

**THE OMBUDSMAN
Bihar Cricket Association**

JUSTICE NILU AGRAWAL(Retd.)

BCA/OMBD/01-2020

Uday Shankar Sharma

-----Petitioner

Vs.

Sri Rakesh Kumar Tiwary, President Bihar Cricket Association

-----Respondent

For the Petitioner : Sri Subir Chandra Mishra
For the Respondent : Sri Neeraj Singh

21.01.2020 Heard both the parties. The complainant Uday Shankar Sharma, a Full Member of Bihar Cricket Association and Member Secretary of Muzaffarpur District Cricket Association is the petitioner duly represented through his authorised representative Sri Subir Chandra Mishra and Sri Rakesh Kumar Tiwary, President, Bihar Cricket Association, is the Respondent duly represented through his authorised representative Sri Neeraj Singh. Copy of the authorisation is kept on record.



1. That complaint, as lodged by the petitioner, is with regard to Notice-cum-Agenda of Bihar Cricket Association for convening a Annual General Meeting. It has been averred that the President of Bihar Cricket Association (hereinafter referred to as "BCA"), through Mail dated 03.01.2020 addressed to the Honorary Secretary, BCA, with copy to the District Representative BCA, Joint Secretary BCA, Treasurer BCA, Vice-President BCA, informed that the Annual General Meeting of the BCA would be held as follows:-

Date of Meeting : 31st January 2020

Time of Meeting : 12.30 onwards (1230 hrs)

Place of Meeting : Hotel Aditya Inn, South Ramna
Road, Arrah (Bhojpur)

The Honorary Secretary BCA was directed to notify the above schedule within 24 hours and was also asked by the President BCA to discuss, so that the Agenda could be finalized and notice be uploaded in the official website of the BCA duly recognised by the BCCI. (The said notice dated 03.01.2020 is Annexure-1 to the complaint petition)

2. That the office of the Honorary Secretary BCA uploaded the notice on the official website of BCA not recognised by the BCCI on 07.01.2020 regarding convening of Annual General Meeting (hereinafter referred to as "AGM"). The same was not uploaded in the official website duly recognised by the BCCI and specified a different place of meeting.

3. That again the president BCA vide notice dated 09.01.2020 sent through Mail to the Secretary BCA with copy to District Representative BCA, Joint Secretary BCA, Treasurer BCA and Vice-President BCA, informed and concurred about the Agenda (1) to 10(b) of the Meeting of AGM (Annexure-3 to the complaint petition).

4. That the notice of AGM issued by the Secretary BCA uploaded on the official website of the BCA not recognised by the BCCI on 10.01.2020 prescribed that it was as per direction of the BCA President but the place of meeting was an entirely different place i.e. instead Hotel Aditya Inn, South Ramna Road, Arrah(Bhojpur), the place was notified as Hotel Alkazar Inn, Patna. The notice contained Agenda (a) to (k) of AGM, although the same was not discussed or concurred by the President. The said notice dated 10.01.2020 also contained a footnote that the venue of the AGM to be held on 31st January 2020, had been changed on the request of some Full Members of the BCA with whom he had telephonic conversation. The said place and agenda as concurred by the President was quite different in character, word and phrase with that which was uploaded by the President on 03.01.2020 and 09.01.2020 (Annexure-2 and 2A of the complaint petition).

5. That the petitioner has thus filed the complaint, stating therein, that confusion is prevailing as the stakeholders are unable to decide whether.



to attend the AGM as notified by the President-BCA or the Honorary Secretary-BCA and has sought confirmation of one Agenda amongst the two different ones. The petitioner submits, the said act of the Honorary Secretary BCA is in direct violation of rule 10(3) (e) of the Rules and Regulations of the BCA (hereinafter referred to as "Rules"). It is further submitted that Notice-cum-Agenda uploaded on the website by the President BCA dated 09.01.2020 (Annexure-3A) is well within the powers of the President. The petitioner seeks a clarification/ authentication of the two Notice-cum-Agenda, one issued by the President and one by the Honorary Secretary BCA, and which one to follow.

6. That the respondent has appeared through his authorised representative Sri Neeraj Kumar and submits that the President BCA deriving his powers and duties under the Rules specifically under Rule 10(1) is empowered amongst other powers and duties, to preside at all meetings of the General Body and the Committee of Management as per clause (a) of Rule 10(1). The Secretary deriving his powers and duties under Rule 10(3)(e), shall convene the Annual General Meeting, the Special General Meeting and the Meetings of the Committee of Management and Executive Council with written concurrence of the President. It is thus submitted that the Secretary of BCA apart from other duties can convene the Annual General Meeting with the concurrence or in agreement with the President and could not act independently by fixing another venue of the AGM or could bring a change in the Agenda. The thrust of the submission is that, as postulated in Rule 11(1) of the Rules, the President has the power to fix the place and time of the AGM and as per Rule 11(5) at least 21 days prior to the date fixed for AGM, forward to each member the notice setting out the Agenda of business to be transacted at the AGM so that if members would raise any point or issue the same could be done 7 days prior to the AGM, before the Secretary. It is thus contended that the Secretary has neither any independent power to convene the AGM, set



out the place and time for the said meeting nor change or format his own agenda of the AGM except with the written concurrence of the President.

7. Having heard the submissions of both the parties, I am referring to certain extracts of the Rules and Regulations of the BCA. The President under the "Definitions" Rule 1(A)(aa) is the Honorary President of the BCA and of the Committee of Management as set out in Rule 10(1). The Secretary under the said Definitions 1(A)(ad) is the Honorary Secretary of the BCA as set out in Rule 10(3). The powers and duties of the office bearers has been defined under Rule 10, wherein at 10(1), the powers and duties of the President is as follows :

"10. POWERS AND DUTIES OF OFFICE BEARERS:

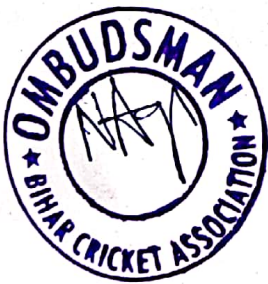
(1) THE PRESIDENT

(a) The President shall preside at all meetings of the General Body and the Committee of Management.

(b) The President shall be one of the three persons who sign the audited annual accounts and other financial statements of BCA.

(c) The President shall also exercise such functions and duties as he may be empowered with by the General Body or the Committee of Management.

(d) The President shall, in the event of a vacancy or indisposition of an Office Bearer, delegate the functions to another Office Bearer until the vacancy is duly filled up, or the indisposition ceases."



8. The powers and duties of the Secretary has been defined in Rule 10(3) which are as follows :

"(3) THE SECRETARY

The Secretary shall:

(a) Keep and maintain the minutes of Annual General and Special General Meetings of the General Body, the Meetings of the Committee of Management and of the Committees appointed by the General Body in appropriate books and shall cause them to be properly and correctly recorded and confirmed.

(b) Be one of the three persons who sign the audited annual accounts and other financial statements of the BCA.

(c) Sign all contracts for and on behalf of the BCA and carry on all correspondence in the name of the BCA save as otherwise directed by the Committee of Management.

(d) Be in charge of the records of the General Body, the Committee of Management, the Governing Council and all Committees, and such properties as may be trusted to his care by the BCA, the Committee of Management or the Governing Council as the case may be.

(e) Convene the Annual General Meeting, the Special General Meeting and the Meetings of the Committee of Management and Executive Council with the written concurrence of the President.

(f) Circulate to all members of the BCA the statement of accounts prepared by the Treasurer.

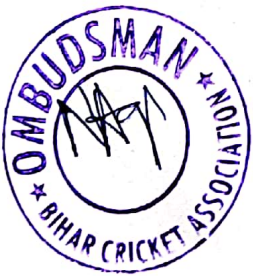
(g) Have the power to delegate any work to the Honorary Joint Secretary."



9. That thus, from the plain reading of the said Rules, the powers and duties of the President is that he shall preside all meetings of the General Body and Committee of the Management apart from other functions as postulated in Rule 10(1) (a) to (d). The Secretary shall convene the Annual General Meeting, Special General Meeting and the meetings of the Committee of Management and Executive Council with the written concurrence of the President, apart from other duties like maintaining the minutes of the AGM, Special General Meeting and other meetings, one of the signatories of the audited annual accounts and other financial statements, signing of contracts on behalf of BCA and carry on all correspondences in the name of BCA, be incharge of the records of the General Body or the Committee of Management and all Committees. As per Rule 10(3)(e), for convening the Annual General Meeting and other meetings, envisages the Secretary to discharge his duties with the written concurrence of the President.

10. The definition of concurrence is agreement or things that act or occur together. When two people agree on something, this is an example of concurrence of opinion i.e. in agreement, in accord. Hence, the Secretary under the Rules has the power to convene the Annual General Meeting with the written concurrence of the President and without the concurrence of the President, the Secretary is not entitled to disagree/ change the venue or the agenda which could only be done with the written concurrence of the President BCA under the Rules.

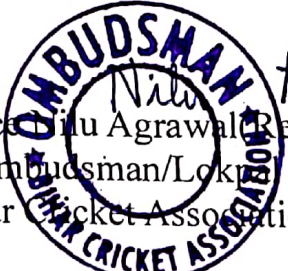
11. That the Annual General Meeting has been prescribed in Rule 11 with special reference to Rule 11(1) which postulates that the AGM of the General Body shall be held every year not later than 30th August at such place and time as the President may fix. Thus, from the plain reading of the aforesaid, it is evidently clear that the place and time is fixed by the President alone and none other, and for convening the AGM the written concurrence of the President has to be obtained by the Secretary.



12. That the authorised representative of the respondent has also brought to my notice the various reminders sent to the Secretary BCA dated 11.01.2020 at 4.47 p.m. through mail with copy to the Vice-President, Joint Secretary, Treasurer and District Representative. Again a reminder has been sent on 20.01.2020 at 5.00 p.m., which is also taken on record.

13. That under the facts and circumstances and in view of the submissions of the parties, as per Rules of the BCA, specially powers and duties of the President vis-a-vis Secretary BCA, specifically under Rule 10(1) and (3)(e) read in juxtaposition with Rule 11(1), the Secretary has neither any independent power to convene the AGM, set out place and time for the said meeting nor change or modify the agenda of the AGM except with the written concurrence of the President. The Secretary acts as a convenor with the written concurrence of the President. Hence, the Secretary is directed to give effect to the mail dated 03.01.2020(Annexure-1) and mail dated 09.01.2020 (Annexure-3) issued by the President BCA and addressed to the Secretary BCA and to be uploaded in the official website, duly recognised by the BCCI by 6.00 p.m. on 22.01.2020 of the AGM to be held on 31.01.2020. Copy of the order would be sent by mail latest between 1.30 to 2.30 p.m.

14. The issue is clarified and the complaint is disposed of accordingly.


Justice Nitu Agrawal (Retd.)
Ombudsman/Lok
Bihar Cricket Association

Copy to :

- (i) Sri Uday Shankar Sharma, Member Secretary, Muzaffarpur District Cricket Association
 - (ii) Sri Rakesh Kumar Tiwary, President, Bihar Cricket Association
 - (iii) Sri Sanjay Kumar, Honorary Secretary, Bihar Cricket Association
- Email : (i) blueudaysharma@gmail.com
(ii) president.bca.rkt@gmail.com
(iii) secretarybca78@gmail.com
(iv) subirchandramishra@gmail.com

Certified copy issued on 22.01.2020


Nitu Agrawal