

(2012) 07 DEL CK 0306

In the Delhi High Court

Case No : Writ Petition (C) No. 195 of 2010

Rahul Mehra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)(d), 19(5), 9

Citation : (2012) 07 DEL CK 0306

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Devvrat, for UOI., Mr. Mukul Rohtagi, with Mr. Rajiv Nayyar, with Ms. Shyel Trehan, Ms. Diya Kapur for Mr. Suresh Kalmadi . Ms. Divya Jain, for Mr. Amit Grover, for SAI. Mr. Sushil D. Salwan and Mr. Aditiya Garg, for R-6, for the Respondent

Judgement

CM No. 8790/2012 in W.P.(C) No. 195/2010.

1. The petitioner in this Public Interest Litigation (PIL) seeking redressal of the maladies afflicting with the various National Sports Federations inter alia by enforcement of the Comprehensive National Sports Policy 2007 and the Revised Guidelines dated 14th August, 2001, establishment of a Sports Regulatory Authority limiting the tenure of the office bearers, providing for representation of prominent sports persons of outstanding merit in the National Sports Federations etc., has filed this application inter alia to restrain Mr. Suresh Kalmadi from attending the London Olympics Games Village - 2012 during hosting of the Olympics Games from 26th July, 2012 to 13th August, 2012. Notice of the application was issued to the Union of India (UOI), Indian Olympic Association (IOA) and Mr. Kalmadi. Having regard to the urgency in the matter, the counsels for the said respondents agreed to file replies within three days. A statement was made by the counsel for Mr. Kalmadi that Mr. Kalmadi has booked his ticket for going to London for 26th July, 2012. The matter was accordingly fixed for hearing on 24th July, 2012. Replies to the application have been filed on behalf

of IOA and Mr. Kalmadi. UOI though has not filed any reply but its counsel has handed over in the Court a copy of the letter dated 13th July, 2012 of the Ministry of Youth Affairs & Sports, Government of India to the Secretary General, IOA as under:-

This is in the context of reports about the visit of Shri Suresh Kalmadi to London for purpose of witnessing London Olympics 2012.

2. Taking into consideration the serious charges leveled against Shri Kalmadi in the matters relating to conduct of the Commonwealth Games 2010 and that the court is still seized of the matter, the Ministry requests that the Indian Olympic Association, on ethical grounds should not facilitate or sponsor the visit of Shri Kalmadi to London in any manner including air travel, lodging & boarding in London and giving tickets for witnessing the opening and closing ceremonies and sport competitions of the London Olympics 2012.

3. The IOA should also take up this issue with the IOC and the IAAF particularly in the light of the fact that visit of Sh. Suresh Kalmadi to London Olympics, before corruption charges against him are cleared by the court, would defy the "Fundamental Principles of Olympism" as enshrined in the Olympic Charter.

The petitioner/ applicant appearing in person, the counsel for the IOA and the senior counsel for Mr. Kalmadi have been heard.

2. The petitioner's application pleads:-

(a). that the International Olympic Committee (IOC) is the supreme authority of the Olympic Movement worldwide and acts as a catalyst for collaboration between all parties of the Olympic family consisting of National Olympic Committees, the International Sports Federations, the athletes and the Organizing Committees for the Olympic Games;

(b). One of the main roles of IOC as per the Olympic Charter is to encourage and support the promotion of ethics in sports as well as education of youth through sport;

(c). Mr. Kalmadi who is the President of IOA has been charge sheeted by the Central Bureau of Investigation (CBI) in criminal cases involving widespread corruption; he is the main accused in the case pertaining to cheating, conspiracy and corruption in awarding the games relating contract to a Swiss firm and thereby causing loss to the Public Exchequer to the tune of about Rs. 95 crores; Enforcement Directorate has also filed a complaint against him of financial irregularities in the nature of foreign exchange contraventions to the tune of about Rs. 8 crores in the conduct of Queen's Baton Relay held in 2009 in London;

(d). Mr. Kalmadi was arrested and after more than nine months in Jail was released on bail on the condition that he shall not leave the country without the prior permission of the Court;

(e). on his application, he has however been permitted to travel to London for

representing India at the London Olympics;

(f). that Mr. Kalmadi if so permitted to go abroad would be in a position to influence witnesses; during the hosting of the games in London Mr. Kalmadi will have direct access to almost everyone from the world of sports including many whose names have surfaced in the various cases, pending trial/investigation pertaining to Commonwealth Games Delhi-2010;

(g). Mr. Kalmadi was the Chairman and the face of the Organizing Committee Commonwealth Games which had organized Queen's Baton Relay in London in 2009;

(h). that the petitioner as a patriotic citizen of the country, like many others, is pained and saddened with the news that Mr. Kalmadi will soon be representing India and Asia at the forthcoming London Olympics in his capacity as President IOA, President, Asian Athletic Association (AAA) and Council Member, International Association of Athletic Federation (IAAF);

(i). that the presence of Mr. Kalmadi at the London Olympics would be extremely embarrassing, unsettling and uncomfoting to the sports person as well as to India;

(j). that Mr. Kalmadi has allowed Mr. Vijay Kumar Malhotra, Vice President of IOA to assume the office of Acting President of IOA;

(k). Mr. Kalmadi also wrote a letter dated 3rd January, 2012 to Mr. Vijay Kumar Malhotra that he had not been able to look after the affairs of IOA during his incarceration for nine months and that his absence from the affairs of IOA will be a prolonged one and he will not be taking part in the IOA activities for a long time;

(l). that on the IOC prodding IOA to take appropriate action against Mr. Suresh Kalmadi, "to ensure full respect of the principles and rules of the IOC Code of Ethics and to preserve the reputation of the Olympic Movement" in India, Mr. Kalmadi vide another letter dated 8th February, 2012 undertook that he will not exert his rights and obligations as President of IOA;

(m). that the IOA accepted and acted upon the letters dated 3rd January, 2012 and 8th February, 2012 of Mr. Kalmadi;

(n). that Mr. Kalmadi however now in violation of the aforesaid is seeking to attend the London Olympics;

(o). that the Ethics Commission of the IOA with Justice U.C. Bannerjee (Retd.) former Judge of Supreme Court of India as Chairman has issued notice to show cause dated 6th December, 2011 to Mr. Kalmadi and also suspended him from the post held by him in IOA;

(p). that the Ethics Commission of the IOC has in the past withdrawn accreditation granted to Members who were incarcerated for a much shorter time

than Mr. Kalmadi;

(q). that the presence of Mr. Kalmadi at the London Olympics will be in violation of the Olympic Charter, Olympic Movement, Principles of Olympism all requiring highest level of integrity and ethical standards to be maintained.

The petitioner applicant, besides seeking to so restrain Mr. Kalmadi, also seeks impleadment of CBI as a party to this petition and a direction to the UOI to make a representation/complaint to the IOA's Ethics Commission against Mr. Kalmadi and to restrain Mr. Kalmadi from being a part of the Official Indian Delegation at the London Olympics.

3. The IOA in its reply has stated that Mr. Kalmadi is not a part of the delegation of IOA to London Olympics and is not going to London in any official capacity emanating from IOA; that IOA has not made any arrangements in this regard and not even issued any accreditation card to Mr. Kalmadi.

4. Mr. Kalmadi in his reply has stated:-

(i). that he is not going to London in is capacity as the President of IOA or in any manner connected with IOA;

(ii). that the objective of his trip is not to attend the Olympics and is in fact to attend IAAF Council meetings;

(iii). that his trip is not being funded by the Public Exchequer or by the IOA or by the Athletic Federation of India (AFI);

(iv). that he is going to London in his individual capacity as the IAAF Council member at IAAF's expense, to attend the meetings of IAAF Council which are being held at the same time as the London Olympics; that he is a Member of the IAAF Council since 2003 by virtue of being repeatedly elected as the Asia Area Group Representative of IAAF;

(v). that the meetings of IAAF are scheduled on 31st July, 2012, 2nd August, 2012 & 10th August, 2012 at venues different from the Olympic Games;

(vi). that his trip does not include attending any sports events of the Olympics Games and this was never the intention of his trip; however even if he were to attend such events, he would be doing so in his individual capacity;

(vii). that AAA has over 45 Asian Countries as its Members;

(ix). that the order of the CBI Court granting him permission cannot be modified in these proceedings;

(x). that IAAF and AAA are organizations located outside India and jurisdiction of this Court and this Court has no domain over their activities;

(xi). that no restrictions on his travel permitted by the CBI Court can be placed in these proceedings;

(xii). that he is a Sports Administrator by profession and has a right to practice the said profession;

(xiii). that as per the law of the country, he has to be presumed innocent unless proven guilty.

5. The petitioner applicant has argued that Mr. Kalmadi in his reply has not dealt with the pleas in the application regarding Olympic Charter, Olympic Movement, Principles of Olympism; that he has not filed any documents along with his reply to show the constitution of IAAF or AAA or even the invitation which he claims to have received to participate in the IAAF Council meetings; that the position enjoyed by Mr. Kalmadi in AAA or in IAAF is by virtue of his status in this country; that IAAF Council, besides country/region representatives also comprises of 15 independent Private Members but Mr. Kalmadi is not shown as a Private and Independent Member; that IAAF is a affiliate of IOC; that Mr. Kalmadi has no fundamental right to go for such luxurious purpose; that Mr. Kalmadi has by his acts leading to his prosecution breached the ethical values and principles of Olympism; that AFI is affiliated to IAAF and through IAAF to the AAA and the position held by Mr. Kalmadi in IAAF and AAA are by virtue of his being representative of India; that AFI is also guided by the rules & regulations, bye laws and directions of IAAF; that IAAF is to abide by the Olympic Charter; that any person or organization belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter; IAAF is a part of the IOC; that Mr. Kalmadi while seeking bail when incarcerated had claimed to be suffering from dementia and cannot now seek to attend important meetings; that the CBI did not even file reply to the application of Mr. Suresh Kalmadi before the CBI Court, to travel abroad; that Mr. Ashish Patel, co-accused in the Queen's Baton Relay case is in London.

6. The senior counsel for Mr. Kalmadi has argued that the Ethics Commission with Justice U.C. Bannerjee as Chairman was dissolved by the General Body of IOA; that the order of the CBI Court granting permission to Mr. Kalmadi to travel abroad cannot be challenged in these proceedings; Mr. Kalmadi will not be representing India in any manner; that he is willing to give an undertaking not to wear any badge showing himself as a representative of India and if at all goes to the Olympic events, to not even go as representative of IAAF; that the relief claimed in this application is outside the ambit and scope of the writ petition; that the heavens will not fall if Mr. Kalmadi goes to the Olympic Games; that he has a fundamental right to travel.

7. Before we start our decision, following pertinent factors need to be recapitulated:

A. that the Government of India is also of the view that the visit of Mr. Kalmadi to London Olympics, before corruption charges against him are cleared by the court, would defy the "Fundamental Principles of Olympism as enshrined in the Olympic Charter";

B. that Mr. Kalmadi also states that he is not going to London as representative of India or Indian Sports and is willing to give undertakings in this regard;

C. The criminal proceedings are pending against Mr. Kalmadi in CBI Court, New Delhi. As per the conditions of bail granted to him, he has to seek prior permission of the said Court for going abroad. Mr. Kalmadi had moved an application seeking permission to go to London which has been granted by the CBI Court; and,

D. that the objection of the petitioner/applicant is inter alia to Mr. Kalmadi being seen at the London Olympics as the face of India.

We would like to remark at the outset that in view of provisions contained in Article 19(1)(d) of the Constitution of India, free movement is the Fundamental Right of Mr. Kalmadi i.e. right to move freely throughout the territory of India. This right is however subject to reasonable restrictions that can be imposed under Article 19(5) of the Constitution. Mr. Kalmadi is not exercising his right under Article 19(1)(d) as he wants to go abroad. In such a case and having regard to the attendant circumstances we have to examine as to whether it would be proper and/or in public interest to allow Mr. Kalmadi to go to London and if so on what conditions. We would like to clarify at this stage that the order of CBI Court does not address this issue and naturally so it needs to be emphasized that the CBI Court examined the issue from altogether different angles. Since Mr. Kalmadi is the accused in criminal proceedings pending before the CBI Court, the CBI Court while considering the application had to examine it from a different angle namely the CBI Court was to satisfy that Mr. Kalmadi if permitted to go to London, would come back and would not jump the bail; he would participate in the proceedings before the Court; those proceedings will not be unduly delayed because of his visit to London; and he would not make an attempt to influence witnesses in London. On the other hand as mentioned above, the parameters which have to keep in mind are altogether different. Therefore merely because CBI Court has granted the permission to Mr. Kalmadi to go to London would not mean that it is an end of the matter in so far as this Court is concerned.

Mr. Kalmadi in his reply has already assured that he is not going to London in his capacity as the President of IOA or in any manner connected with IOA; the objective is not to attend the Olympics; his trip is not being funded by the Public Exchequer or by the IOA or by the Athletic AFI etc. As per him he is going to London in his individual capacity as the IAAF Council member at IAAF's expense to attend the meetings of IAAF Council. The question in these circumstances that arises is as to whether attending to the affairs of IAAF is purely individual affairs or it has any official flavour and representation of India, in the process, is involved.

We have enquired from the senior counsel for Mr. Kalmadi as to whether the limited participation also of Mr. Kalmadi as portrayed by him, in the meetings and

affairs of IAAFs the Asian Area Representative is not on behalf of Indian Sports. The senior counsel vehemently denied. He was however asked to make good the said denial. As aforesaid, the averments in the reply in this regard are bereft of any particulars or documents in support.

8. The senior counsel at the outset protested and contended that Mr. Kalmadi is not required to establish before this Court his stand/capacity in AAA and IAAF which are both foreign bodies outside the jurisdiction of this Court. However upon being reminded that it is the plea of Mr. Kalmadi himself that he is going for the purposes of attending the meeting of an International Sports Body and in his personal individual capacity and not as a representative of India or any Indian Sports Federation, the copies of the documents filed in the CBI Court in this regard and extracts from the constitution of IAAF were handed over in the Court.

9. Mr. Kalmadi before the CBI Court produced the copy of the Circular dated 21st February, 2012 of the General Secretary of IAAF to all the members of IAAF Council and the photocopy of his travel ticket showing the date of his departure as 26th July, 2012 at 0820 hours and the date of his return as 13th August, 2012. A perusal of the said documents shows that the General Secretary of the IAAF has merely circulated to all the Members of the IAAF Council the information concerning participation at the London Olympics. The said participation is in the entirety of the Olympic Games with the meetings of IAAF Council only on 31st July, 2012, 2nd August, 2012 & 10th August, 2012. It is thus not as if, it is necessary for Mr. Kalmadi to attend the said events or that his presence has been requested. The visit is undoubtedly of the own volition of Mr. Kalmadi.

10. The extracts of the constitution of IAAF handed over do not disclose the information sought. On our asking, a photocopy of the complete Constitution of IAAF has been handed over. The same shows:

- (i). that IAAF is the World Governing Body for the sport of athletics, with democratically elected National Governing Bodies for athletics of different countries or territory as its Members;
- (ii). that the General Assembly of Members of IAAF is called the "Congress" and the Executive Body of IAAF is called the "Council";
- (iii) the Council comprises of representatives of the Area Associations;
- (iv). the Area Associations comprise of the Member countries;
- (v) India is a part of the 45 Member Asian Area Association;
- (vi) the Council of IAAF is empowered inter alia to suspend or take other sanctions against a Member, to facilitate and to co-operate the establishment of an official worldwide calendar of athletics events, to promote a development programme for the benefit of Members etc;

The constitution of IAAF lists AFI as one of its Members.

11. A perusal of the constitution of IAAF leaves no manner of doubt whatsoever that the position, even if any of Mr. Kalmadi therein as the Asian Area Representative and hence as a Council Member of IAAF (though no proof of the same has been produced) is on behalf of AFI which is a member of IAAF and AAA and not in his individual capacity as has been sought to be argued on his behalf. We may at the cost of repetition state that only democratically elected National Governing Bodies for athletics of various countries, as AFI is for India, can be Members of IAAF and such National Governing Bodies for athletics of different countries of defined regions form Area Associations who depute/elect their representative in the Council of IAAF. Article 9 of the Constitution of IAAF dealing with Area Associations provides for the Area Members electing from amongst themselves, their representative on the Council. The Member countries of IAAF obviously have to be represented by humans; such human beings however act as representatives of their respective countries. From the letter aforesaid of the Govt. of India it is apparent that the Govt. of India does not approve of representation by Mr. Kalmadi. The claim thus of Mr. Kalmadi that his participation in the IAAF Council and the position held by him in AAA or his participation in IAAF Council is in his individual capacity having nothing to do with the sport of athletics in India may not be entirely correct.

12. The matter can be looked at from another perspective also. The election of Mr. Kalmadi as the Representative of the Asian Region is because of the membership of AFI of IAAF. It defies logic that while Mr. Kalmadi is not authorized to represent India or AFI, as is clear from the stand of the Government of India, he will still participate in the affairs of IAAF. Faced with the same, the senior counsel for Mr. Kalmadi has argued that Mr. Kalmadi is representing not only India but 44 other Asian Countries also and which he has been elected to represent. However the fact is that he got so elected only because then he represented India and which he today does not. Moreover Mr. Kalmadi has for the last nearly two years now been disassociated with sports as also admitted by him and has also given an undertaking to keep himself disassociated. What we have wondered is as to how such a person can represent the interest of India or any other Asian country. He is clearly not only not authorized to do so but is also due to his long absence incompetent to do so.

13. The position as emerges also takes care of the argument of the senior counsel for Mr. Kalmadi that the relief claimed in the application is outside the ambit and scope of the writ petition. The writ petition as aforesaid is concerned with the malfunctioning in the various Sports Federations. What has come to light in this application and from its reply is yet another facet of such malfunctioning - of a person who admits to be disassociated with sports wanting to represent India and the AFI in an International Body / Meet. The relief claimed in this application is thus clearly within the ambit of the writ petition.

14. Yet another factor which cannot be lost sight of is that IOC did indeed vide its letter dated 15.08.2011 to Mr. Vijay Kumar Malhotra, Acting President of IOA

expressed concerns about the happenings / goings-on in IOA and sought information of the status of Mr. Kalmadi and the measures which IOA had taken or intended to take in the matter. No reply was sent to IOC, inviting reminders dated 21.12.2011 and 10.01.2012. IOA ultimately vide its reply dated 11.01.2012 informed IOC of the prolonged absence and assurance of Mr. Kalmadi to disassociate himself from IOA and of having constituted the Ethics Committee. IOC was not satisfied with the said reply and vide its letter dated 20.01.2012 sought further information and called upon IOA to ensure full respect of the Principles and Rules of the IOC Code of Ethics and to preserve the reputation of the Olympic Movement in India. It is thus clear that IOA warded off action by IOC against IOA and against Mr. Kalmadi by representing to IOC that Mr. Kalmadi had been disassociated with IOA.

15. However now what we find is Mr. Kalmadi participating in the Council meetings of IAAF which is one of the limbs of IOC. It is to be borne in mind that all sports events in athletics in the Olympics are going to be under the supervision of IAAF. Therefore, in the meetings of IAAF, as scheduled, naturally affairs of Olympics, at least pertaining to athletics, would be discussed.

16. However, the learned senior counsel for Mr. Kalmadi has argued that IAAF is an International Body which is not subject to the jurisdiction of this Court and even not a party to these proceedings. For this reason alone, it may be difficult to ban Mr. Kalmadi from attending the meetings of IAAF. At the same time, it is also to be kept in mind that inspite of warnings of IOC no action was taken by IOA against Mr. Kalmadi for the reason of Mr. Kalmadi having disassociated himself from the Olympic Movement.

17. The scenario presented above thus poses two situations. When we examine the matter from National point of view we find that participation of Mr. Kalmadi in the Council meetings of IAAF, which is one of the limbs of IOC is not purely an individual affair. The Supreme Court in THDC India Ltd. Vs. Voith Hydro GMBH Co. and Another, even in a commercial dispute, observed that the issue of national interest is the prime concern, the importance of which cannot be undermined. Mr. Justice Frankfurter of the Supreme Court of the United States, in Clemente Martinez PEREZ Vs. Herbert BROWNELL, Jr., Attorney General of the United States of America expressed the situation as under:

Experience amply attests that in this day of extensive international travel, rapid communication and widespread use of propaganda, the activities of the citizens of one nation when in another country can easily cause serious embarrassments to the government of their own country as well as to their fellow citizens. We cannot deny to Congress the reasonable belief that these difficulties might well become acute, to the point of jeopardizing the successful conduct of international relations, when a citizen of one country chooses to participate in the political or governmental affairs of another country. The citizen may by his action unwittingly promote or encourage a course of conduct contrary to the interests of his own government; moreover, the people or government of the foreign country

may regard his action to be the action of his government, or at least as a reflection if not an expression of its policy. Cf. Preuss, *International Responsibility for Hostile Propaganda Against Foreign States*, 28 Am.J. Int'l L. 649, 650.

18. On the other hand, as mentioned above, IAAF is an International Body where Mr. Kalmadi intends to participate in his individual capacity as President of AAA another International Body, as its Asian Representative. Having regard to the fact that Mr. Kalmadi was associated with IOC for quite sometime his presence in the ensuing Olympic Games, particularly at the Opening Ceremony may be viewed by one and all concerned as representing India and would be contrary to National interest. Therefore we are not allowing him to attend the Opening Ceremony. In this backdrop, in order to strike balance between two competing situations we feel that while permitting Mr. Kalmadi to go to London and attend Council meetings of IAAF, it is also extremely important that the IOC and IAAF are made aware of the events that are taking place in this country. Since these have been duly mentioned and recorded by us in this order, it would be appropriate if the copy of this order is shown to IOC and IAAF and it is left to the discretion of the IAAF whether it would like to allow Mr. Kalmadi to participate in the Council meetings of IAAF. We have taken recourse to this path keeping in mind the dicta laid down by Supreme Court in *Election Commission of India Vs. State of Haryana*, that the Court cannot remain a passive spectator in extraordinary situations and leave the Nation to the mercy of an individual. We accordingly while allowing Mr. Suresh Kalmadi to so attend the meetings of IAAF, make the same subject to following conditions:

- (i) IOA within 24 hours informs IAAF as aforesaid, along with copy of this order.
- (ii) We leave it to the discretion of the IAAF to, take a decision as to whether Mr. Kalmadi is entitled to participate in its Council meetings.
- (iii) Mr. Kalmadi to thus not leave the country till 27.07.2012.
- (iv) Mr. Kalmadi shall however remain bound by his statement not to attend any of the Olympic events in any official capacity.
- (v) Copy of this order be sent by the IOA to the IOC.

The application is disposed off.

No costs.