

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 19570 of 2022

Swarnendu Banerjee

Vs.

Union of India & ors.

For the petitioner : Mr. Rahul Karmakar, Adv.
Mr. Sounak Mukherjee, Adv.

For the respondent nos. 1 & 2 : Mr. Sandip Kumar Bhattacharyya, Adv.

For the respondent no. 3 : Mr. Soumya Majumder, Adv.
Ms. Sanjukta Dutta, Adv.

Last Heard on : 29.11.2022

Delivered on : 06.12.2022

Moushumi Bhattacharya, J.

1. The petitioner is a playing member of the West Bengal Bridge Association and has participated in several Bridge Tournaments organised by the respondent no. 3/Bridge Federation of India (BFI). The West Bengal Bridge Association is affiliated to the Bridge Federation of India. The

petitioner seeks quashing of two notices issued by the BFI dated 20th July, 2022 and 1st August, 2022. By these letters, the petitioner was suspended from all Bridge Tournaments pending enquiry and was debarred from participating in any tournament conducted by the BFI as well as international events of the World Bridge Federation for a period of 18 months effective from 15th July, 2022.

2. The BFI, represented by learned counsel, urges that the writ petition is not maintainable since the Bridge Federation of India against who reliefs have been sought, is not an entity amenable to Article 226 of The Constitution of India.

3. The point of maintainability is being answered first.

4. It is undisputed that BFI is the sole custodian of the right to select players for national and international Bridge Tournaments and approves their participation in such events. BFI hence is the only decision-making body in matters of permitting selected players for participating in national and international Bridge Tournaments. The Supreme Court dealt with a similar question on whether the Board of Control for Cricket in India (BCCI) was amenable to judicial review: *Board of Control for Cricket in India vs. Cricket Association of Bihar*; (2015) 3 SCC 251. The Supreme Court held that BCCI falls within Article 226 of the Constitution even though it is not a 'state' within the meaning of Article 12 of the Constitution. The rationale of the Supreme Court was based on the nature of the duties and function

performed by BCCI; one of the grounds being that BCCI has complete control over the game of cricket in this country to the exclusion of all others.

5. Paragraph 33 of the Report applies with full vigour to the facts and logic in the present case. Like the BCCI, the respondent no. 3/Bridge Federation of India, formulates the regulations, norms and standards covering all aspects of Bridge Tournaments played in the country as well as outside India. The power of choosing the members of the national team and of disqualifying players is also a common function shared by both BFI and BCCI. This would be borne out from the impugned decisions of suspension and debarment made against the petitioner in the present case as well as the Rules and Regulations forming part of the Memorandum and Articles of Association of BFI. The Rules and Regulations indicate that BFI has complete sway over the game of Bridge in the country and exercises sole authority which may irrevocably impact the sporting career of a Bridge player. The facts concerning the merits of the case in the following paragraphs would substantiate this point.

6. Besides, the balance-sheet of BFI as of 31st March, 2019 reflects the grants and sponsorships received from the Sports Authority of India which further goes to show the financial connection between BFI and public bodies related to sports in the country.

7. The argument of learned counsel appearing for BFI that the writ petition is in the nature of a service dispute is liable to be rejected. The argument may have been persuasive had the petitioner been a member of

BFI. This is evidently not the case since a ‘member’ of BFI can only mean a State association or an All India Sports Control Body affiliated to BFI under Rule I(14) of the Rules and Regulations of BFI. Rule 1(18) also provides that a permanent member shall only mean the association registered under the relevant Act framed in the State/UT having registered players to conduct bridge events in the State/UT. The fact that the petitioner is not a member of BFI hence deflates the argument of the writ petition being in the nature of a service dispute. In *St. Mary’s Education Society vs. Rajendra Prasad Bhargava*; 2022 SCC OnLine SC 1091, the Supreme Court explained the meaning of the expression “public duty” as a duty or obligation to the public involving a public law element. The Supreme Court proceeded to hold that the act complained of must have a direct nexus with the discharge of public duty. In the present case, BFI being the sole repository of rights in connection with selection of players including for grant of permission to play in national and international Bridge Tournaments, has debarred the petitioner from both national and international events of BFI. Hence there is an indisputable nexus between the act complained of and the discharge of public duty in the present case.

8. This Court therefore is inclined to reject the argument of the BFI and hold that the writ petition is maintainable.

9. Now to the merits of the case. The two impugned letters under challenge are of 20th July, 2022 and 1st August, 2022. By the first letter, the petitioner was communicated that a “disciplinary committee” of BFI has decided to suspend the petitioner from all Bridge Tournaments with

immediate effect and the petitioner was asked to reply to the same. The second letter treated the first letter as a show-cause notice and noted the ‘un-satisfactory’ reply of 25th July, 2022 of the petitioner and proceeded to debar the petitioner from tournaments conducted/approved by BFI and also international events of the World Bridge Federation for a period of 18 months starting from 15th July, 2022.

10. The impugned letters are a result of a series of posts on the social media by the petitioner in July, 2022 against the administrators/portfolio holders of BFI. The posts do not bear a direct reference to the administrators by name but draw a slanted reference to other governing body members of sports organisations across the country who have brought disrepute to the organisations. The posts refer to misuse of Central Government funds allocated to BFI.

11. The issue is not whether the allegations made by the petitioner against the office bearers of BFI are true or false. The issue is whether the BFI could have show-caused the petitioner with suspension and debarred the petitioner from taking part in any national and international Bridge Tournaments which are conducted/approved by BFI. The issue directly brings the Court to the Rules and Regulations of the BFI contained in its Memorandum and Articles of Association. Under Rule XXII (b)(v), “Executive Committee” has the power to determine penalties to be inflicted on any member or any player for an infringement of the Rules of the game and the Rules of the Federation. The constitution of the Executive Committee is found in Rule I(17) and is further defined in Rule XXII to mean the office

bearers of the Federation and the Chairmen of the Technical Development Committee and National Laws Commission. “Office bearers”, under Rule I(19) means the President, the Vice-Presidents, the Honorary General Secretary and Executive members and finds a more exhaustive explanation under Rule XIII.

12. The first lacunae in the impugned notice is the absence of any indication that the Executive Committee, as constituted under Rule XXII determined the penalty imposed on the petitioner in the form of suspension or debarment.

13. Rule XXXVIII is also relevant to the present adjudication. Rule XXXVIII - “Code of Disciplinary Regulations” empowers the Executive Committee to expel, suspend or otherwise discipline a player for any of the reasons provided under the Rule. Rule XXVIII(i) is one of the instances in which the Executive Committee exercise its power to discipline a player;

“Rule XXVIII.

.....

(i) in case of impropriety/ cheating/ fraud committed by the said player.”

14. The alleged impropriety of the posts on the social media suggesting ineffective management of BFI and financial malpractices will have to be read in the context of the other two conditions in Rule XXXVIII(i) i.e “cheating/ fraud”. The requirement to read “impropriety” in its contextual and surrounding sense arises from the use of the “/” between the three words namely “impropriety/ cheating/ fraud” committed by the player. The “/” though commonly used to mean either/or or a substitute arises from the

word “*Obliquus*” (latin) which means oblique; cross; transverse; co-lateral: Black’s Law Dictionary, 6th Ed.

15. This definition assists the petitioner in convincing the Court that “*impropriety*” must be read in conjunction with or in contextual reference to the other two offences under Rule XXXVIII (i) i.e. ‘*cheating*’ and ‘*fraud*’. In other words, the impropriety must be of a level and of a degree and gravity similar to an offence of cheating and fraud committed by a player in order to warrant expulsion, suspension or any other form of disciplinary measure. In the present case, the social media posts suggesting ineffective and self-serving governance of BFI does not qualify as an impropriety which can be equated with cheating or fraud.

16. The next question is of more significance, whether the impugned debarment was in compliance of and followed the procedure laid down under Rule XXXVIII

17. Under Rule XXXVIII(1), the Executive Committee shall appoint a “Disciplinary Committee” which shall consist of 5 members. Under Rule XXXVIII(2), complaints of misconduct against a player shall be referred to the Disciplinary Committee unless the Executive Committee decides otherwise. Rule XXXVIII(4) mandates that no action shall be taken by the Executive Committee or Disciplinary Committee without first notifying the accused player of the nature of charges against him and allowing sufficient time to the accused to answer such charges. More important, under Rule XXXVIII(5), the Disciplinary Committee shall investigate the complaints

against the player and adjudge such complaints after notice and opportunity to the player for being heard before the player is censured, suspended, expelled, etc. The right of representation of the player also forms part of Rule XXXVIII(5).

18. In the present case, the impugned notices were issued by the Honorary General Secretary of BFI with copies to the West Bengal Bridge Association, and all Member State Associations. The material before the Court does not contain any evidence of the step-wise procedure envisaged under Rule XXXVIII being followed by BFI before the petitioner was debarred or disciplined for the reasons under the said Rule. The step-wise procedure contains a requirement of not only the accused player having notice of the charges against him (which may have been done in the present case by the first notice) but also the requirement of the disciplinary committee to investigate complaints and a further opportunity of hearing to the player before any further disciplinary action is taken against the player [Rule XXXVIII(5)].

19. Moreover, the second impugned letter of 1st August, 2022 does not indicate that the petitioner was given any such opportunity before the debarment or any material of the findings of the Disciplinary Committee which the petitioner could have answered to had the petitioner been given such an opportunity. The only ground given is the alleged un-satisfactory reply of the petitioner. The impugned decision appears more to be of a collective and concerted retaliation against a “whistle-blower” although the posts do not point to any particular office-bearer of BFI.

20. Notably, the debarment for a period of 18 months is also arbitrary since there is no reason given for the length of the period of debarment. A debarment of 18 months is unreasonable and extreme for a player who regularly participates in Bridge Tournaments across the country, unless such punishment is justified under the Rules and Regulations framed by BFI. This Court is informed that the petitioner has already missed out on several Bridge Tournaments from the date of the impugned notices.

21. Having found that the alleged impropriety does not fall under Rule XXXVIII of the Rules and Regulations of the BFI, and that the impugned letters were not issued by a properly-constituted Executive Committee and further that the procedure provided under the Rules was not followed for imposing the penalty on the petitioner, this Court is inclined to quash the impugned notices of 20th July, 2022 and 1st August, 2022. There shall be an injunction on BFI from acting in terms of the notices in the matter of suspension or debarring the petitioner from national and international Bridge Tournaments conducted or approved by the BFI.

22. WPA No. 19570 of 2022 is accordingly disposed of in terms of this judgment.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)