
(2012) 11 DEL CK 0074

In the Delhi High Court

Case No : Writ Petition (C) 5626 of 2010

Indian Hockey Federation

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2012) 11 DEL CK 0074

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Arvind K. Nigam with Ms. Manmeet Arora and Ms. Vasundhara Kumar, for the Appellant; Lovkesh Sawhney, for R-2, Mr. Sanjeep Sethi, with Ms. Shyel Trehan and Ms. Diya Kapur for R-3, for the Respondent

Judgement

Rajiv Shakdher

CM 18719/2012 (for directions)

1. Notice in the captioned application was issued on 21.11.2012, when arguments of warring parties were heard at length. The learned counsel for the petitioner at the said hearing has confined his relief to the following, which is, therefore the only outstanding issue, which I am required to examine, in view of urgency in the matter. The relevant portion of my order dated 21.11.2012 is as follows:

I have heard arguments for quite some time in the matter. Mr. Nigam confines his relief to the following: First, the petitioner should be allowed to vote in the Annual General Meeting ("AGM"), to be held on 25th November, 2012. Second, the petitioner should also be allowed to vote at the elections of the Indian Olympic Association ("IOA"), as and when they are held. Mr. Nigam makes it clear that he would be agreeable if the vote cast is kept in a sealed cover pending adjudication in the writ petition.

1.1 I may also only indicate that at the same hearing respondent no. 2/IOA had

agreed to carry out necessary corrections qua its constitution which is uploaded on the IOA's website, as well as, in the printed version of the IOA's constitution. The correction sought and agreed to be carried out by IOA was with regard to inclusion of the petitioner's name in the list of members.

1.2 It is in this background that respondents were given time to file their reply by 22.11.2012, and the matter was renotified for hearing on 23.11.2012. The short time granted to respondents, to which none of them had any objection, was on account of the fact that respondent No. 2/IOA was holding its annual general meeting on 25.11.2012. I had hoped that parties would come up with a practical protem arrangement, which could enure to the benefit of all parties pending the adjudication of the writ petition, having regard to the limited relief which the petitioner has sought at the present juncture. However, that was not to be.

I may thus indicate at the very outset that the petitioner had moved an interlocutory application before me, being CM 17422/2012 on 16.10.2012. The said application was disposed of with a direction that the petitioner would be entitled to "participate" in the special general body meeting slated to be held on 18.10.2010 and the Annual General Meeting (in short AGM) to be held on 25.11.2012. Seemingly, what has propelled the petitioner to approach this court once again by virtue of the captioned application, is the fact that even though a direction was issued on 16.10.2012 permitting the petitioner to participate in the AGM of 25.11.2012, the respondent no. 2/IOA has curtailed that right by not permitting the petitioner to vote on the agenda of the day. To be noted at that point in time, apart from the usual business, election to respondent no. 2/IOA were also to be conducted on the said date. The election, however, stands postponed to 05.12.2012.

1.3 The petitioner also seems to be aggrieved by the fact that the election to respondent no. 2/IOA, are also due, at which the petitioner's right to vote is impeded by the said respondent no. 2/IOA. In point of fact, even at the time when the captioned application was moved, the elections to respondent no. 2/IOA were also slated to be held on 25.11.2012. By the time the application came up for hearing the elections were postponed which, as indicated above, I am told are slated for 05.12.2012.

1.4 I may also note at the outset that, I have not been told by any of the counsels appearing before me, in particular, those appearing for respondent no. 2/IOA and respondent no. 3/Hockey India (in short HI), that the order dated 16.10.2012 has been assailed before any appellate forum.

2. In this background, it may be useful to recollect that, the captioned writ petition, has been filed to assail the show cause notice dated 23.07.2010 issued by respondent no. 2./IOA to the petitioner seeking to withdraw the recognition granted to the petitioner.

3. Prior to the institution of the present writ petition, qua an earlier decision of

respondent no. 2./IOA (taken at its emergency meeting of 28.4.2008, whereby the petitioner's membership was suspended with immediate effect by respondent no. 2./IOA) was amongst other consequential orders, challenged in WP(C) 3713/2008. The decision of respondent no. 2./IOA was contained in the resolution dated 28.04.2008 whereby the governing council of the petitioner was suspended and an ad hoc committee was appointed. The decision of the respondent no. 1/UOI dated 07.05.2008 granting its approval to the said action of respondent no. 2./IOA was also challenged in the said writ petition. So was order dated 12.05.2008 passed by Respondent no. 1/UOI suspending recognition to the petitioner, as also the subsequent dis-affiliation by the respondent no. 2./IOA of the petitioner on 10.05.2009 and, the consequent order of respondent no. 1/UOI withdrawing recognition of the petitioner.

3.1 The writ petition 3713//2008 was, however, allowed by a Single Judge of this court vide judgment dated 21.05.2010. The net result is that the aforementioned decisions of respondent no. 1/UOI and respondent no. 2./IOA stand quashed. The said judgment has, however, been assailed by way of SLP being: SLP No. 24470/2010, and in a writ petition (C) 270/2010 which is also instituted in the Supreme Court.

3.2 In these proceedings orders have been passed by the Supreme Court from time to time in the interest of the sport, to enure that, Indian Hockey is represented in international sporting events. Suffice it to say, in those proceedings the Supreme Court has passed the following interim orders: 17.08.2010, 25.08.2010, 27.08.2010 and 22.10.2010. These orders in nutshell have allowed respondent no. 3/HI and respondent no. 2./IOA to represent the sport of Hockey, pending adjudication of the petitions in the Supreme Court.

3.3 I may only note that Supreme Court in its order of 22.10.2010 had also made an observation that the representatives of the warring parties should hold discussions with the Sports Ministry to sort out the matter. This hope is belied and, therefore, the on-going battle.

4. In the background of the development which took place in April, 2008 and thereafter, respondent no. 3/HI was incorporated, and thus, registered under the Societies Registration Act, 1860, on 20.05.2009.

4.1 It may pertinent to note that prior to this, i.e., even before respondent no. 3/HI was incorporated, International Hockey Federation (FIH) at its congress held on 28.08.2008, took a decision to transfer membership from the petitioner organization, under Article 6.7 of its constitution, to respondent no. 3/HI; when it was not even incorporated. It appears, as a consequence on 10.05.2009 respondent no. 2./IOA sought to dis-affiliate the petitioner. Given the fact that respondent no. 3/HI had been incorporated on 20.05.2009, on 14.06.2009, FIH issued a confirmation in favour of respondent no. 3/HI, that it had become a "full member".

4.2 As indicated above, the decision of respondent no. 2./IOA dated 10.05.2009

amongst other decisions, was quashed vide its judgment dated 21.05.2010.

4.3 It is in this background that, one is presented with a situation, whereby the petitioner continues to as a member of respondent no. 2/IOA on account of the judgment of this court dated 21.05.2010, while respondent no. 3/HI is a new inductee, which is also recognized by FIH.

5. Having regard to above, on 16.10.2012, I had permitted the participation of the petitioner at the AGM of 25.11.2012. The caveats now entered by respondent no. 2/IOA and respondent no. 3/HI were not expressed at that hearing.

5.1 Notwithstanding the above, the objections which have been taken by Mr. Sethi, on behalf of respondent no. 3/HI, which have the wholehearted support of respondent no. 2/IOA, are as follows:

(i) the amended constitution of respondent no. 2/IOA does not confer voting rights on a member unless it is affiliated to an International Federation, which in this case would be the FIH;

(ii) the prayers, in the captioned application, in particular, prayer clause (ii) & (iii) are beyond the reliefs sought in the writ petition, in as much as, they seek a declaration that Rule no. III & XII of the Rules and Regulations of respondent no. 2/IOA, be declared, null and void and/or be suspended. Therefore, no interim relief can be granted which cannot be subsumed in the main relief;

(iii) the amendment to the constitution took place in February, 2011; the petitioner has approached the court in November, 2012; is therefore, guilty of delay and latches;

(iv) the petitioner cannot be granted the status of a voting member of respondent no. 2/IOA, as it would amount to negating the aforementioned Rules of the Constitution of respondent no. 2/IOA; at an interim stage;

(v) the FIH has confirmed to respondent no. 3/HI, that it recognizes it, as its member, and that petitioner has not been its member (FIH's member) for India since 2000. In this regard reference is made to a communication dated 09.11.2012 issued by FIH;

(vi) the proceedings that the petitioner has instituted before the Judicial Committee, at Switzerland, against FIH, would not be of much assistance to the petitioner as there is no interim order sought or granted qua recognition of respondent no. 3/HI by FIH;

(vii) the judgment of this court dated 21.05.2010 passed in WP(C) 3713/2008 has been challenged by respondent no. 3/HI in which several interim orders have been passed granting respondent no. 3/HI the right to continue to field Indian Hockey team in International Hockey events;

(viii) the judgment of this court dated 21.05.2010, set aside the suspension orders qua the petitioner on the ground that they were in violation of the

principles of natural justice. No observations were made on the merits of the case.

(ix) Even in WP(C) 6091/2012, the petitioner chose not to challenge the Constitution of respondent no. 2/IOA;

(x) the election process having already been triggered on 05.11.2012, no interim orders can be passed; which is a well settled position in law;

(xi) that a similar prayer was made in a Public Interest Petition, filed by one Mr. Rahul Mehra, being CWP 195/2010, which was declined by this court by order dated 08.11.2012 and 23.11.2102;

5.2 Mr. Sawhney, who appears for respondent no. 2/IOA, as indicated above, dittoed the submissions of Mr. Sethi, learned counsel for respondent no. 3/HI.

6. Mr. Nigam, on the other hand, argued both in the opening and in the rejoinder largely, in line, with the averments made in the captioned application. Briefly, he submitted that, it cannot be disputed that the petitioner continues to be a member of the respondent no. 2/IOA; a fact which is evident on a bare perusal of the Division Bench order of 30.09.2010, passed in LPA no. 718/2010, whereby a Single Judge's order dated 19.08.2010, passed in WP(C) 5626/2010, was confirmed save and except to the extent modified by the said order of the Division Bench. Reliance in this regard was also placed on the order dated 10.12.2010 passed in LPA No. 718/2010, whereby an attempt was made by respondent no. 2/IOA to seek recall of the earlier order of the Division Bench order dated 30.09.2010.

6.1 It was therefore contended that, the petitioner, being a member whether under the orders of this Court or otherwise, would have to be allowed the opportunity to exercise its right as member, which includes the right to vote; both at the AGM of 25.11.2012 and the elections, which are slated for 05.12.2012.

6.2 It was further contended that in order to maintain parity between parties, this court would have to have regard to the fact that the recognition of respondent no. 3/HI, is a subject matter of challenge, before the Judicial Committee of the FIH. The said Judicial Committee, on an application filed by FIH to seek a summary dismissal of its claim, had returned observations in its order of 05.01.2012, which clearly indicate that, it had found a prima facie case in its favour qua the challenge laid before the said Judicial Committee.

6.3 The argument of the respondents that, the amendment to the Constitution of respondent no. 2/IOA having not been challenged, no interim relief can be granted as it would be beyond the scope of the WP, according to the Mr. Nigam, need not burden this court as a bare perusal of the relevant Rules would show that, the amendment cannot apply to existing members. The amendment, if at all, can only apply prospectively. Moreover, there is no amendment to the Rules which relates to voting. The amendment to the Rules relates to membership.

6.4 That apart, it is Mr. Nigam's contention that amendment was carried out surreptitiously, without notice to the petitioner of the meeting at which the amendment was carried out. Therefore, the amendment was bad in law.

6.5 In view of the fact that, the petitioner is a member, it should be allowed to vote; the principle of law that courts will not interdict an election process once it has commenced will not operate qua the petitioner. It is submitted in this context that the petitioner became aware of its disability only when, respondent no. 2/IOA, circulated a list of the electoral college, on 06.11.2012; which was accompanied by a ballot, indicating the fact that, the petitioner could participate in the AGM of 25.11.2012, as per the order of this court dated 16.10.2012, without being entitled to vote. There was, therefore, according to Mr. Nigam no scope for the petitioner to challenge, if at all, the amended provisions of the Constitution, which are clearly inimical to the interest of the petitioner.

7. I have heard the learned counsels for the parties. As indicated at the very outset, when I passed the order on 16.10.2012, the respondents did not raise any of these objections qua voting rights of the petitioner. There is no doubt that till such time the judgment and orders referred to above operate, which include the judgment dated 21.05.2010 and the two orders dated 30.09.2010 and 10.12.2010, the continuation of the petitioner as a member of respondent no. 2/IOA cannot be questioned.

7.1 The fact that the Judicial Committee of the FIH, is adjudicating upon the claim of the petitioner, is also not disputed. Before, the Judicial Committee the petitioner has, inter alia, sought a declaration to the effect that the purported recognition of respondent no. 3/HI be declared invalid. Per contra a relief is also sought that the purported de-recognition of the petitioner be also declared invalid. It is also undoubtedly true that, while there is no interim order of the Judicial Committee on the recognition of respondent no. 3/HI by FIH, and perhaps none was sought, the adjudication of the petitioner's claim is yet to be concluded. The Judicial Committee, however, in an application moved by FIH for a summary dismissal of the petitioner's claim has made the following pertinent observations:

....58. the Panel carefully considered Mr. Taylor's arguments, but have had to have regard to the fact that this is a summary dismissal Application and that FIH must therefore show not merely that any or all of the above arguments will eventually be successful on the "balance of probabilities" test, but that IHF's argument to the contrary has no real (as opposed to fanciful) prospect of success. 59. With this test very much in mind, we have to recognize that there is a real dispute as to whether the purported consent of IHC at the 2008 Congress was genuine. However, even if it was, while that might be sufficient to have brought an end to HIC's membership of FIH, it would not necessarily have been enough to permit HI to become a member of FIH pursuant to the procedure that was in fact adopted.

60. On the assumption that IHC's purported consent cannot be relied upon, Mr. Taylor argued that the decision of the November, 2008 congress was final and cannot be challenged. As we have stated, it appears that the manner in which the decision came to be made and was made (certainly for the purpose of a summary dismissal Application) was not within the power (or to use the Latin, was *Ultra Vires*) the FIH Congress, albeit at a General Meeting. In this respect we do not accept (again, certainly for the purpose of a summary dismissal Application) that any part of Article 4 of the FIH Statutes (in particular Article 4.4 and 4.6) can be relied on to enable FIH to do something that would be contrary to the express terms of Article 6.

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62. In the circumstances, we are satisfied that IHF has at least some real (as opposed to fanciful) prospect of obtaining a Declaration at a full hearing before the JC that the purported recognition of HI by FIH was and is invalid.....

8. Therefore, the argument of the learned counsel for respondent no. 2/IOA and respondent no. 3/HI, that the election process is on and, therefore, no interim order can be made is untenable qua the petitioner whose status as a member, at this stage, stands undisturbed. Any contrary order will in effect negate the earlier orders passed by this Court, to which, I have already made a reference. The petitioner being a member can thus claim a relief for exercising its right as a member, pending adjudication of lis on this very issue.

9. The other argument of the respondent no. 3/that any relief granted at this stage would be beyond scope is also untenable for the following reasons; though I must confess that the prayers seeking declaration qua Rule III and XII of the Constitution of respondent no. 2/IOA, were *prima facie* completely unnecessary. It is because of this reason that Mr. Nigam quite consciously has steered clear of the prayers in the application made qua the said Rules of the Constitution of respondent no. 2/IOA.

9.1 It is quite clear that Rules III(i) and XII(d) of Constitution of respondent no. 2/IOA require affiliation of a National Sports Federation with the international sports federation. But what is significant is that the amendment to the Constitution by way of the said Rules was made in February, 2011. There is no doubt in my mind that not only is the amendment made keeping in mind the petitioner but also to achieve indirectly what respondent no. 2/IOA could not achieve directly. If this argument of respondents is accepted, it would negate the efficacy of the orders passed by this court. The orders of this court permit the petitioner to act as a member. Respondent no. 2/IOA having not been able to persuade variation of the order seeks to use this device and then comes up with the argument that no interim order can be granted beyond the scope of the prayers made in the writ petition. This cannot be accepted.

9.2 What cannot also be lost sight of is, that, the petitioner claims that it had no notice of the meeting at which the Constitution of Respondent no. 2/IOA was amended in February, 2011. Therefore, if I were to accept this argument of respondent no. 2/IOA, and respondent no. 3/HI which is the immediate and obvious beneficiary of the amended Rules, would tantamount to conceding that a litigant can adopt a device to dilute the efficacy of court orders.

9.3 Thus, in view of the fact that the affiliation of respondent no. 3/HI is also subject matter of adjudication before the Judicial Committee; presently the matter is evenly balanced, and it is this balance which is required to be maintained.

10. Having regard to the above, in my view, the interest of parties will be served if the petitioner is allowed to cast its vote at the AGM of 25.11.2012 and the ensuing elections of respondent no. 2/IOA to be held on 05.12.2012, with a caveat that the vote cast will be kept in a sealed cover. The condition imposed in this behalf, as is recorded in the proceeding of 21.11.2012, is acceptable to the petitioner. The application is disposed of with the aforesaid directions.