

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

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Date of decision: 5th January, 2016

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W.P.(C) No.9775/2015 & CM No.23488/2015 (for stay)

**CHURCHILL BROTHERS SPORTS CLUB PVT.
LTD.**

.....Petitioner

Through: Mr. Mohan Parasaran, Sr. Adv. with
Dr. Harsh Pathak, Mrs. Shweta Pathak,
Ms. Gurveen Dhaliwal, Mr. Siddhartha
Shukla and Mr. Ashwin Kumar, Advs.

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Dr. L.C. Singhi, Adv. for R-1.
Mr. Saurabh Kirpal, Mr. Premtosh
Mishra and Ms. Yojna Goyal, Advs.
for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW.

1. The petition impugns the communication dated 13th July, 2015 of the respondent no.2 All India Football Federation (AIFF) informing the petitioner that the petitioner is not eligible to apply for the grant of licence to participate in the I-League Season 2015-16.
2. Notice of the petition was issued on the contention of the senior counsel for the petitioner that though under the Indian Club Licensing Regulations framed by the respondent no.2 AIFF the decision, to whom to

license for participation in the I-League is to be given, is to be taken by the Club Licensing Committee and against the order whereof remedy of appeal is available to the Club Licensing Appeal Body but the application of the petitioner for licence for the I-League Season 2015-16 had been rejected not by the Club Licensing Committee but by the Manager, Club Licensing.

3. Counter affidavits have been filed by the respondents and rejoinders thereto have been filed by the petitioner. The counsels have been heard.

4. The relevant part of the impugned communication dated 13th July, 2015 is as under:-

“Therefore, in terms of the said direction of the Hon’ble High Court dated 10.04.2015 and subsequent to submission of license application & representation dated 02.07.2015, we would like to inform you that the licensing procedure is only applicable to the clubs already participating in the I-League and the Champions of the 2nd Division league. Further, only the following clubs can be granted National and AFC Licence under the Indian Club Licensing procedure of the I-League Season 2015-16:

- i. Existing clubs participating in the I-League Season 2014-15 which have not been relegated i.e. the clubs which were playing in the I-League Season 2014-15 and which have not been relegated to the second division at the end of the I-League are eligible;*

ii. *Champions of the 2nd division league i.e. Clubs who participate in the second tier national league competition of India i.e. 2nd Division League and win the competition are eligible to participate in the licensing process of the subsequent season of I-League. In the present season, Aizawl FC participated in the 2nd Division League 2014-15 and won the same, making them eligible to apply for a license to play in I-League Season 2015-16. You were given an opportunity to participate in the 2nd Division League 2014-15 at the start of the season, which you also applied for, but later denied participation thus making you ineligible to qualify for I-League 2015-16 under this criterion;*

Please also note that, clubs entering through the bidding route (lateral entry) are given a one-time exemption for the 1st year, which was also given to your club, Churchill Brothers for the season 2013-14. Thereafter, as per the provisions of the present regulations, such clubs are required to comply with the provisions of the club licensing regulations in the subsequent years.

Therefore, as Churchill Brothers does not fulfil any of the abovementioned requirements, please be informed that you are not eligible to apply for the grant of license to participate in the I-League Season 2015-16.”

(emphasis added)

5. The senior counsel for the petitioner contends that the criteria adopted by the respondent no.2 AIFF for holding the petitioner not eligible to apply for grant of license is not provided in the Regulations aforesaid.

6. The counsel for the respondent no.2 AIFF has in this regard drawn attention to Article 32 of the Constitution of the respondent no.2 AIFF which *inter alia* provides that the Executive Committee shall pass decisions on all cases that do not come within the sphere of responsibility of the General Body or are not reserved for other bodies, by law or under the Statutes of the respondent no.2 AIFF. He has then drawn attention to the extract of the minutes of the meeting of the Executive Committee of the respondent no.2 AIFF held on 2nd February, 2008 *inter alia* providing that the clubs not adhering to the licensing policies and requirements would not be considered for the next I-League, whatever may be their classification at present, and to the extract of the minutes of the meeting of the Executive Committee of the respondent no.2 AIFF held on 11th August, 2008 *inter alia* recording that clubs which do not abide by Club Licensing Regulations of AIFF and Asian Football Confederation (AFC) will not be considered for participation in the next edition of the I-League, even if they are not among the demoted teams. Attention is next invited to the Regulations *supra* defining a License Applicant as a legal entity fully and solely responsible for the football team participating in the National and International club competitions which applies for a license.

7. I have enquired from the counsel for the respondent no.2 AIFF, where is the “Indian Club Licensing procedure of the I-League Season 2015-16” referred to in the impugned communication dated 13th July, 2015 and Clauses (i) and (ii) of which are quoted in the said communication.

8. The counsel for the respondent no.2 AIFF states that there is no single document containing the same and what is stated therein is on the basis of practice and decisions taken by various Bodies of the respondent no.2 AIFF and contained in separate documents and which have not been placed before this Court.

9. I have also drawn attention of the counsel for the respondent no.2 AIFF to the bullet points under the heading “Operations and Duties” and under the heading “Powers” in Regulation 3.1.2 titled “Club Licensing Committee (First Instance Body)” of the Regulations supra and which provide the procedure for consideration of an application and which does not provide that the Club Licensing Manager is to screen the applications to consider the eligibility of the applicant so as to enable the Club Licensing Committee to consider only those applications which are found by the Manager to be eligible.

10. The counsel for the respondent no.2 AIFF has contended that the “License Applicant” having been defined as an entity participating in National and International club competitions, an entity as the petitioner which in the current year has not been participating in the competitions, cannot be considered eligible and if it were to be held that the Club Licensing Committee is to consider even the applicants who are not eligible, it could become a mammoth task and the Club Licensing Committee would not be able to process and consider all the applications.

11. I am of the opinion that (i) in the absence of any defined procedure prescribed in one document, and on the basis whereof an applicant for a license can test its eligibility, and (ii) in the absence of any Regulation vesting the Manager of Club Licensing Committee with a power to reject an application for licence of an applicant and further (iii) in the absence of the Regulations providing any remedy against the rejection of an application by the Manager, the possibility of the Manager erroneously rejecting an application and the licence applicant being left remedyless and wrongfully ousted from participation in the I-League, cannot be ruled out. The procedure adopted by the respondent no.2 AIFF for ousting the petitioner from participation in I-League, even though may be valid and *bona fide*, does not

inspire confidence. Further, the procedure followed is also not found to be consistent with the Regulations, particularly Regulation 3.1.2 supra as per which all applications are required to be considered and decided by the Club Licensing Committee. In the absence of any provision so authorizing the Manager, the Club Licensing Manager can only submit/put up the applications for licence for consideration of the Committee along with his report on the eligibility of the applicant. The application of the petitioner has admittedly not been considered by the Club Licensing Committee.

12. The counsel for the respondent no.2 AIFF states that he has already advised the respondent no.2 AIFF to consider amending the Regulations in the said light. He has however sought to draw analogy of the procedure followed with the scrutiny by the Registry of this Court of the plaints, petitions filed before this Court and which come up for consideration before the Judge only if found by the Registry to be compliant in all respects.

13. The analogy given, though may be correct, but the Rules of filing of this Court are specific in this regard and not only empower the Registry to so scrutinize but also provide remedy against the objections raised by the Registry. That is what is lacking in the Regulations of respondent no.2 AIFF.

14. The Regulations of the respondent no.2 AIFF as they stand, require the application for licence to, in the first instance, be considered by the Club Licensing Committee and do not empower the Committee to further empower the Manager to decide the eligibility of the applicant. The Regulations also provide the remedy of appeal to the Club Licensing Appeal Body to an applicant aggrieved from decision of the Committee. The counsel for the respondent no.2 AIFF on enquiry states that against the rejection by the Manager of an application, the remedy of appeal also is not available. The same, in my view amounts to the rejection, even if erroneous, by the Manager of an application, being allowed to be final.

15. Supreme Court, in *Babubhai & Co. Vs. State of Gujarat* (1985) 2 SCC 732, dealing with the challenge to the validity of provisions of the Bombay Town Planning Rules, 1955 on the ground that the same did not provide corrective machinery of appeal or revision to any superior authority against an adverse order, held that the power so conferred may be unreasonable and arbitrary unless conferred on a high authority/official and depending on, (a) nature of power; (b) whether the power is to be exercised objectively or depends on the subjective satisfaction; (c) whether exercise of power is compliant with principles of natural justice; (d) whether the exercise of power

requires making of a speaking order; (e) whether the procedure prescribed ensures application of mind on the part of the authority etc. It was held that all these factors will have to be considered in the light of the scheme of the enactment and the purpose intended to be achieved by the concerned provision and that if on an examination of the scheme of the enactment as also the purpose of the concerned provision it is found that the power to decide or do a particular thing is conferred on a very minor or petty officer and that the exercise thereof by him depends on his subjective satisfaction and that he is expected to exercise the power administratively without any obligation to make a speaking order, then the absence of a corrective machinery will render the provision conferring such absolute and unfettered power invalid. The said view was subsequently reiterated in *Indian Airlines Ltd Vs. Prabha D. Kanan* (2006) 11 SCC 67.

16. Applying the aforesaid principles and further considering that the Regulations of the respondent no.2 AIFF do not even provide for the Manager of the Club Licensing Committee to so screen the applications for license, I am of the view that a case for interference with the impugned decision is made out, particularly when there is no clarity also on the eligibility. In the absence of the eligibility conditions being specified in a singular document,

visible to all concerned, the power exercised by the Manager of rejecting the application of the petitioner for license on the ground of the petitioner being not eligible for license and which rejection is without any opportunity of hearing is indeed found to be unreasonable and arbitrary.

17. Though in the event of it being ultimately found that the eligibility conditions indeed are as are quoted in the impugned letter, the petitioner may have been rightly denied the license but it cannot be lost sight of that the right of the petitioner to have its application for license considered by the Club Licensing Committee has indeed been violated. Though the Courts cannot substitute their own opinion on such matters i.e. whether the petitioner was/is entitled to the license for participation in the I-League Season 2015-16 or not but upon finding the application to have been not considered by the authority empowered to consider the same, can certainly grant a mandamus for consideration thereof by the appropriate authority. I am tempted to cite an old judgment of the High Court of Calcutta in ***Ruttonjee and Company Vs. State of West Bengal*** AIR 1967 Calcutta 450 on the said proposition and which proposition of law remains unshaken till date.

18. The counsel for the respondent no.2 AIFF has then contended that the first game of the season is to begin on 9th January, 2016 and the fixtures of the

entire season were finalised in December, 2015 and even if a decision were to be now reached in favour of the petitioner, it would not be possible to allow the petitioner's participation in the current season. He has handed over a Timeline for the year 2015 of AIFF Club Licensing showing that the Core Process thereof was to begin on 31st March, 2015 with the announcement of the licensing applications to the clubs and to culminate on 10th October, 2015 by issuance of licenses to the club.

19. I may in this regard notice that though the impugned communication is dated 13th July, 2015 but this petition was filed only on 9th October, 2015 and came up first for consideration on 14th October, 2015 when adjournment was sought on behalf of the petitioner and was thereafter taken up for consideration on 28th October, 2015. I am of the view that the delay on the part of the petitioner (though the senior counsel for the petitioner gives explanation therefor) from 13th July, 2015 till 28th October, 2015 when the entire process for licensing had closed, is fatal to the grant of any relief to the petitioner.

20. The senior counsel for the petitioner then contends that the entire procedure and criteria adopted by the respondent no.2 AIFF is *de hors* the Regulations and at the *ipse dixit* of its Executive Committee and without any

basis. It is further contended that the procedure is also arbitrary as it ignores the vintage and past records of a club as the petitioner which is being denied participation. It is also contended that the respondent no.2 AIFF has treated different clubs though identically placed differently and has thereby indulged in discrimination and favouritism.

21. However there are no proper pleadings on all the said aspects and without any foundation in pleadings and response of the respondent no.2 AIFF thereto, the said arguments cannot be considered.

22. Accordingly, this petition is disposed of with the following directions:-

- A. The respondent no.2 AIFF to consider (i) amending its Regulations to either clearly spell out the eligibility criteria for licensing therein or if otherwise entitled under the Regulations and its Constitution to decide the eligibility criteria for licensing from season to season, to clearly spell out the eligibility criteria at the time of announcing the licensing applications itself; and, (ii) if desirous that the eligibility of the applicants be considered/screened before the application is considered by the Club Licensing Committee, to make express provision therefor in

the Regulations including the desirability of a remedy against the decision of the Screening Body or person, and take a decision thereon before the announcement of the next licencing applications.

- B. The petitioner though not entitled to any relief in this petition would be entitled to file another proceeding challenging on merits the criteria for licensing adopted by the respondent no.2 AIFF as well as the discrimination/favouritism if any practiced by the respondent no.2 AIFF in the licensing for the Season 2015-16 and seeking appropriate remedies for the procedure and criteria for licensing for future seasons.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 05, 2016

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(corrected and released on 15th January, 2016)