

Judgment Sheet
ISLAMABAD HIGH COURT
ISLAMABAD

I.C.A. No. 928/2013

Ministry of Inter Provincial Coordination

Vs.

Major (Retd.) Ahmad Nadeem Sadal etc.

Ms Asma Jahangir &
Mr Mohammad Arfan Ullah Khan, Advocates
For: Ministry of Inter Provincial Coordination &
Pakistan Sports Board

Mr Afnan Karim Kundi, Momin Ali Khan &
Barrister Adeel Aftab, Advocates
For: Chaudhry Muhammad Zaka Ashraf

Mr Taffazul Haider Rizvi, Advocate &
Barrister Salman Naseer, Manager Legal
For: Pakistan Cricket Board &
Mr Najam Aziz Sethi

Mian Abdul Rauf, Ch. M. Tanvir Hinja &
Mr Waqar Ahmad, Advocates
For: Major (Retd.) Ahmed Nadeem Sadal

Mr Aftab Gul Advocate
For: Ch Muhammad Anwar

Mr Hasnain Ibrahim Kazmi, Advocate
For: Applicants in C.M. No. 4932/2013

Ch Faisal Hussain, Advocate
For: Applicant in C.M. No.4702/2013

Applicant Muhammad Ayub Chudhary, in person
In C.M. No. 4848/2013

Mr. Abdul Razzaq Rajab, Advocate
For: Applicant in C.M. No. 4922/2013

Date of hearings: - **07-11-2013, 12-12-2013,**
16-12-2013 and 17-12-2013

Riaz Ahmad Khan J: This judgment is directed to dispose of instant I.C.A. No. 928/2013 as well as Nos. 936/2013, 984/2013 and 1033/2013, as common questions of law and facts are involved in these appeals.

2. Facts constituting the background of these appeals are that in order to regulate the development and control of sports in Pakistan, the Government had promulgated Sports (Development and Control) Ordinance, 1962. Deriving authority from this Ordinance, the Government of Pakistan issued S.R.O. dated 13th February, 2013, by virtue of which Constitution of the Pakistan Cricket Board was promulgated. Article 28 of the said Constitution was regarding Nomination Committee and Appointment of Chairman, which provided that Nomination Committee shall be formed at least three months prior to the expiry of tenure of the Chairman or immediately upon the office of the Chairman falling vacant. It was also provided that the Nomination Committee may consider the names of two or more individuals recommended by Patron for the post of the Chairman. Section 29 of the said Constitution was regarding discussion by the Nomination Committee, which provided that the Nomination Committee could unanimously reject the names or could recommend the name of one of the individual to the Board of Governors for the post of Chairman.

3. Major (R) Ahmad Nadeem Sadal was the Graduate, Cricketer since 1980. He remained as coach of Army Cricket Team from 2007 to 2011. Feeling aggrieved of above said two provisions of Constitution i.e. Articles 28 and 29, he filed W.P. No. 2242 of 2013 against Federation of Pakistan, Pakistan Sports Board, Ministry of Inter Provincial Coordination and Chairman, Pakistan Cricket

Board. However, the name of Chaudhry Muhammad Zaka Ashraf was afterwards added, but not as a separate party, rather his name was written with pen. Respondent No.5 Ch. Muhammad Anwar was impleaded on his own application. The prayer of the petitioner in the writ petition was to the following effect:-

"It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted, the paragraphs 28 and 29 and definition of Nomination Committee may kindly be declared as illegal, unlawful, ultra vires the Constitution, without lawful authority and jurisdiction and of no legal effect, the same be set aside/struck down in the interest of justice.

It is further prayed that the Chairman (respondent # 4) of PCB be restrained from performing his function till the time his appointment is validated under the approved Constitution by Board of Governors, General Body, Cabinet Division and Ministry of Inter Provincial Coordination, Government of Pakistan.

It is also prayed that the Chairman (Respondent # 4) may also be restrained from conducting any meeting posing himself the Chairman of Pakistan Cricket Board in any manner whatsoever till the final decision of the main writ petition.

It is further prayed that re-election may be conducted under the Election Commission providing clear chance to the Ex-Cricketers to contest the said election.

Any other relief which this Hon'ble Court deems just and proper may also be granted to the petitioner."

4. The said writ petition was filed on 25-05-2013, however, was fixed before the Court on 28-05-2013. Alongwith the petition application for interim relief was also filed with the prayer that respondent No.4 (Chairman, PCB) may be restrained from performing his functions as Chairman, PCB till final disposal of the writ petition. Learned Judge in Chamber was pleased to call for comments of respondents No.1 to 3 and notice was issued to

respondent No.4 for his representation. In respect of C.M. for interim relief, the following order was passed:-

"Prima facie, petitioner has good arguable case in his favour, as entire process of the election of respondent No.4 appeared to be motivated and polluted. And in case respondent No.4 is allowed to act as Chairman, PCB as result of dubious and non transparent election, it may complex the situation and any decision taken by respondent No.4 may cause loss to the PCB. In this view of the matter, respondent No.4 is restrained from acting and performing duties as Chairman, PCB till next date of hearing. "

5. On 13-06-2013, when the case was again taken up, the learned Judge in para-2, 3 and 4 held as follows:-

2. Learned counsel for respondent No.4 submitted that annual general meeting of ICC is scheduled to be held in the last week of June, 2013 in United Kingdom, therefore, respondent No.4 may be permitted to attend that meeting. Request of learned counsel cannot be acceded to, as very qualification to hold the post of Chairman PCB by respondent No.4 is under challenge and this Court has already passed restraining order, therefore, which cannot be reviewed at this stage.

3. In the peculiar circumstances, respondent No.3 is directed to appoint some acting Chairman of PCB fully qualified to be appointed as Chairman, till final disposal of instant writ petition, with the authority to attend forthcoming meeting of ICC so that Pakistan may be represented in the meeting.

4. Let matter be posted for hearing on 19-06-2013.

6. On 19-06-2013, Ministry of Inter Provincial Coordination submitted three names of Mr Majid Khan, Mr Chishti Mujahid and Mr Mumtaz Rizvi for appointment of any one of them as acting Chairman PCB as well as for posting on regular basis. On 01-07-2013, the learned Judge in Chamber came to know through media reports that Mr Najam Aziz Sethi had been appointed as Chairman PCB, so the following order was passed:-

"Through media reports it has been conveyed that Mr. Najam Sethi, a known Journalist has been appointed, as acting Chairman PCB, whose name was never mentioned before this Court during hearing of this case. More particularly, his appointment has been made without seeking permission from the Court with regard to panel consisting of Mr Majid Khan, Mr.Chishti Mujahid and Mr.Mumtaz Rizvi.

2. The Secretary, Ministry of Inter Provincial Coordination, Government of Pakistan, Islamabad, is directed to explain on which consideration Mr. Najam Sethi, has been appointed as Chairman PCB, when professional cricketers with vast experience and knowledge like Mr. Asif Iqbal, Mr. Majid Khan and Mr. Ramiz Raja, are available for this job?

3. Notice may also be issued to Mr. Najam Sethi, for his representation before the Court on next date of hearing.

7. However, vide judgment dated 04-07-2013, the writ petition was accepted. In the impugned judgment, learned Judge in Chamber held that the order of appointment of Mr Najam Aziz Sethi as Acting Chairman ceased to hold field after 4th July, 2013 when the Court finally decided the writ petition. Practically, Mr Najam Aziz Sethi is no more Acting Chairman rather his status was of Caretaker being appointed by this Court for a period of 90 days with the object to look into day to day affairs of PCB, cooperate and ensure the holding of election by the Election Commission of Pakistan within the stipulated period commencing from 21st July, 2013 to 18th October, 2013. Appointment of members of Selection Committee, its Chairman and other appointments/termination of services in the PCB as well as any other major decision shall be right and domain of the newly elected Chairman, PCB.

8. The learned Judge in the judgment gave history of cricket in Pakistan, list of employees appointed in Cricket Board, discussed controversies, and came to the conclusion that Chairman, PCB is always appointed on political consideration, instead of merit. With the exception of two persons, the rest of persons appointed as Chairmen, did not have good administrative qualities, understanding about the game of cricket and obsession to promote the game at gross root level. The post of Chairman was not only lucrative, authoritative, and of limelight but also provided an opportunity of numerous foreign visits, interaction with celebrities of game of cricket, showbiz and sponsors. It was further held that if the Chairman PCB himself was corrupt, he would never be able to eliminate corruption of match and spot fixing. Learned Judge therefore, held that legendry cricketers owe to Pakistan their skills, experience and temperament by passing it on to new generation of cricketers and it was therefore, suggested that players like Javed Miandad, Mohsin Hassan Khan, Saeed Anwar, Inzamam-ul-Haq and Muhammad Yusuf be given the task to identify the batting talent in the Camps organized by District and Regional Cricket Associations and after picking the youngsters they may be trained in the National Cricket Academy, where after they may be picked up by the Selection Committee. Similar other suggestions were made by the learned Judge. In para-21 of the impugned judgment, the learned Judge held that according to media reports, funds of PCB which were about 8 billion, had been reduced to less than 3 billions in the tenure of Chaudhry Muhammad Zaka Ashraf and

therefore, the learned Judge ordered for special audit of Pakistan Cricket Board as well as National Cricket Academy. It was further held that criminal cases must be registered and investigated by F.I.A. against persons who are involved in plundering the money of PCB and converted the assets of the organization for personal use and for the benefit of irrelevant persons. In para-22 it was held that International Cricket Council directed all the cricketing boards to evolve democratic process of election for the post of Chairman, Cricket Board, however, according to learned Judge, for the appointment of Chaudhry Muhammad Zaka Ashraf, Articles 28, 29, 30 and 31 were inserted in the Constitution of Pakistan Cricket Board, as the above mentioned articles do not say anything about the experience of cricket. Resultantly, articles 28, 29, 30 and 31 were declared to be void ab initio, unconstitutional, besides the democratic values, offensive to rights of individuals qualified to be elected as Chairman, PCB, against the principle of transparency, fairness, impartiality, credibility and openness, therefore, all the provisions under Part-IV of the Constitution of PCB were declared to be of no legal effect and it was directed that the same may be deleted forthwith. It was further held that in the past, President of Pakistan was the Patron of Pakistan Cricket Board and after the 19th Constitutional amendment, this authority now vests in the Prime Minister. It was therefore, directed that the Election Commission of Pakistan shall hold the election of Chairman PCB within ninety days starting from 21st July, 2013 and Electoral College should consist of Presidents of all elected Regional and

District Cricket Associations and nominees of departments playing first class cricket. Every voter of the Electoral College shall be eligible to contest the election provided he is not carrying any disqualification under the organic law of the Country i.e. Constitution of Islamic Republic of Pakistan, remained first class / test cricketer or has experience of running District or Regional Cricket Association and in case of nominee from 1st Class playing departments has experience of administration, at least Graduate and not a defaulter of PCB.

9. Feeling aggrieved of said judgment, appellant Ministry of Inter Provincial Coordination filed I.C.A. No. 928/2013, appellant Chairman Pakistan Cricket Board filed I.C.A. No. 936/2013, appellant/petitioner Major (Retd.) Ahmed Nadeem Sadal filed I.C.A. No. 984/2013 and Chaudhry Muhammad Zaka Ashraf, Chairman, Pakistan Cricket Board filed I.C.A. No. 1033 of 2013.

10. Ms. Asma Jahangir, Advocate, learned counsel for Ministry of Inter Provincial Coordination submitted that the impugned judgment being based on whims and conjectures and personal knowledge, is liable to be set aside. It was further submitted that learned Judge had passed the judgment, which was beyond the scope of Article 199 of Constitution of Islamic Republic of Pakistan, 1973. Policy matter of the Government was not only interfered with, rather the learned Judge had tried to give his own policy and

in such a way, had assumed the executive authority and as such the impugned judgment is violative of the Principle of trichotomy of powers. It was further submitted that the learned Judge had assumed the jurisdiction under Article 184(3) of the Constitution of Islamic Republic of Pakistan, rather had gone beyond that and therefore, the impugned judgment was liable to be set aside.

11. Mr Taffazul Haider Rizvi, Advocate representing Pakistan Cricket Board and Mr Najam Aziz Sethi, submitted that the writ petitioner had no locus standi and no grievance. The writ petition was liable to be dismissed on this score alone. The writ petitioner had challenged Article 28 and 29 of the Constitution of PCB, whereas learned Judge had granted relief, which had not even been prayed for. In such a way, the learned Judge had gone beyond the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. It was further submitted that in addition to Articles 28 and 29, Articles 30 and 31 were also declared void ab initio, whereas the petitioner had not asked to declared these articles as void ab initio. According to learned counsel, learned Judge had passed the judgment on the basis of surmises and conjectures. It was however, added that during pendency of the writ petition on the very first day, Chairman, PCB was removed and as a result, chaos and confusion was created. Mr Najam Aziz Sethi was appointed by the Government and in that respect, Notification dated 14th October, 2013 was issued by virtue of which, the Prime Minister was declared as Patron, instead of

President. Articles 28, 29, 30 and 31 were omitted from the Constitution and Article 41 of the Constitution was also amended. By virtue of this new amendment in Article 41, the Pakistan Cricket Board was superseded and the Federal Government was directed to constitute an Interim Management Committee comprising of five members, who could elect one of them as Chairman. This supersession was however for 90 days. Learned counsel further submitted that this Notification was not challenged by any one. On the same day, another Notification was issued by virtue of which, the Prime Minister appointed Interim Management Committee comprising of M/s Haroon Rasheed, Najam Aziz Sethi, Naveed Akram Cheema, Shaheryar Khan and Zaheer Abbas. The I.M.C. was directed to elect one of its members as Chairman. Learned counsel further submitted that since these Notifications have not been challenged, therefore, if any order is passed by this Court, these Notifications would remain in the field and the Government would run affairs of the Pakistan Cricket Board in accordance with these Notifications.

12. Argument regarding Notification was supported by Ms Asma Jahangir, learned counsel for Ministry of Inter Provincial Coordination, however, she submitted that the Government has no intention of hijacking Pakistan Cricket Board and any order passed by this Court would be obeyed, irrespective of the fact as to what order is passed in respect of these Notifications as well.

13. Mr. Afnan Karim Kundi, learned counsel for appellant, Chaudhry Muhammad Zaka Ashraf submitted that the impugned judgment is perverse, arbitrary against law and facts available on record, therefore, liable to be set aside. According to learned counsel, on the very first day, when the case was taken up, through interim relief, final relief was granted and Chaudhry Muhammad Zaka Ashraf was removed from the post of Chairman Cricket Board. This order was totally illegal for the simple reason that final relief could not be granted at ad-interim stage and that too without notice to the other party. In the present case, Chaudhry Muhammad Zaka Ashraf was not party in his personal capacity. The grounds on the basis of which Chaudhry Muhammad Zaka Ashraf was removed were totally unfounded and were not even pleaded by the petitioner. Learned counsel submitted that it is not known as to wherefrom the learned Judge gathered the remarks attributed to Chaudhry Muhammad Zaka Ashraf while passing order regarding his removal. Learned counsel further submitted that the learned Judge in Chamber could strike down Articles 28 and 29 of the Constitution of Pakistan Cricket Board, if these were against any provision of the Constitution or law, but instead on the basis of his personal whims, learned Judge held that these provisions were provided in the Constitution to benefit Chaudhry Muhammad Zaka Ashraf. According to learned counsel, it was totally misconceived and against the facts. It was further submitted that the remarks regarding appointment of Chaudhry Muhammad Zaka Ashraf and other irregularities

attributed to Chaudhry Muhammad Zaka Ashraf were not born out from the record and it is not known as to how the learned Judge could pass those remarks. It was further submitted that Chaudhry Muhammad Zaka Ashraf had been appointed in accordance with law and he could not be removed from the said post in violation of law and on the basis of personal whims. Learned counsel also submitted that it was nowhere provided on the record that Chaudhry Muhammad Zaka Ashraf had personal relations with Mr Asif Ali Zardari, ex-President of Pakistan and that it was because of this that he had been appointed as Chairman, Pakistan Cricket Board. It was totally personal belief of the learned Judge. It was further submitted that no judgment can be passed on the basis of personal whims or even knowledge of the Judge and the judgment has to be within four corners of law. Learned counsel further submitted that the Chairman Pakistan Cricket Board as well as Ministry of Inter Provincial Coordination has also changed its position after filing of appeal. While arguing the case before learned Judge, the position of the Pakistan Cricket Board as well as Ministry of Inter Provincial Coordination was that removal of Chaudhry Muhammad Zaka Ashraf was unlawful, whereas now at the time of appeal, they have made slight change in their submissions, as now their object is that the appeal should be accepted, however, new persons of new Government are to be appointed as Chairman of the Pakistan Cricket Board. It is because of this that reference is being made to two Notifications, whereas these Notifications were issued as stopgap arrangements,

because total confusion arose after the impugned judgment. It was further submitted that these Notifications would become invalid as and when the judgment is announced by this Court. Learned counsel further submitted that Pakistan Cricket Board as well as Ministry of Inter Provincial Coordination have tried to mislead the Court that earlier some Notifications were produced before the Court, wherein it was provided that the reason for issuance of Notification was the judgment of the learned Judge, whereas now the second copy of the same Notification has been filed wherein preamble has not been shown and an effort is being made to create impression as if these Notifications are forever. Learned counsel further submitted that the appeal be accepted and Chaudhry Muhammad Zaka Ashraf be restored to his position.

14. Mian Abdul Rauf, Advocate, learned counsel for appellant/writ petitioner submitted that PCB itself is component of the Government, therefore, the Board as well as Ministry of Inter Provincial Coordination could appoint a counsel in accordance with the rules of business, but no such procedure was adopted. Power of attorney in favour of Mr Taffazul Haider Rizvi, Advocate as well as Ms Asma Jahangir, Advocate are defective, therefore, both counsel cannot represent these appellants. It was further submitted that in absence of proper power of attorney presumption would be that no appeals were filed. These appeals being not maintainable are liable to be dismissed. Learned counsel further submitted that appointment of Mr Najam Aziz Sethi was also

against law, as the requirement of International Cricket Council (ICC) was that the Cricket Board be constituted through elections. Therefore, the appointment of Mr Najam Aziz Sethi or any other Chairman through other means except Election, would be illegal. Learned counsel further submitted that the learned Judge was right in holding that proper Election of the Pakistan Cricket Board be held in order to elect the Chairman, Pakistan Cricket Board and as such, the findings of learned Judge regarding holding of Election are quite correct and legal. However, the appointment of Mr Najam Aziz Sethi and that of D.M.G. Officer as Secretary P.C.B. be set aside.

15. We have heard learned counsel for the parties and have also perused the record.

16. The Government of Pakistan in order to regulate the development and control of sports in Pakistan, promulgated Sports (Development and Control) Ordinance, 1962. Sub-section 2 of Section 3 of the said Ordinance provides that a Board shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable. As such, the Pakistan Cricket Board by itself is a corporate body, which can sue and be sued. The Board itself is not a component of the Government and therefore, the first objection of learned counsel for the writ petitioner that the cricket board is the

component of the Government and therefore, the power of attorney executed in favour of Mr Taffazul Haider Rizvi, Advocate is illegal, is not correct. The record shows that proper resolution was passed by the Board authorizing Mr. Subhan Ahmad, Chief Operating Officer and Brig (R) Sajid Hameed, Director Coordination to file the case on behalf of Pakistan Cricket Board. As far as power of attorney in favour of Ms. Asma Jahangir is concerned, that was signed by the Section Officer. The contention that the said power of attorney was not executed in accordance with the Rules of Business, is the internal procedure of the Ministry and the same could be challenged only by the Ministry, executing the power of attorney. Opposite party cannot raise the objection in respect of the same. The contention that the Ministry is represented by the Secretary is correct, however, normally the correspondence is made through section officers. Both the objections of the learned counsel for writ petitioner are therefore, invalid.

17. First Constitution of Pakistan Cricket Board was promulgated on 20th September, 2007. It was published in the official gazette on 18th October, 2007. Article 5(1) of the said Constitution provided that the Patron shall appoint a person of high repute and integrity with management experience as the Chairman for a period of three years, who shall be eligible for reappointment for one further consecutive term of three years. According to Section 2(t), President of Islamic Republic of Pakistan was Patron of the Board. Under Article 5 of the said Constitution of

Pakistan Cricket Board, Chaudhry Muhammad Zaka Ashraf was appointed as Chairman, Pakistan Cricket Board vide Notification dated 13th October 2011. The tenure was to end on 30th October 2014. By that time there was no complaint regarding appointment of Chaudhry Muhammad Zaka Ashraf, as Chairman. However, during this period certain new developments took place, which included establishment of International Cricket Council. It was limited by guarantee and not having share capital; different countries of the world were the members of the Council. Articles and Memorandum of the Association were prepared and Para 2.9 of the Article and Memorandum of Association was regarding Independence of Member Boards. For the sake of convenience, the same is reproduced herein below:-

“2.9 Independence of Member Boards

- (A) Members must provide for (a) free elections and/or (b) appointments from amongst their members for their executive body or nominees from outside their members appointed by their executive body. This obligation shall be included in their statutes. Where there is no such provision or where the Executive Board considers an executive body of a Member not to have been established by free elections and/or appointments as indicted above, the Executive Board shall have the power to suspend or refuse to recognise such Member or its executive body (including an executive body set up on an interim basis), subject to the provisions of Article 2.7.***
- (B) Where a government interferes in the administration of cricket by a Member, including but not limited to interfere in operational matters, the selection and management of teams, the appointment of coaches or support personnel or the activities of a Member, the Executive Board shall have the power to suspend or refuse to recognise that Member, subject to the provisions of Article 2.7.***

18. The above said provision provided that the Member Board should either be elected through Election and the Chairman should also be elected or appointed from amongst their executive body or nominees outside their members appointed by their executive body. As such, three different options were given to the Member Boards. The actual object of the I.C.C. was that the Cricket Boards of each member country should be an independent body, not being influenced by the concerned Government. The second object was that if the Board itself is independent and outside the political influence of the Government, the Board would make efforts for the development of Cricket. The object no doubt was excellent and praiseworthy, but the fact remains that every Government was given three different options for the appointment of executive body and Chairman Board.

19. As far as the provisions of this Constitution are concerned, this could not be implemented through Court, for the simple reason that they were never approved by the Parliament of Pakistan. It is established principle of law that any agreement award not approved by the Parliament, does not have the force of law and cannot be executed through process of Court. In judgment titled as **Societe Generale De Surveillance S.A. Vs. Pakistan through Secretary, Ministry of Finance, Revenue Division, Islamabad**, reported as **2002 SCMR 1694**, it was held that if provisions of the Treaty are not incorporated into the laws of the country through legislation, such provisions would not have

the effect of altering the existing laws, as such, rights arising therefrom, called treaty rights, could not be enforced through Court. The Court is not vested with the power to do so.

20. Nevertheless, the fact remains that Pakistan being a Member of international community could not ignore international decisions. Furthermore, Pakistan Government also had to make efforts for the development of cricket, which now has become a national game and of extreme importance in the country. It was because of this that certain amendments were required to be made in the earlier Constitution and as a result, new Constitution of Pakistan Cricket Board was promulgated on 13th February, 2013. It was published in the official gazette on 14th February, 2013. Under Article 2(xxi) of the Constitution, "Nomination Committee" was defined, which provided that committee constituted to recommend the name of the Chairman to the BOG, comprising of two representatives of BOG and two representatives nominated by the Patron. The representatives of the BOG shall be one elected representative of the Regions and one elected representative of the Service Organizations on the BOG (the said two representatives shall be elected by the BOG).

21. Article 6 provided for the appointment of the Chairman and also described the powers of the Chairman. It is important to note that Pakistan was divided into 15 regions and the President of each

region is to be elected. Five elected Regional Presidents on the basis of rotation are to be appointed as Board of Governor. In addition to that the Board of Governor included five members, who are representatives of Service Organizations and Departments. In the same Constitution, Part-IV was regarding nomination committee and appointment of Chairman. For the sake of convenience, the same is reproduced herein below:-

PART-IV

NOMINATION COMMITTEE AND APPOINTMENT OF CHAIRMAN

28. Nomination Committee:-- A Nomination Committee shall be formed at least three months prior to the expiry of tenure of the Chairman or immediately upon the office of the Chairman falling vacant for any reason whatsoever. The Nomination Committee may meet as many times as deemed necessary to consider the names of two or more individuals recommended by the Patron for the post of Chairman. The individuals, in order to qualify for recommendation for the office of Chairman, shall possess experience of management or administration.

29. Discussion by the Nomination Committee:-- The Nomination Committee, within one week from the date of receipt of nomination by the Patron, shall meet to discuss and evaluate the names of individuals for the office of Chairman and unless unanimously rejected by it with reasons, recommend to the BOG one of the individual aforesaid for the post of Chairman. In the event the Nomination Committee fails to take any decision in the said meeting, the name forwarded by the Patron, at serial number one shall be deemed to have been recommended to the BOG. The Chairman shall be appointed for a period of four years and shall be eligible for reappointment.

30. Decision by BOG:-- The BOG, unless it unanimously rejects the said nomination in a meeting to be held within one week of receipt of name from the Nomination Committee, shall

formally endorse the appointment of the recommended nominee as the Chairman. In the event the BOG fails to take decision in the said meeting, the nominee recommended by the Nomination Committee shall be deemed to be formally appointed.

Provided that in case the BOG immediately rejects the nominations by the Nominations Committee, the entire process as given afore will start de novo with fresh nominations to be made by the Patron.

31. Charge of the office:- The Chairman so appointed or reappointed, shall assume charge of the office upon expiry of the tenure or forthwith as the case may be.

22. Chaudhry Muhammad Zaka Ashraf was again appointed as Chairman after the decision was made in the 55th meeting of the Board of Governors on 8th May 2013. There is no denial of the fact that this appointment was made strictly in accordance with the Constitution for the year 2013. These facts are admitted by all the parties and there is no cavil to the fact that appointment of Chaudhry Muhammad Zaka Ashraf was legal and according to the prevailing rules.

23. The writ petitioner filed the writ petition as according to him the appointment was not in accordance with Article 28 and 29 of the Constitution of Pakistan Cricket Board. As the appointment of Chairman Pakistan Cricket Board was not in accordance with Article 28 and 29 of the Constitution of PCB, the constitution of selection Board was illegal, the President could not issue Notification, the appointment of the Chairman was made due to

favoritism, the Board of Governors was not properly constituted and Election was not transparent.

24. Learned Judge in Chamber on the very first day when the case was placed before his Lordship, held that the entire process of election of respondent No.4 (Chaudhry Muhammad Zaka Ashraf) appeared to be motivated and polluted and that if he is allowed to act as Chairman, PCB as result of dubious and non transparent election, it may complex the situation and any decision taken by respondent No.4, may cause loss to the PCB. After these observations, the Chairman, Pakistan Cricket Board was restrained from acting and performing duty as Chairman, PCB. On the next date of hearing, request of learned counsel for PCB to allow respondent No.4 to attend annual general meeting of ICC at United Kingdom was turned down and respondent No.3 was directed to appoint some acting Chairman of PCB. In such a way, the learned Judge passed final order on the very first day, which could not be passed, particularly for the reason that Chaudhry Muhammad Zaka Ashraf was not before the Court. The observations made by his Lordship were totally uncalled for, because these observations were not born out of the record. In addition to that, merely on the basis of certain apprehensions, which were totally personal, his Lordship passed restraining as well as removal order. The said order as such is totally illegal, violative of principle of natural justice and against the norms of fair play and justice. Restraining order is passed under Order XXXIX of

CPC, but the said Order is to be read with Section 94(c) and (e) as well as 151 of CPC. The powers u/s 94(c) are supplemental. Civil Court has all the powers available to it under the Code of Civil Procedure and in a suitable case pass an incidental or supplemental order following the procedure prescribed in the code. The object of passing interlocutory order is to prevent the ends of justice from being defeated. The impugned order regarding restraining and removal of respondent No.4 was neither incidental nor supplemental and as such were uncalled for.

25. In judgment titled as **“Muhammad Rafique Javaid Vs. Muhammad Khalil and 3 others [1999 MLD 1672]**, his lordship relying on **Mala V. Hashim and 2 others [1993 SCMR 1960]** and **Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others Vs. Muhammad Zaman Khan and others [1997 SCMR 1508]**, held that the object of interim injunction was to preserve the situation as obtaining on the date of suit so as to prevent an injury to plaintiff and not to create a new situation. Similarly, in judgment reported as **“Muhammad Ayub & Brothers through Partner Vs. Province of Sindh through Secretary, Irrigation and another [2009 YLR 348]**, it was held that no injunction could be granted against day to day functioning of public functionaries. In the present case, by way of temporary injunction, not only Chairman PCB, Chaudhry Muhammad Zaka Ashraf was restrained from performing his public duty, rather he was altogether removed from the post. This

order was neither incidental nor supplemental and by itself was final order passed at the initial stage.

26. Even in the impugned judgment, which was after the removal of the Chairman, PCB and where reasons for removal were given by the learned Judge are also not correct. Learned Judge described the past history of Pakistan Cricket Board, evaluated different events, described the achievements made by different players and thereafter, came to the conclusion that during tenure of Chaudhry Muhammad Zaka Ashraf, Chairman PCB, the cricket in Pakistan could not make any progress. Leaving aside the narration of history of cricket in Pakistan as described by the learned Judge, the fact remains that no Judge has the right to pass the order on the basis of personal whims or knowledge, no matter how authentic it might be. In the Courts, we follow adversarial proceedings, where two parties are before the Court and the Judge acts as umpire. The rights of the parties are to be determined in accordance with law and not on the basis of personal knowledge or experience or knowhow of the Judge. Learned Judge passed the order against respondent No.4 on the basis of observations which were totally personal and were not available in the petition.

27. Learned Judge in Chamber through impugned judgment struck down Part-IV of the Constitution of Pakistan Cricket Board.

In this respect, the learned Judge after reproducing Part-IV, held that *“the plain reading of above provisions clearly indicates that these have been incorporated with an object to allow Chaudhry Muhammad Zaka Ashraf to retain his office of Chairman, PCB. It is astonishing to note that qualification for recommendation for the post of Chairman is only experience of management or administration. It is absolutely silent about experience of cricket, knowledge about game of cricket and understanding the codes of ICC, “Code of 1744” and subsequent enactments/amendments brought”. Another aspect is that these provisions talk about appointment of Chairman and not election. The constitution of Nomination Committee is against the spirit of holding election in accordance with the democratic values. The Court is constrained to observe that Part-IV of the Constitution is a deceptive and dubious device to engineer the appointment of Chairman and this Court has no hesitation in holding that it is person specific for Mr. Chaudhry Muhammad Zaka Ashraf. Appointment of Chaudhry Muhammad Zaka Ashraf by the patron, vide notification dated 13.10.2011, was not on the basis of his career as cricketer, knowledge about game of cricket, administrative qualities and management skills but apparently for the reasons that he was President of ZTBL, a banker in status and due to personal affiliation with the person on the helm of affairs. Reappointment of Chaudhry Muhammad Zaka Ashraf, is totally deceptive as no election in accordance with the spirit of democratic process has been held, therefore, same is hereby set aside. Consequently, Part-IV of the Constitution of Pakistan Cricket Board was declared to be void*

ab initio and unconstitutional.”

28. After going through the above said para, it becomes clear that the learned Judge had a particular sketch in his mind regarding game of cricket in Pakistan. There can be no doubt about the fact that the learned Judge wanted the progress of the game of cricket in Pakistan, but the problem is that on the personal evaluation, knowledge or wisdom of Judge, the judgment cannot be made.

29. According to learned Judge, qualification should have included experience in the game of cricket. This observation was not correct. It is entirely for the Government to prescribe qualification for the Chairman, P.C.B. and the Courts have no authority to prescribe qualification for the post of Chairman, P.C.B.

30. In judgment titled as **“Zafar Iqbal and another Vs. Director, Secondary Education, Multan Division and 3 others”**, which was basically a civil case, reported as **2006 SCMR 1427**, it was held that the Government was always empowered to change promotion policy and domain of Government to prescribe qualification for a particular post through amendment in relevant rules was not challengeable.

31. As far as guidelines given by the International Cricket Council are concerned, it has already been stated that there were three different options for the constitution of Board and nomination of Chairman. It is entirely for the Government to adopt any of the option. Although the suggestions of ICC were not binding upon the Government of Pakistan, yet the Government decided to adopt those suggestions. Though the act was for the wellbeing of the country and the nation, however, the Court cannot compel the Government to adopt a particular option of the ICC, as it would amount to encroaching upon the executive authority of the Government. There could be no doubt of the fact that the Executive has to play its own role and the Courts cannot compel the Executive to adopt a particular course. In addition to that, adopting one of the options, given by the ICC, by the Government was entirely a policy matter. It is established principle of law that High Court has only power to interpret the law and has no jurisdiction to take the role of policy maker in the garb of interpretation. In judgment titled as “**Aqsa Manzoor Vs. University of Health Sciences, Lahore through Vice Chancellor and 3 others**” reported as **PLD 2006 Lahore 482**, it was held that Policy matters of the Government could not be assailed or challenged in the constitutional jurisdiction unless those were proved to have been framed or formulated against the fundamental and basic provisions of the Constitution.

32. Part-IV of the Constitution of Pakistan Cricket Board, 2013 could be adjudged at the touchstone of fundamental rights or any basic provision of Constitution of Islamic Republic of Pakistan, 1973 and could be struck down, but not for the reason that the Court has got a better option or a different view. In the impugned judgment, Para-IV of the Constitution was not discussed at the touchstone of any provision of the Constitution or law, but was struck down simply for the reason that the learned Judge had a different view. It is also not known as to wherefrom the learned Judge came to know that Chaudhry Muhammad Zaka Ashraf had personal relations with the person at the helm of affairs or how Articles 28, 29, 30 and 31 were person specific. It is also to be kept in view that Chaudhry Muhammad Zaka Ashraf had not to remain forever as Chairman, Pakistan Cricket Board or the person at the helm of affairs also had to go, but the provisions of law had to remain on the statute book.

33. We are, therefore, of the considered view that Part-IV of the Constitution of PCB was illegally struck down and the findings on this score were neither according to law nor facts available on record.

34. During pendency of the writ petition, after removing Chaudhry Muhammad Zaka Ashraf from the post of Chairman, respondent No.3 was directed to appoint someone to act as

Chairman, PCB. As stated earlier, respondent No.3 proposed three different names for acting Chairman, PCB as well as for posting on regular basis, but afterwards Mr Najam Aziz Sethi was appointed as Acting Chairman, PCB. The appointment of Mr Najam Aziz Sethi also annoyed the learned Judge as his name was not included in three names suggested to the Court and the learned Judge was never informed prior to said appointment. In this respect, notice was issued to Mr Najam Aziz Sethi for personal appearance. Thereafter, the impugned judgment was passed on 04-07-2013. In the Judgment, it was held that Mr Najam Aziz Sethi had ceased to hold office w.e.f. 04-07-2013, when the final judgment in the writ petition was announced. (The judgment, however, was delivered much later). Accordingly, the Election Commissioner was directed to hold Election within 90 days.

35. The Election Commissioner of Pakistan could not hold the election within 90 days and as a result, the learned Judge after about three months of the announcement of final judgment passed another order on 21-10-2013, extending the date of Election with further direction to Election Commission of Pakistan to hold Election.

36. Since Election Commission of Pakistan could not hold Election, therefore, review petition was filed before the learned Judge in Chamber, which came up for hearing on 28-10-2013 and

on the said date, the learned Judge reviewed the earlier order, but as the Election Commission refused to hold Elections, therefore, the case was adjourned to the next date. On the next date, i.e. 29-10-2013, the learned Judge in Chamber appointed Mr Justice Munir A. Sheikh, Hon'ble retired Judge of Supreme Court of Pakistan as Election Commission to hold Election of PCB and fee of the Election Commission was fixed as Rs.2.5 Millions, to be paid by the Pakistan Cricket Board. It was further ordered that the fee be paid within three days. Thereafter, another application was moved before the learned Judge in Chamber by some officers of PCB with the prayer that Chief Operating Officer and/or the Chief Financial Officer, PCB may be authorized to release an amount of Rs.2.5 Million as fee of the Election Commission. This application was also allowed vide order dated 04-11-2013. Thereafter, the file was requisitioned by this Court and this order was also suspended by this Court.

37. All the orders passed after the announcement of the judgment were illegal for the reason that once the learned Judge had signed the judgment and announced the same, thereafter, no change could be made in the said judgment.

38. In judgment titled as **Habib Bank Limited Vs. 1st Additional District Judge and others [2005 MLD 1525]**, it was held that provisions of S. 152 C.P.C. were confined to the

correctness of types of errors mentioned therein. Correction of any other type of error could only be obtained through appeal or review in accordance with law. Error should not be contentious in nature and should be apparent from the record. Use of word “accidental” in the provision had shown that where order was deliberate, S.152 CPC was inapplicable. Where order represented the intention of the Court, it could not be said to be mistaken.

39. In case law titled **Messrs Noorani Traders Vs. Civil Aviation Authority [2001 YLR 2277]**, it has been held that the errors which required judicious application of mind could not be corrected under S. 152 CPC and such error in the order or judgment could only be corrected by resorting to review or appeal as the case could be. In the present case, the changes brought through the subsequent orders did not fall within the ambit of Section 152 C.P.C. The review could not be made for the simple reason that appeal had already been filed. Infact, learned Court had become Executing Court of its own order, in order to execute the same prior to the judgment of Appellant Court. These subsequent orders, therefore, were illegal and had no value.

40. Since during pendency of the writ petition, the learned Judge had removed the Chairman, P.C.B. and had ordered for Election of Chairman, PCB, so as a result, Pakistan Cricket Board practically ceased to exist, so the Government issued S.R.O.No.(1)/2013, dated 14th October, 2013. This S.R.O. was produced by appellant Chairman, Pakistan Cricket Board through C.M.No.4685/2013

and annexed to the C.M. as Annexure-C.

41. In Para-A of grounds of C.M. the Chairman, Pakistan Cricket Board submitted as follows:-

“that the impugned order by the Honourable Learned Judge in Chamber has been passed without due consideration to law and facts. As after issuance of the amendment in S.R.O. 100(1) 2013 on 14.10.2013 whereby after amendment in the PCB Constitution, the Patron has been pleased to supersede PCB and an Interim Management Committee (IMC) has been appointed, resultantly, the Board of Governors (BOG) and the General Body stand superseded by the IMC. Consequently, the Electoral College ceases to exist. This had made the holding of election in a legal and valid manner, as impossible. The amendment in the Constitution was presented and read-over in Court but the Honourable Judge disregarded the same. Even otherwise, the post of Chairman is a nominated post and the chairman is always appointed by the Patron i.e. now Prime Minister of Pakistan. The copy of amendment in the PCB Constitution is filed as ANNEXURE-‘C’.

42. For the sake of convenience, the S.R.O. is also reproduced as under:-

S.R.O.(1)/20013 dated 14th October, 2013

WHEREAS the Islamabad High Court vide Judgment dated 4.7.2013 in Writ Petition No. 2242 of 2013 has held Part IV of the Constitution of Pakistan Cricket Board comprising of Section 28, 29, 30 and 31 to be void and un-constitutional;

AND WHEREAS an Intra Court appeal has been filed against the said judgment but no date has been fixed for hearing as yet;

AND WHEREAS in the said judgment the Election

Commission of Pakistan was required to hold Election of Chairman PCB within ninety days. The matter was referred to the Commission but the decision is awaited.

AND WHEREAS, Islamabad High Court has also noticed financial irregularities in the funds of PCB and has directed five years audit to be conducted by the Auditor General of Pakistan.

NOW THEREFORE, to implement the Judgment, the Federal Government, in exercise of the powers under Section 3 & 4 of the Sports (Development and Control), Ordinance 1962 (Ordinance XVI of 1962), is pleased to amend the SRO No. 100(I)/2013 called the Constitution of Pakistan Cricket Board in the following manner:-

- (1) The amendment shall come into force at once and shall remain in force till the decision of the ICA.***
- (2) Amendment of the SRO No. 100(I)/2013, dated 13th February, 2013:-***
 - 1. In Section 2 Clause (xxii) may be substituted as “(xxii) Patron” means the Prime Minister of Pakistan”.***
 - 2. “Sections 28, 29, 30 and 31 are repealed.”***
 - 3. Section 41 shall be substituted as :-***

“41 Supercession of the Board (1) The Patron, in the presence of sufficient evidence and being satisfied that grave financial irregularities exist in the Board, may direct the Federal Government to supercede the Board and to constitute an Interim Management Committee (IMC) comprising of five members who may elect one of them to be the Chairman, and to specify the functions of the Committee, consistent with Section 3 & 4 of the Ordinance.

Provided that such supercession shall not remain in force for a period of more than ninety days unless extended by the Patron for reasons to be recorded in writing.”

The above mentioned S.R.O. clearly shows that the S.R.O. was issued because the Court had removed the Chairman and vacuum was created, election could not be held, therefore, Interim Management Committee was established for a period of ninety days and the same had to come to an end with the final judgment

of this Court. In the arguments also, the learned counsel took the same view as stated in the C.M.

43. At the time of rejoinder to the arguments, learned counsel for Pakistan Cricket Board and Ministry of Inter Provincial Coordination submitted that aforementioned S.R.O. was infact a draft and the actual S.R.O. was as follows:-

S.R.O. (1)/2013:- In exercise of the Powers of the powers conferred by the sub-section (1) of section 3 read with section 4 of the Sports (Development and Control) Ordinance, 1962 (Ordinance XVI of 1962), the Federal Government is pleased to direct that, in its Notification No. 100(1)/2013, dated 13th February, 2013, the following amendments shall be made, namely:-

- (a) in paragraph 2, in clause (xxii), for the word "President" the word "Prime Minister" shall be substituted;***
- (b) in paragraph 5, in sub-paragraph (1), for the word "President" the word "Prime Minister" shall be substituted;***
- (c) paragraphs 28, 29, 30 and 31 shall be omitted; and***
- (d) for paragraph 41, the following shall be substituted, namely:-***

"41 Supercession of the Board (1) The Patron, in the presence of sufficient evidence and being satisfied that grave financial irregularities exist in the Board, may direct the Federal Government to supercede the Board and to constitute an Interim Management Committee (IMC) comprising of five members who may elect one of them to be the Chairman, and to specify the functions of the Committee, consistent with Section 3 & 4 of the Ordinance.

Provided that such supercession shall not remain in force for a period of more than ninety days

unless extended by the Patron for reasons to be recorded in writing.”

44. The said copy was produced at the time of arguments (rejoinder). Infact, according to earlier S.R.O. which is being considered as a draft by the appellant, showed that the S.R.O. was only issued to fill up the gap created by the judgment of learned Judge in Chamber and was only stopgap arrangement. That stopgap arrangement was to end by the order of this Court in I.C.A. whereas the second copy of the same S.R.O. has not been issued as a stopgap arrangement. The strange thing is that the preamble was not included in the second S.R.O., which was included in the earlier S.R.O. We do not agree with the contention of learned counsel for the appellant that the earlier S.R.O. was a draft copy and the second one is the actual Notification for the reason that both are dated 14th October 2013. It is not possible to believe that actual copy was not available on the said date. It is also not possible to believe that how preamble is not included in the second copy produced by the appellant. In addition to that in Para-A of the grounds of C.M. the appellants themselves had stated that the earlier copy of S.R.O. produced was actual copy and not a draft. So in these circumstances, we hold that the constitution of Interim Management Committee as well as appointment of the acting Chairman was a stopgap arrangements and would come to an end with the judgment of this Court in I.C.A. Even otherwise the second S.R.O. (or the actual S.R.O. as claimed by the learned counsel in rejoinder) was issued for ninety

days with effect from 13-02-2013, so by now it has become infructuous and has lost its value.

45. The next submission was regarding Patron, as to who would be Patron of Pakistan Cricket Board. Since the Patron is appointed through S.R.O. issued under Section 3 & 4 of the Sports (Development and Control) Ordinance, 1962, which is subordinate legislation and the Government through subordinate legislation, appointed the Patron as well. According to earlier Constitution of PCB, the President was Patron, but now through the present S.R.O. the Prime Minister is the new Patron. Since the Government had the authority to issue fresh S.R.O., therefore, the said appointment cannot be challenged. However, separate S.R.O. would be required for appointment of P.M. as Patron of P.C.B.

46. Last but most important question in this case was that whether the writ petitioner was an aggrieved person or not. This aspect was not taken into consideration by the learned Judge in Chamber. The claim of the writ petitioner that he was graduate, cricketer since 1980; the said position did not give him the cause of action to file writ petition.

47. In case law titled as **Province of Balochistan through Secretary Excise and Taxation Department Vs. Murree Brewery Company Ltd. through Secretary [PLD 2007 Supreme**

Court 386], it was held that it is sine qua non for invoking jurisdiction of High Court through Constitutional petition that petitioner must be an aggrieved person and he must have a locus standi for availing such jurisdiction. Which denotes a person.

48. The aggrieved person is a person, who has suffered a legal grievance, against whom a decision has been pronounced, which has wrongfully deprived him or wrongfully refused to him something which he was legally entitled to. Person invoking constitutional jurisdiction under Art. 199 of the Constitution has to establish that any of his legal or fundamental rights guaranteed under the Constitution has been violated resulting in legal loss. In this regard, we have sought guidance from case law **Hafiz Hamdullah Vs. Saifullah Khan and others [PLD 2007 Supreme Court 52]**.

49. The petitioner was also required to establish direct or indirect injury to him and substantial interest in the proceedings. In the present case, the petitioner had nothing to do with the post of Chairman, Pakistan Cricket Board. By appointment of the said Chairman, no loss was caused to the petitioner; no right had been infringed; he was not a contender for the post of Chairman, PCB, so he had no cause of action or locus standi to file writ petition.

50. 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.

51. During pendency of these appeals, different applicants filed applications for impleadment as party. They were also given chance of audience but their arguments were covered in the arguments of other counsel, so no separate order is required to be passed on the said applications and accordingly, all the C.Ms stand disposed of.

52. With these observations, I.C.A. No.1033/2013 filed by Chaudhry Muhammad Zaka Ashraf is accepted. The I.C.A.

No.984/2013, filed by writ petitioner, Major (Retd.) Ahmad Nadeem Sadal alongwith the writ petition is dismissed. I.C.A. No.928/2013, filed by the Ministry of Inter Provincial Coordination and I.C.A. No. 936/2013, filed by Chairman Pakistan Cricket Board are accepted in accordance with the aforementioned observations and all the pending C.Ms. are disposed of accordingly.

(NOOR-UL-HAQ N. QURESHI)
Judge

(RIAZ AHMAD KHAN)
Judge

Announced in the Open Court on 15-01-2014

Judge
Judge

Approved for Reporting.

Wajid

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