

Before Ombudsman, Bihar Cricket Association
Raghendra Kumar Singh (Retd. District Judge)
Incharge Ombudsman, Bihar Cricket Association

BCA/Ombudsman-02 of 2021

Manoj Kumar (claiming himself to be Ex-Joint Secretary and Present Secretary,
Muzaffarpur District Cricket Association)Petitioner
Versus

1. Bihar Cricket Association, Through its Secretary (As mentioned in the amended petition)
2. President, Bihar Cricket Association.
3. The Joint Secretary, Bihar Cricket Association
4. Chief Executive Officer, Bihar Cricket Association
5. Sri Sanjay Kumar Singh, Presently District Representative Bihar Cricket Association (as mentioned in the petition)

.....Respondents

10.07.2022

Sri Pankaj Kumar Das, Advocate for the petitioner appeared in person on 20.03.2021 and filed petition with annexures (which web copy was sent on Email on 11.03.2021 to me and to the Respondents) alongwith vakalatnama executed in his favour by said Manoj Kumar with assertion that the Respondent No.5 Sri Sanjay Kumar Singh has completed his tenure on 20.04.2020 as Member of Committee of Management of Bihar Cricket Association and on that premise his prayer to restrain said Respondent No.5 from participating in any of the meeting of the Committee of Management of Bihar Cricket Association and to direct/command Respondent No. 1 to 4 to stop treating him as Member of said Committee of Management, because the respondent no. 5 Shri Sanjay Kumar Singh was elected as Hony. Secretary of Jamui District Cricket Association (DCA) on 20.04.2014

(Sd/-)
R.K.

and continued in the same capacity till his election as District Representative of Bihar Cricket Association (BCA) on 29.09.2019 and, therefore, the respondent no. 5 is not eligible to continue on the post of District Representative BCA as per order dt. 09.08.2018 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 4235 of 2014 and in consonance of said order of the Hon'ble Supreme Court the BCA to its SGM held on 02.09.2018 new draft Constitution-Cum-Rules & Regulations of BCA approved, according to which an elected member of the Committee of the Management (CoM) could hold his post only for 2 terms (each term of three years) including the terms/period in continuation and thereafter the member who has completed his/her 2 terms shall have to go for cooling-off three years.

After issuance of notice on behalf of the respondent an oral preliminary objection was made as regards to the addresses of the respondent nos. 1 to 4 wherein their addresses as "Bindhyawasni Commercial Complex, Welcome Hotel, R. K. Bhattacharya Road, Patna. Also at Shail Raj Complex, Budh Marg, Patna- 01" asserting that the aforesaid address given in the petition in relation to the aforesaid respondent nos. 1 to 4 as "Bindhyawasni Commercial Complex, Welcome Hotel, R. K. Bhattacharya Road, Patna" is incorrect because there is no such office of the respondent nos. 1 to 4 at the said "Bindhyawasni Commercial Complex" when the petition was filed by the petitioner and also regards to the name of "Sanjay Kumar" after the words "Bihar Cricket Association through its Secretary" in the array of the respondent no.1, and until the same are deleted they would not file reply, and then the matter was adjourned to several dates on the aforesaid issue of the said incorrect address and the aforesaid name of "Sanjay Kumar" in array of respondent no. 1, and lastly the counsel for the petitioner deleted the portion "Bindhyawasni Commercial Complex, Welcome Hotel, R. K. Bhattacharya Road, Patna" from the addresses of the respondent nos. 1 to 4 and also the name of "Sanjay Kumar" in array of respondent no. 1 on 22.01.2022 vide order dt. 28.08.2021 and then reply on behalf of the respondent nos. 1 to 4 jointly and the respondent no. 5 separately but the contents of the reply of the respondent nos. 1 to 4 and the reply of the respondent no. 5 are same.

In the replies it has been asserted that the petition of the petitioner is not maintainable because the petitioner has not uttered a single word in his entire petition that under which provision of law the same has been filed and the petition seems to be a Public Interest Litigation (PIL) and, therefore, the same could not be decided by this forum and the petitioner being Ex-Joint Secretary and present Secretary of Muzzafarpur DCA could not

(Contd.)
R. Singh

challenge the tenure of the respondent no. 5 as holding the post of Secretary Jamui DCA and then District Representative of BCA and the relief(s) sought by the petitioner is/are neither maintainable either in law or on facts. It has also been averred in the replies as regards to the petitioner's pleading to the effect that the respondent no. 5 was elected on the post of Hony. Secretary of Jamui DCA on 20.04.2014 and continued in that capacity till his election on the post of District Representative BCA on 29.09.2019, which is evident from the documents being copies of Affiliation-Forms, relevant extracts of minutes of the meeting of AGM dt. 20.04.2014, newspaper report, nomination form, annexed with the petitioner's petition that the aforesaid pleading of the petitioner is completely false, concocted and misleading, and, beside it the post of the District Representative BCA does not come within the purview of the office-bearer of the BCA and, therefore, as per the respondent no. 5, the provision of cooling period of three years on completion of two consecutive terms is not attracted to the case of the respondent no. 5, and on the aforesaid premises, it has been prayed in the replies to dismiss the petitioner's petition.

Shri Rajesh Kumar Singh Advocate appearing for the petitioner has urged that the Hon'ble Supreme Court by its judgment dt. 18th July, 2016 in the aforesaid Civil Appeal No. 4235 of 2014 vide Para 91 of said judgment accepted almost all the recommendations made by Hon'ble Justice (Retrd.) Lodha Committee constituted by the Hon'ble Supreme Court itself with such modification and clarification as have been set out by the Hon'ble Supreme Court in the body of the aforesaid judgment, and in the light of said judgment draft Constitution of BCCI was framed and on the such draft Constitution suggestions from State Cricket Associations and other parties were received and the such suggestions were filed by the Committee of Administrators (CoA), constituted by the Supreme Court on 17th January, 2017, before the Hon'ble Supreme Court and after hearing the Hon'ble Supreme Court in the aforesaid Civil Appeal vide its judgment dt. 09th August, 2018 has held in its Para's 33, 34 that:

"33. However, in our view, it would be appropriate to direct that a cooling off period of three years would apply after an individual holds two successive terms in office either in the BCCI, or in any state association or a combination of the two. For instance, if an office bearer has held office for two consecutive terms in any post in a state association, such an individual must face a cooling off period of three years. Likewise, if an individual has held any post as an office bearer of the BCCI for a total period of six years in succession, the

(Contd.)
R. Singh

individual must have a cooling off period of three years before seeking election again either to the BCCI or to a state association. The cooling off period would apply also in a situation where an individual holds a post for one term in a state association followed by a post in the BCCI successively or vice versa. This would ensure that after a period of six years involving two consecutive terms, a cooling off period would be attracted. Allowing an individual to act as an office bearer for six years in continuation, is a sufficiently long period for experience and knowledge gained to be deployed in the interest of the game without at the same time resulting in a monopoly of power.

The cooling off period shall read as follows :

“An office bearer who has held any post for two consecutive terms either in a state association or in the BCCI (or a combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the cooling off period, such an office bearer shall not be a member of the governing council or of any committee whatsoever of the BCCI or of a state association.”

The above principle shall govern Clause 6(4) as well as Clause 14(4) of the draft constitution. The above principle will ensure that the cooling off period will come into operation upon a person holding any post for two consecutive terms not exceeding six years.

34. We accordingly clarify that the position as approved by the Court in the present order shall be to the following effect:
- (i) The term for all posts of office bearer in BCCI and in state associations shall be three years;
 - (ii) No person shall hold the position of an office bearer in any state association, regardless of post, for a period in excess of nine years in the aggregate;
 - (iii) No person shall hold the post of office bearer in BCCI, regardless of post, for a period in excess of nine years in the aggregate;
 - (iv) There shall be a cooling off period of three years after an individual has held the post of an office bearer for two consecutive terms either in a state association or in the BCCI or a combination of both; and
 - (v) The expression 'office bearer' should not be permitted to be circumvented by being a member of any other committee or of the Governing Council in BCCI or any state association, as the case may be.”

It has also been urged on behalf of the petitioner that the respondents might have

(Contd.)
Rising R.

contend that the aforesaid provision of cooling off would be applicable to a person who has been a member of Governing Council in BCCI or any state association and on that score the respondents might have contend that as the respondent no. 5 was not member of any such Governing Council of BCCI or any state association for consecutive two terms and he become member of Governing Council (CoM) of BCA only after his election on 29.09.2019 as District Representative of BCA and his being member of Governing Council (CoM) of Jamui DCA could not be counted for the aforesaid provisions of cooling off period after his has been being member of CoM of Jamui DCA; but this argument which could might have been put forth on behalf of the respondent is not tenable because the aforesaid provision regarding cooling off period would be applicable even in a case of a person who have held the post of a member of the CoM of BCA or of any DCA or a combination of both and this view put forth on behalf of the petitioner by his counsel also gets support from the order dt. 10th November, 2020 of Hon'ble Justice G Krishnamohan Reddy, Ombudsman of the Andhra Cricket Association in the case no. 5 of 2020 before him as Ombudsman Andhra Cricket Association being Sri V Prabhuprasad, Vice-President of Krishna District Cricket Association vs. Krishna District Association & The Andhra Cricket Association; and, therefore, I hold that the aforesaid provision of cooling off period would be applicable to a person if that person has been a office bearer/member of Govering Council (CoM) of any state cricket association or of DCA or combination of both, as the case may be and accordingly the aforesaid provision of cooling off period of three years would be applicable to the respondent no. 5 if it is proved that he has been member of the CoM of BCA or Jamui DCA or combination of both for continuous six years.

On the question is whether the petitioner would have been able to prove his aforesaid elevation to the effect that the respondent no. 5 Mr. Sanjay Kumar Singh has been Hony. Secretary of Jamui DCA since 20.04.2014 till his election as District Representative of BCA on 29.09.2019 and, in that case, he would have to go under the cooling off period since 20.04.2020?

The respondents have made evasive denial of the aforesaid claim/pleading of the petitioner and they have not specifically pleaded from which period he has been Secretary of Jamui DCA till his election on 29.09.2019 as District Representative of BCA.

It is settled principle of law as per Order VIII Rules 3,4,5 of the Code of Civil Procedure, 1908 that if denial is evasive and not specific then in that case the pleading made

(contd.)
Singh

by the petitioner/plaintiff in respect of which there is no specific denial rather only evasive denial then in that condition the pleading to the aforesaid facts which have not been specifically denied and only denied evasively such facts asserted in the petition/plaint may be treated as admitted to the respondents/defendants and in that view of the matter as per Section 58 of the Evidence Act, such facts need not be proved. As in the present case the respondents including respondent no. 5 have not specifically denied the aforesaid facts alleged by the petitioner that to the respondent no. 5 has been holding the post of Hony. Secretary of Jamui DCA since 20.04.2014 till his election as District Representative BCA on 29.09.2019 and this fact has been evasively denied by the respondent no. 5, in view of the aforesaid provisions of law the same must have been to be treated to be admitted to the respondents and, therefore, need not be proved by the petitioner.

Beside it from the documents - (i) The letter of Jamui DCA being Ref. 001 dt. 21.04.2014 by aforesaid Sanjay Kumar Singh (respondent no. 5) as Secretary Jamui DCA to the Hony. Secretary BCA, Patna mentioning therein that a General Election in Jamui DCA was held on 20.04.2014 and the said election was conducted by Shri Shekhar Kumar Singh the Chairman Election Committee of Jamui DCA, and from the aforesaid contention of the aforesaid letter and signature of said Sanjay Kumar Singh in the capacity of Secretary Jamui DCA and the letter being dt. 21.04.2014 it can be easily inferred that in the aforesaid General Election dt. 20.04.2014 of Jamui DCA said Shri Sanjay Kumar Singh was elected as Secretary of Jamui DCA and then in the aforesaid capacity of Jamui DCA sent the aforesaid letter dt. 21.04.2014 to the Hony. Secretary BCA; (ii) Affiliation-Form dt. 15.06.2015 also signed by said Shri Sanjay Kumar Singh as Hony. Secretary Jamui DCA mentioning therein that last Annual General Meeting held on 20.04.2014; (iii) Affiliation-Form dt. 23.09.2014 also signed by said Shri Sanjay Kumar Singh as Hony. Secretary Jamui DCA mentioning therein that last Annual General Meeting held on 20.04.2014; (iv) Letter being Ref. No. DCA/10025/2019-20 dt. 17.09.2019 also signed by said Shri Sanjay Kumar Singh as Secretary, Shri Chandra Bhanu Singh as President Baldeo Prasad Bhagat as Vice-President and Bijay Kumar Singh, Shekhar Kumar Singh of Jamui DCA addressed to the Electoral Officer BCA, Patna mentioning therein that a notification has been issued for holding election for 6 posts (President, Vice-President, Secretary, Joint-Secretary, Treasurer and District Representative) of BCA and the Committee of Management of Jamui DCA has authorised Shri Sanjay Kumar Singh, Secretary Jamui DCA to contest for any one post and

(Contd.)
R Singh

to give vote in the aforesaid notified election of the BCA. All these documents go to prove by preponderance of probability that said Shri Sanjay Kumar Singh has been Secretary of Jamui DCA continuously since 20.04.2014 till his election on the post of District Representative BCA on 29.09.2019 and as such he has to demit the post of District Representative BCA since 20.04.2020 in view of the aforesaid recommendations of Justice Lodha Committee approved by the the Hon'ble Supreme Court in the aforesaid Civil Appeal No. 4235 of 2014 as mentioned above.

It has been pleaded on behalf of the respondents that the petitioner has not mentioned the provision(s) under which he has filed the aforesaid petition and, therefore, according to them, the petitioner's petition is liable to be rejected. In this regard it is apt to reproduce Rule 45 of BCA Rules & Regulations and the same runs as follows:

"45. GRIEVANCE REDRESSAL

(1.) The types of disputes/differences that form the Ombudsman's ambit and the procedures for redressal are:

a. **Member, Association & Franchisee Disputes**

Any disputes between or among the BCA, its Members, Tournament Franchisees, Zones and the Cricket Players' Association shall be automatically referred to the Ombudsman.

Procedure: Both parties would submit their arguments and a hearing would be conducted following the principles of natural justice and exercising all powers of enquiry and hearing as the Ombudsman deems fits before appropriate orders are passed.

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 and 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.

c. **Misconduct or Breach by Others**

In the event of any complaint received from any quarter or based on any report published or

(Cont.)
Rajesh

circulated or on its own motion, of any act of Indiscipline or misconduct or violation of any of the Rules and Regulations by any Player, Umpire, Team Official, Selector or any person associated with the BCA, the Committee of Management shall refer the same within 48 hours to the Chief Manager to make a preliminary enquiry.

Procedure: The CEO shall forthwith make a preliminary inquiry and call for explanations from the concerned person(s) and submit his report to the Committee of Management not later than 15 days from the date of reference being made by the Committee of Management. On receipt of the report, the Committee of Management shall forward the same to the Ombudsman, who shall call for all particulars and unless it decides that there is no prima facie case and accordingly drops the charge, hearing shall commence on the case and the same shall be completed as expeditiously as possible by providing a reasonable opportunity to the parties of being heard. If, despite due notice, any party fails to submit any cause or submits insufficient cause, the Ombudsman shall after providing reasonable opportunity of hearing to the parties concerned, pass appropriate order. In the event any party refuses and/or fails to appear despite notice, the Ombudsman shall be at liberty to proceed ex-parte on the basis of the available records and evidence.

d. **By the Public against the BCA**

Where a member of the public is aggrieved concerning ticketing and access and facilities at stadia, the same may be brought in the form of a complaint to the Ombudsman.

Procedure: The Ombudsman would adopt the same procedure as laid down in (c) above after referring the complaint to the Chief Manager to solicit a report on the complaint.

- (3) The Place of hearing shall be decided by the Ombudsman from time to time. The Ombudsman shall have the power to impose penalties as provided in the Regulations for Players, Team Officials, Administrators, Managers and Match Officials of the BCA.
- (4) The decision of the Ombudsman shall be final and binding and shall come into force forthwith on being pronounced and delivered.
- (5) Any Administrator, Player, Match Official, Team Official, Selector or other individual associated with the BCA on being found guilty and expelled by the BCA shall forfeit all their rights and privileges. He or she shall not in future be entitled to hold any position or office or be admitted in any committee or any role on the BCA.
- (6) A Member of Franchise once expelled, may, on application made after expiry of three years since expulsion, be readmitted by the BCA, provided the same is accepted at a General Body meeting by 3/4th members present and voting.

(Corrected)
R. Singh

(7.) Pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Administrator, Player, Match Official, Team Official, or other Individual associated with the BCA (along with their respective privileges and benefits) may be suspended by the Committee of Management until final adjudication. However, the said adjudication ought to be completed within three months, failing which the suspension shall cease."

From the above Rule 45, it is clear that any difference/dispute between or among the BCA or its Members is amenable under sub-Rule (1) (a) of the said rule, and only for the reasons that the petitioner has not mentioned the relevant rule in his petition for the relief(s) sought by him in his petition can not be rejected if his petition is maintainable under the said Rule 45. Consequently, I hold that there is no force in the aforesaid contention made on behalf of the respondents and the petitioner's petition is maintainable before this forum of Ombudsman under said Rule 45.

Consequently, the petitioner's petition for the relief(s) sought by him in Para 1.(a) – That the above named petitioner is filing the present petition before this Hon'ble Tribunal for declaring that respondent no. 5 has completed his tenure on 20.04.2020 as member of Committee of Management of Bihar Cricket Association and to restrain the respondent no. 5 from participating in any of the meetings of Committee of Management of Bihar Cricket Association; and in Para 1.(b) – That the petitioner is further praying before this Hon'ble Court to direct/command the authorities of Respondent Bihar Cricket Association specifically Respondent No.2 to stop treating respondent no.6 (sic. respondent no. 5) as member of Committee of Management of Bihar Cricket Association is allowed.

R Singh
(Raghwendra Kumar Singh)
In-charge Ombudsman
Bihar Cricket Association

Copy to:

1. Manoj Kumar
Email: muzaffarpurdca@gmail.com
2. Bihar Cricket Association, Through its Secretary
Email: bca@biharcricquetassociation.com
3. President, Bihar Cricket Association

(Contd.)
R Singh

Email: president@biharcricketassociation.com
president.bca.rkt@gmail.com

4. Joint Secretary, Bihar Cricket Association

Email: jointsecretary@biharcricketassociation.com

5 CEO, Bihar Cricket Association

Email: ceo@biharcricketassociation.com

6. Sri Sanjay Kumar Singh

Email: sanjajsingh@gmail.com

7. Sri Navjot Yeshu, Advocate

Email: navjotlawyer@yahoo.co.in

8. Sri Pankaj Kumar Das, Advocate

Email: pankajvakeel@rediffmail.com

9. Sri Rajesh Kumar Singh, Advocate

Email: deenurajesh@gmail.com

R Singh