
(2015) 08 BOM CK 0194
In the Bombay High Court
Case No : Writ Petition (L) No. 2225 of 2015

Hiken Naresh Shah

APPELLANT

Vs

The Board of Control for Cricket in India

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Chartered Accountants Act, 1949 — Section 21, 21(3), 21(4)
Constitution of India, 1950 — Article 226

Citation : (2016) 1 ALLMR 33 : (2015) 6 MhLj 364

Hon'ble Judges : V.M. Kanade, J; B.P. Colabawalla, J

Bench : Division Bench

Advocate : Zubin Behramkamdin, Punit Patni and Som Sinha, for the Appellant;
T.N. Subramaniam, Senior Counsel, Rubin Vakil, Rahul Mascarenhas, Indranil Deshmukh and Ayesha Talpade instructed by Cyril Amarchand Manaldas, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Colabawalla, J—By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner, who is a cricketer by profession, has challenged his suspension order dated 12th July, 2015 which was passed by the President of the Respondent. This suspension order inter alia states that pending the final decision of the Disciplinary Committee of the Respondent, the Petitioner is suspended with immediate effect from participating in any affairs of the Board including suspension from participating in any form of the game of cricket held by or under the aegis of the BCCI and/or its affiliates, until final adjudication. The ground on which the suspension order has been assailed is that the principles of natural justice were grossly violated before passing this suspension order, and therefore, the same was liable to be set aside by us in our equitable jurisdiction under Article 226 of the Constitution of India.

2. The facts germane to decide the present controversy are that one other first class cricketer from Mumbai and also a member of an IPL team "Rajasthan

Royals", Mr. Pravin Tambe, lodged a complaint against the Petitioner sometime in March, 2015 for indulging in corrupt practices of "match fixing". On the basis of this complaint, the Petitioner received a notice dated 16th March, 2015 under Article 4.2 of the Respondent's Anti Corruption Code ("the code") under which the Petitioner was called upon to appear before the Director of the Anti Corruption Union, ("ACU"), on 18th March, 2015. It is the case of the Petitioner that as directed by the said notice, he appeared before the ACU authorities and the ACU made allegations against him for indulging in the alleged offence of "match fixing" without giving him any details or reasons.

3. Thereafter, on 18th March, 2015, the Petitioner received another notice under Article 4.3 of the Code directing the Petitioner to furnish itemized e-bills of his mobile number for the period from 1st November, 2014 to 18th March, 2015. It is the case of the Petitioner that these itemized bills were also furnished by him in the time frame set out in the said notice.

4. Thereafter, another notice dated 17th April, 2015 was sent to the Petitioner directing him to appear before the ACU authorities on 20th April, 2015. It is the case of the Petitioner that he appeared on the said date and he was questioned about certain individuals without giving any sort of reference or any sort of details in respect of the alleged offence. After this, the Petitioner went to England on 22nd April, 2015 to play in the English County League. It is thereafter, that the Petitioner received the impugned suspension order dated 12th July, 2015 from the President of the Respondent inter alia suspending him from participating in any kind of cricket matches held by or under the aegis of the BCCI and/or its affiliates, until final adjudication by the Disciplinary Committee.

5. The only argument canvassed before us by Mr. Kamdin, learned counsel appearing on behalf of the Petitioner, was that the impugned suspension order was passed without giving him an opportunity of being heard and without furnishing him any documents or the complaint that was filed against him. He submitted that this was a clear case of breach of the principles of natural justice as this suspension order had serious consequences and was therefore liable to be set aside. He submitted that the Petitioner was in the midst of playing the English County League when the suspension order was served upon him. On the basis of this suspension order, he has not been permitted to participate even in the English County League. Since it is an admitted position that no personal hearing was given to the Petitioner, and even the complaint filed was not furnished to him, there was a clear breach of the principles of natural justice, was the submission of Mr. Kamdin. He additionally submitted that even if the Rules do not expressly provide for a hearing to be given to the Petitioner, in a matter where a player is being suspended, the principles of natural justice ought to be read into those provisions. In this regard, he relied upon the following three judgments:--

"(i) Mangilal Vs. State of Madhya Pradesh, AIR 2004 SC 1280 : (2004) CriLJ 880 : (2004) 1 CTC 474 : (2004) 1 JT 81 : (2004) 1 SCALE 42 : (2004) 2 SCC

447 : (2004) 1 SCR 1 ,

(ii) Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, AIR 1987 SC 71 : (1987) 61 CompCas 266 : (1986) 3 CompLJ 352 : (1986) 57 CTR 121 : (1987) 164 ITR 1 : (1986) 1 JT 671 : (1986) 2 SCALE 614 : (1986) 4 SCC 537 : (1986) 3 SCR 1049 , and

(iii) Lalit Kumar Modi v. Special Director and Another. 1 (Bombay High Court DB Judgment)."

6. On the other hand, it was submitted by Mr. Subramaniam, learned Senior Counsel appearing on behalf of the Respondent, that under the provisions of the Regulations framed by the BCCI for Players, Team Officials, Managers, etc., as well as the Code, a complaint was lodged against the Petitioner by Mr. Pravin Tambe for "match fixing". On the basis of the said complaint, necessary detailed investigations were undertaken by the ACU, headed by a former CBI Director. He submitted that as per the requirements of the Regulations as well as the Code, the Petitioner was issued notices on several occasions and his statements were recorded wherein he gave his version of the evidence on a number of dates. After recording the statements of not merely the Complainant and the Petitioner, but also of a host of other persons, and after a detailed analysis of the call records and e-bills of the Petitioner and others including known bookies, the Director of the ACU, as the Enquiry Officer, submitted his detailed report dated 8th July, 2015 to the President of the Respondent. The said report prima facie held the Petitioner guilty of corrupt practices and of unbecoming conduct.

7. Mr. Subramaniam, the learned Senior Counsel appearing on behalf of the Respondent, submitted that this enquiry was only a preliminary enquiry which thereafter had to be placed before the Disciplinary Committee who would evaluate whether there exists a prima facie case against the Petitioner, and if not, drop the same. It is only at that stage, and only if the Disciplinary Committee decides to go ahead with the enquiry, that an opportunity of hearing would be given to the Petitioner and all documents would be supplied to him. In this regard, Mr. Subramaniam placed reliance on Rule 32 of the Code, and more particularly, Rule 32(ii) and (iii) respectively. He further submitted that under Rule 32(vii), pending any enquiry into any complaint or charges of misconduct or any act of indiscipline or violations of any Rules and Regulations, the Petitioner could be suspended by the President from participating in any of the affairs of the Board, until final adjudication. He also submitted that the adjudication as contemplated under Rule 32 was to be completed within a period of six months. He therefore submitted that there was no question of granting the Petitioner a hearing at the time when the suspension order was passed and in fact a hearing will be given to the Petitioner if the Disciplinary Committee decides to go ahead with the enquiry as contemplated under Rule 32(iii).

8. After hearing the counsel at some length and perusing the papers and proceedings in this case, we are unable to agree with the submissions of Mr.

Kamdin, the learned counsel for the Petitioner. Rule 32 deals with misconduct and the procedure how it is to be dealt with. The relevant rules for the purposes of the present controversy are Rule 32(i), (ii), (iii), (vii) and read thus:--

"32(i) The Board shall have a power to frame Bye-laws regarding the discipline and conduct of the players, umpires, team officials, administrators, referees and selectors and shall have a power to amend the same from time to time.

(ii) In the event of any complaint being received from any quarter or based on any report published or circulated or on its own motion, in the subject matter of any act of indiscipline or misconduct or violation of any of Rules and Regulations by any Player, Umpire, Team Official, Selector or any person appointed or employed by BCCI, the President shall refer the same within 48 hours to a Commissioner appointed by the President to make a preliminary enquiry.

The Commissioner shall forthwith make preliminary inquiry and call for explanations from the concerned person(s) and submit his report to the President not later than 15 days from the date of reference being made by the President. On receipt of the report, the President shall forthwith forward the same to the Disciplinary Committee.

(iii)(a) Immediately on receipt of a Report as contained in Clause 32(ii) above, the committee would call for all particulars and unless it decides, that there is no prima facie case and be accordingly dropped, commence hearing the subject case and complete the same as expeditiously as possible and decide the subject issues by providing reasonable opportunity to the parties of being heard. None of the parties shall be entitled to be represented by any Lawyer. If, despite due notice, any party fails to submit any cause or submits insufficient cause, the Committee shall after providing reasonable opportunity of hearing to the parties concerned, take appropriate action. In the event any party refuses and or fails to appear despite notice, the Committee shall be at liberty to proceed ex-parte on the basis of the available record and evidence. The Place of hearing shall be decided by the Committee from time to time. The Committee shall have the power to impose penalties as provided in the Regulations for players, Team officials managers and Umpires of the Board.

(b) The decision of the Committee shall be final and binding and shall come into force forthwith on being pronounced and delivered.

(vii) Pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the selector (including the privilege and benefits such as subsidies to the Member or Associate Member) may be suspended by the President from participating in any of the affairs of the Board until final adjudication. However, the adjudication should be completed with six months."

(emphasis supplied)

9. From the said Rules, it is clear that in the event of any complaint being received regarding any act of indiscipline, misconduct or violations of any rules or regulations by any player, the President of the Respondent shall refer the same within 48 hours to the Commissioner appointed by the President to make a preliminary enquiry. The Commissioner is thereafter mandated to make a preliminary enquiry and call for an explanation from the concerned persons and submit his report to the President not later than 15 days from the date of reference being made by the President [Rule 32(ii)]. On receipt of the report, the President is mandated thereafter to forward the same to the Disciplinary Committee. Once the report is forwarded to the Disciplinary Committee, it would call for all particulars and unless it decides that there is no prima facie case, commence hearing the subject case and decide the subject issues by providing a reasonable opportunity to the parties of being heard. If the committee finds that no prima facie case is made out, then naturally the committee would drop the proceedings. On the other hand, and after giving an opportunity of being heard, if the committee finds that the concerned person is guilty, it has the power to impose penalties as provided in the Regulations [Rule 32(iii)]. Pending the enquiry before the Disciplinary Committee, the President of the Respondent is given the power to suspend the person against whom the enquiry is going on [Rule 32(vii)]. This rule does not provide for any hearing being given before the suspension order is passed. The reason for this is because the suspension order passed under rule 32(vii) is not a penalty and is of a temporary nature and operates only until final adjudication by the Disciplinary Committee.

10. On a holistic reading these relevant Rules, we find the submission made by Mr. Kamdin to be without any merit. The suspension order in the present case has been passed after a preliminary enquiry has been conducted by the director, ACU, as contemplated under Rule 32(ii). At the stage when the preliminary enquiry is conducted, there is no contemplation of giving a personal hearing to the person who is being investigated. This is for the simple reason that the findings given in the preliminary enquiry are not final and are only prima facie in nature. These prima facie findings are thereafter put before the Disciplinary Committee who would give a personal hearing to the person charged, and only thereafter come to a finding of guilt or innocence, as the case may be. Since the suspension order is of a temporary nature and is not a penalty imposed on the person charged, there is no question of giving a hearing before the concerned person is temporarily suspended. It is not as if the suspension order is passed after a final adjudication and it operates as a penalty and/or a punishment. A penalty or any other punishment, can be imposed by the Disciplinary Committee only after the enquiry is held and concluded and the concerned person is given a proper hearing.

11. In the facts of the present case, only the preliminary enquiry is conducted wherein it is prima facie found that the Petitioner is guilty of "match fixing". This preliminary enquiry has been placed before the Disciplinary Committee who is going to assess whether any prima facie case is made out for proceeding further

or whether to drop the proceedings. Mr. Subramaniam has drawn our attention to paragraph 12 of the affidavit of one Mr. Anurag Thakur dated 8th August, 2015 in reply to the Petition, wherein it is stated that they would adhere to the time line of completing the proceedings before the Disciplinary Committee within a period of six months, subject to the fact that the Petitioner does not seek extensions to submit his reply, adduce evidence and generally abides by time lines fixed by the Disciplinary Committee. In the said affidavit, it is categorically stated that unless the Disciplinary Committee decides to drop the proceedings against the Petitioner, the proceedings are likely to be completed within a time frame of six months as expressly provided in the Rules and Regulations of the Respondent.

12. This being the case, we are clearly of the view that there is no requirement of giving a personal hearing to the Petitioner before the suspension order is passed. The suspension order operates only for a temporary period and that too whilst the proceedings are pending before the Disciplinary Committee. In the facts of the present case, Mr. Subramaniam has assured us that the Respondent shall, subject to what is stated in paragraph 12 of his client's Affidavit, make every effort to ensure that the proceedings before the Disciplinary Committee will be completed within a period of six months from today. We have no reason to disbelieve this assurance given on behalf of the Respondent.

13. Looking to the grave allegations leveled against the Petitioner about "match fixing", which, we must add, brings the entire game of cricket into disrepute, we are not inclined to exercise our equitable jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner. We must mention here that it is not sufficient that the party should come to this Court and make out a case that a particular order (in the present case, the suspension order) is invalid. In order to get relief from the Court in a writ petition, not only must he come with clean hands, not suppress any material facts and show utmost good faith, but he must also satisfy the Court that passing an order in his favour will do justice, and that justice lies on his side [SEE The State of Bombay Vs. Morarji Cooverji, (1959) 61 BOMLR 318 . In the present case, grave and serious allegations have been made against the Petitioner about "match fixing". A preliminary enquiry has been conducted by the ACU authorities and prima facie, the ACU has found substance in these allegations. On this basis, the report of the ACU authorities has been forwarded to the Disciplinary Committee before whom the matter is now pending. In these peculiar circumstances, we do not think that justice lies on the side of the Petitioner for us to exercise our equitable writ jurisdiction and strike down the suspension order passed by the President of the Respondent, and who, we might add, was empowered to do so under the Rules and Regulations framed by the Respondent. We therefore decline to exercise our extraordinary equitable jurisdiction under Article 226 of the Constitution of India in favour of the Petitioner.

14. Having said this, we shall now deal with the judgments relied upon by Mr. Kamdin, learned counsel appearing on behalf of the Petitioner. The first judgment

relied upon by Mr. Kamdin is the judgment of the Supreme Court in the case of Mangilal (supra). Mr. Kamdin relied upon paragraph 10 of the said decision wherein the Supreme Court has opined that even if the statute is silent and there are no positive words in the Act or the Rules made thereunder, there would be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The Supreme Court has opined that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. There is no quarrel with this proposition laid down by the Supreme Court in the aforesaid decision. We, however, fail to see how this proposition would apply to the facts of the present case. There is no final decision that has been taken in the present case and therefore the observations made by the Supreme Court in paragraph 10, cannot be of any assistance to the Petitioner. In the present case, the Petitioner is suspended pending an enquiry which is permissible under the Rules and Regulations of the Respondent and which are binding on the Petitioner.

15. The next judgment relied upon by Mr. Kamdin was a decision of the Supreme Court in the case of Institute of Chartered Accountants of India (supra). In the facts of that case, the Supreme Court was interpreting Section 21 of the Chartered Accountants Act, 1949 which deals with the procedure into enquiries relating to misconduct of the members. On interpreting the said section, the Supreme Court observed at paragraph 14 that though there was a difference between the terms under Sections 21(3) and 21(4), the textual difference was not decisive. In fact on reading Section 21(3), it is clear that there is a final finding of guilt that is contemplated under the said section and it is in that context that the Supreme Court held that the principles of natural justice entitling the member to be heard by the council have to be read into the said provisions when it proceeds to render its findings. The facts therefore in the aforesaid case were totally different from the facts before us and the ratio laid down in the said judgment has no application to the factual matrix before us. Before us, there is no finding of guilt and in fact the Rules and Regulations itself contemplate that before such a finding is rendered, an opportunity of being heard would be given to the Petitioner. In this view of the matter, the reliance placed on the aforesaid judgment is also wholly misplaced.

16. The last judgment relied upon by Mr. Kamdin was a decision of a Division Bench of this Court in the case of Lalit Modi (supra) to which one of us (B.P. Colabawalla, J.) was a party. We fail to see how this judgment is of any assistance to the Petitioner. The issue before the Division Bench was the interpretation of Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. Whilst interpreting the said Rule, the Division Bench, after relying upon a Supreme Court decision interpreting the very same rule, came to the conclusion that the documents relied upon by the Respondent in the show cause notice had to be supplied to the Petitioner before

any opinion could be formed that the enquiry should be held. To our mind, this judgment has absolutely no application to the facts of the present case.

17. For the reasons discussed earlier, we find no merit in this Writ Petition and the same is hereby dismissed. In the facts and circumstances of the case, we leave the parties to bear their own costs. However, liberty is granted to the Petitioner to approach this court again, if the inquiry is not completed within a period of six months from today.

1Writ Petition No. 1703 of 2013 decided on 06.02.2014