

2017 SCC OnLine CIC 734

Central Information Commission
(BEFORE M. SRIDHAR ACHARYULU, IC)

Om Prakash Kashiram

Versus

PIO, M/o Youth Affairs & Sports

CIC/MOYAS/A/2017/116693

Decided on June 9, 2017, [Hearing on: 16.05.2017]

RTI: 24.10.2016

FAO: 28.12.2016

Second Appeal: 20.02.2017

Appellant: Present

Public authority: Shri A.K. Patro, Under Secretary

FINAL ORDER

FACTS

1. The appellant sought to know under which provisions of Constitution of India the BCCI is selecting Indian teams/players for tournaments/cricket matches with other countries as the BCCI is a society under Tamil Nadu Society Act, what is its authority to select team for India, along with relevant papers. The CPIO replied that the information is not available with them and transferring the application to the BCCI is not possible as BCCI is neither recognized by the Ministry of Youth Affairs and Sports nor it has declared as a public authority under RTI Act. The PIO suggested the applicant to seek this information directly from the BCCI. The First Appellate Authority (FAA) upheld the decision of the CPIO. Claiming dissatisfied, the appellant approached this Commission.

DECISION

2. Mr. A.K. Patro, the PIO, has reiterated before the Commission that no information was available with them since the Board of Control for Cricket in India was neither recognized by the Ministry of Youth Affairs and Sports (MoYAS) nor was declared as a public authority. It is common man's basic question as to why it should not be answerable under Right to Information Act, because it is not BCCI's team but 'team of India' or 'our National team'. Appellant neither alleged anything wrong against the BCCI nor said anything negative against Indian Team. The quality of performance of Indian team at international cricket proves beyond doubt that BCCI has selected the best team, which is proving one of the best in the world. Essence of appellant's question is who is BCCI?

3. The questions emerged for consideration before this Commission are:

- 1) Is BCCI a National Sports Federation?
- 2) Whether BCCI is selecting team India on its own without any approval of Government of India? (These two are questions of fact)
- 3) Whether the BCCI is a public functionary? If so,
- 4) How to make BCCI functionally transparent? (These two are questions of law)

1. Whether BCCI a National Sports Federation? Answer: The BCCI is a National Sports Federation for Cricket in India; Reasons:

4. It is a matter of open fact that The Board of Control for Cricket in India (BCCI) is the national governing body for cricket in India. This board was formed in

December 1928 as a society, and registered under the Tamil Nadu Societies Registration Act. It is a consortium of state cricket associations and the state associations select their representatives who in turn elect the BCCI officials.



The logo of BCCI derived from the emblem of the Order of the Star of India, symbol used by the British Raj. India gained Independence from British Raj, but Indian Cricket is yet to be relieved from logo designed by and reflecting British Raj. Why BCCI has in its logo a British Star, why not Ashoka's Chakra or four lions, why 'Satyameva Jayathe' is not the motto of BCCI?

Whether our team is Indian or British Indian? Symbol of BCCI is similar to the representation of the star of the order on the mantle of British Raj (see left). After First War of Indian Independence in 1857, to consolidate its sovereignty over India, British Crown created a new order of knighthood to honour loyal Indian Princes. No such honours were given after 1948. Did anybody notice that the BCCI is still hanging on to this colonial legacy, 'symbolically', & our team flags this logo even today.

5. *Constitutional status:* Being a state subject, "sports development" comes within the purview of the States up to the state level; at the national and international level, (including meeting international treaty obligations) it falls within the realm and remit of the Union Government under its residuary powers and within the ambit of Entries 10 and 13 of the Union List in the Seventh Schedule of the Constitution of India. At the national level, sports is at par with public education and public health, and like them sport is for public good and sport development is a public function.

6. *Grant of de facto recognition:* The MoYAS further stated that in *Zee Tele films Ltd. v. UOI*, (Writ Petition (Civil) No. 541 of 2004 with S.L.P. (C) No. 20186 of 2004), the Government has granted de-facto recognition to the BCCI and continues to recognize it as the apex national body for regulating the game of cricket in India. But the BCCI denied that the Government had ever granted any recognition to the Board. The Ministry submitted that BCCI had recently approached this Ministry for holding the ICC Cricket World Cup, 2011 in India, Sri Lanka and Bangladesh from 19th February, 2011 to 2nd April, 2011. This Ministry after getting the clearance of MEA and MHA conveyed its approval for holding the event. BCCI had also taken up the matter relating to Customs Duty Exemption with the Ministry of Finance for the World Cup, 2011. Ministry of Finance, in turn, referred the matter to this Ministry. The Finance Ministry was appraised of the factual position with regard to annual recognition and the stand taken by BCCI in the above mentioned Court case. Ministry of Finance had issued a circular disallowing BCCI Customs Duty Exemption.

8. *State support and tax concessions:* The BCCI's claim that it is not a non-National Sports Federation entity is not correct. The BCCI is committing to functions like nominating players for national awards, which is an exclusive function of NSF. In Para 14 (Written Statement by Sports Ministry to Supreme Court dated 17/03/2017 regarding Lodha Committee report) it was submitted that Board of Control for Cricket in India (BCCI) is a deemed NSF as far as Govt. of India is concerned. From time to time Govt. has been providing necessary support to BCCI to hold various events in

India. The kind of support includes making available land by State UT governments for stadia, tax concessions, making available security during the matches, facilities for visa etc. Therefore, it is incorrect to say that BCCI is not an NSF and does not fall within the purview of the Ministry of Youth Affairs & Sports, Govt. of India. Based on this stand of the Ministry, there cannot be any reason for the BCCI to claim itself as an un-registered NSF.

9. Representative of MoYAS said that the sports policy of India (including policy for cricket) is reflected in the National Sports Development Bill, 2013, which proposed

12. The National Sports Federation alone shall be eligible to—

- (a) Use the expression "India" or "Indian" or any equivalent expression in any other language in its title or in any athletic competition controlled by it;*
- (b) Represent or purport to represent itself as the National Sports Federation for the sport and represent India in the International Federation;*
- (c) Regulate the sport for which it is recognized for India.*
- (d) Select and nominate the national team which shall represent India in international athletic competitions for the sport.*

10. Further, Section 20 of the National Sports Federation Bill, 2013 deals with Recognition and Accreditation of National Sport Federation:

20. (1) The Central Government may, by notification specify, the period, on expiry of which, no body or association of persons shall function as a National Sports Federation in respect of a sport unless it is recognized by the International Federation for the concerned sport.

Provided that a National Sports Federation which has been granted accreditation by the Central Government in the year immediately preceding the year of the commencement of this Act shall be deemed to have been accredited under this Act subject to compliance of all other provisions under this Act.

11. Section 22 deals with Eligibility criteria for accreditation as National sports Federation:

22. (1) The National Sports Federation shall fulfil the following eligibility criteria for obtaining the certificate of accreditation, namely:— 21 of 1860, 1 of 1956, 2 of 1882. (a) It shall be a society registered under the Societies Registration Act, 1860 or any other State law or the Companies Act, 1956 or a trust created under the Indian Trusts Act, 1882 with the sole object of the development of that sport.

12. The BCCI, as a society registered under the Societies Registration Act, 1860 could be an eligible body to be declared as National Sports Federation (Cricket) or the Union Government could create a National Cricket Federation to perform the present functions of the BCCI. Section 37 deals with applicability of Right to Information Act, 2005:

37(1) The National Olympic Committee and the National Sports Federations shall be deemed to be public authorities as defined in clause (h) of section 2 of the Right to Information Act, 2005 and perform their duties and discharge their functions as such under that Act.

11. Whether BCCI is selecting team India on its own without any approval of Government of India? Answer: The BCCI has tacit recognition or approval/sanction from Government for selecting the Indian Team which gave it complete monopoly with deep and all pervasive control over the sport of Cricket in India; Reasons:

13. According to Supreme Court, 'it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party

may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.' As explained by apex court in BCCI case it is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not 'State' within the meaning of Article 12. The rationale underlying that view lies in the "nature of duties and functions" which the BCCI performs. It is common ground that the Board has a complete sway over the game of cricket in this country. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and Supporting State Associations. It frames pension schemes and incurs expenditure on coaches, trainers etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board's monopoly in the field of cricket. On the contrary, the Government of India have allowed the Board to select the national team which is then recognized by all concerned and applauded by the entire nation including at times by the highest of the dignitaries when they win tournaments and bring laurels home. Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government. Such is the passion for this game in this country that cricketers are seen as icons by youngsters, middle aged and the old alike. Any organization or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the Board are clearly public functions, which, till such time the State intervenes to take-over the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a nongovernment body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action, said the apex court. How can anybody disagree with these propositions?

14. Though it's a norm that the Government should not interfere in the national sports activity, which is part of people's autonomy. But across the world, various nations have enacted laws or enunciated guidelines for the regulation of sports in public and national interest. The need to regulate sports arises to prevent arbitrariness, conflict of interest, racism, doping, age fraud, betting or gambling, commerce dominating sportive spirit, to protect athletes' rights, child abuse sexual harassment, ban dangerous sports, to promote gender equality, professional management and managerial and financial accountability, address anti-trust and competition policy issues related to sports, manage broadcasting rights, the price and entry to sports events, etc.

15. In a written submission on 16.12.2011 to CIC, the Sports Ministry explained how the BCCI was at par with other NSFs: "Whenever BCCI had faced difficulty in obtaining the Customs duty Exemption; BCCI approached this Ministry seeking a

certificate that it is the recognized National Sports Federation for Cricket in India. Ministry has issued such certificates in favor of BCCI. Thus BCCI has been at par with other NSFs and has been availing itself of various Government benefits such as Customs Duty Exemption, Income Tax exemption, etc. Since BCCI is a very old body, there are no papers relating to BCCI's recognition by Government of documents such as annual report, audited accounts, details of national championships held, utilization certificate in respect of Government grants, etc. The BCCI has been seeking Customs Duty/Income Tax and other exemptions from the Union Government and also land is allotted to it/its affiliates at concessional rates by various State Governments. As such BCCI is getting indirect and substantial funding from Government/State Governments. While for organization of an event, all civic and security services are provided/arranged by the Central or concerned State Governments. Even in case some amount is charged from the organizers, the hidden costs of expenditure on security, visa clearances, etc. cannot not denied being incurred by the Government". All these points prove that BCCI can be public authority under RTI Act.

16. *Monopoly over cricket*: Granting monopoly or not diluting it, itself is a major, direct and substantial funding/concession from Union Government and State Governments. In *Board of Control for Cricket in India v. Netaji Cricket Club*, (2005) 4 SCC 741, Supreme Court referred to monopoly status of BCCI, and said: "The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regards regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State associations except Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deeply pervasive and complete. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of "fairness" and "good faith" in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards."

III. Whether the BCCI is a public functionary? Answer: The BCCI is a public functionary, as endorsed by the apex court in different judgments, more so in 2015 and 2016 in BCCI v. Cricket Association of Bihar; Reasons:

17. Even though National Sports bodies are autonomous in nature, the Supreme Court of India and several High Courts have, in various judgments, maintained that although they are not State' within the meaning of Article 12 of the Constitution of India, they are amenable to the writ jurisdiction of High Courts under Article 226 of the Constitution of India because they perform 'state-like functions' such as the selection of national teams and representing the country in international sports events and forums. The apex court is monitoring the reforms in administration of BCCI based on the recommendations of Justice Lodha Committee constituted in a Writ Petition.

18. *Public duties of BCCI*: The Supreme Court reviewed the working of BCCI covering all aspects and emphasized the need for comprehensive reform of its

governance. In case of *BCCI v. Cricket Association of Bihar*, [(2015) 3 SCC 251] on 22nd January, 2015, the Supreme Court explained the character of BCCI said: "..... it is admitted position that respondent-BCCI does discharge several important public functions which make it amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.... In *Sukhdev v. Bhagatram Sardar Singh Raghuvanshi*, (1975) 1 SCC 421, quoting *Marsh v. Alabama* (3) 326 U.S. 501, 19 L. 22 ed. 265 held that even where a corporation is privately performing a public function it is bound by the constitutional standard applicable to all State actions".

19. *Instrumentality or Agency of State*: In *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489 Supreme Court explained when a corporation or society would become instrumentality or agency of Government. It referred to American decisions in *Evans v. Newton*, 382 US 296, 15 L.Ed.-2nd 373, Ch 614 : 1963 1 All. E.R. 590 and *New York v. United States* 326 US 572 and declared that if the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the State. In *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722, Supreme Court noted the constitutional philosophy of a democratic socialistic republic requiring the government to undertake a multitude of socioeconomic operations, and Supreme Court went on to enunciate certain tests applicable for determining whether an entity is an "instrumentality or the agency of the State", an expression that does not figure in Article 12 of the Constitution but which would constitute an authority under Article 12 of the Constitution.

IV. How to make BCCI functionally transparent? Answer: All the points discussed above answers the fourth question. The measures suggested by the Justice Lodha Committee and the Supreme Court should be followed soon to make the BCCI functionally transparent, the Committee of Administrators and BCCI's CEO have to make maximum disclosures on their official website to facilitate the public scrutiny of its functioning. The Ministry of Youth and Sports has to coordinate with other agencies and implement the judgment of the Supreme Court to make BCCI answerable and accountable under the Right to Information Act. The Law Commission is expected to guide the Government of India to on the recommendation of Supreme Court, to fulfil the formality of declaring the BCCI as public authority under RTI Act; Measures required:

20. *Need to regulate BCCI*: The Supreme Court referred to various irregular activities happening in the field of Cricket and explained the need to set right things in BCCI. In *K. Murugon v. Fencing Association of India, Jabalpur*, (1991) 2 SCC 412 Supreme Court said: "BCCI is a very important institution that discharges important public functions. Demands of institutional integrity are, therefore, heavy and need to be met suitably in larger public interest. Individuals are birds of passage while institutions are forever. The expectations of the millions of cricket lovers in particular and public at large in general, have lowered considerably the threshold of tolerance for any mischief, wrong doing or corrupt practices which ought to be weeded out of the system. Conflict of interest is one area which appears to have led to the current confusion and serious misgivings in the public mind as to the manner in which BCCI is managing its affairs". This will squarely apply to present day situation even.

21. *SC's Lodha Committee*: In *BCCI v. Cricket Association of Bihar*, [(2015) 3 SCC 251] the Supreme Court Bench of T.S. Thakur and Fakkir Mohamed Ibrahim Kalifulla, JJ, on January 22, 2015, constituted a Committee with Hon'ble Mr. Justice R.M. Lodha, former Chief Justice of India - Chairma, Hon'ble Mr. Justice Ashok Bhan, former Judge, Supreme Court of India - Member, Hon'ble Mr. Justice R.V. Raveendran, former Judge, Supreme Court of India - Member The SC explained powers: The order passed by the Committee shall be final and binding upon BCCI and the parties concerned subject to

the right of the aggrieved party seeking redress in appropriate judicial proceedings in accordance with law. This three-member Committee is also requested to examine and make suitable recommendations to the BCCI for such reforms in its practices and procedures and such amendments in the Memorandum of Association, Rules and Regulations as may be considered necessary and proper on matters specified in this order. The Committee has to consider amendments necessary to the memorandum of association of the BCCI and the prevalent rules and regulations for streamlining the conduct of elections to different posts/officers in the BCCI, resolving conflict of interest, prohibiting creation or holding of any commercial interest by the administrators, with particular reference to persons, who by virtue of their proficiency in the game of Cricket, were to necessarily play some role as Coaches, Managers, Commentators etc., considering recommendations of the Probe Committee headed by Justice Mudgal as found approved by Justice Lodha Committee.

22. *Centralization of Powers:* In 2016 in *BCCI v. Cricket Association of Bihar*, the SC bench of T.S. Thakur, Fakkir Mohamed Ibrahim Kalifulla, JJ on July 18, 2016, (<https://indiankanoon.org/doc/101366341>), said, while the principle is separation of powers in the Constitution, all powers merge in working committee, as far as the BCCI is concerned, the working Committee not only lays down the relevant rules, regulations and bye-laws that govern the BCCI, but also oversee their implementation and takes final decisions when a Member or third party challenges either the rule or the manner of its implementation. These overlaps provide for extremely complicated and messy functioning. It found that players had no voice at all, and Board does not allow independent voice. The apex court observed: "*The BCCI has not embraced the modern principles of open governance, which is all the more necessary when discharging such far reaching public functions. The Working Committee consists entirely of representatives of the Full Members, thereby making it's functioning a closed-door affair with no representation of players or audit experts to act as checks on governance*". It also advised to regulate affairs to prevent 'conflict of interest'.

23. *No Disclosure on BCCI website:* Referring to recommendations of Lodha Committee, the Supreme Court emphasized the need for transparency in BCCI: In Chapter eight of the report, the Committee noted that BCCI in its website did not carry the existing constitution or the bye-laws of BCCI, very little of the functioning of the BCCI is done in a fair and transparent manner and that those who seek greater information are either rebuffed by the Board or won over by enticements, that those whose professional livelihood depends on cricket acknowledge the BCCI's total sway over the sport, and choose to remain silent rather than upset the apple cart, and therefore, recommended that players and the public, ought to have access to all rules and regulations, codes and instructions of the BCCI in English and Hindi and that the same should be uploaded on the official website of the BCCI.

24. *Commerce dominates:* The Lodha Committee further noticed that the commercial angle has overtaken the enjoyment of the sport, with advertisements continuing many a times even after the first ball and again commencing even after the last ball is played thereby interrupting the full and proper broadcast of the game. The Committee has opined that people of the country have a right to know the details about the functions of the BCCI and its activities and recommends to the legislature to bring BCCI within the purview of the RTI Act as a public authority. The BCCI must provide the relevant information in discharge of its public functions. All rules and regulations, norms, details of meetings, expenditures, balance sheets, reports and orders of authorities are to be uploaded on the website as well. The Committee fervently hoped that this report will bring cricket fans back to the fold and put an end to regional excesses and imbalances, reign by cliques, corruption and red tape, all of which have harmed the game and the youngsters looking for nothing

more than to take the field in flannels. Apex court quoted with approval: "In the light of all this, the Committee proposes that clear principles of transparency be laid down, and the BCCI website and office will carry all rules, regulations and office orders of the BCCI, the constitution of the various committees, their resolutions, the expenditures under various heads, the reports of the Ombudsman/Auditor/Electoral Officer/Ethics Officer and the annual reports and balance sheets. In addition, norms and procedures shall be laid down for the engagement of service professionals and contractors, and there shall be full transparency of all tenders floated and bids invited by or on behalf of the BCCI. The website shall also have links to the various stadia with seating capacities and transparent direct ticketing facilities.

25. *Bring BCCI under RTI*: Apex court referred with approval the recommendation of the BCCI being under the purview of Right to Information Act and for carrying out a suitable amendment to this effect. Committee recommended Citizens Charter by BCCI: "The Right to Information Act, 2005 ('RTI Act') enacts that public authorities shall make known the particulars of the facilities available to citizens. While the issue of the BCCI being amenable to the RTI Act is sub judice before the High Court of Madras in W.P. No. 20229/2013, many respondents who appeared and interacted with the Committee were of the view that BCCI's activities must come under the RTI Act. Having regard to the emphasis laid by the Hon'ble Supreme Court that BCCI discharges public functions and also the Court's reference to indirect approval of the Central and State Governments in activities which has created a monopoly in the hands of the BCCI over cricket, the Committee feels that the people of the country have a right to know the details about the BCCI's functions and activities. It is therefore recommended that the legislature must seriously consider bringing BCCI within the purview of the RTI Act."

26. *People's Right to Know*: The Supreme Court reiterated this saying "since BCCI discharges public functions and since those functions are in the nature of a monopoly in the hands of the BCCI with tacit State Government and Central Government approvals, the public at large has a right to know and demand information as to the activities and functions of the BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under purview of Right to Information Act, we expect the Law Commission of India to examine the issue and make a suitable recommendation to the Government".

27. Regarding declaration of an organization of public authority under Section 2(h) of Right to Information Act, the apex court has laid down a test in a landmark order of 2013 in Thalappalem Service Cooperative Bank case (civil appeal no. 9017 of 2013) wherein it looked into the aspect of substantial financing, it considered Section 2(h) of the RTI Act as a question of fact, which will depend upon the question as to whether the organization is substantially financed, directly or indirectly, by the funds provided by the State Government. This has to be decided by the Information Commission depending upon the facts and circumstances of each case. This includes non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government also. Substantial means 'something of real worth and importance'. The apex court laid down a test to determine the factor of substantial funding:

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist...

28. If this test applied, the question is: "whether BCCI will be able to completely

and independently manage all its affairs if the substantial support is withdrawn from the centre and the state governments"? This needs to be addressed by inquiring into matters like - *Monopoly or use of patronage* and the Governmental assent for selection of teams for India, facilitating practice and matches in state owned stadiums, providing security for conducting the games, etc. It is clear that if these forms of support are withdrawn from the government, then BCCI will not be able to conduct its affairs, and hence it has to be a public authority under RTI Act.

29. In its submissions and through the Bill, the Executive expressed its intention to make BCCI a public authority. The apex body of judiciary, the Supreme Court explained the need of transparency due to irregularities, scams and betting, and approved the recommendation of the Lodha Committee to make it public authority under RTI Act. But suggested the Law Commission to study and suggest the Government on this point.

30. When the constitutional estate of Executive abdicated its responsibility to set things right in BCCI, which could not even question the British Raj's colonial logo the Supreme Court became the voice of the people and undertook the task of reforming the BCCI and reviewed minute aspects of its administration, constituted Justice Lodha committee, entrusted it with the responsibility of reforms and implementation of its own idea of reform. It has agreed with suggestions of the Justice Lodha Committee, that BCCI should embrace modern principles of governance.

31. *The Responsibility of BCCI:* In an RTI application similar to this, Ms. Madhu Agrawal sought information from BCCI, when CIC took up the hearing and issued hearing notice to BCCI on the issue of making public authority, the later approached Madras High Court in 2013. The Hon'ble Madras High Court in W.P. No. 20229/2013 has stayed the hearing of CIC on 25th July 2013. Technically the Madras High Court is seized of the matter. However, since then much water has flown under the bridge, the apex court itself has recommended bringing a legislation to bring BCCI within the purview, after examining various factors and grounds that make it essential to declare the BCCI as public authority.

32. *The Committee of Administrators:* Now the administration of the BCCI is in the hands of *Committee of Administrators* appointed by Supreme Court. After approving almost all recommendations of Lodha Committee on July 18, 2016 he apex court has directed the Lodha Committee to supervise the implementation of those suggestions by the BCCI. Finding that the Board did not cooperate the Supreme Court removed BCCI President Anurag Thakur and Secretary Ajay Shirke from their posts on January 2, 2017, on the ground of non-implementation of recommendations in spite of its directions on July 18, 2016. Later on January 20, the Supreme Court, by an interim order appointed Mr Rahul Johri as BCCI Chief Executive Officer, until the Committee is constituted. During hearing the Supreme Court on January 30, 2017 has appointed four eminent personalities from varying backgrounds to a panel of administrators to oversee the running of the BCCI until fresh elections for office bearers. *The Committee of Administrators* is chaired by Vinod Rai, the former Comptroller and Auditor General of India, and it consists of Ramachandra Guha, the historian and cricket writer, Diana Edulji, the former India women's captain, and Vikram Limaye, managing director and CEO of IDFC (Infrastructure Development Finance Corporation). This CoA has taken charge with immediate effect started liaising with BCCI's chief executive officer Rahul Johri, who is in-charge of the daily administration of the board. This means the Union of India has taken over the administration of BCCI through the Supreme Court's appointed committee, hence the BCCI, its CoA already became public authority and answerable.

33. *Issues raised by Mr. Guha:* In a sensational move, historian and renowned author, Mr. Ramachandra Guha resigned from membership of the Committee of

Administrators. And after that, in a letter dated 2nd June 2017, to Chairman Vinod Rai, listed out the reasons for resignation. He has shocked the cricket fans by exposing various incidents of conflicts of interest involving cricketing super stars. He explained major issues of divergence for the sake of transparency. He has come down heavily on Indian cricket's big stars and preferential treatment accorded to them by the Board of Control for Cricket in India and also the CoA. He raised following issues.

- a) *CoA's failure to address conflict of interest issue*: National coaches neglecting national team. Delhi Daredevils coach Rahul Dravid is also in charge of the India A and India Junior team. Guha has criticised the lack of will of his colleagues to stamp out Conflict of Interest involving high-profile players-turned coaches. He wrote: "I have repeatedly pointed out that it is contrary to the spirit of the Lodha Committee for coaches or the support staff of the Indian senior or junior teams, or for the staff of the National Cricket Academy, to have contracts in the Indian Premier League. One cannot have dual loyalties of this kind and do proper justice to both. National duty must take precedence over club affiliation."
- b) *Superstar Syndrome*: He mentioned that Indian cricket's "superstar syndrome" was responsible for former India captain MS Dhoni getting BCCI's A contract. He wrote to Vinod Rai: "As you will recall, I had pointed out that awarding MS Dhoni an 'A' Contract when he had explicitly ruled himself out from all Test matches was indefensible on cricketing grounds, and sends absolutely the wrong messages". He pointed out that Dhoni happens to be the only cricketer in the Grade A list who isn't in the Test squad, others with BCCI top contract, get Rs. 2 crore a year, while players in Grade B get Rs. 1 crore and Grade C players earn Rs. 50 lakh.
- c) He also raises the issue of how Dhoni was a captain of the team while "holding a stake in a firm that represented some current India players". He wanted this "[superstar culture] must stop - and only we can stop it."
- d) Guha cites the example of Sunil Gavaskar heading the PMG company which manages cricketers like Shikhar Dhawan to Rishabh Pant, and continues to work as BCCI commentator. Guha categorically said: "Either he must step down/withdraw himself from PMG completely or stop being a commentator for BCCI."
- e) "Already, in a dismaying departure from international norms, current Indian players enjoy a veto power on who can be members of the commentary team. If it is to be coaches next, then perhaps selectors and office-bearers will follow," Guha predicted.
- f) Unprofessional way of handling the India coach issue. Kumble's contract coming under scrutiny despite his excellent past record and on eve of Champions Trophy.
- g) CoA's total neglect of domestic cricketers and huge gap in their match fee as compared to international players.
- h) CoA silence on the disqualified officials attending BCCI meets.
- i) "Clearly, the issue has been handled in an extremely insensitive and unprofessional manner by the BCCI CEO and the BCCI office-bearers, with the COA, by its silence and inaction, unfortunately being complicit in this regard. (Recall that the Court Order of 30 January had expressly mandated us to supervise the management of the BCCI.)," Guha said.

34. *How are they appointed?* This is what the appellant was asking. How the commentators, coaches, players are being appointed? How the domestic cricketers get encouragement, etc? This is where transparency plays a role. So far the people saw how the top officials of cricketing body hang on to their positions with several conflicts of interests. And this independent member of Committee, Mr. Guha has shown how one could throw away those high valued positions for values and principles. The Board

should have such independent and objectives minds on board to guide its functioning or put it back on track if misguided.

Role of BCCI, Lodha Committee & CoA

35. As per the orders of the Supreme Court, for all practical purposes, the Lodha Committee is supervising implementation of reforms, while the *Committee of Administrators* headed by Vinod Rai is administering the BCCI. Since bringing BCCI into purview of RTI was their significant recommendation to improve efficacy in BCCI administration through transparency, the people are looking to the Lodha Committee and Committee of Administrators for making BCCI fully transparent. The approval to report of the Lodha committee and significant propositions explained in elaborate orders referred above in a full-fledged hearing of all parties including the BCCI by the Supreme Court is the declaration of law under Article 141.

Role of Law Commission

36. The Supreme Court referred to monopoly of BCCI over the sport of Cricket, which is worth Lakhs of Crores of Rupees, and said: "... since BCCI discharges public functions and since those functions are in the nature of a monopoly in the hands of the BCCI with *tacit State Government and Central Government approvals*, the public at large has a *right to know* and demand information as to the activities and functions of the BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under purview of Right to Information Act, we expect the Law Commission of India to examine the issue and make a suitable recommendation to the Government".

Role of Ministry of Sports

37. The monopoly and sanction for the selection of Indian team is the real delegation of state power being life for BCCI, withdrawal of which would remove it from the scene. This second appeal highlights need for public scrutiny through RTI to prevent unjust enrichment through scams and conflicts of interest. The propositions laid down by the apex court need to be processed into legal declaration by the Executive. As per the observations from Supreme Court explained in two elaborate judgments in 2015 and 2016 the Executive has to perform its constitutional obligation. Where is such substantial initiative from the Government?

38. *As the nation looks to transparent functioning BCI, the CIC expects:*

- (i) *In the interest of good governance and healthy cricket, to avoid scams like match fixing, conflict of interests, misappropriation of public money etc besides upholding the sporting spirit, the BCCI should get ready to be fully transparent in all its functions, or conduct itself like a responsible National Sports Federation, and voluntarily publish its information to public as if it is the public authority under RTI Act till the Union of India formally declared it as the Public Authority through appropriate means.*
- (ii) *Like any other responsive public authority the Lodha Committee has been transparent all through regarding its working and placing the details of recommendations on website, wordpress. The cricket fans are expecting the Vinod Rai Committee of Administrators to make BCCI functioning fully transparent.*
- (iii) *The BCCI under the administration of the Committee of Administrators has to do maximum disclosure on its own, reducing the need to file any RTI. It has to respect apex court's order by establishing on its own, an RTI wing.*
- (iv) *The Committee of Administration and the CEO need to immediately initiate efforts to find the facts on the issues raised by Mr. Ramachandra Guha, take necessary steps to prevent wrongs, if found to have been committed.*

- (v) *It should also come up with Citizen's Charter on their official website. As Lodha Committee and the apex court pointed out that BCCI did not even publish its own constitution, bylaws, rules and regulations which amounts to refusal to disclose basic material, it is the duty of CoA to publish all such material on its website in both Hindi and English.*
- (vi) *The Law Commission has to inform what is their contemplated plan and the timeline, taking into account the urgency in view of the happenings in BCCI and cricket world.*
- (vii) *The MoYAS has to inform Supreme Court, this Commission and the appellant, its efforts to coordinate with Law Commission, CoA, Lodha Committee, or Attorney General of India to expedite the process of bringing a bill or adopting appropriate legal measures to declare BCCI as public Authority under RTI Act.*
- The Commission orders accordingly.
-

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.