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

+ W.P.(C) 5074/2018 and CM APPL. 19616/2018

SP SINGH DHILLON Petitioner

Through: Mr Ashish Kothari and Mr Nitin
Mittal, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr Bhagwan Swarup Shukla, CGSC
with Mr Mukesh Pandey, Advocate
for UOI.

Mr Anip Sachthey, Senior Advocate
with Ms Anjali Chauhan and Ms Ria
Sachthey, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.04.2019**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “a) Issue a writ in the nature of certiorari or any other appropriate writ, order or direction to set aside the arbitrary, illegal and unethical appointment of friends and family members of the Respondent No. 3/Treasurer, DCBA to fill 6 key posts of the Executive Committee of the Delhi Capital Badminton Association (Annexure-A), without holding any elections, with ulterior motives and in complete disregard of the order dated 12.08.2015 passed by this Hon’ble Court in W.P.(C) No. 3326 of 2013 titled as Delhi Badminton Association Vs. Badminton Association of India & Anr.;
- b) Issue a writ in the nature of certiorari or any other appropriate writ, order or direction to set aside the arbitrary, illegal and *mala fide* resolution passed by the

Executive Committee (comprising of illegally appointed members) during an “Emergency Meeting” held on 06.02.2018 (Annexure-B) to, *inter-alia*, initiate an enquiry against the Petitioner for his alleged undisclosed corrupt practices and unlawful activities and to restrain the Petitioner from performing his duties as the Hony. Secretary, DCBA with immediate effect;

- c) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent Nos. 2 and/or 3 to comply with the MOU dated 23.07.2015 (Annexure-F) and the order dated 12.08.2015 (Annexure-I) passed by this Hon’ble Court in W.P. (C) No. 3326 of 2013 and to ensure fair and adequate representation of erstwhile DBA by filling the aforesaid 6 positions in the Executive Committee by members of erstwhile DBA.
- d) Issue for a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent Nos.1 and/or 4 to consider the representations dated 19.02.2018 (Annexure-W) and 21.01.2018 (Annexure-U) respectively made by the Petitioner and pass a reasoned order/report in respect of the same after giving an opportunity of being heard to the Petitioner;”

2. The petitioner is the Hony. Secretary of the Delhi Capital Badminton Association (DCBA) was an office bearer of the erstwhile Delhi Badminton Association (DBA). DBA had filed the writ petition being W.P.(C) 3326/2013 captioned “*Delhi Badminton Association v. Badminton Association of India & Ors.*” before this court, impugning the actions of Badminton Association of India (BAI), in recognising only DCBA as its affiliate association. The said writ petition was dismissed as withdrawn by an order dated 12.08.2015, in view of the Memorandum of Understanding

/Compromise/Settlement arrived at between the concerned parties.

3. In terms of the said Memorandum of Understanding/Compromise/Settlement, DBA had agreed to dissolve itself as a registered society and it was agreed that the members of DBA would merge with DCBA. It is relevant to note that the parties also agreed that DCBA shall hold elections for electing its Executive Committee to manage its affairs and in order to give adequate representation to the members of DBA, and also in the district units of DCBA. One of the grievances raised by the petitioner relates to the representation of the erstwhile executive members of DBA in DCBA.

4. Mr Sachthey, learned senior counsel appearing for DCBA submits that the election is now scheduled to be held in July-August, 2019 as per the constitution of DCBA, and all members would have an equal opportunity for seeking election as office bearers.

5. In view of the above, this Court does not consider it apposite to pass any orders in this regard at this stage.

6. The petitioner had also made several allegations of corruption and malpractices on the part of the office bearers of DCBA. The learned counsel appearing for BAI states that an enquiry officer has been appointed, and an enquiry is being undertaken in regard to the allegations made by the petitioner. He further submits that if any allegation is found to be correct, necessary action would be taken by BAI.

7. In view of the aforesaid statement, the grievance of the petitioner in this regard stands addressed.

8. The petitioner had also made a grievance regarding appointment of the family members and friends of respondent no.3 as members of the Executive Committee of DCBA. In this regard, Mr Sachthey, submits that all members appointed to the six key posts as pointed out by the petitioner, have resigned and are no longer members to the Executive Committee.

9. In view of the above, the petitioner's grievance in this regard is also addressed.

10. The only issue that remains to be examined is with regard to the resolution dated 06.02.2018, stated to have been passed at an emergency meeting of DCBA. A perusal of the relevant minutes indicates that the President, DCBA was authorised to take appropriate actions against the petitioners in respect of the alleged corrupt practices. The minutes further record that in compliance with the aforesaid resolution, the President, DCBA would constitute an independent disciplinary inquiry, in accordance with the provisions of the Constitution/Memorandum of DCBA.

11. In view of the above, the President, DCBA has, in exercise of Clause 23 of the Constitution/memorandum, decided that the petitioner shall refrain from performing his duties as the enquiry officer of DCBA, till the pendency of the disciplinary inquiry.

12. The relevant extract of the communication setting out the decision of the General Body of DCBA is set out below:-

“In view of the above, it was resolved in Meeting of the General Body of DCBA by more than 2/3 majority that;

“The President, DCBA has been authorized to take appropriate action against Shri S.P. Singh, Hony. Secretary of DCBA with respect to his ‘Corrupt Practices, Unlawful activities and Misconduct on his part to malign the image of DCBA, in his personal interest, in the larger interest of the Game of Badminton.

In compliance of the above ‘Resolution’, President, DCBA is constituting an independent “Disciplinary Enquiry” against Shri S.P. Singh Hony. Secretary, DCBA, as per the provisions of the Constitution / Memorandum of DCBA, with the objective to once again provide fair opportunity to him as a ‘Natural Justice’. The ‘charge Sheet’ based on the Corruption Charges & Misconduct shall be issued to Shri S.P.Singh by an independent and neutral ‘Enquiry Officer’.

Apart from it, President DCBA, under the powers of President – Clause 23 of the Constitution / Memorandum of DCBA, has further decided that Shri S.P. singh shall refrain from performing the duties as Hony. Secretary of DCBA till the pendency of said ‘Disciplinary Enquiry’ in the most fair manner and as such all day-to-day activities of DCBA shall be looked after by Prof. A.K. Mittra, Hony. Secretary of DCBA from now on wards with immediate effect.”

13. This Court is informed that the disciplinary inquiry against the petitioner has not commenced as yet. However, the petitioner has been restrained from performing his duties.

14. Article 9 of the Constitution of Memorandum of DCBA contains provisions regarding expulsion or suspension and the said Article is set out below:-

“9. Expulsion or Suspension:

In an Organization, if its member or a player, a registered Umpire, a Life Member or Hony. Member or Committee

Member refuses to comply with the provisions of the Rules and Regulations or is faulty of misconduct or misappropriation of any money or property of the Association such as the Committee deems or considers likely to endanger the harmony or affects character or stability of the Association, such an organization or person shall be liable to expulsion or suspension for such period as the Committee or the Association in case of Committee Member, decides or may take any legal steps for the recovery of the loss by a resolution, provided that not less 2/3 of the Committee Members, or 2/3 of the Association Members, in case of Committee Members shall have voted in favour of the same. A fourteen days clear notice of such resolution along with the charge sheet shall be given to the party, who shall be at liberty to give an explanation or to present a defense in writing. Refusal to accept service or notice shall be regarded as service of the notice. On passing of such resolution, the Hony. Member, Committee Members or the organization or its representative or player shall forthwith cease to be affiliated to the Association and shall not have any claim against the Committee or the Association whatsoever.”

15. It is seen from the above that a committee member would cease to be affiliated with the association after a resolution to the said effect has been passed. It is also apparent that such a resolution is required to be passed after giving a fourteen days prior notice to the concerned person. Admittedly, in the present case, no such resolution has been passed as yet and no such prior notice has been issued to the petitioner.

16. The petitioner has been called upon to refrain from discharging his duties from an Hony. Secretary of DCBA, pursuant to the powers of the President under Article 23 of the Memorandum of Association. The said Article is set out below:-

“23. President:

Shall have the power to:

- a. preside over all the meetings of the Association and the Executive Committee at which he happens to be present.
- b. have a casting vote.
- c. call an Emergency Meeting whenever he considers fit and fix the Agenda provided that five days notice is given.
- d. Postpone any item of the Agenda at any time before it is taken up discussion, provided that when an item is once postponed, it shall not be postponed for the second time on that ground.
- e. to nominate Sr. Vice President/one of the Vice-Presidents to act for him.
- f. To advise and guide Hony. Secretary in carrying out the work of the Association.
- g. Can take any decision in emergency to be rectified [sic ratified] by the Executive Committee/General Body to which the matter is concerned.
- h. Can suspend any player Pending enquiry.”

17. Mr Sachthey contended that the President had the power to call upon the petitioner to refrain from discharging his duties by virtue of Clause (g) of Article 23 of the Memorandum. He submitted that the resolution had been passed in an emergency meeting for the president to exercise such emergency powers, and, therefore, he was well within his rights to do so.

18. The aforesaid contention is unpersuasive. Clause (g) only grants the

power to the President to take a decision in an emergency and such decision is to be ratified by the Executive Committee, subsequently. Plainly, such a decision is one that can be taken by the Executive Committee. As observed earlier, in view of Article 9 of the Memorandum of Association, no such decision can be taken without issuing a prior notice. Clearly, the President of DCBA has no power to pass any direction restraining any of the office bearers from discharging their functions. In this view, the direction for the petitioner to refrain from performing his duties as the Hony. Secretary, as issued by the President, DCBA, is set aside.

19. It is further clarified that this would not preclude the concerned committee/general body of the DCBA from passing any resolution removing the petitioner, in terms of Article 9 of the Memorandum of Association, if the petitioner is found guilty of the charges levelled against him.

20. The petition is disposed of with the aforesaid terms. The pending application also stands disposed of.

VIBHU BAKHRU, J

APRIL 05, 2019
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