

SUPREME COURT OF INDIA

Krishan Lal Gera

Vs.

State of Haryana & Ors.

C.A.No.4924 of 2011

(R.V. Raveendran and H.L.Gokhale,JJ.,)

04.07.2011

JUDGMENT

R.V.Raveendran,J.,

SLP(Civil) No.4595/2007

Leave granted.

2. Nahar Singh Stadium at Faridabad is stated to be situated in a land measuring about 38 acres belonging to Faridabad Municipal Corporation. The stadium was constructed and was maintained by the District Administration through the District Sports Council. It consisted of a Cricket Stadium with North and South Pavilions, a football ground, a basket ball ground and an athletics ground and large vacant grounds. The cricket stadium has been the venue for some occasional Ranji Trophy matches, Dileep Trophy and Irani Trophy matches and occasional One Day Internationals (ODIs.). It is stated that the District Sports Council and the District Cricket Association which occasionally used the Cricket Stadium, found it difficult to maintain the stadium complex on account of the infrequent use of the stadium facilities and frequent vandalism by miscreants and anti social elements. As a result the dressing rooms and toilets required frequent renovation before every match. Electric fixtures and sanitary fittings which were being frequently stolen had to be replaced repeatedly.

3. In this background, the District Cricket Association ('DCA' for short) on 31.12.1997 decided to form a club that could generate income for the District Cricket Association, so that the Association could have the funds to maintain the cricket stadium including the cricket ground, main pitches, practice pitches, dressing rooms and the Hostel of Haryana Cricket Nursery, in a proper manner. It was decided that the existing members of the District Cricket Association would be its founding members and the club would cater to the requirements of the citizens of NIT area of Faridabad, by providing facilities like lawn tennis, badminton, table tennis, billiards, swimming pool, gymnasium and a card-room, T.V. lounge and a Bar and Restaurant. In pursuance of it, the DCA Club was registered as a society under the Societies Registration Act, 1860 on 29.4.1998 with the Registrar of Firms

and Societies, Haryana. The main aims and objects of the DCA Club under its Memorandum of Association were inter alia to (i) promote sports, cultural, literary and recreational activities for its members and foster the spirit of brotherhood and fraternity; (ii) undertake activities relating to promotion of sports in all fields with special emphasis on cricket, (iii) encourage and help upcoming sports persons of Haryana. It provided for Chief Patrons/several Patrons and three categories of members (i) Honorary Members (eminent personalities), (ii) Foundation Members (with voting rights), and (iii) Associate Members (without voting rights). The President of the DCA was to be the President and the Senior Vice Presidents and Vice Presidents of DCA were to be the Senior Vice Presidents and Vice-Presidents of the DCA Club.

4. On the request of DCA club (fourth respondent), the District Sports Council, Faridabad, under lease deed dated 26.8.1998 granted a lease of the Kapil Pavilion (that is South Pavilion Building measuring 784 sq.yds. as well as the open area in front of the South Pavilion measuring 5713 sq. yds.) in all 6497 sq.yds, for a period of 99 years, in favour of DCA Club on a token annual rent of Re. one per year. The lease was for the purpose of establishing, running and maintaining a club and related activities which were lawfully permissible. The lease deed cast the following obligations upon the lessee :

“(i) The lessee shall not carry out any additions and alterations in the building except construction of play fields in the open area and any portion covered under the stadium stairs opening in the open area earmarked in the Schedule without the permission of the President, District Sports Council in writing. (vide clause 6)

(ii) The lessee shall not sublet or transfer his rights under this lease. (vide clause 10)

(iii) The building and the land attached to the building shall not be used for any other purpose except the purpose for which lease has been made and for no other purpose. (vide clause 11) The lease deed contains certain inconsistent clauses. The preamble states that "the lessor has agreed to grant the lessee a temporary use and occupation of the said building for establishing, running and maintaining a club". Clause (1) stated that lease was "for a period of ninety nine years". Clause (4) stated that the "lease is irrevocable unless it is terminated by the lessor on breach of the conditions or term of the lease by the lessee".

5. It is not in dispute that the `open area' of 5713 sq.yds. (situated to the South and East of the South Pavilion) leased to DCA club comprises the cricket practice pitches, Badminton Courts, Lawn Tennis Courts, Swimming Pool (situated to the East of the Pavilion) and a large vacant ground (situated to the South of the Pavilion).

6. Though the object of establishing the DCA club was to run a club and provide funds to DCA to maintain the cricket stadium, contrary to the terms of the lease, on 15.12.2003, the DCA Club granted a licence in regard to the lawn area (that is the open space to the South of the Pavilion without specifying the exact extent) in front of the Kapil Pavilion to `Modern

Tent House' on a monthly rent of Rs.15,000 with a ten percent increase every two years. The said agreement stated that the "period of hiring" was six years, and the purpose was to host 'parties'. Though the agreement purports to be a licence, the terms make it clear that it is in fact a lease.

7. The appellant herein filed a public interest litigation in the year 2006 before the Punjab & Haryana High Court, alleging that instead of using the leased premises which is part of the stadium complex, for sports and sports related activities, it was being used for illegal activities; that the club had become an adda (den) of gamblers; that though clause 10 of the lease deed in favour of the club barred subletting or transfer of the premises in violation thereof, the premises had been sub-let to the Modern Tent House under the guise of a licence; that the licensee Modern Tent House in violation of the lease terms constructed several permanent structures including pandals and rooms (for godown, generator etc.) and the entire area is in bad shape because of the lack of maintenance; and that Modern Tent House was permitted to use the entire open area of 5713 sq.yds, instead of only the lawn area to the South of the Pavilion. It was next alleged that the swimming pool constructed by the DCA Club had been given on a fifteen year lease to M-n- M Pool and Spa Services at a throwaway rent on 22.5.2004, implying that other amounts were received by the committee members, which was not being accounted. It was alleged that the funds were misused by the corrupt members of the Executive Committee who were least interested in fulfilling the objects of the club. The appellant therefore prayed for a direction to respondents 1 to 3 (State of Haryana, Deputy Commissioner, Faridabad and Faridabad Municipal Corporation) to (a) cancel the sub-lease/licence of Kapil Pavilion and the open area in front of it under the Deed dated 15.12.2003 and also cancel the sub-lease/licence of the swimming pool under contract dated 22.5.2004; (b) to stop the usage of premises for purposes of private functions, gambling and illegal activities etc.; (c) to dissolve the DCA Club (fourth respondent) and take action against its members and recover the loss of revenue from them and other consequential reliefs.

8. The petition was resisted by respondents on several grounds. They denied the allegation that any illegal activities were carried on in the premises. It was pointed out that the reliefs have been sought in regard to the portions given to Modern Tent House and M-n-M Pool and Spa Services without impleading them as parties; and that the pool had been given to said M-n-M Pool and Spa Services on build, operate and transfer contract.

9. A Division Bench of the High Court which heard the petition, dismissed the petition by a single line order on 29.1.2007 : "No public interest is involved in this petition. Dismissed." Aggrieved thereby, the appellant has filed this appeal. Relying upon the decision in *Jayalalitha v. Government of Tamil Nadu* [1999 (1) SCC 53], the appellant contends that a public interest litigation was in fact maintainable in the event of a stadium intended for public use, meant for sports activities was misused or not properly maintained.

10. This Court on 30.11.2009 had restrained the respondents from further leasing the premises. On 15.12.2009 this Court directed the respondents to file a statement in respect of the activities of the club. In response to the said direction the Executive President of the

DCA club has filed an affidavit dated 21.9.2010 on behalf of respondents 1 and 2. It is stated therein that Nahar Singh Stadium and adjoining areas are being used for the following sports activities : (a) cricket; (b) foot ball; (c) lawn tennis; (d) badminton; (e) table tennis;(f) billiards; (g) swimming; (h) athletics/Gymnasium. It is stated that the premises has a bar room, restaurant, card room and TV lounge and that about one acre of land which is outside the stadium, which had been earlier given to Modern Tent House, is being co-managed with Hotel Raj Mahal Regency.

11. After the hearing was concluded, the fourth respondent (DCA Club) has filed written submissions disclosing that the DCA Club had entered into an MOU dated 30.6.2010 with Hotel Raj Mahal Regency for co-management of the Club. The copy of the Memorandum of Understanding dated 30.6.2010 produced as an annexure to the written submissions disclosed that DCA Club has entrusted the Kapil Pavillion and the open area in front of it for five years to Hotel Rajmahal Regency, "for managing the Bar and Restaurant and provide tentage, and holding parties/functions on the lawns and manage the other activities like Gymnasium, Billiards and Tennis etc". Hotel Rajmahal Regency is required to pay to DCA Club Rs.35,000/-plus taxes per every "big function" using the party lawn apart from Rs.25000/- towards average monthly electricity charges. The licensee was required to invest Rs.25 lakhs (non-refundable) for renovation, air-conditioning, furniture and fixtures and interiors to improve the ambience of the club. This arrangement entered by DCA Club on 30.6.2010 is in clear violation of the interim order of this Court dated 30.11.2009. Be that as it may.

12. The written submissions also allege that the DCA Club has been acting as a "support base" for cricket and other sports activities by maintaining the day and night practice pitches outside the stadium, maintaining the Lawn Tennis Courts, Badminton Courts, swimming pool and gymnasium, helping in maintaining the entire cricket stadium including the main ground, practice pitches, main pitches, dressing room, the North Block which houses the hostel of Haryana Cricket Nursery and providing regular security to the whole stadium area. It was submitted that the DCA Club is in lawful possession of the premises (measuring 6497 sq.yds., that is open area of 5713 sq.yds. and pavilion area of 784 sq.yds.) and working towards sports development, cultural development fraternity, talent promotion within the framework of statutory requirements and using the club as well as the open land allotted to it for the purpose of activities relating to sports and games.

13. We have referred to the facts to demonstrate that there have been several irregularities by the District Administration (District Sports Council) in granting arbitrarily a largesse to DCA club etc., in the form of a long term lease at an annual rent of Rs.1/-, and use of a Sports Stadium, for non-sports commercial activities. The matter required consideration. Unfortunately, the High Court chose to dismiss the petition in limine and thereby failed to exercise its jurisdiction.

14. What we find in this case is the common malaise found in various parts of the country in regard to sports stadia and sports facilities. Firstly, inadequate and inappropriate use. Secondly, poor maintenance. Thirdly, lack of access to students, public, athletes and sports persons. A huge tract of valuable land belonging to the local authority was earmarked

exclusively for sports activities by constructing a stadium. The pavilions were intended to be used for sports related activities. Unfortunately, the District Sports Council instead of encouraging sports and developing the entire area into a thriving and vibrant stadium for various sports and sportsmen, has pushed sports activities into the background by converting the pavilion into a club with a bar room, restaurant, card room and developing the open space meant for sports activities into a party lawn for functions/marriages. This is done by granting a 99 year lease of a prime area of the stadium measuring 6497 sq.yds. (that is, the entire south pavilion building measuring 784 sq.yds. and the open area of about 1.25 acres) for a paltry rent of Re.1 per annum. The stadium and infrastructure therein are meant for the benefit of the people. Sports promote health, spirit of competition, and social integration. The sports facilities in the Stadium are meant to be used by residents and sports persons of the city/town and surrounding areas. The prime area of the stadium cannot be taken over by persons in power and the rich and mighty for an elitist recreational club by paying a token annual rent of Re.1. The affidavit shows that in the leased area sports activities are not encouraged and the entire leased area is used for commercial activities: bar, restaurant, party hall and party lawn. This Court sought the particulars and details to know the activities conducted. The affidavit in reply dated 21.9.2010 filed by DCA Club vaguely states that it is being used for the activities of cricket, lawn tennis, badminton, billiards, swimming pool, gymnasium, football, athletics. This is obviously false as the football ground and athletics ground are outside the area leased to the DCA Club. The cricket stadium is also outside the area leased to DCA Club. It is not disclosed who is maintaining the cricket stadium, football field, basket ball field, athletic tracks etc., and whether cricket, football, basketball are regularly played, by whom and at what level; whether the infrastructure and facilities for playing these games are available; who is permitted to play tennis, badminton; who is permitted to use the swimming pool; and who is running the gymnasium and what kind of equipment is available and who are entitled to use it. The District Administration (District Sports Council headed by the Dy. Commissioner) and the State have not bothered to answer any of these issues even before us.

15. Whenever nepotism, favoritism and unwarranted government largesse to private interests, threaten to frustrate schemes for public benefit, it is the duty of High Courts to strike at such action. The stadium is meant for improving and developing sports and sports persons. But slowly and steadily these are ignored by stating that the funds are not available for maintenance or people are not coming to use the facilities. The standard refrain is that a part of the stadia or sports facility can be used for non-sports activities generating funds for the upkeep of the stadium. In no time, an exclusive recreational club is established for those in power, those who have access to power and those who can afford to pay hefty sums to access the facilities by way of membership. Thus valuable state resources meant for the general public, for the poor and the needy who require the facilities to improve themselves, are denied access and the entire facility becomes the domain of a chosen few. What started as a multipurpose stadium for the benefit of citizens become partly a private recreational club and partly a neglected unused stadium. What started as a club then goes into private hands for commercial exploitation for a hotel or for conducting marriages and other functions. The only "sports" activity regularly held is in the card room. Unfortunately, all this is done under

the nose of the District Administration, in a centrally located property belonging to the Municipal Corporation and controlled by District Sports Council. Creating a sports ground, encouraging sports is a part of human resource development which is the function of the State. No part of the stadia or sports grounds can be carved out for non-sport or commercial activities to be run by recreational club or by private entrepreneurs. Recreational clubs are not sports clubs. Nothing prevents the Municipal Corporation or District Administration from running these sports facilities either directly or through registered associations without any restriction as to membership. After all human resource development and the health and welfare of the citizens is one of the main functions and responsibility of governments. We fail to understand why the Government/ Municipal Corporation failed to allot funds and maintain the sports facilities; why sports facilities created at huge costs are not used or made available as sports grounds to the colleges and schools; why a large chunk of the stadium complex (measuring 6497 sq.yards) including a huge building meant to be a sports pavilion is let out for 99 years on a rent of Re.1/- per year, without inviting tenders; and why were the sports facilities permitted to be converted into a club house, marriage hall and party lawn for private functions. The State and its instrumentalities should wake up to their responsibilities in regard to the citizens and youth of this country, in regard to human resources development.

16. The country requires world class infrastructure to train potential athletes and sportspersons. It is not sufficient if infrastructure is created, but such infrastructure and facilities should be properly maintained and optimum utilization of the infrastructure should be ensured. The Parliamentary Standing Committee on Human Resources Development has noted thus in the 185th Report on Promotion of Sports in India (laid on the Table of Lok Sabha on 30.11.2006):

"Under-utilisation of infrastructure 5.12 Optimum utilisation of our existing sports infrastructure has also been one of areas of concern before the Committee. We have erected huge stadia and other sports infrastructure in the metros and cities, which are used only when national or international tournaments take place. For the rest of the period, stadia remain unutilized or are rented out for cultural programmes and other non-sporting events. The public at large generally does not have access to such huge stadia. A lot of money is being spent on their maintenance including security. Sports Federations and other bodies having offices there, do not pay the rent also. Besides, excellent infrastructure is created in different States by way of organizing National Games there. The Committee came to know that these generally remain idle most part of the year and States found it difficult to maintain. The Committee finds it ironical that on the one hand, we suffer from massive lack of infrastructure and on the other hand, our infrastructure remains un- utilized or under-utilized. This is an unfortunate situation that needs to be corrected. The Committee strongly recommends to have a plan prepared for this purpose in consultation with all the State governments, Federations, Sports Authority of India, etc. for putting our infrastructure to maximum use".

17. A sports complex cannot be converted into a Recreation club. Recreational clubs usually have provisions for recreation with swimming pool, tennis, badminton, table tennis (indoor

and outdoor sports), restaurant with bar, and lounges and areas for gathering, interaction, and functions. Merely because a recreational club has provision for some sports activity like badminton or tennis, it does not become a sports club. Nor can a sports stadium belonging to the government with special infrastructure created for sports, athletes and sports persons can be converted into a recreational club. Nor can a stadium complex be used for non-sporting recreational activities or for holding marriages and other functions, unless it had been planned in a manner providing for a recreational club. Persons experienced in sports administration and sportspersons should manage the stadia and not the Managing Committee of the recreational clubs.

18. We may also note at this juncture the difference between exclusive sport stadia and multi-purpose community arenas. Multi-purpose community arenas can be used for sport activities, community meets, and also for holding public or entertainment events. They ensure frequent use, optimum utilization and earning of adequate revenue to meet the cost of maintenance. If stadia have to be converted into a multi-purpose arena, then necessary provision should be made to ensure that the use for public events or entertainment events does not affect the usefulness of the arena for sports. With adequate planning, constant maintenance, multi-purpose arenas may generate better income from non-sports activities which can be ploughed for its maintenance and upkeep of the arena and development of sports. All sports facilities cannot be converted into multipurpose arenas. The object of these observations is not to encourage conversion or use of sports stadia into multipurpose community arenas or to approve the practice of using sports stadia for non-sports activities or for public functions or entertainment events.

19. If a chunk of a Government stadium, being prime land in the heart of the city meant for developing sports and athletics is misused or illegally allowed to go into private hands, it cannot be said that no public interest is involved. While the High Courts are not expected to take policy decisions in regard to sports administration and infrastructure, nor expected to supervise the running of the sports stadia, they are bound to interfere and protect public interest when blatant misuse is brought to their notice. The High Court should direct the concerned authorities to perform their duties and take action in regard to the irregularities, omissions and negligence, so that the interest of the public, particularly human resources development, could be protected. Lack of commitment to the cause of sports has ensured that India remains at the bottom rungs of any international sports event, though it boasts of one sixth of world population. Development of sports infrastructure does not mean spending hundreds of crores for infrastructure for some international event and then allowing the entire infrastructure to go waste, but to ensure continuous and effective use of those facilities and provide adequate maintenance and upkeep. Basic sports infrastructure should be made available at village, taluka and district levels and there should be a comprehensive plan for optimum utilization of the facilities already available so that they are accessible to sportspersons. The government cannot allow sports facilities and sports bodies to be hijacked by persons totally unconnected with sports for private gain or for the benefit of an exclusive few. State of Haryana prides itself in giving importance to sports. We do hope that the state administration realizes the needs of the society and the need for improving sports as an

integral part of human resources development. Participation in sports and sport competitions builds patriotism and national pride, apart from other regular benefits.

20. In this behalf we may refer to the following passages from draft Comprehensive Sports Policy drawn up in 2007. Dealing with playgrounds, it stated :

"As regards the provisioning of space for playgrounds and the preservation of existing playgrounds, the National Sports Policy 1984 emphasized the importance of this and recommended legislation, if necessary, to secure this objective. No such legislation has been brought on the statute books and, in the meanwhile, the use of existing open spaces for purposes other than sports and games, as also the severe shortage of land for sports and games, especially in urban areas, has become a serious issue calling for rectificatory action. It may be particularly noted that the seventh Survey has underlined the decline in schools of 5-9% between 1978 and 2002 in playfields and access to outside sports facilities. In contradistinction, China, which has emerged as a leading-edge sporting nation over the past few decades, has 37 per cent of its population, which comes to about 480 million citizens, actively participating in physical education and sports activities. There are over 3,50,000 popular sports instructors. Even as far back as the year 2000, for which information is readily available, China had over 40,000 grassroots level sports associations, 3854 urban community associations, 2000 community sports institutions, and over 1,00,000 part-time sports instructors, besides an incredible 6,20,000 sports facilities spread across the country. Even a small country like Cuba, whose population of about 11.5 million is comparable to that of NCT Delhi, boasts approximately 2 million athletes, of whom 23,000 are in the high performance category in 38 different sports disciplines at the national and international level."

The draft policy pointed out following deficiencies in the existing sports management :

"access to sport and physical education opportunities still remains highly inadequate, especially in rural areas and the poorer parts of urban areas; and as a consequence, the levels of participation in sport and physical education at home, school, college, the community level and the workplace are abysmally low; the participation of girls and women in physical education and sports is far below that of boys and men; 7 persons with disability have hardly any access to sporting facilities and most of the sports infrastructure is not disabled friendly; 7 indigenous sports and games need to be brought centre-stage in the promotion of a national sporting culture; 7 education remains highly academic-centric with a definite trend towards reducing school sports and extra-curricular sports; 7 India's performance in international sport needs to be significantly enhanced through a holistic and sportsperson centred cradle-to-grave sports policy; to this end, and within the framework of the Olympic Charter, the Sports Authority of India, the Indian Olympics Association and the National Sports Federations need to be revamped, rejuvenated and reoriented to function in an open, democratic, equitable, transparent and accountable manner as there is too much concentration of resources and public support on too few team sports like cricket,

there is need to popularize other sports, especially medal-intensive individual sports disciplines such as athletics, gymnastics and swimming; sports medicine and sports science need particular attention; the scientific and technical support systems for high performing athletes are insufficient;"

The draft policy spelt out the following solution :

"The Policy aims at adopting a holistic approach to sports development taking into account the health benefits, recreation benefits, educational benefits, social benefits, economic benefits and source of national pride that it offers. This would require a realignment of responsibilities between the Union and State Governments, on the one hand, and, on the other, between Government and the Indian Olympics Association, the Sports Authority of India, the National Sports Federations and their affiliated bodies at the state and district level, and corporate bodies. This in turn might require Constitutional changes and the elaboration of a suitable legal framework. The Policy shall endeavour to achieve a shared vision amongst all stakeholders that would be realized through convergence of their efforts. Special emphasis will be laid on mobilizing corporate support in the field of sports. The participant/athlete shall occupy centre-stage in the Comprehensive National Sports Policy, will all other stakeholders playing a promotional, supportive and convergent role towards achieving the goals of mass participation, expansion of the talent pool, enhanced performance in competitive sports, and the emergence of India as a vibrant leading-edge sporting nation in the world through transparent and effective sports systems. In other words, the policy would provide a conducive framework within which sports can develop and thrive."

The said policy also made the following among other recommendations, to identify talented sportspersons who could use the facilities in the stadium complexes:

"Fostering a sports club culture: Encourage and support the setting up in both rural and urban areas, with particular emphasis on poorer localities, of a variety of public and private sports and youth development institutions, as well as sports and health clubs, to enable the young and the old, men and women, the physically challenged and the children, casual players and serious contenders, employees and professionals, the health conscious and talented sportspersons, to find a suitable playing environment to meet their playing needs. These sports clubs would either create their own facilities or access public or private facilities through suitable 'pay and play' schemes for their members. They could also avail of the governmental programmes and schemes to provide the required facilities, equipment and technical support". We are informed that the said draft policy and the recommendations and suggestions therein were rejected by the Sports Federations. Be that as it may.

21. The following questions require to be addressed in regard to this case :

“Specific Issues:

(i) What is the basis for giving a virtual largesse of a huge property by the District Sports Council, Faridabad, to DCA Club at a paltry rent of Re. 1/- per annum, without inviting offers/bids, without ensuring exclusive use for sports/athletics?

(ii) When the lease deed categorically states that the lessee shall not carry out any additions and alterations to the building and shall not sublet or transfer its rights and the building shall not be used for any purpose other than the purpose for which the lease was granted, the reason why action has not been taken by the state government and district administration, against DCA Club for the violations of all these conditions, as admittedly DCA Club has granted licences which virtually amounts to sub-leases in regard to the leased premises, allowed constructions to be put up and allowed premises to be used for purposes other than the purpose for which it was leased.

(iii) Whether the entire stadium, in particular the Cricket Stadium, football ground, basketball ground, athletic tracks, swimming pool, badminton and lawn tennis courts are accessible to the public or only to the members of the club and if so on what conditions?

(iv) What is the amount incurred by the DCA Club in allegedly assisting in maintaining the stadia, athletic tracks and other sports areas?

(v) Whether leases and sub-leases can be granted without any financial benefit to the owner of the stadium complex, that too without any kind of open competitive bidding?

(vi) What steps are taken to ensure that the entire stadium is used only for sports and sports related activities and that access is provided to all persons interested in sports by giving primacy to the sports and athletics in the stadium complex.

(vii) Whether the lease in favour of DCA Club requires to be cancelled/revoked/terminated for breaches? General Issues:

(viii) What steps are to be taken to ensure that there is no diversion of the stadia and sports facilities for non sports activities, recreational activities and private commercial activities.

(ix) Whether there is any misuse or diversion to unauthorized use, in respect of other stadia and sports facilities/complexes in the state and whether there is any policy guidelines to prevent their misuse or diversion to unrelated use? As the High Court has not considered these aspects and the matter requires monitoring and appropriate directions, we consider it necessary to remand the matter to the High Court.”

22. We therefore allow this appeal, set aside the order of the High Court, remand the PIL to the High Court with a request to the High Court to deal with and dispose of the matter in accordance with law, in particular with reference to the issues enumerated in the previous para and other issues that may arise during hearing by the High Court.