

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No. 3644 of 2014

Major (Retd.) Ahmed Nadeem Sadal, etc.

Vs

Federation of Pakistan through Secretary Sports, Islamabad, etc

DATE OF HEARING: 19-8-2014.

PETITIONERS BY: Mr. Muhammad Faiz Cheema and Ch. Tanvir Ahmed,
Advocates for the petitioners.
Mian Abdul Rauf, Advocate for the applicants in
CM.No.4056 of 2014.

RESPONDENTS BY: Mr. Tariq Khokar, Addl. Attorney General.
Malik Faisal Rafique, DAG.
Mr. Tallat Abbas Khan, Standing Counsel.

ATHAR MINALLAH, J.- This petition and the conduct of the petitioners is a classic manifestation of attempting to thwart the administration of justice by suppressing and concealing material facts, abusing the process of the Court, subverting justice for other bonafide litigants by filing frivolous and fraudulent petitions, which is a major factor for causing delays and clogging the Courts, brazenly trying to obstruct or frustrate the judgment of the august Supreme Court and reopen the lis finally decided. It also manifests attempts to bring into disrepute the national sport of Cricket and its premier organizing body by making it controversial.

2. Briefly stated, the facts of the case are that the petitioners, who claim to have held responsible positions in various Cricket clubs and the Pakistan Cricket Board (hereinafter referred to as “PCB”), have challenged the amendments made in the PCB constitution, vide Notification No.4-14/2008-IPC-S-II, dated 10-7-2014 (hereinafter referred to as the “Impugned Notification”).

3. The petition was filed in this Court on 26-07-2014, and was fixed for hearing on 07-08-2014. The petitioners had also filed Civil Miscellaneous

Application No.02/14 seeking interim relief, which was also fixed on the said date of hearing as the petitioners had claimed urgency in the matter.

4. When the petition was taken up on 07-8-2014, while the petitioners counsel was arguing his case exparte. the learned Additional Attorney General made an appearance and informed the Court that the matter agitated through the present petition had been decided by the august Supreme Court through judgment dated 21-7-2014, in Civil Petition No.784 & 853 to 876 of 2014, and Criminal Original No's.48 & 54 of 2014 (hereinafter referred to as the "Judgment"). It was further informed that a short order was also passed on 21-7-2014 (hereinafter referred to as the "Short Order"), giving effect to the impugned notification. It was further informed that in pursuance of the directions in the said Short Order, which was also posted on the website of the Hon'ble Supreme Court, the respondents had taken steps by appointing Hon'ble former Judges of the Supreme Court as acting Chairman and Election Commissioner respectively. It was alleged that the petitioners are habitual litigants who have deliberately suppressed and concealed the Judgment and the proceedings before the Hon'ble Supreme Court, with the malafide intention of indirectly reopening the same matter and thereby obstruct or frustrate the judgment. It was alleged that the petitioners, by misleading this Court through suppressing material facts, are attempting to play fraud on the judgment of the august Supreme Court. Copies of the Short Order and the judgment dated 21-07-2014, were placed on the record.

5. In the light of the above serious allegations, the averments made in the petition were perused, and it was revealed that not a word was mentioned regarding the proceedings before the august Supreme Court, let alone the Short Order dated 21-7-2014, or the Judgment.

6. When confronted with the above, the learned counsel for the petitioners, after inquiring from the petitioner No.1, who was also present in person, informed that the petitioners had not received copies of the Judgment of the august Supreme

Court. The learned counsel made a statement at the Bar that he was not aware nor had the petitioners provided him with a copy. The learned counsel was at a loss and could not give an explanation. The learned counsel was informed that this court will not proceed unless a plausible explanation is offered for suppressing material facts. However, he sought permission to withdraw the petition, which was denied, keeping in view the prima-facie reprehensible conduct of the petitioners. Through order dated 07-8-2014, the petitioners were directed to file their respective affidavits, explaining as to why, besides dismissal of the petition, heavy costs may not be imposed, in addition to initiating proceedings under the Contempt of Court Ordinance, 2003 (hereinafter referred to as the “Ordinance”). The petitioners were directed to file respective affidavits explaining each objection/allegation raised by the learned Additional Attorney General.

7. The petitioners filed their respective affidavits through Civil Miscellaneous Application No.4056/2014, and the parties were heard on 19-08-2014.

8. Learned counsels Mr. Faiz Cheema and Chaudhary Tanvir Ahmed, Advocates High Court, appeared for the petitioners, while Mian Abdul Rauf, ASC appeared in CM No.4056/2014. They contended that the petitioners had no intention to mislead the Court; that the petitioners keep the Courts in highest degree of reverence and prestige. Lastly, it was submitted that the petitioners place themselves at the mercy of this Court. It was contended that they had not suppressed material facts, as the august court had not considered or given an opinion regarding the impugned notification.

9. With the assistance of the learned counsels and the Additional Attorney General, the contents of the affidavits and the judgment of the august Supreme Court were perused. It is admitted in the respective affidavits that the petition was filed on 26-7-2014; it was fixed for hearing on 07-08-2014; the counsel for the petitioners were not provided copies of the short order or the Judgment; the petitioners had earlier filed W.P.No.2242/2013, challenging the Constitution of the

PCB, enforced vide Notification dated 13-02-2013; the said petition was allowed on 04-07-2013, which was later set-aside by a Division Bench of this Court vide judgment dated 15-01-2014; the august Supreme Court heard Civil Petitions No.784 & 853 to 876 of 2014, and Criminal Original No.48 & 54 of 2014, on 21-08-2014; the august Supreme Court passed the Short Order on 21-08-2014; the Judgment was announced by the august Supreme Court on 28-07-2014; the petitioners filed for a certified copy of the said Judgment on 02-08-2014, at the Lahore Registry; the certified copy of the judgment of the august Supreme Court was delivered to the petitioners on 04-08-2014.

10. Besides the above unequivocal admissions made by the petitioners, they were at pain to somehow establish that the judgment of the august Supreme Court neither considered nor has reference to the impugned notification. Some relevant statements are as follows;

- a. In Para 3(i) of the respective affidavits it is stated on Oath: *“that the contention of the learned Additional Attorney General that the impugned notification 10-7-2014 was considered by the honorable Supreme Court, and that the Court had passed directions for its implementation vide its short order dated 21-07-2014, are not correct. The deponent submits that the said notification and the Constitution of the PCB notified through the same were not under scrutiny/challenge/examination before the honorable Supreme Court of Pakistan and there was no finding to the effect in the short order dated 21-07-2014”*.
- b. Para 3 (ii) states *“That with respect to the objection that the proceedings were in progress in compliance with the direction of the honorable Supreme Court, it is submitted that as on 25-07-2014, there was no order of the Supreme Court as to any direction or the compliance thereof”. “The judgment released on 28-07-2014 was delivered after the filing of the titled*

petition and there was no finding even in the said reasons that the said notification was lawfully issued and could not be challenged”.

- c. In Para No.8, the petitioners have stated that: *“The case came up for hearing before the honorable Supreme Court finally on 21-7-22014 at the Lahore Registry of the Supreme Court of Pakistan, and the same was disposed off vide the short order. The said short order did not say a word about the new Constitution of the PCB”.*

11. With the assistance of the counsels, this Court went through the Short Order dated 21-7-2014, and the Judgment, admittedly received by the petitioners on 04-08-2014. The Short Order dated 21-7-2014 unambiguously refers to the impugned notification as follows:-

“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”.

12. Reference may also be made to the relevant observations, findings and directions of the august Supreme Court in the Judgment, inter-alia, as follows:-

(i). *The statement made by the learned Attorney General of Pakistan as recorded in Para-5, specifically refers to the new Constitution enforced vide the impugned notification.*

(ii). *In Para-7, learned counsel for the petitioners contended that the impugned notification was “well within the provisions of Section 41 of the PCB Constitution”.*

(iii). *In Para-10, the august Supreme Court has observed that the impugned notification was formulated and prepared in pursuance of the recommendations made by a special Committee constituted by the Federal Government, consisting of two Hon'ble former Judges of the Supreme Court, namely, Mr. Justice (Retd) Syed Jamsed Ali Shah and Mr. Justice (Retd) Faqir Mohammad Khokar.*

(iv). *In Para 10, the august Supreme Court has unequivocally held that “The Constitution as proposed by the Committee has now been enforced vide notification dated 10-7-2014 (impugned notification) and this was accepted before us by all the stakeholders”. “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.*

(v). *In Para-14, a specific direction with regard to the impugned notification has been given i.e.*

“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”.

(vi). The Status of respondent No.3, namely Mr. Najam Aziz Sethi, was also determined through the judgment.

13. The learned counsels for the petitioners were asked to explain the obvious distortions/misstatements and concealment of facts in the affidavits filed in compliance with the directions of this Court, dated 07-08-2014. When the contents of the sworn affidavits and the Judgment are put in juxtaposition the distortions and concealment becomes obvious. It was also inquired from the counsels, in presence of the petitioner No.1, whether the petitioners had applied for a certified copy of the Short Order dated 21-07-2014. After considerable reluctance it was candidly admitted that an application was made on 22-08-2014. However, the petitioner no.1 was reluctant to state as to when it was received. A query was also raised as to why this material fact has been concealed in the affidavits filed through C.M. No.4056/2014. The counsels were at a loss and could not give any explanation except stating that the petitioners placed themselves at the mercy of the Court.

14. After hearing the counsels, perusing the record and careful consideration, it is observed and held as follows:-

15. The petitioners are educated citizens, some have held responsible positions in the PCB, while others continue to hold such positions. They are associated with the organizing bodies of a sport which undeniably has attained the status of a national sport. They have been invoking the extraordinary jurisdiction of this Court under Article 199 of the Constitution, for washing PCB's dirty linen in the court rooms, without having any regard for the repute of the PCB, within or outside

Pakistan. It is sad and unfortunate that those who are associated with this national sport appear to be oblivious of the principles of “sportsman spirit”.

16. The conduct of the present petitioners in filing the petitions, and their statements on oath in pursuance of order dated 07-8-2014, is disturbing and reprehensible, which can neither be ignored nor taken lightly. It is obvious from the record that they have been vigorously pursuing and following the PCB related litigation since 2013 after filing petitions in this Court. They admit that they were aware of the proceedings before the august Supreme Court. They admit that they applied for the detailed judgment on 02-08-2014, and received copies on 04-08-2014. After considerable reluctance, and on this courts query, it was also admitted that they filed an application on 22-8-2014, for obtaining a certified copy of the short order. However, they chose to suppress this material fact in the affidavits filed through C.M.No.4056/2014. Despite having another opportunity to make true and candid disclosure of facts in their respective affidavits, they made blatant distortions and misstatements of facts with respect to the Short Order and the Judgment, bending over backwards in trying to mislead this Court.

17. As highlighted above, the impugned notification has been discussed in detail in the Judgment. It was considered and approved, directions were given to the Federal Government and PCB for taking steps in implementing and enforcing the new amendments (impugned notification in the present petition). The petitioners deliberately suppressed from this Court material facts which could have obstructed or frustrated the Judgment and the proceedings/steps taken in pursuance thereof. The petitions, without any doubt, are frivolous, vexatious, based on deliberate suppression and concealment of facts. The conduct of the petitioners have severe consequences. They have caused considerable damage to the sport of Cricket on the one hand, and on the other abused the process of this Court by wasting public time and suppressing material facts with the intent to obstruct or frustrate the judgment of the Hon’ble Supreme Court. Now that the petitioners have placed themselves at the mercy of this Court, should their conduct be condoned, or

should they be proceeded under the Contempt of Court Ordinance, 2003 in addition to imposing special heavy costs? In order to answer this question two aspects need to be examined; the extent of damage caused to PCB and the consequences of suppressing material facts and thereby abusing the process of this Court.

(A) Damage or likely damage to PCB and Sports of Cricket

18. For every nation, Sports has a special status amongst its public priorities, inevitably linked with national interests. Nations all over the globe treat sports as a symbol of pride, nationalism and identity. At the international level it reflects a peaceful competition among nation States and on many occasions it has been used as a foundation or tool for diplomacy for ending wars, conflicts and defusing tense situations. It enables nations to raise their respective flags on foreign territories with honour and pride. It promotes public policy, inculcates the cherished desire to respect and recognise the values of "sportsman spirit", which transcends the boundaries of the play grounds to more mundane spheres of a society, be it politics or the economy. It creates tolerance and serves a pivotal role in progress and prosperity.

19. Like the other nations, in Pakistan, the sport of cricket for the nation is much more than a bat, ball or a playing ground. It touches the lives of every citizen, including the illiterate downtrodden citizen in the most remote areas. It has produced many national legends such as AH Kardar, Fazal Mehmud, Miandad, Zaheer Abbas, Imran Khan, Inziam Ul Haq, Shahid Afridi and many others. It has given the common man an opportunity to experience triumph, jubilation and ecstatic moments of pride and honour in the most difficult and challenging times. The first victory at the Oval in 1954 or the lifting of the world cup in Melbourne, Australia, and on many other occasions, Cricket has united the nation with pride and joy. The sport of cricket has become intertwined with the quality of life and consequently the right to life of the citizen guaranteed under Article 9 of the Constitution. The august Supreme Court in the celebrated case of "*Shehla Zia*",

PLD 1994 SC 693, has given a wide meaning to the right to life which has been extended from mere sustenance of life to enjoying it in terms of its quality.

20. This euphoria and joy of the common man has been a victim in the past many years on account of the deteriorating law and order situation, particularly the terrorist attack on the visiting Sri Lankan team in Lahore. As if this was not enough, the litigation during the last one year has caused considerable damage to the sport of Cricket and its repute within and outside Pakistan. At times, it appeared, that those claiming to be organisers have attempted to settle scores and get media attention by resorting to the courts and abusing its process for other than bonafide reasons. On the one hand, such conduct has threatened the sport of cricket, while on the other it has defamed and maligned its administrative structure, not only within Pakistan but also abroad.

21. The alleged conduct of the present petitioners in filing the petition by seeking to invoke the jurisdiction of this court under Article 199, prima facie appears to be a classic example of not only abusing the process of the court but also playing fraud on the execution proceedings of the amended Constitution of PCB, in pursuance of the orders and judgment of the Honourable Supreme Court, dated, 21-07-2014. Such alleged conduct is likely to cause further damage to the sport of Cricket and to abuse the process of the court, besides playing fraud on the orders of the Supreme Court, and therefore, cannot be ignored.

22. It is also pertinent to refer to the observations made by the august Supreme Court in the judgment dated 21-07-2014, which are as follows:-

“Heard. Before proceedings 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 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 all 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”.

23. The petitioners were in the knowledge of the above observations made by the august Supreme Court, as admittedly, they had received certified copies of the Judgment on 04-07-2014. Despite this they took the risk of initiating another round of litigation through concealment of facts. They were obviously aware of the damage such litigation has already caused to the Sport of Cricket, the national team and the premier organising body “PCB”. Yet they filed the present frivolous, vexatious and fraudulent petition. This inexcusable conduct of the petitioners has made the premier organisation of the national sport controversial, undermining its prestige, effectiveness and credibility, not only nationally but before the international institutions, with which it has to deal to promote the interests of our national team. The damage they have caused can obviously not be measured in monetary terms.

(B) Consequences of frivolous, vexatious litigation by suppressing or/and distorting facts.

24. The Black Law Dictionary defines “frivolous” as “*lacking a legal basis or legal merit; not serious; not reasonably purposeful*”. Vexatious has

the meaning of “*without reasonable or probable cause or excuse; harassing, annoying*”. A suit instituted maliciously and without a good cause is termed as a vexatious suit. Suppression of facts entails, “*preventing the facts from being seen, heard or known*” which inevitably leads to suppression of the truth, a kind of fraud”.

25. Facts may be of two types, those which have a bearing on the merits of the case and those which, though relevant, may not have such an effect. Facts are exclusively in the knowledge of the person who files a petition. In so far as law is concerned, though competent and professional members of the Bar exercising utmost care are expected to know the law, but a mistake is nevertheless excusable on the well known adage that a Judge must wear all laws of the country on his robe. Reliance placed on “*Muhammad Fiaz Khan vs Ajmer Khan and other*”, 2010 SCMR 105, “*Muhammad Gulshan Khan vs Secretary, Establishment Division, Islamabad and others*”, PLD 2003 SC 102, “*Iffat Jabeen vs District Education Officer (M.E.E), Lahore and other*”, 2011 SCMR 437.

26. Petitioners invoking jurisdiction of this Court are initially heard ex-parte. The Court is dependent on the averments made in the petition supported by an affidavit. It is a fundamental principle, rather a pre-requisite, that the person seeking equitable relief must approach the Court, by making full, candid, truthful, frank and open disclosure of all the relevant facts, particularly the facts having a bearing on the merits of the case.

27. Suppression or concealment of relevant facts is a kind of fraud and has been rightly termed as a “jugglery which has no place in the equitable and prerogative jurisdiction”. Frivolous, vexatious litigation based on suppression of facts has serious consequences for administration of justice.

It subverts the course of justice for other bonafide litigants by clogging the judicial system and gives rise to mistrust of the legal system. It causes delay for others by wasting public time and loss to the exchequer. It is, therefore, an abuse of the process of the Court. In the words of Lord Denning MR, in *Allen vs Sir Alfred Mc ALPINE & Sons* (1968) 1 All.E.R 543, “...*law’s delays have been intolerable. They have lasted so long as to turn justico sour*”. Courts, therefore, have the duty to protect its process from being abused. This is in the nature of a fiduciary duty which the Courts owe towards the public and bonafide litigants. Obstinate litigants causing abuse of the process of the Court undermine the public confidence in the administration of justice and the courts. Being conscious of this onerous duty, Courts cannot show leniency when its process is abused, despite the fact that grace and magnanimity is its essential attributes.

28. The present petitioners are a manifest example of abusing the process of the Court through frivolous litigation and trying to mislead the Court through suppressing material facts. They have attempted to play a fraud on the judgment of the august Court, despite admitting that they had applied for and in consequence received the copies of the short order and the detailed judgment. They were aware that the short order was posted on the website of the august Supreme Court. Being associated with PCB, they were aware of the steps taken in pursuance of the judgment of the august Supreme Court. They misstated before this Court on the first date of hearing that they were not aware of the short order or the judgment of the Supreme Court, and instead of outrightly withdrawing the petition, they wished to argue as is also evident from their subsequent sworn affidavits. As if this was not enough, they filed false affidavits in this Court by yet again suppressing material facts and misleading the Court by bending backwards in distorting the judgment of the august Supreme Court. Their conduct is obviously beyond

recklessness, rather deliberate. The conduct can neither be condoned nor taken lightly.

29. It is pertinent to emphasize that the jurisdiction of this Court under Article 199 of the Constitution is discretionary and equitable in character. Petitioners seeking to invoke its extra ordinary jurisdiction ought to come with clean hands because “he who seeks equity must come to the Court with clean hands”. Where the petitioner has not stated relevant facts correctly or candidly, has suppressed, misstated or misrepresented the material facts, this by itself is sufficient for an outright dismissal of the petition without going into merits. These principles are well settled, inter-alia, elucidated in “*Abdur Rashid vs Pakistan and others*”, 1969 SCMR 141, “*Nawab Syed Raunaq Ali etc vs Chief Syed Settlement Commissioner and others*”, PLD 1973 SC 236, “*Wali Muhammad and others vs Sakhi Muhammad and others*”, PLD 1974 SC 106, “*Rana Muhammad Arshad vs Additional Commissioner (Revenue), Multan Division and others*”, 1998 SCMR 1462, “*Thakur Dan Singh Bist, and others vs Registrar of Companies*”, AIR 1960 Allahabad 160, “*Daulat Singh and others vs The Deputy Commissioner, Karnal and others*”, AIR 1972 Punjab & Haryana 28, “*Corporation of Calcutta vs Narayan Chandra Das*”, AIR 1957 Calcutta 447.

30. The next question which needs to be answered is, as to what consequences a petitioner may face if he/she has resorted to a frivolous and fraudulent litigation by suppressing and concealing material facts and attempted to play fraud on the Judgment of the august Supreme Court, as in the present case. The principles and law as enunciated in this regard may be summarized as follows:-

(i). *It is recognized as a duty of the Court to take effective measures against obstinate litigants who resort to frivolous or fraudulent litigation.*

(ii). *Though Civil Procedure Code, 1908 (hereinafter referred to as "CPC") is applicable to writ jurisdiction ("Hussain Bakhsh vs Settlement Commissioner, Rawalpindi", PLD 1970 SC 1), yet being extra ordinary constitutional jurisdiction, the High Court has ample power to do justice and to prevent misuse or abuse of its process.*

(iii). *Section 35-A of CPC, in no way limits the constitutional jurisdiction of a High Court and in appropriate cases can impose costs, while exercising jurisdiction under Article 199, "Notwithstanding the parameters" of the said provision. Thus costs in excess of the amount prescribed under Section 35-A, can be imposed.*

(iv). *Petitioners wasting public time and exchequer should be burdened with heavy costs.*

(v). *Courts can award heavy costs for harassing others or dragging them in frivolous litigation.*

(vi). *High Court under its constitutional jurisdiction under Article 199 can award, in appropriate case, costs to compensate a party made to suffer unnecessarily through frivolous litigation.*

(vii). *Imposition of suitable costs is one of the mode to deter or eliminate frivolous litigation.*

(viii). *In appropriate cases proceedings under the law of contempt can be initiated against the litigant and the person who drafted the petition.*

31. For the above principles, reliance is place on “*Inayatullah vs Sh. Muhammad yousaf and 19 others*”, 1997 SCMR 1020, “*S.M. Sohail vs Mst. Sitara Kabir-ud-Din and others*”, PLD 2009 SC 397, “*Muhammad Azam vs Muhammad Iqbal and others*”, PLD 1984 SC 95, “*Shahid Orakzai and another vs Federation of Pakistan*”, PLD 2008 SC 77, “*Mir Sahib Jan vs Janan*”, 2011 SCMR 27, “*Muhammad Anwar and others vs Mst. Ilyas Begum and others*”, PLD 2013 SC 255, “*Khurshid Ahmad Naz Faridi vs Bashir Ahmad and 3 others*”, 1993 SCMR 639, “*The Postmaster-General, Northern Punjab and (AJ&K), Rawalpindi vs Muhammad Bashir and 2 others*”, 1998 SCMR 2386, “*Sher Ahmed and others vs The State*”, 1995 SCMR 145, “*Muhammad Zia vs Ch. Nazir Muhammad, Advocate and 4 others*”, 2002 CLC 59, “*Kawasb. AGA and another vs City District Government, Karachi (CDGK) through Nazim-e-Ala and others*”, PLD 2010 Karachi 182, “*Smt. Satya vs Teja Singh*”, AIR 1975 SC 105, “*Hindustan Transport Co. and another vs State of U.P and others*”, AIR 1984 SC 953, “*The Election Commission of India vs Shivaji and others*”, AIR 1988 SC 61.

32. Now reverting to the consequences for the grave acts and omissions of the petitioners as mentioned above, should this court initiate contempt proceedings against the petitioners in addition to awarding special costs? Keeping in view the conduct of the respondents, the answer is emphatically in the affirmative. The damage caused to PCB by making it controversial and

its likely impact on the sport of Cricket and its international reputé is immeasurable. The concealment of material facts, attempt to play fraud on the judgment of the august Supreme Court, trying to subvert the proceedings in pursuance thereof. Furthermore, filing affidavits in compliance with the order of this Court by distorting and suppressing material facts.

33. The reprehensible conduct of the petitioners is so grave that it requires that besides imposing heavy costs, they should be proceeded against under the Contempt of Court Ordinance, 2003. As already mentioned, magnanimity and grace are essential attributes of a Court. Hence, though required, this Court restrains itself from proceeding under the Ordinance. Nevertheless, keeping in view the gravity of the acts and omissions of the petitioners, the immeasurable damage they have caused, and above all the duty of this Court to protect its process and interests of bonafide litigants, heavy special costs are hereby being imposed.

34. The petition is, therefore, dismissed and special costs are imposed on the petitioners. Each petitioner shall pay Rs.1, 000,000/- (Rupees One Million) each, as costs to be paid to the PCB i.e. the respondent No.4. The petitioners are directed to deposit the costs with the Deputy Registrar Accounts of this Court within four weeks. The Registrar shall deposit the amount with PCB. The PCB, if it deems appropriate, may consider payment of the said amount to the Pakistan Blind Cricket Council.

35. As for the role of the learned counsels for the petitioners, they stated at the Bar, in presence of the petitioner No.1 that they were not aware of the Judgment, nor the petitioners had given such information. It is stated in the respective affidavits that the counsels were not aware of the Judgment. However, members of the Bar are equally responsible to protect the process

of the Court. It is their duty to exercise utmost care as their competence and professionalism is pivotal for creating public trust and confidence in the Courts. In the present case the counsels have failed in exercising due care expected from them. In the circumstances they are warned to be careful in future.

36. Before parting it is pertinent to emphasize that it is always painful for a Court to impose heavy costs on persons seeking to invoke the extra ordinary jurisdiction of this Court. However, if such reprehensible conduct is ignored as in the present case, the Court would be failing in its duty to protect the interests of the bonafide litigants and its own process. It is expected that the present petitioners and other litigants will exercise utmost care in future and respect the rights of the bonafide litigants, who are the actual stakeholders of the justice system.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 05-09-2014.

JUDGE

Approved for reporting.

*Asif M**

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