



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st MAY, 2022

IN THE MATTER OF:

+ **W.P.(C) 7272/2022 & CM APPL. 22286/2022**

NITENDRA SHARMA

..... Petitioner

Through: Petitioner in - Person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ashim Vachher, Standing Counsel for DDA with Mr. P. Piyush and Mr. Kunal Lakra, Advocates and Mr. Ashish Dixit, Law Officer, DDA

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. Aggrieved by the termination of the membership of the Petitioner by the Saket Sports Complex, the instant writ petition has been filed with the following prayers:

"a) Pass a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing the respondents No.1 & 2 to take corrosive action against the respondent No. 3 & 4, for not following the guidelines of natural justice and providing the opportunity to the petitioner for depositing the membership fees and restored the membership of the petitioner without any penalty charges;

b) Pass direction or order to the respondent NO. 3 & 4 for restoring the membership of petitioner without any penalty



charges;

c) Pass directions to the respondents no. 3 and 4 to compensate the petitioner due to non-restoring the membership the petitioner suffered a lot and could not join the swimming with his family members within time;

d) Pass any direction or order against the respondent No. 3 & 4 who are not following the guidelines of the natural justice and also pass direction to the respondent No. 1 & 2 to frame guidelines and take action within time;

e) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case."

2. The facts, in brief, as narrated in the instant writ petition are that the Petitioner is a practicing advocate in Delhi. It is stated that the Petitioner had got the membership of DDA Sports Complex, Saket, New Delhi, and he has been paying the subscription fees of the Sports Complex on a regular basis. It is stated that due to outbreak of COVID-19, all the facilities of the Sports Complex were closed in light of the directions issued by Government from time to time. It is stated that the Petitioner, his wife and children had contracted COVID-19 due to which the Petitioner was not in position to avail the facilities of the Sports Complex from April 2020 to March 2022. It is stated that when the Delhi Government relaxed most of the restrictions, the Petitioner visited the Sports Complex to enquire about the commencement of swimming activity, and he was informed that his membership had been cancelled. It is stated that the Petitioner, thereafter, sent a legal notice to the Respondent/DDA regarding the cancellation of his membership. It is stated that the Respondent/DDA sent a reply to the legal



notice sent by the Petitioner informing him that he was duly informed regarding the non-payment of subscription vide email dated 09.01.2020 on his registered email ID. The DDA in its reply also stated that the membership of the Petitioner had been cancelled with effect from 14.10.2021 due to non-payment of membership subscription fees from 01.01.2020 to 14.10.2021.

3. Contending that the membership of the Petitioner had been cancelled without following the due procedure of law and also that the Petitioner was not liable to pay the subscription fee since the Sports Complex was not offering any services amidst the outbreak of COVID-19, the instant petition has been filed.

4. Heard the Petitioner, who appears in - person, Mr. Ashim Vachher, Standing Counsel for the DDA, and perused the material on record.

5. The Petitioner, who appears in person, has reiterated the averments in the writ petition and states that his membership ought not to be terminated. He states that he has not been informed about the arrears of subscription. He states that a communication was sent by the Respondent No.2 to all but the same has not been received by him.

6. Mr. Ashim Vachher, Standing Counsel for the DDA, submits that an email dated 09.01.2020 was sent to various members of the Sports Complex, including the Petitioner herein, by the Secretary, Saket Sports Complex, DDA, informing them about the non-payment of the subscription fee. Mr. Vachher further submits that a letter dated 29.08.2020 was also sent to the Petitioner informing him that his monthly subscription was long overdue due to which his name had been included in the list of defaulters. He submits that the letter categorically indicates that if the Petitioner did not pay the outstanding amount, his name would be forwarded for cancellation of



membership to the Competent Authority and restoration of the same would be subject to approval of the Competent Authority on payment of restoration charges as applicable.

7. The Petitioner is a Member of the DDA Sports Complex, Saket, Delhi. Annexure-A in the writ petition, which is a copy of the email dated 09.01.2020 sent to the various Members of the Sports Complex, including the Petitioner herein, by the Secretary, Saket Sports Complex, DDA, demonstrates that all the Members of the Sports Complex had been duly informed about the non-payment/outstanding dues of subscription fee. It is apparent that it was known to the Petitioner that he had not paid the subscription fees and his membership was liable to be terminated. It was the duty of the Petitioner to make payments of the subscription fees so as to ensure continuance of the same. There was no announcement from the Sports Complex for waiver of subscription fees owing to the closure of the facilities in light of the directions issued by the Government from time to time. The DDA in its reply to the legal notice sent by the Petitioner mentioned that the Sports Complex was closed only for certain periods, i.e. from 20th March, 2020 to 20th May, 2020, from 19th April, 2021 to 05th July, 2021, and from 28th December, 2021 to 01 February, 2022, and for rest of the days, the Sports Complex was fully functional and facilities of the Sports Complex could have been availed by the Petitioner.

8. As laid down by the Supreme Court in Dr. Rai Shivendra Bahadur vs. Governing Body of Nalanda College, Bihar Sharif and Others, AIR 1962 SC 1210, it is well settled that a writ lies only when there is a right, and without a right, a writ is not maintainable.

"5. A great deal of controversy was raised before us as to



*whether the Statutes framed by the University under Section 20 of the University of Bihar Act have or have not the force of law and whether a writ under Article 226 of the Constitution can issue against the Governing Body of the College i.e. whether the appellant has a legal right to the performance of a legal duty by the respondents. In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance. It is, however, wholly unnecessary to go into or decide this question or to decide whether the Statutes impose on the Governing Body of the College a duty which can be enforced by a writ of mandamus because assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus. According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. **Our attention has not been drawn to any article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to court and ask for a writ to issue. It is therefore not necessary to go into any other question.**"*

(emphasis supplied)

9. The termination of the membership to the Sports Complex of the Petitioner can only be attributed to the Petitioner's lackadaisical approach in clearing of subscription dues. Mr. Vachher has produced the letter dated 29.08.2020 sent to the Petitioner by the DDA stating that his name has been included in the list of defaulters. The proof of service has also been shown by Mr. Vachher. It cannot be said that the Sports Complex has acted in an arbitrary manner in cancelling the membership of the Petitioner as the



cancellation stems solely from the Petitioner's failure in paying of the subscription fees. The Petitioner has not been able to bring on record any material that can substantiate his contention that his membership has been terminated contrary to the Rules/By-laws of the Sports Complex. Further, there is no right vested in the Petitioner that could warrant him approaching this Court seeking a Mandamus to restore the same

10. However, Mr. Vachher, learned Standing Counsel for DDA, very fairly submits that if the Petitioner pays the subscription dues, the authorities will consider restoring the Petitioner's Membership to the Sports Complex.

11. With the above observations, the petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 31, 2022

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