government of Australia on 13th October, 2023 and a ban order was made under the National Disability Insurance Scheme Act and she was permanently prohibited from being involved either directly or indirectly in the provisions of National Disability Insurance Scheme support or services to people with disability, from 5 pm of 27th October, 2023. The relevant extract reads thus:-

Parvinder Kaur	n/a	Not available	V/C	Not available	On 13 October 2023 a banning order was made under Section 73ZN(2)(a)(iii) of the National Disability Insurance Scheme Act.
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He refers to the nomination form (Annexure P-5 on page 87 of the petition) which mandates a declaration that the candidate has not been convicted in any criminal case in India or abroad. He submits that the respondent No.3 did not make a disclosure about having been banned by the Government of Australia and as such there was a mis-declaration by her in her nomination form which was thus liable to be rejected. It is also submitted by him that in the nomination form submitted by respondent No.3, she had given her status as an Ex-NRI and not as NRI, hence, she was required to fulfill the conditions prescribed thereunder, which she did not qualify.

ii) It is submitted that only an Ex-NRI was eligible to contest for the post of President and for being an Ex-NRI, a person must have stayed in India for a period of at least 09 months. He submits that

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respondent No.3 does not fulfill the said requirement and had been in India only for a period of one month.

iii) That the requisite procedure as prescribed under the Rules had not been followed due to which the petitioners were not permitted to cast their vote.

6. The State of Punjab which is on advance notice has opposed the prayer on the following grounds:-

i) That the NRI Sabha is a Society registered under the Societies Registration Act, 1860 and that a challenge to the election of the President of the NRI Sabha cannot be raised by means of a writ petition since disputed questions of fact would be involved. The petitioner should be at liberty to take recourse to their remedy before the Civil Court.

ii) He contends that in so far as the submission of the petitioner that the respondent No.3 has made a mis-declaration about her being convicted and the reliance placed on Annexure P-8 at page 94 extracted above is concerned, it does not in any manner substantiate the disqualification set out in the Rules. The said order is only an order of debarment of respondent No.3 from supporting or carrying out the services under the National Insurance Disability Scheme. The disqualification prescribed under the bye-laws of the Sabha is that a person ought to be convicted for a period of three years in a criminal case for being ineligible to contest an election. He submits that the terms of disqualification have to be satisfied before nomination form submitted by a person can be rejected. A



debarment cannot be said to be a conviction in a criminal case for a period of three years as debarment may be for non criminal cases as well.

iii) It is contended that the petitioners are not contestants to the post of the President and as such they have no locus to raise a challenge to the final outcome of the election held and to challenge the declaration of a result. Only a person aggrieved i.e. the Candidate contesting against respondent No.3 is competent to raise any challenge to the procedure. It is also submitted that the petitioners never approached this Court at any point prior in time against any action by which they were debarred from participating in the process of election and that the contentions are an afterthought and cannot be taken into consideration at this stage. The election was held on 05.01.2024 and challenge is being raised after 06 months.

iv) It is submitted that the argument of the petitioner that only an Ex-NRI can contest the election to the post of President is misconceived since Clause 8 of the Constitution of the NRI Sabha deals with President and Clause 8 (iii) prescribes for an eligibility for an Ex-NRI to stand for election. The said Clause does not prescribe that only an Ex-NRI is eligible to stand for election. The reading as suggested by the petitioner would amount to legislation and prescribing qualifying bye laws of the Sabha which a writ Court would not do.

(v) Learned Counsel also contends that an alleged mis-declaration does not by itself render a nomination form liable to be rejected.



Unless a disqualification as prescribed in the Constitution and the bye-laws is made out, acceptance of the nomination form cannot be said to be bad.

7. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

8. Before proceeding further in the matter, it would be relevant to refer to Clause 8 of the Constitution of the NRI Sabha which deals with the President. The same is extracted as under:-

8. President:-

i) President shall be the head of the Executive. Employees and members of the Executive shall function under his supervision.

ii) It shall be the duty of the President and the Executive members to ensure that the Sabha works efficiently as per this constitution and bye- laws for achieving the objectives of the Sabha.

iii) The election for President shall be held by secret ballot once in two years if unanimity in choice is lacking. An ex-NRI Shall be eligible to stand for election. If the NRI member casts vote, the nominee member shall not cast his vote.

iv) President Chairman shall allocate portfolios/offices to members of the Executive in consultation with the President Chairman.

v) The President may constitute an Administrative Sub committee (ASC) of the Executive with the approval of the chairman. for discharging day to day functions. The ASC will have such powers as may be conferred by the executive or the



bye-laws. The President may co-opt any person or persons on the ASC with the approval of the Chairman.

vi) Meetings of the Executive shall be convened and presided by the President.

vii) All decisions of the Executive shall be taken by majority. The president shall be entitled to cast vote in case of tie.

(Emphasis Supplied)

BYE-LAW OF NRI SABHA PUNJAB

Xx xxx xxx xxx xxx xxx xxx xxx

2. Membership

(a) **Definition of NRI**. *An Indian citizen who stays abroad for employment/ carrying on business or vocation outside India or stays abroad under circumstances Indicating an intention for an uncertain duration of stay abroad is a non-resident. It will also include non- resident foreign citizens of Indian origin holding OCI Card or PIO Card issued by Government of India and Indian citizens having green card or otherwise the right of residence in a foreign country. The definition includes, for the purpose of membership, an ex-NRI residing in Punjab for more than nine months in a year.*

(b) **Definition of Ex-NRI**

- (i) *Ex-NRI is a person who was an NRI at any time of his life in past.*
- (ii) *Ex-NRI shall be eligible to become member of NRI Sabha Punjab within 5 years of the day he steps in India and ceases his status of NRI.*



- (iii) *Ex-NRI must reside in India for more than nine months in a year.*
- (iv) *If any NRI returns to India after getting membership of NRI Sabha Punjab, he will automatically convert to Ex-NRI status for the purpose of being a Member of NRI Sabha.*
- (c) *Only NRIs and Ex-NRIs of Punjab shall be eligible to be members of the Sabha subject to eligibility conditions and terms of membership laid down in bye-laws.*

3. **Terms and Process of Membership**

Xx xxx xxx xxx xxx xxx xxx xxx

(b) *Eligibility. The NRIs of Punjab covered under the definition of NRI shall be eligible to become members of the Sabha. The definition includes for the purpose of membership an ex-NRI residing in Punjab for more than nine months in a year.*

Xxx xxx xxx xxx xxx xxx xxx xxx xxx

16. ***Election of President Central Sabha & Distt. Units*** - *The Chairman with prior approval of Chief Patron shall ensure to conduct timely elections. The process of elections should preferably commence three months prior to the completion of tenure of the President Central Sabha/District Units.*
17. (1) *For the election of President of Central Sabha/District units following officials shall be involved by the Chairman:*



- (i) **Returning Officer.** *Returning Officer means an IAS/PCS Officer appointed by the Chairman to carry out the election of President NRI Sabha as per Constitution and these Bye-Laws in a fair and transparent manner.*
- (ii) **Assistant Returning Officer** *Assistant Returning Officer means an officer appointed by Returning Officer to assist the Returning Officer,*
- (iii) **Electoral Registration Officer.-** *Electoral Registration Officer (ERO) means Class I Government Officer appointed by the Chairman to prepare electoral roll and includes Assistant Electoral Registration Officer (AERO).*
- (iv) **Presiding Officer.-** *Presiding Officer means official appointed by the Returning Officer to assist him on conduct of election.*

9. It is evident from a perusal of the aforesaid clause that every person belonging to Punjab who stays abroad for employment/carrying on business or vocation outside of India or stays abroad under circumstances indicating an intention for an uncertain duration of stay abroad has been included as an NRI and also includes the persons of Indian origin holding OCI Cards or PIO Card issued by the Government of India. Besides, the definition of Ex-NRI has also been prescribed. A persons of both the categories viz. the category of NRI and Ex-NRI are clearly eligible to be members of the NRI Sabha and entitled to cast their vote. The provision of the Constitution which prescribes for the office of President and its election mandates that the election has to be held by secret ballot once in two years if

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unanimity in choice is lacking. The same prescribes that an 'Ex-NRI shall be eligible to stand for election'. The language of the Constitution nowhere specifies that only an Ex-NRI is eligible to stand for the election. Thus, the argument of the petitioner that in order to contest for the post of President, a person must necessarily be an Ex-NRI does not flow from an objective and meaningful reading of the Clause. An incorporation of a restriction or a limitation has to be specific and not by way of a remote inference. There is no such provision in the constitution of the NRI Sabha as would oust a non-resident Indian from being eligible to contest for the post of President. If the intent would have been to disallow an NRI from contesting for President, such an expression or intent would have been specifically reflected in the Constitution. Language of Clause 8 (iii) of the Constitution of the NRI Sabha rather is an enabling provision to allow the Ex-NRI to also contest for the post of President and the same is not to be read as an exclusion of every person-other than Ex-NRI to contest election to the post of President. The argument of the petitioner is accordingly rejected.

10. The second argument of the petitioner that respondent No.3 was disqualified to be a member on account of having been debarred by the Government of Australia from participating in the National Disability Insurance Scheme would render her ineligible to be a member and thus she would not be entitled to contest the election is also without any force. The disqualification of a membership as prescribed under Clause 4 (b) is specific and for a Non-Resident Indian to be disqualified for being member of the NRI Sabha, there has to be a conviction for more than 03 years by any Court of law in a criminal case. The reference made by the petitioner on the

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extract of NDIS Provider Register providing for banning orders is misplaced. The order of 13.10.2023 is an order banning the petitioner from being involved directly or indirectly in the provisions of the NDIS supports or services to people with disability. The same cannot be interpreted or construed as conviction of a period of more than 03 years in a criminal case. Such an order may also be a civil order as well and cannot necessarily be equated as a criminal conviction.

11. That further, the contention of the petitioner that they had not been permitted to cast their vote in the election of the Sabha on account of non-renewal of the Voter I-Card is concerned, Clause-17 (2) (t) specifically provides that all the NRI members of the Sabha coming to vote must bring their Passports alongwith the Identity Card issued by the NRIs Sabha as proof of identity to be accepted at the time of polling. Learned Counsel has conceded that the petitioners were not holding the valid identity card issued by the NRI Sabha, Punjab as a proof of their Identity and thus could not be permitted to cast their vote.

12. Without going into the aspects as to whether the petitioners had actually appeared before the authorities to cast their vote or not, the position remains that the procedure specifically provides that the members have to bring not only their passport but also must bring alongwith his Identity Card to be eligible to cast their vote. Hence, the action of the Returning Officer in not permitting the petitioner to cast the vote for want of a valid Identity Card issued by the NRI Sabha may be a valid reason. Be that as it may, the issue as to whether the petitioners had actually visited the place for casting their



vote or not is a matter which cannot be ascertained merely on the basis of an assertion made by the petitioners at this stage. Moreover this Court is also cognizant of the fact that the petitioner was not a contestant to the post of President and that none of the persons who contested for the said post are aggrieved of the process of election. It appears that the petitioners are now pursuing a proxy litigation for and on behalf of a third party.

13. I do not find that sufficient prima-facie grounds exist which call for interference by this Court in exercise of a writ jurisdiction. The present writ petition is accordingly **dismissed** at this stage. The petitioners, may, if so advised, take recourse to their alternative remedies to establish their claim in accordance with law. Any observation recorded above is only for determination of the writ and the Court where a challenge is made should decide the matter on the strength of evidence adduced before it and uninfluenced by observation recorded above.

(VINOD S. BHARDWAJ)
JUDGE

JULY 15, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No