

Before Ombudsman, Bihar Cricket Association Cum Ethics Officer

Raghwendra Kumar Singh (Retd. District Judge)

Incharge Ombudsman Cum Ethics Officer, Bihar Cricket Association

(As per Resolution dated 25.09.2020 of General Body Meeting of Bihar Cricket Association)

BCA/Ombudsman/10 of 2021

Bihar Cricket Association, Through its President Sri Rakesh Kumar Tiwary, 1st and 2nd Floor, Shail Raj Complex, Buddha Marg, P.S. Kotwali, Patna-800001.....Petitioner

Versus

1. Sri Kumar Arvind S/o Sri Harsu Singh R/o Jay Prakash Nagar, Katira, P.S. Ara, District Bhojpur at Ara(elected as Joint Secretary of Bihar Cricket Association on 29.09.2019 and vide AGM dated 31.01.2020 was given charge of Secretary of said Association to function as Acting Secretary of said Association).....Respondent

05.03.2022

A petition on behalf of the aforesaid petitioner through Sri Rakesh Kumar Tiwary, along with his affidavit sworn on 25.08.2021 was filed by Sri Navjot Yeshu, Advocate (AOR No. 01751) before me as Incharge Ombudsman Cum Ethics Officer praying therein that a show cause notice be issued to the sole Respondent and after hearing him the prayer made in para 1 of the petition should be allowed and during the pendency of this petition, decision of the Committee of Management of the Bihar Cricket Association(BCA) dated 16.08.2021 so far it relates to the restraintment of Sri Kumar Arvind from functioning as Joint Secretary cum Acting Secretary of the BCA be confirmed and/or pass such other order(s) as this Tribunal of Ombudsman cum Ethics Officer deem fit and proper.

In the petition it has been averred that since last few months it has come to the notice of the members of the Committee of Management of Bihar Cricket Association that Sri Kumar Arvind(Respondent) who was elected as Joint Secretary of Bihar Cricket Association on 29.09.2019 and vide AGM dated 31.01.2020 was given the charge of Acting Secretary of Bihar Cricket Association is involved and doing all such act which is quite detrimental and is against the interest of Bihar Cricket Association(BCA). It has also been

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averred that the Respondent Kumar Arvind has filed an affidavit (copy of which is annexure 3 to the petition at pages 24 to 33) before the Ombudsman, BCA making allegation against the President of BCA without there being iota of material to substantiate his stand and also without any instruction/authorization in the said regard from the BCA with some of his illegal, arbitrary, malafide and oblique reason just to demean and defame the BCA. In this regard, a legal opinion was sought from the Chairman of the Legal Committee of the BCA by the Hon'ble President BCA vide his letter dated 09.08.2021 enclosing the Emails of Smt. Kavita Roy, ICA Member (Female Player Representative), Member of Committee of Management (COM) of BCA, Sri Sanjay Singh, District Representative and Member of the COM, Sri Ashutosh Nandan, Treasurer and Member of the COM, and Sri Amikar Dayal, ICA Member (Male Player Representative) and Member of the COM (Annexure 1 at pages 13 to 15 and at page 19) wherein all of them have requested for withdrawing the charge of Joint Secretary cum Acting Secretary of the BCA from Kumar Arvind for his illegal activities against the BCA. It has also been averred that the Chairman of the Legal Committee, BCA has opined that the conduct of Sri Kumar Arvind is completely illegal, detrimental and he is doing all such acts which is against the interest of the BCA. The Chairman of the Legal Committee, BCA has also opined that it is desirable that powers of given to Kumar Arvind may be withdrawn. Further it is averred in the petition that in one of the case bearing CWJC No. 9541 of 2020 which is pending before the Hon'ble High Court, Respondent Kumar Arvind has executed a vakalatnama on 13.07.2021 in favour of the Legal Retainer of BCA and thereafter without any consent or taking no objection from the retainer has executed another vakalatnama in favour of a lawyer of his choice and has also filed affidavit in the said case which is completely illegal and detrimental without there being any decision or authorization from the Members of the Committee of the Management and has also committed fraud with the Hon'ble Patna High Court. Looking into the said conduct of Kumar Arvind, a show-cause dated 13.08.2021 was issued to him seeking explanation from him but till date he has not submitted his reply. In fact, the Chairman of the Legal Committee has also opined that conduct of Sri Kumar Arvind is completely illegal, detrimental and he is doing all such acts which is against the interest of the BCA. It has also been averred that thereafter, on 16.08.2021, Sri Kumar Arvind at AIG Registration Office, Chajjubagh, Patna misbehaved and assaulted the Chief Executive Officer, BCA in presence of members of the COM namely 1. Sri Dilip Singh, Vice President, BCA 2. Sri

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Sanjay Kumar Singh, District Representative 3. Sri Ashutosh Nandan Singh, Treasurer 4. Sri Kaushal Tiwary in an intoxication condition and for his such misdeeds the CEO has vehemently proposed to resign from the said post but on request and intervention of the Members of the COM of BCA he did not resign. It has further been averred that looking into the gravity of the offence being committed by Sri Kumar Arvind an emergent meeting of the Committee of Management was held on 16.08.2021 through video conferencing in view of Covid-19 Pandemic in which in three members of COM namely 1. Sri Dilip Singh, Vice-President 2. Sri Sanjay Kumar Singh, District Representative and 3. Sri Ashutosh Nandan Singh, Treasurer in whose presence the aforesaid occurrence took place have appeared and has stated and narrated the entire incident before the COM condemning the act of Kumar Arvind and further stated that the conduct of Sri Kumar Arvind is completely illegal, and detrimental in the interest of BCA and has also stated that it is a Black Day for BCA and all of them have recommended that a stern action should be taken against Sri Kumar Arvind and having no other option it has been unanimously been resolved/decided as follow:

- A. To restrain Sri Kumar Arvind from functioning as Joint Secretary cum Acting Secretary of the BCA with immediate effect. By his own conduct he has gone further and proved himself to be acting against the interest of BCA and his act is in complete violation of Rule 5 (a) (iv) (v) & (vi) of the BCA.
- B. The members of the COM of the BCA in exercise of the powers conferred on it under Rule 10 (i) (c) of the BCA further unanimously resolved that the charge of Joint Secretary cum Acting Secretary of the BCA shall be given to the President of the BCA till the time Hon'ble Incharge Ombudsman cum Ethics Officer, BCA finally adjudicate the matter.
- C. The members of the COM of the BCA further unanimously resolved that Sri Sanjay Kumar Singh, District Representative shall look into the Cricket activities of BCA.
- D. The members of the COM of the BCA further unanimously resolved that the signatory in the Bank Account be changed and further the same is to be operated under the joint signatures of the Hon'ble the President and Hon'ble the Treasurer of the BCA. It is further resolved that necessary communication in this regard may be made along with the copy of this resolution to the Bank forthwith for change in the

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designation of the authorized signatory.

E. It has further been resolved by the members of the COM to refer the matter under Rule 45 (1) a & b of the BCA to the Hon'ble Incharge Ombudsman cum Ethics Officer, BCA for passing an appropriate order in this regard.

On the basis of aforesaid averments it has been pleaded by the petitioner that the aforesaid conduct of the respondent Sri Kumar Arvind is quite detrimental and against the interest of BCA being in complete violation of Rule 5 (a) (iv) (v) & (vi) of the BCA.

Considering the aforesaid facts mentioned in the petition along with its annexures supported by an affidavit sworn by Sri Rakesh Kumar Tiwary, the President, Bihar Cricket Association in the interest of justice, the respondent Sri Kumar Arvind was restrained vide order dated 25.08.2021 passed by me in the present case from functioning as Joint Secretary Cum Acting Secretary of the BCA till further order which would be passed after considering the show cause and argument made on behalf of the Respondent Sri Kumar Arvind (if any).

After filing of the aforesaid application on behalf of the Bihar Cricket Association (BCA) by Sri Rakesh Kumar Tiwari, President BCA notice with copy of the order dated 25.08.2021 was sent to the Respondent Kumar Arvind and in response of the same reply has been filed by him along with an application to recall the order dated 25.08.2021 mentioning therein that the Vakalatnama filed by the Respondent Kumar Arvind in the Hon'ble Patna High Court in C.W.J.C. No. 9541 of 2020 preferred by one Praveen Kumar was filed by the Respondent in his individual capacity after his impleadment as Respondent No. 6 passed by the Hon'ble High Court on 13.07.2021 in said C.W.J.C. No. 9541 of 2020 and the counter filed by him in said C.W.J.C. was also in his individual capacity and as such, the execution of Vakalatnama, filing a counter affidavit could not be termed as detrimental to the Cricket or against the B.C.A. It is also averred in the said reply that the copy of web page of C.W.J.C. No. 9541 of 2020 has been attached as Annexure-R/12 of the reply. It has also been averred by the Respondent that at no point of time the respondent has been issued show cause notice dated 13.08.2021 nor the letter dated 09.08.2021 has been communicated to the Respondent and meeting of the Committee of Management (COM) dated 16.08.2021 was convened against the provisions of Rule

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18.7 of the BCA Rules and Regulations, according to which an emergent meeting could be convened with two days prior notice but there was no such notice for convening the said meeting on 16.08.2021 and the resolution dated 16.08.2021 of the COM against the respondent was taken without giving notice for show cause to respondent which is also against the provision of Rule 45(1)(b) of the BCA Rules and Regulations and as such reference of this case to Ombudsman is not in consonance of the said provision. Other facts have also been averred in the reply but those facts have not been referred by the counsel of the respondent during the course of the hearing of the matter and as such the same are not being referred herein.

On the last date fixed in the case I have heard Sri Navjot Yeshu, Advocate for the petitioner and Sri Manish Jha, Advocate for the Respondent.

Learned counsel for the petitioner has argued that the Respondent in his reply has not controverted mishandling done by him with the CEO of BCA at Registration Office as mentioned in the affidavited petition of the petitioner and, therefore, the said fact is impliedly admitted to the Respondent as there is no denial of the same as per rule of the pleadings.

On the other hand, learned counsel for the Respondent has argued that all actions taken against the Respondent are contrary to the provisions of Rule 45(1), Rule 18(6), 18(7) and 18(8) of the BCA Rules and Regulations as there was no written requisition for holding meeting of the COM on 16.08.2021, sufficient quorum was not there at the meeting on 16.08.2021, there was no two days' prior notice for convening the meeting on 16.08.2021. In reply of the same, counsel for the Petitioner submits that from Annexure-4 of the petition of the petitioner being the minutes of the emergent meeting of the COM of BCA held on 16.08.2021 it would appear that ^{Seventy} ~~same~~ members of the COM were present at the meeting and as such there was sufficient quorum as per Rule 18(8) of the Rules and Regulations. It has also been argued by the counsel for the petitioner that at the time of convening the meeting of the COM on 16.08.2021 there was pandemic due to COVID-19 and as such it was not possible to file written requisition and it was electronically done.

It has not been controverted by the counsel for the petitioner that no show cause notice was issued to the respondent for his alleged mishandling with the CEO before taking any decision against the Respondent in the said meeting of 16.08.2021. As regards to the earlier show cause notice to the Respondent regarding his

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filling of fresh Vakalatnama without the NOC of the retainer of the BCA and filing of the counter by the Respondent in the aforesaid C.W.J.C. No. 9541 of 2020 is concerned, the stand of the Respondent is that no such show cause notice was received by him and it has also been claimed by him that the same was filed by him in his individual capacity after his impleadment in the said writ as Respondent No. 6.

From Annexure-R/11 (Copy of the order dated 13.07.2021 passed in C.W.J.C. No. 9541 of 2020), Annexure-R/12 being the web copy of aforesaid C.W.J.C. of the reply, it would transpire that Acting Secretary of the BCA was impleaded in the said writ as Respondent No. 6. and not Kumar Arvind (Respondent) in his personal capacity. In the rejoinder affidavit filed on behalf of the petitioner in reply of the counter affidavit of the respondent in its para 13 that the averment made in para 25 of the reply affidavit of the Respondent, where it has been averred that at no point of time respondent has been issued show cause notice dated 13.08.2021 nor at no point of time the letter dated 09.08.2021 has been communicated to the respondent, has been denied but the petitioner has not filed any document to prove service of such show cause notice or the letter to the Respondent. 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.

With the aforesaid observation the matter is disposed off.

Raghwendra Kumar Singh

(Raghwendra Kumar Singh)

In-charge Ombudsman

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Ethics Officer

Bihar Cricket Association

Copy to:

1. Bihar Cricket Association, Shail Raj Complex, Buddha Marg, P.S. Kotwali, Patna-800001.
Email: biharcricketassociation@gmail.com
2. Sri Rakesh Kumar Tiwari, President, Bihar Cricket Association, Patna
Email: president@bihar cricketassociation.com
president.bca.rkt@gmail.com
3. Sri Kumar Arvind (Respondent) Acting Secretary cum Joint Secretary, Bihar Cricket Association (Restrained from discharging the functions of the aforesaid posts),
Email: jointsecretary@biharcricketassociation.com
arvind.singh10970@gmail.com
4. Sri Navjot Yeshu, Advocate
Email: navjotlawyer@yahoo.co.in

Arvind