
(2011) 08 P&H CK 0290

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 4012, 4657, 4884, 5189, 5821 and 6537 of 2011 (O and M)

Dr. Harjot Kamal Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medicine Central Council (Election) Rules, 1975 — Rule 2, 4, 5, 7
Indian Medicine Central Council Act, 1970 — Section 14, 15, 16, 17, 18
Punjab Ayurvedic and Unani Practitioners Act, 1963 — Section 14(5)

Citation : (2011) 164 PLR 618

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.

I. The reliefs claimed in the respective writ petitions

1. All the writ petitions are at the instance of various persons, who claim to be registered Medical Practitioners in Indian Medicine and their grievance is that, in the election of office bearers to the State and the Central Councils of Indian Medicine, the Registrar had sought for compulsory registration of all the Medical Practitioners within the State of Punjab, whose registration was due to expire after 5 years on the pain of being removed from the State roll of members. The removal, it is stated, was in the process of updation of the State Register that would have an immediate ramification in the preparation of the electoral roll containing names of persons, who would become eligible to contest elections for the State body and also to cast the votes in the election. From amongst the representatives in the State Council depending on the number of members, they would have representations in the Central Council as well. The grievance of the petitioners is that, several of the members had been disenfranchised by deletion of names by the State Board from the State Register.

2. In CWP No.4012 of 2011 instituted in March, 2011, the petitioner seeks for quashing of notification issued on 15.11.2010 (Annexure P-12) in the gazette of India, by the Ministry of Health and Family Welfare, allocating one seat for Ayurveda, and one seat for Unani for the Central Council of the Indian Medicines for Ayurveda, Unani and Siddha systems of Medicine (hereinafter referred to as, "the Central Council"). The petitioner also seeks for quashing of the updated list of voters prepared by the Returning Officer of the Punjab Board of Ayurveda, Unani and Siddha systems of Medicine. There is a prayer for permission to vote in the forthcoming elections and also to contest the election for members of the Central Council.

3. In CWP No.4657 of 2011, the petitioner seeks for quashing of the appointment of one Sanjeev Goyal as the Returning Officer and for his removal alleging that the 4th respondent is only an Ayurvedic Medical Officer, which is the lowest post in the hierarchy of Ayurvedic doctors in the State Government and this appointment was lower than the rank of the Deputy Secretary of the State, which, according to the petitioner, was the minimum qualification necessary to hold the post. The petitioner's contention is founded on an instruction dated 10.08.2010 alleged to have been issued upon the Hon'ble Supreme Court's direction to the Secretary, Patna, that in the manner of appointment of a Returning Officer, the Central Government was recommending that the State Council shall nominate a person not below the rank of the Deputy Secretary.

4. In CWP No.4884 of 2011, the petitioner seeks for identical reliefs as are sought in CWP No.4012 of 2011 and also to quash the order rejecting the petitioner's nomination on the ground that his name was not enrolled on the updated State Register of Indian Medicine.

5. In CWP No.5821 of 2011 instituted in March, 2011, containing similar prayers as in the other writ petitions in CWP No.4012 of 2011, the petitioners also seek for a prayer to permit all the members whose names were not in the Register of Ayurvedic Medical Practitioners mentioned prior to this updation in the year, 2010 to be eligible to vote in the election. The writ petition is at the instance of 30 persons, who were similarly placed. All of whom were removed from the Register for their failure to obtain registration on the expiry of 5 years from the prior registration.

6. CWP No.5189 of 2011 is yet another writ petition filed in March, 2011, at the instance of about 54 persons, challenging the notification issued by the Ministry of Health and Family Welfare, on 15.11.2010, containing the same reliefs.

7. CWP No.6537 of 2011 seeks for quashing of the election process of the Central Council, since it was alleged not to be as per the mandatory provisions of the Indian Medicine Central Council (Election) Rules of 1975. The petitioner has also sought for stay of election process. The challenge is essentially on the fact that the Returning Officer was required within 30 days from the date appointed for election to send by post a letter of intimation in Form IV with a numbered

declaration in Form III, a voting paper -in Form II containing the names of candidates. The forms were not in conformity with the proforma given under the relevant Rules.

II. Summation of the diverse reliefs

8. It could be seen, therefore, that all the writ petitions have been filed in March, 2011, contending for the reliefs that (i) the notices calling for registration on the expiry of 5 years after the initial registration was bad in law, (ii) the removal of the names as a measure of updation of the State Register of several of the members for their failure to register was consequently bad, for, it disenfranchises them from participating in the election either to cast vote or to contest the election after a due nomination, (iii) the appointment of the Returning Officer was itself incompetent, since he did not have the requisite qualification to hold the post, (iv) the ballot papers supplied by the Returning Officer were also not in consonance with the relevant Rules that made possible indiscriminate issue of ballot papers to compromise on the integrity and fairness of the election, (v) the notification issued by the Government making an allocation of one seat was wrongly made by making a reference to the number of members as found in the updated list, which itself was defective and the notification was, therefore, liable to be quashed.

III. The respective contentions in defence by the respondents

9. The Central Council has in a way supported the cause of the petitioners by stating that the respective State enactments govern the registration, licensing and practice of Indian Medicine and there was no provision for periodical renewal of the licences or to require periodical registration in the State of Punjab. The updation ought to have relevance only for removal of members, who had ceased to practice or who were guilty of some malpractices or under the circumstances mentioned under the Act itself and a removal on the ground that the names were not registered after 5 years, was not contemplated under the Punjab Ayurvedic and Unani Practitioners Act, 1963. The removal of several of the members from the list was, therefore, not proper and they will have no objection if the petitioners' claim for proper enumeration of all the members was undertaken afresh by due regard to the provisions contained in the State enactment.

10. The Union Government has not filed any independent reply, but would adopt the written statement filed by the Returning Officer appointed by it. The contention in reply by the Returning Officer is, (i) the writ petition itself is not maintainable, since any dispute arising with regard to election shall be referred to the Central Government, whose decision shall be final u/s 4(2) of the Indian Medicine Central Council Act of 1970, (ii) the petitions are also not maintainable in view of the fact that under the Indian Medicine Central Council (Election) Rules, 1975, the Returning Officer himself shall decide questions relating to right of persons to stand for or to vote at election and in case where a question arises whether a person is entitled to vote or not, it shall be decided by the Returning

Officer. The petitioners had not availed of such remedy as provided by the statutory rules, (iii) the appointment of the Medical Practitioner as Returning Officer was not in any way incompetent for all that the law require was that the appointment shall be made by a notification issued on 10.11.2007 in terms of Rule 2(d) of the Indian Medicine Central Council (Election) Rules, 1975. The communication of the Central Government to the Secretary, Bihar State Board, on 10.08.2010, recommending the appointment of an officer not below the rank of a Secretary was under the particular circumstances where the election in the State had not taken place since 1983 and that the said letter will not govern the issue of appointment for a Returning Officer in Punjab, (iv) the enumeration of members of the State Board was undertaken when the State Board was called upon to update the State Register and it had finalized the list on 31.07.2010, preparatory to conducting the election, (v) the notification of the Central Government had been issued only on the basis of the number of members entered in the State Register as 5,581 and the allocation of seats that was made to dependent on the number of members, was, therefore, appropriate and correct, and there was no scope for a challenge to the Union Government's notification and (vi) the ballot papers had been properly issued and the serial number which the Rules contemplate were part of the ballot paper that contained a portion with perforation in one portion of the papers so that it could be retained by the Returning Officer and the same number was also carried in the identification number given to the voter to ensure that there was no tampering and only the person to whom it was dispatched could return it duly filled in the ballot paper after having cast his vote. The State Board has also filed its objection stating that all its actions in preparation of the register of members have been in conformity with law and as per the directions of the Central Council, there have been no violations in the manner of preparation of such register and the electoral roll prepared on that basis, was correct and not amenable to any alteration.

IV. Direction of the Hon''ble Supreme Court for final adjudication to make way for competition of election to Central Council

11. The elections to the Central Council as well as to the State Board have been the butt of contention, when the affairs of the Central Council came under the scanner of the Hon''ble Supreme Court in Writ Petition (Civil) No.33 of 2009 in the case titled K.B. Nagur M.D. (AYU) v. Union of India, 2010 (6) S.C.C. 309, when it was observed that there had been no elections held for the Central Council for several years. Consequently, there had been a mandate from the Hon''ble Supreme Court that the elections shall be held in various States as well as for the Central Council immediately and at any rate, concluded before 31st August, 2011. The Central Council has also given an undertaking to conclude the election exercise as ordered by the Supreme Court. All the actions that were begun by the Union Government with the appointment of Returning Officer, the public notices demanding registration by the State Board and preparation of the electoral rolls were sequel to the undertaking given by the Central Government

before the Hon''ble Supreme Court of India.

12. After the filing of the writ petition, the petitioner in CWP No.4012 of 2011 complained that his name was not merely removed from the Register but his nomination paper was also rejected. During the course of the proceedings, it was reported to the Court and the Court observed in its order dated 14.03.2011 that it was in violation of its order dated 07.03.2010 that the petitioner's nomination shall not be rejected. Consequently, it issued a notice to the Returning Officer as to why contempt proceeding be not initiated against him. On 23.05.2011, the counsel for the Union Government filed CM No.7430 of 2011 to place on record the order passed by the Hon''ble Supreme Court in Writ Petition (Civil) No.33 of 2009, where the Hon''ble Supreme Court had requested this Court to decide all connected writ petitions pending before the Court or to consider the vacation of stay passed already by this Court. The application also made known that the Hon''ble Supreme Court had directed that the Union of India should complete the election process on 30th August, 2011. The Court, on that day, found that it would be expeditious to decide the main petition itself. The case was adjourned to 03.06.2011. Since the Union had not filed its reply, the Court had directed that all the pleadings of the party should be completed before then. On 03.06.2011, the case was adjourned to 05.07.2011 and when the matter came before me, all the counsel appearing for various parties agreed that the main case could be taken up and disposed of.

V. Grounds of attack on behalf of the petitioners.-

(a) Power of the State Board for updating the State Register of Members and as scope

13. Making a common case for all the petitioners, the learned senior counsel Mr. Atma Ram, began arguments by pointing out that the most crucial issue in the case is the power of the State Board for updating of the State Register of members, being qualified as practitioners of Indian Medicine, since in the scheme of the Indian Medical Council Act of 1970, the hierarchy is built-up through State to Centre upwards by a system of election that will first enumerate the members of the State Board, which will elect the office bearers of the State Board who, amongst the returned candidates would also offer themselves as eligible to contest for the post of Chairman and the members of the Central Council. The senior counsel argued that, in the manner of enumeration of membership to the State Register, there has been a serious violation of law that had disenfranchised several thousands of members. The election process was flawed at every turn from the stage of preparation of electoral roll to the appointment of the Returning Officer and still later by the rejection of several of valid nomination to contest to the post of the Central Council. It becomes, therefore, necessary to first examine the process of preparation of the State Register and the relevant provisions relating to updation of list of members.

14. At a workshop to deliberate the problems and objections of the Central

Register of Indian Medicine being maintained by the Central Council and the roll of State Boards thereon, there had been several recommendations made by the Central Council to all the Registrars of the State Boards and Councils. The recommendations had been forwarded with the details of the deliberations at the workshop by the letter of the Secretary of the Central Council to the State Council on 20.06.2007. Representatives from all the States of India had taken part in the workshop and it examined the provisions of various State enactments that provided for registration in various States. There was no homogeneity in various State enactments and the differences in the enactments were specifically noted and as regards the provisions in the State enactments, the Registrar of the State Board Shri Sanjeev Goyal had represented the State of Punjab, who had pointed out that there was no provision for renewal of registration in the State enactment. While summarizing the recommendations, the Central Council had on the subject of renewal of practitioners took note of the fact that there were several practitioners of Indian Medicine without due registration that led to serious threats to public interest and pressed upon the imperatives of keeping registers current. The recommendations included that the registration of practitioners of Indian Medicine with State Board shall be valid for 5 years. The registration would require to be renewed with payment of Rs.500/- as renewal fee. The Central Council noted that large number of practitioners failed to renew the registration in time and even after individual notices as well as public notification, there had been failures to renew that resulted in deletion of names of a large number of registered practitioners from the State register. The recommendation under this subject concludes with the following words:-

This will be implemented after Gazette Notification.

As recommendation No.8 of the Central Council had states as under:-

.....Central Council has decided that all the registered practitioners will renew their registration every five years for the purpose of updating the State Register. It will be duty of every practitioner to do so and the name will be removed from the State Register if not renewed in time. All changes in State Register of Indian Medicine occurred due to above should be informed by the State Boards/Councils to the CCIM without any delay from time to time.

Clause 11 of the recommendations refers to the Registrar of State Boards to ensure several details relating to the notification, qualifications of members to be verified before granting registration which includes in sub-clause 6 as follows:-

Every practitioner must get his registration renewed at every five years.

It also states that no registration would be allowed in two Boards simultaneously, meaning thereby that a member of one State Board cannot also be a member of another State Board to seek an election from some other State.

15. This requirement of registration once in 5 years which was referred to as a recommendation, the learned senior counsel argued, did not take effect as

requiring registration immediately and even the Central Council had in its communication dated 12.08.2007 containing the recommendation clearly spelt out in the following words:-

1.....

2. State Boards to amend their Rules/Acts to make reregistration as a mandatory one as well as renewal." The letter concludes with an exhortation, as follows:-

....You are, therefore, keeping in view the serious concerns expressed by the PAC of the Parliament, requested to take the above mentioned measures so as to achieve the target of updation of State Registers within the shortest possible time of say about three months period.

(b) There is no legal mandate for renewal, without amendment in State law; deletion of names of petitioners, not lawful

16. Even without bringing any amendment in the State enactment requiring registration to be undertaken once in 5 years, the State Board went about its task by issuing a public notice through the Registrar on 12.07.2008 through a publication in Punjabi edition of "Ajit" that large number of Ayurvedic practitioners were practising without having their registration renewed. All of them were required to get the registration certificate renewed by 31.08.2008 and get their identity cards. There was also a notification on the following day i.e. on 13.07.2008 in an issue of "Amar Ujala", reiterating the same information. Publications were carried out in "The Tribune" on 14.07.2008 for the same message. Subsequently, on 04.10.2008, yet another notice was issued extending the deadline for registration from 30.08.2008 to 31.11.2008. The publication states that the failure to get renewal by the last date would result in the practitioner in not allowed to practice in Punjab and that their names would be removed from the State Register. The extended date also came through publication in "Jagbani" and still later on 30.05.2009, yet another publication was issued in "The Tribune", making a further extension for registration up to 30.07.2009. The publication stated that for updation of registration, they should send prescribed performa duly filled in and that it should be done before 30.07.2009. All this is to state that there had been repeatedly various publications in dailies requiring the practitioners of Indian Medicine to register their names, who had not been registered earlier, as also asking for renewal of registration for members whose registration had expired after five years, within specified dates. The learned counsel arguing for the petitioner states that these public notices did not specifically bring home the fact that a person who had been already registered would still not require to take a fresh registration or renewal of registration, for, there are several cases where registration had been made subsequent to 2005 and whose registration even as per the stand of the State Board enured for a span of 5 years but notices were still issued seeking for renewal. The State Board was, therefore, not very clear in its communications about how there fell a legal necessity to secure a renewal for persons, who had

already registered. The learned counsel would also point out that the individual communications sent to several of the members requiring application for identity cards could only be taken as for renewal of identity cards that had no bearing a renewal of registration itself. The Board was committing a mistake in making it appear as though that the notices sent to the members requiring renewal of identity cards also meant renewal of registration.

17. The counsel for the petitioners as well as the counsel for the State Board took me through all of the provisions of the Indian Medical Council Act relating to the objects of the Act with particular reference to registration and renewal and updation of Register. Section 18 of the Indian Medicine Central Council Act of 1970 refers to the rights of persons possessing qualifications included in 2nd, 3rd and 4th schedule to a right of enrollment only in State Register and in the Central Register. Section 5 of the Act states that no person would be eligible for election to Central Council unless he possesses any kind of medical qualification included in 2nd, 3rd or 4th schedule and is enrolled on any State Register of Indian Medicine and resides in the State concerned. Section 27 of the Act contains provisions for removal of the names from the Central Council of Indian Medicine. The said Section is crucial, for, on this hinges the consideration of the validity of the action of the State Board and the ultimate disenfranchisement that resulted by such an act. This Section makes it clear that, if a person is removed from the State Register, the Central Council shall also direct the removal of the name from the Central Register. Read with the relevant Rules, namely, the Indian Medicine Central Council (Election) Rules of 1975, it states through Section 3 that all persons whose names are enrolled on a State Register of the Indian Medicine Practitioners of Ayurveda, Siddha or Unani systems of medicine shall be entitled to vote at the election of members to represent the constitution of the Central Council. The preparation of the State Register and the rights which are attached to it are governed by Punjab Ayurvedic and Unani Practitioners Act, 1963. Section 9 that details the disqualification for election or appointment as a member of the Board includes through Clause (c) such disqualification for any person whose name is removed from the Register. Section 2(j) of the Medical Council Act, 1970 defines the State Register of Indian Medicine to mean, "a Register maintained under any law for the time being in force in the State". Sections 14 to 17 deal with recognition of medical qualification and Sections 23 to 27 deal with the Central Register of Indian Medicine and the manner of removal of names from the Central Register that shall depend on the removal of the names from the State Register.

18. The counsel Mr. Anupam Gupta appearing on behalf of the State took me to the various proceedings at the workshop of the Central Council to give a background for requiring registration and renewal of registration. The concern primarily was a proliferation of quacks practicing Indian Medicine at various places without adequate qualification. There was a serious danger to public interest and a periodical updation became necessary. The counsel refers me also to a copy of the communication sent by the Board to various members that

brought the pointed attention of the members to the provision of Section 14(5) of the State Act of 1963 that required a person to inform whether he/she was still practising at the address mentioned or whether such person had ceased practice or changed the residence. Section 14(5) is reproduced as follows:-

14. Duties of Registrar.- (1) Subject to the provisions of this Act and the rules made thereunder and subject to any general or special order of the Board, it shall be the duty of the Registrar to maintain the Register and to act as the Secretary to the Board.

(2) to (4) x x x

(5) For the purposes of this section, the Registrar may write by registered post to any registered practitioner at the address which is entered in the Register enquiring whether he has ceased to practise or has changed his residence and if no answer is received to the said letter within three months the Registrar may remove the name of the said practitioner from the register.

The communication states that if the person was still engaged in practice to send a copy of registration certificate and that if no copy was received within the period, the name would be removed from the State Register without giving any further opportunity in that regard.

19. In the manner of updation, it would be perfectly justified under the scheme of the Act to ensure that a person, who was originally registered was entitled to keep the name in the Register by declaring that he is still in practice, that he has not ceased to practice and that he resides at the particular place or at the address within the State. A cessation of practice or shifting of place of practice outside the State were grounds enough definitely under the Act for removal of a person from the State Register. If the communication had stopped at that and the action of the Board was also confined only to deletion of names, who had not responded with affirmation that they continued in practice and that they had not changed residence, it would become for the State Board to contend that the deletion was proper. However, several notices which I have already referred to above brought through paper publications were requiring members not merely to register but also renew the membership. Renewal of identity, as pointed out by the senior counsel appearing on behalf of the petitioners was definitely different from renewal of registration. While renewal of identity may be relevant to fix the identity for person with reference to his residence, continuation in practice and his appearance, it would have no relevance for keeping the registration alive if he continued in practice. There was simply no provision for renewal of registration every 5 years under any of the provisions of the State Act. If the circumstances were requiring such renewal, it was without any basis and there could not have been, therefore, any justification to remove the names from the Register by the only fact that a member whose name was found in the State Register, had not applied for renewal. I have already pointed out to the fact that even the communication from the Central Council containing the recommendations on the

workshop contemplate change of the State laws and the notifications before such renewal could be compelled to be taken by an existing member. The deletion of names of several persons for not renewing the registration was in contrary to law of the State and the action of the Registrar in removing the names of the petitioners from the Register were clearly vitiated. All the writ petitions in so far as they contain a prayer that the names ought not to have been removed from the State Register and consequently:, the Central Register as well as the removal of the names from the electoral roll by the removal of names from the Register are set aside.

VI. Defect in electoral roll notwithstanding, election is not vitiated

(a) Consideration of plea regarding failure to object to the deletion of names before the Returning Officer

20. While dealing with the question whether the election held subsequent to the filing of the petition would be vitiated by removal of their names from the electoral rolls consequent on the removal of the names from the State Register, it has to be also examined whether such an objection could have been competently dealt with by the Returning Officer. While the person whose nomination is rejected could have a valid remedy through an election petition, the removal of the names from the electoral roll itself will not vitiate the election. I place this proposition not on the alternative remedy and the provisions as to rules extracted from the replies of the 4th respondent that the affected parties had a right to make representations to the Returning Officer or a right to prefer an appeal to the Central Government entitling the petitioners to plead successfully in their challenge to the election itself. In a case where the removal of the various members from the State Register was made on a wrong understanding that the recommendations of the Central Council requiring renewal to be made once in 5 years to apply even without bringing a change in the State law, such a person could not have had an adjudication from the Returning Officer that the removal from the electoral roll was not correct. The remedy which the Rule contemplates is the remedy of a person whose name was removed from the electoral roll, which could be issues of accidental omissions that could be corrected by a Returning Officer and it is not possible to read into the provisions a right of adjudication to the Returning Officer whether a particular person was entitled to have his name retained in the State Register or not. That ought to be a power of the State Board itself and not the function of the Returning Officer.

(b) Appointment of Returning Officer is not vitiated

21. Whether the election held even after the deletion of several names from the State Register and the electoral roll, is first required to be examined in the light of certain objections contained in some to the writ petitions objecting to the appointment of a person as Returning Officer, who allegedly did not have the requisite qualification. The Senior Counsel and Assistant Solicitor General appearing on behalf of the Union Government Shri Sidhu, contended that there

was no particular qualification prescribed under the election rules for appointment of Returning Officer. The counsel refers to Section 2(d) of the Indian Medicine Central Council (Election) Rules, 1975, that defines a "Returning Officer" to mean, "any officer appointed as such by the Central Government for the purposes of these rules". While challenging the appointment of the Returning Officer, Shri Atma Ram also argued that the scheme of the election rules contemplate a dichotomy in office between the Registrar and the Returning Officer. Rule 4 requires the Returning Officer to give a notice to the Registrar of the election schedule which means that the Returning Officer cannot also be a Registrar. I do not think that this is a fundamental flaw, for, a Returning Officer can just as well take notice of the fact of the election process in the dual capacity as a Registrar and this cannot vitiate the appointment itself so long as the source of appointment is proper.

(c) Objection regarding validity of ballot papers

22. There is also a challenge to the election on the ground that the ballot papers issued do not conform to the Rules requiring the serial number given in form-2. Producing a proforma in form-2, the senior counsel for the petitioners argues that it does not contain any serial number and, therefore, it would become possible for the Returning Officer to produce any number of ballot papers and substitute them. This argument is clearly wrong, for, it represents a wrong state of affairs. The senior counsel for the 4th respondent Shri Sidhu produces before me the proforma of the ballot papers and other papers in forms-3 and 4 that had been sent to each one of the voters. Form-2 contains a portion above the perforation made in the form where there is a serial number. The very same serial number finds a place in the letter of intimation in Form-4. He states that the paper with the serial number after tearing at the perforation in Form-2 will be retained by the Returning Officer and only the remaining portion of the voting paper will be sent, so that when the vote is cast and returned, the voting paper will not contain the serial number. But the accompanying letter of intimation will show that it was an authorized vote by the fact that it contains the same serial number as retained by the Returning Officer. If the serial number was to be found in the ballot paper itself, then the secrecy of the vote will be easily breached. It is possible to match the serial number as found in the letter of intimation with the counterfoil retained by the Returning Officer to ensure that the vote has been returned duly cast by the very same person to whom it was sent and which could be cross checked with reference to the serial number found in the letter of intimation. The objection regarding the invalidity of the ballot papers is therefore rejected.

(d) After notification of election schedule, election cannot be stopped, except under grave circumstances - the law stated

23. Rule 5 of the said Central Rules empowers the Returning Officer to call upon persons enrolled on the State Register to elect the members of the Central Council. The learned counsel would point out that Rule 7 prescribes procedure for

fixing date of various stages of elections and the time when the election schedule was notified and a public notice had also been given on 22.01.2011. The public notice refers to the notification of the Government of India dated 15.11.2010 and the updated register of the list of voters provided by the Registrar of the Board. The public notice clearly spells out that any voter could come and see the register between 10 AM to 3 PM on any working day. The public notice gives out the whole schedule which is as follows:-

Nomination from (on all working days of Punjab Government)

23.02.2011

10 a.m. to 5 p.m.

Last date for nominations

04.03.2011

Upto 5 p.m.

Scrutiny of nomination Papers

07.03.2011

12 noon

Last date of withdrawal of Candidature

14.03.2011

Upto 5 p.m.

Declaration of final list of Candidates

14.03.2011

Mailing of the voting papers by registered post

24.03.2011

Last date of receipt of voting papers

23.04.2011

Upto 5 p.m.

Opening of the outer Envelope

5 p.m. onwards

Counting of votes

Within 3 days

Declaration of results

Immediately after Counting

The learned counsel also points out that even in the State of Himachal Pradesh, elections had been held and when an attempt was made to stall the same, the Himachal Pradesh High Court had directed the election to continue and an objection to the Hon"ble Supreme Court was rejected. In a situation where the Hon"ble Supreme Court was literally monitoring the activities of the Central Council, it was keen to strengthen the democratic process by obtaining the elections of office bearers of the Central Council before 31st August, 2011, the petitioners cannot file writ petitions at the stage when the election had been notified. I have already pointed out that the writ petitions were filed only in March, 2011, after the election schedule had been notified. None of the petitioners had earlier approached this Court to challenge the removal of the names from the State Register or impeaching several notices requiring renewal of registration. Even if any such objection had been made, till an adjudication was completed regarding whether the rejection was valid or not, it cannot stall the election process once it was notified.

24. There have been several decisions arising under the Representation of Peoples Act that have dealt with the effect of large scales deletions of names from the electoral roll in the electoral process. The consistent string of authorities is only that after the election gets under way through a notification, it cannot be stalled and the actual election of various office bearers could be challenged only through election petitions. There are also constitutional provisions which interdicts any stoppage to the election process after a notification is made. We are surely not referring to any of the provisions of the Representation of Peoples Act and the Constitutional underpinnings to draw a parallel to elections to smaller bodies, but I am stating the same only for judicial hands-off approach in election matters that are best left for challenges only through election petitions and not find the election to be vitiated by the only fact that certain names are excluded. It is completely a different matter if the issue is whether rejection of a nomination of a person could be taken as valid. If I have held in this case that the removal of a name of a member from the State Register for non renewal was vitiated, then it must be only taken that his name was bound to be retained in the Register. Consequently, the nomination paper could not have been rejected. A person, who is affected by rejection of nomination amongst the petitioners, would be entitled to challenge the election in an independent election petition in the manner contemplated under the relevant election rules and the provisions of the Central and State enactments and not through these writ petitions.

25. It has been held in Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, that a defect in the electoral roll will not itself vitiate the election result. The same point was reiterated also in Indrajit Barua and Others Vs. Election Commission of India and Others, The limitation of judicial intervention for annulling the election results in the writ petitions and not in properly constituted election petitions was also dealt with by the Hon"ble Supreme Court in Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, . If we cannot draw sufficient lesson from the

decisions of the Hon''ble Supreme Court by any distinction that could be made by the fact that in those decisions, the Hon''ble Supreme Court was dealing with interpretation of Representation of People Act, then an election to an elected body and the fact to delay an laches in approaching the Court was considered by the Hon''ble Supreme Court in the election to a local body in Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others, . In this case, the challenge to the election process after the election was notified was itself a clear example of laches where the petitioners have failed to challenge the deletion earlier even when there had been several notices issued from the year, 2007 requiring the members to seek for renewal of registration. There is but one decision of the Hon''ble Supreme Court dealing with the election to the office of Bar council in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, where the Hon''ble Supreme Court held that when the preparation of an electoral roll was on the basis of an invalid application of a rule, the election itself would be vitiated. Here, there was no such invalid application of a rule. It was a wrongful understanding of a recommendation from the Central Council to mean that a renewal of registration was necessary once in 5 years even without an express amendment of the existing law to that effect in the State Act. If the notices calling for renewal or removal of the names of the petitioners from the State Register had been brought through challenges much ahead of the announcement of the election schedule and an adjudication had also been made, it could have become possible for entertaining such plea and applying the law in Bar Council of Delhi's case (supra) to a post election result. I have already shown that there had been laches on the part of the petitioners and it was definitely a case where the dispensation in Ashok Kumar Mishra (supra) ought to be preferred. There has been also a very early ruling of a Division Bench of this Court in Lajpat Rai v. Khilari Ram, ILR 1960 (2) P&H 192, where the Division Bench held that a defect in electoral roll would render the election results invalid and even qua warrant would be issued annulling the whole election results. When I pointed out to the counsel for the Union Government that the deletion of a large number of members by the Registrar had been made by a wrong reading of the directive to mean a legal mandate, the learned senior counsel Mr. Sidhu pointed out that the State Board was with limited resources and it had carried out the extensive task on the directions from the Central Government and upon the compulsions resulting from directives of the Hon''ble Supreme Court requiring the completion of the election process before 31st August, 2011. He also pointed out that even when the election schedule was notified, none of the persons had objected to the electoral roll which had been notified and just on the eve of the election, writ petitions were filed complaining that the removal of some of the members were unjustified. He pointed out that in a State Register that contained over 5,000 members, the persons, who had come to Court were even less than 100 and the whole election result cannot be annulled by the only fact that some of the names had been re-moved. Neither the Act nor the Rules make possible the election result to be annulled by the defect in electoral roll. I accept this contention and find that even though the petitioners are able to establish the removal of their

names from the State Register and consequently, the disenfranchisement that disentitled them to cast their votes, was unjustified, I will not find that the powers of this Court for an intervention of the election results shall be made in this case under Article 226 of the Constitution. Every wrongful order need not compel a Court to make intervention, if such a direction will indefinitely delay the completion of election process and involve enormous expenses and render waste a large exercise already undertaken. In this case the election process has been completed and it only awaits order for declaration of results from the Court. The election to the State Board will also mean a serious hardship of stalling even the election of executive committee to the Central Council. The ultimate composition of the Central Council depends on the electoral college consisting of various members electing their representatives and the notification issued in October, 2010 on the basis of the electoral roll already prepared, could not have been a subject of challenge only in March, 2011. When we are considering an issue of delay and laches, it has to be seen in the context of a particular situation of the mischief that upholding of these objections could cause to the election results and the representation to the Central Council, which is an All India body. In this case, large amount of human labour and resources for already been spent and the composition of an All India Central Council cannot be made to stand akimbo for an indefinite period. Larger public interest will be subserved if only the Central Council is allowed to function, with the elected representatives from the respective State Boards.

VII. Disposition

26. In fine, (i) all the petitioners are entitled to succeed in their pleas that the removal of their names from the State Register on the ground of expiry of 5 years from the date of registration and from the electoral roll were untenable and quashed.

(ii) It is hereby directed that the removal of names that have taken place only on their failure to renew their registration shall be undone and they are entitled to be restored in the Register, on their giving a declaration that they continue to practice (i.e., they have not ceased to practice), their place of practice, etc. as required u/s 14(5) of Punjab Act of 1963 to enable the Registrar to make valid updation of the State Register.

(iii) The conduct of election, however, is not vitiated, since there was no flaw in the notification appointing the Returning Officer and the election had been conducted after preparation of a schedule in the manner laid down by law.

(iv) The Returning Officer is competent to declare the result. The challenge to the appointment of the Returning Officer is also rejected as untenable.

(v) The notification issued by the Central Government making an allocation of one seat to Punjab on the basis of the electoral roll is valid to the extent of rendering also valid the election.

27. All the writ petitions are disposed of as above. No costs.