

IN THE SUPREME COURT OF PAKISTAN
(REVIEW/APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

CIVIL REVIEW PETITIONS NO.412 AND 413
OF 2014 IN CIVIL APPEALS NO.1223 AND
1224 OF 2014

(On review of this Court's order dated 23.9.2014 passed in C.As.No.1223 & 1224/2014)

AND

CIVIL APPEALS NO.1223 AND 1224 OF 2014

(Against the judgments dated 23.10.2012 of the Lahore High Court, Lahore passed in W.P. No.3053/2012)

AND

CIVIL PETITIONS NO.2061 AND 2189 OF 2014

(Against the judgments dated 8.7.2014/2.10.2014 of the Lahore High Court, Lahore passed in C.M.No.1/2014 in W.P.No.19769/2014 and W.P.No.19769/2014)

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|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| C.R.P.412/2014: | Pakistan Olympic Association through its President Vs. Nadeem Aftab Sindhu etc. |
| C.R.P.413/2014: | Pakistan Olympic Association through its President Vs. Muhammad Khalid Mehmood etc. |
| C.A.1223/2014: | Pakistan Olympic Association through its President Vs. Nadeem Aftab Sindhu etc. |
| C.A.1224/2014: | Muhammad Khalid Mahmood etc. Vs. Nadeem Aftab Sindhu etc. |
| C.P.2061/2014: | Federation of Pakistan M/o Inter-Provincial Coordination through its Secretary, Islamabad and another Vs. Pakistan Olympic Association through its Secretary General, Lahore etc. |
| C.P.2189/2014: | Khawaja Farooq Saeed, Secretary General Pakistan Olympic Association Lahore Vs. Federation of Pakistan through M/o Inter-Provincial Coordination through its Secretary, Islamabad etc. |

For the petitioner(s)/
appellant(s):

Mr. Muhammad Ahmed Qayyum, ASC
(On behalf of Malik Muhammad Qayyum, Sr. ASC)
(In C.R.Ps.412 & 413/2014 and C.P.2189/2014)

Mr. Muhammad Ali Raza, ASC
Mr. Tariq Aziz, AOR
(In C.A.1223/2014)

Kh. Haris Ahmed, Sr. ASC
Ch. Akhtar Ali, AOR
(In C.A.1224/2014)

Mr. Muhammad Munir Paracha, ASC
Mr. Mahmood A. Sheikh, AOR
(In C.P.2061/2014)

For the respondent(s): Mr. Muhammad Ali Raza, ASC
(For respondent No.5 in C.R.P.412/2014; for respondent No.26 in C.R.P.413/2014 & for respondent No.4 in C.A.1224/2014)

On Court's notice: Mr. Sohail Mahmood, DAG
Mr. Qasim Ali Chohan, Addl.A.G. Punjab

Date of hearing: 14.11.2018

JUGDMENT

MIAN SAQIB NISAR, CJ.- The brief facts of the instant matters are that the Pakistan Olympic Association (*Association*) is an autonomous society registered under the Societies Registration Act, 1860 (*the Act*) which is affiliated under the Olympic Charter with the International Olympics Committee (*IOC*) as the National Olympic Committee for Pakistan (*subsequently, it also became member of the Association of National Olympic Committees and the Olympic Council of Asia*). The background of the appeals (*C.As. No.1223 and 1224/2014*) is that the elections held on 04.02.2012 for all the posts within the Association, except that of the President, were not held through secret ballot but instead through a show of hands in contravention of Rule 37 of the Pakistan Olympic Association Election Rules, 2012 (*the Rules*). Aggrieved, respondent No. 1 filed a writ petition before the learned High Court which was accepted and the elections were declared to be illegal and without lawful authority. This judgment was challenged by the Association before this Court through a petition wherein leave was granted *vide* order dated 23.09.2014 to consider the maintainability of the writ petition against the Association in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*the Constitution*). The said order also granted the following interim relief:-

“As conceded by the learned counsel for the petitioners, pursuant to the judgment under challenge, they would not claim themselves to the office bearers of the Pakistan Olympic Association. Besides, for the offices except the President, fresh elections shall be conducted by the Pakistan Olympic Association, not by show of hands but by secret ballot under the rules. An independent election body for conducting elections shall be selected by the general body of

the Pakistan Olympic Association; Mr. Arif Hassan shall act as the President and represent the Pakistan Olympic Association at all forums, if representation is so needed; the elections shall be held within 75 days from today and compliance report in this regard shall be submitted to this Court.”

In compliance of the above interim order, the Association submitted a report (*vide C.M.A. No. 5916/2016*) stating therein that fresh elections had been announced and an independent election commission was notified. However, review petitions (*C.R.Ps. No.412 and 413/2014*) were filed against the said interim order. It is also pertinent to note that the Association had filed W.P. No.19769/2014 before the Lahore High Court against the Federation of Pakistan, etc. seeking, *inter alia*, a declaration to the effect that Syed Arif Hassan had no authority to present himself as the President of the Association and that the letters dated 13.06.2014 and 04.07.2014 issued by the Director General, Pakistan Sports Board (*PSB*) were without lawful authority. The learned High Court passed an interim order dated 08.07.2014 suspending the two noted letters of the PSB which (*interim order*) was challenged by the Federation before this Court in C.P. No.2061/2014. Thereafter, the learned High Court passed an order dated 02.10.2014 in the said writ petition withdrawing the interim relief it granted *vide* order dated 08.07.2014 in light of the leave granting/interim order of this Court dated 23.09.2014 passed in C.Ps. No.245 and 489-L/2013 (*now C.As. No.1223 and 1224/2014*) and adjourning the matter *sine die*. This order dated 02.10.2014 was then challenged before this Court in C.P. No.2189/2014.

Be that as it may, the main questions of law arising from the instant matters stand on the following pivotal questions of maintainability:-

- i) Whether the Association was a ‘person’ performing public functions in connection with the affairs of the Federation under Article 199(1)(a) of the Constitution?
- ii) Whether a writ is maintainable against the Association in terms of Article 199(1)(c) of the Constitution?

The above questions of law shall be dealt with separately in this opinion and the arguments of the learned counsel shall be reflected therein.

i) Whether the Association was ‘person’ performing public functions in connection with the affairs of the Federation under Article 199 of the Constitution?

2. Mr. Ali Raza, learned counsel for the appellant in C.A. No.1223/2014 commenced his arguments by unequivocally stating that the Association is a private registered society affiliated with an international private body, the IOC; it is neither controlled nor funded by the Federal Government nor does it have any public function. The Association merely represents Pakistan for the purposes of participation in events held by the IOC internationally as well at national forums and it is admitted by the Federal Government that it exercises no control over the Association. The learned High Court arrived at the conclusion that the Association was a ‘person’ under Article 199 of the Constitution on the mistaken assumption that because the participating athletes carry the national flag and the sports aspirations of the country, it consequently exercises a public function and hence is a public functionary in terms of Article 199 *ibid*. He argued that this view is not in consonance with the law laid down by this Court in Salahuddin and 2 others Vs. Frontier Sugar Mills and Distillery Ltd. Tokht Bhai and 10 others (PLD 1975 SC 244), Pakistan International Airline Corporation and others Vs. Tanweer-ur-Rehman and others (PLD 2010 SC 676), Anoosha Shaigan Vs. Lahore University of Management Sciences and others (PLD 2007 SC 568), Pakistan Red Crescent Society and another Vs. Syed Nazir Gillani (PLD 2005 SC 806), and Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383).

3. The learned counsel for the respondents submitted that the learned High Court based its decision on the sound observation that the athletes selected by the Association represented the Pakistani flag;

moreover, according to the aims and objectives laid down in paragraphs No.2, 5, 7, 9 and 17 of the Constitution of the Association it, *inter alia*, has the exclusive authority to approve and guarantee the candidature of any city or organization of Pakistan for hosting or staging the Olympic or other games and has the exclusive authority to represent Pakistan therein. Additionally, he submitted that the Association is exempted from Capital Value Tax (CVT) and relied on Article VI of the Association's Constitution which provides that the Association's General Council will comprise of almost all federations affiliated and controlled by the Government. He emphasized that by reason of the international impact of the Association, the instant appeal is a matter of national dignity. He further laid emphasis on the fact that the Association finds mention in the Revised National Sports Policy, 2005 (*Sports Policy*) and has been recognized as one of the main sports organizing agencies alongside the PSB and the National Sports Federation, etc. Moreover, under paragraph No.5 of the Sports Policy, all national games are to be organized as per the policy of the Association and in paragraph No.11 of the Sports Policy, restrictions are being imposed on the manner of elections in the Association. Further, the participating athletes of the Association are fully funded by the Federal Government at these international/national events. According to him, the crucial question is whether the Association's functions affects or are exercised with regard to the affairs of the Federation, the answer to which is in the affirmative. In support of his submissions he distinguished the present case from the cases of **Anoosha Shaigan** (*supra*) and **Abdul Wahab** (*supra*) arguing that unlike in these matters, the Association despite being a private body is not merely affecting its students or employees but is in fact, to the exclusion of others, affecting the international image of sports in Pakistan and collaterally affects the attached sentiments of countless citizens.

4. When questioned as to whether the Association is a public functionary and thereby satisfies the function test laid down in the cases of Abdul Wahab (*supra*) and Frontier Sugar Mills (*supra*), the learned counsel for the respondents submitted that the functions and powers exercised by the Association are analogous to those of the PSB, and hence it can be said to be exercising functions in connection with the affairs of the Federation. However, when probed as to whether the Federation exercises the same amount of control on the Association as it does on the PSB, he responded evasively. Be that as it may, it is an undisputed fact that the Association is not controlled by the Federal Government, neither is it a statutory body nor has it acquired any affiliation from the PSB. However, to answer the question as to whether the Association is exercising functions in connection with the affairs of the Federation Article 199(1)(a) of the Constitution is to be considered in detail in the light of the facts of the instant case, which reads as follows:-

Article 199. Jurisdiction of High Court.- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

- (a) on the application of any aggrieved party, make an order-
 - (i) directing a **person performing**, within the territorial jurisdiction of the Court, **functions in connection with the affairs of the Federation**, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
 - (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a **person performing functions in connection with the affairs of the Federation**, a Province or a local authority has been done or taken without lawful authority and is of no legal effect;

[Emphasis supplied]

There is no cavil to the proposition that unless the Association is a 'person' under Article 199(5) of the Constitution, the threshold of

maintainability under Article 199(1)(a) *supra* will not be met. Therefore, in order to conclusively determine whether the Association is a public body exercising the functions of the Federation, the function test laid down by this Court in **Frontier Sugar Mills'** case (*supra*) must be considered wherein it was held that "*regulatory control does not make a person performing functions in relation to the federation or a province*". This judgment was relied upon in **Abdul Wahab's** case (*supra*) in which a six-Member Bench of this Court comprising of one of us (*Mian Saqib Nisar, J.*), while holding that Habib Bank Limited was a private entity, observed that:-

*"...in order to bring the Bank within the purview and the connotation(s) of a 'person' and 'authority' appearing in Articles 199, 199(5) and 199(1)(c) of the Constitution and also for the purposes of urging that appropriate order, in the nature of a writ can be issued independently by this Court under Article 184(3) (Constitution), to the Bank, the learned counsel for the petitioners has strenuously relied upon the 'function test'...In this context, it may be held that for the purposes of resorting to the 'function test', two important factors are the most relevant i.e. **the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof...**"*

[Emphasis supplied]

The Association organises National Games, represents Pakistan at International sporting events, scrutinises, approves, and guarantees the candidature of any city or organisation applying for staging at International sporting events, and is also responsible for the promotion and development of sports in Pakistan. None of the above functions involve the exercise of sovereign power or public power, and do not constitute a function or duty of the state. It is not exclusively state managed organisations who may bear the Pakistani flag or incorporate it into their identity. Therefore no functions of the State involving sovereign or public power are being exercised by the Association. While it is true that Federal Government approves the selection of contingents and gives

its consent to the Association representing Pakistan at international events, We do not find that this amounts to executive control. The Federal Government does not exercise decision making authority even if the PSB is involved in scrutinising and approving teams. Notably, as per paragraph No.19 of the aims and objectives provided in the Association's Constitution, "*its autonomy, dignity and independence in accordance with the Olympic Charter*" is not to be compromised. Hence, we are of the opinion that the Federal Government does not exercise substantial control on, or have dominance in the controlling affairs of, the Association. Finally, the Federal Government does provide funding to defray the costs of sending contingents to the Olympics, however the private activities and other management of the organisation is funded by the Association itself. The overall activities of the organisation are independent and the bulk of the activities carried out are privately funded. A single activity/undertaking is funded by the federal government (*i.e. sending teams to the Olympics*) and while it is an expensive undertaking, it is only part of what the Association does. Most importantly, no **financial interest** of the State lies in the functions of the Association.

Thus, in light of the above precedents it can be concluded that the Association does not satisfy the function test laid down by this Court and therefore, is not exercising public functions and is not a 'person' as per Article 199(5) *supra*. No writ of *quo warranto* can therefore lie against its office holders, nor can a writ lie against the Association in terms of Article 199(1)(a) *supra*. Even otherwise, the only affiliation that the Association has acquired is that of private bodies such as the IOC which according to the Olympic Charter does not require that the affiliating body be a public body. Therefore, it is held that the finding of the learned High Court in this regard was incorrect; the Association is not a person exercising functions in connection with the affairs of the Federation in terms of Article 199(1)(a)(i) and (ii) of the Constitution.

ii) **Whether a writ is maintainable against the Association in terms of Article 199(1)(c) of the Constitution?**

5. The learned counsel for the appellant submitted that the Association on account of not exercising public functions in connection with the Federation is not a public body, and thus no writ can lie against it in terms of Article 199(1)(c) of the Constitution. On the other hand, the learned counsel for the respondents averred that Article 199(1)(c) *ibid* does not require that the 'person' against whom a writ is being issued should necessarily be performing functions in relation to the affairs of the Federation etc. According to him, Article 199(1)(c) *ibid*, unlike Article 199(1)(a) *supra*, owing to the use of the word 'including' applies to all persons [unless excluded under Article 199(5) of the Constitution] and not just those performing functions in relation to the affairs of the Federation etc. Relying on the judgment reported as **Don Basco High School Vs. The Assistant Director, EOBI and others** (PLD 1989 SC 128) he submitted that this Court held therein that the use of the term 'include' enlarges the scope and meaning of the sentence. Additionally, according to him the functions of the Association affects the fundamental rights of the citizens of Pakistan (under Articles 9, 14, 17, 18, and 25 of the Constitution) since the manner in which the Association carries out its affairs involves the nation's image in international sports, therefore, the present case falls squarely within the ambit of Article 199(1)(c) of the Constitution and any actions of the Association may be subject to judicial review in terms thereof .

6. At this juncture it is expedient to consider Article 199(1)(c) *supra* which is reproduced hereinbelow for ease of reference:-

Article 199. Jurisdiction of High Court.- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or

*performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate **for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.***

[Emphasis supplied]

The true import of this provision from a plain reading thereof is that (*subject to the Constitution*) a High Court is authorized to issue any directions, as may be appropriate for the enforcement of any of the Fundamental Rights conferred by the Constitution, to **any person or authority exercising any power or performing any function in (or in relation to) any territory within the jurisdiction of that Court** (*which includes but is not limited to any Government*), provided two conditions are met: (i) such direction is made pursuant to an application of any aggrieved person, in other words, the High Court cannot do so *suo motu*; and (b) no other adequate remedy is provided by law. However, this provision has to be read with Article 199(5) of the Constitution which provides as under:-

*“(5) In this Article, unless the context otherwise requires,- “person” includes any **body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan...**”*

[Emphasis supplied]

The key question is that whether the condition of “*of or under the control of the Federal Government or of a Provincial Government*” applies only to “*any authority*” or will it also apply to “*any body politic or corporate*” and we find that such condition only applies to “*any authority*” and not “*any body politic or corporate*”. We hold so for the reason that a coma has been used between the two sets of phrases, i.e. “*any body politic or corporate*” and “*any authority of or under the control of the Federal Government or of a Provincial Government*”, which differentiates the two; besides, the word “any” is used separately for both

sets of phrases. In fact, the word "any" is also used with the third phrase/set of bodies, i.e. "*Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan*", creating three distinct categories. Thus, in light of the foregoing interpretation, a writ is maintainable under Article 199(1)(c) of the Constitution against any person including the body politic or corporate for the purpose of enforcement of any of the Fundamental Rights conferred by the Constitution.

7. This interpretation is in consonance with the *ratio* of the judgment of this Court reported as **Human Rights Commission of Pakistan and 2 others Vs. Government of Pakistan and others (PLD 2009 SC 507)** wherein it was held that the amplitude of Article 199(1)(c) *ibid* is wider than the other parts of Article 199 of the Constitution and is not restricted to public functionaries only but could extend to private parties, as long as there is a question of enforcement of fundamental rights under the Constitution:-

*"35. ...the Jurisdiction of superior courts to enforce fundamental rights under Article 199(1)(c) of the Constitution is not merely exercisable against persons performing functions in connection with the affairs of the Federation or Province or a local authority but against any person or authority including a Government. **Some of the fundamental rights by their very nature may be impaired by private persons and there is no embargo on the powers of the High Court to issue such directions as may be appropriate for enforcement of such rights.**"*

[Emphasis supplied]

Furthermore, in **Abdul Wahab**'s case (*supra*) it was held as under:-

"8. ...Fundamental rights enshrined in our Constitution have a very significant and pivotal position and are the most sacred of the rights conferred upon the citizens/persons of the country and thus the regard, security and the enforcement of these rights is one of the primary duties of the

*State and its institutions at all the levels...**In view of the sanctity and the importance of these rights and for the safeness and the safeguard** (saving those from a slightest impairment) **thereof the Constitution itself** in a noteworthy way, **has provided a specific and a special mechanism, in terms of Article 199(1)(c) by virtue whereof notwithstanding the powers of the High Courts under Article 199(1)(a) and (b) an extraordinary power has been conferred on it** “to make an order giving directions to any person etc...as may be appropriate for the enforcement of the fundamental rights conferred by Chapter I of Part-II”...”*

[Emphasis supplied]

In other words, Article 199(1)(c) *supra* is contingent on the fact that the matter should involve the enforcement of fundamental rights guaranteed under the Constitution. In the instant case, the fundamental rights being relied on by the learned counsel in making such argument are Articles 9, 14, 17, 18, and 25 of the Constitution, all of which do not seem relevant in the instant matter. We do not find that the internal functioning of the Association, particularly the method of elections of certain posts thereof, deprives persons of the right to life or liberty (*Article 9 of the Constitution*), violates the dignity of man (*Article 14 of the Constitution*), curtails the right to freedom of association (*Article 17 of the Constitution*), trade, business or profession (*Article 18 of the Constitution*), or is discriminatory in any manner whatsoever (*Article 25 of the Constitution*). Therefore, we do not find that a writ is maintainable against the Association under Article 199(1)(c) *ibid*.

8. Before parting it is found pertinent to mention that indeed, the promotion of sports in Pakistan holds paramount importance and the participation of athletes in international sports events is a matter of immense pride and prestige for the entire nation, however, in the tide of such emotions we cannot lose sight of the fact that a body which is operating independently and is admittedly not being substantially controlled by either the Federal or Provincial Government or any other

governmental body and considering the fact that the instant matter does not involve a violation of any of the fundamental rights, the internal functions of the Association cannot, in the facts and circumstances, be subjected to judicial review under Article 199 of the Constitution. Therefore, it is held that the decision of the learned High Court in holding a writ to be maintainable against the Association was erroneous and cannot be sustained.

9. For the foregoing reasons, the instant appeals are allowed and the impugned judgment is set aside. As the main appeals stand decided, the review petitions, civil petitions and miscellaneous applications have lost their relevance and are all disposed of accordingly. For the redressal of any grievances with regards to the internal functioning of the Association including its elections, the aggrieved may, if so advised, approach the courts of plenary jurisdiction to seek the appropriate remedy as provided under the law.

CHIEF JUSTICE

JUDGE

Announced on open Court

on **1.1.2019** at **Islamabad**

Approved for reporting

M. Azhar Malik/*

JUDGE