

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 16.12.2013

Date of Decision: 20.12.2013

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W.P.(C) 5283/2013

YASH SEHRAWAT

..... Petitioner

Through: Mr. Sanjeev Sindhawani, Sr. Adv. with
Ms. Sumati Anand & Mr. Sanjay
Sharma, Advs.

versus

**BOARD OF CONTROL FOR
CRICKET IN INDIA & ANR**

..... Respondents

Through: Mr. Amit Sibal, Ms. R.Rangaswamy,
Mr. R. Kumar & Mr. Pratek Chadha,
Advs. for R-1.
Mr. J.S. Bakshi & Mr A.S. Bakshi,
Advs. for R-2.

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W.P.(C) 5284/2013

ARYAN SEHRAWAT

..... Petitioner

Through: Mr. Sanjeev Sindhawani, Sr. Adv. with
Ms. Sumati Anand & Mr. Sanjay
Sharma, Advs.

versus

**BOARD OF CONTROL FOR
CRICKET IN INDIA & ANR.**

..... Respondents

Through: Mr. Amit Sibal, Ms. R.Rangaswamy,
Mr. R. Kumar & Mr. Pratek Chadha,
Advs. for R-1.
Mr. J.S. Bakshi & Mr A.S. Bakshi,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The only issue involved in these writ petitions is as to whether the respondents are entitled to determine the age of a person seeking to play in an Under 16 Cricket Tournament, solely on the basis of a medical test known as Tanner-White house-3 Method (TW-3 Method), even if the determination on the basis of the aforesaid test is contrary to the age of the candidate as reflected in documents, such as Birth Certificate, Passport and School Certificate.

2. The petitioners before this Court seeking to play in an Under 16 Cricket Tournament organized by the respondents in the year 2012-13, their father filled up forms provided by BCCI for verification of the age of the petitioners. As per the norms of the respondents, those who are born on or after 1.9.1996 were eligible to participate in the said tournament.

The petitioners underwent the age determination through Tanner – Whitehouse 3 (TW-3) method at Fortis Hospital, New Delhi and on the basis of said test the age of the petitioner in W.P(C) No.5284/2013

as on 1.9.2012 was determined to be 16 years and 2 months, thereby rendering him ineligible to participate in the Under -16 Cricket Tournament in the year 2012-2013. The petitioner in W.P(C) No.5283/2013 was determined as 16 years and 5 months on the said date. However, he was given benefit of 6 months and held eligible to play in Under-16 team. Though he was permitted to play in Under-16 Team, he is also aggrieved from the age determined from use of TW3 method since the age so determined is fed in the database of BCCI and will remain valid throughout his career, meaning thereby that if he wants to play in the under-19 cricket team, his age as on 1.9.2012 will be taken as 16 years and 5 months. Being aggrieved from the said determination, the petitioners are before this Court.

3. In its counter affidavit, the respondent no.1 – Board of Control for Cricket in India (BCCI) has relied upon the order passed by this Court on 11.10.2013 in CM No.14211/2013, thereby taking a stand that the age determination by TW-3 method was carried out in accordance with the aforesaid order of this Court. They have further stated in the said counter affidavit that faced with the menace of players making false representation with respect to their age and playing in age groups for which they were not eligible to play, thereby denying the chance to the

players of appropriate age to play in various tournaments, BCCI felt need for a scientific method for determination of age of the persons seeking to play in such tournaments. The BCCI after several deliberations, resolved to conduct the bone age test for age verification of the players by the aforesaid TW3 method, which according to BCCI has been adopted by various sports bodies across the world. It is also stated in the counter affidavit that TW3 method of bone maturity is being used in all ACC, Under-16 tournaments since 2005 and the accuracy rate of the aforesaid test is +/- six (6) months. The BCCI has accordingly recommended to all State Cricket Associations including respondent No.2-DDCA, to adopt the aforesaid test, for determining the age of the players seeking to play in such tournaments. The aforesaid test, according to the respondent, rates the bone wrist and hand up to 16.5 years. The BCCI is giving benefit of doubt to the players up to six (6) months since there can be an error of +/- six (6) months in the age determined by use of the aforesaid method. TW3 method, according to the respondents, measures skeletal maturity of a subject by making use of the patterns of development of several bones in the hand and using their shape and degree of fusing of the bones to arrive at the bone age of the person in question, thus, concluding what the subject's actual age is.

Earlier the BCCI was adopting a method called Greulich & Pyle (GP method) in which a margin of error could be +/- two (2) years. The respondents have also relied upon the decision of this Court dated 3.8.2012 in WP (C) No.3789/2012 titled Rajender Kumar Vs. Union of India & Ors. in support of the stand taken by them.

4. The first question which comes up for consideration in this writ petition is as to whether the orders of this Court dated 31.5.2012 and 12.10.2012 passed in WP (C) No.612/2011 Lokniti Foundation versus UOI and others are applicable to this case or not.

A perusal of the aforesaid order dated 31.5.2011 would show that the petitioner before this Court alleged series of instances where the age of the player was found to be inaccurate leading to the players above a particular age managing to get themselves categorized in a lower age category, and thereby gaining an unfair advantage over the other players playing in the tournament meant for the players of a particular age category. The requirement of creating a level playing field for determination of age was, therefore, highlighted in the said petition. During the course of hearing, DDCA informed the Court that medical examination of all the players entering competition for the first time

would be conducted by the Medical Board comprising of three doctors. The aforesaid judgment would show that a consensus amongst the parties to the writ petition emerged during the course of hearing. One of the points emerged as a result of the said consensus was that the medical examination would be carried out by the Board of three doctors on the basis of *inter alia* the radiological examination / MRI/CT Scan indicated in Annexure – II of the National Code, but it would be open to the Medical Board to adopt any particular examination which it felt necessary for a particular candidate. The Board, apart from radiological examination was also to conduct dental examination and general physical examination for arriving at the age of the concerned player. Another point which emerged during the consensus was that once the age is determined in the above indicated manner that would be maintained in the data base of the DDCA and would be strictly adhered to by it throughout the entire career of the player.

An application being CM No.16933/2012 was filed seeking certain modifications and the directions given by the Court on 31.5.2011. Directions were sought in view of the availability of TW3 method, in respect of the persons in the Under-16 Category. This time also, there was a consensus amongst the learned counsel for the parties

that insofar as the category Under-16 was concerned, the test by the Board of three doctors shall be conducted as per the guidelines contained in the BCCI's Age Verification Programme as per TW3 method of bone age maturity, as per the brochure enclosed with CM 16933/2012.

It would thus be seen that both the above referred orders, to which the petitioner before this Court was not a party, were the result of a consensus amongst the parties to the writ petition. The aforesaid orders therefore, do not constitute a binding precedent. The following observations made by the Hon'ble Supreme Court in Municipal Corporation of Delhi versus Gurnam Kaur [AIR 1989 SC 38 are appropriate in this regard:

“10. It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as ‘law’ applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided.

5. Rule 12 (3) of the Juvenile Justice (Care & Protection of Children) Rules, 2007, (Model Rules) which the Central Government has framed in exercise of powers conferred upon it by proviso to Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000, contains the following procedure for determination of age to decide whether an accused person a juvenile on the date of commission of the offence or not:

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if available; and in the absence

whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit

to the child or juvenile by considering his/her age on lower side within the margin of one year.

It would thus be seen that under the aforesaid rules, the age of the person claiming to be a juvenile, is to be determined on the basis of the matriculation or equivalent certificate, if such a certificate is available. In case the matriculation or equivalent certificate is not available, the age of the juvenile is to be determined on the basis of the birth certificate issued from the school, other than the play school first attended by him. If neither the certificate of the first nature nor the certificate of the second nature is available, the age is to be determined on the basis of the birth certificate given by the corporation or municipal authorities or *Panchayat*. It is only in the absence of matriculation or equivalent certificate, the date of birth certificate from school first attended and the birth certificate given by the corporation or a municipal authority or *Panchayat* that the medical opinion can be sought with respect to the age of a person claiming to be a juvenile in conflict with law. The obvious reason behind giving preference to certificates over the medical opinion appears to be that, the documents, if found to be genuine, would reflect the precise age of the person claiming to be a juvenile whereas the medical opinion, cannot be said to be absolutely

error free. Even TW3 method, which the respondents have adopted, admittedly has error margin of +/- by six months.

6. The Lt. Governor of Delhi, in exercise of the powers conferred upon him by Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has framed Rules known as Delhi Juvenile Justice (Care and Protection of Children) Rules, 2009. Rule 12(3) of the aforesaid Rules reads as under:

“(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining – (a)

- i. the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- ii. the birth certificate given by a corporation or a municipal authority or a panchayat;
- iii. the matriculation or equivalent certificates, if available;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may

be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

It would be seen that the aforesaid Rules framed by the Lt. Governor of Delhi envisage determination of age on the basis of the birth certificate from the school, other than the play school first attended by the person claiming to be a juvenile. If such a certificate is not available, the age is to be determined on the basis of birth certificate given by the corporation or municipal authorities or a *Panchayat*. If neither the date of birth certificate issued by the school nor the birth certificate given by the corporation or the municipal authorities or *panchayat* is available, the age is to be determined on the basis of the matriculation or equivalent certificate. The medical opinion can be sought from a duly constituted medical board only if none of the documents referred above i.e. date of birth certificate from the school, birth certificate from the corporation or municipal authorities or *panchayat* or matriculation or equivalent certificate is available.

7. The concern of the respondents to ensure that only the children falling in a particular age group are able to participate in the tournament

meant for the children of that particular age group is absolutely genuine and well-founded. The case of the respondents is that there have been several instances particularly in Asian countries, where the documents containing false date of were submitted by the persons who do not actually fall into a particular age group. They have in this regard referred to the experience of the Asian Cricket Council (ACC), as reflected in the Annexure R-1/1 to the counter affidavit which shows that during ACC Cup Under-15, played in April-2005 14 out of 22 finalists were born over age whereas during ACC Cup Under-17, 15 players were not eligible by bone age, 21 players were not eligible during ACC Under 15 Cup played in August, 2006. During the aforesaid tests, the bone age was determined by using TW2 method. During ACC Cup Under-15 played in November 2007 at Kathmandu, ACC Cup Under-15 played in December 2007 at Bangkok, ACC Under-16 Elite Cup played in March 2010 in Nepal, ACC Under-16 Challenge Cup played in Malaysia in July, 2010, ACC Under-16 Elite Cup played in Malaysia in May, 2012 and ACC Under-16 Cup played in March, 2012 in Thailand, the bone age of the players was determined on the basis of TW3 method. 35, 30, 49, 59, 60 and 32 players respectively were not found eligible by bone age, when determined using TW3 method.

8. It would be unrealistic to say that all the documents produced in support of age of a player seeking to play a tournament meant for a particular age group would be authentic documents. There is a reasonable possibility of some of the documents being forged or tampered with. However, such instances, cannot, in my view, be a good ground to outrightly reject all such documents, when the age determined by use of TW3 method is not in conformity with the age indicated in the documents.

There may be cases where the documents produced are absolutely genuine and the age recorded therein is absolutely correct. It would be highly unreasonable and unfair to the players if despite submitting such authentic and genuine documents, they are denied opportunity to play in a tournament meant for their age group, merely because in the medical opinion their age could be more than 16 years, after giving benefit up to six months on either side. Till date, we have not been able to devise a medical test which would determine the age of a person with 100% accuracy. The case of the respondents is that the age determined through use of TW3 method can be higher or lower by not more than six months. The extent of error, in computation of age through TW3 method is also

a matter of opinion and there can be no unanimity in this regard. It is not as if TW3 method is being universally adopted by all sports bodies, even in the face of authentic, genuine and unimpeachable documentary proof of age. FIFA for instance, is using MRI Test for age verification in Under-17 Soccer competition, though MRI of the left wrist used by FIFA and AFC is stated to be expensive and not practical in large numbers.

9. Be that as it may, what I need to emphasize is that the determination of age by medical test whether using TW3 method, MRI test or any other method will only be an opinion and this is nobody's case that such opinion would give exact and precise age of a person undergoing medical test through use of such methods. Therefore, there is no good reason to altogether discard the documentary evidence of age, if otherwise found to be genuine and unimpeachable. In fact, I fail to appreciate how the respondents can exclude the documentary evidence wholly from consideration when even for the purpose of determining the age of a person claiming to be a juvenile in conflict with law or not, the determination is made primarily on the basis of the documents and it is only in a case of non-availability of any of the

prescribed documents that the age can be determined on the basis of medical test.

10. In my view, though there can be no objection to the respondents subjecting a person seeking to play in a tournament meant for a particular age group to TW3 test for the purpose of verification of his age, but, if on such determination, and after giving benefit of margin of error up to six months on either side, it is found that the age so determined was resulting in the person concerned being held ineligible to play in a tournament, the respondents should also take into consideration the documentary evidence, if any, produced by him as proof of his age. If the documents submitted by such a person are found to be authentic and genuine, the respondents would not be justified in giving preference to the age determined through use of TW3 method over the age as reflected in such unimpeachable documentary evidence. While determining the age of such a person, the respondents would also be entitled to ask him to produce such other evidence as they may feel necessary and appropriate in a given case. If a person seeking to play in such a tournament does not produce documentary evidence which should be available or can be obtained by him, the respondents would be justified in relying upon the age determined through TW3 method and

ignoring the documents produced by him. If, however, such a person produces all such documents which he could be reasonably expected to produce as a proof of his age and such documentary evidence establishes the age claimed by him, the respondents would not be justified in discarding such documentary evidence and relying upon the determination of age through the use of TW3 method.

11. In W.P(C) No.5284/2013, the petitioner has placed on record the birth certificate issued to him under Section 17 of the Registration of Births and Deaths act, 1969. In the aforesaid documents, his date of birth is recorded as 27.2.1998. The names of both his parents as well as his address have also been recorded in the said document. The birth of the said petitioner was registered in the official record on 3.3.1998 i.e. just 4 days after his birth. He has also placed on record his passport which was issued to him for the first time on 15.6.2004. It is difficult even to conceive that in June 2004 when the said petitioner was already 6 years old, his father would have given a wrong date of birth while applying for a passport for him, anticipating that one day he would seek to play cricket in Under-16 team. The said petitioner has also placed on record a certificate issued by Delhi Public School, Gurgaon. In the aforesaid certificate also his date of birth is recorded as 27.2.1998. If the

aforesaid documents are genuine and contain correct date of birth of the said petitioner there would be no reason to prefer the age determined through use of TW3 method, over the age reflected in the aforesaid documents.

12. The petitioner in W.P(C) No.5283/2013 also submitted to the respondents, the birth certificate issued under Section 17 of the Registration of Births and Deaths Act, 1969, the transfer certificate issued by Delhi Public School on 25.6.2012, the transfer certificate issued by Masonic Public School on 2.4.2002 and the passport issued to him on 16.9.2005. In W.P(C) No.5283/2013, a perusal of the birth certificate issued to the petitioner by Municipal Corporation of Delhi under Section 17 of the Registration of Births and Deaths Act, 1969 would show that his date of birth in the said documents was recorded as 3.10.1996. The aforesaid registration was made on 10.10.1996 i.e. one week after his birth and the name of both his parents are recorded therein. In the transfer certificate issued by Masonic Public School as well as certificate issued by Delhi Public School, Gurgaon his date of birth is given as 3.10.1996. Same is the date of birth recorded in the passport issued to him on 16.9.2005.

13. For the reasons stated hereinabove, the writ petitions are disposed of with direction to the respondents to verify the genuineness and authenticity of the documents filed by the petitioners as proof of their respective date of birth, within four weeks from today. If on such verification, the respondents find that the aforesaid documents are genuine documents, they would record the date of birth of the petitioner in W.P(C) No.5284/2013 as 27.2.1998 and that of the petitioner in W.P© No.5283/2013 as 3.10.1996 in their data base and would accordingly consider them for playing in the tournaments for which they are found to be eligible, taking their date of birth to be 27.2.1998 and 3.10.1996 respectively.

There shall be no orders as to costs.

DECEMBER 20, 2013/*rd*

V.K. JAIN, J.