
(2010) 11 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 16685 of 2010

S. Ezaj Hussain

APPELLANT

Vs

Indian Hockey Federation and Others

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Citation : (2010) 11 PAT CK 0088

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioner, for Respondents 1 to 3 (hereinafter referred to as "IHF") and the Respondent No. 4.

2. The Petitioner in his capacity as Secretary, Bihar Hockey Association, originally sought the relief for commanding the IHF to invite him for attending the AGM fixed on 3.10.2010 and questions the locus standi of Respondent No. 4 as President of the Bihar Hockey Association.

3. Learned Counsel submits that the Petitioner learnt of the proposed meeting dated 3.10.2010 from the newspaper item dated 9.9.2010. Respondent No. 4 had been invited for the meeting as published in the media. The Petitioner wrote letters on 7.6.2010, 20.8.2010 that he was not being intimated for attending the meetings. The affiliation fee had been paid up to 2010, notwithstanding which Respondent No. 4 was unethically being invited for the meeting.

4. Considering the aforesaid submission this Court on 1.10.2010 issued notice to the IHF and stayed the meeting to be held on 3.10.2010. Counsel for the IHF submits that no meeting has been held in pursuance of the order of this Court.

5. A counter affidavit has been filed on behalf of the IHF. It raises issues of lack of territorial jurisdiction in this Court to hear the matter in view of the Clause contained in the agreement between the parties vesting jurisdiction in the Courts at Delhi alone. The counter affidavit in no uncertain terms states that since 2008 the Petitioner's Association was not attending meeting of the IHF and not making payment of the subscription. By letter dated 7.7.2009 explanation was called for why membership of the Petitioner be not terminated for non-payment

of annual dues and not attending the AGM and as to why he be not relieved from the post in view of not taking interest in the developmental activities of the IHF. The letters are enclosed as Annexure-R/3 and which are stated not to have been replied. On 6.5.2010 a show cause notice was issued for payment of annual subscription. A final opportunity was given on 18.8.2010 to file reply to the show cause, pay annual subscription explaining reasons for not attending the AGM. All these remained unanswered by the Petitioner. In the circumstances the Petitioner's Association was de-affiliated on 6.9.2010. On 27.9.2010 the Petitioner had sent a demand draft dated 27.9.2010 of Rs. 4,000/- towards affiliation fee for the period 2009-2010, 2010-2011. Such payments were of no avail since it was sent after the de-affiliation.

6. The Petitioner has filed a rejoinder to the counter affidavit. The assertion of facts in the counter affidavit with regard to giving show cause notice on more than one occasion is not denied but a general statement has been made that no opportunity was given placing reliance on certain Annexures to the writ petition that developments were taking place behind his back. The rejoinder affidavit then goes on to raise issues of the identity of the IHF being in dispute before the Supreme Court, locked in battle for identity with Hockey India with which this Court is not concerned as it does not form subject matter of the writ petition or the reliefs prayed for. Counsel for the IHF has very rightly raised the submission that the Petitioner has a peculiar stand when he wants to participate in the meeting of IHF and he questions its identity simultaneously. The Petitioner appears to be blowing hot and cold at the same time. He cannot be permitted to do so.

7. Dribbling which is a hallmark of the game of hockey in the games field steps appears to have been attempted to be brought to the court room by the Petitioner.

8. This Court does not consider it necessary to go into the issue of jurisdiction as the writ petition can easily be disposed on another issue. Likewise the identity of the IHF where it be in battle with any other is not the concern in the present writ petition. The present writ petition only concerns locus standi of the Petitioner and Respondent No. 4 vis-a-vis IHF. If the IHF does not exist both the Petitioner and the Respondent No. 4 do not exist. Therefore, this Court shall now proceed to examine the materials on record in the present writ petition based on the pleadings of the parties with regard to the fight for identity between the Petitioner and Respondent No. 4.

9. This Court has already noticed from the facts aforesaid that the writ petition questions the denial of summoning for a meeting. The counter affidavit of the IHF specifically pleads issuance of show cause notice dated 6.5.2010, 7.7.2009, 18.8.2010 and final de-affiliation of the Petitioner on 6.9.2010. The order for de-affiliation has not been challenged in the present proceeding, notwithstanding the fact that it has been brought on record by the IHF in the present case. Similarly the Petitioner in his rejoinder does not anywhere deny or dispute the

show cause notice issued to the Petitioner by the IHF. The answer is evasive when it only says that no opportunity to file reply was given. A representation was made in the writ petition that the Petitioner had sent a demand draft on 27.9.2010 towards payment of subscription fee after de-affiliation on 6.9.2010. The IHF states that question of accepting payment simply did not arise after de-affiliation had been ordered on 6.9.2010. In the rejoinder the Petitioner kept quiet and does not even attempt to persuade this Court by asserting that his demand draft may have been encashed.

10. It was for the Petitioner in his rejoinder to specifically question the show cause notice as being illegal or that no show cause notice had been issued by specific assertive denial. If the order of de-affiliation dated 6.9.2010 was illegal in absence of show cause notice surely the Petitioner would have challenged the same in the present proceeding. If the show cause notices were issued to the Petitioner and he chose not to reply to the same it is not open for him to assert denial of opportunity of natural justice.

11. This Court on consideration of the facts of the case and the claims with which the Petitioner came to the Court originally read together with the counter affidavit of the IHF and the rejoinder of the Petitioner is satisfied that on 30.9.2010 when he instituted the writ application he did not present the correct facts before the court in the writ petition and presented them in a truncated manner. No details of the show cause notice issued to him have been mentioned. They have not been denied in the rejoinder also. It was strenuously sought to be urged that the Petitioner had kept writing letters on 7.6.2010, 5.6.2010, 20.8.2010 when it is the case of IHF that it had sent show cause notice on 7.7.2009, 6.5.2010, 18.8.2010 leading to final de-affiliation on 6.9.2010. The conduct of the Petitioner in not having specifically denied these assertions of fact pleaded in the counter affidavit satisfies the Court that he deliberately presented matters in truncated form and obtained interim relief from the Court to which he was not entitled as is now apparent from the counter affidavit. It was his duty to place all the correct facts before the Court in the original writ petition and then ask the Respondents to meet his contentions for adjudication by the Court. The underlying principle with regard to a litigant approaching the Court under Article 226 for relief is fairness on his part by placing all necessary and relevant facts before the Court and not withholding relevant materials. The Supreme Court in *Prestige Lights Ltd. Vs. State Bank of India*, at paragraph 33 as held as follows:

33. It is thus clear that though the Appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the Applicant or twisted facts have been placed before the Court, the writ court may

refuse to entertain the petition and dismiss it without entering into merits of the matter.

12. The issue again fell for consideration in K.D. Sharma Vs. Steel Authority of India Ltd. and Others, wherein the Supreme Court has noticed as follows at paragraphs 34, 36 and 38 and went on to observe that the presentation of facts in a truncated manner, suppression of facts not only was unfair but amounted to contempt.

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the Petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the Petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the Applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The Petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

13. From the pleadings that have emerged of the parties this Court is satisfied that the Petitioner grossly misused the process of the Court and instituted a writ petition withholding and suppressing all relevant facts necessary for proper adjudication of the controversy wasting time of the Court quite apart from having obtained an interim order on basis of such suppression.

14. The writ application is therefore dismissed with cost of Rs. 20,000/- payable

by the Petitioner to the IHF and which shall be recoverable as decree of the Court.