

(2016) 10 SC CK 0034

In the Supreme Court Of India

Case No : Special Leave Petition (Civil) No. 5174 of 2016

Dr. Subramanian Swamy

APPELLANT

Vs

Board of Control for Cricket in India

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 RCRCivil 957 : (2016) 6 RecentApexJudgments(RAJ) 313 : (2016) 10 Scale 6

Hon'ble Judges : T.S. Thakur, CJI, A.M. Khanwilkar and Dr. D.Y. Chandrachud, JJ.

Bench : Full Bench

Advocate : Petitioner in-person, for the Petitioner; Vikas Mehta, Advocate, for the Respondents

Final Decision : Disposed Of

Judgement

1. This petition challenges the decision of the Division Bench of the High Court of Judicature at Madras dated 20.01.2016 in Writ Petition No. 29617/2015. By that order the High Court dismissed the Writ Petition filed by the petitioner for the following reliefs:

"1. Dispense with the production of the original of the order dated 14.07.2015 of the Committee headed by Mr. Justice R.M. Lodha, for and on behalf of the 1st respondent;

2. grant an order of interim stay of the order dated 14.07.2015 of the Committee headed by Mr. Justice R.M. Lodha, for and on behalf of the 1st respondent pending disposal of the Writ Petition;

3. issue a Writ of Certiorari or any other Writ or order or direction in the nature of Writ of Certiorari calling for the records comprised in the order dated 14.07.2015 of the Committee headed by Mr. Justice Lodha for and on behalf of the first respondent, from the first respondent and quash the same; and

4. pass such further or other orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

2. The relief claimed by the petitioner to quash the order dated 14.07.2015 passed by the Committee headed by Mr. Justice R.M. Lodha (Former Chief Justice of India) was also prayed by Chennai Super Kings Limited (herein referred to as CSK) by way of Writ Petition No.26777/2015. That writ petition, however, was dismissed by the High Court on 20.01.2016. A Special Leave Petition filed in this Court against the said decision by CSK being SLP(C)No. 3758 of 2016, was withdrawn on 29.07.2016. The said order reads thus:

"Taken on Board.

Learned counsel for the petitioner seeks leave to withdraw the special leave petition which is hereby dismissed as withdrawn.

Application, if any, shall also stand disposed of."

3. The writ petition preferred by the petitioner was taken up by the High Court for preliminary hearing on 20.01.2016. The same was summarily dismissed by a speaking order which reads thus:

"In view of our findings in W.P. No.26777 of 2015 (Chennai Super Kings Chennai Ltd., v. Board of Control for Cricket in India and two others) dated 20.01.2016 qua as to who can raise the issue before this Court within the window granted by the Hon''ble Supreme Court vide order dated 22nd January, 2015 to an aggrieved party, the present petition filed by the petitioner in person, as a third party, ostensibly in public interest, cannot be maintained before this Court. Hence, the writ petition is dismissed. No costs. Consequently, miscellaneous petitions are closed."

4. According to the petitioner, the High Court committed manifest error in dismissing the Writ Petition without hearing the petitioner. Further, the High Court erroneously held that the petitioner had no locus to challenge the order of the Committee headed by Mr. Justice Lodha dated 14.07.2015. In that, the petitioner had raised issues on the basis of documentary evidence in his possession referred to in the Writ Petition, which would show that Mr. Lalit Modi had influenced the course of events which culminated with the suspension of CSK. The High Court ought to have analyzed those documents in public interest. The petitioner relied on the observations inter alia on paragraph 70 and 72 of the decision of this Court in the case of Board of Control for Cricket in India v. Cricket Association of Bihar and others, (2015) 3 SCC 251, which has expounded that the Probe Committee has recorded a specific finding that the allegations of match fixing, spot fixing or betting were not proved against Mr. Srinivasan in the course of the inquiry. On that finding, contends the petitioner that the decision of the Committee to suspend CSK was uncalled for and in any case disproportionate.

5. We have heard the petitioner at length. Considering the fact that the self-same decision of the Committee headed by Mr. Justice R.M. Lodha dated

14.07.2015, was unsuccessfully challenged by CSK (who were directly aggrieved by the decision) by way of substantive Writ Petition before the High Court; and that the adverse decision of the High Court has been allowed to attain finality by them due to withdrawal of the Special Leave Petition, it is not possible to permit the petitioner to question the same decision which has attained finality qua CSK.

6. The fact that the Probe Committee has recorded a specific finding that allegations of match fixing, spot fixing and betting were not proved against Mr. Srinivasan in the course of the inquiry, will be of no avail. For, that observation has been made by this Court while considering question no.(iv) as to whether allegations of cover up levelled against Mr. N. Srinivasan stand proved, if so to what effect. Besides the discussion on the said question, it is apposite to refer to the discussion on question no.(iii) and (vii), as framed in paragraph 20 of the aforementioned reported decision. The same read thus:

"20. We have heard learned Counsel for the parties at considerable length. The following questions fall for our determination:

20.1 (i) Whether the Respondent-Board of Cricket Control of India is "State" within the meaning of Article 12 and if it is not, whether it is amenable to the writ jurisdiction of the High Court Under Article 226 of the Constitution of India? (See Paras 22 to 35)

20.2 (ii) Whether Gurunath Meiyappan and Raj Kundra were "team officials" of their respective IPL teams-Chennai Super Kings and Rajasthan Royals? If so, whether allegations of betting levelled against them stand proved? (See Paras 36 to 53)

20.3 (iii) If question No. 2 is answered in the affirmative, what consequential action in the nature of punishment is permissible under the relevant Rules and Regulations, and against whom? (See Paras 54 to 69)

20.4 (iv) Whether allegations of cover up, levelled against Mr. N. Srinivasan stand proved. If so, to what effect? (See Paras 70 to 72)

20.5 (v) Whether Regulation 6.2.4 to the extent it permits administrators to have commercial interest in the IPL, Champions League and Twenty-20 events is legally bad? (See Paras 73 to 107)

20.6 (vi) Whether allegations levelled against Mr. Sundar Raman, Chief Operating Officer IPL, stand proved? If so, to what effect? (See Paras 108 to 115)

20.7 (vii) What orders and directions need be passed in the light of the discussions and answers to questions 1 to 5 above? (See Paras 116 to 120)"

7. While answering these questions, this Court has held that in terms of Article 6 of the Anti Corruption Code the Disciplinary Committee of BCCI is competent to impose an appropriate sanction upon the delinquent having regard to the provisions of Article 6.2 and the Table appearing thereunder. Paragraph 63 of the reported decision reads thus:

"63. In terms of Article 6 of the Code, upon consideration of relevant factors the disciplinary committee of the BCCI is empowered to impose an appropriate sanction upon the delinquent having regard to the provisions of Article 6.2 and the Table appearing thereunder. There is, therefore, no manner of doubt that even under the Anti-Corruption Code for participants any act like betting can attract sanctions not only for the person who indulges in such conduct but also for all those who authorise, cause, knowingly assist, encourage, aid, abet, cover up or are otherwise complicit in any act of omission or commission relating to such activity."

8. The Court also analysed the provisions of the franchise agreement executed by BCCI on the one hand and the franchisees on the other hand, in paragraph 68 observed thus:

"68. It is evident from the above provisions that the BCCI-IPL is in situations stipulated under Clause 11.3 competent to direct the termination of the agreement. What would constitute "material adverse effect" upon reputation or standing of the league or BCCI-IPL, BCCI, the franchisee, the team or game of cricket shall, however, depend upon the facts and circumstances of each case. What cannot be disputed is that the right to terminate the agreement is available to the BCCI-IPL even in accordance with the provisions of the franchise agreements themselves."

9. Having said this, while considering the appropriate orders and directions to be issued, in para 117 the Court observed thus:

"117. One of the issues that would fall for determination in the light of these findings would be whether we should impose a suitable punishment ourselves or leave it to the BCCI to do the needful. Having given our anxious consideration to that aspect we are of the view that neither of these two courses would be appropriate. We say so because the power to punish for misconduct vests in the BCCI. We do not consider it proper to clutch at the jurisdiction of BCCI to impose a suitable punishment. At the same time we do not think that in a matter like this the award of a suitable punishment to those liable for such punishment can be left to the BCCI. The trajectory of the present litigation, and the important issues it has raised as also the profile of the individuals who have been indicted, would, in our opinion, demand that the award of punishment for misconduct is left to an independent committee to exercise that power for and on the behalf of BCCI. This would not only remove any apprehension of bias and/or influence one way or the other but also make the entire process objective and transparent especially when we propose to constitute a committee comprising outstanding judicial minds of impeccable honesty."

10. The quantum of punishment to be imposed on the participants and their respective franchisees/team/owner of the teams was left to be determined by the Committee constituted by this Court in terms of paragraph 120.2 which reads thus:

"120.2 The quantum of punishment to be imposed on Mr. Gurunath Meiyappan and Mr. Raj Kundra as also their respective franchisees/teams/owners of the teams shall be determined by a Committee comprising the following:

- i) Hon"ble Mr. Justice R.M. Lodha, former Chief Justice of India-Chairman.
- ii) Hon"ble Mr. Justice Ashok Bhan, former Judge, Supreme Court of India-Member.
- iii) Hon"ble Mr. Justice R.V. Raveendran, former Judge, Supreme Court of India-Member.

The Committee shall, before taking a final view on the quantum of punishment to be awarded, issue notice to all those likely to be affected and provide to them a hearing in the matter. 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."

(emphasis supplied)

11. The said Committee considered the entire matter in light of the observations made by this Court in the reported decision and passed impugned order on 14.07.2015. In terms of the dictum in paragraph 120.2 of the decision of this Court, an order passed by the Committee was to be treated as final and binding upon the BCCI and party concerned, subject to the right of the "aggrieved party" seeking redress in the appropriate judicial proceedings in accordance with law. The High Court in the impugned judgment has, therefore, observed that a limited window was kept open by this Court to challenge the decision of the Committee, only to an aggrieved party. That view taken by the High Court is unassailable.

12. To overcome this position, the petitioner would submit that the decision of Justice Mudgal Committee (Probe Committee) against CSK in particular was influenced by the course of events unfolded at the instance of Mr. Lalit Modi, which was nothing short of fraud played on that Committee by creating a web of lies to help the Cricket Association of Bihar. It is asserted that justice has been unfairly denied to CSK, seemingly influenced by strong and powerful adversaries of Tamil pride arising from the champion status of the said team. It is submitted that what could not be directly achieved on the play ground of cricket was sought to be achieved indirectly through an unfair ban denying the people of Tamil Nadu their legitimate pride and unfairly sully the reputation of CSK by banning its participation in the future editions of the IPL. This argument does not commend us. For, nothing prevented CSK to agitate the issues now raised by the petitioner in this petition, in the earlier proceedings before this Court which had occasion to do analytical scrutiny of the finding of the Probe Committee or atleast before the High Court in Writ Petition No. 26777/2015 and lastly before this Court in SLP (C) No. 3758 of 2016. Whereas, CSK allowed the decision of the Committee dated 14.07.2015 suspending them for two years to become final by withdrawing its

SLP (C) No.3758 of 2016 as recently on 29.07.2016. As a matter of fact, the material now relied by the petitioner is to question the finding of the Probe Committee of Justice Mudgal, which has been considered threadbare in the reported decision and acted upon by all concerned.

13. Suffice it to observe that it is too late in the day to entertain challenge to the findings of the Probe Committee and including the decision of the Committee appointed in terms of paragraph 120.2 of the reported decision.

14. Accordingly, we decline to entertain this Special Leave Petition and affirm the order of the High Court dismissing the Writ Petition. Hence dismissed.