

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1234-07-2021

Syed Raza Ali Shah
Versus
Pakistan Cricket Board

Date of Hearing: 10.11.2021

Fawad Malik: Information Commissioner

Present: Mr. Taffazul Haider Rizvi, Advocate Supreme Court assisted by Miss Areeba Khalil, Secretary and Senior Manager, Legal on behalf of the Pakistan Cricket Board. Appellant in person.

A. APPEAL

1. Mr. Syed Raza Ali Shah invoking the constitutional right enshrined under Article 19A of the Constitution of Islamic Republic of Pakistan read with Section 11 of the Right of Access to Information Act, 2017 has desired information from the office of the Chairman, Pakistan Cricket Board through request dated July 6, 2021. The detail of the requested information and record is as under:

“Please provide certified copies of managers of National Cricket Team from January 01, 1991 to December 31, 1999.”

2. The appellant feeling aggrieved of the non-provision of the requested information and record from the respondent within the stipulated frame of time limit of ten days provided in the Act, preferred appeal dated July 27, 2021 before the Pakistan Commission on access to information, Islamabad.

B. PROCEEDINGS

3. The notice of the Commission was responded by the PCB. It is contended that Constitution of Islamic Republic of Pakistan, 1973 imposes restrictions even on the fundamental rights to ensure that one person’s right shall not be

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violated by another person's right of freedom therefore it's not an absolute right, that the contract, especially the one whereby terms of service are set forth as an arrangement between two persons under which mutual covenants are laid down in writing are confidential documents and its disclosure would tantamount to breach of confidence, that the magic time frame itself shows that the law at hand is being abused for personal and ulterior motives, that the PCB generates its revenues solely from its own resources and avails no public funds or grants, that the requested information is exempted from disclosure under Section 16 (d) and (g) clause 1 of the Right of Access to Information Act, 2017 and that the requested information is exempted from disclosure as it would tantamount to breach of confidence therefore the contracts with the team managers cannot be disclosed however the organization along with the reply has attached the list of the National Cricket Team Managers engaged by the Pakistan Cricket Board from 01-01-1991 till December 1999.

4. The appellant disputed the points raised by the organization and claimed that PCB is a government organization and liable to provide the contracts signed by PCB with the lawyers / firms due to the following reasons:

1. *“PCB is established under the Sports (Development and Control) ordinance 1962. The section 2 of the above mentioned Act (ix) and (d) states “any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government”.*
2. *Have the PCB ever not received any funds & grants from the government?*
3. *The offices being used by the PCB is government property or PCB owned/rental property?*
4. *Are the playgrounds used for cricket by the PCB owned/rented by the PCB from the government?”*

5. The organization to meet the points raised by the appellant in the rejoinder filed the following points in addition to the earlier reply:

- *“PCB is a unique entity entirely different from other autonomous/semi-autonomous bodies, corporations and commissions in that it receives no funds/monies whatsoever from the Federal Government / the Consolidated Funds / the Public Exchequer rather generates its own revenues from the sale of its commercial and media rights and other ventures. PCB is the only sports organization which has been made amenable to Income Tax Laws of Pakistan. Reference is drawn to Part I of the Second Schedule, Proviso to Entry No.98 of the Income Tax Ordinance, 2001. Resultantly PCB annually pays Millions of Rupees as tax to the Public Exchequer.*
- *PCB has instilled its own robust financial management system and undergoes external and internal audits which are conducted by the internationally*

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acclaimed firms of Chartered Accounts such as Deloitte Yousaf Adil and Ernst & Young Ford Rhodes Sidat Hyder, respectively, whilst A.F. Fergusons (PricewaterhouseCoopers) & Co Act as Tax Advisor.

- *Annual Financial Settlements and audit reports are available on the official PCB website and the latest financial statement may be perused via the link below:*

Note 1 of the same 'STATUS AND NATURE OF BUSINESS' (Page 9 of the Financial Statement) explains in detail how operate and generates its own funds.

- *In light of the above, it is submitted that payment of the professional legal fees paid to lawyers on PCB's panel of advocates are not made from the Public Fund/Exchequer, but from PCB's own income, therefore protected under Qanun-e-Shahadat Order, 1984. The list of lawyers engaged by the PCB has already been placed on record by PCB through his earlier Reply to Appeal."*

6. During the course of arguments learned counsel has argued on the similar lines and produced a copy of constitution of Pakistan Cricket Board, copy of the deed dated 06.12.1980 signed between President, Board of Control for Cricket in Pakistan and the President of Islamic Republic of Pakistan for the lease of 104.5 acres of land for the annual rent of Rs. 12,6445/- for land situated in KDA scheme No. 24, Karachi for the period of 99 years, a copy of lease deed dated 03 May, 1995 signed between Pakistan Cricket Board and the Deputy Commissioner Lahore on behalf of the Punjab Government for the lease of a piece of land measuring 180 kanal, 1 Marla situated in revenue estate Ichhra, Tehsil, Cant Lahore for the construction of cricket stadium, with the token rent of one thousand per year, copy of tax paid for the year 2020-21. He has placed the reliance on PLD 2009 Supreme Court 28, 2016 CLC 1884, and PLD 1990 Karachi 173.

ISSUES

7. Out of the divergent pleadings the following issues arise for resolve by the Commission:
 - a. Whether the Pakistan Cricket Board is a unique entity different from other autonomous/semi-autonomous bodies, corporations and commissions as it hasn't received any funds from the government exchequer?
 - b. Whether the contracts signed between Pakistan Cricket Board and the Managers of Pakistan Cricket Team are confidential documents?
 - c. Whether the requested information is exempted from disclosure under Section 16 (d) & (g) of the Act?
 - d. Whether the appellant is abusing the law for his personal and ulterior motives?

C. COMMISSION'S VIEW

8. The appellant invoking his fundamental right guaranteed under Article 19A of the Constitution of Islamic Republic of Pakistan, 1973 read with Right of Access to Information Act 2017, has desired the certified copies of the contracts signed by the Pakistan Cricket Board with the Managers of Pakistan Cricket Team. The respondent body in the reply has though provided the list of the Manager engaged by the Pakistan Cricket Board from 1st January 1991 till 31st December 1999 but have held the provision of the copies of the contracts signed by the PCB with the said Managers.

Issue a.

At the first instance the Commission essentials to resolve the point raised by the sports organization that the Pakistan Cricket Board is a unique entity different from other autonomous/semi-autonomous bodies for the reason that PCB generate the funds through its own resources and revenues from the sale of its commercial, media rights and other ventures and that government exchequer isn't involved for any payment. The learned counsel on behalf of the organization hasn't taken the stance either in the reply or during the course of arguments that the Pakistan Cricket Board is not a public body within the meanings of the Right of Access to Information Act, 2017 rather argued that the PCB is not liable and accountable to provide the information under the Act as it is dissimilar to the other autonomous/semi-autonomous bodies for the reason that PCB generates all its funds through its own resources and revenues from the sale of its commercial, media rights and other ventures and that government exchequer isn't involved for any payment.

Although the organization is earning its revenues from the sale of commercial and media rights but it is worth to note that all the activities carried out by the organization are based on the cricket stadiums/grounds constructed on the leased land, owned by the government. All offices of the PCB are constructed on the government land leased in favour of the PCB at a highly subsidised rate which affords the source of income for the organization. The organization is therefore earning from the activities, sports or commercial, carried out on the leased land sponsored by the government at a supported rate. Apart from the sport activities the PCB is deriving income from the commercial activities like shops, showrooms and restaurants etc, outside the stadiums. According to the lease agreements provided by the organization in the case of Qaddafi Stadium, Lahore the PCB is paying token rent of Rs.1000/- per year for very valuable land measuring 180 kanal 1 Marla while in the other case of land in Karachi the annual lease rent is worked out at the rate of Rs.1210/- per acre. This token

money paid by the PCB is figurative and symbolic aiming to provide the citizens of Pakistan the facility of enjoying the sports and other activities.

Section 5 of the constitution of Pakistan Cricket Board states that the Prime Minister of the Islamic Republic of Pakistan shall be the Patron who may from time to time, give general policy directions to the Board for its consideration.

PCB is established under the Sports (Development and Control) ordinance 1962. The section 2 of the ordinance states “any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government.

In the Rules of Business, 1973 of Cabinet Secretariat (Cabinet Division), Islamabad the Pakistan Cricket Board is placed at item 18(38) under Interior Division. All the Divisions, attached departments including the autonomous bodies of the Federal Government are enlisted in the definition of the public body as defined in section 2(ix)(a) the Act.

In the light of the discussion above the Commission is therefore of the considered view that the PCB is a public body, answerable and accountable under the Right of Access to Information Act, 2017.

Issues b& c.

The stance of the organization is that the contracts signed between PCB and the Managers of Pakistan Cricket Team are confidential documents therefore are exempted from disclosure under Section 16 (d) & (g) of the Right of Access to Information Act, 2017. Section 16 (d) & (g) are reproduced here under:

Information exempt from disclosure:- (1) Subject to the provisions of this Act,

.....

(d) Information is exempt if and so long as its disclosure is likely to cause,

- (i) Damage to the economy as a result of premature disclosure of a proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;*
- (ii) Damage to the financial interests of the Public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for acquisition or disposal of property or supply of goods or services; or*
- (iii) Damage to lawful commercial activities of the public body;*

.....

(g) Information may be exempt if,

- (i) The information was obtained from a third party and on its communication it would constitute an actionable breach of confidence; or*

- (ii) *The information was obtained in confidence from a third party and it contains a trade secret or if communicated it may prejudice the commercial or financial interests of that third party;*

.....

The provision of this information and record cannot be denied for the following reasons:

- a. Under article 8 of the Constitution of Islamic Republic of Pakistan, 1973 any law or custom or usage having the force of law, in so far as it is inconsistent with the fundamental rights of the citizen of Pakistan, shall be void.
- b. Since the PCB is a public body within the meanings of the Act of 2017 therefore the transactions, expenditures, agreements, notifications, remunerations, perks and privileges and the contracts signed between the PCB and the Managers of Pakistan Cricket Team are the category of information and record that ought to have been disclosed proactively including uploading over the internet and computerization by the Principal officer of each public body, within six months of the commencement of the Act as mandated under section 5 and 8 of the Act.
- c. The lease agreement is a contract for the exclusive possession of land for life, for term of years, at will, or for any interest, usually for a specified rent or compensation. The PCB is thus utilizing the government land, on lease, under its use for generating its funds.
- d. The token money paid by the PCB to the government for very valuable land is figurative and symbolic aiming to provide the citizens of Pakistan the facility of enjoying the sports and other activities.
- e. The citizens has the privileged right under article 19A of the Constitution of Islamic Republic of Pakistan read with the Right of Access to Information Act, 2017 to seek information and record in all matters of public importance. The Commission in the light of afore mentioned reasons and discussion hold that the requested information and record is encompassed in the definition of public record and merits to be shared with the public.
- f. Transparency in the working of the government departments is the essence for the enactment of the Act, 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practice would improve the participation of the people in the public affairs aimed at reducing nepotism, corruption and inefficiency in the governance.
- g. The disclosure of the requested information is neither likely to cause any damage to the economy of the country or the organization nor would constitute an actionable breach of confidence of the third party rather would improve the transparency in the affairs and eradicate nepotism and

favoritism. The referred section of the Act does not exempt the organization from disclosing the requested information.

The Commission is mindful that one person's right must not be violated by another person's right of freedom but in the light of the discussion above the requested information cannot be attached to the freedom or privacy any identifiable individual.

Issue d.

The respondent organization has alleged the abusing the law for his personal and ulterior motives by the appellant but has not produced even an iota of evidence to prove the allegation. Suffice to say that under section 11(5) of the Act in no case shall an applicant be required to provide reasons for asking any information. Any citizen can invoke the right to have access to information in all matters of public importance subject to regulations and reasonable restrictions. The regulations and restrictions provided in the Act do not debar the appellant from asking the requested information.

D. ORDER.

7. The appeal is allowed. The Chairman, Pakistan Cricket Board is directed to provide the appellant the certified copies of contracts signed by PCB with the Managers of Pakistan Cricket Team from January 01, 1991 till December 31, 1999 forthwith but in any case not later than ten days of the receipt of this order.

He is further directed to implement sections 9 and update the official website as mandated in section 5 of the Act, in letter and spirit under intimation to this Commission within one month of the receipt of this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 15.12.2021

Certified that this order consists of Seven (7) pages, each page has been read and signed.