

(2019) 05 SC CK 0004
In the Supreme Court Of India
Case No : Civil Appeal No. Of 2019

Maharashtra Archery Association

APPELLANT

Vs

Rahul Mehra And Ors

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 19, 33

Citation : (2019) 5 Scale 223 : (2019) 3 BCR 856 : (2019) 6 AII MR 421

Hon'ble Judges : A.M. Khanwilkar, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Siddhartha Dave, Sahil Tagotra, Neha Sangwan, Amit Agrawal, Nikunj Dayal, Anil Katiyar, Pooja Dhar, Hrishikesh Baruah, Chirag M. Shroff, Mahima C. Shroff

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J

1. Leave granted.

2. The respondent No.1 has filed a public interest litigation before the High Court of Delhi at New Delhi, being Writ Petition (Civil) No.195 of 2010, raising issues of transparency in governance and functioning of the Archery Association of India (for short the "AAI"). Several interim orders came to be passed in the said writ petition which are not relevant for answering the controversy in the present proceedings. The present special leave petitions emanate from the order dated 10th August, 2017 passed by the High Court in C.M. No.10461 of 2017 filed by respondent No.1 (writ petitioner) inter alia for appointment of Administrator/Returning Officer including to conduct elections of AAI in compliance with the High Court's order dated 15th December, 2016, as well as stay of notice dated 2nd March, 2017 of the AAI, calling for an emergency meeting of the General Council on 15th March, 2017 and, in the alternative, to stay the outcome of such meeting if held, till the Court appoints an Administrator/Returning Officer. The

High Court after hearing the parties passed the following order:

"20. In the circumstances, the Court deems it appropriate that the affairs of the Archery Association of India (AAI) be brought under the supervision of an Administrator till its Constitution is amended and elections are held in terms of this Court's order dated 15.12.2016. The Court also deems it appropriate that for the present, the affairs and elections of AAI be conducted by a person of public eminence with significant experience in sports affairs and administration and elections. We are of the opinion that Mr. S.Y. Quraishi, Former Chief Election Commissioner of India, who has also served as Secretary in the Ministry of Youth Affairs and Sports, Government of India would be a suitable person to be appointed as the Administrator-cum-Returning Officer for discharge of the following functions:

(i) To resolve the issue of disaffiliation of such members/units of AAI as on 15.12.2016, within a month from today by giving them two weeks' notice and if their membership can be regularized in terms of the 'unamended' Constitution, it shall be so regularized;

(ii) the Electoral College of the AAI shall be prepared and elections shall be held in six weeks thereafter. This elected body shall carry out the amendments to the Constitution to bring it in conformity with the National Sports Code.

(iii) Thereafter, a fresh round of elections, shall be carried out as per the amended Constitution and in terms of the National Sports Code, to ensure that age and tenure restrictions and due representation of the sports persons are strictly complied with. The entire exercise shall be carried out within a period of 4 months from today.

(iv) The AAI shall make available to the Administrator an appropriate office space and facilities for the discharge of the aforesaid directions and make available such staff and personnel as the Administrator may express the need for. Alternatively, the Administrator may appoint such personnel to assist him in the aforesaid matter and expenses towards the same shall be borne by the AAI.

(v) Till the elections are conducted and results declared in consonance of the National Sports Code and in compliance with the preceding directions, the AAI shall not make any new financial commitments except with the prior approval of the Administrator. Routine expenses of AAI too shall be defrayed, with the due prior approval of the Administrator.

21. The applicant and the AAI shall seek consent of Mr. S.Y. Quraishi, of his acceptance of the aforementioned responsibility.

22. The Court would consider fixing an honorarium for the Administrator's assignment at a later date.

23. The application is disposed off in the above terms."

3. This decision is assailed by way of an appeal [arising out of SLP(C) Diary

No.29577/2017] filed by Maharashtra Archery Association (for short "MAA"), appeal [arising out of SLP(C) Diary No.28788/2017] filed by the Archery Association of India (for short "AAI"), and the appeal [arising out of SLP(C) Diary No.29202/2017] filed by Kerala State Archery Association (for short "KSAA"). When these special leave petitions came up for hearing on 18th September, 2017, the Court recorded the submission of the appellant(s) that the constitution of AAI stood amended in accordance with the National Sports Development Code of India, 2011 (for short "the Sports Code"). The counsel appearing for Union of India prayed for time to verify the said position. Later, this Court directed the Ministry of Sports to file an affidavit regarding compliance, on or before 26th October, 2017. Eventually, the affidavit of the competent officer of the Ministry of Youth Affairs and Sports, Government of India, came to be filed. It is not necessary for us to dilate on the contents of the said affidavit. For, the matters were heard on 4th December, 2017 whence, after hearing the parties, the Court proceeded to pass the following order:

"Heard Mr. Sunil Gupta, learned senior counsel and Mr. Salwan, learned counsel for the petitioners; Mr. Narasimha, learned Additional Solicitor General for the Union of India and Mr. Rahul Mehra, respondent appearing in person. It is submitted by Mr. Narasimha, learned Additional Solicitor General that though certain amendments have been carried out in the constitution, yet they are not in consonance with the National Sports Development Code, 2011 (NSDCI) of the MYAS. In the affidavit filed by the Union of India, certain deviations have been pointed out. They read as follows :

'i. The NSDCI provides that the election of office bearer of an NSF shall be conducted in accordance with the Model Election Bye-laws of the NSDCI, copy whereof is annexed herewith and marked ANNEXURE R/3 [PAGE 12 TO 51]. As per the provisions of the said election bye- laws, the Office Bearer and Members of the Managing Committee shall be elected by secret ballot. However, the Constitution of the AAI provides that election of office bearers of the AAI shall be held as per the rules and regulations which may be adopted by the General Council, and there is no mention in the Constitution of the AAI that such election shall be held by secret ballot.

ii. As per the principles underlying the NSDCI, an affiliated member of a National Sports Federation (NSF), i.e., a full member of the NSF, should be represented by two delegates in the General Council (by whatever name called). The Constitution of AAI shows each State Association has been given representation of three delegates in the General Council i.e. one representative over and above the minimum of two representatives.

iii. The NSDCI provides that an NSF shall give affiliation as a full member to a State Association if such State Association has at least 50% of the district units functioning in that State as per Para 3.10 and Para 3.19 of Annexure-II of the Code. But no such stipulation is found in the eligibility conditions for affiliation of State Associations as members of the AAI.

iv. The Constitution of AAI also makes a provision that up to three persons may be bestowed the title of Honorary Life President of AAI, without voting rights, in recognition of the services rendered by past Presidents of AAI. The NSDCI is silent on the matter.'

Mr. Gupta, learned senior counsel and Mr. Salwan, learned counsel for the petitioners fairly stated that the amendment shall be carried out keeping in view the said deviations within a week hence.

In view of the aforesaid, it is directed that amendment shall be incorporated by treating it as an order of the Court. After the constitution comes into force, election shall be held under the supervision of Mr. S.Y. Quraishi who has been appointed as the Administrator by the High Court, within four weeks therefrom. Mr. Quraishi is requested to see that the election takes place in accordance with the amended constitution which stands amended by incorporation by virtue of order passed by this Court, as agreed to by learned counsel for the parties.

The amended constitution shall be filed before this Court and a copy whereof be supplied to Mr. Narasimha, learned Additional Solicitor General and Mr. Rahul Mehra, respondent-in-person. But the filing of the amended constitution will not postpone the election, as directed hereinabove. To elaborate, amendment shall be incorporated stating the same as an order of the Court within a week hence and thereafter Mr. Quraishi shall proceed to hold the election in accordance with the constitution which will come into existence by virtue of the order passed today.

Mr. Quraishi shall be at liberty to see that the constitution of the Association is strictly in accordance with the Code and thereafter proceed with the election. If he has any reservation, he is at liberty to move this Court.

List after eight weeks."

(emphasis supplied)

4. As a matter of fact, the contentious issues regarding the relevant amendment carried out to the Constitution of AAI stood resolved in terms of this order. Further, this Court issued certain peremptory directions to the Administrator to ensure compliance thereof within the timeline specified in the order. The appeals could have been disposed of in terms of the said order itself, but the same were kept pending with a sanguine hope that the directions given therein would be complied with within the time-frame specified in the order and that the compliance report would be submitted by the Administrator in that regard. The appellant (AAI) filed an application before this Court on 11th December, 2017, being I.A. No.135882 of 2017 and placed on record the final amended Constitution in terms of the order of this Court dated 4th December, 2017. The appellant (AAI) then filed a separate I.A. No.132436 of 2018 on 13th September, 2018, seeking directions to hold elections as per the Court approved Constitution.

5. The Administrator, Mr. S.Y. Quraishi, appointed by the High Court finally filed a

compliance report in the Registry of this Court on 24th September, 2018, being document No.139081/2018 in appeal arising from SLP(C) Diary No.29577/2017, together with the new Constitution (for short "Administrator's Constitution"). Be it noted that, admittedly, the Constitution filed by the Administrator contained several other amendments than the permitted or approved amendments in terms of the order of this Court dated 4th December, 2017. It is also not in dispute that no formal application has been moved by the Administrator (appointed by the High Court) before this Court seeking liberty to amend the Constitution beyond the amendments referred to in the order of this Court dated 4th December, 2017. Further, no direction was sought from this Court to permit the Administrator to conduct elections on the basis of the amendments incorporated by him in the new Constitution. The grievance of the appellants is that this amended Administrator's Constitution was not even circulated to the constituent members until it came to be filed in this Court.

6. Thus, the grievance of the appellant(s) is that the Administrator had carried out amendments beyond what was permitted and approved by this Court in terms of the order dated 4th December, 2017, that too without any discussion with the members and stakeholders. That Constitution however, came to be notified for the first time on 4th October, 2018, through e-mail to the members - State Association(s) along with a notice for election for the office bearers of AAI to be conducted by the Administrator on 22nd December 2018, at 11.00 A.M.

7. The appellant (AAI) immediately rushed to this Court by way of I.A. No.15611 of 2018, seeking directions to the Administrator to conduct elections in conformity with the Court approved Constitution and seeking further directions to the Union of India to restore recognition of the AAI which was de-recognised on 17th December, 2012. That application was moved for passing suitable directions by this Court on 19th November, 2018, when the Court, after hearing the parties, passed the following order:

"Since the election programme has already commenced in terms of notice dated 4th October, 2018, the same should proceed as per law uninterrupted.

We clarify that the result of the election will be subject to the outcome of this application.

The grievance made in this application inter alia about improper amendments to the Constitution can be considered at a later stage.

List this application in the second week of February, 2019."

(emphasis supplied)

8. Resultantly, the election process was concluded in accordance with the Administrator's Constitution and not as per the amended Constitution in terms of the order of this Court dated 4th December, 2017. As a result, the representatives of the appellant Association(s) could not contest the election due to the restrictions prescribed in the Administrator's Constitution.

9. The Union of India has also filed a separate application being I.A. No.15103/2019 on 24th January, 2019, raising objections to the Administrator's Constitution being in violation of the Sports Code. Even the Indian Olympic Association (for short "IOA") has filed document No.24274/2018 on 8th February, 2019, objecting to the Administrator's Constitution being in violation of the Sports Code and the Constitution of the World Archery. Another application has been filed by Kerala State Archery Association ("KSAA"), being I.A. No.30011/2019 on 18th February, 2019, for directions to declare that the elections conducted by the Administrator on the basis of the Administrator's Constitution, is null and void and to appoint a new Returning Officer to hold fresh elections in consonance with the Court approved Constitution, in terms of the order dated 4th December, 2017. The appellant (MAA) has also filed an application on 1st March, 2019, being I.A. No.3792/2019 seeking a direction to declare the Administrator's Constitution as void ab initio and to appoint a Returning Officer/Observer to conduct fresh election for AAI in terms of the Court approved Constitution as per order dated 4th December, 2017. The Union of India, as per the liberty given by this Court, has filed an affidavit on 5th March, 2019 highlighting the deviations in the Administrator's Constitution and the Sports Code.

10. During the course of hearing of these matters, before closing the matter for judgment, the Court called upon the Administrator, appointed by the High Court, to submit a flow chart pointing out the steps taken by him from 4th December, 2017 till 22nd December, 2018, until the election of the new body. The Administrator has accordingly filed a compilation giving details about the follow up steps taken by him in that regard.

11. We have heard Mr. K.M. Natarajan, learned Additional Solicitor General appearing for Union of India, Mr. Shyam Divan, Mr. Sunil Gupta, Mr. Siddharth Dave, Mr. Shekhar Naphade, Mr. Gopal Sankaranarayanan, learned counsel appearing for the respective parties and Mr. Rahul Mehra, respondent No.1 appearing-in-person.

12. The core issue to be answered in these proceedings is about the purport of the order passed by this Court on 4th December, 2017. The background in which the said order came to be passed after hearing the parties, leaves no manner of doubt that it had modified the impugned order of the High Court dated 10th August, 2017. Further, the contentious issues regarding the proposed amendment in the Constitution stood answered to that extent. In that, this Court passed a peremptory order not only for approving the proposed amendments, as noted in the order dated 4th December, 2017, but also directed the Administrator to conduct elections in consonance thereto within a period of four weeks, after incorporating the amendments within one week from the date of the order. That was the limited mandate given to the Administrator. Indeed, this Court had given liberty to the Administrator to seek clarification or directions if and when necessary. That liberty, however, by no stretch of imagination could be mistaken

as authorising the Administrator to carry out amendments in the Constitution beyond the four amendments referred to in the order dated 4th December, 2017, much less to do so unilaterally without any prior notice to all the stakeholders and due deliberations with them as mandated by the Constitution of the AAI. In any case, any further amendments to the Constitution could be incorporated only after taking prior permission of this Court which was still in seisen of the matter. The Administrator was also ill-advised not to seek extension of time for completion of election process, which was to be completed not later than five weeks from 4th December, 2017.

13. The stand taken by the Administrator is that the order dated 4th December, 2017 gave him liberty to ensure that the Constitution of the Association is strictly in accordance with the Sports Code and only thereafter to proceed with the election. Indeed, liberty was given to the Administrator in the last paragraph of the order dated 4th December, 2017. However, the order if read as a whole and keeping in mind the spirit of the order, it had directed the Administrator to ensure timely completion of election within five weeks from the date of the order on the basis of four amendments approved by the Court, which were required to be incorporated by the Administrator within one week from the date of the order. No more and no less. For any other doubt or deviation, the Administrator was obliged to seek clarification and appropriate directions from this Court, before the expiry of the timeline given in the order dated 4th December, 2017. The Administrator, however, merely filed a compliance report on 24th September, 2018, in the Registry of this Court without attempting even once to invite the attention of this Court thereto. The Administrator has also filed a further report in terms of the order dated 28th March, 2019. On perusal of the said reports, we may hasten to accept the plea that the steps taken by the Administrator were under a mistaken belief - that he had the authority to proceed in the manner that he did and including to amend the Constitution beyond the four amendments referred to in the order dated 4th December, 2017. It is not a case of defiance or disobedience of the Court's order as such.

14. The appellant(s) would contend that even if it is not a case of intentional disobedience of the order of this Court by the Administrator, however, since steps taken by him are not in conformity with the spirit of the directions given by the Court, the same be declared as null and void and non est. For, his actions had caused serious prejudice owing to the unilateral, unauthorised action taken by him, including of having deprived the members of the appellant Association(s) from representing and participating in the election process of the apex body, which they were otherwise entitled to under the Constitution, as approved by this Court in terms of the order dated 4th December, 2017. All this having been done by the Court appointed Administrator, in the guise of an order of this Court, the Court must step in and nullify all the actions taken by the Administrator which are beyond the scope of the order dated 4th December, 2017. To buttress this submission, reliance has been placed on *Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Anr.* (1996) 4 SCC 622 (paragraph 19),

Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh and Ors. (2016) 9 SCC 44 (paragraphs 54, 55), and Bihari Lal Vs. Shankar Das and Ors AIR 1925 Lahore 309.

15. We are in agreement with the stand taken by the appellant(s) that the Administrator could have taken only such steps as were permitted by this Court vide order dated 4th December, 2017, in their letter and spirit. Indisputably, the additional amendments incorporated by the Administrator have resulted in denial of right to represent in and contest elections of the AAI for the existing members. Notably, even the direction given by the High Court whilst appointing the Administrator vide the impugned judgment, in no way gave authority to the Administrator to amend the Constitution, but was limited to conduct elections on the basis of the Constitution as it stood then. As ordered by the High Court, it was for the newly elected body to take steps in the right earnest to amend the Constitution to bring it in line with the National Sports Code on specified matters and then to conduct fresh elections on the basis of such amended Constitution. In other words, the Constitution could be amended only in accordance with law, which means by the elected body after interacting with all the stakeholders and members. The Administrator had no power to amend the Constitution, much less unilaterally, except for the four amendments approved by this Court, for which no further formality was required to be undertaken. The Administrator was obliged to conduct elections on the basis of such amended Constitution in terms of the order of this Court dated 4th December, 2017. No more and no less.

16. Appellants have rightly invited our attention to the decision of the Constitution Bench of this Court in Smt. Damyanti Naranga Vs. The Union of India and Ors. (1971) 1 SCC 678, which had approved the exposition in G.K. Ghose and Anr. Vs. E.X. Joseph. (1963) Supp. 3 SCR 789 In that case, this Court had held that the right to form an Association was conditioned by the existence of the recognition of the said Association by the Government. In that case the Court had held:

"It is not disputed that the Fundamental Rights guaranteed by Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application, to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co- employees are entitled to form Associations or Unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government servants as soon as recognition accorded to the said Association is withdrawn or if, after the Association is formed, no recognition is accorded to it within six months. In other words, the right to form an Association is conditioned by the existence of the recognition of the said Association by the Government. If the Association obtains the recognition and continues to enjoy it, Government servants can become

members of the said Association; if the Association does not secure recognition from the Government or recognition granted to it is withdrawn, Government servants must cease to be the members of the said Association. That is the plain effect of the impugned rule."

17. This dictum was quoted with approval by the Constitution Bench to conclude that the right to form an Association included the right to its continuance and any law altering the composition of the Association compulsorily will be a breach of the right to form the Association. Thus understood, the steps taken by the Administrator beyond the scope of the authority bestowed upon him in terms of the order of this Court dated 4th December, 2017, cannot be validated by the Court but must be treated as non est in law. It would have been a different matter if the Administrator had presented the additional amendments before this Court and invited this Court to approve the same after hearing the concerned parties.

18. Be that as it may, the question as to whether the amendments incorporated by the Administrator are justified and proper or, so to speak, essential as per the exposition of this Court in Board of Control for Cricket Vs. Cricket Association of Bihar and Ors. (2016) 8 SCC 535, need not detain us. For, the further amendments to the Constitution could be effected only in the manner provided by the Constitution of the AAI including in terms of the order dated 4th December, 2017. It is thus not necessary for us to examine as to whether, in fact, there is any deviation or not from the dispensation predicated in the National Sports Code, as contended by the respondents and the counsel appearing for the Administrator.

19. For the time being, without any hesitation, we are of the considered opinion that all steps taken by the Administrator, including the elections conducted by him on the basis of the Constitution (as amended by him), will have to be treated as null and void and non est in law. The parties will have to be relegated to the position as on 4th December, 2017, consequent to incorporation of the four amendments approved in terms of the same order. After carrying out those four amendments in the Constitution, the election will have to be conducted to constitute the new body, which would then take steps to introduce further amendments to the Constitution, if so required, to bring it in line with the National Sports Code, after giving an opportunity to all concerned. Only after the amendments are accepted and approved, fresh elections be conducted for constituting a new body in conformity with such duly amended Constitution.

20. In reference to certain apprehensions expressed by the respondents due to reactions of the World Archery body, we must observe that the controversy cannot be adjudicated on the basis of perception of the World Archery body. Similarly, we do not wish to expand the scope of the present proceedings as the main writ petition is still pending before the High Court of Delhi, where all issues can be deliberated and answered appropriately. While doing so, the High Court, no doubt, would be guided by the exposition in Sheela Barse Vs. Union of India

and Ors. (1988) 4 SCC 226 (para 1), K. Murugan Vs. Fencing Association of India, Jabalpur and Ors. (1991) 2 SCC 412 (para 12), and Board of Control for Cricket in India Vs. Cricket Association of Bihar and Ors, (2015) 3 SCC 251 (para 100-103) on which reliance has been placed by the counsel representing the newly elected body of AAI and the respondents, for issuing appropriate directions in a public interest litigation. In other words, the High Court will examine all aspects of the matter on their own merits in accordance with law.

21. We make it clear that the High Court may also consider the stand taken by the appellant(s) and Union of India that the decision of this Court in Board of Control for Cricket (supra) (2016) 8 SCC 535 will be of no avail to the present case, because the National Sports Code takes within its fold fifty-two disciplines of sports and Cricket is not one of the scheduled sports. In other words, the dispensation to be followed must be in conformity with the National Sports Code in so far as AAI is concerned. We keep this issue open to be considered at the appropriate stage.

22. In view of the above, we dispose of these appeals and all the applications on the following basis:

(I) We declare that the Constitution of AAI is amended only to the extent of four amendments referred to in the order dated 4th December, 2017, treating it as amended by an order of this Court, without requiring to comply with any other formality. Rest of the amendments are declared as null and void and non est in law. The same, at best, may be pursued as a proposal to be considered after the newly elected body initiates a procedure for carrying out further amendments to the Constitution of

(II) We further declare that all steps taken by the Administrator on the basis of the Administrator's Constitution, including the elections conducted on 22nd

December, 2018, are null and void and non est in law.

(III) All concerned parties are relegated to the position as it stood after the incorporation of the four amendments referred to in the order dated 4th December, 2017. Further, the High Court-appointed Administrator stands relieved in terms of this order. The elected body, in office, would continue to function hereafter as a Committee of Administrators appointed in terms of this order. We deem it appropriate to allow this Committee to continue in office as nothing adverse has been brought to our notice for their continuation until the newly elected body takes over. However, the Committee shall discharge only routine and day-to-day activities and shall not take any policy decision or create new financial liability, until the newly elected body takes over.

(IV) The election for constituting the new elected body be completed by the aforementioned Committee appointed by this Court within four weeks from today and the election process must be conducted strictly in accordance with the Constitution as amended in terms of order dated 4th December, 2017.

(V) The newly elected body, after taking over the office, shall move a proposal for further amendment of the Constitution to bring it in line with the National Sports Code and that process be taken to its logical end expeditiously.

(VI) Any issue arising from such amendment may be raised before the High Court where the main matter i.e. Writ Petition (Civil) No.195/2010 is pending. That writ petition be decided on its own merits and in accordance with law.

(VII) The Committee shall submit a compliance report before the High Court immediately after the newly elected body takes over the office but not later than six weeks from today. Issues concerning the said report may also be considered by the High Court on their own merits in accordance with law.

23. The appeals are allowed in the aforementioned terms. All the applications are disposed of.

24. While parting, we place on record our word of appreciation for the services rendered by the High Court appointed Administrator Mr. S.Y. Quraishi. We also appreciate the sincere effort of respondent No.1 for the cause of sports and for introducing reforms in the functioning of the apex body (AAI).