

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18043 of 2018

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Lakhan Raja, Son of Shri Aditya Prakash Verma, Resident of B- 307, Lotus Apartment, New Patliputra Colony, P.S.- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The Bihar Cricket Association, Bindhyawashini Commercial Complex, S.K. Bhattacharya Road, District- Patna through its Secretary.
2. Committee of Management, Bihar Cricket Association, Bindhyawashini Commercial Complex, S.K. Bhattacharya Road, District- Patna through its Secretary.
3. President, Bihar Cricket Association, Bindhya Wasini Commercial Complex, S.K. Bhattacharya Road, District- Patna.
4. Secretary, Bihar Cricket Association, Bindhya Wasini Commercial Complex, S.K. Bhattacharya Road, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava

For the Respondent/s : Mr. Tej Pratap Singh

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-10-2018

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Jagannath Singh, learned counsel appearing for the respondents.

2. The petitioner has challenged the decision of the Committee of the Management (for short 'COM') of the Bihar Cricket Association, Patna (for short 'BCA'), as contained in an email dated 24.08.2018 written by the President of the BCA by which he has been informed that the COM of the BCA in its meeting held on 23.08.2018 has unanimously decided to suspend him for the



upcoming two seasons, as a player of the BCA.

3. The case of the petitioner, in short, is that he got himself registered with one Jafar Imam Cricket Club, Patna, which was affiliated to the Patna District Cricket Association, (for short 'PDCA'), which is associated to the BCA and in this manner, in terms of the necessary provisions contained under the rules and regulations framed by the Board of Control for Cricket in India (for short 'BCCI'). He became eligible for being registered as player under the BCA so as to enable him to participate in tournaments being organized by the BCCI. On 07.05.2018, an article was published in the Hindi Daily 'Dainik Jagran', Patna Edition through which he came to know that the concerned authority under the BCA were contemplating to suspend him on the basis of some complaints having been received against him. He wrote an email to the Secretary BCA on 13.08.2018 by which he requested the concerned authority to issue a no objection certificate (for short 'NOC') in his favour so as to enable him to participate in the cricket tournaments in the coming BCCI domestic season 2018-19. Thereafter, on 18.08.2018, an email was sent by the Secretary of the BCA informing him that certain complaints were received against him from the PDCA regarding his alleged participation in an unregistered/unaffiliated cricket tournament, which was held in Patna in March, 2018. He was also



communicated that information had been received that he had been playing for a team in Hyderabad Cricket Association's A1 division league without having proper NOC from the BCA. While stating these facts, through the email dated 18.08.2008, he was informed that since the said matter warranted enquiry, till the time a decision was taken by the COM of the BCA, NOC in his favour will not be issued. Subsequently, vide impugned email dated 24.08.2018 sent by the President of the BCA, he was informed that on the basis of an unanimous decision taken by the COM of the BCA during its meeting held on 23.08.2018, he has been placed under suspension for the upcoming two seasons, i.e. 2018-19 and 2019-20.

4. Being aggrieved by the impugned email dated 24.08.2018, the petitioner has filed the instant writ petition.

5. Mr. Abhinav Srivastava, learned counsel for the petitioner submitted that the petitioner is a talented cricketer. Since childhood, as a student of Loyala School, Patna he participated in several inter-school cricket tournaments and gained accolade for it. When he was student of Bachelor of Commerce in Kolkata University, he was member of the University team and participated in several all India level cricket tournaments held during the period 2011-13. He also played for Bengal Under-19 State team in the Vinoo Mankad Trophy organized by the BCCI in the year 2013-14. He also



played for IDBI Sports Club in the Times Shield tournament in the year 2016 at Bombay. During the year 2016-17, he played in the Mumbai Police Gymkhana Senior Division League organized by the Bombay Cricket Association. Since he is a domicile of the State of Bihar, he participated in the process of selection and on the basis of the decision taken by the selection committee of the BCA, for the cricket season 2017-18, he was registered with the BCA on the basis of permission having been granted by the concerned authorities under the BCCI so as to enable him to participate in the Under-23 tournament to be organized by the BCCI during the year 2017-18.

6. Mr. Srivastava, learned counsel contended that the petitioner did not in any manner violate any of the rules and regulations of the BCCI or the BCA. He contended that in an arbitrary manner the BCA has placed him under suspension for the upcoming two seasons, i.e. 2018-19 and 2019-20 leveling several allegations, but neither a copy of any complaint having been received against him was handed over to him nor a copy of an enquiry report prepared on the basis of enquiry having been conducted against him was ever served upon him. According to him, the so called suspension for two seasons virtually amounts to debarment of the petitioner for two seasons from playing in domestic or international cricket, which would ruin his entire cricketing career. He contended that no heed



was paid to the rules and regulations of the BCA while passing the impugned order of suspension. He submitted that a perusal of email dated 24.08.2018 written by the President of the BCA would clearly demonstrate that no notice was served upon the petitioner and if any enquiry had been conducted into the alleged misconduct, it was all behind his back.

7. Per contra, Mr. Jagannath Singh, learned counsel appearing for the respondents submitted that the writ petition would not be maintainable against the respondent BCA, which is a society registered under the Societies Registration Act, 1860. According to him, the society not being a State within the meaning ascribed to it under Article 12 of the Constitution of India would not be amenable to the writ jurisdiction of this Court. On merits, he contended that it is not a fact that the petitioner did not violate rules and regulations of the BCA. He had clearly violated the declaration and undertaking given by him on 05th January, 2018 by participating in an un-registered tournament called as Bihar Shatabdi Cup, 2018 organized by his father, which was declared an unregistered tournament by the BCCI as also the BCA. He pleaded that he has not only violated the declaration given by him to the BCA but has also participated in the match conducted by the Hyderabad Cricket Association without obtaining NOC from the BCA for the year 2017-18. He argued that



in the aforesaid background, the COM was compelled to place him under suspension for his acts of misconduct and indiscipline. Referring to clause 23 of the rules and regulation of the BCA, he submitted that the said clause deals with the BCA's jurisdiction over players, match officials and team officials, which, inter alia provides that no player can participate in any match/tournaments/exhibition matches, which has not been authorized/approved/permited/ conducted by the BCA or its full members. Since the petitioner had participated in an unregistered tournament, which was declared to be unauthorized tournament, it was held by the COM that he had violated the rules and regulations of the BCCI and the BCA and, therefore, he has been placed under suspension. He further contended that under clause 24 of the rules and regulations of the BCA, the COM has been vested with the power to enquire into the conduct of any player within its jurisdiction and it to take disciplinary action against him and such decision has the effect of finality.

8. He has also drawn my attention towards para 14 of the counter affidavit filed on behalf of the respondents in order to justify the legality of the impugned order dated 24.08.2018, the relevant part of which reads as under : -

“.... it is stated that the petitioner sent an email to the deponent for issuance of No Objection Certificate which was replied by the Secretary



on **28.08.2018** through email that the complaints from Patna District Cricket Association regarding the alleged participation and playing in an unregistered/unqualified cricket tournament which was held on March, 2018. Meanwhile the BCA received further information along with the conclusive proof that the petitioner had been playing for/representing a team in Hyderabad Cricket Team Association A1 Division League without having a proper NOC and all the matters were under inquiry and therefore no NOC can be provided as is evident from email dated **28.08.2018** Annexure-4 at page 27 & 28 to the writ petition and thereafter the petitioner was also informed by the President of Bihar Cricket Association about the participation of the petitioner in a tournament i.e. Bihar Shatabdi Cup Tournament and also playing in Hyderabad HYCA 1 Division League representing Team India Cements in Group B without giving any prior information and/or getting permission from the BCA which is an act of indiscipline, shows unprofessional behaviour of player, breach of rules and regulations and therefore the Committee of Management in its meeting dated 23.08.2018 has unanimously decided to suspend the petitioner for upcoming two sessions i.e. 2018-



19 and 2019-20 and hence the contention of the petitioner that he was not informed about the complaints and decision taken is unfounded and contrary to the record of the case itself, rather the petitioner has been placed under suspension in view of the powers vested with the Committee of Management under the Rules and Regulations of Bihar Cricket Association under Rule 23 and 24 of the Rules...”

(emphasis supplied).

9. Mr. Singh, learned counsel pointed out that inadvertently in the aforestated para 14, at two places, due to typographical error 28.08.2018 has been typed in place of 18.08.2018. He submitted that the date 28.08.2018 should be read as 18.08.2018.

10. He pleaded that in any view of the matter, the remedy of writ to the petitioner would not be available as the rules and regulations of the BCA provide for redressal of the grievances before the Ombudsman. Thus, in stead of invoking writ jurisdiction of this Court, the petitioner ought to have raised his dispute before the Ombudsman.

11. In reply, Mr. Srivastava, learned counsel for the petitioner submitted that the issue regarding maintainability of writ petition against the BCA is no more res integra, as the Hon'ble Supreme Court, in the matter of *Board of Control for Cricket in*



India Vs. Cricket Association of Bihar and Ors. [(2015) 3 SCC 251],

has clearly held that since the BCCI discharges several public functions, it would be amenable to writ jurisdiction before the High Court under Article 226 of the Constitution of India. He submitted that availability of an alternative remedy for the redressal of grievance or the rule of exhaustion of statutory remedy before a writ is granted is a rule of self imposed limitation rather than a rule of law and in appropriate cases a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted can always be issued. He pleaded that since suspension of the petitioner for two seasons is in the nature of penalty and the same has been awarded without giving him an opportunity of being heard, the same amounts to violation of the principles of natural justice. He argued that in case of violation of the principles of natural justice, the doctrine that writ would lie only where there is no effective remedy would have no application. He further contended that the participation of the petitioner in the tournament organized by Hyderabad Cricket Team Association A1 Division League, by no stretch of imagination, can be said to be an act of indiscipline, as the said association is affiliated to the BCCI.

12. I have heard learned counsel for the parties and carefully perused the record.

13. The BCA like the BCCI is a registered association under



the Societies Registration Act, 1860. It has its own rules and regulations. The jurisdiction of the BCA extends over the geographical limits of the State of Bihar. The objects of the association as per rules and regulations are to control, promote, encourage and organize the game of cricket in the state of Bihar, lay down policies, roadmaps, guidelines and make rules and regulations in all matters relating to the game of Cricket in consonance with the BCCI, recognizing that the primary stakeholders are the players and cricket fans in the State of Bihar, and that accountability, transparency and purity of the game are the core values. Its objective is also to provide for measures necessary for promotion and development of game of cricket, welfare and interest of cricketers and elimination of unethical and unfair practices in the game of cricket and for that purpose arrange, organize and regulate representative matches in the State with teams representing the association and also approve matches of BCCI and to select such teams for any tournament, championship or fixture, local and otherwise. Its other objectives are to advance and safeguard the interest of the game of cricket, to hold and maintain the Laws of Cricket and the rules and Regulations of the Board of Control for Cricket in India, to select teams to represent State of Bihar in matches organized/ approved by the BCCI in India or abroad as the BCCI may decide from time to time, to publish



cricket journals, magazines and literature on cricket for the benefit of the members and the cricket loving public of the State, to promote, encourage, organize and develop the game of cricket in schools and colleges in the State, to appoint State's representatives on the BCCI, as also to conferences and seminars connected with the game of cricket, to appoint managers and/or other team officials for the State teams, to employ and appoint chief manager, professional managers, auditors, executive secretaries, administrative officers, assistant secretaries, managers, clerks, team support staff, players, and other service personnel and staff; and to remunerate them for their services, by way of salaries, wages, gratuities, pensions, honoraria, ex-gratia payments and/or provident fund and to remove/terminate or dismiss such employees or personnel, to maintain a panel of approved umpires and to do such acts, as may be deemed necessary for the purpose, etc.

14. There can be no dispute to the fact that the BCA, which is a society registered under the Societies Registration Act, 1860 is not a 'State' within the meaning of Article 12 of the Constitution of India, but the same would not mean that it is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

15. Article 12 of the Constitution of India has been provided



exclusively for the purpose of Part-III of the Constitution of India, which embodies the rights, which are fundamental and the definition of 'State' is confined to and for the purpose of Part-III of the Constitution. It reads as under :-

“12. Definition.- In this Part, unless the context otherwise requires, ‘the State’ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

16. Here, it is of relevance to note that Article 12 of the Constitution speaks of ‘other authorities’ ‘within the territory of India or under the control of Government of India’ while Article 226 of the Constitution so far as relevant for the present case reads as under:-

“Art. 226. (1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by



Part-III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) -----

(4) ----- ”

17. Apparently, while defining ‘State’, Article 12 speaks of ‘other authorities’, whereas Article 226 speaks of the jurisdiction of the High Courts with regard to its power of judicial review and its authority to issue writs, directions or orders to any Government, any authority or to any person.

18. I am of the view that the phrase ‘other authorities’ in Article 12 is markedly distinct from ‘any authority’ as covered by Article 226 of the Constitution.

19. Suffice it to say that in the case of *Zee Telefilms Ltd. & Anr. vs. Union of India & Ors [(2005) 4 SCC 649]*, the issue that arose before the Constitution Bench of the Supreme Court was that



whether the BCCI was 'State' within the meaning of Article 12 and, consequently, could a writ under Article 32 of the Constitution be maintainable against it. The Constitution Bench held as under :

“It would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.”

20. After analyzing the ratio in plethora of case laws, the Supreme Court observed :

“Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen.



Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.”

21. In *Board of Control for Cricket in India vs. Cricket Association of Bihar & Ors.* (Supra), the Supreme Court formed seven issues for adjudication. The questions included, “whether the respondent Board of Cricket Control of India is ‘State’ within the meaning of Article 12 and if it is not, whether it is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India ?”

22. After elaborately discussing the plethora of case laws that had been placed before the Supreme Court, the Supreme Court observed:

“The functions of the Board are clearly public functions, which, till such time the State intervenes to take over the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act.”

23. So far as the question of the BCCI coming within the meaning of Article 12 of the Constitution is concerned, the Supreme



Court observed:

“BCCI may not be ‘State’ under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.”

24. Since the BCA like the BCCI is registered under the Societies Registration Act, 1860 and it discharges several public functions, in view of the ratio laid down by the Supreme Court in *Zee Telefilms Ltd. & Anr vs Union of India & Ors* (Supra) and *Board of Control for Cricket in India vs. Cricket Association of Bihar & Ors.* (Supra), even though the BCA is not ‘State’ within the meaning of Article 12 of the Constitution of India, it would be amenable to the writ jurisdiction under Article 226 of the Constitution of India.

25. Having said so, firstly, I would like to refer to certain rules and regulations of the BCA.

26. Clause 21 of the rules and regulations provides for constitution of the COM. It also provides that the COM shall be primarily responsible for the governance of the affairs of the BCA.

27. Clause 22 of the rules and regulations interalia provides for powers and functions of the COM. It prescribes that COM shall have all the powers of the general body and shall have discretion to do all acts and things except such acts, which are expressly directed or



required by the rules to be done by the General Body.

28. Clause 23 of the rules and regulations ineralia provides that the BCA shall have jurisdiction to take disciplinary action against the players. Clause 23 (3) of the rules and regulations prescribes that no player, match official and team official within the jurisdiction of a member can participate in any match/tournaments/exhibition matches, which has not been authorized/ approved/permited/conducted by BCA or its full members.

29. Clause 24 of the rules and regulations ineralia provides that COM shall have the power to enquire into the conduct of any player within its jurisdiction and it may take such disciplinary action against the player as the COM may deem fit, which decision shall be final.

30. Clause 25 of the rules and regulations ineralia provides that in the event of the BCA enquiring into the conduct of a player, the BCA shall proceed in the manner prescribed in rule 48.

31. Clause 47 of the rules and regulations mandates that the BCA shall appoint an Ombudsman at the annual General Meeting for the purpose of providing an independent dispute resolution mechanism. The Ombudsman shall be a retired Judge of the High Court or a retired District Justice of a District Court so appointed by the BCA after obtaining his/her consent and on terms as determined



by the BCA in keeping with the dignity and stature of the office.

32. Clause 47 (2) of the rules and regulations interalia prescribes that the BCA shall, in consultation with the Chief Manager, frame regulations regarding the discipline and conduct of the players associated with the BCA.

33. Clause 48 of the rules and regulations prescribes the types of dispute/differences that form the Ombudsman's ambit and the procedures for redressal. It reads as under:-

“48. GRIEVANCE REDRESSAL

(1) The types of disputes/differences that form the Ombudsman's ambit and the procedures for redressal are:

a. **Member, Association & Franchisee Disputes**

Any disputes between or among the BCA, its Members, Tournament Franchisees, Zones and the Cricket Players' Association shall be automatically referred to the Ombudsman.

Procedure: Both parties would submit their arguments and a hearing would be conducted following the principles of natural justice and exercising all powers of enquiry and hearing as the Ombudsman deems fit before appropriate orders are passed.

b. **Detriment caused by Member or Administrator**



If any Member or any Administrator of the BCA commits any act of indiscipline or misconduct or acts in any manner which may or likely to be detrimental to the interest of the BCA or the game of cricket or endanger the harmony or affect the reputation or interest of the BCA or refuses or neglects to comply with any of the provisions of the Memorandum and/or the Rules & Regulations of the BCA and/or the Rules of conduct framed by the BCA, the Committee of Management, on receipt of any complaint shall issue a Show Cause Notice calling for explanation and on receipt of the same and/or in case of no cause or insufficient cause being shown, refer the same to the Ombudsman.

Procedure: The Ombudsman shall, after providing opportunity of hearing to the parties concerned, pass an appropriate order.

c. Misconduct or Breach by Others

In the event of any complaint being received from any quarter or based on any report published or circulated or on its own motion, of any act of indiscipline or misconduct or violation of any of the Rules and Regulations by any Player, Umpire, Team Official, Selector or any person associated with the BCA, the Committee of Management shall refer the same within 48 hours to the Chief



Manager to make a preliminary enquiry.

Procedure: The Chief Manager shall forthwith make a preliminary inquiry and call for explanations from the concerned person(s) and submit his report to the Committee of Management not later than 15 days from the date of reference being made by the Committee of Management. On receipt of the report, the Committee of Management shall forward the same to the Ombudsman, who shall call for all particulars and unless it decides that there is no prima facie case and accordingly drops the charge, hearing shall commence on the case and the same shall be completed as expeditiously as possible by providing a reasonable opportunity to the parties of being heard. If, despite due notice, any party fails to submit any cause or submits insufficient cause, the Ombudsman shall after providing reasonable opportunity of hearing to the parties concerned, pass appropriate order. In the event any party refuses and or fails to appear despite notice, the Ombudsman shall



be at liberty to proceed ex-parte on the basis of the available records and evidence.

d. By the Public against the BCA

Where a member of the public is aggrieved concerning ticketing and access and facilities at stadia, the same may be brought in the form of a complaint to the Ombudsman.

Procedure: The Ombudsman would adopt the same procedure as laid down in (c) above after referring the complaint to the Chief Manager to solicit are port on the complaint.

- (3) The Place of hearing shall be decided by the Ombudsman from time to time. The Ombudsman shall have the power to impose penalties as provided in the Regulations for Players, Team Officials, Administrators, Managers and Match Officials of the BCA.
- (4) The decision of the Ombudsman shall be final and binding and shall come into force forthwith on being pronounced and delivered.
- (5) Any Administrator, Player, Match Official, Team Official, Selector or other individual associated with the BCA on being found guilty and expelled by the BCA shall forfeit all their rights and privileges. He or she shall not in future be entitled to hold any position or office or be



admitted in any committee or any role on the BCA.

(6) A Member or Franchise once expelled, may, on application made after expiry of three years since expulsion, be readmitted by the BCA, provided the same is accepted at a General Body meeting by 3/4th members present and voting.

(7) **Pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Administrator, Player, Match Official, Team Official, or other individual associated with the BCA (along with their respective privileges and benefits) may be suspended by the Committee of Management until final adjudication. However, the said adjudication ought to be completed within three months, failing which the suspension shall cease.”**

(emphasis supplied)

34. Thus, clause 23 vests powers of the general body in the COM. Clause 23 confers jurisdiction in the COM to take disciplinary action against the players. Clause 24 confers jurisdiction to the COM to enquire into the conduct of a player and take disciplinary action against him. As per clause 25, in the event of the BCA inquiring into the conduct against the player, it is required to proceed in the manner



prescribed under clause 48 of the rules and regulations.

35. Clause 48(1) c of the rules and regulations mandates that in the event of any complaint received from any quarter or based on any report published or circulated or on its own motion, of any act of indiscipline or misconduct or violation of any of the rules and regulations by any player associated with the BCA, the COM shall refer the same within 48 hours to the Chief Manager to make a preliminary inquiry. Thereafter, the Chief Manager shall make a preliminary inquiry and call for explanations from the concerned person and submit his report to the COM within 15 days from the date of reference. On receipt of the report, the COM is required to forward the same to the Ombudsman. Thereafter, the Ombudsman is required to call for all particulars and unless it decides that there is no prima facie case and accordingly drops the charge, hearing is required to commence on the case and the same is required to be completed expeditiously by providing a reasonable opportunity to the parties of being heard. If, despite due notice, any party fails to submit any cause or submits insufficient cause, the Ombudsman, after providing reasonable opportunity of hearing to the parties concerned, may pass appropriate order. In the event any party refuses and/or fails to appear despite notice, the Ombudsman would be at liberty to proceed ex-parte on the basis of the available records and evidence.



36. A close look to clause 48(7) of the rules and regulations would demonstrate that pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any rules and regulations, the concerned player associated with the BCA may be suspended by the COM until final adjudication. However, the said adjudication has to be completed within three months, failing which the suspension shall automatically cease.

37. Keeping in mind the aforestated provisions of the rules and regulations, when I look to the admitted facts of the present case, it would appear that on 13.08.2018 when the petitioner requested the BCA to issue NOC in order to enable him to participate in the cricket tournaments in the coming domestic season 2018-2019, an email was sent by the Secretary of the BCA on 18.08.2018 stating therein that certain complaints had been received against him from the PDCA regarding his alleged participation in an unregistered/unaffiliated cricket tournament held in Patna in March, 2018 and it was also communicated to him that information had been received that he had been playing for a team in a tournament organized by the Hyderabad Cricket Association without having proper NOC from the BCA and while stating these facts he was informed that as the said matter warranted inquiry till the time decision is taken by the COM of the BCA, NOC will not be issued in his favour. Immediately, thereafter



on 24.08.2018, the President of the BCA sent an email to the petitioner by which he was informed that on the basis of unanimous decision taken by the COM during its meeting held on 23.08.2018 he has been placed under suspension for the upcoming two seasons, i.e. 2018-2019 and 2019-2020. For the first time, in the said email certain allegations were leveled against him.

38. The facts noted above clearly demonstrate that for the charges leveled against the petitioner, no preliminary inquiry was undertaken and no explanation was called for from him under clause 48(1) c of the rules and regulations of the BCA. Similarly, neither the COM forwarded any report to the Ombudsman nor the Ombudsman called for any particulars nor any hearing was made by him nor any opportunity of hearing was given to the petitioner in terms of clause 48(1) c of the rules and regulations.

39. True it is that as per clause 48(7) of the rules and regulation pending inquiry and proceeding into the complaints of charges of misconduct or any act of indiscipline or violation of any rules and regulations, the COM has been vested with the power to suspend a player until final adjudication. However, the said adjudication is required to be completed within three months failing which the suspension would automatically cease.

40. At this stage, it is also of salience to note that though the



rules and regulations of the BCA provide for an independent dispute resolution mechanism through an Ombudsman to be appointed by the BCA. However, from a reading of clause 48(1) c, I find that in the event of any disputes/difference between the player and the BCA, only the COM has been vested with the power to refer the dispute to the Ombudsman. The procedures prescribed under clause 48(1) c do not authorize a player to approach the Ombudsman for the redressal of his grievance in case of dispute.

41. Be that as it may, the rules and regulations of the BCA proclaim adherence to the principles of natural justice at all stages in case of inquiry into allegation of any charge of misconduct or indiscipline or violation of any rules and regulations by any player associated with the BCA, but in the present case no notice was issued to the petitioner prior to taking decision to suspend him for two seasons. The essential elements of natural justice is i.e. both sides should be heard, the parties to a proceeding must have due notice to when the proceeding would start into the charges and the authority must act honestly and impartially and not under dictation of other persons to whom authority is not given in law have been given a complete go by.

42. There is no gainsaying that even in absence of any specific provision of affording an opportunity of hearing, a hearing is



required to be given to the person, who is going to be adversely affected by the authority discharging any public function.

43. In the present case, firstly, the petitioner against whom the impugned order to his prejudice has been passed was never informed of the charges and no opportunity of hearing was given to him to meet those charges, secondly, though the COM was under obligation to forward the preliminary inquiry report to the Ombudsman for final adjudication, it never forwarded any report and, thirdly, in any case, the COM had no authority to suspend a player for two seasons. It is reiterated that the authority to suspend a player pending inquiry and final adjudication by the Ombudsman vested in the COM was for a limited period of three months only, but it has acted without jurisdiction in suspending the petitioner for two seasons, which would effectively mean for two years.

44. As far as the contention of Mr. Jagannath Singh, learned counsel for the respondents regarding maintainability of the writ petition without exhausting alternative remedy is concerned, Mr. Abhinav Srivastava, learned counsel for the petitioner has rightly submitted that rule of exhaustion of statutory remedy before a writ is granted is a rule of self-imposed limitation, rule of policy and rules of discretion rather than a rule of law and in exceptional cases notwithstanding the fact that the statutory remedies have not been



exhausted the Court may issue a writ of certiorari.

45. It is also a well settled position in law that where proceedings are undertaken in violation of the principles of natural justice the doctrine of exhaustion of alternative remedy before issuance of a writ would have no application.

46. As I have already held, hereinabove, that there is complete violation of the principle of natural justice in suspending the petitioner and the COM has passed the order in utter disregard to its own rules and regulations arbitrarily, the order impugned suspending the petitioner for two seasons cannot be sustained.

47. Accordingly, the decision of the COM of the BCA, as contained in an email dated 24.08.2018 written by the President of the BCA by which the petitioner has been informed that the COM of BCA in its meeting held on 23.08.2018 has unanimously decided to suspend him for upcoming seasons as a player is quashed. Consequently, the decision of the COM of the BCA dated 23.08.2018 suspending the petitioner for two seasons is also quashed. Any other communication made to the petitioner by any other authority of the BCA in this regard is also set aside. However, this order would not preclude the BCA from proceeding against the petitioner in future in accordance with the rules and regulations of the BCA after affording him an opportunity of hearing.



48. With the aforesaid observations and direction, the writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.10.2018
Transmission Date	

