

(2010) 08 RAJ CK 0146
In the Rajasthan High Court

Arshad Ali and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 RAJ CK 0146

Hon'ble Judges : Jagdish Bhalla, C.J.;Dinesh Maheshwari, J

Bench : Division Bench

Judgement

1. The petitioners, said to be the State Champions in Badminton, having represented the State in National Championship and having played in International tournaments, have filed this writ petition under Article 226 of the Constitution of India essentially seeking issuance of a writ in the nature of quo warranto and declaration that the post of the President of the respondent No. 4, Badminton Association of India (BAI), is held by the respondent No. 5 in violation of the guidelines dated 01.05.2010 issued by the respondent No. 1, which carry the force of law.

2. It is contended by the petitioners that the respondent No. 4, BAI, is under financial support from the Government of India and is, therefore, bound by the guidelines. According to the petitioners, the respondent No. 5, who had been holding the post of President of BAI for more than 12 years, could not have been elected again to this post in the elections held on 13.06.2010; and his holding of the post is prohibited by virtue of the said guidelines.

3. On 23.07.2010, after having primarily considered the submissions sought to be made in this matter and after noticing representation on behalf of respondents Nos. 2,4 and 5 in caveat, we ordered issuance of notice to the respondents Nos. 1 and 3, returnable on 28.07.2010.

4. Appearance having now been put on behalf of all the respondents, service is complete.

5. On behalf of the respondent No. 2, Jodhpur Badminton Association, an application (IA No. 10214/2010) has been moved for its deletion from the array of parties with the submissions that no cause of action has been disclosed against itself in the writ petition. A reply to the writ petition has been filed on behalf of the respondent No. 1 essentially endorsing the averments taken in the writ petition regarding the status of BAI and the binding nature of guidelines. On behalf of the respondent No. 4 BAI, a reply-cum-affidavit has been filed by Dr. Vijai Sinha in his capacity as the General Secretary of the Association but apparently without joining much issue on the major and core questions raised by the petitioners and at the same time indicating that he has not received the records of the Association from the respondent No. 5.

6. The respondent No. 5 has, however, filed a counter-affidavit contesting the writ petition while also raising various objections on the maintainability of the petition.

7. It has been argued on behalf of the respondent No. 5 that the petitioners are having no locus standi to challenge his election to the office of the President of the Badminton Association of India or against his holding this office because they are not the members of BAI or any of its affiliates. It is further submitted that Registered Office of BAI, who is a registered society, being at Hyderabad; its Administrative Office being at Delhi; the elections in question having been held at Chennai; and the contesting respondent being also not residing within the jurisdiction of this Court, no part of cause of action arose within the territorial jurisdiction of this Court and hence, the petition is not maintainable before this Court. It is yet further submitted that a writ in the nature of quo warranto cannot be issued in this matter as neither the guidelines are of statutory force nor the respondent No. 5 is holding a public office. Learned Counsel for the contesting respondent has referred to the decisions in Union of India and Others Vs. Adani Exports Ltd. and Another, and B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others,

8. Per contra, it is contended on behalf of the petitioners that they being the persons directly connected and associated with the sport, having represented the State in various tournaments and coaching the budding players, have direct interest in the lawful functioning of BAI; and being directly affected by all the acts and functions of BAI, are very much the "persons aggrieved" and are entitled to maintain this petition for a writ of quo warranto. It is further submitted that the petition is maintainable in this Court particularly when the respondent No. 4 is exercising jurisdiction on all the State Level Sports Associations including respondent No. 3 situated in the State of Rajasthan and the rights of the petitioners and the players in the State of Rajasthan related with badminton are directly infringed for any illegality in BAI; and the sports career of the petitioners and those coached by them is likely to be undermined if the respondent No. 5 continues to illegally hold the post of President of respondent No. 4 particularly when the very recognition of the respondent No. 4

as the representative association of the country may not continue. It is yet further submitted that looking to the nature of activities of BAI and their implications, the respondent No. 5 is definitely holding an office which is of public character; the guidelines do have the character, trappings and force of statutory rules; and holding of the office of the President of BAI contrary to such guidelines could be prohibited by a writ of quo warranto. Learned Counsel for the petitioners has referred to the directions of the Hon''ble Supreme Court in Ghulam Qadir Vs. Special Tribunal and Others, and Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab,

9. During the course of arguments, while examining the counter-affidavit filed by the respondent No. 5, we noticed rather strange and indiscreet averments in the affidavit suggesting that Union of India is also in collusion and conspiracy against him e.g.,

Hence, his cause is being espoused by the Petitioners, who are hand-in-glove with the said Dr. Vijai Sinha as well as the Union of India.

10. It was also noticed that Justice K.S. Rakhra, a retired Hon''ble Judge of Allahabad High Court, who had acted as the Election Officer in the elections held on 13.06.2010, addressed a communication dated 12.07.2010 (Annex.P/20) to the Hon''ble Minister in the Ministry of Youth Affairs and Sports, Government of India pointing out the complaints received by him against the election process and also stating that the aforesaid guidelines of the Government of India were not brought to his notice while he was made a privy to the whole exercise of election; and that he would have declined to associate with such election if complete and true facts were brought to his knowledge. The answering respondent, while raising issues on the legality and propriety of such communication, has gone to the extent of casting aspersions, albeit in an oblique manner, even on the said Hon''ble Retired Judge and has even raised questions on his respect to the protocol. The respondent No. 5 has averred,

...In fact the present Petition is a result of conspiracy which was hatched by Dr. Vijay Sinha in connivance with the Petitioners and Respondent No. 1. Unfortunately, and much to the disliking of any and every respectable citizen, Dr. Vijay Sinha has roped in the Hon''ble Justice K.S. Rakhra in this conspiracy....

... ..The letter of Justice K.S. Rakhra purporting to be a report dated 12th July 2010 is an afterthought. Justice Rakhra was not called upon by the Ministry to give any such report. As a matter of fact, there was no occasion or reason in view of the fact that Justice Rakhra was appointed as Returning Officer by the BAI and not the Government of India. It is evident that Justice Rakhra has been roped into this conspiracy by Dr. Vijay Sinha who was instrumental in getting Justice Rakhra as the Returning Officer for the election held on 13th June 2010. I have the highest regard for the majesty of Law as well as the Hon''ble Judge. However, I am intrigued that Justice Rakhra, a Retd. High Court Judge, is addressing an unwarranted communication to the Minister of Youth Affairs and

Sports and addressing him as "The Hon"ble Minister....

11. The above quoted are only a few of the seriously questionable averments taken by the respondent No. 5 but we do not proposed to elaborate on the same at this stage because when we pointed out these and other rather vexatious averments in the affidavit so filed by the respondent No. 5, the learned senior counsel submitted that the contesting respondent may be permitted to withdraw this affidavit and to file afresh.

12. During the course of submissions, it was also noticed that the respondent No. 5 has issued a notice dated 12.07.2010 convening a meeting on 13.08.2010 at Hyderabad wherein, apart from other business, some such issues are also sought to be taken up that are likely to magnify the dispute in BAI like agenda item No. 14 directed against the General Secretary of the Association and other consequential items.

13. Having heard the learned Counsel for the parties at sufficient length at motion-admission stage and having examined the material placed on record, we find that the matter involves several issues of importance and significance; and deserves to be admitted for consideration without finally pronouncing at this stage on any of the issues raised by the parties including the question of territorial jurisdiction. Ordered accordingly. Parties being represented, fresh notices need not be issued.

14. Having regard to the circumstances of the case, we allow the respondent No. 5 to withdraw the counter-affidavit, subject of course to all just exceptions; and to file a comprehensive reply to the writ petition within one week from today. At the same time, we permit the other respondents too to file additional reply/affidavit, if so desired, within one week from today. The petitioners may file rejoinder, if so desired, within three days of receiving copy of reply/affidavit. Having regard to the circumstances, the application (IA No. 10214/2010) moved on behalf of the respondent No. 2 is also kept pending for consideration at the time of final hearing.

15. The learned Counsel for the petitioners has pressed for granting of interim relief to the effect that the respondent No. 5 be restrained from functioning as the President of BAI. In the facts and circumstances of the case and taking a comprehensive view of the matter, though we do not consider it proper at this stage to prohibit the respondent No. 5 altogether from functioning as the President of BAI but it does appear appropriate and hence is ordered that during the pendency of this petition:

(i) the respondent No. 5 shall not take any decision nor shall enter into any contract or arrangement, by whatever name called, that might create financial liability or burden on BAI without specific permission of this Court;

(ii) the respondents Nos. 4 and 5 shall not implement any decision dealing with the present composition of BAI without specific permission of this Court; and

(iii) the respondents Nos. 4 and 5 shall not take any coercive measure or action against the members and affiliates of BAI.

16. Having regard to the questions involved, it does appear appropriate to hear the matter finally at an early date out of turn.

17. Hence, put up for hearing on 17.08.2010.