

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. D-4923 of 2021

Present:

Mr. Justice Zafar Ahmed Rajput, J.

Mr. Muhammad Faisal Kamal Alam, J.

Petitioner : Sindh Games Association (Regd.), through
M/s. Ali Tahir and Touqeer Ahmed Seehar,
Advocates.

Respondents : Province of Sindh and three others, through
No. 1 to 4. Mr. Miran Muhammad Shah, Addl. A.G.,
Sindh

Intervenor : Sindh Olympic Association, through
Mr. Masood Hussain Khan, Advocate

Date of hearing : 23.11.2021
Date of order : 17.12.2021

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant petition, the petitioner i.e. Sindh Games Association, an association registered under Societies Registration Act, 1860 (*“the Act”*) with respondent No. 2 (*Provincial Assistant Registrar, Joint Stock Companies, Sindh, Karachi*), *inter alia*, seeks issuance of writ of prohibition refraining the respondents from cancelling its registration with the respondent No. 2 on the basis of its non-affiliation with Sindh Sports Board (*“SSB”*) under the Sindh Sports Board Ordinance, 1980 (*“the Ordinance”*).

2. It is alleged that the Petitioner-Association submitted a proposal, vide letter dated 06.01.2020, to respondent No. 1 (*Province of Sindh through Chief Secretary, Sindh*) to organize ‘18th SINDH GAMES’, on that the latter, vide letter dated 07.01.2020, directed to respondent No. 3 (*Secretary to the Government of Sindh, Sports and Youth Affairs Department*) to take appropriate action. Thereafter, the respondent No.3, vide letter dated 16.01.2020 asked the Petitioner’s president to submit desired information, which was complied with. Subsequently, the respondent No. 3 issued a letter, dated 17.04.2020, to the respondents No. 2 to 4

requesting therein to clarify whether the Petitioner-Association was registered with their departments and to issue an order of its cancellation on the ground that the SSB has unilateral rights to affiliate the associations with it for any particular game and sports. The Petitioner-Association sent an intimation to the respondents No. 1 & 2 asserting its position, however, again on 19.08.2020 respondent No. 3, through its Director Sports, wrote a letter to respondent No. 2 for the cancellation of the Petitioner-Association's registration and due to persistent demands, the respondent No. 2, vide letter dated 28.09.2020, asked the Petitioner-Association to take N.O.C. from the respondent No.3, failing which its registration shall be cancelled. The Petitioner-Association, on 01.10.2020, again replied to respondent No. 2 and explained the entire position to him; however, after passing of several months, the respondent No. 3 again wrote a letter to respondent No. 2, dated 26.07.2021, requesting him to cancel the registration of the Petitioner-Association; hence, this petition.

3. Learned counsel for the petitioner has contended that the Petitioner-Association is duly registered under the provisions of the Act with the respondent No.2 and its registration cannot be cancelled without any legal justification; that it is obligatory condition for affiliation with Pakistan Sports Board ("**PSB**") that the Petitioner-Association must be registered under the Act; that the respondents have no legal authority to get the registration of the Petitioner-Association cancelled and/or force it to register under the Ordinance, especially when the Petitioner-Association does not want any funding or favour from respondents No. 1, 3 and 4; that the request of the respondent No. 3 to respondent No.2, vide letter dated 26.07.2021, to cancel the registration of the Petitioner-Association is in violation of the Articles 4 and 17 of the Constitution of the Islamic Republic of Pakistan, 1973 ("*the Constitution*"); that the Petitioner-Association has domain over 'SINDH GAMES' being owner of its registered trademark and copyright for the promotion of the sports in the Province. In support of his contentions,

learned counsel has relied upon the cases of *Pakistan Industrial and Intellectual Property Rights Association (PIPRA) v. Government of Sindh, through Directorate of Industries (Registration), Karachi and another (1999 CLC 477)* and *All Pakistan Muslim League through Chief Organizer Sindh v. Government of Sindh through Home Secretary and 3 others (2012 CLC 714)*.

4. On the other hand, learned Addl. Advocate General, Sindh has maintained that the Petitioner-Association has wrongly been registered under the Act in violation of its Section 20; that in the year 2013, Pakistan Olympic Association (“POA”), vide letter dated 12th January, 2013 put a ban upon Mudassar Razzak, the president of the Petitioner-Association, for ten years from participating in any sport activity under the auspicious of POA or holding any office or position of being affiliated to any organization/association or federation affiliated with POA, but he illegally got the Petitioner-Association registered from respondent No. 2 by concealment of facts; that the Ordinance is a special law that prevails over the general law and under the Ordinance an Association for any particular game or sport is required to be affiliated with the SSB and since sports is a Provincial subject, it is a mandatory requirement for an Association for any game or sports to be affiliated with SSB; hence, the respondent No. 3 rightly issued the letter dated 26.07.2021 for the cancelation of the Petitioner-Association’s registration; that the Petitioner-Association has no legal right to hold ‘18th Sindh Games’, as it is the respondent No.3 that has earlier held 17 Sindh Games; that the Petitioner-Association has illegally, unlawfully and fraudulently obtained trademark and copyright of ‘SINDH GAMES’ for that the respondent No.3 reserve its right to challenge the same under the relevant laws before the competent forum and therefore, the instant petition being devoid of merit is liable to be dismissed.

5. Heard the learned counsel for the Petitioner-Association as well as learned Addl. Advocate General, Sindh and perused the material available on record.

6. It appears from the perusal of the record that the respondent No.3 has organized 17 Sindh Games since 1986. The Finance Department, Government of Sindh has also created head of account title “Sindh Games” (KQ0702) and has been allocating budget in the above head of account in every year since 1986. The respondent No.3 has also created its website and offered to sports persons of Sindh and the associations/organization/clubs for their online registration for participation in the 18th Sindh Games. Suddenly, the Petitioner-Association appeared claiming that it has domain over the SINDH GAMES and have right to organize the 18th SINDH GAMES, vide letter dated 06.01.2020, with a request to respondent No.1 for extending permission and the expenses through respondent No.3 for organizing SINDH GAMES. The request for the allocation of the expenses is belied to the pleadings of the Petitioner-Association that it does not want any funding or favour from the respondents No.1, 3 and 4. The Petitioner-Association claims its domain over “SINDH GAMES” being holder/owner of its registered trademark and copyright; however, it is an undisputed matter of record that the respondent No.3 has a goodwill and reputation in the mark ‘Sindh Games’ by holding 17 Sindh Games since 1986, while the petitioner-Association obtained trademark and copyright certificates on 06.09.2018 and 20.11.2018, respectively.

7. It may be observed that under Section 1 of the Act, any seven or more persons associated for any literary, scientific or charitable purpose or for any such purpose as described in Section 20 of the Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint Stock Companies, form themselves into a society under the Act. In the instant case, it is claim of the Petitioner-Association that it is duly registered with respondent No.2 under the provisions of the Act and its registration cannot be cancelled without any legal justification, while it is stance of the respondent No.3

that the Petitioner-Association has wrongly been registered under the Act in violation of its Section 20, which reads as under:-

“20. To what societies Act applies.- The following societies may be registered under this Act: Charitable societies, societies established for the promotion of science, literature or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, or designs.

The aims and objects of the Petitioner-Association have been described in its Memorandum of Association, which shows that it runs on charitable basis but it has prima facie not been formed for charitable purpose. Further, the object of the Petitioner-Association relates to organizing and promoting the Sindh Games, Regional Games, Beach Games, Traditional Games and Sports, Training Workshops, School Camps and holding matches, tournaments and competition.

8. The writ of prohibition is a judicial writ directing a person performing functions in connection with the affairs of the Federation, or a Province or a local authority to refrain from continuing with a proceedings therein, on the ground that the proceedings is without or is in excess of jurisdiction or contrary to the laws of the land and proceedings may be without jurisdiction if they contravene some enactment or some principles of law. It is undeniable fact that it is domain and jurisdiction of the respondent No.2 to examine as to whether or not the aims and objects of the Petitioner-Association are in conflict with the object provided by Sections 1 and 20 of the Act, and to pass appropriate order in this regard. Hence, we are of the view that issuance of writ of prohibition in the matter as prayed for by the Petitioner-Association shall amount to thwart and stifle the duty of the respondent No.2. The case of PIPRA (*supra*) cited by the learned counsel for the petitioner being on different footings does not advance the case of the Petitioner-Association.

9. As regard the contention of the learned counsel for the petitioner-Association that it is obligatory condition for affiliation with PSB that the Petitioner-Association should be registered under the Act, it may be observed that Sports (Development and Control) Ordinance, 1962 has been promulgated to regulate the development and control of Sports in Pakistan and Sections 3 (1) and 4 thereof empowers Federal Government to constitute one or more boards for the purpose of promoting and developing uniform standards of competition in Sports in Pakistan comparable to the standards prevailing internationally, and regulating and controlling Sports in Pakistan on a national basis; therefore, in exercise of the powers conferred by subsection (1) of Section 3 and Section 4 (*ibid*) the Federal Government has constituted PSB and made Pakistan Sports Board Rules, 1981. The sub-rule (iii) of the Rule 4 thereof provides function of the Board, namely, “*to affiliate, recognize, assist and guide the national games and sports organization in executing their programmes of sporting activities*”. However, it has neither been claimed by the Petitioner-Association nor it is its case that since it is affiliated with PSB, it does not need to be registered with SSB.

10. Government of Sindh has enacted the Ordinance for the establishment of SSB, *inter alia*, to promote and develop sports, games and physical education in the Province, and lay down the general policy thereof; to promote the formation and efficient functioning of the associations; to give grant in aid to the associations for promotion and development of sports and games. Under section 6 (v) of the Ordinance, it is function of the SSB to affiliate associations and under sub-section (1) of Section 11 (*ibid*) any seven or more persons may associate to form an association for any particular game or sports by subscribing their names to a memorandum of association. Under sub-section (3) the Secretary of the SSB issues an affiliation certificate of the association. Since SSB is the regulator and fund provider for the activities relating to sports, games and

physical education in the Province, it is therefore, mandatory for the sports associations to get affiliation from it under the Ordinance.

11. There is no cavil to the proposition that under Article 4 of the Constitution the right of individuals to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen of Pakistan and its Clause 2 (b) provides that “*no person shall be prevented from or be hindered in doing that which is not prohibited by law*”, while, Article 17 of the Constitution ensures the freedom and right to form associations or union subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. The learned counsel for the Petitioner-Association has, however, failed to establish that the alleged act of the respondents is mala fide, colourable and in derogation of Article 4 of the Constitution. Similarly, right to form an association or a union under Article 17 of the Constitution is neither unbridled nor unregulated and it is permissible to regulate such right by imposing reasonable restrictions, *inter alia*, in the interest of public order. The State has a power to regulate associations and unions through legislation with a view to protect the public order/interest; therefore, they cannot claim special immunity from such regulations.

12. For the foraging facts and reasons, we find no merit in the instant petition, which stands dismissed accordingly, with no order as to costs.

JUDG

JUDGE

Athar Zai