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IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(PIL) No.4636 of 2021

Dheeraj Kumar, aged about 47 years, Son of Rajendra Prasad Singh, Resident of Flat No.C-403, B-Block, Gulmohar Park, P.O. & P.S. Namkum, District-Ranchi, Jharkhand.

... .. Petitioner

Versus

1. The State of Jharkhand through the Chief Secretary, having its office at Project Building, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand.
2. The Secretary, Department of Home and Disaster Management, having its office at Project Building, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand.
3. Jharkhand State disaster management Authority, through its Director, having its office at Project Building, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand.
4. The President, Jharkhand State Cricket Association, JSCA Stadium, P.O. & P.S.-Dhurwa, District-Ranchi, Jharkhand.

... Respondents

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner	: Mrs. Ritu Kumar, Advocate
For the State	: Mr. Rajiv Ranjan, Advocate General
For the Resp.-JSCA	: Mr. Amit Kumar Das, Advocate

ORAL ORDER

02/Dated 18th November, 2021

1. The instant writ petition has been filed by way of public interest litigation under Article 226 of the Constitution of India for the following reliefs:

“(A.) For showing cause upon the respondent no.1 & 2 as to how & why they have given special permission to Jharkhand State Cricket Association to conduct T-20 cricket match between India & New Zealand on 19.11.2021 with full capacity and all facilities in total contravention to the guidelines issued by State of Jharkhand in exercise of the Power conferred u/s 22(h) of the Disaster Management Act, 2005 issued vide memo no. 434/CS/RES Ranchi, dated 30.10.2021 which prohibits all outdoor congregations of

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more than 500 persons are prohibited in the State of Jharkhand and there is every possibility of out break of COVID-19 pandemic in the State due to the irresponsible action taken by the State Government.

(B.) The petitioner further prays for issuance of appropriate writ(s), Order(s)/Direction(s) upon the respondents particularly the respondent nos.1, 2 and 3 to immediately and forthwith direct the Jharkhand State Cricket Association to follow strictly memo no. 434/CS/RES Ranchi, dated 30.10.2021 according to which all outdoor congregations of more than 500 persons are prohibited in the State of Jharkhand and other related guidelines.”

2. The brief facts as per the pleading made in the writ petition reads as hereunder:

It is the case of the writ petitioner that an International T-20 Cricket Match is fixed for 19.11.2021 between India and New Zealand at JSCA stadium, Dhurwa, Ranchi which is against the prevailing COVID-19 guidelines issued by the State of Jharkhand vide memo no.434/CS/RES Ranchi, dated 30.10.2021 by which all outdoor congregation of more than 500 persons have been prohibited across the entire State of Jharkhand. The writ petitioner came to know from the local daily newspaper dated 17.11.2021 that the State of Jharkhand, in exceptional case has allowed JSCA to conduct the said T-20 cricket match with full audience capacity and also allowed caterers to serve food & beverages inside the cricket association ground.

According to the writ petitioner, such exercise of State of Jharkhand is highly arbitrary in relaxing the restrictions imposed vide order dated 30.10.2021 by giving special status to the cricket association even without considering the likelihood of spread of COVID-19 pandemic.

3. According to the writ petitioner, the State Government has got no power to relax the COVID-19 guideline for the benefit of the commercial event at the risk of public at large and as such the writ petition has been filed under Article 226 of the Constitution of India to restrict the congregation not to exceed 500 persons as also to direct the Jharkhand State Cricket Association to follow the guideline issued by the State of Jharkhand as contained in memo No.434/CS/RES Ranchi, dated 30.10.2021 as per which all outdoor congregation of more than 500 persons are prohibited in the State of Jharkhand and other related guidelines.
4. Mrs. Ritu Kumar, learned counsel appearing for the petitioner submits that since the match is scheduled to be held tomorrow and the COVID-19 pandemic has not fully ended and there is every likelihood of its spread again, therefore, appropriate direction may be passed as prayed for in the instant writ petition.

5. Mr. Rajiv Ranjan, learned Advocate General appearing for the State of Jharkhand and Mr. Amit Kumar Das, learned counsel for the JSCA have put their appearance.

This Court has put specific query to the learned Advocate General that under which authority the congregation has been directed to be exceeded for more than 500 persons when there is already a decision taken by the department of Disaster Management not to exceed the outdoor congregation of more than 500 persons as under memo no.434/CS/RES Ranchi, dated 30.10.2021.

6. The learned Advocate General, on instruction, produced the copy of the extract of the file for demonstrating the decision of the competent authority in relaxing the said restriction in exercise of power conferred to the competent authority under Section 18(3) of the Disaster Management Act, 2005.

He submits that since the competent authority has taken decision, in the exceptional circumstances, by taking into consideration the fact that day before yesterday first T-20 match held in Jaipur in the State of Rajasthan had been allowed to be conducted with full capacity of the stadium as also in Mumbai, the test match is scheduled to be held with full strength of the stadium and even the other T-20 International match is

scheduled to be held at Eden Gardens, Kolkata with 80% of its capacity.

He further submits that the competent authority, considering these aspects of the matter, has exercised the power as has been conferred under Section 18(3) of the Disaster Management Act, 2005 and therefore, it is incorrect to say that whatever decision has been taken by relaxing the outdoor congregation for more than 500 persons, is without any authority of law.

7. It has been submitted by Mr. Amit Kumar Das, learned counsel for the JSCA that as on today most of the tickets have been sold out and if any direction will be passed then it will create chaos in people. It has further been submitted that the State Government has granted such relaxation subject to fulfilment of the COVID-19 protocol, i.e., every person must wear mask; JSCA must deploy volunteers to ensure every person is wearing mask; hands of each entrants must be sanitized at the entry gates; and entire stadium, especially chairs and railings must be sanitized at least a day before the match.

Therefore, since the cricket association is taking all endeavours by following COVID-19 protocol as directed, therefore, the decision of the State authority which has been taken, in the interest of public at large, may not be interfered with.

8. In response, the learned counsel for the petitioner submits that although there is a power under Section 18(3) of the Disaster Management Act, 2005 but the said provision provides by conferring power upon the Chairperson of the State Authority to take such decision only in a case of emergency but conducting a cricket match cannot be treated to be an emergency.
9. Learned Advocate General, in response to such submission, has submitted that if such issue is being raised, the decision of the State Authority is required to be challenged and in absence thereof, no adjudication can be made.
10. We have heard learned counsel for the parties and perused the document which has been produced in course of argument, i.e., the order passed by the Chairperson of the State Authority dated 16.11.2021 and a communication issued under the signature of Under Secretary to the Government, Home, Prison and Disaster Management Department, Government of Jharkhand (Disaster Management Cell) addressed to the Secretary, Jharkhand State Cricket Association, Ranchi.
11. There is no dispute about the fact that the State Government has come out with a Standard Operating Protocol to deal with COVID-19 pandemic as has been issued on 30.10.2021 whereby and whereunder it has

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been decided that there will not be outdoor congregation of more than 500 people. The writ petitioner has filed this writ petition solely on the basis of the aforesaid notification by taking the plea that when the Government has taken a decision not to allow outdoor congregation of more than 500 people then how the T-20 International Cricket Match has been allowed to be conducted with full strength of the stadium which is about 38,000.

12. This Court, in order to consider the argument advanced on behalf of the writ petitioner about the authority under which such relaxation has been granted, has perused the decision of the Chairperson of the State Authority who happens to be the Chief Minister of the State whereby and whereunder the Chairperson of the State Authority vide decision dated 16.11.2021 has approved the proposal of allowing the T-20 International Cricket Match in between India and New Zealand with full audience strength of the stadium subject to fulfilment of conditions, i.e., every person must wear mask; JSCA must deploy volunteers to ensure every person is wearing mask; hands of each entrants must be sanitized at the entry gates; and entire stadium, especially chairs and railings must be sanitized at least a day before the match.
13. This Court has considered the authority under which such decision has been taken by the Chairperson of the

State Authority which has been stated to be taken under Section 18(3) of the Disaster Management Act, 2005. The said provision is being reproduced as hereunder :

“18.

(3) The Chairperson of the State Authority shall, in the case of emergency, have power to exercise all or any of the powers of the State Authority but the exercise of such powers shall be subject to ex post facto ratification of the State Authority.”

14. It is evident from the aforesaid provision that the Chairperson of the State Authority has been conferred with the power to exercise all or any of the powers of the State Authority in case of emergency but such exercise of power shall be subject to *ex post facto* ratification of the State Authority. Thus, the aforesaid provision confers powers upon the Chairperson of the State Authority to take such decision but in case of emergency.

So far as the issue raised that whether conducting the International Cricket Match can be treated to be a case of emergency and if it is not considered to be emergency then the power exercised by the Chairperson under Section 18(3) of the Disaster Management Act, 2005 cannot be said to be a correct decision but this Court cannot go into this issue at present because the decision taken by the competent authority as under Section 18(3) of the Disaster Management Act, 2005 is not the subject matter of challenge as would appear from

the relief sought for by the writ petitioner as pleaded in para-1 to the writ petition and it is settled position of law that the prayer which has not been made by the litigant in the writ petition that cannot be adjudicated upon. Reference in this regard be made to the judgment rendered in ***Manohar Lal vs. Ugrasen and Ors., (2010) 11 SCC 557*** wherein at paragraph-31 it has been observed which reads as hereunder:

“31. A similar view has been reiterated by this Court in Krishna Priya Ganguly v. University of Lucknow [(1984)1 SCC 307] and Om Prakash v. Ram Kumar [(1991) 1 SCC 441] observing that a party cannot be granted a relief which is not claimed.”

In ***Rajasthan Pradesh Vaidya Samiti, Sardarshahar and Anr. Vs. Union of India and Ors., (2010) 12 SCC 609*** wherein at paragraph-15 it has been observed which reads as hereunder:

“15. It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the court is under no obligation to entertain the pleas. In Bharat Singh v. State of Haryana [(1988) 4 SCC 534 : AIR 1988 SC 2181] this Court has observed as under: (SCC pp. 542-43, para 13)

“13. ... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. ... there is a

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distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading i.e. a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.”

15. This Court, after taking into consideration the aforesaid ratio propounded by the Hon’ble Apex Court in the judgments referred as above, is of the view that the issue as to whether it is a case of emergency for which the power conferred under Section 18(3) of the Disaster Management Act, 2005 can be exercised, cannot be adjudicated in the present case.

16. This Court, is further of the view that since the decision has been taken by the competent authority as under Section 18(3) of the Disaster Management Act, 2005 relaxing the outdoor congregation for conducting the T-20 International Cricket Match as has been submitted by Mr. Amit Kumar Das, learned counsel for the JSCA that most of the tickets have been sold out and the match is scheduled to be held tomorrow, therefore, it will not be proper for this Court to restrain the Jharkhand State Cricket Association to restrict the congregation up to 50% of the seat available in the stadium because the exemption has been granted by the competent authority in exercise of power conferred under Section 18(3) of the Disaster Management Act, 2005, therefore, this Court is

of the view ~~that at this stage~~ WWW.LIVELAW.IN when the match is scheduled to be held tomorrow and most of the tickets have been sold out, it will not be proper to allow the writ petition.

However, the issue as to whether conducting the International Match will come under the case of emergency as stipulated under Section 18(3) of the Disaster Management Act, 2005 is left open for its adjudication in the appropriate case.

17. Needless to say that the Chief Secretary of the State will issue appropriate direction to follow the COVID-19 protocol by issuing appropriate direction to the Deputy Commissioner, Ranchi. In turn thereof, the Deputy Commissioner, Ranchi and S.S.P., Ranchi are directed to ensure compliance of the said directions outside the stadium and also inside the stadium.
18. The writ petition is accordingly stands dismissed with the aforesaid observations and directions.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)