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W.P.No.34039 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.34039 of 2012

All India Chess Federation
represented by its Hon.Secretary
Mr.Bharat Singh Chauhan
Hall No.82, Jawahar Lal Nehri Stadium,
Chennai, Tamil Nadu – 600 003.

... Petitioner

Vs

1. Competition Commission of India,
Hindustan Times House,
(3rd, 4th & 7th Floor), 18-20 Kasturba Gandhi Marg,
New Delhi – 110 001.
2. The Union of India,
represented by the Ministry of Youth Affairs and Sports,
“C” Wing, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi – 110 001.
3. The Government of Tamilnadu
rep. by its Secretary to Government,
Youth Welfare and Sports Development,
Fort St. George, Chennai – 600 009.
4. The Sports Development Authority of Tamilnadu
rep. by its Member Secretary,
Nehru Park, Egmore, Chennai – 600 008.



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5. Hemant Sharma
6. Devendra Bajpai
7. Gurpeet Pal Singh
8. Karun Duggal

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent culminating in order dated 09.02.2012 under Section 26(1) of the Competition Act, 2002, in Case No.79 of 2011 and all further proceedings in Case No.79 of 2011 on the file of the first respondent and quash the same.

For Petitioner : Mr.A.K.Sriram

For Respondents : Mr.R.Thirunavukkarasu – R1
Ms.N.K.Nithavani,
Central Government Standing Counsel – R2
Mr.B.Vijay
Additional Government Pleader – R3
Mr.Santhosh Kumar – R4
Mr.Rahul Balaji - R7
Mr.Velmurugan -R8
No appearance – R5 and R6

ORDER

The petitioner is the All India Chess Federation (AICF), a body registered under the Societies Registration Act, 1860, in 1958. The main objective of the petitioner is to promote the game of chess in India and it is affiliated to the World Chess Federation and the Federation Internationale des Echecs (FIDE).

2. The constitution of AICF was pursuant to the formulation of a National

Sports Policy in 1984 with the avowed objective of improving and raising the



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standards of sports in the Country. The policy was itself refurbished in the year 2001, which required autonomous National Sports Federations to affiliate with State and District level associations to ensure the percolation of high standards in sports, across the Country. The Ministry of Youth Affairs and Sports Development had, in File No.22-32/2009-SPI dated 14.01.2010, declared the petitioner as the National Sports Federation qua the game of Chess.

3. The prayer of the petitioner is for a Certiorari calling for and quashing records of the first respondent, the Competition Commission of India/R1, culminating in order dated 09.02.2012 passed under Section 26(1) of the Competition Act, 2002 (in short and hereinafter referred to as 'Act'), in Case No.79 of 2011. The cause of action for the present Writ Petition does not, in fact, survive any further for the following reasons:

i) The impugned order dated 09.12.2012 is one whereunder R1 rejects the objections raised by the petitioner to assumption of jurisdiction by R1 and confirms the jurisdiction assumed by it under the Act. A direction has consequently been issued to the Director General to proceed with the investigation and cause enquiry upon the complaint filed by the private respondents, arrayed as R5 to R8 in this Writ Petition (in short and hereinafter referred to as 'informants').



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ii) Since there has been no stay of the impugned order pending this Writ Petition, R1 has proceeded to hear the matter on merits and has come to pass final orders in terms of Section 27 of the Act, on 12.07.2018.

(iii) Final order dated 12.07.2018 is stated to be pending before the National Company Law Appellate Tribunal in Competition Appeal (AT) No.74 of 2018.

(iv) The impugned order thus stands telescoped with final order dated 12.07.2018 which is pending in further appeal, and to this extent, this writ petition is rendered infructuous.

4. Since the respondents have raised an issue touching upon and objecting to the very maintainability of this Writ Petition, it is appropriate that the issue is discussed and decided.

5. Section 26(1) of the Act sets out the procedure for enquiry under Section 19, and states that upon receipt of a reference from the Central or the State Government, statutory authority or on the basis of suo motu knowledge received by the Commission, it shall decide as to whether there exists a prima facie case and upon such opinion having been formulated, shall direct the Director General to cause investigation to be made in the matter.

6. In the case of *Competition Commission of India V. Steel Authority of India Limited and another* ((2010) 10 SCC 744), three Judges of the Hon'ble



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Supreme Court considered the question of whether an order passed under Section 26(1) was liable to be challenged. Upon a comparison of sub-sections (1) and (2) of Section 26, the Bench held that an order passed under Section 26(1) constituted merely a preliminary order, which recorded the formation of a prima facie opinion and directed, on the basis of such opinion. Such a direction, simplicitor, would not effectively determine any right or obligation of the parties to the lis.

7. It is only at the stage of proceedings under Section 26(2) of the Act that the Commission deals with the lis perse, and passes directions or interim orders that would bind the parties and give rise to a cause of action. In conclusion, they hold that an order under Section 26(1) was only one of a preparatory nature without recording any findings that would not bind the parties and was hence was not appealable.

8. The above judgment has been noted and applied by this Court in the case of *Chettinad International Coal Terminal Private Limited V. The Competition Commission of India* (W.P.No.7233 of 2016 dated 29.03.2016), wherein at paragraph 21, the learned single Judge specifically deals with the argument raised on maintainability of the Writ Petition.

9. Paragraph 21 of the decision reads as follows:

21. *The other issue which framed was regarding the maintainability of challenge to the impugned order. This submission*



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essentially was on the ground that the impugned order is only a prima facie opinion recorded by the Commission under Section 26(1), does 22 not result in any civil consequences and under the scheme of the Act, the order is not appealable and therefore, the Writ Petition should not be entertained. This submission by the learned counsel for the respondents 1 and 2 cannot be stated to canvass a contention that a Writ Petition is not maintainable as against an order passed by the Commission. There can be no such general embargo as facts of the each case has to be gone into, as essentially a 'Writ' remedy under Article 226 of Constitution of India is an extra-ordinary power vested with the High Courts to examine correctness of orders passed by forums, subordinate to it. It is true that by a long-line of decisions, the power of judicial review in these matters have been circumscribed and by now, they have been clearly defined. Therefore, the argument of the respondents 1 and 2 regarding the maintainability of the Writ Petition should not be misunderstood to mean that no 'Writ' is maintainable, but could be argued that against the preliminary finding/opinion of the Commission, no "Writ" could be entertained, as it is only a prima facie finding and not a final order and does not result in civil consequences.

10. Both in the case of *Steel Authority of India Limited* and *Chettinad International Coal Terminal Private Limited* (supra), the argument of the petitioners there, was that an order under Section 26(1) requires a hearing to have been afforded, and as such, any order that had been passed without such opportunity, would be in violation of the principles of natural justice.

11. A perusal of both orders makes it clear that neither of the petitioners as above, had questioned the assumption of jurisdiction by the Competition Commission of India on the ground that they would not come within the ambit of the definition of '*enterprise*' under Section 2(h) of the Act. There is thus a



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specific argument to the effect that it would not come within the ambit of the Competition Commission at all.

12. In any event, this point has been considered by R1 in final order under Section 26(2) dated 12.07.2018 at paragraphs 27 and 28 and the issue of maintainability decided adverse to the petitioner, to following effect:

'27. The decisional practice of the Commission has also been to regard sports federations as 'enterprise' if they are engaged in activities covered under Section 2(h) of the Act.

Reference is drawn to the decisions of the Commission in Dhanraj Pillay and others v. Hockey India (Case No.73 of 2011) and Surinder Sing Barmi v. Board for Control of Cricket in India (Case No.61 of 2010) in this regard. Subjecting economic activities of sports federation to competition law is also consistent with the practices followed by mature competition regimes like the European Union. In Motosyklestistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio (Case No.C-49/07 (2008) ECR I – 4863), it was held that “A legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC”.

28. In the light of above, the Commission concludes that AICF has been engaging in organisation of professional chess events/tournaments as well as in incidental revenue generating activities. Performance of these activities by AICF is found to be sufficient to hold it as an enterprise as defined under Section 2(h) of the Act.'

13. In my considered view, the challenge on maintainability in the present case goes to the root of the matter as the issue that has been raised by the petitioner is as to whether the Competition Commission at all possesses, the



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jurisdiction of the Competition Commission is under challenge, an order passed under Section 26(1) expressing a prima facie opinion would, in my considered view, be open to challenge, as it would touch upon the aspect of jurisdiction of the Commission to have entertained such a complaint.

14. The appeal filed by the petitioner before the National Company Law Tribunal, Principal Bench, New Delhi is stated to be listed for hearing on 12.12.2022. Learned counsel for R1 states that it includes the issue of assumption of jurisdiction by the Competition Commission.

15. In the above circumstances, nothing further survives in the present Writ Petition, as the parties will be heard by the appellate authority in due course. This Writ Petition though otherwise maintainable, is closed and there will be no order as to costs.

08.12.2022

Index : Yes
Speaking Order
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Dr.ANITA SUMANTH,J.

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