

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.59837 /2017

JUDGMENT

Munda Eleven Cricket Club Vs. Federation of Pakistan
and four others.

Date of Decision: - 23.08.2017

Petitioner by: - Mr. Shaigan Ijaz Chadhar, Advocate.

Respondents by:- Mr. Tafazzal H. Rizvi, Advocate.
Mr. Tahir Mahmood Ahmad
Khokhar, Deputy Attorney-General.
Sadia Malik, Assistant Attorney-
General.

JAWAD HASSAN, J:- Through the instant petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution of Pakistan**”), the Petitioner, Munda Eleven Cricket Club (the “**Petitioner**”), has assailed (a) the order dated 4.7.2017 passed by the Respondent No. 5 (Independent Adjudicator), (b) order dated 13.4.2017 passed by the Respondent No. 4 (Deputy Election Commissioner, Pakistan Cricket Board (“PCB”)), and (c) order dated 4.11.2016 passed by the Scrutiny Committee, PCB. The Petitioner has made the following prayer:

“In view of above it is humbly prayed that instant writ petition may kindly be accepted and orders dated 04.07.2017, 13.04.2017 and 04.11.2016 be set aside and resultantly the Petitioner club be declared as an ‘active’ club and allowed to

participate in the election process of District Cricket Association, Dir Lower.

It is also prayed that the elections of the District Cricket Association, Dir Lower may kindly be stayed till decision of the instant writ petition.”

A. The Essential Facts:

2. The facts succinctly revealed from the instant petition are that the Petitioner is registered with the concerned District/Zonal Cricket Association. The Petitioner was established in the year 1985 and since then, it has been participating in the Cricket competitions organized by PCB.

3. The Scrutiny Committee of PCB visited the Petitioner on 19.10.2016 and declared the Petitioner as ‘Inactive’ after recording information in the Scrutiny Assessment Form on 04.11.2016 for the reasons that the Petitioner did not participate in the District Championship in last three years and also did not adopt the Model Constitution. It is pertinent to mention here that the Governing Board of PCB approved the “Model Constitution of the Club” (the “**Model Constitution**”) on 13.06.2015 and directed all the clubs to adopt and implement it within three months from the date of its communication i.e. 29.06.2015.

4. Feeling aggrieved by the said assessment of the Committee, the Petitioner filed an appeal before the Respondent No.4 which was dismissed vide order dated 25.11.2016. On 25.11.2016, the Respondent No. 4 passed an order after providing the Petitioner

with opportunity of hearing that the Petitioner did not satisfy the requisite criteria mentioned in para 2(ii)(a) of PCB Constitution as well as in the “PCB Procedure for security of club.”

5. The Petitioner challenged the said order by filing an appeal before the Board of Governors of PCB (the “**Board of Governors**”) which was entrusted to the Independent Adjudicator who vide order dated 19.01.2017, accepted the appeal of the Petitioner and remanded the case to the Respondent No.4 for passing fresh speaking order after considering the material in totality and strictly in accordance with law.

6. On 13.4.2017, the Respondent No. 4 dismissed the appeal of the Petitioner. The Petitioner, feeling aggrieved, filed appeal before the Board of Governors, which was dismissed vide a detailed and well-reasoned order dated 4.7.2017 passed by the Respondent No. 5.

7. Hence, the Petitioner has approached the High Court against the orders of the Scrutiny Committee, Deputy Election Commissioner and Independent Adjudicator, in its Constitutional jurisdiction under Article 199 of the Constitution of Pakistan.

B. Submissions of the Petitioner:

8. The learned counsel for the Petitioner *inter alia* submitted that the impugned orders dated 4.7.2017, 13.4.2017 and 4.11.2016 (the “**Impugned Orders**”) are illegal and have been passed without applying judicial mind; that under the Model Constitution,

the President is also the Chief Executive and authorized to file petition before this Court; that the Club has been declared inactive by the Respondents on the sole ground of non-adoption of the Model Constitution and regarding non-participation in the District Championship; the Respondent No. 4 accepted the plea of the Petitioner vide order dated 19.01.2017 that the Petitioner participated in a private tournament, which was duly approved by PCB and that too has not been challenged by the Respondents; that the Petitioner cannot be declared inactive on the ground that it has not participated in the District Championship in last three years as it participated in the private tournaments duly recommended and approved by the PCB; that as the other Cricket Clubs have been declared active on the ground that they participated in the private tournaments duly approved by the PCB, as such there is a clear discrimination with the Petitioner; that the Impugned Orders have been passed arbitrarily in a whimsical manner; that through the Impugned Orders, the Petitioner has been deprived of its fundamental right to cast vote in the District Association Elections to be held on 28.08.2017; that in the Impugned Orders, the plea of the Petitioner regarding discrimination has not been dealt with properly; that the Respondents No.4 & 5 have not duly taken into consideration the documents produced by the Petitioner; that the subsequent orders have not been passed in line with the remand order, therefore, liable to be set aside; that the documents produced by the Petitioner to prove that the Petitioner has duly adopted the Model Constitution, have not been negated on solid grounds; that substantial compliance has been made to provision of law and in support of his contentions the learned counsel for the Petitioner has placed reliance upon the cases titled *Dr. Zafar Ullah*

and 5 others (2016 CLD 1283 [Lahore]) Air Marshal (R) Syed Oaiser Hussain v. Sajid Hussain Toori and 4 others (2017 CLC 617 [Peshawar]), Dr. Akhtar Hassan Khan and others v. Federation of Paksitan and others (2012 SCMR 455), Syed Ghazi Gulab Jamal v. Presiding Officer, Election Tribunal, Peshawar and 2 others (2015 CLC Peshawar 953) and Syed Mashooq Mohiuddin Shah v. Syed Fazul Ali Shah and 37 others (2014 CLC Election Tribunal Sindh 1181).

C. Submissions of the Respondent:

9. On the contrary, in reply to the instant petition, the Respondents filed report and parawise comments raising certain preliminary objections regarding the maintainability of the Petitioner as well as on merits. The learned counsel for the Respondents vehemently controverted the arguments advanced by the learned counsel for the Petitioner and prayed for dismissal of the petition on the grounds that no resolution has been appended with the petition which is incurable defect; that the Petitioner has been declared inactive on two grounds i.e. failing to adopt the Model Constitution devised by PCB and failing to take part in requisite number of cricket tournaments which are the mandatory requirements; that the documents produced by the Petitioner are manufactured/forged and are result of afterthought; that the Petitioner has admitted during assessment that it has not participated in the required tournaments and that too the Petitioner is signatory of the Security Assessment Form; that the matter involves factual controversy which cannot be resolved in the instant petition under Article 199 of the Constitution; that the

instant petition is also not maintainable on the ground that the Rules and Regulations of the PCB are non-statutory in nature; that the Petitioner has developed his case as the points taken by the Petitioner before this Court have not been agitated before the lower forums; that the Petitioner has failed to fulfill the mandatory requirements of the Model Constitution, therefore, deserve no flexibility as the same is not provided in the Rules. The learned counsel for the Respondents has placed reliance on the case titled *Pakistan WAPDA Employees Pegham Union v Member, National Industrial Relations Commission, Islamabad and others* (2014 SCMR 1676), *Amir Jamal and others v Malik Zahoor and others* (2011 SCMR 1023), *Muhammad Zaman and others v. Government of Pakistan etc.* (2017 SCMR 571), *Syed Imran Shah and others v. Government of NWFP etc.* (PLD 2004 SC 285), *MOM and others v. Province of Sindh and others* (2014 CLC 335).

D. Nub of the Matter/Moot Points:

10. In order to pass judgment upon the above mentioned facts, circumstances and arguments urged by the counsels for the parties at length, following moot points are essential for consideration and determination of this Court, arising out of instant petition:

- a. **Whether the PCB Constitution is a statutory instrument or not, and whether the instant writ petition is maintainable under Article 199 of the Constitution of Pakistan?**

- b. Whether the instant writ petition is maintainable in absence of any resolution authorizing the President of the Petitioner to file instant proceedings?**
- c. Whether the Petitioner has adopted the Model Constitution prescribed by PCB, and whether the Club has manufactured the documents to fill the gap/lacunae?**
- d. Whether the Petitioner has participated in the District Championship in last three years?**
- e. Whether the Petitioner has fulfilled the requirement of governing law under the doctrine of ‘substantial compliance’, and whether the Scrutiny Committee has rightly assessed the Petitioner as inactive or not?**

E. Pakistan Cricket Board:

11. In order to resolve the controversy and to deal with the issues raised, I am of the view that before dilating upon any determination on all the above issues, it is essential to discuss the relevant law in respect of PCB.

12. Importantly, the Sports (Development and Control) Ordinance, 1962 (the “**Ordinance**”) has been promulgated to regulate the development and control of sports in Pakistan. Section 3 of the Ordinance establishes and constitutes one or more boards for the sports in Pakistan, and reads as:

“3. Establishment of the Board.— (1) As soon as may be after the commencement of this Ordinance, the Central Government may, 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, by notification in the official Gazette, constitute, one or more boards for the control of Sports in Pakistan.”

13. Admittedly, PCB has been established vide SRO No.43(K.E)/2014 dated 10.07.2014 (the “**PCB Constitution**”), amended vide SRO 20(KE)/2016 on 5.11.2015 issued by the Ministry of Inter Provincial Coordination. Article 3(1) of the PCB Constitution constitutes PCB, affairs of which are managed and regulated by the Chairman, the Board of Governors and the General Body in accordance with the PCB Constitution. Under Article 3(3) of the PCB Constitution, PCB is the governing body of Pakistan cricket and its primary aim is to promote the game of cricket in Pakistan, and it has to operate in transparent manner and ensure that all decisions are made on merit and in the best interest of Pakistan cricket.

14. Further, Article 4 of the PCB Constitution provides objects, powers and functions of PCB, and reads as follows:

*“4. Objects, powers and functions of the Board. -
The objects, powers and functions of the Board shall
be to,-*

*(i) promote, develop, supervise, and maintain
general control on all forms of domestic and
international cricket;*

*(ii) promote and regulate all formats of cricket,
including but not limited to cricket played by men,
women, veterans and those who are physically
challenged or otherwise handicapped like blind,
deaf and dumb;*

*(iii) regulate formation and affiliation of Constituent
Members and to fix fees and other conditions for the
grant of such affiliation and to monitor the
functioning of the same;*

...

*(vii) co-ordinate and promote activities in respect of
the game of cricket in all manner and ways, the
holding and organizing of tournaments and national
and international matches within Pakistan or
abroad;*

...

*(xi) regulate selection and composition of National
Cricket Teams and their officials for participation in
cricket matches and other events both within and
outside Pakistan;*

(xii) constitute tribunals or bodies to inquire into, investigate or adjudicate upon matters relating to the functions of the Board;

...

(xxi) organize and hold matches and other events, inter alia, for the benefit of current or former cricketers, umpires, support personnel or for any charitable purpose;

(xxii) develop the cricket infrastructure in Pakistan and in this regard undertake any act deemed appropriate for the same ...;

...

(xxxi) constitute such committees as may be deemed appropriate to assist the Board in exercise of any of its functions or powers including but not limited to inquiry committees;

(xxxii) to organize and hold any tournament or league within or outside Pakistan or to participate in the same on such terms as deemed appropriate for the purpose of promotion of Pakistan cricket; and

(xxxiii) generally do all such acts and things and take measures as deemed necessary or appropriate to advance the interests of Pakistan cricket or for carrying out its objects and functions.”

15. Under Article 6, the Chairman of PCB is elected by the Board of Governors for a period of three (3) years, and is the chief executive officer of PCB, having power to undertake day-to-day management of PCB. Further, the Chairman is accountable to the Board of Governors. Article 7 prescribes the procedure for elections of the Chairman from amongst the members of the Board of Governors, by a majority of its total voting membership.

16. Article 8 provides the terms and conditions, and powers of the Chief Operating Officer of PCB to assist the Chairman for effective performance of his functions, who is appointed by the Board of Governors on recommendation of the Chair. Article 9 provides the terms and conditions, and powers of the Chief Financial Officer of PCB. Article 10 provides composition of the Board of Governors, consisting of the Chairman, four (4) members being duly elected representative of the mentioned regions on the basis of rotation as per applicable Regulations, and other members.

17. Moreover, Article 11 of PCB Constitution prescribes the procedure for meeting of the Board of Governors. Under Article 12 of the PCB Constitution, the powers, duties and functions of the Board of Governors have been defined, which inter alia, include:

“(a) formulate regulations, codes, operation manuals and to devise policies relating to efficiency, discipline and recruitment or anyother matters for the players, player support personnel, Board’s employees or those affiliated with or controlled by the Board;

(b) take effective measures for carrying out the objects, powers and functions of the Board;

(c) elect the Chairman of the Board in accordance with Paragraph 7 of this Constitution;

(d) appoint the Deputy Election Commissioners and determine their terms and conditions of appointment on the recommendation of the Chairman;

(e) appoint or remove adjudicators on the panel of adjudicators on the recommendations of the Chairman;

(f) manage the affairs of the Board and ensure that the provisions of this Constitution, Rules, Regulations and Bye-laws of the Board are duly adhered to;

...

(u) exercise such power and functions contemplated for the Board of Governors by this Constitution, Rules or Regulations; and

(v) take such other steps as may be necessary and expedient to carry out the objects and functions of the Board in matters not covered by this Constitution, Rules, Regulations and bye laws.”

18. Article 16 of the PCB Constitution constitutes the General Body of PCB consisting of Chairman, Chief Operating Officer, Chief Financial Officer, President or Head from each Full Member; President or Head from each Associate Member; one respective from the Board's Women Cricket Department.

19. Under Article 29(6) of the PCB Constitution, states that the Board of Governors may appoint one or more Deputy Election Commissioners as and when deemed necessary and may assign such other powers and duties as may be prescribed to them. However, such appointment has to be on the recommendation of the Chairman and in consultation with the Election Commissioner

20. Under Article 37(2) of the PCB Constitution, anyone aggrieved by a decision or order of a scrutiny committee of PCB or of the Election Commissioner or a Deputy Election Commissioner or by any other decision or order of PCB may prefer an appeal against such decision with the Board of Governors within fourteen days of the decision or order, which shall be referred to an adjudicator. Article 37(2) states that:

“(2) Any association or active club or member or department or any other person, aggrieved by a decision or order of a scrutiny committee of the Board or of the Election Commissioner or a Deputy Election Commissioner or by any other decision or order of the Board may prefer an appeal against such decision with the Board of Governors within fourteen days of the decision or order, which shall

be referred to an adjudicator selected from amongst the panel maintained by the Board”. (emphasis added)

21. Under Article 41 of the PCB Constitution, PCB has powers to make regulations, without prejudice to general power of PCB to make Regulations under Section 5 of the Ordinance. PCB has prescribed, among others, the Conduct of Proceedings before Independent Adjudicator, the Pakistan Cricket Board Election Regulations 2015, and Pakistan Cricket Board (Rules for Private Cricket Events), 2012.

F. Determination:

22. Now I would like to thrash out the moot points mentioned above as under:

(a) Whether the PCB Constitution is a statutory instrument or not, and whether the instant writ petition is maintainable under Article 199 of the Constitution of Pakistan?

23. While raising preliminary objections regarding the maintainability of the petition, the learned counsel for the Respondents has raised specific objection that the Respondents have non-statutory Rules, as such the instant petition is not maintainable before this Court. The learned counsel has placed reliance on the *Muhammad Zaman and others v. Government of Pakistan etc.* (2017 SCMR 571). It is noticeable here that the learned counsel for the Petitioner has not uttered even a single

word to counter the contention of the learned counsel for the Respondents regarding non-statutory Rules of the Respondents.

24. Importantly, under Section 3 of the Ordinance, the Government has powers to make boards for the control of sports in Pakistan 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. The ‘sports’ has been defined in Section 2(i) of the Ordinance, and recognizes cricket as a sport. Therefore, the issuance of the PCB Constitution, under which PCB has been established, has the backing of law.

25. The case law submitted by the learned counsel of the Respondent, **Muhammad Zaman supra**, also ruled that the test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. The Court had to see whether the rules/regulations dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory.

26. Similarly, the case titled **Shafique Ahmad Khan and others v. NESCOM and others (PLD 2016 SC 377)**, established the principle that “*certain Rules or Regulations were framed without the approval of the Federal Government was not the sole*

criteria to term them as non-statutory in nature. It was indeed their nature and area of efficacy which were determinative of their status. Rules dealing with instructions for internal control or management were treated as non-statutory while those whose area of efficacy was broader and were complementary to the parent statute in the matters of crucial importance were statutory.”
(emphasis added)

27. Therefore, in view of the above case law referred, since the PCB Constitution has wider and broader area of efficacy, hence has backing of law, made under Section 3 of the Ordinance. Further, all the principles and directions etc. enlisted in such instrument shall have to be complied with being the command of the statute by the Members.

28. It is also important to observe case law titled **Muhammad Tariq Badr and another v. National Bank of Pakistan and others** (2013 SCMR 314), in which it was held at Para 8 that “... *it is not only the legal position, but has also been conceded by the counsel for both the sides that, if the rules of a statutory establishment/body are statutory in nature, the employees (who are covered by the rules) of such organization may invoke the constitutional jurisdiction of the High Court for the redressal of their service grievance.*” (emphasis added)

29. However, an exception can be drawn to the case titled **IPC through Secretary vs. Arbab Altaf Hussain and others** (2014 SCMR 1573), in which it was held that services of contractual employees of PCB were not governed by any statutory rules and thus their constitutional petitions filed before the High Court were

not competent; secondly, the employment of the said employees was contractual in nature and their services were terminated after due notice as per their contractual terms and conditions of service. On such account the constitutional petitions before the High Court were incompetent and had to fail.

30. Hence, it follows that the PCB Constitution is non-statutory in nature and actions under the same cannot be challenged under the Constitutional jurisdiction of this Court because the PCB Constitution is for the internal control and management amongst the Members of the PCB only. As the Members have been defined under Article 2(c), (p) & (s) as “Associate Member”, “Full Member” and “Honorary Member” respectively and Articles 12, 13 & 14 of the PCB Constitution. The Respondent No.1 made the PCB Constitution specifically to promote and regulate the conduct of the Members, to set up a Code of Conduct for discipline in all the Members and to regulate affiliation of constituent Members which is purely the internal management of the PCB. Hence, while relying upon the Muhammad Zaman Supra case in which it has been held that *the Court had to see whether the rules/regulations dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory*, I have left with no option but to hold that this Court lacks jurisdiction to entertain this petition being the PCB Constitution non-statutory in nature.

(b) Whether the instant writ petition is maintainable in absence of any resolution authorizing the President of the Petitioner to file instant proceedings?

31. This Court on the very first date pointed out that no resolution has been attached with the petition and till to date has not been associated with the petition. In this regard, the contention of the learned counsel for the Petitioner is that under Article 10 of the Model Constitution the President is also the Chief Executive of the Club and has the power to file petition before this Court and the petition has been duly filed through President; that the President signed all the pleadings, as such the petition is competent; that the resolution is prepared but could not be filed through proper application before the Court.

32. But on the other hand learned counsel for the Respondents contended that the Petitioner has not annexed any authorization whereby it has been authorized by the Club to file the said petition by the President, therefore, the instant petition is legally defective and deserve summarily dismissed on this score alone and that too the said defect is incurable.

33. Admittedly, the petition has been filed without associating the resolution, and there is no provision under the PCB Constitution, specifically authorizing the President of the Petitioner to initiate proceedings against PCB or any other respondent.

34. It was held in the case of **TNB Liberty Power Ltd. vs. Director Of Labour, Government Of Sindh, (2014 PLC 382**

Karachi), that constitutional petition had been filed without proper authorization to the person, as for such an authorization a resolution of the Petitioner (employer) company was necessary to authorize such person to file the petition and in absence of such resolution of board of directors, the petition was filed incompetently in violation of order xix, rule 1 of CPC.

35. It was also held in para 9 of the case titled **Munawar Ali Khan vs. Secretary, Land Utilization Department, Government Of Sindh, Karachi** (2014 YLR 1602 [Sindh]), that:

“9. Consequently, we have no hesitation to conclude that the petition is filed by an unauthorized and incompetent person, as admittedly no resolution has been passed by the Workmen Employees and Agriculture Machinery Thatta Division, authorizing the petitioner as General Secretary Agricultural Engineering Workshop Union to file this petition, therefore, the petitioner has neither any locus standi nor legal character to file instant petition, and even he has failed to establish himself to be an aggrieved person as envisaged in Article 199 of Constitution of Pakistan to invoke the jurisdiction of this Court for relief claimed.”

36. It was held in the case titled that **Syed Bhais (Pvt.) Ltd. vs. Government Of Punjab through Secretary Local Government** (2012 PLD Lahore 52), constitutional petition, in the present case, had not been filed by the Petitioner on the basis of the resolution of

the company. When law required a thing to be done in a particular manner, the same must be done accordingly and if prescribed procedure was not followed, presumption would be that the same had not been legally done. Even, subsequent resolution of the company authorizing the Petitioner to ratify would not resolve the issue as for that matter there should have been some powers vesting in the directors to ratify the wrong and no such power had been provided in the memorandum and articles of the company. The constitutional petition, on such score, was not maintainable. This Court has also dilated upon the issue vide judgment dated 21.03.2014 in case titled **Pioneer Cricket Club v. Election Commissioner, PCB etc.** (W.P. No.30656 of 2013) in which it has been held that *“in the first instance they argued that the petitions have been filed by the cricket clubs through their presidents without due authorization. Review of the record of each of the instant petitions except W.P. No.30580/2013 shows that the Petitioners are all cricket clubs who have filed the petitions through their presidents, without any authorization in favour of the president. There is merit in this objection as the club had to have authorized the president before he could have instituted the instant petitions.”*

37. Therefore, in view of the above, since the Petitioner has not submitted any resolution authorizing the President to specifically initiate such proceedings, the writ petition is not maintainable.

(c) Whether the Petitioner has adopted the Model Constitution prescribed by PCB, and whether the Club has manufactured the documents to fill the gap/lacunae?

38. The Governing Board of PCB approved the Model Constitution of Club, in exercise of the powers conferred under the PCB Constitution, on 13 June 2015 for regulating the affairs of Cricket Clubs in Pakistan, which had to be adopted and implemented by all Cricket Clubs within three months from the date of communication of the PCB Constitution. i.e. 29 June 2015. The Model Constitution provides provisions relating to the objects of Club, office bearers of Club, qualification of office Bearer of Club, election of office bearers, membership, composition of Club, removal of Club office bearers, powers of the officer bearers, undertaking by the office bearers, selection of team, net practice, coach, funds of the Club, change of club name, casual vacancy, dispute resolution, amendment in the Model Constitution, removal of difficulty or doubts.

39. The requirement of adopting the Model Constitution has also been given a statutory backing under Article 2(ii) of the PCB Constitution, which defines Active Clubs as:

“(ii) “Active Club” means a cricket club which,-

(a) has adopted the model constitution as formulated by the Board of Governors, within a period of three months from the date of its communication;

...

(c) has formulated bye-laws for regulating business and the conduct of its members;

(d) participates in every calendar year in at least two tournaments organized by the District Cricket Association to which it is affiliated or two other tournaments approved or recognized by the Board;”

(emphasis added)

40. Therefore, if any club has adopted the model constitution, and fulfills all other requirements mentioned in Article 2(ii) of the PCB Constitution, it shall be declared as Active Club. Consequently, if any club has failed to meet these requirements, it shall be declared as Inactive Club.

41. Under Article 14 and 15 of the PCB Constitution, all Regional, District and Zonal Cricket Associations are required to adopt the model constitution provided by the Board and replace their respective constitutions within three months of the date of communication of the model Constitution made by the Board. Article 14 and 15 of the PCB Constitution reads as:

“14. Regional Cricket Associations.- (1) All Regional Cricket Associations shall adopt the model constitution provided by the Board and replace their respective constitutions within three months from the date of communication of the model constitution made by the Board.

(2) The Regional Cricket Associations shall be responsible to promote, develop, regulate and

maintain general control of cricket in their respective Regions.

(3) The Regional Cricket Associations shall coordinate activities in respect of cricket including the holding and organizing of tournaments. ...”
(emphasis added)

“15. District or Zonal Cricket Associations.- (1) All District or Zonal Cricket Associations shall adopt the model constitution provided by the Board and replace their respective constitutions within three months of the date of communication of the model Constitution made by the Board. The District or Zonal Cricket Associations shall perform their functions under the guidance and supervision of their respective Regional Cricket Associations. ...”(emphasis added)

42. The plea of the Petitioner is that it adopted the Model Constitution without any shadow of doubt and to prove this contention/averment, the Petitioner produced certain documents before the authorities which vividly reveal that the Petitioner took every step to adopt and implement the Model Constitution as prescribed by PCB. On the other hand, the learned counsel for the Respondents has vehemently denied this contention and submitted that the documents produced by the Petitioner are forged and have been manufactured, as such do not have any legal sanctity.

43. However, in para 4 of order dated 25.11.2016, it was noted that “... record of scrutiny shows that the club produced only two pages relating to adoption of model constitution whereas, these two pages are not reflecting as proceeding of adoption of model constitution therefore it is sufficient to believe that the appellant did not adopt the model constitution.” On 13.4.2017, the Respondent No. 4 dismissed the appeal by stating that: “by relying upon the documents shown and provided at the time of scrutiny, it was observed that model constitution was not adopted. But at the hearing of appeal before undersigned on 22 November 2016, the appellate departed from the document submitted before the scrutiny committee and raise new plea of facts and such facts were inconsistent and different from the facts given to the scrutiny committee.”

44. Indisputably, the Respondent No. 5 has also passed a detailed and well-reasoned order dated 4.7.2017, and has held that “... however, this stance has been contested by the Respondents by stating that these documents were an afterthought and prepared subsequently and were not in existence or presented to the Scrutiny Committee at the time of inspection. He had further contended that these documents existed on the day of scrutiny, there was nothing to obstruct the Appellants from providing them to the Scrutiny Committee. This clearly shows that though the second set of documents, the Appellants has attempted to make improvements in its stance regarding the adoption of the Model Constitution. This contention of the PCB’s counsel appeals to reason because if the second set of documents is accepted, then the first set of documents as well as the exercise undertaken by the Scrutiny Committed as

envisaged by the PCB Regulations would become redundant and a futility, thus, would defeat the very purpose of framing of the Model Constitution. Therefore, the Respondent/Deputy Election Commissioner, PCB, has rightly refused to entertain and consider the second set of documents.” It was also clarified in this order that this order shall not prejudice the right of the Petitioner to play cricket and to acquire the status of an “Active” club after meeting requirements of the Model Constitution, PCB Regulations and the other applicable laws.

45. It is pertinent to note that the Petitioner has submitted two sets of documents at different stages and has not submitted even a single document or proof to contradict the above underlined facts noted by the authorities in their respective orders. The Petitioner has categorically also admitted that in the Scrutiny Assessment Form, the facts were recorded on the information provided by the Petitioner, and the Scrutiny Assessment Form has also been signed by the President, Secretary & Treasurer on behalf of the Petitioner. Therefore, it stands proved that the Model Constitution was not adopted at the time of scrutiny and though the second set of documents, the Petitioner has attempted to make improvements in the documents to show the adoption and implementation of the Model Constitution.

46. Even otherwise, on the one side the Petitioner relied upon the said documents but on the other side the same have been denied by the Respondents being fake, hence keeping in view the contentions of both the counsels, it is not out of place to mention here that this issue involves factual controversy as the authenticity

of the said documents stands on the touchstone of the evidence which this Court in exercise of its constitutional jurisdiction cannot do. The scope of this Court under Article 199 of the Constitution of Pakistan is dependent on the questions which are devoid of factual controversies, therefore, this Court cannot interfere in such like matters where disputed questions of facts are involved.

47. It has been held in the case of **Pakistan WAPDA Employees Pegham Union v Member, National Industrial Relations Commission, Islamabad and others** (2014 SCMR 1676), that the High Court could not resolve factual controversies in its constitutional jurisdiction. Further, in the case of **Amir Jamal and others v Malik Zahoor and others** (2011 SCMR 1023), it was held that the scope of Article 199 is dependent on the questions which are devoid of factual controversy. Such jurisdiction of the High Court would extend to questions devoid of factual controversy. This Court in the case **Pioneer Cricket Club supra** has also held that the issues raised in the petitions are of factual in nature, hence the petitions are not maintainable.

48. Therefore, in view of the above, it is clear that whether the Petitioner had adopted the Model Constitution before the Scrutiny Committee visited the Petitioner and collected information, is a question of factual controversy and cannot be resolved under the constitutional jurisdiction of this Court. However, it prima facie seems established that the Petitioner has attempted to fill in the lacunas it had already done by submitting new documents at the time of appeal, and has failed to establish its stance.

(d) Whether the Petitioner has participated in the District Championship in last three years?

49. While dilating upon the issue, it is observed that the record reveals that the Scrutiny Committee visited the Petitioner on 19.10.2016 and recorded the information provided by the Petitioner in the Scrutiny Assessment Form and on the basis of assessment the Committee declared the Petitioner inactive *inter alia* on the ground that the Petitioner did not participate in the District Championship in the last three years.

50. None else but the Petitioner itself attached with the petition copy of the Scrutiny Assessment Form as Annexure-D which explicitly depicts that the columns used for the purpose; *Tournaments organized by the District/Zonal Cricket Association and couples of draws & score sheets provided (2015, 2014 & 2013)* have been crossed. Similarly, the columns used for the purpose; *Tournaments recognized or approved by the Board and couples of draws & official score sheets provided (2015, 2014 & 2013)* have also been crossed. It is also important to note here that the said Form is duly signed by the President, Secretary & Treasurer on behalf of the Petitioner which has not been denied by the Petitioner. Moreover, the Petitioner itself admitted that the Form has been duly filled as per the information provided by the Petitioner to the Committee as per paragraph 4 of the petition.

51. In this regard, above mentioned Article 2(ii)(d) of the PCB Constitution is also essential to be relied upon, which states that an Active Club means a cricket club which participates in every

calendar year in at least two tournaments organized by the District Cricket Association to which it is affiliated or two other tournaments approved or recognized by PCB. Therefore, it is essential for a club to be active to participate in every calendar year in at least two tournaments organized, approved or recognized by the District Cricket Association.

52. Further, participation in tournaments and cricket matches organized by PCB has also been emphasized in Article 19 of the PCB Constitution, which states that:

“19. Undertaking by Full Members and Associate Members of the General Body.-Every Full Member and Associate Member of the General Body shall give an undertaking in writing to endeavor to,-

(a) achieve the objects and purposes of the Board;

(b) abide by the directions of the Board and meet all its obligations including those with regard to the payment of registration fee, annual subscription and match guarantee money...;

(c) follow the Code of Conduct and Discipline issued by the Board or the Board of Governors and to give effect to the Rules, Regulations, By-laws or instructions issued, from time to time, by the Board or the Board of Governors or the Chairman; and

(d) participate in all tournaments or matches as may be organized by the Board and hold not less than two cricket tournaments in every calendar year for any Association or Active Clubs affiliated to it.”

53. Therefore, it follows that the Petitioner has neither fulfilled the requirement mentioned in Article 2(ii)(d) of the PCB Constitution being an Active Club, nor participated twice a year in tournaments organized, approved or recognized by the District Cricket Association or PCB in last three years. Hence, there is no cavil to the argument that the Petitioner is not an Active Club, and consequently is Inactive Club.

d. Whether the Club has met with the requirements of the Model Constitution and all other applicable laws thereto, under the doctrine of ‘substantial compliance’?

54. The Petitioner has stated that it has made substantial compliance for adopting the Model Constitution, and therefore does not fall under category of Inactive Club. To establish the principle of substantial compliance, the Petitioner has relied on various case laws, i.e. *Air Marshal (R) Syed Qaiser Hussain v. Sajid Hussain Toori and 4 others* (2017 CLC 617 [Peshawar]), *Dr. Akhtar Hassan Khan and others v. Federation of Paksitan and others* (2012 SCMR 455), *Syed Ghazi Gulab Jamal v. Presiding Officer, Election Tribunal, Peshawar and 2 others* (2015 CLC Peshawar 953), and *Syed Mashooq Mohiuddin Shah*

v. Syed Fazul Ali Shah and 37 others (2014 CLC Election Tribunal Sindh 1181).

55. On the other hand, the Respondent has relied on the case titled **MOM and others v. Province of Sindh and others (2014 CLC Karachi 335)**, which rules that:

“38. ... (7) (2011) 1 Supreme Court Cases 236 (Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others). The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.”

56. The superior courts of Pakistan have held that the doctrine of substantial compliance is a doctrine in equity. It states that if a good faith attempt was made to perform the requirements of a law

or contract, but failed to exactly meet the specifics, and if the essential aim of the law or contract has been met, the law or contract will still be considered as having been complied with or completed. In other words, it is the compliance with the essential requirements of something (as a statute or contract) that satisfies its purpose or objective even though its formal requirements are not complied with.

57. The following principles have evolved through the decisions of the Superior Courts of Pakistan while interpreting the scope of the doctrine of substantial compliance:

(i) As long as relevant provisions of law are complied with, substantial compliance is held to be sufficient (see **Collector of Sales Tax and Central Excise vs. Zamindar Paper and Board Mills**, 2008 SCMR 615; **Abdul Aziz vs. Malik Aman**, 2007 SCMR 383; **Azmatullah through L.Rs. vs. Hameeda Bibi**, 2005 SCMR 2001; **Muhammad Nawaz vs. Province of Punjab**, 2005 SCMR 1612; **Dr. Akhtar Hassan Khan vs. Federation of Pakistan**, 2012 SCMR 455; **Abdur Rahim Ghulam Qadir vs. The Federation of Pakistan**, PLD 1957 (W.P) Lahore 279).

(ii) Strict compliance of rules is not required as long as it is not detrimental to public policy. (see **Nishat Mills Limited vs. Superintendent of Central Excise**, PLD 1989 SC 222; **E.A. Evans vs. Muhammad Ashraf**, PLD 1964 SC 536)

(iii) Statutory rules and mandatory provisions must be complied with (see Nishat Mills Limited vs. Superintendent of Central Excise, PLD 1989 SC 222; The controller of Estate duty (Representing Central Board of Revenue) Pakistan vs. Radha Kanta Das, PLD 1959 SC 330; Habib Bank Limited vs. Sultan Ahmad, 2001 SCMR 679; Federal Public Service Commission vs. Syed Muhammad Afaq, PLD 2002 SC 167; Haji Khuda Baksh Nizamani vs. Election Tribunal, 2003 MLD 607 Karachi).

(iv) If there is substantial or no compliance of directory provisions, an Act cannot be invalidated so long as it is in accordance with the law (see Manzoor Ahmed vs. the State, PLD 2008 Lahore 243); Muhammad Mushtaq vs. The State, PLD 2006 Peshawar 39)

(v) Where authority or performance of formalities is delegated upon a person under special law or prescribed by the statute, the doctrine of substantial compliance cannot be valid (see Director Intelligence and Investigation (Customs and Excise), Faisalabad and another vs. Bagh Ali, 2010 PTD 1024 Lahore).

(vi) Mandatory provisions require strict compliance. However, for provisions that are directory in nature, the doctrine of substantial compliance is sufficient (see Syed Musadiq vs. The State, PLD 2003 Karachi 216)

58. The contention of the Petitioner before the Appellate forum was that it was a new activity and nobody was given awareness about the right procedure/criteria for the adoption of the Model Constitution. However, the Club adopted the Model Constitution according to its knowledge, therefore, it can carry some shortcomings. This contention of the learned counsel for the Petitioner shows that they although have not adopted the procedure in *stricto sanso* but as per their knowledge, as such it cannot be said that the above said provision/criteria has been adopted in letter and spirit.

59. It is further added that that the record reveals that the Model Constitution formulated by the PCB was duly approved by the Board of Governor on 13.06.2015 and clubs all over Pakistan were directed to adopt the same within three months of the date of the communication of the same i.e. 29.06.2015. The clubs were directed to call the meeting of General Body of their respective Club and adopt the Model Constitution. Resultantly, clubs all over Pakistan underwent this exercise and adopted the Model Constitution except the Petitioner and some others.

60. In order to ensure dissemination of information about the Model Constitution, PCB also uploaded the Model Constitution, both in English and Urdu to its Official Website and informed the District Cricket Associations with which clubs are affiliated. In view of the same, there remains no reason of excuse regarding knowledge etc.

61. Admittedly, the Scrutiny Committee of PCB visited the Club on 19.10.2016 and recorded the information provided by the Petitioner in the Scrutiny Assessment Form and on the basis of that assessment the Club has been declared as 'Inactive' allegedly on the following two grounds:

- i. *The Club did not participate in District Championship in last three years.*
- ii. *The proceedings regarding adoption of model constitution provided by the club at the time of scrutiny seems to be fake.*

62. However, Article 2(ii) of the PCB Constitution, a statutory instrument, has defined the Active Clubs, which has to adopted the Model Constitution as formulated by the Board of Governors, within a period of three months from the date of its communication and which has participated in every calendar year in at least two tournaments organized by the District Cricket Association to which it is affiliated or two other tournaments approved or recognized by PCB. Therefore, if any club has adopted the Model Constitution, and fulfills all other requirements mentioned in Article 2(ii) of the PCB Constitution, it shall be declared as Active Club. Consequently, if any club has failed to meet these requirements, it shall be declared as Inactive Club.

63. Even if it is considered that the Petitioner has met the requirements under doctrine of substantial compliance in adoption of the Model Constitution, the Petitioner has clearly not fulfilled the second requirement to participate in recognized tournaments

twice a year from past three years. Therefore, the Petitioner cannot be declared as an Active Club under the PCB Constitution.

64. The Petitioner has also take plea of discrimination that similarly placed Clubs have been declared active but the Petitioner has been discriminated by declaring inactive, as such has been deprived of its fundamental right. To support his plea the learned counsel for the Petitioner has failed to produce substantial material on record on the basis of which it can be ascertained that the discriminatory attitude has been adopted towards the Petitioner and his fundamental rights have been infringed.

65. In view of above, the Committee has rightly assessed the inactiveness of the Petitioner on these accounts, and it stands established that the Petitioner has not met the criteria of being an Active Club under Article 2(ii) of the PCB Constitution. Therefore, this petition being devoid of merits is hereby dismissed.

(JAWAD HASSAN)
JUDGE

Approved for reporting

JUDGE