

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE MIAN SAQIB NISAR

CIVIL PETITIONS NO.784 AND 853 TO 876 OF 2014 AND
CRIMINAL ORIGINAL PETITIONS NO.48 & 54 OF 2014

(Against the judgment dated 17.5.2014 of the Islamabad High Court, Islamabad passed in Writ Petitions No. 1789, 1949, 1866, 1861, 1860, 1973, 1865, 2045, 2277, 1974, 2167, 2264, 2061, 2166, 1972, 1971, 1859, 2057, 2055, 2056, 2060, 1864, 2059, 2082 & 2058 of 2014)

M/o IPC through its Secretary etc.	...in C.P.784, 854 to 876/2014
Chairman Management Committee PCB etc.	... in C.P.853/2014
Arbab Altaf Hussain	... in Cr.O.P. 48/14
Adnan Ahmed Siddiqui	... in Cr.O.P. 54/14
	...Petitioner(s)

VERSUS

Arbab Altaf Hussain etc.	... in C.P.784/2014
Sanobar Gul etc.	... in C.P.853/2014
Muhammad Irfan etc.	... in C.P.854/2014
Farrukh Munir Chaudhry etc.	... in C.P.855/2014
Aneela Arshad etc.	... in C.P.856/2014
Adnan Ahmed Siddiqui etc.	... in C.P.857/2014
Ihtesham-ul-Haq etc.	... in C.P.858/2014
Syed Tanveer Jafri etc.	... in C.P.859/2014
Commodore (R) M. Arshad Hussain etc.	... in C.P.860/2014
Amjad Ali etc.	... in C.P.861/2014
Muhammad Ilyas etc.	... in C.P.862/2014
Ejaz Hussain etc.	... in C.P.863/2014
Muhammad Liaquat etc.	... in C.P.864/2014
Syed Azhar Ali Shah etc.	... in C.P.865/2014
Alveena Tariq etc.	... in C.P.866/2014
Muhammad Akhtar etc.	... in C.P.867/2014
Syed M. Akram Shabbir Gillani etc.	... in C.P.868/2014
Idrees Ali etc.	... in C.P.869/2014
Muhammad Faisal etc.	... in C.P.870/2014
Nabeel Edger Pace etc.	... in C.P.871/2014
Muhammad Asim etc.	... in C.P.872/2014
Shahnaz Asif etc.	... in C.P.873/2014
Waseem-ud-Din etc.	... in C.P.874/2014
Salman Ahmed Shah etc.	... in C.P.875/2014
Sajid Yasin Hashmi etc.	... in C.P.876/2014
Najam Aziz Sethi etc.	... in Cr.O.P. 48/14
Secretary M/o IPC Islamabad etc.	... in Cr.O.P. 54/14
	...Respondent(s)

For the petitioner(s):
(in C.Ps.784, 854 to 876/2014)

Mrs. Asma Jehangir, Sr. ASC

For the petitioner(s): (in C.P.853/2014)	Malik Muhammad Qayyum, Sr. ASC Mr. Taffazul H. Rizvi, ASC Mr. C.M. Lateef, AOR
For the petitioner(s): (in Cr.O.Ps.48 & 54/2014)	Sahibzada Ahmed Raza Kasuri, Sr. ASC
For respondent No.1: (in C.Ps.784, 854 to 857, 866, 868 & 873/2014)	Sahibzada Ahmed Raza Kasuri, Sr. ASC Ms. Tasneem Amin, AOR
For respondents (2, 4, 5, 8 to 13): (in C.P.784/2014)	Malik Muhammad Qayyum, Sr. ASC Mr. Taffazul H. Rizvi, ASC Mr. C.M. Lateef, AOR
For the respondent(s): (in C.Ps.859 & 860/2014)	Mr. Imtiaz Rashid Siddiqui, ASC Syed Hasnain Ibrahim Kazmi, ASC
For respondent No.2: (in C.P.875/2014)	Raja Ghazanfar Ali Khan, ASC
For respondent No.1: (in C.Ps.853 & 862/2014)	Ghulam Asghar Khokhar, ASC
For the Federation:	Mr. Salman Aslam Butt, Attorney General for Pakistan Mr. Waqas Rana, ASC/Consultant to A.G. Mr. Taimur Khan, Consultant to A.G. Mr. Najam Aziz Sethi, in person
Respondents/Employees of Cricket Board:	Faisal Rai, in person Nabeel Edger Pace, in person Ehtisham, in person Irfan, in person Adnan Siddiqui, in person Akram Gillani, in person Ilyas Ahmed, in person
Date of hearing:	21.07.2014

...
JUDGMENT

MIAN SAQIB NISAR, J.- The matter came up for hearing before this Court on 21.7.2014 and vide short orders, these petitions were converted into appeals and allowed in the following terms:-

“After hearing the arguments of learned ASCs for the parties and some of the respondents in person, for reasons to be recorded separately, this petition is converted into appeal and allowed; impugned judgment dated 17.5.2014 is set aside. In the light of the new Constitution of the Board, enforced vide notification dated 10.7.2014, the Patron is required to appoint

Acting Chairman for the intervening period and also the Chief Election Commissioner within one week to hold free and fair elections within the period prescribed by the notification(s) dated 10.7.2014. It may be mentioned here that Mr. Najam Aziz Sethi has made a statement before the Court that he shall not be contesting forthcoming elections for the post of Chairman, PCB. Other pending applications, including Criminal Original Petitions No.48 & 54 of 2014 are also disposed of accordingly.

For reasons to be recorded separately, these petitions are converted into appeals and allowed; the judgment impugned therein is, therefore, set aside as the petitions filed by the respondents before the Islamabad High Court were, inter alia, incompetent; the Board having no statutory rules. Besides, their appointments were on contract basis. Other pending applications are also disposed of accordingly.”

(This order be read as integral part of this opinion)

2. The backdrop of this case has nexus with the appointment of Mr. Zaka Ashraf as the Chairman of the Pakistan Cricket Board (*PCB or the Board*), vide notification dated 13.10.2011. This appointment (*election*) was assailed by one Major (R) Nadeem Ahmed through Writ Petition No.2242/2013 in the Islamabad High Court on 25.5.2013 and by an order dated 28.5.2013, the learned single Judge-in-Chamber restrained Mr. Zaka Ashraf from performing his duties as the Chairman. Vide another order dated 13.6.2013, the Islamabad High Court directed the Ministry of Inter Provincial Coordination (*IPC*) to appoint someone as the acting Chairman of the Board. Pursuant to the above, IPC placed three names before the Islamabad High Court for approval of one of them to act as the Chairman, but before an order could be passed by the Court; the Patron nominated Mr. Najam Sethi as the acting Chairman vide notification dated 22.6.2013. However, ultimately vide judgment dated 4.7.2013 the noted writ petition was allowed and the appointment of Mr. Zaka Ashraf as the

Chairman of the PCB was set aside/annulled. The salient features of this judgment are reflected in paragraphs No.21 to 25 thereof, in that, a direction was issued for the special audit of the PCB during the period when Mr. Zaka Ashraf was the Chairman of the Board; Part IV of the PCB Constitution was declared to be void *ab initio* and a direction was issued to the Election Commission of Pakistan for holding of the election(s) of the PCB (*for the Board as a whole*) within 90 days. Furthermore, Mr. Najam Sethi was directed to act as the caretaker Chairman, till the time a new Chairman was elected in terms of the said judgment. This judgment dated 4.7.2013 was assailed by Mr. Zaka Ashraf and the present petitioner vide intra court appeals (*ICA No.1033/2013 and ICA No.938/2013 respectively*) which were allowed by the Division Bench of the High Court on 15.1.2014, and the judgment of the single Judge-in-Chamber was set aside. The effect of this judgment is clear from the operative part thereof which is reproduced as under:-

“In view of the aforementioned facts, we have come to the conclusion that the impugned judgment, was outside the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and is therefore, liable to be set aside. The respondent Chaudhry Muhammad Zaka Ashraf was removed from the post of Chairman, Pakistan Cricket Board in violation of principle of natural justice, as no opportunity of hearing was provided to him at the time of removal, so by setting aside the impugned judgment, we order restoration of Chaudhry Muhammad Zaka Ashraf as Chairman, Pakistan Cricket Board. All the decisions taken by PCB or I.M.C. during interim period, would be considered as legal and would stand validated. Since the appointment of Interim Management Committee was temporary, so with the pronouncement of this judgment, the said Committee would

stand dissolved. The situation of Pakistan Cricket Board would come back to the day when the writ petition was filed.”

This judgment was challenged by the present petitioner (IPC) vide Civil Petition No.61/2014 which was dismissed as withdrawn by this Court on 31.1.2014. The following part of the order is relevant:-

“8. The record reveals that the learned Single Judge in chambers at Islamabad High Court passed the order restraining respondent No.1 to function as Chairman, Cricket Board at the initial stage of the proceedings. This order created a vacuum which necessitated measures for a stop gap arrangement. At the end of the day, when the Intra Court Appeal was allowed and respondent No.1 was restored, the vacuum thus created has filled. Once the vacuum was filled, we do not understand how the interim or stop gap arrangement or set up created during the interregnum can endure. The interim set up created pursuant to inter-locutory or final orders passed by the learned Single Judge of the High Court in its Chambers in Writ Petition No.2242 of 2013 will evaporate with their reversal on acceptance of appeal. Therefore, we do not agree with the learned ASC for the petitioner that the set up created during the interregnum can have any existence after the parties were brought to the position as was existing at the time of commencement of action.

9. The argument addressed in the alternative that even if the set up thus created during the interregnum cannot endure, the power of the Government to hire and fire cannot be restricted by any observation made in the impugned judgment, seems to have flowed from an apprehension which is more Imaginary than real. There is absolutely nothing in the impugned judgment, nor there can be, as could restrict the power of the Government to do what it is required by law to do. When faced with this situation, the learned ASC for the petitioner straightaway asked for withdrawal of her petition in the terms mentioned above (emphasis supplied by us).”

3. Vide notification dated 30.1.2014 issued by the Federal Government an amendment was introduced in the Constitution of the PCB and instead of the President of Pakistan, the Prime Minister of Pakistan was made the Patron (*of the PCB*). Furthermore vide notification dated 10.2.2014 another amendment was made therein (*in the Constitution*) to the effect that Section 41 was substituted, to read as follows:-

“41. Supersession of the Board.- (1) When the Patron is of the opinion that the Board is unable to perform its functions properly in accordance with this Constitution he may, by order in writing, supersede the Board and constitute a Management Committee comprising upto eleven members, for the performance of the functions of the Board:

Provided that upon an order of supersession the Board of Governors shall stand dissolved and the Chairman shall stand removed.

Provided further that such supersession shall not remain in force for a period of more than one hundred and twenty days unless extended by the Patron for reasons to be recorded in writing.

(2) The Management Committee shall elect one of its members to be its Chairman who shall also be the Chairman of the Board.

(3) The Management Committee shall assume and discharge all or any functions of the Board and references in this Constitution to the Board of Governors and the Chairman shall deemed to be a reference to the Management Committee.

(4) The Patron may also assign additional functions to the Management Committee for the promotion and development of Cricket.

(5) All acts done, proceedings taken and contract entered into by the Management Committee shall be deemed to have been done, taken and entered into lawfully and validly and shall be binding on the Board.”

The same day (*i.e. 10.2.2014*) vide another notification No.4-14/2008-IPC-S-II, the Board, which was restored by the learned Division Bench of the

High Court through its verdict dated 15.1.2014, was superseded by the Patron in exercise of his power under Section 41 thereof (*the amended Constitution*) and an Interim Management Committee (*IMC*) was formed to run the affairs of the PCB in place of the superseded Board. This supersession as mandated by law was for a period of one hundred and twenty days. The contents of the notification are:-

“No.4-14/2008-IPC-S-II. Whereas there is an emergent need to streamline the affairs of Pakistan Cricket Board (PCB) and to align its constitution towards representative governance, to contain principles of financial discipline, to provide guiding principles for promotion of the game of cricket as per the international best practices, and to eliminate the chances of corrupt and arbitrary practices, and to organize cricketing bodies in a fair and transparent manner;

And whereas there are serious issues in the management of PCB, repugnant to the aims and objects of PCB and that there is an immediate and emergent need to take necessary measures to improve the management of PCB as well as to streamline the game of cricket at all levels in Pakistan;

Now, therefore, under the powers conferred upon the Patron under paragraph 41 of the PCB constitution as amended vide SRO dated 10th February 2014, the Prime Minister of Pakistan being Patron PCB has been pleased to constitute the following Management Committee for performance of the functions of the Board with immediate effect:

- i. Mian Sheharyar Khan, Ex-Chairman PCB.*
- ii. Mr. Najam Aziz Sethi, Ex-Acting Chairman PCB*
- iii. Mr. Zaheer Abbas, Ex-Captain Pakistan Cricket Team.*
- iv. Mr. Naveed Akram Cheema, Chief Secretary Punjab.*
- v. Secretary, Ministry of IPC.*
- vi. Mr. Shakil Sheikh, Ex-Member BOG, Islamabad/Rawalpindi.*
- vii. Mr. Yousaf Naseem Khokhar, Ex-Member, BOG from Wapda.*
- viii. Mr. Iqbal Qasim, ex-test Cricketer/Ex-member of BOG from National Bank of Pakistan.*

2. *It shall elect one of its members as Chairman, who shall be the Chairman PCB."*

Pursuant to the above notification and in terms of sub-para 2 thereof Mr. Najam Sethi was elected as the Chairman PCB. It may be mentioned here that these two notifications; the one amending the Constitution (*of PCB*) and the second superseding the Board of which Mr. Zaka Ashraf was the Chairman were never ever challenged by him (*Mr. Zaka Ashraf*) or any other Board Member(s) (*who were thirteen in number*); except Commodore (R) M. Arshad Hussain, and this remains to be the position till 10.7.2014, when the Federal Government has enforced a new Constitution of the Board. Be that as it may, during this period the services of certain employees of the Board were terminated, including one Arbab Altaf Hussain (*respondent No.1 of C.P.L.A.No.784/2014*) whose service was terminated on 28.3.2014 by the Director Human Resource and Administration (*Director HR & A*) of PCB. He was the first to file a Writ Petition No.1789/2014, primarily challenging his termination order, and it is only in the above context that the supersession notification was also assailed. Some other employees of PCB who were similarly placed (*their services also terminated*) filed the akin petitions (*in some cases however the notification was not challenged*).

4. For the first time Commodore (R) M. Arshad Hussain (*a member of the superseded Board*) filed a Writ Petition No.2277/2014 before the Islamabad High Court on 10.5.2010 in which Mr. Zaka Ashraf was arrayed as one of the respondents. It may be relevant to mention here that the term of office of Mr. M. Arshad as a Board member admittedly was for a period of one year. His appointment is dated 13.5.2013, which term was to expire on 12.5.2014 and the petition was filed by him just two days (*on 10.5.2014*) before the expiry of his term. In this petition, Mr.

Zaka Ashraf at some point of time (*note: must be between 12th to 14th of May --- without yet being served in the matter*) moved an application for his transposition as a petitioner, but there is no order of the Court in respect of his transposition request. Anyhow, all these petitions which were twenty-five in number were clubbed and heard together and have been decided by the single Judge-in-Chamber of the Islamabad High Court vide impugned judgment dated 17.5.2014; whereby the notification dated 10.2.2014 (*by virtue whereof the Board of Governors was superseded*) has been declared illegal and unlawful. The main reasons in this regard are:- that the supersession is not inconsonance with the power available to the Patron in terms of Section 41 of the PCB Constitution; the object of supersession and the reasons for the interim set up were missing; that the Interim Managing Committee (*IMC*) has exercised certain power beyond its mandate; there was no material justifying the supersession and thus such action is arbitrary and mala fide. Thus on the basis of these broad reasons, the court came to the conclusion “*Therefore, the impugned Notification dated 10.02.2014 superseding duly elected Body of Pakistan Cricket Board without assigning any reason nor any instance shown is required to be struck down. The same is, therefore, hereby annulled. The acts down orders based on long term nature by employing remaining or any other order of like nature passed by the interim Management Committee during such period are also struck down being excessive of their powers*”. As a consequence of the impugned judgment, besides the revival of superseded Board, the termination of the employees has been annulled. The above judgment has been challenged before this Court in Civil Petition No.784/2014 (*and other connected matters*) and on 21.5.2014 this Court was pleased to suspend the impugned judgment in the following terms:-

“We have heard the learned ASC for the petitioner. Issue notice to the respondents for 27.5.2014. Till then, operation of the impugned judgment shall remain suspended.”

On 27.5.2014 however another order was passed, in that, *“At the joint request of learned ASCs for the parties, the hearing of main petition and the stay application is adjourned for two weeks. It is expected that in the meantime, parties will maintain status-quo vis-à-vis the contesting respondents”*.

5. The matter came up for hearing before this Court on 26.6.2014 and the case was partly heard. When it came up for hearing on 10.7.2014, Mr. Salman Aslam Butt, the learned Attorney General for Pakistan appearing for the Federal Government informed the Court that a new Constitution of the Board is being enforced; the Managing Committee headed by Mr. Najam Sethi is being dispensed with, and a new Board of Governors is being constituted. During the course of hearing it was further divulged that pursuant to the new Constitution and the steps to follow, Mr. Najam Sethi shall be one of the nominees of the Patron on the Board of Governors. About this new development, Mr. Imtiaz Rasheed Siddiqui, learned ASC appearing for Mr. Zaka Ashraf when queried, has categorically, unequivocally and unambiguously stated, that he has discussed the above expected development with Mr. Zaka Ashraf, who is abroad. He and his client has no objection qua the enforcement of the **new Constitution**; the holding of the elections thereunder. His client however for the vindication of his position shall request the Court for his reinstatement as per the impugned judgment, and simultaneously shall resign, without taking over as the Chairman PCB even for a single moment. But Mr. Siddiqui expressed serious reservation about the inclusion of Mr. Najam Sethi as one of the nominees of the Patron on the proposed PCB Board, on the ground that

this is an ulteriorly motivated move and the object and intention behind is to bring back Mr. Sethi as the Chairman, in an oblique and indirect way. This according to him shall be a colourable exercise of jurisdiction and a mala fide act. It is meant to ultimately bring him back as the Chairman, through a dubious mean. Anyhow the case was adjourned to 11.7.2014 to have the view point of Mr. Sethi in the context of above objection and the plea. On the said date (11.7.2014) three notifications were also produced on the record by the learned Attorney General vide C.M.A.No.3933/2014. The first notification is about the promulgation of the new Constitution of the PCB. By virtue of second notification SRO No.1/2014 (*in supersession of office letter No. F.No.4-14/2008-IPC(S-II) dated 6th June, 2014 and SRO dated 10.2.2014*), the Patron appointed Mr. Justice (R) Syed Jamshed Ali Shah, the former Judge of the Supreme Court of Pakistan as the Election Commissioner of PCB with immediate effect as per the requirement of Part-IV of the new Constitution of PCB; the Managing Committee headed by Mr. Najam Sethi ceased to exist and the newly appointed Election Commissioner (*named above*) was to take over the charge of Chairman PCB who was to ensure the conduct of elections within thirty days from the date of assumption of the office as the Chairman PCB. This all was required to be done in terms of the new Constitution. Vide same notification as per Article 10 of the new PCB Constitution, the composition of the Board of Governors was postulated and Mr. Najam Sethi and Mr. Iqbal Umer, the two Members of the Board of Governors were nominated by the Patron in his discretion (*as envisaged by Article 10(d) of the new Constitution*). According to third notification No. F.No.4-14/2008-IPC(S-II), it was mandated that Mr. Justice (R) Syed Jamshed Ali Shah shall take over as the Chairman of PCB with immediate effect from today.

6. On 11.7.2014 Mr. Najam Sethi was also present in the Court who came forward to express his view point and stated that he in the first place was never keen to be appointed as Chairman PCB, but the Patron reposed confidence in him and he has worked hard for the revamping of the Board and promotion of Cricket in Pakistan. It is on account of his honest endeavors that the Board's function, prestige etc. has been improved and restored. Once again, if the Patron (*the Prime Minister*) wants him to continue serving the Board in any capacity, he cannot disappoint the Patron and say no to him. Be that as it may, on the said date the operation of two out of three notifications dated 10.7.2014 (*except through which the Constitution was enforced --- brought on the record vide C.M.A.No.3933/2014*) was suspended and the matter was listed for hearing on 21.7.2014.

7. Ms. Asma Jehangir, learned counsel for the petitioner in continuation of the earlier submissions made on 26.6.2014 argued that the supersession notification dated 10.7.2014 is well within the purview of the provisions of Section 41 of the PCB Constitution and the authority available to the Patron thereunder; the opinion has been formed by the Patron on the basis of adequate material justifying that the Board is unable to perform its functions properly in accordance with the PCB Constitution, thus it is in valid exercise of his jurisdiction and the Board headed by Mr. Zaka Ashraf was lawfully superseded. Moreover she contended that none of the writ petitioners/respondents had any *locus standi* to challenge the notification of supersession dated 10.2.2014; Mr. Zaka Ashraf or any other Board member who were superseded never ever challenged the supersession order, except Commodore (R) M. Arshad Hussain, who in the facts and circumstances of the case had no *locus standi* to do so, because his term as a Member

of the Board was to expire on 12.5.2014, whereas the writ petition bearing No.2277/2014 was filed by him on 10.5.2014, which was a Saturday and when it came up for final hearing on 15.5.2014, he virtually was not a Member of the Board; that Commodore (R) M. Arshad Hussain was estopped by his own conduct to file such belated petition which was hit by the rule of laches, and the principles of acquiescence, waiver are also duly attracted to his case. Furthermore, she submitted that from the contents of his petition, it is quite clear that Commodore (R) M. Arshad Hussain was/is neither pursuing his own cause in a bona fide manner, nor does he come to the Court with clean hands, rather this is a proxy petition, as he is primarily seeking the reinstatement of Mr. Zaka Ashraf. As regards the other writ petitioners/respondents, it is submitted that they were all contractual employees of the Board and their services were terminated by the competent authority in the Board (*e.g. in the case of Arbab Altaf Hussain by Director HR & A*) after giving one month's notice as per the terms and conditions of their service. The issue of supersession of the Board in the context of the termination of the employees was not relevant and, therefore, while examining the validity of their termination, the learned High Court in exercise of its jurisdiction under Article 199 of the Constitution of Pakistan 1973, in the garb of such petitions could not determine the vires of the supersession action. Without prejudice to the above, it is also submitted that the very writ petitions filed by the employees were incompetent and not maintainable in law, because not only that they were in the contractual employment of the Board, rather their rules of service were non-statutory in nature and resultantly, the writ petitions should have been dismissed on this score alone; in any case the employees in the facts and circumstances of the present case

had no *locus standi* to challenge the supersession order of the Board dated 10.2.2014; it was/is also not permissible for the employees to make a collateral attack on the supersession action of the Board, in the garb of challenging their termination of contractual employment.

8. During the course of her submissions Ms. Asma Jehangir, learned counsel in view of certain observation of the Court sought some time to ponder qua the response thereto; one hour was granted for the above. On resumption of hearing, Mr. Najam Sethi who was present in the Court throughout the proceedings (*since morning*) came to the rostrum and stated that the only objection of the respondent Mr. Zaka Ashraf is that by virtue of his nomination as a member of the new Board he shall be elected as the Chairman of the Board. But while hearing the proceeding of the case, he has decided not to contest the forthcoming elections for the office of Chairmanship under the new Constitution (*such statement is also reflected in the short order reproduced above*). Mr. Imtiaz Rasheed Siddiqui, learned ASC when asked to comment upon the above, states that though his client (*he himself*) has no intention to resile from earlier commitment made before the Court in respect of accepting the new Constitution and the steps to be taken thereunder, but as the petitioners have argued the case in the first part of the day on merits therefore, he would also make his legal submissions. Be that as it may, in order to avoid any confusion, we have again asked Mr. Siddiqui if he accepts the new Constitution and the holding of elections according to it, he very candidly and unequivocally affirms the same. Be that as it may, we have still allowed him to make his submissions. It is argued that this entire exercise of supersession is mala fide; meant to circumvent, nullify and frustrate the judgment of the High Court passed in ICA dated 15.1.2014; there was no material available with the Patron

to form an honest opinion, that the Board is unable to perform its functions properly in accordance with the Constitution. He has also made reference to the summary submitted by the concerned ministry to the Patron for the purposes of supersession, to argue that from the contents thereof it is clear that the entire exercise of supersession is manipulation and a preplanned action; the Patron has not formed any independent opinion as is required by Section 41 *ibid*; that there was no waiver on part of Mr. Zaka Ashraf at any point of time for the reason that Commodore (R) M. Arshad Hussain, one of the Board Members, had filed the writ petition in which Mr. Zaka Ashraf was arrayed as a respondent, an application was moved for transposition as the petitioner, and thus for all intents and purposes he shall be deemed as a petitioner in the cause of challenging the supersession order dated 10.2.2014. Besides, it is argued that one Mr. Rafiq Bogio another Member of the Board had also challenged the supersession action and, therefore, regardless that no direct challenge was thrown by Mr. Zaka Ashraf; these challenges by the aggrieved persons who were deprived of their vested right to be the Members of the Board was good enough to assail the supersession. He submitted that the impugned judgment is in *rem* and all the affected persons shall be entitled to take the benefit of the said verdict. It is also argued that on account of the new Constitution Mr. Zaka Ashraf and the other Board Members cannot be deprived of their vested right, which right stands created in their favour on account of the two judgments of the High Court, one passed in ICA dated 15.1.2014 and the other impugned in the present petition. He has also submitted that in the facts and circumstances, no question of waiver, estoppel and acquiescence shall arise or is even relevant.

9. Sahibzada Ahmed Raza Kasuri, learned ASC who is representing the respondents (*the writ petitioners*) in other case, who were the employees of the Board and whose services have been terminated, has argued that their termination is mala fide; they have been dislodged by the IMC illegally and without jurisdiction; the respondents are in permanent and regular employment of PCB; and that their services are governed and regulated by the statutory rules, therefore, it is misconceived to argue that such writ petitions filed by them were incompetent.

10. Heard. Before proceeding further with this opinion, and avoiding unnecessary comments, we are constrained to observe that on account of the above litigation immense damage has been caused to the PCB in particular and Pakistan Cricket in general at all the levels, the domestic and international. The individuals might have gained or suffered, but it is the institution (*PCB*) which has been impaired excessively in all respects. The smooth functioning, prestige, prominence of PCB has been seriously hampered. The institution (*PCB*) has been in doldrums and hiccups since the time of commencement of this litigation. These all are publicly known facts. The people of Pakistan who have great passion for the game of cricket, are really concerned and earnestly desire and want PCB to emerge as a strong, independent, democratic and accountable institution. Most likely it is pursuit of the above objective and in line with the spirit thereof, that the Federal Government formed a Committee comprising of Mr. Justice (R) Faqir Muhammad Khokhar and Mr. Justice (R) Syed Jamshed Ali Shah (*both the Hon'ble former Judges of the Supreme Court*) to formulate and prepare a Constitution of PCB. The Constitution as proposed by the Committee has now been enforced vide notification dated 10.7.2014 and this was

accepted before us by all the stakeholders. Mr. Zaka Ashraf in particular (*through his counsel*) has avowedly accepted the same and for the holding of the fresh elections of the Board thereunder. Besides, as a Court of Appeal, we can take notice of this vital development which seemingly is for the betterment of the Board and the Cricket as a whole, in the country. Therefore while formulating this opinion we cannot remain oblivious of the subsequent development; the undertaking given by Mr. Zaka Ashraf in the Court; his conduct (*which shall be highlighted in the preceding part of this judgment*) after the supersession action, till date; the statement of Mr. Sethi made before us; the conduct of other writ petitioner Mr. Arshad; the legal constraints of the employees/respondents in invoking the constitutional jurisdiction of the learned High Court. Thus we are refraining ourselves from examining and dilating upon the vires of the supersession notification, especially when on account of the above factors, the main focus of the learned counsel for the parties has been on the aforestated points, and full-fledge arguments were neither addressed nor the record in depth was discussed and debated upon in this regard.

11. In the context of above, there are three sets of respondents before us (1) Mr. Zaka Ashraf, (2) Commodore (R) M. Arshad Hussain, (3) the employees of the Board. They all are the beneficiaries of the judgment and thus have to defend the same. The first in chain is Mr. Ashraf who is a key character of this entire controversy. He was removed from the post of Chairmanship of PCB and stands restored on the basis of the impugned judgment. Thus he is the prime beneficiary of the judgment. Therefore, an important question which arises for consideration is, whether he shall be able to defend the said judgment on account of his conduct till date, after

the supersession order was passed. In this regard the following aspects are relevant:- **(A)** Mr. Zaka Ashraf has never ever personally come forward to challenge his removal and supersession of the Board; therefore, he shall for all intents and purposes be considered to have accepted the supersession and acquiesced thereto, as per the definition of 'acquiescence' provided by the Black's Law Dictionary 8th Edition meaning "*persons tacit or passive acceptance; implied consent to and act*". This is aptly applicable to him; besides the doctrine of acceptance by silence can also be legitimately invoked against Mr. Zaka Ashraf in this context; **(B)** on account of his promise and undertaking given to this Court which has been highlighted in the preceding part of this opinion, Mr. Zaka Ashraf had accepted the new Constitution; the holding of fresh elections. And the only reason upon which his objection was founded, that Mr. Najam Sethi should not become the Chairman in an oblique way, this possibility due to the statement of Mr. Sethi has vanished, who has changed his course on account of such objection and the grouse is no more available to Mr. Zaka Ashraf now. Therefore on account of the above Mr. Zaka Ashraf is **estopped** by his own conduct to take a different stance and defend the impugned judgment; **(C)** the argument that Mr. Zaka Ashraf has made an application to be transposed as a co-petitioner in the writ petition filed by Commodore (R) M. Arshad Hussain and thus he should be considered to be the co-petitioner when such request was not declined by the learned High Court, this aspect shall be explained in the succeeding part of the judgment; **(D)** regardless, that the impugned judgment is *in rem* or *in personam*, after the statement of Mr. Sethi and in view of Mr. Zaka Ashraf's undertaking, he is left with no cause to defend the impugned judgment. It may be pertinent to mention here that Mr. Imtiaz Rasheed

Siddiqui, passingly, has also argued that according to the provisions of Section 4 of the Sports (Development and Control) Ordinance, 1962, the Federal Government though can give a Constitution for the first time for a Sports Board created under the provisions of the Ordinance *ibid*, but there is no power in the said Ordinance enabling the Federal Government to make any amendment in such Constitution or to substitute that Constitution with a new one. And that too, with an object to divest and deprive the key office holders from their vested right to occupy the same. We do not find any force in this submission, because an authority which has the power to enforce law, shall necessarily has the power to repeal the law; to amend the same; and even to substitute the law by repealing the earlier law on the subject, provided it is otherwise within the legislative competence of that authority (*note:- it may be pertinent to mention here that the above principle in no way should be construed to apply for the amendment etc. to the Constitution of Islamic Republic of Pakistan, 1973 because such issue is not before us for the determination*).

12. Now attending to the case of Commodore (R) M. Arshad Hussain, it seem relevant to refer to the gist of averment of his writ petition, wherefrom it transpires that he in fact is agitating for the reinstatement of Mr. Zaka Ashraf who was arrayed as respondent No.13 in the matter, as otherwise his term of office had **almost** expired by the time the writ petition was filed by him i.e. 10.5.2014. The supersession had taken place on 10.2.2014, he remained mum for a period of almost three months; no explanation is forthcoming on the record on his part for the silence for a considerable time, particularly in the situation when the IMC after the supersession was constituted only for hundred and twenty days and prompt action to challenge the same was

expedient; but out of this short period he remained quiet for vital period of three months. Thus not only the rule of acquiescence as mentioned earlier shall be attracted to his case also; rather the principle of laches as has been expounded in the judgment reported as **State Bank of Pakistan through Governor and another Vs. Imtiaz Ali Khan and others (2012 SCMR 280)** shall also apply; the relevant part of this dictum reads as follows:-

*“It is settled principle of our jurisprudence as well that delay defeats equity and that equity aids the vigilant and not the indolent. In the case of **Jawad Mir Muhammadi v. Haroon Mirza** (PLD 2007 SC 472), a full Bench of this Court has held that laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case; question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitutional petition, the same cannot be overlooked and ignored subject to facts and circumstances of each case.*

*In this very case reference has also been made to words of Lord Camden L.C. from the judgment of **Smith v. Clay** (1767) 3 Bro. C.C. 639n at 640n wherein it has been observed that “a Court of equity has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time; nothing can call forth this Court into activity, but conscience, good faith, and reasonable diligence, where these are wanting the Court is passive, and does nothing.” Cited judgment also refers to a book titled **Snell’s Equity** by John Meghee 13th Edition, wherein at page 35 it has been observed that “the doctrine of laches in Courts of equity is not an arbitrary or a technical doctrine; where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by this conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these lapse of time and delay are most material.”*

Furthermore, on account of the delay in filing the petition by Mr. Arshad when his term has almost expired, no other conclusion can be

drawn except that he was pursuing the cause for Mr. Zaka Ashraf, and was a proxy for him. It was never an honest effort to seek the enforcement of any of his right, which even otherwise as mentioned earlier had extinguished with the term of his office as a Member of the Board of Governors coming to an end on 12.5.2014. It may be emphasized that as he was not a member of the superseded Board of Governors after 12.5.2014, therefore, he lost his *locus standi* to maintain his petition; which can also be termed to have become infructuous when it came up for hearing and decided by the Court on 15.5.2014. At this point it may not be irrelevant to mention about the transposition of Mr. Zaka Ashraf in this petition; he was not transposed by a specific order of the Court; transposing cannot be deemed or assumed granted as a matter of right or course until an order to that effect is passed; transposition was not even legally permissible, because when the application for the transposition was made, on account of the expiry of the term, Mr. Arshad had lost the *locus standi* and his petition was rendered infructuous; no person should ordinarily be transposed in such infructuous case. As regards the case of Mr. Rafiq Bogio is concerned, Mr. Imtiaz Rasheed Siddiqui, learned ASC has pointed out today that he too was a Member of the Board of Governors who had filed an independent Writ Petition No.2313/2014. We have checked up with the office of the Islamabad High Court this petition was filed on 12.5.2014 and was never fixed for hearing along with the other connected matters and decided accordingly; even otherwise this matter is not before us. Besides, we have been apprised by the Legal Advisor to the PCB Mr. Taffazaul H. Rizvi, ASC that Mr. Bogio was appointed the Member of the Board on the recommendation of Mr. Zaka Ashraf. This petition again thus can be inferred to be proxy for Mr. Zaka Ashraf, who

for the reasons best known to him has always been shy to come in the forefront to challenge his supersession. Besides this petition is also hit by rules of acquiescence, and laches and the rule of acceptance by silence as well.

13. As regards the other respondents are concerned, without going into the question whether a collateral attack could be made by them qua the supersession of the Board, when **primarily** they were aggrieved of their termination orders. Suffice it to say that these petitions were liable to be dismissed for two simple reasons **firstly** that their services were not governed by any statutory rules and thus their writ petitions were not competent in terms of the law laid down in the judgment reported **Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383)**, **secondly**, the employment(s) of the said respondents admittedly was contractual in nature and their services were terminated after due notice as per their contractual terms and conditions of service. And even on this account the writ petitions were incompetent and had to fail. It may be added here, that their termination(s) was made by the competent authority in the Board; for example in the case of Arbab Altaf Hussain, as stated earlier, notice was served upon him and ultimately his service was terminated by Director HR & A, who as per the Board's non-statutory rules, was the competent (*authority*) to do so. Besides to their extent the rule of exercise of *de facto* jurisdiction was attracted even if the supersession of the Board was assumed to be bad in law. So the writ petitions filed by all other respondents, as mentioned earlier, were liable to be dismissed on these scores.

14. For what has been stated above, we by converting these petitions into appeals, allow the same and the impugned judgment of

the High Court is set aside. All the writ petitions filed by the respondents (*the writ petitioners*) shall stand dismissed. However, before parting it may be observed that all the employees of the Board who had challenged their termination orders, but have failed by virtue of this decision may approach the new Board constituted after the elections are held, as envisaged by the new Constitution, within one month by filing representations to the new Management of the Board, and such Board/Management shall finally decide about the fate of their employment; which decision shall be conclusive by all means.

Cr.O.Ps.No.48 & 54/2014:

15. In the light of the decision rendered in the main petitions, these criminal original petitions have lost efficacy and are accordingly dismissed.

JUDGE

JUDGE

Lahore, the
21st July, 2014
Not Approved For Reporting
Waqas Naseer/*