

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

CWP No.18466 of 2020
Decided on 03.11.2020

Sandeep Goel

.....Petitioner

VERSUS

State of Punjab and Others

...Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present:- Mr.R.S.Cheema, Senior Advocate, with
Mr.A.S.Cheema, Advocate, and
Mr.Shekhar Verma, Advocate, for the petitioner.

AJAY TEWARI, J. (ORAL)

This petition has been filed challenging the Order (Annexure P-3) praying that the order Annexure P-3 to be ignored as it is a nullity.

The brief facts are that the issue regarding elections to the Ludhiana District Cricket Association had come up before this Hon'ble Court in CWP No.11735 of 2018 and by an order dated 25th September, 2020, this Court had directed that the elections were to be held and had appointed an observer and had fixed a last date by which the elections had to be held. Independent of that, some persons had filed an anticipatory bail application bearing CRM-M No.34788 of 2020. Those petitioners were the current office bearers of the Ludhiana District Cricket Association and an FIR had been lodged against them regarding defalcation of funds etc. and that is why they approached this Court for anticipatory bail. Vide order Annexure P-3, some relief

was granted to them in respect of their impending arrest. However, after that the following direction was passed by this Court:

“However, this Court cannot be oblivious of the argument raised by counsel for the petitioners that the Senior Superintendent of Police, Barnala has been a Senior Vice-President of the Association for long and, therefore, there can be possibility of covert tinkering of the process of election due to the influence of the Officers of the District Administration, if any public official participate in the process of election as a candidate. Hence, by exercising its powers under Section 482 Cr.P.C, it is further ordered that no person holding public office shall be permitted to participate in the process of this election as a candidate unless he has either played Ranji Trophy or he has participated as a player, at least, in a district level tournament and the said fact is verified by the testimonials issued at the relevant times. It is also ordered that no certificate issued freshly shall be entertained during the process of the election for a claim that the concerned public officer had played the above said tournaments.

The present petition is disposed of with the above-said directions.”

The contention is that these observations are null and void.

Mr. R.S.Cheema, learned senior counsel for the petitioner, has pointed out that petitioner was not even a party before the learned Single Judge in any case those petitioners had neither had made any pleadings or prayer which was allowed by the learned Single Judge and even if there had been pleadings to that effect or a prayer to that effect that direction could not have been given by the Single Judge in bail application. The third argument raised by Mr.Cheema is that by dis-

entitling the petitioner from contesting the election the learned Single Judge has virtually re-written the Memorandum of Association which contains no such bar and rather in view of the fact that the Chairman of the Ludhiana District Cricket Association is a Deputy Commissioner in office.

At the very outset, we put it to learned senior counsel as to how the writ jurisdiction of the High Court can be invoked to declare any order of the Learned Single Judge to be non-binding. He has relied upon the following judgments:

Sr.No.	Title and Citation
1.	Shiv Dev Singh and others Vs. State of Punjab AIR 1963 SC-1909
2.	Pandurang and others Vs. State of Maharashtra (1986) 4-SCC-436
3.	Kiran Singh and Others Vs. Chaman Pawan AIR 1954 SC-126
4.	Pohla Singh alias Phola Ram Vs. State of Punjab (2004) 6 SCC-534
5.	Dhurandhar Prasad Singh Vs. Jai Prakash University and Others (2001) 6 SCC-534.
6.	Sarwan Kumar and Another Vs. Madan Lal Aggarwal (2003) 4 SCC-147
7.	CWP No.11018 of 2007 and CRM-M-No.40491 of 2007 dated 14.11.2008- Punjab and Haryana High Court Bar Association, Chandigarh and anr. Vs. CBI and Others.
8.	Hari Krishna Mandir Trust Vs. State of Maharashtra and others 2020 SCC Online SC 631.

In **Shiv Dev Singh's case (supra)**, the facts were that the writ petition filed by some persons etc. was allowed and second set of persons had filed another writ petition claiming that they were necessary parties and the previous petition had been filed without impleading them. That petitioner was also allowed and thereafter, an

LPA was filed which was dismissed. Thereafter the persons who had filed the first petition went up to the Supreme Court and there Lordships held as follows:

(10)The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art.226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art.226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla' J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no. right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was e entertained by Khosla, J.

In our considered opinion, this judgment would not empower us to direct that the order Annexure P-3 is a nullity.

Likewise **Pandurang's case (supra)**, the issue was that an appeal against acquittal could only be heard by a Division Bench but in that case a Single Judge decided the same and set aside the acquittal

and convicted Pandurang and others who then went up to Supreme Court and their Lordships held that the decision passed by the Single Judge was a nullity. Again it is not a case where that decision was challenged in a writ petition but was challenged before the Supreme Court under Article 136 of the Constitution of India.

In **Kiran Singh's case (supra)** a suit was filed with a certain valuation. Ultimately one RSA was preferred before the Guwahati High Court, where one of the questions was related to the valuation of the suit. The High Court held that the suit as laid was wrongly under valued and the value of the suit was much more. In view of that finding, a secondary question arose as to whether on the higher valuation, the first appeal could have been heard by the District Judge and if not, whether it was not obligatory on the High Court to hear the appeal as a first appeal not as a second appeal. It was in that context that their Lordships held that decision of the district judge was void.

In **Pohla Singh's case (supra)**, the Supreme Court set aside a part of the order which had not been challenged before it. In our considered opinion, the power of their lordships under Article 142 of the Constitution of India and their finding that a person who is aggrieved of a decision can file a second petition for recall of its decision on the ground that they were necessary parties and had not been impleaded would not help the petitioner in the present case.

The next judgment which has been cited **Dhurandhar Prasad Singh's case (Supra)** was where the Supreme Court while

deciding an issue under Order 22 Rule 10 expounded on the true scope of expressions “Void and Voidable”. The same also does not help the present petitioner.

In **Sarvan Kumar's case (supra)**, the issue before the Supreme Court was whether a decree for ejectment passed by a Civil Court qua a commercial tenancy in the State of Delhi before the declaration of law of the Supreme Court in **Gian Devi Anand Vs. Jeevan Kumar (1985) 2 SCC 683** that such a tenancy is heritable is executable, or the judgment-debtors can successfully object to the execution of the decree on the ground that same was passed by a Civil Court, lacking inherent jurisdiction and therefore non-executable. The objection regarding executability was rejected by the Court and a petition filed against that order before the Delhi High Court was also dismissed and it was thereafter, that the matter was carried up to the Supreme Court. Again this judgment cannot help the petitioner.

In **Hari Krishna Mandir Trust case (supra)**, it was in appeal against the judgment of the Division Bench of Bombay High Court dismissing the writ petition filed by the appellants and in that judgment their Lordships expounded on the scope of Article 226 Constitution of India.

None of these judgments hold that a decision of a Single Judge in a petition for anticipatory bail can be brought into question by way of a writ petition. Learned Senior counsel has further relied upon the decision of a Division Bench of this Court in CWP No.11018 of 2007 and CRM-M-40491 of 2007 decided on 14.11.2008 to argue that

in that case an order passed by a Single Judge in CRM-M-40491 of 2007 was challenged by way of civil writ petition. We have gone through that judgment and we find that the Division Bench had noticed the issue of maintainability but ultimately proceeded with the petition in view of the consent of the parties. Resultantly, even that case cannot be used as a precedent.

Consequently, this petition is dismissed as being not maintainable.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

A copy of this order be given to the learned counsel for the petitioner under signatures of the Bench Secretary of this Court.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

03.11.2020
anil

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