

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Amir Hani Muslim

Civil Appeals Nos. 368 to 370 of 2011.

(Against the judgment dated 28.10.2010 passed by the Lahore High Court, Lahore in WPs Nos. 18398/08, 17812/09 & 20670/2010 respectively).

Pakistan Sports Board and another. ... Appellants (In all cases)

VERSUS

Pakistan Volleyball Federation etc. ... Respondents (CA 368/11)
Athletics Federation of Pakistan & another. ... Respondents (CA 369/11)
Abdul Rashid Khan etc. ... Respondents (CA 370/11)

For the appellant (s): Mr. M. Munir Piracha, ASC in all cases.

For the respondent (s): Mr. M. Akram Sheikh, Sr. ASC (for respdts.1-4 in CA 368/11)

For the respondent (s): Mr. A. I. Raza, ASC

(for respdts.5 in CA 368/11, No. 1-2 in CA 369/11 & for No.2 in CA 370/11)

For the respondent (s): N.R. (for respdts.3-4 in CA 370/11)

For the respondent (s): Ex-parte (for respdts.1 & 5 in CA 370/11)

Date of hearing: 8.5.2012

Judgment

Jawwad S. Khawaja, J:- The appellants namely, Pakistan Sports Board (appellant No.1) and the Federation through the Secretary, Ministry of Culture, Sports and Youth Affairs (appellant No.2) impugn the judgment of the High Court dated 28.10.2010 whereby writ petition No. 20670/10 filed by respondents Nos.1 to 4, was allowed.

2. The said respondents Nos. 1 to 4 are respectively the Pakistan Volleyball Federation, the Pakistan Handball Federation, the Pakistan Cycling Federation and the Pakistan Gymnastic Federation. These are sports bodies created by private individuals for the promotion of the sports which are part of their respective names. In the High Court the respondents had agitated a grievance against certain portions of the Revised National Sports Policy which had been notified by the Federal Government vide SRO No. 1249 (1)/2005, dated 5.12.2005 (the Sports Policy). The Sports Policy was made pursuant to a decision taken by the Federal Cabinet. Paragraphs 5 and 6 of the writ petition filed by the respondents set out with clarity the grievance of the respondents.

To understand the same, paragraphs Nos.5 and 6 *ibid* are reproduced as under:-

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

5. That the subject matter of controversy in this case is the following provision made in para 10 (b) of this Policy, the relevant portion of which reads as follows:-

'National Federations should be re-structured on the following lines within one year upto December, 2006 namely,

10 (5) Tenure restriction of Office Bearers

(a) One tenure of any member of Federation or Association will be of four years only.

(b) President, Honorary Secretary and the Treasurer will be allowed a maximum of two tenures, in any office of the Federation or Association after which they will become ineligible for holding the same posts of that particular Federation or Association. However, they will be allowed to contest for next higher Post/Association at any time.

(c) Tenure restrictions will not be applicable on the office bearers of the Federations holding posts of President or Secretary of World/Asian Federation".

6. That para 11 of this policy deals with the office bearers of the National and Federal Olympic Committee. This para also contains similar provisions in places (b) and (c) of para 11, which reads as follows:-

(b) One tenure of any office bearer of these Committees will be of four years.

(c) President, Secretary and Treasurer will be allowed two tenures only. They will become ineligible for any office after two tenures and must vacate their position for new incumbents. However, an individual will be allowed to contest for next higher Association at any time".

3. It is clear from the above that the grievance of the respondents relates to restrictions which were sought to be imposed on the office bearers of various sports bodies affiliated with the PSB. The respondents Nos. 1 to 4 are sports bodies established on All-Pakistan basis, which claim affiliation with the Pakistan Sports Board. At this point, it is relevant to note that the Pakistan Sports Board (PSB) was constituted in exercise of powers conferred by Sections 3 and 4 of the Sports (Development and Control) Ordinance, 1962 (the Ordinance) vide Notification No. S.R.O.222(1)/81, dated 16.3.1981. Rules were also framed by virtue of the said notification for determining inter alia, the powers and functions of PSB. These rules are called the PSB Rules, 1981. The respondents Nos.1 to 4 were never compelled by PSB to become affiliated with PSB, but they chose to do so on their own.

4. Learned counsel for the appellants contended that the Ordinance empowered the Federal Government to establish the PSB and to make the PSB Rules. This has been done, as noted above. The PSB Rules as originally framed have been amended to allow the PSB inter alia, "to approve, amend and repeal constitution of National Sports Federations

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Supreme Court of Pakistan
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and Associations". According to learned counsel, the Sports Policy, including the provisions thereof reproduced above could be implemented by the PSB through exercise of powers vested in it under the PSB Rules as amended. The High Court, by means of the impugned judgment proceeded on the basis of considerations which, we say with respect, were neither germane nor relevant to the controversy raised by the respondents in their writ petition. It was observed by the High Court that the above referred provisions of the Sports Policy "might be the result of Chief Executive's Order No. 19 of 2002 whereby the qualification to hold certain public offices was settled" and it was stipulated that "a person who has, at any time, held the office of the Prime Minister or that of a Chief Minister of a Province or a combination of such offices for two terms, . . . shall not be qualified to hold the office of the Prime Minister or that of a Chief Minister". It is evident that these remarks are based on mere conjecture as there is no lawful basis for connecting the Sports Policy with the Chief Executive's Order or for observing that the Order 'might' have been the cause of the Sports Policy.

5. The High Court then noted that the aforesaid provisions which were part of the Constitution had been removed therefrom through the 18th amendment. The inclusion or subsequent exclusion of these provisions from the Constitution have no relevance with the Sports Policy which was framed pursuant to a decision of the Federal Cabinet. The High Court also observed (without adverting to the Ordinance or the Constitutionally recognized functions of the Cabinet) that the provisions of the Sports Policy "are not recognized by any law of the land". The learned Judge-in-Chambers in the High Court then remarked that the only power vested in the Federal Government was to constitute a Board and to specify its powers and functions under section 4 of the Ordinance. This is not correct as a statement of law because policy making constitutes an important element in the exercise of the executive authority of the government. The restrictive provisions of the Sports Policy which were impugned by the respondents were within the domain and competence of the Federal Government. It is an important function of the Government to frame policies. It is important to note as rightly emphasized by learned counsel representing the appellants that the PSB does not and cannot compel the respondents or any other national sports body to seek affiliation with

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Deputy Registrar
Supreme Court of Pakistan
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the PSB. If, however, a sports body does seek and obtain such affiliation, it would be obliged to abide by the rules of the PSB including rule 4 which authorizes the Board to require a sports body affiliated with it to incorporate the terms of the Sports Policy in its constitution.

6. In the foregoing circumstances, Article 17 of the Constitution has no application whatsoever. The right of the respondents or their members to join an association is nowhere under challenge and nor has it been infringed in any manner. The members of the respondents are free to enter into any association or union, and to adopt any constitution of their own choosing including one which allows for life tenures for office bearers. If, however, they seek and become affiliated with the PSB, it follows naturally that they will have to subordinate their constitution to the directives which may be issued by the PSB under the PSB Rules. The learned Judge-in-Chambers in the High Court, therefore, fell in error because he proceeded on the premise as if the PSB was interfering in the freedom of association guaranteed to the members of the respondents under Article 17 *ibid*. This premise quite clearly is not tenable because the PSB cannot regulate or control an association which does not seek affiliation with it. We are therefore not in any doubt that the members of the respondent associations would have the right to form their associations without interference from the PSB but this can only happen if the respondents do not voluntarily, and on their own initiative, seek PSB affiliation. But if they want to be affiliated with the PSB and to reap the benefits which accrue with such affiliation, they cannot claim any exemptions from following the directives which may be given by the PSB in accordance with the PSB Rules.

7. Learned counsel for the respondents Nos. 1 to 4 premised his argument on a challenge to the vires and constitutionality of the Ordinance. This, however, is not a ground either taken or urged in the writ petition before the High Court. In fact, as noted above, the controversy is restricted to para 10 (5) and para 11 of the Sports Policy which have been reproduced above. In the entire writ petition, the validity of the Ordinance has been acknowledged. Furthermore, we fail to see how the respondents can challenge the Ordinance while at the same time claiming affiliation with the PSB which has been constituted in accordance with and under the Ordinance. We should also add that a

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grievance that the right of a citizen granted by Article 17 has been infringed in circumstances such as the present raises multiple factual and legal issues. These had to be specifically pleaded in the writ petition. However, as noted above, this was not done and cannot be allowed at this stage in the absence of relevant averments in the writ petition. In any event, in view of our finding that the fundamental right guaranteed to the respondents has not been infringed, the deficiency in the pleadings or its correction at this stage has no relevance.

8. For completeness, we may add that learned counsel for the respondents referred to the cases titled Ghulam Naus v. Chief Administrator of Awajf (PLD 1966 (W.P) Lahore 978), Abul A'in Mansoori v. Govt of West Pakistan (PLD 1964 SC 673), Federation of Pakistan v. Ghulam Mustafa Khur (PLD 1989 SC 26) & L.A. Shariwari v. Government of Pakistan (1991 SCMR 1041). We have gone through the cited precedents and observe that none of these have any application or relevance to the facts and circumstances of the case before us.

9. In view of the foregoing discussion, we agree with the submissions of learned counsel for the appellants that the learned Judge-in-Chambers in the High Court proceeded on erroneous grounds while allowing the writ petition filed by the respondents Nos. 1 to 4. In this view of the matter, the appeals are allowed. Consequently, the impugned judgment is set-aside and as a result, the writ petition, filed by the respondents, is dismissed.

10. Before parting with this judgment, we may note that the matter before us was confined to a controversy between the appellants on the one hand and respondents Nos. 1 to 4 on the other. Respondent No. 5 namely, the Pakistani Olympic Association was not affected by the impugned judgment and remains unaffected by our present decision.



Approved for reporting.
 21/5/12

Cell. Jamil S. Waniyar
 Cell. Amir Hani Muslim, J
 Certified to be True Copy
 21/5/12
 Superintendent
 Supreme Court of Pakistan
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