

(2015) 09 DEL CK 0297

In the Delhi High Court

Case No : LPA 52/2014, CM Nos. 1138, 1139/2014, 14077/2015 LPA 53/2014, CM Nos. 1142, 1143/2014 and 14076/2015

Board of Control for Cricket in India

APPELLANT

Vs

Aryan Sehrawat and Others

RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 09 DEL CK 0297

Hon'ble Judges : G. Rohini, C.J. and Jayant Nath, J.

Bench : Division Bench

Advocate : Abhinav Vashisht, Senior Advocate, Radha Rangaswamy, Raman Kumar and Prateek Chadha, Advocates, for the Appellant; Sumati Anand, Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, C.J.

1. Board of Control for Cricket in India (for short "BCCI") preferred these two appeals aggrieved by the common order passed by the learned Single Judge dated 20.12.2013 disposing of W.P.(C) Nos. 5284/2013 and 5283/2013 with the following directions:

"13. For the reasons stated hereinabove, the writ petitions are disposed of with direction to the respondents to verify the genuineness and authenticity of the documents filed by the petitioners as proof of their respective date of birth, within four weeks from today. If on such verification, the respondents find that the aforesaid documents are genuine documents, they would record the date of birth of the petitioner in W.P(C) No. 5284/2013 as 27.2.1998 and that of the petitioner in W.P(C) No. 5283/2013 as 3.10.1996 in their data base and would accordingly consider them for playing in the tournaments for which they are found to be eligible, taking their date of birth to be 27.2.1998 and 3.10.1996 respectively."

2. The respondents herein/writ petitioners desired to participate in Under-16 Tournaments organized by BCCI in the year 2012-2013 in which those who are born on or after 01.09.1996 were eligible to participate. However, in the age determination test conducted through Tanner-White House 3 (TW3) method, the petitioner in W.P.(C) No. 5284/2013 was determined to be 16 years and 2 months as on 01.09.2012. Similarly, the petitioner in W.P.(C) No. 5283/2013 was determined as 16 years and 5 months on the said date. Though the petitioner in W.P.(C) No. 5283/2013 was held eligible to play in Under-16 Team giving him the benefit of six months, the petitioner in W.P.(C) No. 5284/2013 was held ineligible to participate. It is claimed by the writ petitioners that as per the birth certificates issued to the writ petitioners under the Registration of Births and Deaths Act, 1969, transfer certificates issued by the schools where the petitioners studied as well as the Passports, the date of birth of the petitioner in W.P.(C) No. 5284/2013 is 27.02.1998 and the date of birth of the petitioner in W.P.(C) No. 5283/2013 is 03.10.1996 and thus both of them were within the age limit prescribed and were eligible to participate in the tournament. Therefore, assailing the action of BCCI in declaring them ineligible to participate on the basis of the age determined by TW3 method, the petitioners filed W.P.(C) Nos. 5284/2013 and 5283/2013.

3. The writ petitions were contested by BCCI pleading that bone age test being conducted for age verification of the players by TW3 method has been recognized as the most authenticated and scientific method by various National sporting Federations in India as well as international sports bodies; that prevention of age manipulation for competent advantage is one of the factors underlying the Age Verification Programme of BCCI to contain the menace of manipulation of birth certificates which is rampant in South Asia; that the age testing process by GP method (Greulich-Pyle method) which was being followed by the Associations earlier had accuracy rate of +/- 2 (two) years, whereas the TW3 method has the accuracy rate of +/- 6 (six) months; that the age determination by TW3 method was adopted in accordance with the directions of this Court dated 11.10.2013 in CM No. 14211/2013 in W.P.(C) No. 612/2011 titled Lokniti Foundation v. Union of India & Others.

4. Rejecting the contentions of the respondents, the learned Single Judge opined that it would be highly unreasonable and unfair to the players if despite submitting authentic and genuine documents they are denied opportunity to play in a tournament meant for their age group merely because in the medical opinion their age could be more than 16 years. Accordingly, the writ petitions were disposed of with the above- noticed directions observing as under:

"10. In my view, though there can be no objection to the respondents subjecting a person seeking to play in a tournament meant for a particular age group to TW3 test for the purpose of verification of his age, but, if on such determination, and after giving benefit of margin of error up to six months on either side, it is found that the age so determined was resulting in the person concerned being

held ineligible to play in a tournament, the respondents should also take into consideration the documentary evidence, if any, produced by him as proof of his age. If the documents submitted by such a person are found to be authentic and genuine, the respondents would not be justified in giving preference to the age determined through use of TW3 method over the age as reflected in such unimpeachable documentary evidence. While determining the age of such a person, the respondents would also be entitled to ask him to produce such other evidence as they may feel necessary and appropriate in a given case. If a person seeking to play in such a tournament does not produce documentary evidence which should be available or can be obtained by him, the respondents would be justified in relying upon the age determined through TW3 method and ignoring the documents produced by him. If, however, such a person produces all such documents which he could be reasonably expected to produce as a proof of his age and such documentary evidence establishes the age claimed by him, the respondents would not be justified in discarding such documentary evidence and relying upon the determination of age through the use of TW3 method."

5. Aggrieved by the order of the learned Single Judge, the present appeals are filed by BCCI contending inter alia that the learned Single Judge ought not to have interfered in the policy matter of BCCI particularly in the absence of challenge to the policy of the Age Verification Programme of BCCI by the petitioners. On the other hand, it is contended by the learned counsel for the respondents/writ petitioners that the order under appeal does not suffer from any infirmity warranting interference by this Court.

6. As could be seen from the material available on record, from 01.04.2010, the Ministry of Sports, Government of India adopted a National Code Against Age Frauds in Sports (NCAAFS). The said Code set out the procedure for medical examination by medical and scientific testing paramount which are to be conducted by Sports Authority of India and National Sports Federations. The Working Committee of BCCI at its meeting held on 12.05.2012 in Chennai resolved to adopt the TW3 policy for all future BCCI Under-16 age group tournaments and the same was communicated to the concerned radiology centres inviting them to be partners in the process. The details of how the test was to be conducted were also conveyed. The BCCI also conveyed to the affiliated State Cricket Associations the AVP Rules and Regulations of BCCI which are to be followed for all Under-16 players. The said AVP became effective from 01.09.2012.

7. It is also relevant to note that BCCI is the governing body for the sport of cricket in India. The Age Verification Programme has been undertaken by BCCI to ensure a level playing field for competitive participation of players in its age group tournaments by ensuring competition only between players of similar skeletal maturity.

8. As rightly pointed out by the learned counsel for the Appellant/BCCI, the petitioners never challenged the policy of BCCI to adopt a scientific method of

determination of the age. It is not in dispute that BCCI was earlier adopting GP method which is also one of the bone age testing methods for determination of the age of players. From 01.09.2012 onwards, the BCCI has started adopting TW3 method in the place of GP method since TW3 method is found to be more authenticated scientific method all over the world. The fact that all the participants in Under-16 tournaments are subjected to the age determination test by TW- 3 method is also not in dispute.

9. Under these circumstances the policy decision taken by BCCI for adopting TW-3 method for age determination of the participants in Under-16 Tournaments cannot be held to be based on either irrational or extraneous criterion. The decision of BCCI, according to us, stands to the test of reasonableness and under no circumstances can be held to be against public interest. The law is well-settled that such a decision does not warrant interference under Article 226 merely because it is possible to take a different view.

10. We are also of the view that BCCI cannot be expected to have the method of verification of genuineness of documents which are given as proof of age by the players from all over the country. Evidently, the bone age test adopted by BCCI is to avoid discrimination between the players and to ensure a level playing field in age group tournaments. It may be added that even the petitioners did not raise any objection to the procedure/method of age determination being adopted by BCCI and had voluntarily subjected themselves to the age determination test by TW3 method conducted by BCCI. Merely because the age determined by TW3 method did not tally with the birth certificates and other documents produced by the petitioners, they cannot now turn around and seek a mandamus directing BCCI to rely upon the birth certificates.

11. Having regard to the admitted fact that BCCI has been adopting the scientific method of bone age test for age determination of players for all Under-16 tournaments for the past several years and that the petitioners were very well aware of the said fact and particularly in view of the undisputed fact that all the players participated in the Under-16 tournaments in the year 2012-2013 were subjected to age determination test by TW3 method, the impugned action of BCCI cannot be held to be arbitrary, unreasonable or discriminatory.

12. For the aforesaid reasons, we hold that the interference by this Court under Article 226 is not warranted and no mandamus can be issued compelling BCCI to adopt a different method for age determination of the writ petitioners.

13. Accordingly, the order under appeal is set aside and the writ petitions shall stand dismissed.

14. In the result, both the appeals are allowed. No order as to costs.