

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-17620-2015 (O&M)
Date of Decision : 26.05.2017

R.S. Gujral	versus	Petitioner
UOI and others		Respondents

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

Present: Mr. Arjanbir Singh, Advocate
for the petitioner.

Mr. Deepak Malhotra, Advocate
for respondents No. 1 to 5.

Mr. Gaurav Jindal, Addl.A.G., Haryana.

Mr. Munish Behl, Advocate
for respondents No. 6 and 7.

M.M.S. BEDI, JUDGE (ORAL)

Petitioner claims that he is a retired Army Officer, about 68 years of age and a member of the Defence Services Officers Institute (DSOI) which was established under the Societies Registration Act, in the year 2001 as a non-profit association wherein objectives of the institute were to provide welfare, social and recreational facilities to the Officers of the Defence Services, both serving and retired, along with a common mess. Petitioner claims that on account of petitioner having complained about the rampant corruption in the management of the Defence Services Officers Institute (DSOI), his membership has been cancelled vide order

Annexure P-8 in the exercise of Rule 24 (a) (vi) read with Rule 52 of DSOI, Sector 36-C, Chandigarh Rules and Bye-Laws 2001 as amended from time to time.

There is no dispute that the respondent No. 6 club is an instrumentality of State as it is managed and supervised by the serving army officials. The grievance of the petitioner is that he has not been granted any opportunity of hearing before this membership was cancelled.

Learned counsel for respondents No. 6 and 7 has vehemently contended that the writ petition is not maintainable as the present writ petition involves disputed questions of fact and that the petitioner could have filed an appeal under the Societies Registration Act, 1860.

I have considered the facts and circumstances of the case and I am of the opinion that as per the ratio of the judgment of Supreme Court in BCCI versus Cricket Association of Bihar and others, (2016) 10 SCC 231 respondent No. 6 has been performing public functions and as such is an authority which would be amenable to writ jurisdiction.

As per the Rules governing the termination and suspension of membership, reference can be made under Rule 24 (a) (vi) and Rule 52 of the DSOI. The said Rules are reproduced hereunder for ready reference:-

“TERMINATION/SUSPENSION OF MEMBERSHIP”

“24 (a) A members's connection with the Inst shall be

liable to be terminated or suspended due to any of the following reasons:-

- (i) XXXXX*
- (ii) XXXX*
- (iii) XXXX*
- (iv) XXXX*
- (v) XXXX*
- (vi) by expulsion by the managing committee for violating the rules or bylaws of the Inst and further un-officer like conduct. (See rule 51 and 52).*
- (vii) XXX XXX XXX*

“52. In case the conduct of a member either within or outside the Inst premises shall, in the opinion of two thirds of the members present at the managing committee meeting specially summoned to consider the case, be injurious to the character and interest of the Inst, his connections with the Inst as a member shall be terminated or suspended. Minimum 9 members shall be present in such a management committee meeting. Decision of the managing committee for termination or suspension of membership shall be put up for approval of the president governing body.”

The order Annexure P-8 does not refer to any opportunity of hearing granted to the petitioner by issuing any show cause notice. In the writ petition in para 7 (c) and (d), the petitioner has raised a plea that the order Annexure P-8 is illegal as no show cause notice

was issued to the petitioner by respondent No. 7 and that 2/3rd of the members were not present at the Managing Committee Meeting which was, especially summoned to consider the case. The grounds in para 7 (c) and (d) of the written statement of respondents No. 6 and 7 are reproduced below:-

“(c) That the contents of para no. 7 (c) of the writ petition are wrong, incorrect and hence vehemently denied. It is respectfully submitted that the petitioner was afforded reasonable opportunities to visit the institute and inspect the record for his satisfaction, but he opted to file false complaints. It is clearly held under item no. 32 that the petitioner failed to avail the opportunities granted to him and therefore, the order of termination of members was passed by the majority of the members who were present in the AGBM. The judgment relied upon by the petitioner is not applicable to the present case as the same applies to quasi judicial or administrative proceedings relating to the government officials. It would be relevant to mention here that the petitioner was asked to be present in the monthly committee meeting (MCM) held on 27.6.2013 vide letter dated 23.6.2013. The petitioner though came to the institute and attended the MCM by writing certain discourteous remarks left the meeting without giving any explanation. Thus the averment that no opportunity of hearing was granted is patently wrong. The detailed submissions have been made in the preliminary objections which may kindly be read as part and parcel of this para to avoid repetition.

(d) That the contents of para no. 7 (d) of the writ petition are wrong, incorrect and hence vehemently denied. The termination of the petitioner is in accordance with Rule 24 (a) and 52 of the Rules of the Institute which are very well in the knowledge of the petitioner as he himself remain an office bearer of the institute immediately before the present managing body as per rules which have been amended from time to time. The detailed submissions have been made in the preliminary objections which may kindly be read as part and parcel of this para to avoid repetition.”

The respondents have vaguely denied the averments made in the writ petition regarding opportunity of hearing having not been granted. No show cause notice, as is required to be issued as per Rules 52, has been placed on record. No opportunity of hearing was also given to the petitioner. There is apparently violation of rules of natural justice. The action of the respondents is also discriminatory and the membership of the petitioner has been terminated by a cryptic order without mentioning the reasons for terminating the membership. The order Annexure P-8 dated 03.08.2017 is thus liable to be set aside being violative of rules of natural justice and the provisions of Rules 24 (a) (vii) and 52 of the Bye-Laws 2001 and the petitioner would be entitled to all the consequential benefits and would be deemed to be a member of the club against membership No. G213.

It will not be out of place to mention here that learned

counsel for the respondents has placed reliance on judgment in case of *Air Vice Marshal J.S. Kumar versus Governing Council of Air Force Sports Complex (Delhi)* 2006 (86) DRJ 711 wherein the petitioner had challenged the order of termination of membership on the ground that the said order had been passed without affording him opportunity of hearing. The writ petition was held to be not maintainable against the Governing Council for Air Force Sports Complex that being a private body not performing any public function.

I have considered the facts and circumstances of the said case. In the present case, it is not a disputed question of fact that the respondent club is being managed by the members of the armed forces and is performing public functions, as per the judgment in *Whirlpool Corporation versus Registrar of Trade Marks* (1998) 8 SCC 1 and there being violation of rules of natural justice, the writ petition is maintainable. The judgment of Supreme Court in BCCI case (supra) rendered by the Supreme Court would impliedly overrule the judgment of Delhi High Court. It is undisputed that the respondent club being managed by the elected members under the supervision of the army authorities is performing public function.

In view of said circumstances, this writ is held maintainable whereas the judgment cited by counsel for the respondents is not applicable to the facts of the present case.

In view of the above, the writ petition is allowed. The

impugned order dated 03.08.2015 Annexure P-8 is set aside with all consequential benefits to the petitioner.

(M.M.S. BEDI)
JUDGE

26.05.2017
Neha

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