

(2022) 05 DEL CK 0172

In the Delhi High Court

Case No : Civil Writ Petition No. 5703 Of 2020

Aslam Sher Khan

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 25-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(c)

Citation : (2022) 05 DEL CK 0172

Hon'ble Judges : Najmi Waziri, J;Swarana Kanta Sharma, J

Bench : Division Bench

Advocate : Vanshdeep Dalmia, Suchakshu Jain, Natasha Dalmia, Sachin Datta, Anil Soni, Neetu Devrani, Vinayak Sharma, Himanshu Goel, Devesh Dubey, Rajiv Nayar, Shyel Trehan, Bhagya K. Yadav, Rohan Poddar

Final Decision : Allowed

Judgement

NAJMI WAZRI, J

INDEX

S. No.

Particular

1.

The Beginning

2.

Legal Landscape

2.

Stand of Government of India

(GOI)

3.

Petitioner's Arguments

4

Contention on behalf of R-2 and

R-3 viz Hockey India and its

"Life Member"

5

Conclusions and Directions:

6

Accountability

W.P.(C) 5703/2020 & CM APPLs. 20604/2020, 6417/2021, 36762/2021

The Beginning

1. The petitioner is a former Olympian. He excelled in the game of hockey as a member of Indian Hockey Team in the 1976 Summer Olympics. He was also a prominent member of the Indian Hockey Team which won the gold medal at the 1975 Hockey World Cup. For many years thereafter, he is stated to have contributed to the advancement of the cause of hockey in India. As a senior player and as a concerned citizen, he desires that the management of the hockey in the country, be run according to the rules and the guidelines laid-down by the Government of India (GOI) through: i) Circular dated 20th September 1975 (hereinafter referred to as the 1975 Circular) ii) modified by letter of 14.8.2001 (the 2001 Guidelines) and iii) the National Sports Development Code of India, 2011 ('Sports Code'). He contends that there should be transparency in the affairs of the National Sports Federation (NSF) for hockey viz. Hockey India - R-2.

2. He is also concerned that the continued presence of certain persons as office bearers or otherwise in supernumerary posts or under not so innovative nomenclatures, such as Life President, Life Member and CEO is unwarranted and illegal, therefore, the same be struck down as not being in consonance with the Sports Code, as has already been held by this court in Mahipal Singh vs. UOI, 2018 SCC Del 10284.

3. The petition seeks the following specific reliefs:

"...a) Issue an appropriate Writ in the nature of Certiorari quashing Articles 2.1.3, 3.0, 4.1, 5.13, 5.14, 6.6.1 of the Respondent No. 2, MOA whereby the posts of 'Life Member', 'CEO' and 'Life President' have been created, being in blatant contravention of the NSCI, Circular 1975 and 2001 Guidelines, as illegal and unsustainable; and

- b) Issue an appropriate Writ in the nature of Certiorari quashing Articles 1.11, 4.1, 5.3, 6.6.1, insofar as they giving voting rights and recognize the posts of 'Life Member', 'CEO' and 'Life President' created in the Respondent No. 2, federation being in blatant contravention of the NSCI, Circular 1975 and 2001 Guidelines as illegal and unsustainable; and
- c) Issue an appropriate Writ in the nature of Certiorari quashing the appointments of the Respondent No. 3 and 4 as 'Life Member' as 'CEO' respectively in the Respondent No. 2 Federation; and
- d) Issue an appropriate Writ in the nature of Certiorari quashing consequential appointments of the Respondent No. 3 and 4 based on their being an office bearers/ life member in the Respondent No. 2 federation; and
- e) Issue an appropriate Writ in the nature of Mandamus directing the Respondent No. 3 and 4 to render accounts of all gratification and financial benefits received by them from the Respondent No. 2 for holding the posts of 'Life Member' and 'CEO' respectively from the time of their appointments until date, and refund the same to the accounts of the Respondent No.2; and
- f) Issue an appropriate Writ in the nature of Mandamus appointing an impartial Administrator or ad-hoc committee of eminent sport persons to administer the affairs and oversee the day to day functioning and working of the Respondent No. 2 until the MOA of the Respondent No. 2 is amended and fresh elections in accordance with the Model Election Guidelines under the NSCI are undertaken; and
- g) Issue an appropriate Writ in the nature of Mandamus appointing a Returning officer or directing such Administrator to conduct fresh elections of the Respondent No. 2 in accordance with the Model Election Guidelines under the NSCI; and
- h) Issue an appropriate Writ in the nature of Mandamus directing the Respondent No. 1 to cancel the affiliation of the Respondent No. 2 until the MOA of the Respondent No. 2 is amended, appointments of Respondent No. 3 and 4 are terminated and fresh elections in accordance with the Model Election Guidelines under the NSCI are undertaken..."

Legal Landscape:

4. Mahipal Singh (supra) held, inter alia, as under:

"62. The Model Election Guidelines annexed to the NSCI and constituting a part thereof clearly set out the officers who would constitute Office Bearers of the NSF, and the post of "Life President" is not among them. Indeed, neither does the NSCI, nor do any of the Circulars issued prior thereto, contemplate a post of "Life President" in an NSF. While Clause 19 of its pre-amended MOA included, in the Office Bearers of the AKFI, only the President, Vice Presidents, Honorary General Secretary, Honorary Joint Secretaries and Honorary Treasurer, Clause 8.9

of the amended MOA of the AKFI included, among the Office Bearers, the "Life President". This was, on the face of it, illegal, as the NSCI did not visualize any post of Life President at all, in an NSF, either as an Office Bearer, or otherwise.

63. In our opinion, as a beneficiary of the recognition conferred by the Government, the AKFI was bound by the stipulations contained in the NSCI, and other Cognate Guidelines issued by the Government, and had no authority to create posts *de hors*, and in excess of, those contemplated by the NSCI.

64. Apart from the fact that the AKFI, in its capacity as a NSF availing recognition from the Government, did not have any authority to create a post of "Life President", where the NSCI did not contemplate the existence of any such post, Clause 15.8 compounded the illegality by providing that the Life President would hold office during his entire life time. This stipulation, again, directly infringed the tenure limits, specified in the NSCI which, as already noted hereinabove, were binding on all recognised NSFs, including the AKFI. The creation of such an immortal entity, blessed with the gift of "ichhamrityu" (death at will) was, we are certain, not even remotely within the imagination, not to say contemplation, of the framers of the NSCI.

65. Equally, the post of Life President itself being an illegally created post, there could be no question of the holder of the said post having any right to represent the AKFI at any international forum. The NSCI, as well as the Guidelines issued prior thereto, clearly permitted representation, by any NSF, in continental or international sports events in which India was a participant, only if the NSF complied with the stipulations prescribed therein, which included adherence to the age specifications and tenure limits specified, as well as conducting of elections in accordance with the Model Election Guidelines.

66. In any event, the very creation of the post of Life President being vitiated by law, there could be no question of granting any benefits to the holder of such an illegally created post. Though Mr. Dubey asserted that no salary, or emoluments, were paid to Respondent No. 4, in his capacity as Life President, expenses would, no doubt, be incurred in allowing Respondent No. 4 to travel nationally and internationally, purportedly representing the country in sporting events. These expenses are defrayed out of public monies, and amount to thievery of the ordinary citizen by executive dispensation, which is completely unthinkable in law.

67. Clauses 8.9, 15.8 and 17.2 of the amended MOA of the AKFI are, therefore, declared to be completely illegal, and liable to be struck down..."

5. The SLP against the said judgment was dismissed on 31.08.2018. Therefore, the said order has attained finality. Its effect is that there can be no addition of posts by innovative nomenclatures or creation of new posts in the Managing/ Executive Committee (MC) of a NSF. In particular, there can be no Life President or Life Member in the NSF nor can there be a CEO on the Managing Committee, as it perpetuates the presence of some individuals and is against the very ethos of a democratically constituted body, be it a Society, Association of individuals or

a Federation, which the entity must be, to be granted recognition by the GOI. The petitioner contends that such illegal posts be struck down as being in gross breach of the Sports Code and against the dicta of Mahipal Singh. He also contends that there be at least financial accountability of those who have deliberately breached the law and illegally enjoyed the perks of such illegal positions.

6. Under the Sports Code the "Model Elections Guidelines to be followed by all Sports Federations" reads, inter-alia, as under:

"1. Short Title & Definitions

(1) These Bye-laws shall be called the 'Election Bye-laws' and shall govern the conduct of Election of Office Bearers and Members of Managing Committee of _____

(2) In these Bye-laws, unless the context otherwise requires, -

(a) 'clause' and 'sub-clause' mean the clause and sub-clause of these Bye-laws;

(b) 'Managing members' means Member of Managing Committee of _____

(c) 'Form' means the Form appended to these Bye-laws;

(d) _____ means Name of the Federation;

(e) 'Post' includes the office of President, Secretary General, Treasurer, Vice President, Joint Secretary and Member of Managing Committee of _____.

(f) 'Rule' means the rule of Rules and Regulations of _____.

2. Managing Committee:

(1) The 7 (Seven) Officer Bearers (in addition to 5 executive members) shall be as follows:-

1. President 1 (one)

2. Vice-Presidents 2 (two)

3. General Secretary 1 (One)

4. Treasurer 1 (One)

5. Joint Secretaries 2 (Two)

(Note the above number may be changed according to the Constitution of the concerned Federation)

3. Manner of Election:

(1) Office bearers and members of Managing Committee of _____ shall be elected by secret ballot.

(2) Election shall be held at the Annual General Council Meeting (AGM) in

accordance with the procedure prescribed hereinafter, from amongst the representatives of the Permanent Member States/ Union Territories/ Boards/ Institutions.

4. Electoral College:

(1) Each Permanent Member State/ Union Territory duly affiliated by _____ (abbreviation of Federation) as its Permanent Member shall have two votes at the elections of the Office Bearers and Managing Committee Members.

(2) For the purposes of sub-clause(1), each Permanent Member State/ Union Territory shall be represented by two members authorized by the President or Secretary General/ Secretary of the affiliated Permanent Member State/ Union Territory; however, in case President/ Secretary General/ Secretary nominates different person(s) authorized by the President shall be deemed to be the duly authorized person(s). Irrespective of the date.

7. The model nomination paper for election to a 'Post' is prescribed as under:

NOMINATION PAPER FOR

ELECTION

AS _____(NAME OF THE POST)

TO

(Name and address of returning officer)

The Returning Officer for above Election

We nominate

Shri/Smt./Ms. _____ (name and address), whose name is entered at SI.No. _____ in the Electoral College list for the above mentioned post.

2. Our particulars are given below:-

Name of candidate

Name of Member State/Union Territory/Board/Institute

SI. No. in the electoral college list

Sign.

Proposer

Seconder

I, the candidate above named, do hereby give my assent to my nomination for the above post.

Name of the Candidate_____

Name of Member State/Union Territory/ Board/ Institution

Sl. No. In the electoral College list_____

Signature

Place:

Date:?"

...."

8. Clause 2 of the Model Election Guidelines stipulates that there would be seven posts/office bearers and five Executive Members in the Managing Committee; elections to the same are to be held at the NSF's Annual General Meeting (AGM) [clause 3(2)].

9. It is evident from the Model Nomination Paper that for the post of office bearers candidates are required to be from one or the other Member State, Union Territory, Board or Institution, figuring in the Electoral College list.

Stand of Government of India (GOI):

10. Mr. Sachin Datta, the learned Senior Advocate for the Union of India, upon instructions, agrees with the said contentions. However, he says that the GOI's letter dated 24.11.2020 should not be construed to mean that the Government has permitted the position of Life Member, Life President and CEO. The said letter addressed to the President of Hockey India reads inter-alia as under:

" No. 32-02/2020-SP-III

Government of India

Ministry of Youth Affairs & Sports

Department of Sports

.....

Shastri Bhawan, New Delhi

24th November 2020

To,

President,

Hockey India,

B1/E4, Ground Floor,

Mohan Cooperative Industrial Estate Mathura Road, New Delhi – 110044

Subject: Holding of Honorary Posts in Hockey India to enable members to contest for posts in the International Federation

Sir,

I am directed to refer to Hockey India's letter No. HI/MYAS/2020/11/04 dated 17.11.2020 on the above subject and to acknowledge the receipt of proposed amendments in Hockey India's constitution. Comments of the Ministry on the said proposed amendments in Hockey India's constitution will be conveyed in due course of time.

2. As regards the honorary post of Life Member, it is informed that as there is no specific mention in the National Sports Development Code 2011 for the post of honorary life member, it is for the respective National Sports Federation to take a view for having life members without voting rights in their Executive Body as well as General Body.

3. This issues with the approval of the competent authority.

Yours faithfully.

Sd/-

(S.P.S. Tomar)

Deputy Secretary to the Government of India"

11. Comments, if any, of the Government of India to the proposed amendments to the Hockey India's Articles of Association/constitution are not on record. However, the suggestions of the Government have been implemented, inasmuch as voting rights of the Life President, Life Member and CEO have been taken away. Nevertheless, the supernumerary and illegal posts of Life President, Life Members and CEO do exist in the constitution of R-2, which is not envisaged under the Sports Code as held in Mahipal Singh (supra).

12. A NSF is envisaged as a dynamic body, its management vests in members of a Managing Committee elected through a valid election process. The objective of such election is to provide due representation to the best talent, resource and skill available. In each Managing Committee, sports-persons need to have a representation of at least 25% as mandated in the Sports Code. Therefore, conceptually there is no scope for a permanent position for any individual in a NSF. Hockey is an Olympic sport. It is also categorized as a "priority sport" in India. The spirit of Olympism needs to be respected. Olympism promotes space for growth and recognition of the best talent in each human generation, so that the individual and the society progresses from strength to strength, as aspired in the Olympic motto 'Citius - Altius - Fortius': Faster - Higher - Stronger. It is, therefore, vital that the meritorious and experienced players in the sport concerned and familiar with its needs, be accorded an opportunity to contribute

their time, skill and expertise in the management of the NSF for advancement of the sport in India.

13. The court is informed that apropos similar innovative and illegal posts having been created by Indian Amateur Boxing Federation ('IABF'), the Government had unambiguously conveyed to IABF that there could be no breach of the Sports Code. Indeed, by order dated 07.12.2012 recognition of IABF was suspended. It was put on notice for de-recognition. A copy of the said order has been shared between the counsel. It reads as under:

BY SPEED POST

No. 19-10/2010-SP.III

Government of India

Ministry of Youth Affairs & Sports (Department of Sports)

(Department of Sports)

New Delhi, the 7th December, 2012

The Secretary General,

Indian Amateur Boxing Federation,

Room No. 2 & #, 2nd Floor,

NDMC Building

Palika Place, Punchkuian Road,

New Delhi - 110001

Subject: Annual General Meeting of Indian Amateur Boxing Federation held at Patiala on 23rd September, 2012 and holding of election of Office Bearers therein - reg.

Sir,

I am directed to refer to your letter No. IABF/AGM/2012-13/0520 dated 19th November, 2012 on the subject mentioned above. While examining the reply of the IABF, the following have been noticed:

that the time period between the finalization of the electoral roll and the filing of nomination was very short. Since the candidates had to file their nominations in person, it was discriminatory particularly against the candidates from far flung areas.

the proposal to amend the constitution in order to create a post of Chairman and to permit office bearers of the IABF to be office bearers of other NSFs were against the principles of good governance and the National Sports Development Code of India, 2011;

The decision of the Returning Officer to call for nominations from the floor of the House was completely illegal for the following reasons:

(a) No evidence has been produced that indicates that the officials list (Electoral College) was widely publicized. In any case the time between the publication of the Electoral College and the date of nomination is so short, that general publicity, except through the website of the IABF would be impossible. This also means that persons in the electoral list, without access to the internet, would have had no knowledge about the Electoral College.

(b) There is no provision in any rule which allows nominations from the floor of the House. The Returning Officer completely erred in accepting the nominations after the last date of filing of nominations and even after the last date for withdrawal.

2. It is, therefore, clear that the elections violated the Sports Code Guidelines, the Constitution of the IABF itself and the manner in which they were held violated the basic principles of Natural justice.

3. The IABF is therefore, advised to annul the election held at Patiala on 23rd September, 2012 with immediate effect and to hold fresh elections for all the elective posts under an independent Returning Officer in compliance with the National Sports Development Code of India, 2011 and declare the results of the same afresh. While issuing the Notice, it may be ensured that there is sufficient time between finalization and circulation of the Electoral College and last date of filing of nominations so that all eligible and willing persons could file their nominations.

4. The recognition granted earlier to the IABF is hereby suspended. The IABF is requested to communicate its decision regarding holding of fresh elections within 15 days of receipt of this letter, failing which the Government may derecognize the IABF without any further notice.

5. A copy of the Notice to be issued for holding the fresh election alongwith the name of Returning Officer be also sent to the Ministry well in advance.

6. The Federation is also requested to specify tenure and terms and conditions for the post of Chairman created by the federation during the AGM held on 23rd September, 2012. It should also be specified in their Constitution that the person holding the post of Chairman will not form a part of the Electoral College in any future election.

Yours faithfully,

(Onkar Kedia)

Joint Secretary to the Government of India.”

(Emphasis Supplied).

14. Also by its letter dated 16.03.2020, the Government had cautioned the All

India Tennis Association that the position of Life President and Life Vice-President is unnecessary and is contrary to the dicta of this court in Mahipal Singh (supra) and is against the Sports Code. Therefore, the said NSF was directed to amend its bye-laws within six weeks from the said date. There was compliance. The letter to the AITA was regarding creation of post of Life President and such similar posts in contravention to the Sports Code. What is to be seen from the above is that Mahipal Singh (supra) prohibits creation of posts or additional nomenclature being given to any executive body or in the General Body of NSF, which is beyond the Model Elections Guidelines.

15. Apropos the Archery Association of India (NSF for Archery), the Supreme Court has by order dated 01.05.2019 in Maharashtra Archery Association vs. Rahul Mehra and Ors. (2019) 18 SCC 287 held, inter alia, as under:

" 21. We make it clear that the High Court may also consider the stand taken by the appellant(s) and Union of India that the decision of this Court in Board of Control for Cricket (supra) will be of no avail to the present case, because the National Sports Code takes within its fold fifty-two disciplines of sports and Cricket is not one of the scheduled sports. In other words, the dispensation to be followed must be in conformity with the National Sports Code in so far as AAI is concerned. We keep this issue open to be considered at the appropriate stage."

(emphasis supplied)

16. In effect, till such time that a sports body structures itself according to the Sports Code and adheres to its stipulates, it will not be granted recognition by the Central Government. In the circumstances, it would be in the fitness of things that Hockey India put its house in order lest the Central Government shall suspend its recognition and not grant any benefits to it, as has been directed in W.P. (C) 2310/2012 titled Indian Olympic Association vs. Union of India (2012 DLT 389) which is reproduced hereunder: -

"....86. For the foregoing reasons, it is held that the petitioners' contentions are rejected. The Court reiterates its conclusions that international sports and regulation of NSFs, and IOA, in respect of the matters which are the subject of these proceedings, falls within Entry 97 of the First List to the Seventh Schedule to the Constitution of India. The Central Government can insist upon adherence to these provisions, without the aid of legislation. It is also held that the Sports Code does not violate the freedom under Article 19(1)(c) of the Constitution. Neither are its provisions arbitrary. The tenure restrictions impugned in this case can and are insisted upon as a part of the public interest in efficient and fair administration of such NSFs. This Court also specifically notes the letter/notice dated 20.09.1975, which forms part of the Sports Code, as modified by the later letter of 01.05.2010, to the following extent:

"i. The President of any recognized National Sports Federation, including the Indian Olympic Association can hold the office for a maximum period of twelve years with or without break:

ii. The Secretary (or by whatever other designation such as Secretary General or General Secretary by which he is referred to) and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, may serve a maximum of two successive terms of four years each after which a minimum 'Cooling off period of four years will apply to seek fresh election to either post.

iii. The President, the Secretary and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, shall cease to hold that post on attaining the age of 70 years.

iv. The other provisions in respect of the tenure limit as contained in the letter of 1975 mentioned above shall remain as it is.

v. The above dispensation will come into operation with immediate effect."

This regulation (subject to any subsequent amendments) should, till appropriate legislation is framed by Parliament, bind the parties and all NSFs as a condition for recognition, aid and crucially, for the use of the term "India" by any team in International Olympic sporting event." ...

Petitioner's Arguments

17. Mr. Vanshdeep Dalmia, the learned counsel for the petitioner submits that all NSFs will have to be treated alike. He contends that, that which is not permitted directly, cannot be introduced indirectly and illegally, yet this is what has been done by Hockey India. It is a brazen endeavour to make permanent positions for persons, who may have political, administrative or social influence over other members of the NSF, thereby, leading to the lop-sided and monopolistic administration of the sports body. He further submits that the mere presence of such individuals even in non-voting capacity, asserts influence in the subsequent management of the NSF and in the fair and independent decision-making process and is undaunted voting process during its General Body Meetings, etc.

18. Insofar as the Sports Code does not provide for any Life Member, Life President or CEO in the MC of NSF, vesting authority in such 'Posts' to run the affairs and/or to have any sway in the management of a NSF is impermissible. If such supernumerary positions are created or such persons are granted the powers of the MC, the Government of India will be bound not to recognize the said NSF. It is desirable that there be consistency and predictability in the management and administrative structure of a NSF, as it will aid in good governance by bringing about uniformity, discipline and transparency in the administration of the sports bodies.

19. Insofar as the Government has taken a view with respect to IABF, the same view would be applicable to all NSFs, including Hockey India. It could have been clearly conveyed to R-2 in the letter dated 24.11.2020 that the position of Life Member, Life President and CEO, with the voting rights on the Managing/ Executive Body of Hockey India, was impermissible, and that the same should

have been discontinued promptly. R-2 should have been put to notice of suspension due to non-adherence to the Sports Code. Instead, of leaving it to the NSF to take a call in the matter, strict implementation of the rules and mandate of the Sports Code was warranted, lest it lend to a perception of indulgence or cause confusion.

20. However, for legitimate management of R-2, some immediate remedial measures need to be set in motion without the loss of recognition by GOI.

Contention on behalf of R-2 and R-3 viz Hockey India and its "Life Member"

21. The contention of Hockey India is that the Sports Code itself contemplates professionalization of management of sports bodies under the following clause:

" 1.4.9 Professionalisation of management

One of the acute problems being faced by many national federations is the lack of professional skills to plan and implement detailed programmes for the long term development of sports. Most office bearers worldwide are in honorary capacity and find it difficult to manage the complex workings of large Federations without taking outside professional skill. Appointment of professionals in such a scenario does not in any way diminish the status or responsibility of federation executives.

Planning in this area should address issues such as appointments of staff to handle administration and finance. It should also include professional development programmes setting up of administrative procedures, improved communication and meeting procedures and committee structures."

22. Ms. Shyel Trehan, the learned counsel for R-3 submits, that it is in furtherance of professionalization and good governance of sports management, that a CEO was appointed by Hockey India. The court is of the view that, there can be no dispute that professional management of NSFs could only be for the benefit of the sport and sports-persons. Therefore, appointment of CEOs and such other managers cannot be questioned. However, an illegality manifests when such CEOs or managers form a part of the Executive Body and/or are given a voting right in a NSF. A CEO or other manager is at best an employee or a consultant and would have to follow the directions and the targets set by the sports body. It is of some comfort though that with passage of time, Hockey India has reconsidered its position and ensured that no voting rights vest in the Life President, Life Members or CEO. Hockey India Federation defines the role of CEO as under:

" 5.13 CEO

The CEO will have all the powers of the Secretary General, will be Member of the Executive Board with voting rights and will exercise these powers under the guidance and control of Secretary General. The CEO in case of unavailability of the President will also have the powers given to President under 5.4.5. Any such

orders made by the CEO must subsequently be confirmed by the Working Board/ Executive Board or Congress as the case may be.”

23. There cannot be two posts with the same executive/management powers. The Secretary General is a prescribed /permitted ‘Post’ whereas the CEO with voting powers in the Managing Committee, is not. The CEO cannot have the powers of the President or the Secretary General of the NSF. Therefore, the lavishly but erringly vested powers in the CEO, will have to go. It is so ordered. The CEO can at best be an employee or consultant on contractual basis.

24. Mr. Rajiv Nayar, the learned Senior Advocate for R-2 refers to the provision for CEO in the management body of International Hockey Federation (FIH), the relevant FIH provision reads, inter alia, as under:

“ 8.2. The CEO

(a) The Executive Board may appoint a CEO on such terms and conditions as to remuneration, period of employment (and termination thereof) and duties as the Executive Board deems fit.

(b) The CEO shall be a member of the Executive Board. He shall be responsible for managing the staff and the day-to-day operations of the FIH, for administering its affairs, and for implementing the decisions and policies of Congress and the Executive Board.”

(emphasis supplied)

25. It is to be noted that the said structure is specific to the Federation of International Hockey. It need not necessarily be adopted by Hockey India. The only rules a NSF needs to follow are contained in the Sports Code and as interpreted by the courts. A NSF is not answerable to an international body. Its legitimacy emanates from the recognition it receives from the Government of India. The rules set in India for such recognition have to be followed. As noted hereinabove, the GOI has already stated that the addition of posts beyond what has been laid down in the Sports Code (Model Election Guidelines) is an impermissible innovation, which will render the NSFs’ recognition liable to suspension and in the case of adamant recalcitrance lead to its de-recognition. That being the position, a CEO cannot be a Member of the Executive Body nor can the powers of Secretary General or President be vested in such Post. It will be open to a NSF to employ specialists and managers for the augmentation of the objectives of the NSF but without the said individual being a part of the Executive Body or having any voting right in the management of the said NSF.

26. The court is informed that, on an average, the Government spends approximately Rs.30-35 crores annually on hockey sporting activities under the aegis of Hockey India. However, the unaccounted benefits with respect to Government stadia and other infrastructure as well as concessions given towards Railways, air travel and sports equipment, which if computed, would run into a much larger financial figure. Should a NSF fall foul of the Sports Code, it would

have no right to retain its recognition with the Government of India and the Government is bound to either suspend the recognition for non-adherence with the Sports Code or to de-recognize the said NSF. The learned counsel for the petitioner says that it may well be considered that NSFs have an officer in the scheme of their managements, from the office of the Comptroller and Auditor General ('CAG'), to oversee the accounts of the NSF at all levels. Let this be considered by the GOI.

27. The Court is informed that Government of India has unambiguously stated its position in its affidavit dated 03.10.2012 in W.P. (Civil) No. 195/2010, viz Rahul Mehra vs. UOI, that new positions or designations, such as Chairmen, Advisors, Consultants, etc. created to accommodate persons who have become ineligible for re-elections is impermissible under the Sports Code. The said paragraph reads, inter alia, as under:

"14. That contentions raised by the Petitioner in Para 9 require no comments from the answering Respondent as the same are matters of record. However, going by the press reports, there appears to be some cases in which new positions/offices such as Chairman, Advisors, Consultants, etc, have been created in order to accommodate officials who have become ineligible for re-election as they have completed their maximum tenure and/or age as mandated under the Sports Code. When such posts are created with an intention to bypass or circumvent the provisions of the Sports Code, it amounts to defeating the very purpose of the said Sports Code and also violates principles of good governance and international best practices. In such cases, it would also entail action to derecognize such NSFs for such default."

28. In the same writ petition the Government has also asserted, by an earlier affidavit of 27.05.2012, inter alia as under:

"10. It is pertinent to mention here that the Government vide its communication dated 1st May 2010 issued tenure restrictions for the office bearers of the NSF's which is incorporated in the Sports Code. The salient features of the 1st May 2010 communication are:

- a. The President of any recognized NSF, including the IOA can hold the office for a maximum period of 12 years, with or without break.
- b. The Secretary/Secretary General/General Secretary and the Treasurer of any recognized NSF and the IOA, may serve a maximum of two successive terms of four years each, after which a minimum cooling off period of four years would apply to seek fresh election to either post.
- c. The President, Secretary and the Treasurer of any recognized NSF and the IOA, would cease to hold the post on attaining the age of 70 years.
- d. The other provisions in respect of the tenure limit as contained in the 1975 Guidelines were to remain unaffected.

e. It would not disturb the current tenure of any member, provided he/she has been properly elected to the post and would be operative for all future elections to be conducted as per the normal course in the IOA as well as NSFs.

f. Compliance with the aforesaid directions would be a mandatory precondition for receiving any form of assistance, financial or otherwise from the Government of India as well as to derive the authority to perform public functions of selection, deputation of national teams for participation in recognized continental and world level international sports competitions which involve representation of member countries, and to represent the country in international associations, events, meets, conferences etc.”

29. Copies of the said affidavits have been handed-over by the learned counsel for the petitioner to the learned counsel for the parties. There is no dispute apropos Government of India’s clear stand as noted above. A NSF, in particular its Managing/Executive Committee (MC), has to ensure that each member on the MC is eligible for, elected to and serves in that capacity, in strict adherence with the Sports Code. No deviation from the Guidelines, Circulars and the dicta of courts is permissible. Should any NSF do so, it will render itself out of the game. The GOI will promptly suspend its recognition, till the NSF conforms to the law, as discussed above. Indeed, the GOI has already ensured so, in the case of NSF’s representing tennis, boxing, wrestling, and some other sport disciplines. Such nature of prompt and equivalent action by the Government for strict adherence to the Sports Code apropos all NSF would be expected.

30. In *Narinder Batra vs UOI* [ILR (2009) 4 Del 280] this court has emphasized the primary obligation of NSFs towards players in contradistinction to the perks enjoyed by the Office Bearers of the NSFs. It has observed as under:

“...Today sports is no more something that can be dealt with in a meeting over a five star meal. It requires technical knowledge of both the game, the equipment and the training. Every aspect from the aerodynamics in equipment, even of the clothes worn by an athlete to shoes of a hockey/football/basket player; hair cut of the swimmer to 'weight and material of the equipment used is governed by scientific details and principles. In times of expertise, sports management experts are as important to a good sports programme just as experienced competent players or ex-players in decision and policy making areas who would ensure that the sports persons got the same, if not better residential/hotel and other facilities as the office bearers at national and international competition venues; who understood how important good treatment is for the self esteem and confidence of the teams and sports persons, especially when their opponents get the best; where real expenditure is incurred on and energy is devoted to sports persons rather than on maintenance of the office bearers or squabbles over elections. Only then could it be said that the sporting credentials or the tenure of the controlling board is immaterial for the interest of the sport....”

31. It is hoped that monies shall be expended largely on sports persons, their

training, equipment, healthy diet and the best of travel facilities and accommodation. The expenses incurred on the NSF's MC or its officials should not be extravagant, disproportionate or unnecessary.

Conclusions and Directions:

32. The 1975 Circular, the 2001 Guidelines, the Sports Code and the judgement of the Courts, govern sports administration in India. They collectively constitute the law on the subject. They have held sway over 57 years. They are here to stay. No variation of the same, to the detriment of sports-persons or to sports administration, is permissible.

33. Sports does not merely infuse a spirit of healthy competition among players, spectators and enthusiasts, it also gives people a unifying cause to rally behind, of course, with much passion and fun. Often the heart-beat of a nation is hinged on that subtle nick to the ball into the goal-post, in the last moments of a game. But, above all, it teaches discipline and respect for rules and to acknowledge the legitimate winner. It is a sublimation of physical energies and mental alacrity in a fair competition, to acknowledge a clear winner. It is a celebration of fair play. There can be no clandestine ways to win, as that would not be sport. Fairness on the play-field, admirable skills of players, unity of purpose, team-work and coordination, etc. are qualities and values which any sport, played fairly, imparts and instills in society.

34. Indeed, it is this spirit which is manifested in the Objective of the Sports Code. It reads inter alia:

".....1.1 Sports development is a national priority, as it promotes active lifestyle, child and youth development, social inclusiveness, employment opportunities, peace and development, and above all a sense of belongingness and national pride..."

35. In view of the above, the administrative setup of R-2, is, erroneously or illegally constituted because of the Life President and Life Members. The Government of India cannot grant recognition to a NSF whose constitution is not in consonance with the Sports Code. The posts of Life President, Life Member in the NSF are illegal so is the post of CEO in the Managing Committee. These posts are struck-down. All such references in the Constitution/Memorandum of Association of R-2 will have to be removed. As noted hereinabove, the mere presence of some persons in a Society as a Member or in a meeting, albeit without voting rights can influence independent decision-making and election process. Till such time it is brought in consonance with the Sports Code and as interpreted by this court, its affairs cannot be left in the hands of persons who have no legitimacy. In the absence of a Managing Committee, elected under a constitution strictly in consonance with the Sports Code and the court judgments, the interests of hockey, its development and the sentiments of the hockey-players, aspirants and enthusiasts should not suffer. Therefore, it would be in the public interest that its affairs be put in the hands of a Committee of

Administrators ('CoA') as has been directed by the Supreme Court on 18th May 2022, in the case of another NSF in All India Football Federation vs. Rahul Mehra & Ors (SLP (Civil) Nos. 30748-30749/2017). Accordingly, following three persons of eminence from the fields of law, public administration and elections, and from the sport of hockey at national and international levels, are appointed as members of the CoA:

- (i) Mr Justice Anil R Dave, former Judge of the Supreme Court;
- (ii) Dr S.Y Qureshi, IAS, former Chief Election Commissioner; and
- (iii) Mr Zafar Iqbal, former Olympian and captain of the Indian Hockey team, Padmashri awardee.

32. Concurrence of the members of the CoA would be sought, for their assistance. Their functions shall largely be the same as outlined by the Supreme Court in All India Football Federation vs. Rahul Mehra (supra) which are that the CoA shall:

- (i) assist in the preparation and adoption of the Constitution of R2 as per the Sports Code and court rulings;
- (ii) prepare the electoral roll/college for the purpose of conducting the elections to the Executive Committee in accordance with the provisions of the Constitution, as proposed;
- (iii) carry out the day-to-day governance of R-2;
- (iv) In discharging its task in terms of (iii) above, the CoA would be at liberty to take the assistance of the erstwhile EC/MC of R-2 which has continued thus far in order to facilitate decisions being taken, inter alia, on the holding of tournaments, selection of players and all other matters necessary for the proper governance of R-2;
- (v) The erstwhile Committee shall forthwith hand over the charge to the CoA;
- (vi) The CoA would be at liberty to make all appropriate arrangements, for the governance of Hockey India until fresh elections are held in terms of the Sports Code conforming constitution;
- (vii) facilitate the holding of elections and the handing over of the affairs to a democratically elected body in terms of its constitution which will be adopted, preferably within a period of 20 weeks from the date the learned CoA members give their assent.

33. The honorarium payable to the CoA members and facilities to be extended to them will be akin to what may be fixed in All India Football Federation vs. Rahul Mehra (supra). For the moment, a deposit of Rs. 3 lacs per month shall be made with each CoA member to meet expenses, etc.

Accountability

34. Individuals who have exhausted their age and/or tenure in terms of the Sports Code automatically disqualify themselves from contesting for any Executive Posts. The mere fact that the constitution of the NSF is not aligned with the Sports Code of 2011 and the law, it will not be to the advantage of either the NSF or its office-bearers. The age and tenure restrictions came into effect from 1st May 2010. The Sports Code only reiterates it in 2011. Persons who have been in posts such as Life President, Life Member and "CEO on the Management Committee" (with voting rights), which is clearly in breach of the Sports Code, and have enjoyed benefits of such office and expenses have been incurred on them by a NSF in breach of the law must be asked to return the expended amounts. Revenues generated by a NSF is largely on account of recognition granted to it by the Government of India. In the absence of such recognition, the Society/Association would have no legitimacy or occasion to seek or attract sponsorship for any tournament, sporting event, travel, accommodation, training and/or other administrative measures. The monies which are so generated by a NSF, are more in the nature of public trust and the same is to be utilized in the public interest i.e. promotion of the sport and representation of India in international tournaments. The CoA shall ascertain the amount spent on such individuals and initiate process for recovery of the same, so shall the GOI. Expenses incurred on such supernumerary, innovative and illegal posts need to be recovered and there has to be accountability. Details of the amounts expended on such persons will be furnished by Hockey India before the CoA. The latter too shall examine the records and seek refund of monies from the current Life President and the Life Members, as may be.

35. The court is informed that the CEO, in the present case, is a person experienced in the game of hockey and has assisted the Indian team, in the capacity of an administrator; the CEO has no voting rights in the management of R-2; the CEO's assistance has been rendered on the basis of a contract, and not as an Office Bearer; her assistance was clearly on day-to-day basis for the Indian Hockey team. In the circumstances, the Court is of the view that recovery against the current CEO would not be warranted. Regarding retention of the services of the CEO as a consultant, the CoA may decide.

36. Logically then, the non-refund of such monies, as may be quantified, would render the individuals 'ineligible' for holding any 'Post' in the Managing Committee of a NSF. No premium can accrue to a person or entity for non-compliance with the law. It is a matter of record that R-3, the current 'Life-President' of Hockey-India, had successfully pursued the removal and derecognition of the erstwhile Indian Hockey Federation ('IHF') because its then President was entrenched as its President for 11 years. In R-3's said writ petition¹ this court had directed Government of India to investigate and enquire, if deemed necessary, apropos expenses made and to examine all complaints regarding breach of guidelines and grant of financial and other assistance to IHF.

37. In Mahipal Singh the Court had directed the GOI to take steps regarding

recovery of monies expended on persons who had occupied illegal positions in the Amateur Kabaddi Federation of India.

38. It was directed as under:

" 78. Given the totally clandestine and surreptitious manner in which the provisions of the MOA were illegally amended, in order to enable Respondent No. 5 to contest for the post of President, we further direct that Respondent No. 5 render accounts of all financial benefits, which have enured to Respondent No. 5, as and in her capacity as President of the AKFI since the time of her appointment to the said post on 19th May, 2013 until date, and the same be recovered from her, forthwith."

39. It is not known what was the follow-up, if any ensued. The age and tenure restrictions of the Sports Code as well as the cooling-off period between successive terms in the Managing Committee of a NSF, coupled with the necessary 2/3rd votes for the second term, are clear safeguards against permanent positions in a NSF. What cannot be done "per directum" is not permitted "per obliquum" meaning thereby, that, whatever is prohibited by law cannot be effected by an indirect or circuitous contrivance.

40. R-3 knew fully well that the post of Life President and Life Member in a NSF is illegal. He had been specifically intimated so by the Government of India. Yet when Hockey India was registered as a Society under the Societies Registration Act 1860, on 28.05.2009 and was granted prompt recognition by the Government of India within a couple of days thereof, R-3 went ahead and had himself appointed as Life Member of Hockey India. This smacks of brazen impertinence to the clear mandate of law. It was a less than honest but futile endeavour to institutionalize oneself in a body whose legitimacy itself is contingent upon conformity with the Sport Code and the law. What a paradox, to make oneself permanent in an entity whose tenure itself is impermanent. The illegal Post of Life President or Life Member cannot be the stepping-stone for any other position or benefit elsewhere, be it nationally (including in the Indian Olympic Association) or in international bodies. If R-3 has so benefitted, then such benefit or position shall end right away. Let the CoA look into the matter, so would the Government of India.

41. It will be open to the petitioner and the CoA to approach the Court in case of any difficulty.

42. The petition is allowed and disposed off in terms of the above.