
(2022) 12 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 2668 Of 2022 In Writ Petition (C) No. 4524 Of 2019

Desh Rattan Dubey

APPELLANT

Vs

Board Of Control For Cricket In India

RESPONDENT

Date of Decision : 15-12-2022

Acts Referred:

Supreme Court Rules, 1966 — Order 40, Order 40 Rule 3
Jammu And Kashmir High Court Rules, 1999 — Rule 67(2)

Citation : (2022) 12 J&K CK 0040

Hon'ble Judges : Tashi Rabstan, CJ; Mohan Lal, J

Bench : Division Bench

Advocate : Parveen Kapahi, Parimoksh Sethi, Rahul Pant, Rajat Gupta

Final Decision : Dismissed

Judgement

1. Instant application, bearing CM No.2668/2022, has been filed by the applicants, seeking following reliefs:

"In the premises, it is respectfully submitted that the respondent No.1 may be directed to initiate the process of amendment of constitution of JKCA and hold its election thereby electing its office bearer as they are guilty of disobedience of the order of the court dated 23/03/2021 passed in LPAW No 14/2019 and other connected matters as they have failed to conduct in a manner as called for by this Hon?ble Court to amend the constitution and hold the elections and remove respondent no.2 to 5 as they are conflict of interest as per the Lodha recommendation approved by the Hon?ble Supreme Court and appoint independent committee having no conflict of interest.

OR

In alternative this Hon?ble court is requested to fix time line for amendment of the constitution and holding its elections or in alternative order passed on 23/03/2021 in LPAW No 14/2019 and connected matters may be reconsidered in

the light of the basic judgment/order passed in OWP No 787/2017 dated 13/10/2017 which was later on confirmed by division bench of this court in LPA No 196/2017 dated 6/12/2017 and punished them for contempt for disobeying the order of this Hon^{ble} Court by not amending constitution of JKCA.”

2. As is clear from the perusal of the application, applicants seek fresh directions as during the course of the arguments learned counsel for the applicants has categorically stated that he is not pressing for review of the order, but, seeks directions as prayed for in the application.

3. The arguments were heard on the question of the maintainability of the present application.

4. Admittedly, the present application has been filed in WP(C) No. 4524 of 2019 titled Des Rattan Dubey Vs. Board of Control of Cricket in India and others. The said writ petition along with connected LPA as also other petitions came to be decided by the Division Bench of this Court vide its judgment dated 23.03.2021. Certainly, the applicants are seeking fresh directions in the application including fixing of timeline for amendment of the constitution of Jammu & Kashmir Cricket Association (hereinafter in short, ‘JKCA’) and holding its elections as is clear from the prayer made in the application.

5. On the question of maintainability of present application, learned counsel for the applicants relied upon the judgments passed by the Apex Court in K.K.Velusamy Vs. N.Palaanisamy decided on 30.03.2011, Shipping Corporation of India Ltd. Vs. Machado Brothers and others decided on 25.03.2004 besides banking on Rule 67(2) of J&K High Court Rules, 1999 to contend that even after disposal of the writ petition, an application is maintainable.

6. A bare perusal of the judgments (supra) relied upon by the learned counsel for the petitioners would show that none of the judgments provides for exercise of powers under Section 151 of the Code of Civil Procedure when there is no lis pending before the Court and as such has no applicability to the case in hand.

7. Learned counsel for the respondents 1 to 5 has argued that the application is not maintainable as the same has been filed by the persons, who were not party to the original petition which was disposed off by the Division Bench of this Court vide judgment dated 23.03.2021, as such, the applicants have filed this application without filing application seeking impleadment. It is further argued that application can be filed in a disposed off matter under 67(2) of the High Court Rules but that application can be filed only by the parties to the petition for correction in case of any typographical error only in the original judgment. Here in this case neither there is error in the judgment nor the application has been filed by any of the party to the petition so this application is not maintainable and requires to be dismissed.

8. On the other hand, learned Senior counsel for the respondent No.6, Mr. Pant, has relied upon a judgment of the Apex Court in State of UP V. Shri BrahmDatt

Sharma and another reported as AIR 1987 SC 943; wherein in paragraph No.10, it has been laid as under:-

"10. The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10.08.1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29.1.86 he could have filed a separate petition under Art. 226 of the Constitution challenging the validity of the notice as it provided a separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the Court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

9. Taking a cue from the aforesaid judgment, it can safely be concluded that no miscellaneous application could be filed in a writ petition after its disposal as the High Court has no jurisdiction to entertain the application as no proceedings are pending before it.

10. Similarly, learned counsel for the respondent No.6 has also relied upon a recent judgment of the Supreme Court rendered in a case titled Ghanasyam Mishra and sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and others reported as 2022 Live Law (SC) 771 decided on 17.08.2022 wherein the Apex Court has deprecated indirectly seeking review of the orders of the Court by filing applications either seeking modification or clarification of the orders by filing applications that are nothing, but, a total abuse of process of law. In yet another titled Supertech Limited Vs. Emerald Court Owner Resident Welfare Association and others dated 04.10.2021, the Apex Court has held as under:-

8. In successive decisions, this Court has held that the filing of applications styled as "miscellaneous applications" or "applications for clarification/modification" in the guise of a review cannot be countenanced. In Gurdip Singh Uban (supra), Justice M Jagannadha Rao, speaking for a two-Judge Bench of this Court observed:

"17. We next come to applications described as applications for "clarification", "modification" or "recall" of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review

application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.

Order XL Rule 3 states as follows:

"3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party...."

In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of "no hearing", we find that sometimes applications are filed for "clarification", "modification" or "recall" etc. not because any such clarification, modification is MA 1572/2021 indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for "clarification" or "modification", — though it is really one of review — a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in *Sone Lal v. State of U.P.* [(1982) 2 SCC 398] deprecating a similar practice.)

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for "clarification", "modification" or "recall" if the application is in substance one for review. In that event, the Court could either reject the application straight away with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers."

8 Considering the settled proposition of law, the present application which is not only misconceived, but, also amounts to abuse of process of law needs to be dismissed.

9 Insofar as reference to Rule 67(2) of the J&K High Court Rules, 1999, is concerned, the same does not give any right to file the application of instant nature seeking fresh directions after disposal of the writ petition in as much as the same deals only with the applications as are maintainable after disposal of any appeal/petition or reference or other matters connected with it. In some cases, after the disposal of the petition/appeal or reference, there may be some kind of arithmetical or technical errors may require correction for which application may be maintainable, but, in the present application, applicants are

seeking fresh directions, which is not permissible. The directions sought by the applicants do even travel beyond the main proceedings/writ petition as also the judgment dated 25.03.2021 passed by the Division Bench of this Court in LPAOW No.14/2019 and other connected petitions including petition WP(c) No.4524/2019 titled Des Rattan Dubey Vs. Board of Control for Cricket in India and others, in which present application has been filed. Moreover, most of the parties impleaded in the present application were not the parties before the writ Court besides the locus to file present application is not clear as it is not coming forth from the application filed by the applicants as to whether they were parties to any petition/appeal decided by the Division Bench vide its judgment dated 25.03.2021 or not.

10 In view of the settled proposition of law as enunciated (supra) the present application is misconceived and total abuse of process of law, as such, the same being not maintainable is dismissed.