

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 23RD DAY OF FEBRUARY 2022/4TH PHALGUNA, 1943

WP(C) NO. 23374 OF 2021

PETITIONER/S:

- 1 P.P.THOBİYAS, AGED 57 YEARS
S/O. P. A. PETER, POTHADIYIL HOUSE, VELIKUNNU,
MUTTADA P.O., THIRUVANANTHAPURAM.
- 2 RUFUS D' SOUZA , AGED 88 YEARS
S/O. LATE LEWIS D' SOUZA, LUDES VILLA, FORT
COCHIN P. O., PIN - 682 001, ERNAKULAM DISTRICT,
SECRETARY SANTOS FOOTBALL CLUB KOCHI.
- 3 HENRY SHAJAN , S/O. P. A. PETER, POTHADI HOUSE,
BOLGATTY, MULAVUKADU P. O., PIN - 682504,
KANAYANŌOR TALUK, ERNAKULAM DISTRICT.
- 4 BOLGATTY FOOTBALL CLUB
52/11, BOLGATTY, MULAVUKADU, REPRESENTED BY ITS
SECRETARY, BONY THOMAS, AGED 59 YEARS, S/O. A.
T. FRANCIS, SREE PANORAMA GARDENS, PANDARACHIRA
1ST CROSS ROAD, KADAVANTHRA SOUTH, ERNAKULAM,
PIN - 682 020.

BY ADVS.
JAMSHEED HAFIZ
K.K.NESNA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE SPORTS
DEPARTMENT, THIRUVANANTHAPURAM - 695 001.
- 2 THE SPORTS COUNCIL OF KERALA STATUE
THIRUVANANTHAPURAM - 695001, REPRESENTED BY ITS
SECRETARY.

- 3 THE ALL INDIA FOOTBALL FEDERATION
FOOTBALL HOUSE, SECTOR 19, PHASE 1, DWARAKA,
NEW DELHI, PIN - 110075, REPRESENTED BY ITS
SECRETARY.
- 4 KERALA FOOTBALL ASSOCIATION
VIP SECTOR - A, FIRST FLOOR, JAWAHARLAL NEHRU
INTERNATIONAL STADIUM, KALOOR, KOCHI, PIN -
682017, REPRESENTED BY ITS SECRETARY.

BY ADVS.
JIKKU SEBAN GEORGE
PRAVEEN K. JOY
DEEPTI SUSAN GEORGE
T.A. JOY
E.S.SANEEJ
M.P.UNNIKRISHNAN
M.K.SAMYUKTHA
N.ABHILASH
SANDRA S.KUMAR
DEEPU RAJAGOPAL

OTHER PRESENT:

SMT.LATHA ANAND, SC, SRI.JOBY JOSEPH, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 22.02.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

W.P. (C) No. 23374 of 2021

Dated this the 23rd day of February, 2022

JUDGMENT

The above writ petition is filed with following prayers:

- “i. Issue a writ of certiorari or any appropriate writ or direction, to call for records leading to Ext.P1 circular and set aside the same.*
- ii. Issue a writ of mandamus or any other appropriate writ or direction directing the respondents 1 to 3 to take over the Kerala Premier League and conduct the same after drawing proper rules and regulation and conduct the State League Championship to select winners and runner ups among the District League Champions to be qualified for the 2nd division I-League Championship.*
- iii. Pass any other appropriate writ, order or direction which this Hon’ble Court may deem fit to issue and the petitioner may pray from time to time.” (Sic)*

2. Ext.P1 is a circular issued by the 4th respondent. The 1st petitioner is the former Junior Indian Football team Captain and former Indian Senior Football Team Player who also played for Kerala Police Football Team and retired from Government

Service as the Commanding Chief Marshal in the Rank of Superintendent of Police. According to the 2nd petitioner, he is a reputed coach in India, who was honoured by the Prime Minister for his achievements in sports and is the Secretary of Santos Football Club registered with the 4th respondent. The 3rd petitioner is also claims to be a former football player, who claims that he played for Kerala Police and is presently a recognised coach in India recognised by the National Institute of Sports. The grievance of the petitioners is that as per Ext.P1 circular issued by the 4th respondent, an injustice is done to football lovers. According to the petitioners, Ext.P1 circular is issued by the 4th respondent in an unjust, illegal manner violating the right to equality guaranteed by the Constitution in total defiance to the rules and regulations to be followed. It is contended that the 4th respondent is conducting the Kerala Premier League (KPL for short) in total violation to equality and natural justice. The 4th respondent, in order to induct teams

of their choice, without formulating any rules and regulations is conducting the tournament in the name 'Kerala Premier League' without any authority. It is the grievance of the petitioners that huge amount is collected by the 4th respondent for entry to the tournament. According to the petitioners, unlike in the previous years, from this year onwards the 4th respondent has insisted for deposit of Rs.25,000/- with tax as an eligibility criteria for participating in the State Championship League. This, according to the petitioners is unjust, illegal and arbitrary, because many clubs in the State are unable to join the tournament because of the lack of money that too during this tougher times of Covid-19. It is also stated that various institutional teams like Central Excise, Port Trust and various other institutional teams are also not participating because the institution does not permit for participating in such kind of tournaments. According to the petitioners, the above act of fixing Rs.25,000/- with tax is done only by the Football

Association of the State of Kerala and no other part of the country is receiving money from any of the football clubs for participating in the State League Tournament for a qualification to the 2nd division of the I-league. It is also alleged that Ext.P1 circular offers a corporate entry to the tournament. It is the case of the petitioners that the 4th respondent, in order to bring teams of their choice, has started a new entry called Corporate Entry, which permits any team directly to play the league, if they are ready to deposit 7.5 lakhs of rupees. According to the petitioners, the Kerala Football Association, who is accepting aid and grant from respondents 1 and 2 cannot be a money-making institution without promoting football. The 4th respondent Association itself is formed for promoting football and encourage the young general into football. Therefore, it is contended that Ext.P1 circular is illegal and is to be interfered with and to issue direction to respondent 1 to 3 to take over Kerala Premier League.

3. The 3rd respondent in its counter affidavit stated that State League/State Championship is exclusively under the management and control of the various member states in accordance with their rules and regulations. According to the 3rd respondent, a State Association may conduct selection for the I-league 2nd division in a manner as they deem fit. According to the 3rd respondent, since the conduct of a state league/state championship is exclusively within the prerogative of each member states, dictated by their rules and regulations, the 3rd respondent is estopped from interfering in the conduct of the same and further frame rules for the same. According to the 3rd respondent, all member state football associations are independent bodies governed by their own constitution and own memorandum of association and articles of association, which they are mandated to follow bylaws. It is the case of the 3rd respondent that the 3rd respondent does not have the authority to interfere with the conduct of the state competitions.

4. The 4th respondent filed a counter affidavit on 10.01.2022 and an additional counter affidavit on 01.02.2022. The 4th respondent took a specific contention in the counter affidavit that the 4th respondent is a private organisation and did not come within the purview of the definition of “State” under Article 12 of the Constitution of India and hence, no writ petition would lie against the 4th respondent, which is only a private organisation. Kerala Premier League (KPL) is only a private tournament organised by the Kerala Football Association (KFA) as a qualifying tournament for getting selected to participate in the national level league organised by the All India Football Federation, who is the 3rd respondent. KPL is one of the tournament in which a huge number of private clubs are participating. The Corporate Entry fee is collected only to meet the expenses for conducting the KPL. It is the case of the 4th respondent that the private tournaments were conducted by the 4th respondent without obtaining any

fund from the 3rd respondent or from any other authority for the last eight years. Expenses such as stadium rent, ambulance services, medical services, food, ground, marketing, maintenance, light arrangements, expenses for the engineering team including expenses for generators, remuneration for referees, travel allowance and the prize money of Rs.8 lakhs in total were all met by the 4th respondent. It is the case of the 4th respondent that the petitioner's clubs are registered clubs at Ernakulam. According to the 4th respondent the petitioner's clubs have not made any request or intimated their interest in playing in the KPL for the last eight years. According to the 4th respondent, the petitioners' team Santos club is not even registered either with the 3rd respondent or with the 4th respondent. It is the case of the 4th respondent that the petitioners are only trying to distract and disturb the proper conduct of the KPL, which is conducted by KFA for the past several years. It is also submitted that the game of KPL is

already started and the prayers in the writ petition are infructuous. In the additional affidavit, Exts.R4(a) and R4(c) are produced.

5. Heard the learned counsel for the petitioner and the respective Standing Counsel appearing for respondents 2 and 3. I also heard the learned Government Pleader for the official respondent and also the counsel appearing for the 4th respondent.

6. The 4th respondent took a contention in the counter affidavit that the 4th respondent is not amenable to writ jurisdiction and it will not come within the definition of 'State' as defined in Article 12 of the Constitution of India and hence, no writ petition would lie against the 4th respondent, who is only a private organisation. Since such a contention is raised, this Court requested the counsel for the petitioner to argue on the maintainability issue first. The counsel for the petitioners

argued the question of maintainability in detail. The counsel relied on the judgments of the Apex Court in **Zee Telefilms Ltd. and another v. Union of India and others [(2005) 4 SCC 649]**, **Board of Control for Cricket In India v. Cricket Association of Bihar and others [(2015) 3 SCC 251]** and the decision of this Court in **Firosh C. and others v. Palakkad District Cricket Association and others [2019 KHC 4925]**.

7. According to the 4th respondent, it is a private organisation established for the purpose of promoting and developing football in the State. Kerala Football Association is registered state level association of the 3rd respondent. But the 4th respondent submitted that it is a private organisation, which is neither controlled, financed or backed by either by the State or Central Government. The counsel for the 4th respondent also relied on the judgment of the Apex Court in **Federal Bank v. Sagar Thomas [(2003) 10 SCC 733]**.

8. I considered the judgments relied on by the counsel for the petitioner. The first decision relied by the counsel is **Zee Telefilms Ltd (Supra)**. It will be better to extract the relevant portion of the above judgment here:

“29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of [Article 12](#). Assuming that the above mentioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of [Article 12](#)? While considering

this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition

by the Union of India under the guidelines framed by it and that the Board is discharging these functions on its own as an autonomous body.

30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board.

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by

way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.”
(Underline supplied)

9. A reading of the above paragraphs it is clear that the Apex Court was considering the maintainability of a writ petition against Board of Cricket Control in India (BCCI). In the above judgment it is clearly stated that as far as the BCCI is concerned, Union of India has failed to prove that there is any recognition by it under the guidelines framed by it and that the Board is discharging these functions on its own as an autonomous body. But the counsel for the petitioners relied on the finding in paragraph 31 of the judgment **Zee Telefilms Ltd.**

(supra), in which it is stated that though the remedy under Article 32 is not available, an aggrieved party can always seek remedy under the ordinary course of law or by way of a writ under Article 226 of the Constitution, which is much wider than Article 32. The Apex Court concluded like this because BCCI is discharging duties like the selection of an Indian Cricket Team, controlling the activities of the players and others involved in the game of Cricket. The Apex Court observed that these activities can be said to be akin to public duties or state functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party can approach the High Court under Article 226 of the Constitution of India. That is not the case here. The 4th respondent is in effect a private club. They are conducting private tournaments. In such circumstances, based on the dictum laid down by the Apex Court in **Zee Telefilms Ltd.** **(supra)**, this Court cannot held that a writ petition is

maintainable against the 4th respondent.

10. The next decision relied by the counsel for the petitioner is the decision of this Court in **Firosh C. and others (Supra)**. That was a case, in which this Court relied on the judgment of the Apex Court in **Zee Telefilms Ltd.**. In that case, the challenge was against the notice issued by the District Cricket Association. This Court observed that, no public duty of any nature is involved in the disciplinary action initiated by a private body like the association involved in that case against its members. The counsel relied on the judgment of this Court in WP(C) No.19455 of 2008, which was relied in **Firosh C. and others**. But I think, those decision is also not applicable to the facts of the present case. The next decision relied on by the petitioner is **S.Sreeshanth's case (supra)**, which is admittedly reversed by the Division Bench of this Court subsequently. The other decision relied of the Apex Court in **BCCI (Supra)** is also not applicable to the facts and circumstances of this case.

11. In the light of the above judgments itself, according to me, this writ petition is not maintainable against the 4th respondent. The main relief in this writ petition is against the 4th respondent and a circular issued by the fourth respondent. As far as the second prayer in the writ petition is concerned, this court need not entertain the same in the light of the counter filed by the 3rd respondent. According to the 3rd respondent, a State Association may conduct selection for the I-league 2nd division in a manner as they deem fit. According to the 3rd respondent, since the conduct of a state league/state championship is exclusively within the prerogative of each member states, dictated by their rules and regulations, the 3rd respondent is estopped from interfering in the conduct of the same and further frame rules for the same. According to the 3rd respondent, all member state football associations are independent bodies governed by their own constitution and own memorandum of association and articles of association, which they are mandated

to follow bylaws. It is the case of the 3rd respondent that the 3rd respondent does not have the authority to interfere with the conduct of the state competitions. In such situation this court is not in a position to pass any orders based on the second prayer in the writ petition. Therefore, without expressing any opinion about the merit of the case, this writ petition can be dismissed. All the contentions raised by the petitioners in this writ petition are left open and the petitioners are free to agitate the same before the appropriate forum, in accordance to law.

Therefore, this writ petition is dismissed, leaving open all the contentions raised in this writ petition.

sd/-

P.V.KUNHIKRISHNAN
JUDGE

das

APPENDIX OF WP(C) 23374/2021

PETITIONER EXHIBITS

Exhibit P1 A TRUE COPY OF THE CIRCULAR DATED
06.09.2021 AS K.F.A./KERALA PREMIER
LEAGUE/2021-22/302.

RESPONDENT'S EXHIBITS

EXHIBIT R4(A) TRUE COPY OF THE CLUB LICENSING
REGULATIONS FOR LEAGUE QUALIFIERS 2021

EXHIBIT R4(B) TRUE COPY OF THE DRAFT CLUB LICENSING
AGREEMENT

EXHIBIT R4© TRUE COPY OF THE LETTER ISSUED BY THE
3RD RESPONDENT TO THE
DIRECTOR/PRESIDENT OF KERALA UNITED FC
DATED 04.08.2021.