

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 06.06.2026
Pronounced on: 03.07.2026
Uploaded on: 06.07.2026
*Whether the operative part or full
judgment is pronounced:* **Full**

LPA No.323/2025

SANJAY SARAF

... APPELLANT(S)

*Through: - Mr. Danish Majid, Advocate, with
Ms. Ahra Syed, Advocate.*

Vs.

JAMMU AND KASHMIR CRICKET ASSOCIATION & ORS.

...RESPONDENT(S)

*Through: - Mr. Rahul Pant, Sr. Advocate, with
Mr. Rajat Gupta, Advocate.
Mr. Arif Sikandar, Advocate.*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Sanjay Dhar 'J':

1) The appellant has called in question judgment dated 17.12.2025 passed by the learned Writ Court, whereby the writ petition (WP(C) No.3158/2025) filed by him challenging order dated 19.03.2025 passed by the Ombudsman Jammu and Kashmir Cricket Association (JKCA), has been dismissed on the ground that the same is not maintainable as the impugned action does not have a public element.

2) It appears that the appellants/writ petitioner (hereinafter for short “the writ petitioner”) filed a writ petition before the learned Writ Court challenging the decision of Ombudsman appointed by JKCA, Hon’ble Justice L. Narsimha Reddy, whereby faction of Whites Cricket Club headed by respondent No.4, Shri Rajeev Pandita, has been recognized for limited purpose of taking part in voting for elections of JKCA. The writ petitioner also sought a declaration that in the light of findings returned by Ombudsman Hon’ble Shri Justice Syed Bashir-ud-Din, he be declared as the lawful representative of Whites Cricket Club with the direction to the respondents including Election Officer to treat Whites Cricket Club, Kashmir, as the Court recognized affiliated unit and to refrain from extending recognition, voting rights to any faction or individual in derogation of the Court-appointed Ombudsman’s finding. A further direction upon the Election Officer to treat the writ petitioner as the only eligible representative of Whites Cricket Club, Kashmir, and that respondent No.4 has no lawful locus to represent the said Club, has also been sought.

3) Briefly stated, the grievance of the writ petitioner, as stated in the writ petition, is that order dated 19.03.2025 passed by the Ombudsman of JKCA, whereby the faction headed by respondent No.4 has been recognized for the

limited purpose of taking part in the voting for the elections of JKCA, has seriously prejudiced his rights. According to the writ petitioner, the said order is contrary to the findings recorded by the Court appointed Ombudsman Hon'ble Justice Syed Bashir-ud-Din in his order dated 29.10.2019. It was contended by the writ petitioner that he has been unanimously elected as president of the Whites Cricket Club, Srinagar and the impugned order has been passed by the Ombudsman of JKCA behind his back and without his participation in the proceedings. It was alleged that respondent No.4 is neither a duly elected office bearer of Whites Cricket Club, Kashmir nor there was any credible material demonstrating his participation as nominee representative of the said club in the JKCA working committee meetings over the years. It was contended that the impugned order has the effect of disenfranchising the writ petitioner and the genuine members of the club.

4) Before the learned Writ Court, the respondents raised a preliminary objection to the maintainability of the writ petition on the ground that the writ petition raises a purely private dispute between the two factions of a cricket club and that there is no element of public law involved in the case, therefore, the writ petition is not maintainable.

5) The learned Writ Court, after hearing the parties and after analyzing the legal position on the subject, came to the conclusion that there is no element of public law involved in the writ petition as it is a case involving a dispute between two factions of Whites Cricket Club, hence the writ petition is not maintainable. The learned Writ Court also observed that in view of Clause (C) of Section 40 of the Memorandum of Association of JKCA, the Electoral Officer is empowered to decide a dispute as to the eligibility to vote and the decision of the Electoral Officer is final and conclusive. Therefore, the writ petitioner has a remedy available for redressal of his grievances projected in the writ petition.

6) The appellant/writ petitioner has challenged the impugned judgment passed by the Writ Court on the ground that the impugned decision of the Ombudsman determines the composition of electoral college of JKCA in an election mandated by the orders of the Supreme Court and, as such, any adjudication, which confers, divests or re-allocates voting rights in such an election, cannot be reduced to a private civil dispute. It has been further contended that the learned Writ Court has failed to examine the true nature and effect of the impugned action of the Ombudsman of JKCA. According to the writ petitioner, an order passed by a person lacking lawful authority is *void ab initio* and non-est in the eyes of law and, as such, the writ petition is maintainable. It

has been contended that merely because there was an alternative remedy available to the writ petitioner, the Writ Court could not have refused to entertain the writ petition once it was shown that the impugned action of the Ombudsman was contrary to the principles of natural justice. It has been contended that Section 40(c) of the Memorandum of Association of JKCA does not bar judicial review of a decision which is tainted with illegality. It has been contended that the impugned decision of the Ombudsman being contrary to the observations rendered by the court-appointed Ombudsman, the writ petition raises a substantial question as to the illegality of the impugned order passed by the Ombudsman of JKCA.

7) We have heard learned counsel for the parties and we have also gone through the grounds projected in the appeal as also the record of the Writ Court.

8) Before the Writ Court, the writ petitioner, as already stated, has challenged the decision of the Ombudsman appointed by the JKCA. The dispute relates to determination of voting rights of two rival factions of White's Cricket Club headed by the writ petitioner and respondent No.4. By now, it is a settled position of law that the ambit of Article 226 of the Constitution being larger than the ambit of Article 32 of the Constitution, a High Court, while exercising its powers

under Article 226 of the Constitution, is vested with jurisdiction to issue writs even against a person or an authority which is neither a State nor an instrumentality of the state. The Supreme Court in the case of **Board of Control for Cricket in India vs. Cricket Association of Bihar and Ors**, (2015) 3 SCC 251, has held that the Board of Control for Cricket in India is amenable to writ jurisdiction under Article 226 of the Constitution. By that logic, the Jammu and Kashmir Cricket Association, which is a constituent of Board of Control for Cricket in India, is also amenable to writ jurisdiction under Article 226 of the Constitution, even though it may not be a State under Article 12 of the Constitution.

2) The Supreme Court in the case of **Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. Vs. V. R. Rudani and Ors.** (1989) 2, SCC 691, has analyzed the issue as to in which cases a writ petition would lie against a person or an authority which is neither a State nor an instrumentality of the State. The Supreme Court carved out two exceptions to the issuance of writ of mandamus against a person or a body which is not a State or its instrumentality; (1) if the rights are purely of private character, no mandamus can be issued, and (2) if the management of the college is purely a private body with no public duty, mandamus will not lie.

10) In **Binny Ltd. & Anr. vs. V. Sadasivan & Ors**, (2005) 6 SCC 657, the Supreme Court has observed that a writ can be issued against any private body or person only for enforcement of public duty. The Court clarified that there has to be public law element in the action of that body before a writ can be issued against such body.

11) In **St. Marys Education Society & Anr. vs Rajendra Prasad Bhargava & Ors.**, 2022 SCC Online SC 109, the judgment which has been relied upon by the learned Writ Court, it has been held that even if body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review. The Court further held that only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. The Supreme Court further held that the body or the person against whom writ is sought to be issued must be shown to owe that duty or obligation to the public involving the public law element.

12) Recently, the Supreme Court in the case of **S. Shoba vs. Muthoot Finance Ltd.** 2025 SCC OnLine SC 177, summed up the legal position in the following manner:

(1) For issuing writ against a legal entity, it would have to be an instrumentality or agency of a State or should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence Governmental.

(2) A writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State Government; (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

(3) Although a non-banking finance company like the Muthoot Finance Ltd. with which we are concerned is duty bound to follow and abide by the guidelines provided by the Reserve Bank of India for smooth conduct of its affairs in carrying on its business, yet those are of regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company.

(4) A private company carrying on banking business as a Scheduled bank cannot be termed as a company carrying on any public function or public duty.

(5) Normally, mandamus is issued to a public body or authority to compel it to perform some public duty cast upon it by some statute or statutory rule. In exceptional cases a writ of mandamus or a writ in the nature of mandamus may issue to a private body, but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

(6) Merely because a statute or a rule having the force of a statute requires a company or some other body to do a particular thing, it does not possess the attribute of a statutory body.

(7) If a private body is discharging a public function and the denial of any rights is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial but, nevertheless, there must be the public law element in such action.

(8) According to Halsbury's Laws of England, 3rd Ed. Vol.30, p.682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory

duties to perform, and which perform the duties and carries out its transactions for the benefit of the public and not for private profit". There cannot be any general definition of public authority or public action. The facts of each case decide the point.

13) From the foregoing analysis of the legal position, we are of the view that even though a writ petition is maintainable against a private body like Board of Control for Cricket in India or JKCA, yet the determinative factor as to whether a writ petition would lie against BCCI or JKCA is the nature of duty that is sought to be enforced by the writ petitioner against these bodies. While the whole issue relating to amenability of writ jurisdiction is not relevant as even a body, public or private, is amenable to writ jurisdiction, yet the test of maintainability is the function that is subject matter of the writ petition. If a public duty or public function is involved, any body, public or private in relation to that duty or function, would be subject to judicial scrutiny of the High Court under Article 226 of the Constitution.

14) Adverting to the facts of the present case, the writ petitioner is seeking to assail the decision of the Ombudsman appointed by JKCA. The dispute on which the Ombudsman has rendered his opinion is regarding the voting rights of two rival factions of a private cricket club, namely, Whites Cricket Club. The dispute involved does not at all relate to any public functioning of the JKCA. It does not relate to selection of a team or performance of JKCA or

Board of Control for Cricket in India so far as their actions affect the public at large. Who represents a particular cricket club or a particular private association is none of the concerns of the public at large and it does not affect the public. A purely private dispute between two fractions of a cricket club can, by no stretch of reasoning, be elevated to status of a dispute involving public law element. Therefore, a writ cannot be issued by this Court in respect of such a dispute.

15) Apart from the above, the Ombudsman, whose decision is being assailed by the writ petitioner, has not been appointed under any statute or any Court order. The Ombudsman has been appointed by the JKCA, a private body. A decision taken by an authority, which is neither statutory in nature nor is judicially appointed, cannot be tested by a Writ Court for the purpose of issuing a Writ of Certiorari. On this ground alone, the writ petition is not maintainable.

16) It has been argued by learned counsel for the writ petitioner that the writ petitioner would be rendered remediless if the writ petition is not entertained. The argument is absolutely without any substance as it is always open to the writ petitioner to file a suit before the Civil Court for redressal of his grievances and for assailing the decision

of the Ombudsman or for that matter the decision of the Electoral Officer rendered in terms of Section 40(c) of the Memorandum of Association of JKCA.

17) It is a settled law that in an intra-court appeal, a judgment or an order of a learned Single Judge can be set aside only when there is a patent error apparent on the face of the record or the judgment is against the established or settled principles of law. An intra-court appeal is really not a statutory appeal preferred against the judgment and order of an inferior to the superior court. Therefore, unless it is shown that there is a patent illegality committed by the learned Single Judge, it is not open to this Court to interfere in the impugned judgment of the learned Single Judge. In the present case, as already stated, we do not find any illegality, much less a patent illegality, in the view taken by the learned Single Judge vide the impugned judgment that would warrant interference by this Court.

18) For what has been discussed hereinabove, we do not find any merit in this appeal. The same is dismissed accordingly.

(Sanjay Parihar)
Judge

(Sanjay Dhar)
Judge

Srinagar,
03.07.2026
"Bhat Altaf-Secretary"

Whether the **JUDGMENT** is reportable: **YES/NO**