

(2012) 02 DEL CK 0216
In the Delhi High Court
Case No : Writ Petition (C) 8422 of 2011

Joachim Carvalho

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Constitution of India, 1950 — Article 32, 5

Citation : (2012) 187 DLT 524

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jayant Bhushan and Mr. Soumik Ghosal, for the Appellant; Maneesha Dhir, Advocate with Ms. Mithu Jain, Advocate for UOI, Mr. Sandeep Sethi with Ms. Shyel Trehan, Ms. Pardmita Mukherjee, Advocates for R. 2, Mr. D.S. Narula with Ms. Manmeet Arora and Ms. Fareha A. Khan, Advocates for R. 4, Mr. P.V. Kapoor and Mr. Anshu Bhanot, Advocate for R. 5, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. This petition is filed in public interest by the petitioner who is a former member of the Indian Hockey Team and an Olympian. The petitioner claims himself to be a public spirited person. He states that he was awarded the Arjuna Award for his outstanding achievements as one of India's best captains and has a genuine interest in the future of the sport of Hockey in India.

2. This petition has been filed on the ground that hockey players of eminence are being subjected to threats and are being prevented from participating in a world class hockey tournament being organised in the country.

3. The respondents impleaded in the present writ petition include the Union of India through the Ministry of Youth Affairs and Sports (respondent no.1), Hockey India (respondent no.2), Indian Olympic Association (respondent no.3) and Nimbus Communication Ltd. (respondent no.4). Respondent no. 1 is, amongst

other, assigned the role of creating infrastructure and promoting capacity building for broad basing sports as well as for achieving excellence in various competitive events at the national and international levels. In this regard, it has introduced the National Sports Development Code of India through a statutory notification with effect from 31.01.2011 with the objective of sports development, inter alia, through adoption of good governance practices by the National Sports Federation. Respondent no.2 is a Society registered under the Indian laws and established, inter alia, for promotion of the game of hockey. Respondent no. 3 is a Society registered under the Indian laws and is the apex body in the field of Olympic Sports in India. Respondent no. 4 is another National Sports Federation which is recognized by the Central Government for management and regulation of hockey in India. Respondent no. 5 is a company incorporated under the Companies Act, 1956 which is, inter alia, engaged in the business of sports promotion and event management in India.

4. The respondent no.1 has derecognized the respondent no.2 as the National Federation for the Management, Control and Promotion of Hockey in India and conveyed this decision to the FIH on 06.08.2010. In its place, the respondent no.4 has been recognized as the National Sports Federation for Hockey in India by the respondent no.1. However, FIH continues to recognize the respondent no.2 only. The respondent no.4 sanctioned a new domestic Hockey event to be organized with a reputed sports promotion and event management company. Indian hockey players with varying domestic and international experience entered into contracts with the company for a 3 years" period to participate in this domestic event sanctioned by the respondent no.4. Many players want to participate in these competitions.

5. Some restrictions, however, are put by the respondent no.2 in the way of hockey players to participate in the aforesaid hockey events contemplated by the respondent no.4. It would be pertinent to mention here that though the respondent no.2 stands derecognized by the respondent no.1 and even this decision is conveyed to FIH, currently it is only the respondent no.2 which is recognized by the FIH as a National Association admitted into the membership of the FIH as the Government Body for India. Therefore ,insofar as in the national events are concerned, the FIH recognizes the respondents no.2 and not the respondent no.4. The FIH has also introduced new bye-laws in respect of its own functioning as well as that of its member National Association, under the shelter of these bye laws respondent no.2 enacted a code of conduct adopting the principles forming the basis of the FIH bye-laws and providing for disciplinary action against Indian players who participate in domestic events which are not sanctioned by respondent no.2. Respondent no.2 in exercise of its functions as the member of the FIH has refused to grant sanction in favour of this event. Consequently, the players who have signed the contracts with the sports promoter are faced with the threat of disciplinary action and a potential denial of the opportunity to represent India at international hockey events in terms of the Code of Conduct introduced by Respondent no.2.

6. By this petition, the petitioner is challenging the decision of the respondent no.2 to give effect to the "Code of Conduct For all Players in Domestic/ International Competitions" (hereinafter referred to as the "Code of Conduct") under which Indian Hockey players including the petitioner would be made subject to the disciplinary action by respondent no.2 and denied the opportunity to represent India at International Hockey events if the said players participated in any event which is not sanctioned by respondent no.2.

7. Now we proceed to take note of the events in some detail which led to this litigation between the two federations.

8. Pursuant to the unification of the respondent no. 4 and the Indian Women's Hockey Federation to form the India Hockey Confederation (hereinafter referred to as "IHC") on 04.11.2000, the FIH approved the formation and constitution of IHC for the governance of the game in India.

9. Since 2001, all matters concerning hockey in India were administered by the IHC which conducted International events with the approval of the FIH. Citing several reasons, which included the mis-governance accountable to the respondent no.4, the Executive Council of the respondent no.3 suspended the respondent no.4 by a resolution dated 28.04.2008, from its position as a National Sports Federation under the guidelines for assistance to National Sports Federation, 2001. It was intimated to respondent no.4 and all its state units that respondent no.4 was suspended with immediate effect and that respondent no. 3 was to form an Ad-hoc Committee of five members to administer and manage the affairs of respondent no.4 till all issues relating to its governance were finally resolved.

10. The respondent no.4 filed Writ Petition (Civil) No.3713/2008 in this Court on 13.05.2008 against its suspension by the Executive Council of respondent no.3, and later against the suspension ordered by respondent no.1 vide letter dated 12.05.2005. During the pendency of this Writ Petition, respondent no.3 disaffiliated the respondent no.4 as the National Sports Federation for Hockey in India on 10.05.2009, and the ad-hoc committee appointed by the Executive Council of respondent no.3 was dissolved and disbanded.

11. On 20.05.2009, respondent no.2 was registered as a new society, and was given provisional affiliation on 28.05.2009. The respondent no.1 also granted recognition to the respondent no.2 pursuant to the affiliation by the respondent no.3.

12. By order dated 21.05.2010, the suspension and disaffiliation of respondent no.4 by the respondents no.1 and.3 were quashed by this Court. It was held:

This court believes that even now it is not too late for the MYAS to get its act together and set things in order with the cooperation of both the IHF and the IOA and any other body that may have been set up. Instead of again panicking about the revival of the IHF, it requires to be seen how the interests of hockey in India

can be best served. Sports bodies have to have a degree of autonomy with the government playing the role of an effective regulator. They must be allowed to function in a democratic manner with persons really interested in developing the game participating in its affairs. The knee-jerk reaction to losses at international events, which are inevitable in competitive events, and looking for persons to blame, cannot be conducive to a healthy development of any national sport. For a proper enquiry into the problems besetting Indian hockey the cloud of "suspension" over the IHF should be lifted. The past should be put behind and new beginning made. The submission made by Mr. Harish Malhotra that IHF's suspension should continue is accordingly rejected.

For the aforementioned reasons the decision dated 28th April, 2008 of the IOA placing the IHF under suspension and the decision dated 10th May, 2009 of the IOA disaffiliating the IHF are hereby quashed. The decision dated 12th May, 2008 passed by the MYAS temporarily withdrawing the recognition of the IHF and the subsequent order dated 10th/11th August 2009 passed by the MYAS derecognizing the IHF are also hereby quashed.

13. Respondent no.1 addressed letter dated 27.07.2010 to the office bearers of the respondents no.2, 3 and 4 issuing a clarification in light of the decision of this Court on 21.05.2010. It was stated in this letter that there were two recognized National Sports Federations, only one of which, namely, Respondent no.2 enjoyed the support of FIH. In view of the same, the Respondent no. 1 undertook to comply with the directions of this Court and to resolve the matter in the best interest of hockey in the country.

14. By a speaking order dated 05.08.2010, respondent no.1 derecognized respondent no.2 as the National Sports Federation for the management, control and promotion of hockey in India, in the light of the judgment dated 21.05.2010 of this court in Writ Petition (Civil) No.3713/2008. The respondent no.1 addressed a letter dated 06.08.2010 to FIH informing them about the development as regards the restoration of the status of respondent no.4 as the National Sports Federation for Hockey in India, and the consequent de-recognition of respondent no.2, with the request to not assign any international tournament or have any commercial dealings with respondent no.2 thereafter. The Respondent no.2 challenged the aforementioned letters dated 05.08.2010 and 06.08.2010 before the Supreme Court in a Writ Petition under Article 32 of the Constitution of India. The matter is still pending adjudication. However, certain interim arrangements were permitted at the request of respondent no.2 by the Supreme Court while keeping in view the urgency in certain situations. Some of these orders are as under:-

(a) Order dated 17th August, 2010 whereby the Apex Court took note of the fact that FIH had recognized the respondent no.2 Hockey India and team selected by it alone would be permitted to participate and in view thereof, following directions were given:-

In the circumstances, pending further orders, we permit the petitioner (hockey India) and the second respondent (IOA) to finalise the Women Hockey Team for participation in the World Cup and take all necessary steps in that behalf for sending the team so that participation of Indian Team in the World Cup is assured.

(b) Order dated 27th August, 2010 wherein the Supreme Court considered the question who will field the Men's Hockey Team and Women's Hockey Team in the Commonwealth Games to be held in October, 2010 in New Delhi. The Court again permitted the Olympics Association to field the team in collaboration with the Hockey India/respondent no.2.

(c) Orders dated 22nd October, 2010 which was passed for making arrangement in regard to participation of the hockey teams in the Asian Games which was held in China in November, 2010. In this order the Hockey India (R.2), Indian Hockey Federation (R.4) and Indian Olympic Association were directed to held discussion with Sports Ministry and sort out the matter.

(d) Orders dated 11th March, 2011 directing that interim orders dated 27th August, 2010 would apply in regard to participation of the hockey teams in future games as well which would mean permitting the respondent no.2 to select the team and send the team in international squad.

(e) Orders dated 8th April, 2011 whereby leave is granted and while expediting the hearing, ad-interim orders are directed to continue till further orders.

To sum up, the effect of the aforesaid orders of the Supreme Court is that insofar as international events are concerned, authority is given to respondent no.2 to select Indian team and send the same since it is respondent no.2 which is recognized by FIH.

15. In December, 2010, the respondent no.5, a reputed sports promoter and event manager launched "Worlds Sports Hockey" (hereinafter referred to as the "said domestic event") with the sanction of the respondent no.4. the respondent no. 5 was to underwrite the entire cost of the said domestic event and was to pay the respondent no.4 an annual fee of Rs 30 crores for the development of Hockey in India. It is pertinent to note that the said domestic event was the first of a financially sustaining hockey event in India.

16. One of the most welcome features of the said domestic event was that the earnings of the players participating in the event were stipulated under the contract, which also guaranteed a minimum payment along with income from endorsements and performance incentives available to the players.

17. The respondent no.5 entered into three-year agreements with over 140 Indian hockey players to participate in the said domestic event. Under the terms of the agreement, the contracting player is required to perform his services exclusively during the period beginning from the date of signing of the agreement till 30.04.2014, and this exclusivity condition was made applicable

where the contracting party was playing for his national team, or in test matches for his international team.

18. Once these players signed the agreement with the respondent no.5 for participating in the aforesaid domestic event, they come under threat insofar as their participation in international events is concerned. As pointed out above, the respondent no. 2 has enacted Code of Conduct as per which disciplinary action can be taken against any Indian player who participate in domestic event which is not sanctioned by the respondent no.2. The relevant clause of the said Code of Conduct are as under:-

HOCKEY INDIA CODE OF CONDUCT FOR ALL PLAYERS IN DOMESTIC/ INTERNATIONAL COMPETITIONS

All the Players must adhere to the following in Domestic competitions:-

1. Participate only in sanctioned events of Hockey India including age group teams from Under-16 upto Masters as per FIH bye laws dated 11 March, 2011.

(A sanctioned event means any domestic event organized or sanctioned by the relevant Continental Federation and/ or National Association (hockey India) and/ or the FIH)

As per the FIH bye laws, an event is any indoor or outdoor Hockey match, tournament, competition or other event, at whatever level played, whether international, continental, national or local and including age-group events such as "masters" events.

2. Disciplinary action shall be taken against the players who participated in any event which is not sanctioned by Hockey India.

3. Obtain NO OBJECTION CERTIFICATE from Hockey India before playing for any foreign team/club etc.

x x x x x x

BREACHES OF CODE AND SANCTIONS

? Breaches of the Code of Conduct shall be dealt with in the first instance by the Team Manager whilst away by investigating and instigating appropriate interim measures.

? The Team Manager is required to keep a contemporaneous note of any incident and report to HOCKEY INDIA at the most appropriate opportunity and certainly no later than through the medium of the Post Event Report.

? HOCKEY INDIA shall take further action as is deemed necessary.

? In the case of a serious breach whilst away at an event, this could mean being asked to leave the competition and/or the country in which the event is being held.

? A breach of this Code of Conduct could affect whether or not HOCKEY INDIA invite you to represent Indian game.

19. We would also like to reproduce Bye-Law to Article 5 which deals with "sanctioned and unsanctioned events". The relevant portion of the said Regulations is as follows:-

A. Introduction

1. These regulations have been adopted in recognition of the following fundamental sporting imperatives:

1.1 The governance of the sport of Hockey, like most other sports, is organized in a pyramid structure, with the FIH as the sole and exclusive international governing body, one Continental Federation recognized as the sole and exclusive governing body for each continent and one national Association (HOCKEY INDIA) recognized and admitted into membership of the FIH as the sole and exclusive national governing body for each country where the sport is played. x x x x x

1.3 Unsanctioned Events threaten to undermine these fundamental sporting imperatives;

x x x x x

2. In order to further the aforementioned fundamental sporting imperatives, these regulations:

2.1 confirm the right of the FIH, the Continental Federations and the National Associations to maintain and control the official sporting calendar of International Events and Domestic Events;

2.2 confirm the primacy of national representative competition over other types of competition by requiring an Athlete to obtain a No- Objection Certificate from the Home National Association, confirming that it has no objection to his participation in an Event organized or sanctioned by another National Association, as a condition of participation in such Event and

2.3 require a National Association

a. not to participate in Unsanctioned Events;

b. to prohibit participation by Athletes and other organizations and individuals under its jurisdiction in Unsanctioned Events and

c. not to permit an Athlete from another National Association to participate in an Event that it organizes or sanctions unless he has first obtained a No- Objection Certificate from his Home National Association confirming that it has no objection to his participation in such Event.

x x x x x

4. These regulations come into force immediately and National Associations must

implement them by 31st March, 2011 (the Effective Date). The prohibitions will apply to all Events taking place after that date, but they shall not have retrospective effect, and therefore, no action will be taken under these regulations or any National Association's implementing regulations against any National Association, organization or individual on account of any legally binding commitment that the national Association, organization or individual made prior to the Effective Date. Instead, the regulations in effect prior to the Effective Date shall apply in respect of any such commitments.

5. For the purpose of these regulations:

5.1 x x x x x

5.2 x x x x x

5.3 x x x x x

5.4 An International Event is an Event in which National Representative Teams compete. It includes (without limitation) Events staged as part of a multi-sport event as the Olympic Games.

5.5 x x x x x

5.6 x x x x x

5.7 A Sanctioned Event is:

a. any International Event organized or sanctioned by the relevant Continental Federations) and/or the FIH in accordance clause B.1 below; and

b. any Domestic Event organized or sanctioned by the relevant Continental Federation(s) and/or National Association(s) (HOCKEY INDIA) and/or the FIH in accordance with clause B.2 below.

5.8 An Unsanctioned Event is any Event that is not a Sanctioned Event.

B. Procedures for Sanctioning a particular Event.

1. x x x x x

2. Sanctioning of the Domestic Events

2.1 Where a proposed Domestic Event would be open only to teams in membership of or affiliated to one National Association (HOCKEY India), and would be staged entirely within that National Association's territory, then in order for that event to be organized as a Sanctioned Event it must be organized or sanctioned by that National Association (HOCKEY INDIA)

2.2 Where a proposed Domestic Event would be open to more than one National Association's teams and/or Athletes, and/or would be staged by one national Association in another national Association's territory or in more than one National Association's territory, then in order for that event to be recognized as a

Sanctioned Event:

a. If the event is open only to teams and/or Athletes in membership of or affiliated to National Associations within one Continental Federation, and the event would be staged entirely within that continent, then it must be sanctioned by that Continental Federation; while

b. if the event is open to teams and/or Athletes in membership of or affiliated to National Associations from different Continental Federations, and/or it would be staged (in whole or in part) outside of the team's continent, it must be sanctioned by the relevant Continental Federations, and by the FIH.

20. According to the respondent no.2 this Code of Conduct is the by-product of the Code of Conduct prescribed by FIH and the respondent no.2 has no option but to adhere to the FIH mandate. Otherwise, the FIH may even bar the entry of India in the International events.

21. It is a piquant position that emerges at two levels. At first level, the situation is that though the respondent no.1 i.e. Union of India has derecognized the respondent no.2 and in its place has given recognition to respondent no.4, insofar as FIH is concerned, it has not accepted this decision of the respondent no.1. As per the FIH, the respondent no.2 currently stands recognized. The FIH is the controlling body of International events and all participating countries have to conform and subscribe to the rules made by FIH for participating countries. Furthermore, having regard to the interim orders passed by the Apex Court, insofar as International events are concerned, as of now, the respondent no.2 is the body which represents India. Therefore, when question of selecting National Hockey Team for participating in International events arises, it is the respondent no.2 which is to play dominant and exclusive role and send teams to such international events. While doing so, the respondent no. 2 is also supposed to ensure that the rules and regulations as well as Code of Conduct of FIH is respected and followed. Once, this is kept in mind, it becomes difficult for the players to participate in the domestic events proposed to be organized by the respondent no.4 and 5 as that may debar such players from participating in international competition.

22. At other level, the laudable object behind organizing such domestic hockey event which respondents no.4 & 5 want to organize, cannot be undermined. By participating in these events, the hockey players would be able to make a respectful earning which has eluded the hockey players of this country till now. It may attract more youngsters to the game of hockey, who at present are driven to other sports as greener pastures. This may also sound well for the future of the game of hockey in this country and the event may serve a public purpose. Thus, not only new domestic hockey events to be organized by the respondent no.4, with a reputed sport promotion and event management company, may prove to be a boon for the Indian hockey players, boosting their morale and securing them financially, but there are also good chances of it lending valuable

support to the promotion and up-liftment of the game of hockey in this country and to regain its past glory.

23. This conflicting scenario at the aforesaid two levels poses a difficult problem, solution whereof is not easy. If these players participate in the domestic events, their participation in the international events is threatened. If they do not participate in the proposed domestic hockey events planned by the respondent no.4 that may not be good for the sport of hockey in the country. One cause of this unfortunate scenario is the fight between the respondent no.2 on the one hand and the respondent no.4 on the other. Before we ponder over the issue and find the solution, we would like to make certain observations on the basis of arguments advanced by the learned counsel for the parties.

24. The FIH had written letter dated 15th March, 2011 referring to the proposed events. No doubt, in para 3 of this communication, it is stated that the event known as "World Series Hockey" is not recognized or a sanctioned event as far as the FIH and its members are concerned, the main concern expressed in this communication is that the dates of the events were clashing with period when the players were required for national representative duty (which included participation in international events as well as training and preparation for those events). It was for this reason, the FIH impressed that it had adopted regulations requiring members not to participate in unsanctioned events and requiring players to choose whether to participate in sanctioned or unsanctioned events. At the same time, in para 5.1 it is clarified that the new regulations would apply in respect of the commitments made after 31st march, 2011. It would mean that new regulations are not applicable for those commitments which are made prior to 31st March, 2011. It is in this context in para 5.2 wherein it is further mentioned by FIH that players are required to ensure that in their contractual arrangements they retain the ability to comply with the regulatory requirements of the sport and not the other way around.

25. Even the Regulations of FIH clarifies that they are coming into force from 31st March, 2011 and will not have any retrospective effect and would not affect any legally binding commitment with the national association, organization or individual as made prior to the aforesaid effective dates. Minutes of the meeting of Hockey India and Indian Hockey Federation held on 25th July, 2011 confirm to the same effect as per which the respondent no.2 Hockey India itself confirm that they would not impose restrictions on the participation of the players who were contracted before 1st April, 2011 in the proposed World Series Hockey league being organized by respondent no.4 (IHF). The only stipulation made therein was that such commitment should be subject to training schedule in the national camps and duration for which the players can be spared for such participation.

26. It has also come on record that the respondent no.2 has already organized preparatory campus for Olympic Qualifier no.1. The first camp was to be held from 15th December, 2011 to 6th January, 2012 i.e. for 23 days, though

according to respondent no.2 it was only a fitness camp. Second camp was from 16th January, 2012 till the Olympic Qualifiers no.1 i.e. for a period of 40 days which was a skill camp.

27. When the matter is to be looked into in this perspective, according to us, the problem can be resolved once it is ensured that the domestic event to be organized by respondent no.4 with respondent no.5 as sponsor, do not come in conflict with the training schedule prescribed for international events viz. not only the international competitions but the training schedule for that as well. Though, originally the respondent no.4 had scheduled to start the series from 17th December, 2011, which was somewhat conflicting with the international training schedule, during the course of arguments it was suggested by counsel for respondents no.4 and 5 that they will not go ahead with the said domestic events "World Series Hockey" as per the aforesaid schedule but would be ready to reschedule the entire event. If the dates are fixed in March, 2012, the apprehension of the FIH can be taken care of as those dates do not come in conflict with any international event.

28. Keeping in view the boost which this series can give to the game of hockey in India, thereby not only sub serving a larger public interest, but also benefiting the individual players financially by participating in this series, we are of the view that endeavour should be made to hold this domestic event.

29. Since the FIH is not a party nor we have any jurisdiction over the same, and for this purpose cooperation of FIH is required, we are of the opinion that the matter can be placed before the FIH in the same perspective as narrated by us in this judgment. Thus, clarification on this aspect can be sought from FIH. At the same time, the FIH can be impressed upon to sanction the event if it is still required, moreso, when the new dates to be fixed by the organizers are not in any way clashing with the schedule fixed by the FIH for international events.

30. We may place on record that counsel for the respondent no.2 had argued that it was a motivated petition filed by the petitioner who had personal interest in the matter as he was associated with respondents no.4 & 5. However, having regard the public importance of the issue, it may not be necessary to go into this aspect.

31. We may also place on record another argument of the learned counsel for the respondent namely regulations which are framed by the FIH is based on the decision of the experts and it is also necessary to have the preparatory camps for Olympic events, if India wants to put a good show in the said event. There cannot be any quarrel about this argument. It is for this reason, we have already suggested that the domestic event can be arranged in such a manner that it does not come in conflict with preparatory camps or the period when the international events are going to be held.

32. The writ petition stands disposed of in terms of the observations made herein above. All pending applications also stand disposed of.