
(2012) 08 DEL CK 0319

In the Delhi High Court

Case No : Writ Petition (C) No. 3789 of 2012

Rajendra Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2012) 08 DEL CK 0319

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Keshav Kaushik, for the Appellant; Inderjeet Sidhu and Ms. Rohini Musa, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. In this petition, purportedly filed in public interest, the petitioner is seeking directions to the respondents to conduct the age estimation test of the players selected to take part in the ICC Under 19 Cricket World Cup scheduled to be held in Australia in August, 2012. As is clear from the event, only those players who are under 19 years of age can participate. The petitioner alleges that there are 30 probable sports persons who are filling up the forms for the said event and out of those, 29 have not undergone the medical test for age determination as per the directions dated 31st May, 2011 issued by this Court in Writ petition No. 612/2011. After the filing of the writ petition, a team of 15 players has been selected and, therefore, at the time of hearing, petition was confined to those 15. Learned counsel for the petitioner also submitted that 9 persons who are included in the team are suspected overage players. It is not disputed by the petitioner himself that the Respondent No. 1 Union of India has issued "National Code against Age Fraud in Sports" which is filed by the petitioner himself as Annexure-P1. This Code is issued with a view to eliminate age fraud in sports and ensuring fair play for effective regular mechanism so that suitable action is taken

against athletes and sports persons found guilty of age fraud. By this Code, all sports federations, associations and bodies are mandated to take appropriate measures to check age frauds as this amounts to cheating which is violative of the basic spirit of sports. Relevant provisions of this Code are reproduced below:

3. FUNDAMENTAL RATIONALE FOR THE CODE

3.1 NCAAFS seeks to preserve the core values of sports which are honesty, fair play and team spirit.

3.2 The Athletes who indulge in age fraud in sports not only violate these core values, but also put genuine athletes in a disadvantageous position. Moreover, it also results in sub-optimal level of performance of athletes committing such fraud, as they end up competing with their juniors and not their own age group.

4. SCOPE OF THE CODE

4.1 Primarily following agencies are involved in the promotion of sports in the country:-

1. Recognized National Sports Federations.
2. Sports Authority of India through various sports promotion schemes of SAI.
3. Sports Control Boards managed by Government Departments and Public Sector Undertakings.
4. State Governments & Union Territories and their Sports Authorities.

4.2 Recognized National Sports Federations

4.2.1 All recognized National Sports Federations shall accept this Code and incorporate it either directly or by reference to it in their governing documents, constitution and/or competition rules and thus adopt it as part of the rules governing sports and the rights and obligations of those participating in it.

4.2.2 As a pre-condition of receiving financial and/or other assistance from Government of India, National Sports Federations shall accept and abide by the letter and spirit of the Code, including imposition of penalties against the erring athletes.

4.3 Sports Authority of India

4.3.1 The Sports Authority of India shall implement this Code for its various Sports Promotional Schemes for various age groups and for holding the National Coaching Camps.

4.4 Sports Control Boards managed by Government and Public Sector Undertakings; and State Governments & Union Territories & their Sports Authorities.

4.4.1 The above bodies also are required to take suitable measures for adoption

and implementation of the code.

5. IMPLEMENTATION OF THE CODE

5.1 Sports Authority of India, at the time of admitting an athlete into its Sports Promotion Schemes and National Sports Federations at the time of registering or allowing a new athlete to participate in an event, will get all the players in age level competitions medically examined and as per medical report will issue an Identity Card to the athletes as per Annexure-I.

5.2 All the existing athletes who are playing in age level competitions either with SAI or NSF, as the case may be, will also be subjected to medical examination and will also be subjected to medical examination and will also be issued Identity Card. If any existing athlete is found over-age even after going through the appeal process (as per procedure indicated in para 7.3 below) be subjected to performance review before re-adjusting in the appropriate age-group as part of the normal weeding out process.

5.3 The code will be operative from 1st April, 2010.

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7. PROCEDURE FOR MEDICAL EXAMINATION

7.1 Medical and Scientific Testing Parameters

7.1.1 The medical and Scientific Testing parameters on which the medical examination is to be conducted is placed at Annexure-II.

2. Annexure-P2 prescribes age estimation format which is supposed to be filled at the time of medical examination for the purpose of age estimation. Consent of the concerned person or his guardian is taken for complete medical examination. As per this format, the examinee is supposed to give documentary evidence like birth certificate etc. in proof of the age which he/she states. The format prescribes general physical examination, dental examination, radiological examination, MRI/CT scan (as applicable) and on that basis, the doctor gives age certificate by filling the age in the column in the said format itself. The format also prescribes option method in the form of "Body Development Index Method" which is valid up to 18 years.

3. It is also stated by the petitioner himself that in Writ Petition No. 612/2011, this Court had recognized the need for age determination to ensure level playing field. In this judgment, the Court took note of the aforesaid "National Code against Age Fraud in Sports". That was a case pertaining to Delhi & District Cricket Association (DDCA) and the reading of the judgment would disclose that DDCA or BCCI had accepted to adopt the aforesaid National Code. On that basis, directions were given for medical examination to be carried out by a Board of three doctors of Apollo Hospital on the basis of, inter alia, the radiological examination, MRI/CT Scan (as applicable) indicated in the National Code. Again, the petitioner himself states that BCCI had addressed letter dated 16th August,

2011 to all concerned referring to the aforesaid judgment dated 31st May, 2011 passed by the Division Bench of this Court and impressed that since BCCI had agreed to use its best endeavours for procedures for age determination to be adopted throughout India, necessary action be taken by all the associations affiliated with BCCI.

4. The grievance of the petitioner is that all the probable players for the ICC Under 19 Cricket World Cup have not undergone the process of age determination as per the National Code or the directions contained in the Division Bench judgment dated 31st May, 2011 in Writ Petition No. 612/2011.

5. When this petition came up for hearing on 9th July, 2012, we put a specific query to the learned counsel for the petitioner as to what was the basis for making the allegation that 29 out of 30 probable players had not undergone any medical test for determining their age. For want of particulars, we were hesitant even to entertain the petition. However, at that time, learned counsel argued with all conviction that the averments made in the petition are correct and most of the probable"s are more than 19 years of age. Having regard to this passionate plea, we directed the petitioner to first deposit a sum of Rs.50,000/- with the Registrar of this Court for the reason that if ultimately the petitioner is not able to make out a case and fails in the writ petition, that sum could be awarded as costs.

6. We also directed BCCI to indicate the procedure that was followed to ascertain the age of players and produce the relevant records for this purpose. The petitioner has deposited the costs. BCCI produced the record on the next date of hearing and also filed the counter affidavit. In the counter affidavit, apart from questioning the territorial jurisdiction of this Court and also raising preliminary issue that writ is not maintainable since BCCI is not a "State" under Article 12 of the Constitution, the averment is that petition is bad for non-joinder of parties. On merits, it is pointed out that the World Cup tournament is going to start from August 4, 2012. It is explained that the deadline for the sending of the 30 probable"s who would participate in the said tournament is two months prior to the commencement of the tournament, namely, June 4, 2012. It is submitted that the said list of 30 probable"s was sent within the timeframe by the Respondent No. 2 after selection by Junior Selection Team of the Respondent No. 2. It is further submitted that in furtherance to the sending of the list of the 30 probable"s ,the Respondent No. 2 as also the individual players are required to sign and attest various forms, including the Age Determination Form, prescribing the details of the player. This form is the only requirement of the ICC in determining the age of the players. The last stage in the said process is the finalization of the final 15 players, a list of which is to be sent a month prior to the commencement of the tournament, namely, July 4, 2012. The Respondent No. 2 finalized the said list and forwarded the same on July 3, 2012.

7. The Respondents further submit that every player is required to register at entry level with the respective State Cricket Associations. A registration form is

filled up by each player every year with such State Associations. It is the State Associations that inter alia conduct the age verification process for each of such players. Age testing is done by the Associations through the Bone Testing method known as the Greulich - Pyle Method (GP Method) that determines the age of the individual to a +/- 2 years accuracy. The Respondent No. 2 has now started the Tanner - Whitehouse III (TW3) Method of bone testing that has reduced/narrowed the accuracy to +/- 6 months. The respondent No. 2 receives from each candidate (through his respective State Cricket Association) the birth certificate/school leaving certificate/passport as the first point of determination of the age of such candidate. In addition to the same, the report is also included of the Bone Testing done at the selected hospital/medical institution. It is also stated that in order to familiarize the State Associations with the new method being put into use, an Age Verification Education Program was conducted by the respondent No. 2 for the various zones, between 2-7th July, 2012. It is further stated that in many of the other cricket playing nations such as Australia, United Kingdom etc., it is only the birth certificate that is submitted and taken as conclusive proof of the age of the player. The Respondent No. 2 in addition to the birth certificate (or submission of other documents such as the school leaving certificate passport copy), peruses the Bone Testing Report enclosed and then arrives at a conclusion regarding the age of the player. In respect of 9 persons out of 15 finally selected, the petitioner has made the allegation that they are above age. Though there is no basis given by the petitioner for the same except reporting in a magazine that there is a pressure on doctors to clear overage players. The respondents have vehemently denied these allegations. In respect of these persons, details are given including birth certificate, passport copy and medical test reports to show that they are all under 19 years of age. From the aforesaid, it is clear that all precautions were taken by the respondents including medical examination of these players as per the National Code as well as directions of this Court dated 31st May, 2011 contained in Writ Petition No. 612/2011. We, thus, are of the view that petition is totally devoid of merit and is misconceived. Accordingly, the writ petition is dismissed with costs of Rs.50,000/- which has already been deposited by the petitioner. The said cost shall be deposited with Delhi High Court Legal Services Committee.