

IN THE OFFICE OF THE OMBUDSMAN - CUM - ETHICS OFFICER,
PUNJAB CRICKET ASSOCIATION (PCA), SAS NAGAR (MOHALI)

Miscellaneous Application No. 04

Dated 17.06.2022

Decided on 5th August, 2023

(In Complaint No. 01 of 2021)

Decided on 11.04.2022

Representation for withdrawing/setting aside / recalling order dated 11.04.2022 (Annexure A-1) passed by the Ld. Ombudsman cum Ethics Officer, Punjab Cricket Association, in complaint no. 1 of 2021 titled as District Cricket Association, Mohali vs G.S. Walia & others vide which the respondent no. 1 and 2 were debarred for life from involvement with the game of Cricket, respondent no. 3 (Mohali Cricket Association) was concluded to be not recognized by the Punjab Cricket Association, Mohali further CEO, Punjab Cricket Association, Mohali was granted liberty to pass appropriate order with regard to the alleged funds released to Mohali Cricket Association and for deciding the matter afresh after giving reasonable opportunity to be heard on merits after providing due opportunity to the applicants, in the interest of justice and fair play.

ORDER

1. The facts giving rise to the instant Miscellaneous No. 4 are that District Cricket Association, Mohali through its authorised person Sh. Gagan Deep Singh Dhaliwal preferred complaint no. 01 of 2021 against S/Sh. G.S. Walia, M.P. Pandav and Mohali Cricket Association as Respondents no. 1 to 3 whereas Chief Executive Officer – PCA was impleaded as Performa respondent no. 4 which was finally disposed off by the then worthy Ombudsman – cum – Ethics Officer, PCA vide order dated 11.04.2022 on merits as detailed and described in the headnote of the instant petition/representation.

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2. It has been averred in this misc. application that order dated 11.04.2022 (Annexure A-1) is in gross violation of principle of natural justice, fair play and equity as well as the doctrine of *audi alteram partem* or *audiatur et altera pars* as no opportunity of fair hearing was provided to the present applicants before passing it and the then Ombudsman cum Ethics Officer without adhering to the aforesaid principle has debarred the applicants for life from their active participation and involvement with the game of the cricket and also observed that the Mohali Cricket Association – Respondent No.3 is not affiliated with Punjab Cricket association and is not a recognized association.

3. It has been further projected in the misc. application that on 12.03.2022 during the proceedings of the main complaint case, present applicants had moved two applications i.e., for dismissal of the complaint and for directing the CEO to supply necessary information/documents. The said matter was adjourned to 26.03.2022 for filing reply. However, vide separate order dated 12.03.2022 the worthy Ombudsman cum Ethics Officer appointed S/Sh. R.S. Sachdeva and P.M.S. Banga as conveners of the selection committee for running the affairs of the cricket in the district of Mohali till the decision of the main complaint case. On 26.03.2022 reply to the application for dismissal of the complaint moved by the present applicants was filed and the matter was listed for 09.04.2022 for consideration / arguments on the said application. Further, it has been asserted by the applicants that in the beginning of April 2022, they came across a video clip showing that the conveners so appointed were hand in glove with the complainant which prompted the applicants to move two other applications on 09.04.2022 i.e., for recalling of order dated 12.03.2022 whereby, S/Sh. R.S.Sachdeva and P.M.S. Banga were appointed as conveners and seeking permission to Mohali Cricket Association to run its affairs as well as for rejection of replies and the documents filed by CEO – PCA. Though, the worthy Ombudsman cum Ethics Officer heard the arguments on all these applications but it was conveyed to the present applicants that the order of

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these applications will be communicated to the parties on the next date fixed in the matter. On 10.04.2022, it came to light through an article in The Chandigarh Tribune that inter-district U – 16 tournament is being conducted by the complainant association which necessitated the filing of another application for restraining the complainant association from conducting the trials of cricket. In fact, a bare perusal of the Zimny order dated 12.03.2022, 26.03.2022 and E-mail dated 11.04.2022 sent by the Ld. Counsel for the applicants reveals that the matter was still pending consideration on the said application and not for arguments in the main complaint. The evidence was still to be recorded in the main complaint but to the utter surprise of the present applicants, matter was finally disposed of on 11.04.2022 without affording any opportunity to the present applicants and respondents in main complaint to lead their evidence or to argue the case on merits. Accordingly, applicants were constrained to move the instant application / representation for recalling / setting aside / review of the order dated 11.04.2022 for deciding the matter afresh.

4. Upon notice of instant application, complainant district cricket association Mohali through Sh. Gagan Deep Dhaliwal appeared and resisted the application. Reply to the misc. application has been filed raising preliminary objection inter-alia on the grounds that this Hon'ble forum is not vested with power of review or recalling of the order which has been passed on merits as per the provisions contained in the Article of Association / Constitution of PCA ; that the contents of application are baseless, false, mischievous and do not fall within the purview of any permissible grounds for review / recalling or withdrawal of the final order passed by Ld. Ombudsman cum Ethics Officer and that since the matter has been decided on merits after affording an ample opportunity to the parties and that too by giving opportunity of proper hearing, no interference in the order dated 11.04.0222 is justified.

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5. On merits, it has been alleged that while moving instant application dated 17.06.2022 for seeking review / setting aside / recalling of the final order dated 11.04.2022, applicants have misquoted the facts available on record and under the garb of alleged review / recalling of the order, applicants have no right for de-novo trial. The order dated 11.04.2022 is absolutely based upon the documents placed on record by the parties and does not require any interference on the basis of misquoted facts. Accordingly, the dismissal of the application has been prayed for.
6. I have heard the Ld. Counsels for the parties and have meticulously gone through the documents on record as well as the judgement cited by the Ld. Counsels for the parties in support of their submissions.
7. It has been contended by the Ld. Counsel for the applicants Mr. Anuj Ahluwalia while referring to the various interim orders which has been referred to above in the misc. application that neither any opportunity of proper hearing was afforded nor the principle of natural justice was adhered to by the then Ld. Ombudsman cum Ethic Officer while passing the order dated 11.04.2022. Even the procedure prescribed in the constitution of the PCA was not followed. An application dated 12.03.2022 was moved by the present applicants for dismissal of the complaint but that application was not heard and disposed of however, vide order dated 12.03.2022 S/Sh. R.S. Sachdeva and P.M.S. Banga were appointed as conveners for the selection committee for running the affairs of the cricket in the district of Mohali with further direction that the above said formed committee shall start the process immediately after going through the schedule for cricket season 2022-2023. Since a video clip came to light after the passing of the order dated 12.03.2022 which revealed that aforesaid persons appointed conveners are not neutral persons but are hand in glove with the complainant and others, applicants moved another application dated 09.04.2022 for recalling the order dated

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12.03.2022 and further permitting them to run the affairs of Mohali Cricket Association in district Mohali. Not only this, another application of the same date i.e., 09.04.2022 was also moved by the present applicants for rejection of replies and / or any documents filed by the CEO – PCA - Respondent no. 4 which have not been heard and disposed of on merits that ultimately resulted into miscarriage of justice. Even the main complaint case was also not listed for final arguments. Since neither proper procedure was adopted / followed nor arguments were heard before passing the final order dated 11.04.2022, the rights of the applicants have been adversely affected. In such a situation, procedural review is permissible and concerned quasi-judicial authority / court or Tribunal has got inherent or implied jurisdiction to review the matter and set aside palpably erroneous order. In support of this contention, Ld. Counsel for the applicants has placed reliance upon the judgments delivered by the Hon'ble Apex Court in cases **CIVIL APPEAL NO. 15036 OF 2017** arising out of SLP(C) No. 16636 of 2015 case titled as "**SREI INFRASTRUCTURE FINANCE LIMITED vs TUFF DRILLING PRIVATE LIMITED**" and "**Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Anr., (2005) 13 SCC 777**".

8. The next contention put forth by the Ld. Counsel for the applicants is that during the pendency of instant application, an application for bringing certain fresh facts to the knowledge of this authority and for passing appropriate order was moved on 27.10.2022 to which no reply has been filed. Rather today, Ld. Counsel for the respondent – Mr. Ravneet S. Joshi has made a statement that he does not wish to file reply thereto meaning thereby he admits the contents thereof to be correct. According to it, Mohali Cricket Association has already been accorded affiliation. Moreover, letter to this effect Annexure A-2 has already been placed on record by the respondent no. 4 - CEO – PCA, Mohali. In view of the confirmation of the affiliation of Mohali District Cricket Association – respondent no. 3, order dated 11.04.2022 has rendered

Annexure A

infructuous and has ceased to exist. As such, it deserves to be set aside / recalled by way of acceptance of the instant application for review.

9. The Ld. Counsel for applicants further submits that no doubt, as per the Memorandum of Articles, rules and regulations of the PCA, Mohali, the decision of Ld. Ombudsman cum Ethics Officer is final and binding and comes into force forthwith on being pronounced and delivered. At the same time, though no provision has been enacted or provided in the Memorandum of Articles for review of the order passed by Ld. Ombudsman cum Ethics Officer yet in the absence of any specific provision in this regard, Ld. Ombudsman cum Ethics Officer has got the jurisdiction to review or recall its orders particularly when the prescribed procedure has not been followed and there is violation of the Doctrine of *audi alteram partem*.
10. Per contra, it has been argued vociferously by the Ld. Counsel for the respondent – District Cricket Association, Mohali that firstly, instant application for review is not legally maintainable as there is no provision made in the Memorandum of Articles and/or the rules and regulations applicable to the parties to the instant application. Secondly, Ld. Ombudsman cum Ethics Officer has passed the order dated 11.04.2022 after affording proper opportunity to both the parties to lead their evidence and hearing the Ld. Counsel for the parties at length on merits on each of the applications which were disposed of vide separate orders which are available on the file that too in the presence of the applicants/ their Ld. Counsel. There is not even a single application which remained undisposed of. The contention put forth by the Ld. Counsel for the applicants in this regard is absolutely baseless and is against the factual position. Interim orders available on record in the complaint case clearly depict that all the applications have been heard and finally disposed of vide different orders. Otherwise also, post of Ombudsman cum Ethics Officer is creature of a statute and cannot have powers more that

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what is provided for. Power of review of its own order or of appeal against it is not there. Therefore, instant application for review before the same authority who has passed the order is not maintainable and deserves to be rejected. To buttress this contention, the Ld. Counsel for the respondent – District Cricket Association, Mohali has placed reliance upon the judgements of the Hon'ble Bombay High Court captioned as “**Dagadu Sakharam Patill, since deceased through his legal heirs & others Versus State of Maharashtra & others**” 2001(Sup) BCR 508: 2002(1) Mh.Lj 119 and that of Hon'ble State Sales Tax (Appellate) Tribunal, Jammu titled as “**Assessing Authority Versus R.K. Khullar & Co.**” 2007 (47) R.C.R.(Civil) 33.

11. The Ld. Counsel, Sh. Ravneet S Joshi has further argued that as far as the contention of the Ld. Counsel for the applicants to the effect that the confirmation of affiliation has already been accorded after the passing of the order dated 11.04.2022 vide Annexure A-2, is concerned, the same is of no evidentiary value and cannot be taken into consideration as it was never confirmed / approved in the meeting of the Apex body of the PCA, Mohali. As such, it is not helpful to the case of the applicants. Since, there is no procedural defect or violation and the complaint was decided on merits after affording proper opportunity to the parties, the authorities relied upon by the Ld. Counsel for the applicants – G.S. Walia & others are not applicable. Accordingly, he prayed for the dismissal of the instant application.

12. I have weighed the rival contention of the Ld. Counsel for the parties and have minutely scanned the records available particularly the interim orders which have been referred by the Ld. Counsel for the applicants.

13. Undisputedly, complaint no. 01 of 2021 captioned as “District Cricket Association, Mohali through Sh. Gagan Deep Singh Dhaliwal Versus S/Sh

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G.S. Walia, M.P. Pandav & others” was finally disposed of by the then Ld. Ombudsman cum Ethics Officer vide order dated 11.04.2022. Subsequent thereto, on 17.06.2022, instant application / representation was filed by S/Sh. G.S. Walia and M.P. Pandav – Respondents No. 1 & 2 in the main complaint.

14. The first and foremost question which requires determination is whether the instant application for recalling / setting aside / review of the order dated 11.04.2022 is legally maintainable or not. Here it would be pertinent to mention that as per Chapter 9 Article 48(3) of the Memorandum of Articles of the PCA, Mohali the decision of the Ld. Ombudsman cum Ethics Officer is final and this provision reads as under: “The decision of the Ombudsman shall be final and binding and shall come into force forthwith on being pronounced and delivered”. Further, there is no provision made specifically in the Memorandum of Articles with regard to the power of the Ombudsman cum Ethics Officer to entertain a review of its own order. During the course of arguments, the judgements relied upon by the Ld. Counsel for applicants have been gone through. In case “**SREI INFRASTRUCTURE FINANCE LIMITED vs TUFF DRILLING PRIVATE LIMITED**” (supra) similar matter was discussed at length. Para 23 of the said judgment is relevant which reads as under: -

“23. It is true that power of review has to be expressly conferred by a Statute. This court in Paragraph 13 has also stated that the word review is used in two distinct senses. This court further held that when a review is sought due to a procedural defect, such power inheres in every tribunal. In Paragraph 13, following was observed: -

13. the expression “review” is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is

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apparent on the face of record. It is in the latter senses that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal”

Similarly in case “**Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Anr., (2005) 13 SCC 777**” (supra) a question arose whether a quasi-judicial authority is vested with a power to invoke procedural review in which it was held as under:

“19. Applying these principles, it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgement or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceedings itself, and consequently the order passed therein. *Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked.* In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. *He has to establish that the procedure*

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followed by the court or quasi-judicial authority suffered from such illegality that it vitiated the proceedings and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In 'Gringlays Bank Ltd. V. Central Govt. Industrial Tribunal' it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again"

15. In **Srei Infrastructure Finance's** case it has been observed that though it is true that power of review has to be expressly conferred by a statute but it has been held that the expression " review" is to be considered in two different senses i.e., a procedural review and review on merits when an error is sort to be corrected is one of law and is apparent on the face of record and in **Kapra Mazdoor Ekta Union's** case Hon'ble Apex Court has elaborated the scope of procedural review according to which, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceedings itself, and consequently the order passed therein or where a decision is rendered by such authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party or where a matter is taken up for hearing and decision thereon a date other than the date fixed for its hearing are examples where procedural review is permissible.

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16. As regards the judgements relied upon by the Ld. Counsel for respondent Sh. Ravneet S Joshi captioned as **“Dagadu Sakharam Patill, since deceased through his legal heirs & others Versus State of Maharashtra & others”** and **“Assessing Authority Versus R.K. Khullar & Co.”** (Supra) are concerned the same are not applicable in the facts and circumstances of the case in hand and being distinguishable. In both these cases the orders passed by the assessing authorities or Appellate authority as well as the Revenue Tribunal were appealable whereas in the instant case no remedy is available by way of appeal or revision and it can be safely concluded that where an order passed by an authority is final and binding and is not appealable can be looked into by way of review for a limited purpose that it suffers from any patent or legal error on the face of it or there are some procedural lapses.
17. Adverting to the facts and evidence of the instant case notice of the complaint was served upon the present applicants i.e., respondents in the main complaint. They appeared resisted the complaint by filing reply accompanied by various documents. During the pendency of the said complaint, they also moved several applications one after the other fully detailed in paras no. 3 & 7 of this order and after hearing both the parties the same have been finally disposed of vide separate orders available on record that too on merits in the presence of parties and their counsel. A close scrutiny of the compliant case reveals that first of all an application dated 15th January, 2022 was moved on behalf of the present applicants for referring the complaint to Dispute Redressal Committee, Punjab Cricket Association and that application was heard and disposed of on the same day in the presence of the petitioner Sh. GaganDeep Singh Dhaliwal and Sh. Anuj Ahluwalia, Advocate for the respondent no. 1 to 3. The respondent no. 4 in the main complaint CEO – PCA was also directed to produce certain documents whereas the complainant was directed to produce on record the copy of the affiliation certificate and other

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connected documents in this regard vide the order dated 12.02.2022 by then Ld. Ombudsman. On 12.03.2022 another application was moved by the present applicants Mr. G.S. Walia and another for the dismissal of the complaint which was adjourned to 26th March, 2022 for its reply. However, vide the order dated 12.03.2022, S/Sh. R.S. Sachdeva and P.M.S. Banga were appointed as conveners and the matter was adjourned to 09.04.2022 for arguments on the application for dismissal of the complaint date 12.03.2022. On 09.04.2022 Mr. K.C. Sharma & Mr. Anuj Ahluwalia, Advocates appeared on behalf of the respondent no 1 to 3 including the present applicants. On that day, they moved an application for recalling the order dated 12.03.2022 as well as seeking permission to the Mohali Cricket Association to run the affairs of Cricket in district Mohali unfolding certain allegations that the conveners so appointed vide order dated 12.03.2022 have connived with the complainant and others and are not neutral persons. A video clip and transcription of the conversation was also annexed. That application were heard at length on 09.04.2022. On the same day i.e., 09.04.2022 another application was also filed by the present applicants for rejection of replies as well as the documents filed by the respondent no. 4 – CEO – PCA, Mohali. The arguments on the aforesaid both the applications dated 09.04.2022 as well as on the main complaint were addressed by the Ld. Counsel for the parties as is evident from the orders dated 09.04.2022 and the orders were reserved which were pronounced on 11.04.2022. Both the aforesaid application were disposed of vide two separate detailed orders dated 11.04.2022. And the complaint was disposed of vide order dated 11.04.2022, the review of which has been sought through the instant application in terms as depicted in the headnote of the instant application as well as of this order. In fact, all the applications which were moved by the respondents / the present applicants have been finally disposed of. Moreover, no such procedural lapse could be detected during the course of arguments from the record and the contentions put forth by the Ld. Counsel for the applicants in this regard have been found unsubstantiated.

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18. As regards the confirmation of affiliation of respondent no. 3 – Mohali Cricket Association vide letter Annexure A-2, it is suffice to mention that firstly, the minutes with regard to the affiliation of respondent no. 3 were never confirmed in the Annual General Meeting of the general body of PCA and as such Annexure A-2 is of no legal value and cannot be taken into consideration and secondly, the said development if at all has occurred after the passing of the order dated 11.04.2022 which does not fall within the purview of the procedural defects or lapse. Otherwise also, this authority is not to deal with the matter in hand as an appellate authority but within the very limited scope as discussed foregoing paragraphs.
19. In the light of the aforesaid discussion, I do not find any merit in the instant application and accordingly, it stands dismissed. The interim order dated 17.06.2022 whereby the operation / implementation of the order dated 11.04.2022 was stayed or the subsequent orders for its extension, stands vacated.

5th August 2023

Jaspal G
(JUSTICE JASPAL SINGH)
(Former Judge)
OMBUDSMAN-CUM-ETHICS OFFICER,
Punjab Cricket Association, SAS Nagar
(Mohali)

5/8/2023