

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P(C) No.12286 of 2022
(Through hybrid mode)**

Sanatana Tandia and another

Petitioners

Mr. Subir Palit, Senior Advocate

-versus-

***Collector-cum-DM, Boudh and
others***

Opposite Parties

Mr. P.C. Panda, AGA

Mr. Manoj Kumar Mohanty, Advocate
for O.P.3

CORAM: JUSTICE ARINDAM SINHA

ORDER

19.05.2022

Order No.

- 02.** 1. Mr. Palit, learned senior advocate appears on behalf of petitioners and submits, by impugned order dated 5th May, 2022 passed by Collector and District Magistrate, Boudh, membership of his clients have been impliedly invalidated. He refers to following passage from impugned order, reproduced below.

“In view of my findings and observation given above, I am of the view that the DCS, a prime institution of Sports of the District cannot be given with a liberty to act autocratically and it is held that the memberships which were taken prior/till the year 2013 including the life members that is to say 109 numbers in total are held to be genuine one and they have the authority to exercise all the powers of a valid member and the memberships taken in the year 2016 and 2020 cannot be taken as accepted until they are accepted properly. Their memberships will be accepted or declined as per the guidelines and by-laws of the Association and it

will be decided by the new body. For smooth and impartial election, the ADM, Boudh, the District Sports Officer, Boudh and a representative duly nominated by Odisha Cricket Association (OCA) will have the authority under whose supervision the upcoming election of DCA, Boudh will be held.) ”

2. He submits, though this Bench by **order dated 13th May, 2022** in writ petition **W.P.(C) no.12060 of 2022 (District Cricket Association, Boudh vs. Collector and District Magistrate, Boudh and others)** held that the Collector in having complied with directions made in **order dated 1st Jul, 2020** passed by Co-ordinate Bench in W.P.(C) no.15580 of 2020, thereby assumed jurisdiction but the order, being impugned order herein, is without authority or jurisdiction. However, in paragraph 8 of said order this Bench provided for contingency, whereby impugned order having been set aside, would revive. He submits, when this Bench had found that impugned order was without jurisdiction it became null, non est and void ab initio. There cannot be a contingency where it can be revived. He relies on judgment of the Supreme Court in **Deepak Agro Foods vs. State of Rajasthan**, reported in **(2008) 7 SCC 748**, paragraph 17, reproduced below.

“All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction,

null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See: Kiran Singh & Ors. Vs. Chaman Paswan & Ors.). However, exercise of jurisdiction in a wrongful manner cannot result in a nullity - it is an illegality, capable of being cured in a duly constituted legal proceedings.

3. Mr. Mohanty, learned advocate appears on behalf of opposite party no.3 and submits, affairs of the Association were/are in turmoil. Some of the members/affected parties had moved this Court by said writ petition **W.P.(C) 15580 of 2020**. The Co-ordinate Bench, without expressing any opinion on the merits of the case, disposed of the writ petition directing the Collector to take a decision on the representations filed by petitioners therein, and pass appropriate orders in accordance with law. As on date of the order (1st July, 2020) the amendment of inserting section 11A in Societies Registration Act, 1860 was not there. The amendment was with effect from 13th May, 2021. Hence, impugned order cannot be void ab initio as it was in compliance and pursuant to directions in said order.

4. Mr. Palit replies that even prior to amendment the Act did not provide for the Collector to be adjudicating authority under the Act. It is the Registrar being the Additional District Magistrate (ADM). On query from Court he submits, his clients though interested to assert their right of membership as infringed upon by operation of impugned

order, if they are not able to do so within the time frame given by **order dated 13th May, 2022** (supra) then, thereby, impugned order though being without jurisdiction, null, non est and void ab initio will revive to affect membership status of his clients. He, therefore, seeks interference to declare impugned order void ab initio as having been made by the authority lacking inherent jurisdiction.

5. Perused impugned order. The Collector says at the outset that the case was taken up for orders in compliance to the order of this Court in **W.P.(C) no.15580 of 2020**.

6. Paragraph 8 from order dated 13th May, 2020, is reproduced below.

“Petitioners will by 25th May, 2022 approach the Court of Senior Civil Judge having jurisdiction with their grievance on persons being allowed to continue in offices held in the Association as well as election thereto, upon notice to, inter alia, private opposite party no.3. Till then impugned order will remain stayed. In event said Court is moved, impugned order will stand quashed but available for reference by said Court, for adjudicating the disputes including making interim directions with regard thereto. Otherwise, on no approach to the civil Court or approach without noticing, inter alia, private opposite party no.3, impugned order will revive and continue unless interfered in accordance with law.”

7. It is apparent that the direction of contingency was made to ensure reference of the disputes to the Senior Civil Judge having jurisdiction. The contingency provided for omission of taking the disputes, to the Court having jurisdiction since turmoil in the affairs of

the Association exists. Impugned order had also directed for starting process of election within 10 days, after which there was issuance of commencement of election process made by the Registrar (ADM). At this stage Mr. Palit submits, since by **order dated 13th May, 2022** (supra) impugned order was held to be without authority or jurisdiction, the cloud cast over his clients' membership stands removed.

8. By memo dated 10th May, 2022 there was notification for commencement of election process, issued by the Registrar (ADM). Such commencement was found as cannot be said to be due commencement creating a bar or interference in writ issued as made by said **order dated 13th May, 2022** (supra). In the circumstances, the Registrar (ADM) may, on approach or otherwise in the facts and circumstances, issue fresh notification for conduct of elections, subject to reference, in the meantime, of disputes to the Senior Civil Judge having jurisdiction.

9. The writ petition stands disposed of as above.

(Arindam Sinha)
Judge

Prasant