

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2809 of 2022

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Kumar Arvind, Son of Mr. Harshu Singh, resident of Jai Prakash Nagar,
Katira, P.S. Ara, District Bhojpur.

... .. Petitioner

Versus

1. The Bihar Cricket Association through its President, Shail Raj Complex, Budha Marg, Patna-800001.
2. The Committee of Management, Bihar Cricket Association, Bihar Cricket Association, Shail Raj Complex, Budha Marg, Patna-800001 through its President namely Mr. Rakesh Kumar Tiwary.
3. Mr. Rakesh Kumar Tiwary, son of Shri Suresh Tiwary, president of Bihar Cricket Association as well as the Committee of Management of Bihar Cricket Association, resident of 46 Patliputra Colony, P.O.-P.S. Patliputra, Patna.
4. The Chief Executive Officer (CEO), Bihar Cricket Association, Bihar Cricket Association, Shail Raj Complex, Budha Marg, Patna-800001.
5. The Ombudsman, Bihar Cricket Association, Shail Raj Complex, Budha Marg, Patna-800001.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate
For the Respondents	:	Mr. Raju Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 29-04-2022

A five-Judge Constitution Bench of the Supreme Court

in case of ***Zee Telefilms Ltd. v. Union of India***, reported in **(2005)**

4 SCC 649, has conclusively held that the Board of Control for

Cricket in India ('BCCI' for short) is not a 'State' within the

meaning of Article 12 of the Constitution of India. The Supreme



Court has, however, held in paragraph 31 in the said case as under:-

“31. 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 the 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.”

2. The said decision has been followed subsequently in case of ***Board of Control for Cricket in India v. Cricket Association of Bihar (1)***, reported in (2015) 3 SCC 251 [***BCCI vs. CAB (1)*** for short], dated 22.01.2015. It is noteworthy that in case of ***Board of Control for Cricket v. Cricket Assn. of Bihar (2)***,



reported in **(2016) 8 SCC 535** [*BCCI vs. CAB (2)* for short], dated 18.07.2016, the Supreme Court broadly accepted the reforms in the administration of cricket as proposed by a Committee chaired by Justice R.M.Lodha. The decision in case of *BCCI vs. CAB (1)* was rendered in the wake of allegation of sporting fraud, conflict of interest leveled against the functionaries of BCCI and in such situation the jurisdiction of a writ court to intervene and issue directions. The Supreme Court has conclusively held in *BCCI vs. CAB (1)* that even when BCCI was not 'State' within the meaning of Article 12 of the Constitution, it was amenable to the writ jurisdiction of the Court under Article 226 of the Constitution of India as it was discharging an important public functions. While accepting the report and the recommendations made by the report of Justice R.M.Lodha, the Supreme Court in case of *BCCI vs. CAB (2)* had recorded importance of due implementation of the said recommendations by the Committee presided over by Justice R.M.Lodha and observed that in the event any impediment arose, the Committee would be free to seek appropriate directions from this Court by filing status report in that regard. Accordingly, in the light of the aforesaid direction, subsequent orders have been passed by the Supreme Court based on the status report submitted by the Committee, one of which is the order dated 09.08.2018



reported in **BCCI v. Cricket Assn. of Bihar**, reported in (2018) 9 SCC 624 [**BCCI vs. CAB (3)** for short].

3. The above narration has been made since the petitioner in the present writ application claims to be a Joint Secretary-cum-Acting Secretary of Bihar Cricket Association registered under the Societies Act, 1860, with its Memorandum of Association and Rules and Regulations (Rules and Regulations for short) said to have been framed in accordance with the said judgment and order dated 09.08.2018 in case of **BCCI vs. CAB (3)** and directions dated 21.08.2018 and 04.11.2018 of the Committee of Administrators appointed by the Supreme Court. It was decided by the Supreme Court that a Committee of Administrators (CoA) would supervise the administration of BCCI through its Chief Executive Officer in its order in case of **BCCI v. Cricket Assn. of Bihar**, reported in (2017) 2 SCC 333 (see Para 27.5). The CoA was subsequently constituted by the Supreme Court, which was entrusted to prepare a draft constitution of BCCI in accordance with the judgment rendered on 18.07.2016 [**BCCI vs. CAB (2)**]. From paragraph 4 of the order in case of **BCCI vs. CAB (3)** dated 09.08.2018, it appears that the CoA had filed a draft constitution for BCCI and its office bearers and made suggestions to the drafts received from State Cricket Associations and other parties filed by



the CoA with comments on proposed suggestions in the status report dated 12.01.2018. For the benefit of clarity in this regard, paragraph 4 of the order dated 09.08.2018 [*BCCI vs. CAB (3)*] is being reproduced hereinbelow: -

“4. On 27-10-2017, the CoA filed a draft Constitution for BCCI and its office-bearers. Suggestions to the draft received from State Cricket Associations and other parties were filed by the CoA together with comments on the proposed suggestions, in a status report dated 12-1-2018. On 1-5-2018 [Cricket Assn. of Bihar v. Amitabh Choudhary, (2018) 16 SCC 35 : (2018) 16 SCC 44 (2)] , this Court noted that suggestions to the draft Constitution have been filed and would be finalised by the Court. In the interest of fairness, it was however observed that any further suggestions that a State Cricket Association may have, could still be forwarded to the Amicus Curiae. Accordingly, the following directions were issued:

“1. A draft Constitution meant for BCCI and its office-bearers has been filed on 27-10-2017. Suggestions to the same by various State Cricket Associations have also been filed and the same have been attached to the draft Constitution. The draft Constitution shall be finalised by this Court.



2. In the meantime, if any State Cricket Association intends to file any further suggestion, they may submit the same in bullet points to Mr Gopal Subramaniam, learned Amicus Curiae, who shall compile the suggestions and file it before this Court within three days.

3. It is hereby made clear that the draft Constitution approved by this Court shall not be debated upon and shall stand finalised, only subject to the determination made in the application(s) for recall of the primary judgment, pending adjudication before this Court.

4. Let the matter be listed on 11-5-2018.”

4. In the present case, a copy of the memorandum of association and the rules and regulations of the BCA has been brought on record by way of Annexure-1 to the writ application.

5. It is the case of the petitioner that an election of the office bearers of the BCA was held on 29.09.2019 in the presence of the Committee of Administrators appointed by the Supreme Court. Clause 17 of the said memorandum of association postulates constitution of a Committee of Management (CoM) of the BCA, which is primarily responsible for the governance of the affairs of the Board, in which the petitioner was elected as a Joint Secretary. In the first annual general meeting of the BCA, the



elected honorary secretary of the BCA Mr. Sanjay Kumar was restrained from discharging his duties, whereafter the petitioner was given additional charge of the honorary secretary of the association. Subsequently, in an emergent meeting of the CoM of BCA held on 16.08.2021 decided to restrain the petitioner from his functioning as the Joint Secretary-cum-Acting Secretary of BCA, on the allegation made by the Chief Executive Officer against the petitioner of having physically assaulted him; his conduct being in violation of Clause 5(a)(iv), (v) and (vi) of the Rules and Regulations. It was further unanimously resolved to hand over the charge of the post of the Joint Secretary-cum-Acting Secretary to the President of the BCA till the matter was adjudicated upon by an Ombudsman-cum-Ethics Officer of the BCA. Other decisions, consequential to the decision of restraining the petitioner from discharging the duties as Joint Secretary were also taken. It was also resolved to refer the matter to the In-charge Ombudsman-cum-Ethics Officer of the BCA under clause 41(1)(a) and (b) of the regulations.

6. The said decision taken in the emergent meeting of the CoM of BCA dated 16.08.2021 had been assailed in the main writ application. The petitioner had also sought for a declaration that initiation and continuation of the proceeding before the



Ombudsman registered as Case No. 10 of 2021 was wholly without jurisdiction and accordingly the orders passed by the Ombudsman dated 25.08.2021 and 09.10.2021 were illegal. According to the petitioner, the proceeding initiated against him before the Ombudsman stood lapsed, the adjudication having not been completed within the mandatory period of three months in terms of clause 45(7) of the memorandum of association.

7. It is pertinent to note that the Ombudsman-cum-Ethics Officer has passed an order dated 05.03.2022, operative portion of which reads as under: -

“... The claim made by the Respondent to effect that no show cause notice was issued to him for manhandling of the CEO has not been controverted. Hence, the matter is remitted back to the COM for reconsideration for all the matters alleged in the present petition as regards to the alleged misconduct of the Respondent after giving show cause notice to the Respondent for enabling him to make his explanation as regards to alleged misconduct and then decide the matter after following the prescribed procedure for convening the meeting of the COM and this should be done within two months next since today but till then the Respondent Kumar Arvind would be remain restrained from functioning as Acting Secretary-cum-Joint Secretary of BCA as he has not



controverted the mishandling of the CEO by him in his reply filed in this case.”

8. The petitioner herein has been mentioned as the respondent in the aforesaid order of the Ombudsman. An interlocutory application has been filed seeking amendment in the writ petition to assail the order dated 05.03.2022, whereby the matter has been remanded back to the CoM for reconsideration. The Ombudsman has further held that till then the petitioner would remain restrained from functioning of Acting Secretary/Joint Secretary of the BCA as he had not controverted the allegation of manhandling the CEO, in his reply filed before him.

9. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the BCA. The BCA in its pleadings has asserted that on 16.08.202, when the members of the Committee of Management of the BCA had gone to the Office of the A.I.G. (Registration), Patna, in connection with certain work of the BCA, the petitioner had assaulted the Chief Executive Officer, BCA, and accordingly in the emergent meeting, impugned decision was taken. Upon notice issued by the Ombudsman on reference having been made by the CoM, the petitioner though appeared and filed his reply, he did not controvert the allegation against him of manhandling the CEO.



10. It is the petitioner's case in his rejoinder to the counter affidavit that the proceeding before the Ombudsman was itself beyond jurisdiction in the absence of a valid reference and, therefore, the petitioner had raised the objection of jurisdiction of the Ombudsman in its petition dated 03.02.2022. It is further case of the petitioner in the rejoinder that while accepting non-compliance of the mandatory provisions of the regulations, the Ombudsman did not adjudicate on the issue of jurisdiction and referred the matter back to CoM but while referring the matter back, the Ombudsman, acting without jurisdiction suspended the petitioner's functioning by restraining him from discharging his duties only on the ground that the petitioner did not controvert the allegation of manhandling the CEO.

11. Mr. Ashish Giri, learned counsel appearing on behalf of the petitioner has submitted that reference made by the CoM to the Ombudsman under regulation 45(1)(b) in relation to allegation of misconduct against the petitioner being itself invalid, Ombudsman lacked the very jurisdiction to adjudicate upon the same. He has submitted that since the petitioner had questioned the legality of very reference, which came to be finally sustained by the Ombudsman on the ground of absence of any proof of service of notice before the reference, the Ombudsman ought not to have



restrained the petitioner from functioning as the Joint Secretary-cum-Acting Secretary while remanding the matter back to the CoM. He has submitted that compliance of the principles of natural justice is a mandatory requirement for taking any adverse decision. He has relied on Supreme Court's decision in case of ***State of U.P. v. Maharaja Dharmander Prasad Singh***, reported in **(1989) 2 SCC 505**(para 55) to contend that if a discretion is vested in a particular authority, it is to be exercised by that authority alone and the discretion cannot be passed on the dictates of others who are not authorized under the statute, which makes the exercise bad in law. Referring to the provisions under clause 45(1)(b) read with 45(3), (5) and (7) of the rules and regulations of the BCA, he has submitted that the Ombudsman has the jurisdiction to adjudicate only in accordance with the said provision and not otherwise. He has placed reliance on the Supreme Court's decision in case of ***Gujarat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) (P) Ltd.***, reported in **(2017) 16 SCC 498** and in case of ***Standard Chartered Bank v. Dharminder Bhohi***, reported in **(2013) 15 SCC 341** to contend that the Ombudsman did not have any inherent power to put the petitioner under suspension, there being no express provision in this regard under the rules and regulations of the BCA. Such power is vested with the Committee



of Management of the BCA and not the Ombudsman. Relying on Supreme Court's decision in case of ***State of Punjab v. Jaswant Singh Kanwar***, reported in (2014) 13 SCC 622, he has submitted that the order restraining the petitioner's functioning passed by the Ombudsman amounts to suspension, which is beyond the jurisdiction of the Ombudsman. He has further submitted that the conduct of the President of the BCA suffers from the vice of malafide, who apparently acted in utter haste in convening an emergent meeting on the same day of the alleged occurrence on the ground of an incorrect charge of manhandling the Chief Executive Officer merely for removing the petitioner from the post which he was holding usurping all his powers.

12. He has submitted that this writ application under Article 226 of the Constitution of India is maintainable against the impugned action of the Ombudsman. He has placed reliance on the Supreme Court's decision in case of ***BCCI vs. CAB (2)***(supra) and this Court's decision dated 10.01.2018 rendered in case of ***Lakhan Raja vs. The Bihar Cricket Association and Ors.*** (C.W.J.C. No. 18043 of 2018).

13. He has also relied on a Division Bench decision of this Court rendered on 31.03.2022 in C.W.J.C. No. 12464 of 2021 (***Sudhir Kumar and Another vs. The State of Bihar and Others***)



to contend that since the Ombudsman did not have any jurisdiction to pass the order restraining the petitioner's functioning as the Joint Secretary/Acting Secretary of the BCA, the said impugned order deserves interference by this Court.

14. Mr. Raju Giri, learned counsel representing the BCA, on the other hand, has defended the impugned action of BCA.

15. Before beginning to consider the issue involved in the writ petition including the issue as to whether this Court should exercise its discretion to entertain the petitioner's relief under Article 226 of the Constitution of India, in all fairness to learned counsel for the petitioner, we need to refer to clause 45(1)(b) of the memorandum of association, rules and the regulations of BCA, which reads as under: -

*“45 (1) (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.”

16. As is evident, the Ombudsman by the impugned order dated 05.03.2022 has remitted the matter back to the CoM for reconsideration and decide the matter within two months after giving the petitioner a show cause notice, so as to enable him to make his explanation as regards his alleged misconduct of assaulting the CEO.

17. The allegation against the petitioner is of misconduct in the nature of manhandling the Chief Executive Officer of the BCA. The allegations and the counter allegations, which have been made in the pleadings on record, clearly demonstrate that the petitioner is attempting to rake up dispute touching internal functioning of the BCA before this Court in a proceeding under Article 226 of the Constitution of India. There cannot be any gainsaying that the aforesaid memorandum of association, rules and regulations of the BCA have no statutory character.



18. Following the reasoning given in the law laid down by the Supreme Court in case of *Zee Telefilms Ltd.* (supra) and *BCCI vs. CAB (1)*(supra), it can be easily inferred that the BCA also is not a 'State' within the meaning of Article 12 of the Constitution of India though it may be amenable to writ jurisdiction. In case of *Zee Telefilms Ltd.* (supra), the Supreme Court has laid down in paragraph 31 that though the remedy under Article 32 is not available against the BCCI, an aggrieved party can always seek a remedy under the ordinary course of law or a writ petition under Article 226 of the Constitution.

19. The question, which arises in the present proceeding is as to whether the nature of controversy, which primarily relates to misconduct of an office bearer of BCA should be entertained in a proceeding under Article 226 of the Constitution of India or under the ordinary course of law, though the BCA can be said to be discharging functions akin to public duties.

20. It is evident from the law laid down by the Supreme Court in case of *Zee Telefilms Ltd.* (supra) that since the activities of the BCCI can be said to be akin to public duties and 'State' functions and there is any violation of constitutional or statutory obligation or right of other citizens, the aggrieved party may seek



remedy either under ordinary course of law or by way of writ petition under Article 226 of the Constitution of India.

21. In the course of arguments, before the Apex Court in case of *Zee Telefilms Ltd.* (supra), the Apex Court has addressed the concern raised therein that by holding that the BCCI is amenable to the writ proceeding under Article 226 of the Constitution of India, a floodgate of litigation would be opened. It has thus been laid down in the same judgment in paragraph 269 as follows: -

“269. The “in terrorem” submission of Mr Venugopal that a floodgate of litigation would open up if the Board is held to be State within the meaning of Article 12 of the Constitution also cannot be accepted. Floodgate arguments about the claimed devastating effect of being declared a State must be taken with a grain of salt. The courts, firstly, while determining a constitutional question considers such a question to be more or less irrelevant. (See Guruvayoor Devaswom Managing Committee v. C.K. Rajan [(2003) 7 SCC 546] , SCC para 69.) Secondly, as would be noticed hereinafter that this Court has evolved principles of judicial restraint as regards interfering with the activities of a body in policy matters. It would further appear from the discussions made hereinbefore that all actions of the Board would not be subject to judicial review.



A writ would not lie where the lis involves only private law character.”

22. In our opinion, in the present facts and circumstances of the case, considering the nature of controversy, which is primarily an outcome of internal dispute among the office bearers of the BCA, lying within the realm of private law, we decline to entertain this writ petition under Article 226 of the Constitution.

23. In case of *Board of Control for Cricket in India v. Netaji Cricket Club*, reported in (2005) 4 SCC 741, the Supreme Court held in paragraphs 81 and 82 as under: -

“81. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of “fairness” and “good faith” in all its activities. Having regard to the fact that it has to fulfill the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards.

82. An association or a club which has framed its rules is bound thereby. The strict implementation of such rules is imperative. Necessarily, the office-bearers in terms of the



Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner, keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body in charge of controlling the sport of cricket should involve itself in litigations completely losing sight of the objectives of the society. It is furthermore unfortunate that room for suspicion has been created that all its dealings are not fair. The Board has been accused of shady dealings and double standards.”

24. It is significant, however, to note that the Supreme Court’s decision in case of ***Board of Control for Cricket in India v. Netaji Cricket Club***(supra) had arisen out of a civil suit. In our opinion, the Ombudsman under the memorandum of association, rules and regulations cannot be said to be a *quasi* judicial forum created by any statutory authority. Such controversies, as are being raised in the present writ application, in our opinion, should normally not be entertained in a proceeding under Article 226 of the Constitution of India.

25. In such view of the matter, we decline to exercise our prerogative writ jurisdiction under Article 226 of the Constitution in the present facts and circumstances of this case.



26. The petitioner shall, however, be at liberty to seek remedy under ordinary course of law before a civil court of competent jurisdiction or any other appropriate forum as may be permissible to him. We have not entered into the merits of the petitioner’s claim as we have declined to entertain this writ application in the present facts and circumstances. It is accordingly made clear that any observation made in the present order shall not be treated to be any observation on the merits of the contentions raised by either of the parties.

27. This writ application is accordingly dismissed with the aforesaid observations.

28. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

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