

(2010) 09 RAJ CK 0083

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7433 of 2010

Sri Ganganagar District Cricket Association and Another	APPELLANT
Vs	
Rajasthan Cricket Association and Another	RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 12, 226, 227

Citation : (2011) 1 RLW 340

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : L.R. Mehta, assisted by Romit Mehta, for the Appellant; M.C. Bhoot, Rajesh Joshi and Kamal Dave, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—The instant writ petition has been filed by the petitioner Association with the following prayers:

It is, therefore, respectfully prayed that record of the case may kindly be called for and this Hon"ble Court may by an appropriate writ, order or direction be pleased to:

- a. Quash and set aside the certificate of affiliation dated 30.04.2010 (Annexure-22) issued by respondent No. 2 on behalf of respondent No. 1 to respondent No. 3 to 5.
- b. Declare that the petitioner No. 1 association represented by petitioner no. 2 continues to be the duly affiliated member of respondent no. 1 association;
- c. Direct the respondent no. 1 to allow the petitioner No. 1 association represented by petitioner no. 2 to send its players and teams to participate at the State Level Tournaments and further be pleased to direct the respondent no. 1 to arrange to provide training and coaching facilities to the players of petitioner no. 1 association;

d. Respondent authorities may kindly be directed to make all communication with the office bearers elected on 05.03.2010, petitioner herein while treating them legally affiliated body;

e. By an appropriate writ, order or direction the Respondent authorities may be restrained from interfering with the rights and duties of the Petitioners to act as a affiliated District Cricket Association of respondent No. 1 association; and

f. Entire record pertaining to the case may also be called for.

g. any other appropriate relief(s) which this Hon'ble High Court deems just and proper in the facts and circumstances of the case may kindly be passed in favour of the Petitioner Association;

h. Writ petition of the Petitioner Association may kindly be allowed with exemplary costs.

Above writ petition was listed in the Court on 13.8.2010 and, on that date, after hearing learned counsel appearing on behalf of the petitioner, notices were issued to respondents No. 1, Rajasthan Cricket Association through its Honorary Secretary and respondent No. 2 Sanjay Dixit, Honorary Secretary of Raj. Cricket Association, who was impleaded as party by name.

2. On behalf of Rajasthan Cricket Association, Mr. Rajesh Joshi put in appearance. Mr. Kamal Dave put in appearance on behalf of respondent No. 2 and Mr. M.C. Bhoot turned appearance on behalf of respondent No. 4 Sanjay Singh Meel. Having put in appearance through their counsel, respondents No. 1, 2 and 4 raised following preliminary objections with regard to maintainability of the writ petition:

(A) Whether respondent No. 1 Rajasthan Cricket Association can be treated to be "State" within the scope of Article 12 of the Constitution of India.

(B) Whether this writ petition can be filed in the name of Ganganagar District Cricket Association, through its Secretary in view of the fact that he has already been declared disqualified u/s 24 of the Rajasthan Sports (Registration, Recognition & Regulation of Associations) Act, 2005 and whether it can be treated that petitioner Association is in existence and any legal or fundamental right of the Association has been infringed.

(C) This writ petition is not maintainable on the ground of principle of res judicata because before filing this writ petition for the same prayer two other writ petitions being S.B. Civil Writ Petition No. 5077/2010 and S.B. Civil Writ Petition No. 6016/2010 were filed by the petitioner Association and, vide orders dated 26.05.2010 and 13.07.2010 respectively, both the writ petitions were dismissed by co-ordinate Benches of this Court to pursue remedy before the Arbitrator, therefore, as per provisions of res judicata u/s 11 and Rule 2(2) of the Code of Civil Procedure, this petition is not maintainable and deserves to be dismissed.

(D) Whether the petitioner Association made material concealment of fact and

has not approached this Court with clean hands for which this writ petition deserves to be dismissed on the ground of conduct.

After hearing both the sides, it is in the fitness of things to decide the preliminary objections first.

(A) Whether respondent No. 1 Rajasthan Cricket Association can be treated to be "State" within the scope of Article 12 of the Constitution of India:

3. Learned counsel for the respondents specifically pleaded in the form of preliminary objection in his reply that respondent No. 3 Rajasthan Cricket Association is not State within the meaning of Article 12 of the Constitution of India. The entire working is managed by elected office bearers and none of them is nominated by the State Government. It is also specifically pleaded that neither the State Government nor any officer of the State Government is impleaded as respondent in the array of respondents, therefore, this writ petition deserves to be dismissed on the ground that Rajasthan Cricket Association is an independent body and State Government has not contributed any kind of financial assistance or fund so that answering respondent does fall within the category of Article 12 of the Constitution of India. Therefore, this writ petition deserves to be dismissed. Two groups of District Cricket Association, Sriganganagar are raising dispute which is in between them. As such disputed question of fact is involved which has been decided in the arbitration proceedings, therefore, for the reasons mentioned above, it is clear that the respondent Association is not State within the meaning of Article 12 of the Constitution of India and, accordingly, no writ can be issued against the Rajasthan Cricket Association.

4. It is also contended by learned counsel for the respondents that the in the pleading of reply to the preliminary objection with regard to the aforesaid objection, no specific reply has been given by the petitioner, therefore, it is obvious that the preliminary objection raised by the answering respondent is well founded and this writ petition deserves to be dismissed on the ground that RCA is not State within the meaning of Art. 12 of the Constitution of India.

5. Learned counsel for the petitioner states that a strange preliminary objection has been raised with regard to status of the RCA that it is not State within the meaning of Article 12 of the Constitution of India. To discredit the said objection, it is submitted that the Rajasthan Cricket Association and all District Cricket Associations have been created under the Act known as Rajasthan Sports (Registration, Recognition & Regulation of Associations) Act, 2005 and there is direct control of the Registrar of the Cooperative Societies. So also, the present Honorary Secretary is a senior IAS officer and he is holding the post of Secretary, therefore, it cannot be said that RCA is not State within the meaning of Article 12 of the Constitution of India; but, it is abundantly clear that RCA is created under the Act promulgated by the State Legislature and recognized by the State Government and there is direct control of the Registrar, Rajasthan Cooperative Societies u/s 20 of the Act and the Registrar of the Rajasthan State Sports

Council has been given jurisdiction to call for any record of the Association required for any inquiry, therefore, being recognized public body, the RCA is State within the meaning of Article 12 of the Constitution of India. Therefore, entirely baseless objection has been raised by the respondents which deserves to be rejected.

(B) Whether this writ petition can be filed in the name of Ganganagar District Cricket Association, through its Secretary in view of the fact that he has already been declared disqualified u/s 24 of the Rajasthan Sports (Registration, Recognition & Regulation of Associations) Act, 2005 and whether it can be treated that petitioner Association is in existence and any legal or fundamental right of the Association has been infringed:

6. It is pointed out by learned counsel for the respondents that an order was made by the Registrar on 20.02.2009 whereby ad hoc committee was appointed by the Registrar, Co-operative Societies, Sriganganagar while exercising power u/s 24 (1)(ka) of the Act of 2005 and as and when the said order was made for appointment of ad hoc committee, then, it will be deemed that the office bearers of Sriganganagar District Cricket Association headed by Mehmood M. Abdi, President of the Association became disqualified and said order is still in existence, therefore, this writ petition filed by the petitioner Association is not maintainable because the office bearers of said Association have already been declared disqualified u/s 24 by the Registrar.

7. Per contra, learned counsel for the petitioner submits that the said order was challenged by way of filing writ petition and the said writ petition was registered S.B. Civil Writ Petition No. 1521/2009 and the same was decided on 26.02.2009, by which, the petition was dismissed on the ground that alternative remedy is available to challenge the order dated 20.05.2009. The said judgment was challenged before the apex Court, in which, Hon'ble apex Court passed order and allowed the office bearers of the petitioner Association to cast their votes in the election of Rajasthan Cricket Association. The said SLP was registered as Special Leave to Appeal (Civil) No. (S)5720/2009 and the same was decided when election of the RCA was held on 05.03.2010 while observing that, "Election was held on 05.03.2010 and nothing survives in this matter. Dismissed as having become infructuous."

8. This writ petition has been filed by Sriganganagar District Cricket Association and others which is in existence in pursuance of election so held on 05.03.2010, therefore, the preliminary objection raised that office bearers of the Association became disqualified has no force in law. Further, it is submitted that order for constitution of ad hoc committee was passed by the Registrar and mere appointment of the ad hoc committee does not mean that the office bearers of the petitioner Association were declared disqualified, therefore, this writ petition cannot be filed in the name of office bearer. As such there is no force in the objection raised by the respondents that the office bearers were declared disqualified u/s 24 of the Act.

(C & D) This writ petition is not maintainable on the ground of principle of res judicata because before filing this writ petition for the same prayer two other writ petitions being S.B. Civil Writ Petition No. 5077/2010 and S.B. Civil Writ Petition No. 6016/2010 were filed by the petitioner Association and, vide orders dated 26.05.2010 and 13.07.2010 respectively, both the writ petitions were dismissed by co-ordinate Benches of this Court to pursue remedy before the Arbitrator, therefore, as per provisions of res judicata u/s 11 and Rule 2(2) of the Code of Civil Procedure, this petition is not maintainable and deserves to be dismissed and Whether the petitioner Association made material concealment of fact and has not approached this Court with clean hands for which this writ petition deserves to be dismissed on the ground of conduct:

9. At the threshold, a serious preliminary objection was raised by counsel appearing on behalf of the respondents that this writ petition is not maintainable because for the same prayer which is made in this writ petition, earlier two writ petitions were filed. The first writ petition was filed which was registered S.B. Civil Writ Petition No. 5077/2010 and the said writ petition was decided by the co-ordinate Bench of this Court on 26.05.2010 while observing in the order that the Court is not inclined to entertain the writ petition and dismissed the writ petition in limine. Further, it is pointed out that although in this writ petition the petitioner has annexed the order passed by the coordinate Bench; but, deliberately the petitioner Association has not disclosed that what relief was sought in the said writ petition. Therefore, a material concealment of fact has been made by the petitioner Association while not disclosing the fact that same prayer which is made in this writ petition was already made in the earlier writ petition. Therefore, this writ petition deserves to be dismissed on this ground alone.

10. While inviting attention towards the other writ petition which was registered S.B. Civil Writ Petition No. 6016/2010, it is submitted by learned counsel for the respondents that the said writ petition was dismissed by another co-ordinate Bench of this Court, in which, it was held that the petitioners are disputing the passing of the award on 03.07.2010 by the Arbitrator, therefore, the proper remedy to challenge the award is under the Arbitration & Conciliation Act, 1996. In the present writ petition, there is no disclosure by the petitioner with regard to the second writ petition and, that, too, is a major concealment of fact because almost the same prayer which is made in this writ petition was made by the petitioner Association in S.B. Civil Writ Petition No. 6016/2010, therefore, this writ petition deserves to be dismissed on this ground also.

11. Learned counsel appearing on behalf of the respondents further pointed out that except prayer clause (a) made in this writ petition, rest of the prayers were made verbatim in the earlier writ petition, S.B. Civil Writ Petition No. 5077/2010 and, now, the only difference is that in this writ petition while making all the prayers which were already made in S.B. Civil Writ Petition No. 5077/2010, one more prayer, being prayer (a) for quashing the certificate of affiliation, Annex.-22

has been made. For the said prayer, it is submitted that the petitioner Association has made a concealment of fact because, while filing the said second writ petition the factum of issuance of certificate of affiliation dated 30.04.2010, which is now challenged, was well within the knowledge of the petitioner Association as per their own admission prior to filing the earlier writ petition No. 6016/2010 because, as per admission made by the petitioner in the rejoinder to preliminary objection, the said order came to the knowledge of the petitioner Association on 04.07.2010 in the proceedings before the Arbitrator and S.B. Civil Writ Petition No. 6016/2010 was filed on 07.07.2010. Therefore, the petitioner cannot be permitted to challenge the certificate of affiliation dated 30.04.2010, Annex.-22 now again by way of filing the present writ petition because though the said certificate of affiliation was well within the knowledge of the petitioner Association as per its own version on 04.07.2010 but the same was not challenged in the second writ petition filed before this Court, being S.B. Civil Writ Petition No. 6016/2010 which is said to be filed on 07.07.2010, therefore, this writ petition deserves to be dismissed on this ground also.

12. Learned counsel Mr. M.C. Bhoot, appearing on behalf of respondent No. 4 argued that upon perusal of the pleadings of S.B. Civil Writ Petition No. 5077/2010 it is abundantly clear that the fact of issuance of certificate of affiliation dated 30.04.2010 was well within the knowledge of the petitioner Association, therefore, a specific prayer was made for granting affiliation to the petitioner Association. In this regard, Mr. Bhoot invited attention of this Court towards para 22, 28, ground (1) and relief clause (a) in S.B. Civil Writ Petition No. 5077/2010, As per counsel appearing on behalf of respondent No. 4, a specific assertion was made in para 28 that, "the authorities of RCA have again deliberately invited needless controversies while treating the respondent no. 5 to 7 as affiliated office bearer of petitioner association." Further, it is pointed out that in ground (L) it is specifically mentioned that, "the RCA itself acknowledged the election of the petitioner Association held on 05.03-2010 but elected office bearer of petitioner association are not being considered as registered valid office bearer. The arbitrary action on part of respondent authorities to not permit the petitioner association and not corresponding with office bearer elected on 05.03.2010 is absolutely contrary to the Act of 2005. The authorities of RCA has evolved pick and choose policy in absolute violation of the provisions of the Act of 2005, which is liable to be struck down."

13. Similarly, learned counsel appearing on behalf of respondent No. 4, Mr. M.C. Bhoot invited attention towards prayer (a) made in S.B. Civil Writ Petition No. 5077/2010, which reads as under:

(a) Declare that the petitioner No. 1 association represented by petitioner no. 2 continues to be the duly affiliated member of respondent no. 3 association;

The crux of the argument of Mr. Bhoot is that all these aforesaid assertions made in S.B. Civil Writ Petition No. 5077/2010 loudly speak that the fact of issuance of certificate of affiliation dated 30.04.2010 was well within the knowledge of the

petitioner Association; but, deliberately, it was not challenged in the earlier writ petition and after dismissal of those two writ petitions by this Court, again, for the same prayer, the present writ petition has been filed.

14. Learned counsel appearing on behalf of respondents vehemently argued that on the basis of principle of res judicata u/s 11 and Rule 2(2), C.P.C. this writ petition is not maintainable and in support of their contention, counsel for respondent No. 1 Mr. Rajesh Joshi invited attention of the Court towards the following judgments:

(1) U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, , para 18

(2) (2004) 5 SCC 649

(3) (2009) 9 SCC 313

(4) (2003) 12 SCC 140

Mr. M.C. Bhoot, appearing on behalf of respondent No. 4 invited attention of the Court in support of his contention resting upon the plea of res judicata towards the judgments reported in:

(1) Executive Engineer ZP Engg. Divn. and Another Vs. Digambara Rao etc. etc.,

(2) Daryao and Others Vs. The State of U.P. and Others, (para 19, 20 & 22)

While inviting attention towards the above judgments, it is submitted that on the basis of principle of res judicata this writ petition is not maintainable, so also, the petitioner is guilty of concealment of material fact with regard to filing earlier two writ petitions and not disclosing the fact that in the earlier writ petitions the same prayer was made. Therefore, this writ petition deserves to be dismissed.

15. On the other hand, learned counsel for petitioner Mr. L.R. Mehta, assisted by Mr. Ramit Mehta vehemently argued that in this writ petition for the prayer made by the petitioner Association the principle of res judicata will not apply because as per Section 11 of the Code of Civil Procedure, no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. In this case, it is true that earlier S.B. Civil Writ Petition No. 5077/2010 was filed by the petitioner Association, in which, 8 respondents were impleaded as party including all the respondents in this writ petition and fact of filing the said writ petition has not been concealed by the petitioner Association, More so, copy of the order passed by the coordinate Bench of this Court on 26.5.2010 has been placed on record as Annex.-20 to the writ petition. Therefore, it cannot be said that the petitioner has made any concealment of fact while not disclosing the prayer so made in the said writ petition.

16. Further, it is submitted by Mr. L.R. Mehta, learned counsel for the petitioner Association, that the question of affiliation and issuance of certificate of affiliation dated 30.04.2010 admittedly came to the knowledge of petitioner Association on 04.07.2010 in the arbitration proceedings, therefore, obviously, no prayer was made in the earlier writ petition No. 5077/2010 and, now, in this writ petition, the petitioner is challenging the said certificate dated 30.04.2010 because by the said certificate respondent RCA has recognized respondents No. 3, 4 and 5 as office-bearers of Sriganaganagar District Cricket Association which is illegal on the ground that these persons were not lawfully elected in any of the elections said to have been conducted on 04.03.2010, therefore, now, when the fact of recognition of respondents No. 3, 4 and 5 as office-bearers of Sriganaganagar District Cricket Association came to the knowledge of the petitioner Association on 04.07.2010, then, for the said cause, this writ petition has been preferred, in which, the prayer No. 1 has been made for quashing the said affiliation certificate, so also, made other prayers which were made in the earlier writ petitions but not decided by the Court. In this view of the matter, the nondisclosure of the prayer made in the earlier writ petition and prayers made in this writ petition again which were made in the earlier writ petitions will not be treated to be hit by the principle of res judicata because in the earlier writ petitions no adjudication was made; more so, upon perusal of order dated 26.05.2010, liberty was given to the petitioner to raise its grievance.

17. With regard to objections about petitioner not disclosing the fact of filing another writ petition No. 6016/2010, it is submitted that in the said writ petition, altogether different prayer was made with regard to arbitration proceedings initiated by one Vibhuti Narayan Sharma, in which, the co-ordinate Bench declined to interfere in the matter and granted liberty to the petitioner to raise all grounds in accordance with the Act of 1996. Against the said order, special appeal has already been filed and prayer made in the said writ petition was altogether different than the prayer made in this writ petition, therefore, it cannot be said that preliminary objection raised by the respondents with regard to application of the principle of res judicata has no substance.

18. In support of his contention, it is submitted by learned counsel Mr. L.R. Mehta that allegation against the petitioner Association with regard to non-disclosure of prayer made in S.B. Civil Writ Petition No. 5077/2010 in this writ petition, so also non-disclosure of filing of writ petition No. 6016/2010 cannot be said to be treated to be concealment of fact and there is no question of dismissing this writ petition on the ground that petitioner has concealed material facts from the Court, therefore, it is not entitled to invoke extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. In support of his contention, learned counsel for the petitioner invited attention of the Court towards the judgments reported in (1996) SCC 735 and (1986) 4 SCC 116, in which, according to learned counsel for the petitioner, it has been held by the Hon"ble Supreme Court that Section 11. C.P.C. deals with doctrine of res judicata and provides ground for defence where the matter directly and

substantially in issue has been directly and substantially in issue in a former suit and the important words are "has been heard and finally decided". The bar, therefore, applies where the matter has been heard and finally decided by the Court competent to try such suit. That clearly means that the matter or issue has been finally heard and decided by application of judicial mind and final adjudication has been made.

19. I have considered the rival submissions made by both the parties.

(A) First of all, I deem it just and proper to deal with preliminary objection (A) with regard to non-maintainability of this writ petition on the ground that Rajasthan Cricket Association is not State within the meaning of Article 12 of the Constitution of India, therefore, not amenable to the writ jurisdiction. In this connection, first of all, it is necessary to observe that State Legislature has enacted an Act in the year 2005 known as Rajasthan Sports (Registration, Recognition & Regulation of Associations) Act, 2005.

20. The aforesaid special law was enacted to provide for the registration, recognition and regulation of sports associations in the State at various levels and to facilitate and regulate the activities and affairs of sports in the State of Rajasthan and also to provide for recognition and regularization of the right to represent the State of Rajasthan and the various Revenue Districts in the State. The language used in the preamble of the statute itself speaks that the State Legislature has specifically enacted the Act of 2005 to provide the right to represent the State of Rajasthan to Sports Associations, therefore, the main purpose is to permit the sport activities in the State for the young generation of the State. Hence, it is obvious that while performing duties as enumerated in the Directive Principles incorporated in the Constitution of India this Act was promulgated.

21. It is also lucidly clear from the plain reading of the Act of 2005 that all the associations are creation of this Act because as per Section 2 (f), there is provision of District Level Sports Associations. Definition of "Government" is enumerated in the Act vide Section 2 (1) and, further, different sport bodies including the Rajasthan Olympic Association, Rajasthan State Sports Council are defined in the Act; and, as per Section 20 of the Act, there is power left to the Registrar or Rajasthan State Sports Council to call for the records and make inspection; meaning thereby, the District Level Associations and State Level Sports Associations have been created under the Act and, further, it is provided that how their formation will be made as per the bye laws framed by the Sports Associations.

22. It is also specifically provided u/Sec. 6 of the said Act that registration of the Sports Association is necessary with the Registrar and there is power left to the Registrar not to register any association if the Registrar finds that requirements of sub-sec. (1) of Section 6 of the Act are not satisfied. In this view of the matter, it cannot be said that the Rajasthan Cricket Association is not State

within the meaning of Article 12 of the Constitution of India. More so, the RCA which is enumerated in Schedule - B at S. No. 13 is State within the meaning of Article 12 of the Constitution of India being other authority.

23. It is also worthwhile to observe that while enacting the Act of 2005, the State has performed its sovereign duty to promote sports activities for the young generation of the State and to regulate the sports activities in the State created various sports associations at different level while giving them liberty to frame their bye laws to regulate the intra-Association affairs and administration. Here, in this case, action of the Rajasthan Cricket Association, whereby the RCA recognized the players of particular association while issuing the certificate of affiliation dated 30.04.2010, Annex.-2 to the writ petition, therefore, it cannot be said that the RCA is not State within the meaning of Article 12 of the Constitution of India. In my opinion, RCA being State-level Association is enumerated as State being other authority of State of Rajasthan; and, at present, a member of Indian Administrative Service, respondent No. 2 Sanjay Dixit is holding the post of Honorary Secretary of the RCA in addition to his work as Central Government employee. Therefore, the preliminary objection raised by the respondents is not tenable in the eye of law and Rajasthan Cricket Association is hereby held to be State within the meaning of Article 12 of the Constitution of India being other authority created under the Act of 2005.

24. While rejecting the above objection, very important fact which is not agitated by either of the parties in clear terms but, at the same time, is established from the documents filed along with the writ petition that initially an ad hoc committee was appointed by the Registrar, Co-operative Societies vide order dated 20.02.2009. Said order has been placed on record as Annex.-5, by which, the Registrar, Co-operative Societies, Sriganganagar appointed an ad hoc committee for Sriganganagar District Cricket Association, in which, six persons were included as Members of the Committee and Shri Dharamveer was appointed as Convener of the Committee; meaning thereby, while exercising power u/s 23 of the Act of 2005, the Registrar made an inquiry and, after providing opportunity of being heard, the aforesaid order dated 20.02.2009 was passed u/s 24(1)(a) and, as per said Section, the ad hoc committee was to conduct fresh elections within three months.

25. Aforesaid order dated 20.02.2009 was challenged by way of filing writ petition before this Court which was registered S.B. Civil Writ Petition No. 1521/2009, Sriganganagar District Cricket Association & Another vs. State of Rajasthan & Another. Said writ petition was dismissed on 26.02.2009 on the ground of availability of alternative remedy by way of filing appeal u/s 35 of the Act of 2005. The order dated 26.02.2009 passed by this Court was challenged before the Hon'ble Supreme Court. At that time, the office bearers of Sriganganagar District Cricket Association were claiming that they are entitled to cast votes in the election of the Rajasthan Cricket Association being office bearers of the district-level Association. Said SLP was registered as Application

for Special Leave (Civil) No. (D) 6140/2009, in which, Hon"ble apex Court issued direction on 27.02.2009 that, "petitioners before us viz., Mehmood M. Abdi, President and Vinod Saharan, Secretary of the District Cricket Association may be allowed to cast their votes on behalf of Sriganganagar District Cricket Association in the elections of Rajasthan Cricket Association". Further, It was ordered that the votes cast in the election by these petitioners may be kept separate in sealed cover and may be taken into consideration if it is necessary for declaring the result.

26. Thereafter, during the pendency of the said SLP, in pursuance of order dated 20.02.2009, certain directions were issued by the Convener of the ad hoc Committee Shri Dharam Veer on 12.03.2009 but the said letter was stayed by the Hon"ble Supreme Court on 24.04.2009. Thereafter, election programme was also issued on 15.05.2009 but, in view of the fact that Hon"ble Supreme Court stayed the letter dated 12.03.2009, the convener withdrew the said election notice as the same would be in sheer violation and in contempt of order dated 18.03.2009 passed by Hon"ble Supreme Court. Thus no election was conducted by the ad hoc committee because the proceedings against order dated 20.02.2009 was pending before the Hon"ble Supreme Court in the SLP filed by Sriganganagar District Cricket Association.

27. The Special Leave to Appeal No. 5720/2009 was listed before the Hon"ble apex Court on 05.04.2010. On that date, the said SLP was dismissed as having become infructuous on the ground that as per information given to Hon"ble Supreme Court, the election of Sriganganagar District Cricket Association was held on 05.03.2010. It is very strange that the fact as to who conducted the election on 05.03.2010 was not brought to the notice of the Hon"ble Supreme Court. The only information was given to Hon"ble Supreme Court that election was held on 05.03.2010 and, on that statement, the apex Court deemed it just and proper to dismiss the petition as having become infructuous.

28. In the pleadings of this case it is nowhere pleaded whether any information was given to the Hon"ble Supreme Court that elections were conducted by the ad hoc committee or not; meaning thereby, order dated 20.02.2009 which was subject-matter before this Court in the earlier writ petition challenging the said order was under challenge and, till today, there is no order of any Court or Registrar that order dated 20.02.2009 has been quashed or set aside whereby initially ad hoc committee was appointed; meaning thereby, on the basis of incorrect information furnished before the Hon"ble Supreme Court, the SLP filed by Sriganganagar District Cricket Association was got dismissed as having become infructuous without any adjudication upon the order of appointment of ad hoc committee.

29. In this case, the Rajasthan Cricket Association vide the impugned order Annex.-22 has recognized the office bearers of Sriganganagar District Cricket Association namely, Hemant K. Sharma, Sanjay Meena and Shyam Sundar, who were elected in so called election conducted on 04.03.2010 and petitioner

Association is claiming that valid election was held on 05.03.2010 and said fact was brought to the notice of Hon"ble apex Court that election was held on 05.03.2010, therefore, their election is valid.

30. In my opinion, to maintain judicial discipline as held by Hon"ble Supreme Court in the case of Official Liquidator Vs. Dayanand and Others, , once the writ petition was dismissed by this Court against order of appointment of ad hoc committee dated 20.02.2009 passed by the Registrar, Cooperative Societies, Sriganganagar and order was challenged before the Supreme Court by way of filing SLP and, said SLP was dismissed as infructuous, upon non-disclosure of the fact that who has conducted election on 05.03.2010, therefore, it cannot be said that order dated 20.02.2009 whereby "ad hoc committee" was appointed loses its legal sanctity, therefore, obviously whatever elections were to be held were to be held only by the ad hoc committee and executive body of the RCA is under obligation to ensure the compliance of the provisions of the Act. Therefore, without commenting on merit of the case, while holding that the RCA is State within the meaning of Article 12 of the Constitution of India, it is hereby held that writ petition is maintainable against the respondent Rajasthan Cricket Association and Rajasthan Cricket Association is under obligation to act in accordance with the provisions of the Act of 2005.

(B) The preliminary objection (B) has been raised with regard to filing of this writ petition in the name of Sriganganagar District Cricket Association through its Secretary who has been declared disqualified u/s 24 of the Act of 2005. In this connection, I have perused order dated 20.02.2009, in which it is revealed that though the ad hoc committee was appointed but there is no specific order with regard to declaring the office bearers of the Association to be disqualified.

31. The following order dated 20.02.2009 (Annex.-5) was passed by the Registrar, Co-operative Societies, Sriganganagar, whereby, "ad hoc committee" was appointed:

32. The above order dated 20.02.2009 is still in existence and elections were required to be conducted by the said ad hoc committee but, contrary to the said order, now, two elections have been conducted on 04.03.2010 and on 05.03.2010 in which the office bearers of petitioner Association and respondents No. 3 to 5 were declared elected, that too, not by the ad hoc committee and, in connection with resolution of the dispute of two elections, two Arbitrators have been appointed and arbitration proceedings are still pending at the stage of execution, therefore, it is not proper to decide the issue whether the office bearers of petitioner Association were declared disqualified because it is subject-matter of the arbitration proceedings. Therefore, this writ petition cannot be dismissed on the ground of disqualification.

(C and D) I have considered the arguments advanced by learned counsel for the parties with regard to afore-mentioned preliminary objections (C) and (D).

33. Upon perusal of the above facts stated by both the parties, it is abundantly

clear that two writ petitions being, S.B. Civil Writ Petition No. 5077/2010 and S.B. Civil Writ Petition No. 6016/2010 were filed by Sriganaganagar District Cricket Association before this Court and both petitions were dismissed in limine.

34. In S.B. Civil Writ Petition No. 5077/2010, following prayer has been made:

It is, therefore, respectfully prayed that record of the case may kindly be called for and this Hon''ble Court may by an appropriate writ, order or direction be pleased to:

- a. Declare that the petitioner No. 1 association represented by petitioner no. 2 continues to be the duly affiliated member of respondent no. 3 association;
- b. Direct the respondent no. 3 to allow the petitioner no. 1 association represented by petitioner no. 2 to send its players and teams to participate at the State Level Tournaments and further be pleased to direct the respondent no. 3 to arrange to provide training and coaching facilities to the players of petitioner no. 1 association;
- c. Respondent authorities may kindly be directed to make all communication with the office bearer elected on 05.03.2010, petitioner herein while treating them legally affiliated body;
- d. By an appropriate writ, order or direction the Respondent authorities may be restrained from interfering with the rights and duties of the petitioners to act as a registered District Cricket Association; and
- e. Entire record pertaining to the case may also be called for.
- f. any other appropriate relief(s) which this Hon''ble High Court deems just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner Association.

35. While disposing of the said writ petition, vide order dated 26.05.2010, co-ordinate Bench of this Court passed the following order:

This is a writ petition filed by writ petitioner under Article 226/227 of Constitution of India seeking a writ of mandamus against the respondent in relation to subject matter of writ petition. Having heard the learned counsel for the petitioner and on perusal of record of the case, and taking into consideration the nature of controversy, I am of the considered view that remedy of petitioner lies in prosecuting their grievance firstly before the sole Arbitrator in a pending arbitration reference between the parties wherein certain interim awards are claimed to have been passed by the sole arbitrator in their favour which are made basis for prosecuting this writ petition and thereafter if occasion arises to take recourse to the remedies available under the provisions of Arbitration and Conciliation Act, 1996 which are made applicable to this case by virtue of provisions contained in Rajasthan Sports (Registration, Recognition and Regulation of Associations) Act, 2005 for pursuing the grievance further. A writ of mandamus in the facts of this case may not be the appropriate remedy under

Article 226/227 of Constitution.

In the light of foregoing discussion and liberty I decline to entertain this writ petition and dismissed the same in limine.

36. Following prayer was made in S.B. Civil Writ Petition No. 6016/2010:

It is, therefore most humbly prayed that your lordships may be pleased to allow this petition and be pleased to issue appropriate writ, order or direction thereby-

A. Calling for the record from respondent no. 1 of entire proceedings including his appointment letter/order.

B. Respondent No. 1 may be directed to produce the documents demanded vide Annex. 35 before the Hon''ble Court and the same may be quashed.

C. Or in the alternative the respondent no. 1 may be directed to make the documents available to the petitioner association.

D. Quashing and setting aside the appointment of respondent no. 1 as arbitrator and terminating the mandate of respondent no. 1 to act as arbitrator in the matter of dispute regarding Sriganganagar District Cricket Association.

E. Quashing and restraining Respondent no. 1 from proceeding further in the matter of dispute regarding Sriganganagar District Cricket Association.

F. Quashing and setting aside the orders dated 25.4.2010 (Annex. 28), 12.6.2010 (Annex. 31), 27.6.2010 (Annex. 37), and 3.7.2010 (Annex. 41), passed by Respondent No. 1.

G. Quashing and setting aside the entire arbitral proceedings as well as award if any passed by the respondent no. 1.

H. Any other order which the Hon''ble Court may deem just and proper in the case may also be passed in favour of petitioners.

37. While disposing of the writ petition vide order dated 13.07.2010, coordinate Bench of this Court passed the following order:

The petitioner stated that a arbitrator Sh. RK Jain has been appointed and was proceeding with the arbitral proceedings and ultimately he passed the award on 10th July, 2010. However, one Sh. Vibhuti Bhushan Sharma is also stared arbitration proceedings, but the petitioners are not aware about any order appointing him as arbitrator and petitioner when came to know about the fact of proceeding of said Sh. Vibhuti Bhushan Sharma as arbitrator gave an application through advocate demanding copy of the order/letters/agreement or any other communication regarding appointment of said Sh. Vibhuti Bhushan Sharma as arbitrator as well as also demanded copies of the claims petitions, applications and pleadings made before the arbitrator by the claimant or any other party and demanded other documents and any order if has been drawn by the arbitrator. The petitioners also submitted objection about the maintainability of the said

proceedings.

Learned counsel for the petitioners submits that the arbitrator was never appointed by any lawful order or by the agreement of the petitioners and any other claimant, however, today, the petitioners received e-mail message intimating that the arbitrator Sh. Vibhuti Bhushan Sharma has passed the award on 3rd July, 2010.

The petitioners are disputing passing of the award on 3rd July, 2010. However, when award has been passed by the arbitrator, the proper remedy is to challenge the award under the Arbitration and Conciliation Act, 1996 and, therefore, this writ petition is not entertained. The petitioners will be free to raise all their grounds including which have been raised in this petition under the Act of 1996 in accordance with law.

With these observations, this writ petition is dismissed.

38. Upon perusal of the prayers made in this writ petition and prayers made in S.B. Civil Writ Petition No. 5077/2010, it is revealed that prayers (b) to (h) made in the present writ petition and prayers (a) to (f) made in S.B. Civil Writ Petition No. 5077/2010 are verbatim identical and, in the present writ petition, one more prayers was added which is prayer clause (a) in addition to all those prayers which were already made in S.B. Civil Writ Petition No. 5077/2010.

39. In this writ petition, though the petitioner has annexed the order passed by the co-ordinate Bench of this Court in S.B. Civil Writ Petition No. 5077/2010 but copy of the writ petition has not been annexed. In my opinion, the argument of learned counsel for respondents No. 1 and 2 with regard to concealment of fact in this writ petition has no force because order passed by the coordinate Bench of this Court has been annexed to the writ petition. Therefore, it cannot be said that intention of the petitioner was bad because order Annex.-20 has been filed by the petitioner with the writ petition.

40. With regard to concealment of fact of filing another writ petition, S.B. Civil Writ Petition No. 6016/2010, in my opinion, the controversy in the said writ petition was altogether different than one agitated by the petitioner Association in the present writ petition. Therefore, it cannot be said that petitioner has made concealment of fact that another writ petition, S.B. Civil Writ Petition No. 6016/2010 was filed previously by the petitioner Association because upon perusal of the prayers made in the said writ petition, it is quite clear that the prayer was with regard to appointment of one Dr. Vibhuti Narain Sharma as Arbitrator with regard to dispute of election said to be held on 04.03.2010. Therefore, the objection with regard to concealment of fact is not tenable and hence rejected.

41. Now, the question with regard to legal ground viz., based upon the principle of res judicata is required to be considered. For the same, first of all, it emerges from the facts of the case that undisputedly earlier the writ petition was filed by

the petitioner which was registered as S.B. Civil Writ Petition No. 5077/2010, in which, prayers (a) to (f) were made and, in the present writ petition again, said prayers are made by the petitioners which is from prayers clauses (b) to (h). Upon perusal of both the writ petitions, it is revealed that prayers are identical in nature but prayer clause (a) of this writ petition was not made in the earlier writ petition though it was in existence but, for the same, it is pleaded by the petitioners that for the first time knowledge of issuance of certificate of affiliation dated 30.04.2010, Annex.-22 came to the knowledge of the petitioner on 04.07.2010 in the proceedings before the Arbitrator where the dispute with regard to election dated 05.03.2010 was subjudice. If this fact is accepted then also it will reveal from the facts that subsequent writ petition which is filed on 07.07.2010, the order was well within the knowledge of the petitioner Association but the same was not brought to the notice of this Court in subsequent writ petition which was decided on 13.07.2010 though in that writ petition, appointment of respondent No. 1 of that writ petition Shri Vibhuti Narain as Arbitrator was under challenge; meaning thereby, the certificate of affiliation dated 30.04.2010 which is said to be issued by respondent No. 2 was in existence prior to filing S.B. Civil Writ Petition No. 5077/2010 which was filed in the month of May 2010 and S.B. Civil Writ Petition No. 6016/2010 was filed on 07.07.2010 but in both the writ petitions the certificate of affiliation dated 30.04.2010 was not challenged and it was accepted in the pleadings that at the time of filing writ petition on 07.07.2010, again, the certificate of affiliation dated 30.04.2010 was not placed on record or challenged by the petitioner Association; meaning thereby, as per language of Section 11 of the Code of Civil Procedure, the petitioner cannot be permitted to make the same prayer which was already rejected by this Court on the ground that remedy under the Arbitration & Conciliation Act is available. Both the co-ordinate Benches observed in their respective orders that remedy under the Arbitration & Conciliation Act is available to the petitioner Association. Therefore, contention advanced by Mr. L.R. Mehta, learned counsel appearing for the petitioners, that the matter was not decided finally has no force of law. Once the writ petition was filed in which certain prayers were made and this Court refused to entertain the writ petition on the ground of availability of remedy, then, in my view, the petitioner cannot be permitted to re-agitate the same prayers on the ground that between the period certificate of affiliation has come to the knowledge of the petitioner.

42. I have perused the judgments cited by learned counsel for both the sides. I have also perused Section 11 and Rule 2(2) of the Code of Civil Procedure, in which, it is clear that if any suit or proceeding is dismissed on certain prayers for any reason, then, for the same, petitioner cannot be permitted to re-agitate the same matter by way of filing subsequent suit. The basic principle of law is that once the matter has been decided by the Court, then, for the same prayers, subsequent writ petition is not entertained and bar of principle of res judicata will apply. There is substance in the argument of learned counsel for respondents No. 1 and 2 that once this Court has declined to interfere in the matter on the

ground that remedy is available elsewhere, then, it will be deemed that co-ordinate Bench was not inclined to interfere in the matter. In this view of the matter, this subsequent writ petition, which is filed for the same prayers (a) to (f) made in S.B. Civil Writ Petition No. 5077/2010, which are prayers (b) to (h) in the present writ petition, is not maintainable on the basis of principle of res judicata.

43. With regard to prayer clause (a) in this writ petition, whereby, the petitioner has made prayer for quashing Annex.-22, whereby, certificate of affiliation was granted to office bearers, respondents No. 3 to 5, in my opinion, it emerges from the record of the case that the said affiliation certificate has been granted on the basis of election held on 04.03.2010 but which authority conducted the said election is not on record. So also, it appears from the facts of the case that order dated 20.02.2009 passed by the Registrar, Co-operative Societies, Sriganganagar is still in existence, as noted hereinabove, because it has not been quashed so far, therefore, adjudication in respect of prayer clause (a) is necessary in this writ petition because after promulgation of the Act of 2005, election can be held either by the existing executive committee at the time of expiry of the term or by the ad hoc committee appointed by the Registrar. Therefore, although on the ground that earlier writ petition filed against the order of the Registrar dated 20.02.2009 was dismissed by this Court and before the Hon''ble Supreme Court no prayer was made to adjudicate the matter by the petitioner Association and SLP was rendered infructuous and dismissed on the fact that elections have been conducted on 05.03.2010; meaning thereby, correct position was not brought to the notice of the Hon''ble apex Court, so also, there is no material on record to show what is the basis of granting affiliation certificate to respondents No. 3 to 5 by the Rajasthan Cricket Association. Further, it has to be ascertained from the Registrar, Co-operative Societies, Sriganganagar whether order dated 20.02.2009, whereby, ad hoc committee was appointed is still in existence or not. Therefore, to the extent of adjudication qua prayer clause (a) made in this writ petition, this writ petition is held maintainable.

44. In view of the aforesaid position, this writ petition is dismissed to the extent relief is sought in prayer clauses (b) to (h) because said prayers are barred by the principle of res judicata. The writ petition is held to be maintainable in respect of only the relief sought vide prayer clause (a). Hence, notice be issued to the remaining respondents except respondents No. 1, 2 and 4, returnable within two weeks.