
(2010) 07 BOM CK 0140
In the Bombay High Court
Case No : Writ Petition No. 1370 of 2010

Mr. Lalit Kumar Modi

APPELLANT

Vs

The Board of Control for Cricket in India and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2010) 07 BOM CK 0140

Hon'ble Judges : B. H. Marlapalle, J

Bench : Single Bench

Advocate : Virag Tulzapurkar, with Mr. Aspi Chinoy, with Mr. Dhawal Mehta and Mr. Kunal Doshi and Mr. Gaurav Gopal, instructed by Wadia Ghandy and Co, for the Appellant; Sundaram with Mr. Raman and Ms. Akhila Kaushik, for respondent no.1 instructed by y M/s. Thakore Jariwala and Associates, Mr. V.A. Thorat and Mr. Rahul Chitnis, for respondent no.2 instructed by y M/s. Thakore Jariwala and Associates, Mr. I. M. Chagla with Mr. Sharan Jagtiani and H. N. Thakore, for respondent no.3 instructed by y M/s. Thakore Jariwala and Associates and Mr. U.R. Lalit with Ms. Jyoti Ghag, for respondent nos.4, 5 and 6 instructed by y M/s. Thakore Jariwala and Associates, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Roshan Dalvi, JJ.—The petitioner came to be appointed as the Chairman and Commissioner of the Indian Premier League (IPL) sometimes in the year 2008 by respondent no.1. He is also one of the Vice Presidents of the respondent no.1-Board and the Vice President of the Punjab Cricket Association. On 25/4/2010, the Board issued a show cause notice, inter alia, levelling the charges of,

(i) accepting multi-million dollar kickback while assigning the telecast rights for IPL matches;

(ii) attempting to rig the bids for the two new IPL teams that were auctioned the previous month;

- (iii) having proxy stakes in IPL teams;
- (iv) entering into transactions with rank strangers against the mandate of the Governing Council of the IPL;
- (v) helping family members in benefiting from the IPL contracts.

The petitioner submitted his reply to this show cause notice on 15/5/2010, however, on 25/4/2010 itself he came to be suspended on account of acts of indiscipline and misconduct, detrimental to the game of cricket and the respondent-Board. A second show cause notice was issued to the petitioner on 6/5/2010, inter alia, alleging that he was involved in a plan purported to destroy the world cricket structure, especially in England and/or to create a new rebel league. This notice was replied by the petitioner on 31/5/2010. A third show cause notice came to be issued to the petitioner on 31/5/2010, inter alia, alleging that he had committed irregularities and illegalities in the award of the IPL tenders for the Theatrical Rights and the commercialization of FCT for 150 seconds by the Board. This third show cause notice was also replied by the petitioner on 15/6/2010. All these show cause notices were issued under the signature of respondent no.3 who is the Honorary Secretary of respondent no.1, whereas respondent no.2 is the Honorary President. On 19/6/2010, the respondent no.3 purportedly called for a special general meeting of the Board on 3/7/2010 and on 28/6/2010 respondent no.3 issued a letter rescinding the IPL Media Rights Agreement dated 25/3/2009 for the Indian Sub Continent and the agreement was between the respondent-Board and World Sports Group (India) Private Ltd. (WSG). As per the petitioner, on 3/7/2010 this termination of contract with WSG was approved by the Governing Council. In the meanwhile, in response to his letter dated 25/5/2010, the respondent no.2 by his letter dated 19/6/2010 rescue himself from the Disciplinary Committee which consisted of himself and respondent nos.4 and 5. Respondent No.4 came to be appointed as the interim Chairman, after the petitioner was suspended. The petitioner vide the same letter dated 25/5/2010 had also requested respondent no.4 to rescue himself from the Disciplinary Committee but he did not do so. On the recusal of respondent no.2, the special general meeting held on 3/7/2010, reconstituted the Disciplinary Committee consisting of respondent nos.4 to 6. On 3/7/2010, the newly constituted Disciplinary Committee addressed a letter to the petitioner informing him of the preliminary hearing scheduled on 16/7/2010 at 3 p.m. and subsequently on 6/7/2010 the petitioner submitted a representation to the Board praying for reconstitution of the Disciplinary Committee with independent legal luminaries in place of respondent nos. 4 to 6. As per the petitioner, he had set out serious allegations against the respondent no.4, respondent no.5 was party to the decision of the Governing Council ratifying the termination of agreement with WSG and the same decision was again ratified by the Governing Council of which respondent no.6 is also one of the members. The petitioner, therefore, urged by the said letter that when the agreement dated 25/3/2009 was one of the subjects in the charges levelled against him and the termination of that

agreement was ratified by the Governing Council as well as by the general body, there would not be any fairness and transparency in the proceedings of the Disciplinary Committee and continuation of the Disciplinary Committee with respondent nos.4 to 6 would be against the principles of natural justice and fair-play.

2. In this petition, filed under Article 226 of the Constitution of India, a host of reliefs have been prayed for, but having regard to the petitioner's representation dated 6/7/2010, we confined the arguments of the respective parties only on the prayer for reconstitution of the Disciplinary Committee and we made it clear that we are not inclined to consider the other reliefs as prayed for in the petition at such interlocutory stage. Mr. Tulzapurkar, the learned Senior Counsel appearing for the petitioner relied upon the Constitution Bench decision in the case of Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, and submitted that though the respondent no.1-Board is not a State instrumentality within the meaning of Article 12 of the Constitution, a writ petition under Article 226 of the Constitution is maintainable against the said Board so as to examine whether it acts as per its own Rules and By-laws. These propositions are also supported by yet another decision in the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, .

3. The respondent no.1-Board has framed the Rules and Regulations and Rule 1 (q) deals with the constitution of the Disciplinary Committee. It states that the Board shall at every Annual General Meeting appoint a Committee consisting of three persons of whom the President shall be one of them to inquire into and deal with the matter relating to any act of indiscipline or misconduct or violation of any of the Rules and Regulations by any player, Umpire, Team Official, Administrator, Selector or any person appointed or employed by BCCI. The Committee shall have full power and authority to summon any person and call for any evidence it may deem fit and necessary and make and publish its decision including imposing penalties if so required, as provided in the Memorandum and Rules and Regulations. Under the Rules, there are different bodies like the Governing Council and the General Body. We are informed that the General Body has a membership of 30 and the Governing Council has a membership of 14 and before his suspension, the petitioner was a part of both these bodies. Rule 32(iv) of the Rules and Regulations of respondent no.1 reads as under:

If any Member or Associate Member or any Administrator of the Board commits any act of indiscipline or misconduct or acts in any manner which may or likely to be detrimental to the interest of the Board or the game of cricket or endanger the harmony or affect the reputation or interest of the Board or refuses or neglects to comply with any of the provisions of the Memorandum and/or the Rules and Regulations of the Board and/or the Rules of conduct framed by the Board, the Hony. Secretary of the Board, on receipt of any complaint shall, in consultation with the President, forthwith issue Show Cause Notice calling for

explanation and on receipt of the same and/or in case of no cause or insufficient cause being shown, shall refer the same to the Committee. The Committee shall after providing opportunity of hearing to the parties concerned shall submit its findings to the Board. The Board shall at the Special General Meeting specially convened take appropriate decision by majority of 3/4th members present and voting at the said meetings.

4. There is no doubt that the show cause notices issued against the petitioner are under Rule 32(iv). The Disciplinary Committee is required to have the President and two other members and it is constituted by the General Body. We are informed that the Disciplinary Committee consisting of respondent nos. 2, 4 and 5 was constituted by the Board in its last AGM held in September, 2009 and on account of recusal of respondent no.2, the Disciplinary Committee was reconstituted by the Special General Body in its meeting held on 3/7/2010 with respondent nos.4 to 6 as its members. We have gone through the representation submitted by the petitioner on 6/7/2010 for reconstitution of the Disciplinary Committee with independent persons and preferably retired judges of the Supreme Court. He has set out reasons in support of this request, which he feels, are material and as per him if the existing Disciplinary Committee continues with further enquiry, which he is willing to face, the enquiry proceedings will not remain fair and the element of bias cannot be ruled out. It was submitted by the learned counsel for the petitioner that the members who have already been a party to the decision for ratification of the termination of agreement with WSG cannot sit as judges in the Disciplinary Committee and to do so, would be against the principles of natural justice. It was urged that fair-play would demand the reconstitution of the Disciplinary Committee and without appointing any of its General Body members, as members of the said Committee.

5. Mr. Lalit the learned Senior Counsel appearing for respondent nos. 4 to 6, has invited our attention to the notice dated 7/7/2010 addressed to the petitioner and it reads as under:

The Members of the Disciplinary Committee of the BCCI are in receipt of a communication dated 6th July, 2010 addressed to them by your Solicitors, Wadia Ghandy & Co. The issues raised in the said communication shall be considered by the Disciplinary Committee in its meeting/hearing on 16th July, 2010 at the Cricket Centre, Mumbai. You are requested to be present in person to address the Disciplinary Committee on the said issues after which the Disciplinary Committee/its Members shall decide the issues raised.

6. Rule 32(iv) of the Rules and Regulations, which has been reproduced hereinabove, makes it clear that the Disciplinary Committee shall provide opportunity of hearing to the parties concerned and submit its findings to the Board. The Board shall subsequently at the Special General Body Meeting take an appropriate decision by a majority of 3/4th members present and voting at the said meeting. Thus, the Disciplinary Committee is required to enquire into the charges as set out in the show cause notices and submit its findings to the

Board. The Disciplinary Committee is something like a domestic tribunal and it has no further powers beyond conducting an enquiry and submitting its finding. The ultimate decision making body is the Board and the decision has to be taken by a majority of 3/4th members present and voting at the Special General Body meeting. The notice issued to the petitioner on 7/7/2010 and referred to hereinabove, clearly states that he would be heard by the Disciplinary Committee on the issues raised by him in his representation dated 6/7/2010 when it meets on 16/7/2010 and he has been requested to address the said Committee on the very same issues. Respondent No.2 in his communication dated 19/6/2010 addressed to respondent no.3 stated that the petitioner has made certain allegations against him presumably with an intention that respondent no.2 should not be a member of the Disciplinary Committee and also claimed that he wanted to examine respondent no.2 as witness, in case of an enquiry was held. Respondent No.2 further stated that though the allegations were untrue and had no relevance to the charges levelled against him, in order to give a fair opportunity to the petitioner during the enquiry against him and to remove any doubt of bias from the mind of the petitioner, the respondent no.2 thought it fit to rescue himself as a member of the Disciplinary Committee. Whether the same course should be followed by the respondent nos.4 to 6 or any one of them should, in our opinion, be left to the very same members when they meet on 16/7/2010 and even if none of the members withdraw from the Disciplinary Committee, nothing stops the petitioner in challenging the constitution of the Disciplinary Committee along with the challenge he may raise against the final order of punishment, if any, as it is well settled by a catena of decisions that when a challenge is raised to the final action of punishment on the basis of an enquiry by a domestic tribunal, the challenge could be raised to the constitution of the very same tribunal and its proceedings. It is for the Disciplinary Committee and the Board to address the requirements of Rule 1(q) of the Rules and Regulations and the issue of recusal on moral grounds or with an intention to act in fairness or for any other grounds, should be left to the decision of the members of the Disciplinary Committee.

7. Hence, without going into the merits and de-merits of the issues raised before us in this petition, including the legality of the constitution of the Disciplinary Committee, we deem it appropriate not to cause indulgence in invoking our extraordinary jurisdiction under Article 226 of the Constitution and we leave all the issues raised in the representation dated 6/7/2010 to be considered and decided by the Disciplinary Committee, in its meeting scheduled on 16/7/2010.

8. Hence, the petition is rejected. However, all the rights and contentions of the parties are left open.