

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 12276 of 2016

Date of Decision: May 23, 2017

Netball Association of Chandigarh and others

.....Petitioners

Vs.

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.A.S. Narang, Advocate for the petitioners.

Mr. Vipul Aggarwal, Advocate for respondent No.1.

Mr. Suman Jain, Advocate for respondents No.2 to 4.

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M.M.S. BEDI, J.

Petitioners before this Court are Netball Associations of Chandigarh, Punjab, U.P. and Rajasthan. Through instant writ petition they seek issuance of a writ in the nature of mandamus for appointment of an Administrator-cum-Returning Officer to manage the day-to-day affairs of respondents No.2 -Netball Federation of India and to conduct the elections thereof. Petitioners also seek quashing of order annexure P-5 dated April 9, 2016 communicated on April 15, 2016 whereby the election committee, respondent No.3 was appointed; the election schedule dated April 16, 2016, annexure P-6; revised election schedule dated June 1, 2016 (annexure P-22)

and voters list (annexure P-30), declaration of result dated May 13, 2016 (annexure P-41) and all the acts performed by the said Election Committee. A direction is also sought for quashing of order annexure P-21 dated May 31, 2016 passed by the Election Committee holding that the election of Netball Association, Chandigarh was not properly held and that there was no office bearer of Netball Association of Chandigarh. The petitioners have also sought a direction to the respondent No.2-Federation through Administrator to hold elections as per the valid constitution and bye-laws annexure P-2. Not only the above said reliefs have been sought but the petitioners have further sought the exercise of writ jurisdiction by this Court for a direction to respondent No.2-Federation that it should adhere to the National Sports Development Code, 2011 by not permitting individual members i.e. the Executive Committee to cast votes and the strength of Executive Committee should not be more than 12. Petitioners seek another direction to the Administrator-cum-Returning Officer to prepare fresh voters list after deciding the objections pertaining to six new member units.

The facts relevant for the adjudication of the present writ petition are that the petitioners claimed that they are Societies registered under the Societies Registration Act, 1860 with aim of promoting, developing and regulating the game of Netball in their respective territories. The petitioner Societies are members of the respondent No.2-Federation, which is a National Sports Federation and is responsible for controlling the game of Netball in India. The respondent Federation is also a Society registered under the Societies Registration Act, 1860 and has been formulated primarily to promote, develop and regulate the game of Netball

in India. The aims and objects of the respondent No.2-Federation are, inter-alia, to promote and develop the game of Netball for both men and women in India and to maintain general control of the game of Netball in India particularly with reference to the rules and regulations; to seek international and national affiliations which may be instrumental in the development of the game; to encourage the promotion of the State organizations for development of the game and affiliation to the Federation; to secure participation in international contests; to hold international championships as approved by the International Federation of Netball Associations; to promote, control and if necessary finance visits of foreign teams to India and Indian teams to foreign countries; to organize National Championships in the country every year for men, women, junior and sub-juniors by holding All India Tournaments and Inter-Zone Championships. Petitioners have further pleaded that the respondent Federation has been granted exclusive rights by the Ministry of Youth Affairs and Sports to elect teams to represent India exclusively in International Netball Tournaments and for organizing National Level Netball Tournaments. The respondent No.2- Federation is even public authority under the Right to Information Act. As the respondent Federation discharges functions which are of public character and exclusively responsible for promoting, organizing National Level Tournaments in Netball and for selecting teams to represent India at the international arena, as such it would deem to perform State functions with financial assistance of the above said Ministry and is amenable to writ jurisdiction.

To quote the precedent of writ jurisdiction by this Court, petitioners have pleaded that they have filed CWP No. 6806 of 2016 for appointment of Administrator-cum- Returning Officer to manage the day-to-day affairs of the respondent Federation and to further finalise the voters list and conduct elections as the term of the erstwhile office bearers of the respondent Federation had expired on November 26, 2015, after the expiry of term of 4 years prescribed in Article 4-L of the Constitution of the respondent Federation. The said writ petition came up for hearing on April 11, 2016 in which notice of motion was issued and the erstwhile executive committee was restrained from holding elections vide order annexure P-3. The said stay order was communicated to the respondent Federation on April 11, 2016 and also on April 12, 2016 by e-mails annexure P-4 (colly). The erstwhile office bearers of respondent Federation prepared a fabricated letter and ante-dated the same to April 9, 2016 and appointed an Election Committee headed by Mr. Justice M.L. Mehta (Retd.). The letter was communicated on April 15, 2016 after passing of the stay order by this Court. The Election Committee appointed in a contemptuous manner, sent an election schedule dated April 16, 2016, despite the fact that the elections have been stayed by this Court. A photocopy of the election schedule dated April 16, 2016 has been appended with the writ petition as annexure P-6. Though the election schedule dated April 16, 2016 stated that the constitution of the respondent Federation was available on the website but mischievously no constitution had been uploaded till April 25, 2016 with an oblique motive to conduct election on the invalid constitution of the respondent Federation. The said facts were brought to the notice of the

Court by filing CM No.4900 of 2016 in CWP No. 6806 of 2016 with a prayer to set aside the letter dated April 9, 2016 and the election schedule dated April 16, 2016. The matter was taken up for hearing on April 29, 2016 and the writ petition was disposed of with liberty to the petitioners to raise all the objections before the Election Committee on May 2, 2016 and the same were to be decided by the Election Committee within 2 days thereafter i.e. by May 5, 2016 after giving personal hearing to the representatives of the parties and by passing a speaking order. Copy of the order dated April 29, 2016 has been appended with the petition as annexure P-7.

The grievance of the petitioners is that they appeared before the Election Committee through their representatives and filed objections dated May 2, 2016. The respondent Federation also filed reply through erstwhile Secretary General Sh.Hari Om Kaushik. The Election Committee concluded that the constitution and bye-laws would be followed for election held in 2011. The petitioners again approached this Court vide CWP No. 9343 of 2016. The writ petition was disposed of by a consent order dated May 16, 2016 wherein the order dated May 5, 2016 was set aside and the election committee was directed to pass a speaking order on all the objections raised by the petitioners after hearing the petitioners. The Election Committee was ordered to decide the objections after hearing the parties by May 31, 2016 and till then the election process had been stayed. A copy of the order dated May 16, 2016 has been appended with the petition as annexure P-9. The order dated May 16, 2016 is reproduced hereunder for ready reference:-

“On 29.4.2016, the following order was passed by this Court in CWP No. 6806 of 2016 :-

“Learned counsel for the parties are ad idem that the present writ petition may be disposed of with liberty to the petitioners to raise all their objections which are raised in the present petition as well, which shall be decided by the election committee, after giving opportunity of hearing to both the parties.

In view thereof, the present petition is hereby disposed of with liberty to the petitioners to raise all the objections as available to them before the election committee on 2.5.2016 which shall be decided by the election committee within two days thereafter i.e. by 5.5.2016 after giving personal hearing to the representative of the parties and by passing a speaking order.

Needless to mention that in case, the petitioners remain dissatisfied with the order of the election committee they would still have the remedy to approach this Court again. Till then the election process shall remain stayed.

A copy of this order be given to counsel for the parties under the signature of the Special Secretary of this Court.”

In pursuance of the aforesaid order, the Election Committee for Election of Office Bearers and Executive Committee of the Netball Federation of India, 2016-20 passed the order dated 5.5.2016, which is under challenge.

The primary objection raised by the petitioners is that though this Court had disposed of the petition with liberty to the petitioners to raise all their objections as available to them before the Election Committee on 2.5.2016 which were ordered to be decided by the Election Committee within two days

thereafter i.e. by 5.5.2016 after giving personal hearing to the representative of the parties and by passing a speaking order yet the Election Committee did not deal with all the objections raised by the parties and rather observed that:

“12. Having considered the issues, raised by the aforesaid four state units, the Election Committee observed that some of these are not within the domain and jurisdiction of the Committee as these objections are complex and require larger appreciation of facts and legal issues and cannot be resolved in a short span of time. The Election Committee further observed that the Committee will resolve the issues relating to current election process and electoral college only and will not entertain any other issue other than the above.”

Notice was issued in this petition, respondent No.2 filed its reply, which is taken on record.

After brief arguments, counsel for the parties have again agreed that the order dated 5.5.2016 passed by the Election Committee may be set aside and the matter may be remanded back to the Election Committee to pass a speaking order under separate heads of the objections raised by both the parties. Ordered accordingly.

The Parties are directed to appear before the Election Committee on 19.5.2016. The Election Committee is directed to pass a speaking order in accordance with law after hearing the parties and after considering their objections by 31.5.2016.

Till then the election process shall remain stayed.

It is needless to mention that the voters list shall be revised.

Copy of this order be given to learned counsel for the parties under the signatures of the Bench Secretary.”

Pursuant to the said directions, the Election Committee passed an order annexure P-21 on May 31, 2016. The same was communicated on June 1, 2016. On June 1, 2016, the revised election schedule was sent wherein it was stated that the voting shall take place on June 7, 2016. Photocopy of the revised election schedule prepared has been appended with the petition as annexure P-22, which was as follows:-

“REVISED SCHEDULE

1.	<i>Date of poll, if necessary</i>	<i>7th June, 2016 (Tuesday) from 11.00 am to 2.00 pm.</i>
2.	<i>Counting of votes</i>	<i>7th June, 2016 (Tuesday) at 2.30 pm.</i>
3.	<i>Declaration of Results</i>	<i>7th June, 2016 (Tuesday) after completion of counting.</i>

The venue for taking the poll, if any, counting of votes and declaration of results, mentioned in items No.1 to 3 in the Revised Schedule above, is :-- National Sports Club of India, Mathura Road, Pragati Maidan, Opposite Gate No. 3&4, New Delhi-110001.”

Through instant writ petition, the order annexure P-21 and Schedule Annexure P-22 have been challenged on the ground that the entire process conducted by the Election Committee constituted by erstwhile office bearers is without jurisdiction and void ab-initio. The main grievance of the petitioners is the constitution of the Election Committee.

The present writ petition came up for preliminary hearing before a Coordinate Bench of this Court on June 6, 2016. The declaration of the result without permission of the Court was stayed. The respondents filed misc. applications for vacation of stay as well as for expeditious disposal of the writ petition by pre-poning the date of hearing vide CM No. 7216-CWP of 2016. Misc. application bearing CM 12852-CWP of 2016 was filed for declaration of the result of the election which was held on June 7, 2012. CM No. 7844-CWP of 2016 was filed under Section 340 Cr.P.C. by the petitioners alleging that wrong averments have been made by respondent No.2 by wrongly pleading that non-declaration of result will prejudice the grant of recognition to the respondent federation for the purpose of aid etc. All the aforesaid misc. applications have been taken up for hearing with the main petition and will be adjudicated upon with the main case.

The petition has been vehemently opposed by respondent No.2 by filing a detailed written statement taking up the preliminary objections that this Court does not have territorial jurisdiction as it has been agreed to between the parties to submit themselves before the Election Committee which is having its office at Delhi and that no cause of action has accrued within the territorial jurisdiction of this Court. Since the election pertaining to entire country has been conducted at Delhi and Election Committee also has its office at Delhi, therefore, this Court had no jurisdiction to entertain the petition. Respondent No.2 has raised the plea that the earlier petition bearing CWP No. 6806 of 2016 was disposed of by a consent order wherein the constitution of the Election Committee was never disputed by the petitioners. Said petition was disposed of with liberty to the petitioners to

raise all the objections before the Election Committee vide order annexure P-7 dated April 29, 2016. Petitioner No.1 had undertaken to produce annual reports within a week before the Election Committee but instead of honouring its undertaking, it preferred CWP No. 9343 of 2016 to the prejudice of the rights of the respondents. The Federations had given consent that matter may be remanded to the Election Committee to pass a speaking order vide annexure P-9. The order annexure P-9 was assailed in LPA No. 898 of 2016 which was decided on May 26, 2016, wherein LPA Bench had clarified that the entire issue pertaining to the election was within the exclusive domain of the Election Committee and it was for the Election Committee to take decision with regard to the need of revision of voters list. Copy of the order in LPA has been appended as annexure R-2/1. The order passed by the LPA Bench on May 26, 2016 reads as follows:-

“The order appealed against is based on consent of the parties. The only grievance is directed against issue of revision of voters list. The apprehension of the appellant is that this order may be misconstrued by the Election Committee to treat it as a mandate about finality of voters list.

We do not deem it appropriate to go into the issue and leave it for the Election Committee to take a decision in this regard as the complete process of election has been entirely left to the discretion of the Election Committee. The order being self explanatory needs no addition to its content.

Appeal disposed of.”

It is alleged that petitioners, being aggrieved by the order dated May 31, 2016 which was passed by the Election Committee at Delhi, and the

election having been conducted at Delhi and the office of Election Committee being situated at Delhi, this Court does not have any territorial jurisdiction. The petition is not maintainable on account of misjoinder and non-joinder of necessary parties. The petitioners have challenged the declaration of result, annexure P-4, without impleading the elected candidates as such the petition is liable to be dismissed. Another preliminary objection has been raised that entire election process having been completed and election result having been submitted before the Court after fair and impartial election, the writ petition is not maintainable. The only remedy for the aggrieved party is to file election petition. It has been pleaded that in the previous election also the petitioners filed writ petition before Delhi High Court wherein similar allegations were made against the Returning Officer and with regard to the composition of electoral college. The Delhi High Court held that election disputes cannot be decided by way of writ petitions as such the writ petitions were dismissed. Copy of the consolidated order passed by the Delhi High Court in WP (c) No. 1733 of 2012 and connected writ petitions has been appended as annexure R-2/2 with the reply. The composite order passed by Delhi High Court pertaining to challenge to the result of election of executive committee of Netball Federation of India reads as follows:-

“By way of present two writ petitions, petitioners challenge election to the Executive Committee of Netball Federation of India conducted on 27th November, 2011. Since prayer clause in both the petitions are similar, prayers in W.P. (C) 1733/2012 are reproduced hereinbelow:-

- i) *issue a writ, order or direction in the nature of a certiorari recalling and setting aside the results of the elections to the Executive Committee of the Netball Federation of India conducted on 27.11.2011 at Delhi;*
- ii) *declare the results of the election to the Executive Committee of the Netball Federation of India conducted on 27.11.2011 as null and void;*
- iii) *issue directions to the respondent No.2 to conduct fresh elections to the Executive Committee of the Netball Federation of India in accordance with the directions passed by this Hon'ble Court vide its order dated 6.9.2011;*
- iv) *Such other and further order (s) as this Hon'ble Court may deem fit and property in the facts and circumstances of the present case may also be passed?*

On a query being put to Mr. B. Adinarayana Rao, learned Senior counsel appearing for petitioner in W.P. (C) 1733/ 2012 as to how the present writ petition is maintainable challenging the results of the election to the Executive Committee of Netball Federation of India conducted on 27th November, 2011, he states that as notice has been issued in the present petitions and as previous Writ Petition (C) Nos. 14026/ 2009 and 2591/2011 had been entertained, present writ petitions should be dismissed on the ground of maintainability.

W.P. (C) 1733/ 2012

Upon a perusal of the paper book, this Court finds that no finding was given by this Court in W.P. (C) 14026/2009 that a writ petition challenging elections of office bearers is maintainable. In fact, the said writ petition was found to be infructuous by the time it was

taken up for hearing as the term of the office bearers had already come to an end. The only direction given by this Court in the said writ petition was to appoint an Observer and that too with consent of the parties. Consequently, in the opinion of this Court, the said order in no manner supports the submission of learned senior counsel for petitioner.

This Court finds that even in W.P. (C) 2591 of 2011, the matter had been disposed of with a direction to hold elections with consent of parties.

In the present case the only dispute that survives after withdrawal of allegations against the Returning Officer appointed by this Court is with regard to composition of electoral college and whether the previous Executive Committee had a right to vote as its term had expired. In the opinion of this Court, election disputes cannot be decided by way of a writ petition.

Consequently, present writ petitions and applications are dismissed with liberty to petitioners to challenge the election results by way of appropriate legal proceedings.”

The plea of estoppel has been taken in the preliminary objection by taking up a plea that petitioners No.2 to 4 have already participated in the elections and these petitioners did not challenge the list of validly nominated candidates issued by the Election Committee on May 11, 2016 which is appended as annexure R-2/3. After declaration, candidates namely, Anil Chaudhary from Nagaland and Onkar Singh Chauhan from Arunachal Pradesh withdrew from the elections, therefore, one senior Vice President, 7 Vice Presidents, 7 Associate Secretaries and 10 Executive Members have already been elected unanimously and unopposed. Copy of the list of

elected candidates as well as contesting candidates has been appended with the reply as annexure R-2/4. The only objective of the petitioners is to delay the election process. It has also been pleaded that since the elections have already been conducted, any defeated candidate can challenge the results by filing election petition, and that the petition is not maintainable especially when the candidates against 25 posts have already been elected as unopposed on May 13, 2016. It has been pleaded that Mr. Gurbir Singh, so-called President of petitioner No.1 Association wants to leave no stone unturned to damage the Federation and players associated with the Federation. He, on the one hand is challenging the election of the Federation and on the other hand, he did not bother to furnish his election record before the Election Committee. Now for the first time, he has produced the election record along with this writ petition as annexure P-40. A bare perusal of these minutes indicates that it is a fabricated and manipulated document. By making a reference to the record it has been alleged that no meeting has been held in petitioner No.1 Association after September 28, 2013. It is apparent that the last meeting was held when Gurbir Singh was the President on September 28, 2013. Thereafter neither any voters list was prepared and nor Election Committee was constituted and without following any rules few persons declared themselves elected. Petitioner No.1, on the other hand is trying to challenge the election process which was conducted by a retired High Court Judge along with other members of the Committee consisting of retired Secretary of the Election Commission of India. It has been alleged that the conduct of the petitioners indicates that they are in the habit of filing malicious petitions. There has not been any proper authorization to file the

present writ petition. So far as conduct of petitioner No.1 and its alleged President Gurbir Singh is concerned, allegation has been levelled that he being former President of the Federation failed to settle the accounts to the tune of Rs.25,97,427/- despite show-cause notice having been issued to him, appended as annexure R-2/6. The respondent Federation is suffering monetary loss on account of non-release of any further funds to the Federation by the Ministry for the last more than 4 years for which petitioner No.1 is responsible. Respondent No.1 vide letter dated March 14, 2016 has de-recognized the petitioner Association because elections were not conducted in time regarding which a letter annexure R-2/7 had been issued. Respondent No.2 has clarified that when the Election Committee was constituted consisting of a retired Judge and a retired Secretary from the Election Commission of India and one Advocate, then the Ministry was asked to depute independent Observer. In response to the said request, Federation- respondent No.2 vide letter dated April 28, 2016, has appointed Sh. Satyajit Sankrit, Deputy Director as independent Observer vide annexure R-2/10. Similar request was made to Indian Olympic Association to appoint Observer as such Sh. Naam Dev Shironkar was deputed as Observer of Indian Olympic Association, vide letter annexure R-2/11. Election Committee having been fairly constituted and new election having already been held, the endeavour of the petitioners is to stall the entire election process. It has been clarified in the reply that on account of misconduct of the petitioners by not allowing the declaration of the result of the election till date, the respondent Federation could not get the recognition and in the absence of recognition, it is become very difficult to participate in

international tournaments, even depriving the players of the benefits provided by the Government such as travelling concession and other benefits. In the absence of the result of the election, Ministry will not be able to grant any recognition to the respondent Federation and it will neither be able to get any aid, sponsors and no transaction will be feasible with the Asian Netball Federation as such the Indian team will not be participating in the tournament. A calendar pertaining to various championships to be held at INF has been appended with the reply as annexure R-2/13. The impact of order dated July 27, 2015 passed in CWP No. 9256 of 2015 directing not to hold the elections of the Netball Federation of India was that the difficulties were faced by the respondent Federation as noticed in the agenda points 3 and 4 for the discussion of the electoral college. Since the validity of order dated May 16, 2016 requiring the Election Committee to pass final order by May 31, 2016 is required to be considered in the present petition, respondent No.2 claims that after giving full opportunity to all the parties, final decision was taken and fair and impartial election has taken place. Videography was done which indicates that no objection whatsoever was raised by the petitioners with regard to the conduct of the elections. Malafide has been attributed to the petitioners by pleading that the petitioners wants to derail the functioning of the Federation and that it was only because of petitioner No.1 that the Federation was not getting any aid from the Ministry. It is pleaded that inspite of having given undertaking before the Election Committee to provide requisite information, petitioner No.1 did not opt to provide any of the information to the Election Committee. The only endeavour of petitioner No.1 is that either Gurbir Singh should be declared

elected or there should not be any elections. It is averred in the reply that before the previous election for the three terms, Gurbir Singh, mentor of petitioner No.1 Association and now so-called President of petitioner No.1 Association, was at the helm of the affairs. He was instrumental in ensuring that no elections were conducted.

I have taken into consideration the contentions raised by both the parties and taken account of the facts enumerated in the writ petition as well as in the preliminary objections raised by respondent No.2. Maintainability of the writ petition has been questioned on account of territorial jurisdiction; respondent No.2 being not an instrumentality of the State; nonjoinder of necessary parties who have been elected; non-maintainability of the petition on the principle of estoppel as the petitioners have already participated in the election; the precedent of Delhi High Court having already dismissed similar petitions earlier; the petitioners having not been authorized by any valid resolution and the result dated May 31, 2016 of the Rajasthan Netball Federation being invalid and the election process having been started.

MAINTAINABILITY OF THE WRIT PETITION:

On earlier occasion in a case of Netball Association of Chandigarh and another Vs. UOI and others, a coordinate Bench of this Court in CWP No.1288 of 2013 decided on March 15, 2016 had decided five cases along with CWP No. 12808 of 2013 vide annexure P-24, wherein a show cause notice issued by NFI to Gurbir Singh Sandhu, for submitting utilization certificate of the financial assistance of sum of more than Rs.25 lacs for preparation of the Indian team for Common Wealth Games 2010 for

training programme held in Sydney (Australia) was challenged. Show cause notice was set aside and removal of Gurbir Singh Sandhu in the said case from membership of NFI and appointment of Adhoc Committee was held to be illegal. The question of maintainability of writ petition against the respondents is a debatable issue as the law relating to the issuance of a writ in the nature of mandamus has faced tremendous evolution and spectacular advance but relying upon the observations of Apex Court in **Anandi Mukta Sadgur Shree Mukta Jeevandasswami Suvarna Jaya Vs. V.R. Rudani and others**, AIR 1989 SC 1607 wherein the judgments of **Dwarka Nath Vs. Income Tax Officer**, AIR 1966 SC 81 and **Praga Tools Corporation Vs. Shri C.A. Imanual**, 1969 (3) SCR 773 were considered, it was observed that a writ of mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Considering the development of law, it was held in the said case that "to be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It would be sufficient for the duty to have been imposed by charter, common law, custom or even contract." It was also observed that the judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into water-tight compartment and it should remain flexible to meet the requirements of variable circumstances. The technicalities should not come in the way of granting relief under Article 226. Without entering into the controversy regarding the maintainability of the writ petition, I am of the considered opinion that since, on earlier occasion this Court had, in the interest of justice opted to entertain the similar disputes, it will not be

appropriate for this Court to reject the petition merely on the ground of want of jurisdiction.

Without expression of any opinion and without intending to lay down that a writ is maintainable and ignoring the technicalities, this Court has opted to entertain the petition to have a judicial review of the impugned order annexure P-21. The order annexure P-21 had been passed by the Election Committee for the Netball Federation of India, pursuant to the directions passed by this Court dated May 16, 2016 in CWP No. 9343 of 2016 requiring the Election Committee to pass a speaking order in accordance with law after hearing the parties and after considering their objections. Gurbir Singh had appeared before the Election Committee and represented Netball Association of Chandigarh whereas Sh. Hari Om Kaushik, Secretary General of NFI was given opportunity to file reply on behalf of NFI on May 24, 2016. The Election Committee consisted of Assistant Returning Officer, a retired Judge of Allahabad High Court. After taking into consideration all the pleas raised by the petitioners and considering the reply and rejoinder, the Committee has thoroughly considered the claims and objections filed by the petitioners and given a firm finding by passing a detailed speaking order. The findings of the Committee are reproduced hereunder:-

“1. The Committee rejected the objection filed by the respondent that Shri Gurbir Singh cannot file claims and objections and personal appearance before the Committee, on behalf of the Rajasthan Netball Association, Punjab Netball Association and Netball Association of Chandigarh, as the

Netball Federation of India expelled Shri Gurbir Singh. The Committee observed that any person can appear before the Committee on behalf of the state affiliated unit (s), subject to authorization given by the concerned unit to him. In this case, all the above mentioned three affiliated units authorized Shri Gurbir Singh, to appear or file claims and objections on behalf of the units. The Committee observed that if an advocate, who is even not a member of any affiliated unit, can appear before the Committee and then whey Shri Gurbir Singh cannot appear before it. The Committee observed that Shri Gurbir Singh appeared before it as an advocate on behalf of three affiliated units, as authorized by them to Shri Gurbir Singh.

2. *As far as the allegation of one of the members of the Election Committee is concerned, the Committee found the allegations are baseless and the E.C. is impartial and remains impartial throughout. All decisions taken by the Committee, in the past, were unanimous and signed by all the three members and Committee and the petitioner's allegations on Shri R.D. Vats, false and baseless. It may be noted that there was no instance where there was any conflict of opinion and all decisions were taken by the Election Committee were unanimous. The Committee also found that the Punjab Netball Association (who is one of the petitioners) had, after 2011-election, putted the same allegations against Shri S.K. Mendiratta, the then Returning Officer, before the Hon'ble High Court of Delhi and the said allegations were*

dismissed as withdrawn, by the Hon'ble Court, after warning given by the Hon'ble Court.

3. *The Netball Federation of India send so many letters/ notices to Meghalaya and Assam Units, through emails dated 13.6.2015, 7.6.2015, 17.3.2015, 11.3.2015, 23.11.2014, 20.4.2014, etc. and dated 13.6.2015, 7.6.2015, 27.5.2015, 17.3.2015, 11.3.2015, 23.11.2014, 29.4.2014 etc. respectively, but due to non-reply of the state units, the AGM in its meeting dated 1st November 2015 disaffiliated and affiliated new units of the Meghalaya and Assam and passed resolution unanimously in the AGM dated 6th February, 2016, at Haryana. The E.C. has upheld the decisions of the abovementioned AGMs dated 1st November 2015 and 6th February 2016.*
4. *The decision of announcement of the 25 uncontested posts was rightly taken by the Election Committee. In the notice for election dated 16th April, 2016, the Election Committee announced that the election would be held on 18th May, 2016, 'if necessary'. 'If necessary' means, if the number of contesting candidate (s) is/ are more than the number of post (s), then the election would be held on the date fixed. This is the general procedure of elections that if the number of contesting candidate (s) is/ are equal to the number of post (s)/ seats filled, then the result would be announced immediately after the finalization of list of contesting candidates. The same procedure are adopting by the Election Commission of India in the elections to the Parliament and State*

Legislative Assemblies also as per Section 53 (2) of the Representation of the People Act, 1951.

5. *The Committee would conduct elections of Netball Federation of India on the same lines (Constitution) as was conducted by Shri S.K. Mendiratta, Legal Advisor, Election Commission of India, who was appointed by the Hon'ble High Court of Delhi, vide its order dated 6th September, 2011 in Civil Misc. Petition No. 5512 of 2011 and Writ Petition (C) 2591/ 2011 (Haryana Netball Association Vs. Union of India and others), and given power by the Hon'ble High Court to act as Judge of the High Court and decided all election procedure and also constitution of NFI. Shri Gurbir Singh, in his rejoinder, accepted indirectly, that the NFI Constitution attached by him (NAC) in an earlier CWP in the year 2013 and the election conducted by the then Returning Officer adopted the Constitution, are the same. The Committee also observed that in the said CWP before the Hon'ble Punjab and Haryana High Court, the Hon'ble Court quashed the amendments in the Constitution but Netball Federation of India submitted the same constitution to the current Election Committee, which was adopted by the Netball Federation of India before the amendment sand which is still operative.*
6. *The Committee has rightly given voting rights to members of the Executive Committee, as per the Constitution of the Netball Federation of India. In the previous election 2011 also, the term of the Netball Federation of India had already been expired and the then Returning Officer, who was*

appointed by the Hon'ble High Court, vide its order dated 6th September, 2011 in Civil Misc. Petition No. 5512 of 2011 and Writ Petition (C) No.2591 of 2011 (Haryana Netball Association Vs. Union of India and others), had given voting right to the previous Executive Committee (2006-Committee) and the Hon'ble High Court upheld the decision of the then Returning Officer which was filed by the Punjab Netball Association in the Hon'ble High Court of Delhi.

7. *The strength of the Executive Committee would be the same as was in 2006-Elections and then in 2011-Elections. The said elections were challenged in the Hon'ble High Court of Delhi and other CWPs were filed before the Hon'ble Punjab and Haryana High Court, but nobody challenged the strength before any Court of law.*
8. *The Netball Federation of India had given sufficient opportunity to NAC to send name of its representative for inclusion in the electoral college for the current election, but NAC failed to send the name of its authorized representative. The NAC send the name of Shri Gurbir Singh, who was expelled by the Netball Federation of India and the said expelled order was approved/ confirmed by the AGM, who is the highest body of the Netball Federation of India to take decision. It is wrongly mentioned by Shri Gurbir Singh that his expulsion order was set aside by the Hon'ble Punjab and Haryana High Court in its order dated 15.3.2016.*
9. *The State Units of Arunachal Pradesh, Sikkim, Nagaland and Mizoram, were legally and rightly affiliated by the Netball Federation of India, as per*

Constitution of the Netball Federation of India, and the same affiliations were also confirmed in its AGM dated 6th February, 2016, which is the highest body to take decision for confirmation.

- 10. The decisions of disaffiliations in the case of Assam and Meghalaya were also rightly taken by the Netball Federation of India in its AGM dated 1st November, 2015 and affiliated new units of the Meghalaya and Assam and passed unanimously in the AGM dated 6th February 2016 at Haryana, as the old units did not respond so many letters/ show cause notices sent to them.*
- 11. The decision taken on the Jharkhand unit is rightly taken by the Netball Federation of India as per names of office bearers of the newly elected body of Jharkhand sent by the General Secretary and it was confirmed by the Jharkhand Olympic Association also.*
- 12. The Committee has no mechanism to check the forged signature used by the Uttrakhand Netball Federation, as alleged. The Committee received Form 1A, duly signed and stamps by the President and General Secretary on the letter held of the Uttrakhand Netball Association and accepted the same. It is for the concerned person, who alleged that this signature was forged used by somebody to file complaint before the competent authority and take legal action as per law.*

The Committee received rejoinder from the petitioners, in which they attached copy of the affidavit filed by the Ministry of Youth Affairs and Sports, Government of India before the Hon'ble Punjab and Haryana High Court and highlighted para 2 in which the

Ministry stated that “Shri Gurbir Singh, former President, Netball Federation of India furnished the original voucher/ receipts and requested the Ministry that the unspent amount of Rs.78,500/- along with the interest may be adjusted against the outstanding balance of Rs.2,97,454.67/- due to the Netball Federation of India from the Ministry. The relevant sanction of the Ministry vide their OM dated 28.1.2014 (copy enclosed as annexure R-3) has informed that the matter is under examination in consultation with the Internal Finance Division) (IFD) of the Ministry.”

Now, the Election Committee found from the show cause notice sent to Shri Gurbir Singh by the Ministry of Youth Affairs and Sports, Government of India vide its notice No.80-05/2010/CWG-II/SPVI, dated 30th May 2016, which is relevant to enclose with this order.

In the said order dated 30th May, 2016, the Ministry stated that “Out of the said amount, there is an unspent amount of Rs.78,500.00 (Rupees Seventy eight thousand five hundred only) for which neither verified bills/ vouchers have been submitted till date nor the said unspent amount has been returned to this Ministry. You have also failed to give till date any satisfactory reason of delay in settlement of the accounts. Due to your inaction in settling the aforesaid balance amount even after such a long time, NFI is suffering monetary loss due to non-release of any further grants to the Federation by this Ministry for the last your years.....2. You are hereby called upon to explain within 10 days from the date of receipt of this notice why a criminal case should not be filed against you.”

As mentioned in the Ministry’s above said show cause notice, which clearly shows that Shri Gurbir Singh

did not submit account of expenses which he received on behalf of Netball Federation of India and falsely stated before the Committee that he had filed all the account of expenses with the Ministry and also falsely stated that the responsibility of the filing of accounts of Netball Federation of India was lying with the Treasurer and not with the then President.

It is also clearly shows that there is no order of any court of law in which the Court set aside the order of the expulsion of Shri Gurbir Singh and the Committee hold that Shri Gurbir Singh and others falsely stated before the Committee that the Hon'ble Court set aside the expulsion order of Shri Gurbir Singh.

It is also observed by the Committee from the records submitted by Shri Gurbir Singh and others that the elections of Netball Association of Chandigarh held on 2nd January, 2016, was illegal and not conducted as per the Government Guideline and National Sports Development Code, 2011. In this election, the election was not conducted by secret voting and even the NAC had not appointed any returning officer for that election and also there as no notice, and proper election procedure was also not followed by the NAC. It is also mentioned here that inspite of repeated directions of the Committee, the NAC did not submit any documents which were required by the Election Committee vide its orders dated 24th May, 2016, 28th May 2016 and 29th May 2016.

As narrated above, the Election Committee found Shri Gurbir Singh to be ineligible to include his name in the electoral college. The Committee is also found the election to the Netball Association Chandigarh was not properly held and, now, there is no office bearer of the

Netball Association of Chandigarh and the question of true representative of NAC does not arise.

The Committee has also taken lenient view on the other petitioners and upheld its earlier decision for inclusion of names of representatives of Rajasthan Netball Association, Punjab Netball Association and UP Netball Association in the electoral college.

As mentioned above, the Election Committee decided not to change in the list of electoral college issued by the Election Committee on 10th May 2016.”

All the pleas taken up by the petitioners have been taken into consideration. It is settled proposition of law that a Court in the exercise of writ jurisdiction will not act as an Appellate Court to enter into the disputed question of facts. The impugned order annexure P-21 has been passed by Election Committee of the NFI at Delhi. The judgments in **Election Commission of India Vs. Saka Venkata Rao**, AIR 1953 SC 210, **Madan Gopal Rungta Vs. Secretary to the Government of Orissa**, AIR 1962 SC 1513 and **Lt. Col. Khazoor Singh Vs. UOI and others**, AIR 1961 SC 532, are not applicable to the facts and circumstances of the present case. The contention of counsel for the respondent is that the Punjab and Haryana High Court shall not have any jurisdiction to issue any prerogative writ to the Election Committee under Article 226 of the Constitution of India as the petitioners have not been able to satisfy this Court that the members of the Committee did not have jurisdiction to inquire into the matter pertaining to the election of the office bearers and members of the Executive Committee of the NFI for the year 2016 to 2020 but in view of the fact that the order annexure P-21 has been passed pursuant to the directions of this Court, the

same has been questioned again before this Court. The writ has been entertained for the reasons that the parties had earlier submitted to the jurisdiction of this Court and have even gone to the extent of complying with the directions as such the writ has been entertained but the scope of interference being limited as detailed order has been passed after taking into consideration all the aspects by exercising the jurisdiction vesting in the Committee, there is no ground to interfere in the order annexure P-21.

Since petitioners have challenged the process of election and the election process pertaining to the office bearers of NFI, the scope of writ in the election matters would be meager. In this context, a reference can be made to the judgment of Delhi High Court in Punjab Netball Association Vs. UOI and others, in WP (C) No. 1873 of 2012, appended by respondent No.2 as annexure R-2/2, dated March 13, 2014, wherein it was held that the election disputes cannot be decided by way of the writ petition and three other petitions.

It is not out of place to mention here that the Constitution of India imposes specific bar of interference by the Courts in the election matters in the cases of Panchayats (Article 243-O) in the case of Municipalities (Article 243 ZG) and under Article 329 in other electoral matters. Following the legislative intent of the Constitution of India in debarring the interfering in the matters of election by Courts, I am of the considered opinion that it will not be appropriate for this Court, in the exercise of jurisdiction, to interfere in the election matter of NFI on any of the grounds raised by the petitioners as there does not appear to be any glaring illegality or discrimination on the face of it.

I have considered the judgment of **Gurdeep Singh Dua Vs. Delhi SGPC**, 59 (1995) DLT 115 cited by counsel for the petitioners wherein election of the members of the executive board had been considered by the Delhi High Court in peculiar circumstances but in the present case there is neither any illegality nor any patent illegality apparent on the record which would warrant interference by the Court in writ jurisdiction. It is also not out of place to mention here that the elected persons have also not been made as party as such the writ petition is also bad for misjoinder of necessary parties.

Taking into consideration the cumulative effect of all the circumstances mentioned hereinabove, the writ petition is dismissed. The interim order dated June 6, 2016 is hereby vacated with liberty to the respondents to declare the result and continue with the functioning of the federation by formally declaring the result. The election result in sealed cover be returned to respondent No.2.

May 23, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.