
(2009) 02 RAJ CK 0070
In the Rajasthan High Court

Sriganganagar District Cricket Association and Another	APPELLANT
Vs	
State of Rajasthan and Others	RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (2009) 3 RLW 2596

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—This writ petition has been filed by the petitioners challenging the validity of impugned order dated 20.02.2009 passed by the Assistant Registrar (Annex.-P/9) and praying for quashing the same. Further, it is prayed that entire proceedings initiated pursuant to the complaint filed by Shri Radhey Shyam Goyal may also be quashed and it may be held that the entire proceedings initiated on the aforesaid complaint is without jurisdiction.

2. According to facts of the case, it is stated in the writ petition that the petitioner District Cricket Association is affiliated to the Rajasthan Cricket Association is a district level sports association registered under the Rajasthan Sports (Registration, Recognition & Regulation) Act, 2005 (in short, to be called hereinafter as "the Act of 2005"). The petitioner Association had earlier preferred a writ petition before the Jaipur Bench of the Rajasthan High Court, in which, the petitioner Association challenged order dated 30.01.2009 passed by respondent No. 4. The said writ petition filed by the petitioner Association was registered as S.B. Civil Writ Petition No. 1634/2009. The writ petition so filed earlier by the petitioner Association was decided finally by this Court at Jaipur Bench vide order dated 11.02.2009 (Annex.-3). In that order, this Court at Jaipur Bench, while taking note of the order passed by this very Bench in S.B. Civil Writ Petition No. 1031/2009, Vijay Singh Choudhary v. State of Rajasthan and Ors. decided on 09.02.2009, disposed of the writ petition granting opportunity to the petitioner

Association to file appeal u/s 35 of the Act of 2005 against the order passed by the Registrar, Cooperative Societies. While passing the said order, the order impugned dated 30.01.2009, passed by the Registrar, Cooperative Societies, Jaipur, was kept in abeyance for a period of two weeks and directed the petitioner to avail the remedy available before the appellate authority. The petitioner Association has accordingly preferred appeal which is said to be pending before the appellate authority.

3. Earlier, the petitioner Association had preferred writ petition before this Court being S.B. Civil Writ Petition No. 1367/2009. In that writ petition, the petitioner Association challenged notice Annex.-4 dated 17.02.2009, which is said to be issued u/s 24 (1) (a) of the Act of 2005. The said writ petition was listed in the Court on 19.02.2009 and the next date of hearing was fixed upon the caveat filed by the respondents on 25.02.2009. Before that, although an application was filed by the Secretary of the petitioner Association, praying therein, not. to pass any order before hearing of the writ petition; but, the order impugned was passed on 20.02.2009, which is now challenged in this writ petition and the earlier writ petition filed by the petitioner Association against notice Annex.-4 was rendered infructuous and was dismissed on 25.02.2009.

4. In this writ petition, the main contention of learned Counsel for the petitioners is that initial notice issued to the petitioner on 10.02.2009 u/s 23(1)(c) of the Act of 2005 was totally without jurisdiction and, by way of filing reply to the said notice, it was specifically pleaded before the Assistant Registrar, Cooperative Societies,, Sriganganagar that the notice is totally without jurisdiction and the grounds raised in the reply speak that the said notice was without jurisdiction; but, in the case, the Assistant Registrar, Cooperative Societies, Sriganganagar held that authority and jurisdiction is vested in the authority, then, a request was made that opportunity of personal hearing may be granted and opportunity to file detailed reply to the notice dated 10.02.2009 may be afforded.

5. The contention of learned Counsel for the petitioner is that although reply to the notice Annex.-P/2 dated 10.02.2009 issued u/s 23 (1) (C) of the Act of 2005 was filed but without considering the reply so also without providing any opportunity of hearing, straight away, the plea of the petitioner with regard to jurisdiction was rejected and notice u/s 24 (1)(a) was sent to the petitioner on 17.02.2009, in which, it is clearly stated that the petitioners have failed to produce record, therefore, for the reason that Shri Mehmood M. Abdi is holding the post of President of the Association contrary to the by-laws after resignation submitted by the elected President Shri Sandeep Kumar on 07.03.2006, therefore, in the notice dated 17.02.2009, the petitioner was directed to file his reply, so also, explain its stand before the Registrar, failing which," it was ordered that ad hoc Committee will be appointed while dissolving the present Executive Committee.

6. Contention of learned Counsel for the petitioners is that against the said notice dated 17.02.2009, on the one hand, writ petition was preferred before this Court

which was registered as S.B. Civil Writ Petition No. 1367/2009 and, on the other hand, on 20.02.2009, an application was filed before the Deputy Registrar, Cooperative Societies, Sriganaganagar and a prayer was made that till the decision of the writ petition filed against notice dated 17.02.2009 further proceedings may not be taken. Another application was filed on 17.02.2009 by the Secretary of the petitioner Association in which the documents said to be filed by the complainant Shri Radhey Shyam Goyal were requested to be made available. But, without considering the prayer of the petitioners for deferring the matter till decision of the earlier writ petition filed by the petitioner against the notice, the Registrar, Cooperative Societies passed order dated 20.02.2009, whereby, the petitioner Association has been dissolved and, in place of the petitioner, ad hoc Committee has been constituted and, in fact, all this proceedings has been taken to constitute ad committee which is obvious from the impugned order dated 20.02.2009.

7. Learned Counsel for the petitioners vehemently argued that for initiating action against the District Cricket Association proceedings u/s 23 (1)(c) was taken and the notice was issued, whereas, according to Section 23 of the Act, enquiry is required to be conducted by the Registrar on the request of the State-level Sports Association or on the request of not less than one-tenth number of total members of the Association or on its (authority"s) own motion and, further, for the purpose of enquiry u/s 23, there is complete procedure laid down under the rules known as Rajasthan Sports Rules, whereunder, in Chapter 4, there is provision incorporated for conducting the enquiry; but, without following the said procedure laid down u/s 8, action u/s 24 of the Act of 2005 for dissolving the Association was initiated vide notice dated 17.02.2009 without even affording opportunity to the petitioner for filing detailed reply to the notice dated 10.02.2009 issued u/s 23 (1) (c) and the matter has been decided by the respondent which is totally arbitrary and illegal.

8. Learned Counsel for the petitioners vehemently argued that notice dated 10.02.2009 cannot be treated to be notice on his own motion by the Registrar, Cooperative Societies because upon perusal of the notice it will reveal that on the complaint filed by Shri Radhey Shyam Goyal, the petitioner was directed to submit para-wise reply to the complaint; but, in fact, no action can be taken against the so-called complaint made by Shri Radhey Shyam Goyal, therefore, the notice is totally without jurisdiction and, further, it was prayed in the reply that if the Registrar feels that there is jurisdiction, then, opportunity of personal hearing as well as filing detailed reply to the complaint may be given.

9. Learned Counsel for the petitioner vehemently argued that prayer of the petitioner was not considered and, so also, while giving a complete goodbye to the procedure laid down u/s 24 of the Act of 2005 and rules framed thereunder, the order impugned has been passed which is totally without jurisdiction and illegal. Learned Counsel for the petitioner submits that action of the respondents is totally mala fide and it contrary to the basic principles of law because the

respondents have passed order in this case without following the procedure laid down under the rules which is not permissible under the law. It is contended that the respondent Registrar was to wait for the earlier writ petition to be decided, in which, notice was challenged. Therefore, illegality has been committed while proceeding against the petitioner Association and, so also, the Registrar has failed to observe the provisions of law for conducting enquiry u/s 23 of the Act of 2005.

10. Learned Counsel for the petitioners vehemently argued that the order has been passed u/s 24 whereby the members of the petitioner Association have been disqualified while ignoring all the procedure laid down in the rules and Without granting opportunity of hearing, therefore, the order dated 17.02.2009 is contrary to rules and, so also, passed without providing opportunity of hearing. It is vehemently argued that the whole basis of initiating action against the petitioner is complaint filed by Shri Radhey Shyam Goyal and according to Section 24 of the Act of 2005 no enquiry can be held and, for the same, he is required to follow the procedure laid down in the rules for conducting the enquiry but the same has not been done. Therefore, the impugned notice dated 17.02.2009 as well as impugned order dated 20.02.2009 deserves to be quashed. The action has been taken at behest of, one Shri Radhey Shyam Goyal and the same is politically motivated and, as such, impugned order deserves to be quashed.

11. Per contra, the learned Addl. Advocate General who has entered caveat on behalf of the Registrar, Cooperative Societies, Sriganganagar while filing reply, vehemently raised objection that, first of all, this writ petition is not maintainable in view of the fact that alternative remedy is available to the petitioner by way of filing appeal under the Act of 2005. Further, it is argued by the learned Addl. Advocate General that in the case of Vijay Singh Chaudhary v. State of Rajasthan and Ors. (supra), this Court dismissed the writ petition on the ground that there is statutory remedy available u/s 35 of the Act of 2005 and the petitioner also preferred writ petition at Jaipur Bench challenging the order dated 30.01.2009 passed by the Registrar, Cooperative Societies, Jaipur and the said writ petition was registered as S.B. Civil Writ Petition No. 1634/2009; and, the coordinate Bench of this Court at Jaipur Bench, while following the order passed by this very Bench at the Principal Seat in S.B. Civil Writ Petition No. 1031/2009, decided on 09.02.2009, disposed of the petitioner's writ petition filed at Jaipur Bench with liberty to avail alternative remedy provided under the Act of 2005 u/s 35, therefore, in view of the fact that earlier, at the Jaipur Bench, the order of the Registrar was challenged and the said writ petition was disposed of while granting opportunity to the petitioner Association to avail statutory remedy u/s 35 of the Act of 2005, therefore, now the petitioner is challenging the order passed by the Registrar, Cooperative Societies, Sriganganagar by way of filing this writ petition at the Principal Seat but the fact is same that earlier petition challenging the order passed by the Registrar, Cooperative Societies, Jaipur, in which, the petitioner was challenging the order dated 30.01.2009 passed by the

Registrar, Cooperative Societies, Sriganganagar and was directed to avail alternative remedy available u/s 35 of the Act. Here, in this writ petition, the petitioner is challenging the order passed by the Registrar, Cooperative Societies, Sriganganagar dated 20.02.2009; and, for the same, still it has statutory alternative remedy u/s 35 of the Act of 2005 and, once this Court has dismissed the writ petition on the ground of availability of alternative remedy, then, this writ petition is not maintainable and the petitioner is required to avail statutory remedy provided u/s 35 of the Act of 2005, therefore, this writ petition is not maintainable.

12. Learned Counsel for the respondent caveator argued that this writ petition has been filed by Sriganganagar District Cricket Association while disclosing the identity that it is registered society under the Act of 2005 and Secretary Vinod Saharan has been authorized to file this writ petition, so also, Vinod Saharan in his personal capacity has preferred this writ petition jointly but, in fact, after passing order dated 20.02.2009, Vinod Saharan ceased to be Secretary because the Committee in which Shri Vinod Saharan was Secretary was already dissolved by the order impugned dated 20.02.2009, therefore, this writ petition filed by the petitioner Association in the name of Association is not maintainable and, therefore, the writ petition may be dismissed on this count also.

13. Learned Counsel for the respondent argued that in this matter the petitioner is challenging order dated 20.02.2009 and the said order was passed after granting opportunity of hearing to the petitioner while issuing notice on 17.02.2009. Before that, on 10.02.2009, suo motu action was taken by the Registrar, Cooperative Societies, Sriganganagar u/s 23 (1)(a) of the Act, whereby, opportunity of explanation was given to the petitioner while supplying a copy of the complaint filed by Radhey Shyam Goyal. Therefore, the petitioner cannot raise voice that the procedure laid down in the rules for conducting enquiry was not followed. In fact, even if any procedural lapse occurred, then also, the petitioner can raise his ground for not following the procedure while resorting to remedy available under the statute as provided by Section 35 of the Act. The petitioner cannot be permitted to avoid the statutory remedy available to it, even if this writ petition is entertained while accepting the identity of the Sriganganagar District Cricket Association.

14. Learned Counsel for the respondent has pointed out that the order passed by this Bench in Vijay Singh Choudhary's case on 09.02.2009 was followed by the coordinate Bench in the petition filed by the Sriganganagar District Cricket Association at the Jaipur Bench and the order passed in S.B. Civil Writ Petition No. 1637/2009, in which, the petition was solely disposed of while following the order passed by this very Bench at the Principal Seat. Therefore, for maintaining consistency it is necessary to follow the judgment which is rendered by this Bench itself. Hence, this writ petition deserves to be dismissed for this reason also.

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

16. Without entering into the merit of the case, first of all, it is necessary to decide the preliminary objections with regard to maintainability of this writ petition in view of availability of- the alternative remedy. It is true that according to Section 35 of the Act of 2005, there is provision for filing appeal. Section 35 of the Act of 2005 reads as follows:

35. Appeal.-(1) Any Sports Association or person aggrieved by an order made by the Registrar under the provisions of this Act may appeal against the order to the Secretary to the Government, Department of Youth Affairs and Sports within thirty days of such an order being made.

(2) The decision of the Secretary to the Government, Department of Youth Affairs and Sports made in such an. appeal shall be final and a revision against his order may lie with the High Court within thirty days of such an order.

17. The earlier writ petition filed by Vijay Singh Choudhary was listed before me in which order passed by the Registrar was challenged. The said writ petition was registered as S.B. Civil Writ Petition No. 1031/2009, in which, following order was passed by this Bench:

This writ petition is dismissed on the ground of availability of alternative remedy of appeal u/s 35 of the Rajasthan Sports Act, 2005. The petitioner may file appeal within a period of ten days from the date of receipt of certified copy of this order. Upon filing the said appeal, the same may be decided expeditiously.

18. After passing the above order in Vijay Singh Chaudhary's case, the petitioner Association preferred writ petition at Jaipur Bench challenging the very same order challenged by Vijay Singh Choudhary in the aforesaid writ petition.

19. The writ petition filed by the petitioner Association was dismissed by the co-ordinate Bench at Jaipur Bench vide order dated 11.02.2009 and liberty was granted to the petitioner Association to avail the remedy available under the Act. Till then, however, the impugned order was kept in abeyance; meaning thereby, the order passed by this Court was followed by the coordinate Bench at the Jaipur Bench.

20. In the case of Official Liquidator Vs. Dayanand and Others, recently the Hon"ble Supreme Court has held that there must be consistency in the orders passed by the Courts. While dealing with the aforesaid proposition, following adjudication was made by the apex Court in para 78, 90 and 91:

78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. There cases are illustrative of nonadherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia

v. Administrator General of W.B. This Court observed: AIR p.941, PARA 19

19... If one thing is more necessary in law than any other thin, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decision. If one Division Bench of a High Court is unable to distinguish the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and given effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the high Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own high Court.

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the" verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional setup every citizen in under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issued and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

21. The apex Court has held that the power to adjudicate upon important constitutional and legal issued and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. Further, it is observed that if the courts command others to act in accordance with the provisions of the Constitution and

rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. The apex Court has, in clear words, adjudicated that there must be a judicial discipline and Courts are required to maintain the judicial discipline.

22. In this case, although the petitioner has alleged certain irregularities regarding non-compliance of the procedure laid down for the purpose of conducting enquiry in Chapter 4, Rule 8 of the Rajasthan Sports Rules. But, in my opinion, all these grounds can be raised and agitated by the petitioner by way of filing appeal before the authority concerned. The petitioners have raised so many other grounds with regard to violation of the principle of natural Justice and, so also, not providing opportunity of hearing prior to passing the impugned order. Although, there is no dispute with regard to exercising extraordinary jurisdiction under Article 226 of the Constitution of India even if alternative remedy is available, in view of the judgment reported in *L. Chandra Kumar Vs. Union of India and others*, but, in the peculiar facts of this case speak that earlier order of the Registrar dated 30.01.2009 was challenged by one Vijay Singh Choudhary by way of filing writ petition before this Court and the said writ petition was dismissed for the reason of availability of the statutory remedy u/s 35 of the Act and, that order was followed by the co-ordinate Bench at the Jaipur Bench of this High Court in the writ petition filed by none else than the petitioner itself and the said order passed by this Court has been affirmed by the apex Court, as informed by the parties, therefore, there must be consistency in the orders passed by this Court.

23. Learned Counsel for the respondent has although pointed out that so many irregularities and illegalities have been committed by the petitioner Association out of which, important assertion has been made in Annex-4 with regard to holding the post of President by Mehmood M. Abdi; but, the petitioner has not chosen to file any reply to the notice dated 17.02.2009 and has chosen to file application for waiting for the adjudication of the writ petition so filed against the notice dated 10.02.2009. In this view of the matter, both the sides of the coin have acted contrary to law as alleged by both the parties. For the same, in my opinion, once this Court has held that no one can be allowed to surpass the remedy available under the statute in the matter of orders passed by the Registrar, Cooperative Societies, then, to maintain judicial discipline and, so also, to follow the directions issued by the apex Court in the case of *Official Liquidator (supra)*, I am of the opinion that the judgment of the apex Court is having the binding force under Article 141 of the Constitution of India over all the subordinate Court, therefore, there is no option after the judgment in the case of *Official Liquidator* left for this Court to take any other view than the proposition laid down by the Hon'ble apex Court to follow the view expressed by me in the order dated 09.02.2009 in *Vijay Singh Chaudhary's* case.

24. Admittedly, the petition filed against the order of Registrar by one Vijay Singh Choudhary was dismissed by this Court on 09.02.2009 and the said

judgment was followed by the co-ordinate Bench at the Jaipur Bench of this High Court in S.B. Civil Writ Petition No. 1634/2009, then, I am not inclined to entertain this writ petition under Article 226 of the Constitution of India and decide the matter on merit.

25. Therefore, following the judgment of the apex Court, this writ petition is dismissed on the ground that there is alternative remedy available u/s 35 of the Act of 2005 by way of filing appeal. The petitioners are, therefore, at liberty to avail the same.

26. There shall however be no order as to costs.