
(2013) 01 AHC CK 0318

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6866 (M/B) of 2012

Shalabh Srivastava

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 13, 14, 16, 17

Citation : (2013) 2 ADJ 101 : (2013) 4 ALJ 623

Hon'ble Judges : Shiva Kirti Singh, Acting C.J.; Devendra Kumar Arora, J

Bench : Division Bench

Advocate : Prashant Chandra, Vaibhav Srivastava and Miss Stuti Mittal, for the Appellant; Jitendra Singh and Ram Raj, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, A.C.J.

1. This writ petition under Article 226 of the Constitution of India has been preferred by a Cricketer mainly against the Board of Control for Cricket in India (BCCI) as well as against its Disciplinary Committee and some of its officers and appointees with the following prayers:

(a) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the order dated 30.6.2012 (Annexure 1) passed by the BCCI and the finding dated 30.6.2012 (Annexure 2) of the Disciplinary Committee;

(b) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite parties not to give effect to the order dated 30.6.2012 (Annexure 1) passed by the BCCI and the finding dated 30.6.2012 (Annexure 2) of the Disciplinary Committee;

(c) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the opposite party No. 1 to allow the petitioner to participate in all forms of cricket matches conducted by the BCCI;

(d) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in the circumstances of the case may also be passed; and

(e) to allow the writ petition with costs.

Petitioner is, thus, aggrieved by and dissatisfied with the findings of the Disciplinary Committee dated 30.6.2012 which also include penalty imposed upon him, as contained in Annexure-2 which has merely been forwarded to him by the Honorary Secretary of BCCI by a letter of even date contained in Annexure-1.

2. Before noticing the relevant facts necessary for deciding this writ petition on merits, it is pertinent to note a spirited argument advanced on behalf of the BCCI that the writ petitioner should have approached a Civil Court because he is seeking a relief for himself on the basis of the Rules and Regulations of the BCCI which can, at best, be treated as terms of contract between the petitioner as a player and the BCCI and does not have any statutory flavour. In fairness to learned counsel for the BCCI, it is noted that he has not challenged the maintainability of the writ petition on the ground that it is not a State in view of judgments of the Supreme Court in the cases of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, but has relied upon paragraph 31 of the judgment in the case of *Zee Telefilms (supra)* to submit that remedy through a writ petition under Article 226 of the Constitution can be claimed only if the petitioner can demonstrate that in performing public duties, BCCI has violated any constitutional or statutory obligation or rights of the petitioner.

3. On behalf of petitioner, lengthy arguments were advanced in support of maintainability of the writ petition on the ground that as per settled law, the High Court can issue appropriate writs or directions even against persons or bodies who are not State. For this, reliance was placed upon the two judgments of the Supreme Court noted above as well as upon two judgments of Delhi High Court- *Ajay Jadeja Vs. Union of India and Others*, and *Rahul Mehra and Another Vs. Union of India (UOI) and Others*,

4. Both the above judgments of Delhi High Court contain elaborate discussion on relevant case laws pursuant to which preliminary objection to the maintainability of the writ petition against the BCCI was rejected. This view is also supported by judgment of the Supreme Court in the case of *Zee Telefilms (supra)* and hence the issue of maintainability of this writ petition is no longer *res Integra* and as noted earlier, the very argument advanced on behalf of the BCCI does not call for throwing the writ petition at the threshold but requires further consideration as to whether the writ petitioner has succeeded in demonstrating that the impugned action of BCCI relates to public duties and is therefore amenable to judicial review under writ jurisdiction.

5. In the context of rival contentions noticed above, we are of the considered view that power under Article 226 of the Constitution is vast enough to issue appropriate writs, orders or directions against any person including State, Governments or instrumentalities of State as well as private persons but as a rule of prudence and on the ground of self-imposed judicial restraints, writ jurisdiction is not exercised unless action of a person not being State within the meaning of the term under Article 12 of the Constitution of India lies in public law domain and relates to exercise of power by such person or body in the discharge of public duty. To put the matter in more positive terms, it can safely be held that under Article 226 action against private persons can be taken to prevent direct and flagrant disregard of fundamental rights of a writ petitioner and also when constitutional or other rights are violated in context of a public duty, cast upon such persons.

6. On behalf of the petitioner, it has been contended that the penalty imposed upon the petitioner amounts to violation of petitioner's fundamental right under Article 19(1)(g) of the Constitution of India which guarantees to all citizens the right to practise any profession or to carry on any occupation, business or trade. No doubt, the penalty imposed by Annexure-2 debars the petitioner from playing any cricket match conducted by or authorised by ICC or BCCI or affiliated associations of BCCI for a period of five years and further debars him from holding any position in any Cricket Association or from entitlement to any monthly gratis, benevolent fund and benefit matches or any facility in lieu thereof and it may appear to be in derogation of fundamental rights under Article 19(1)(g) of the Constitution but such argument was repelled by the Apex Court in paragraph 28 of the judgment in the case of Zee Telefilms (supra) on the ground that any violation of this right can be claimed only against State, unlike the rights under Article 17 or Article 21 which can be claimed against non-State actors including individuals.

7. It was further contended on behalf of petitioner that the penalty also amounts to depriving the petitioner of right to life guaranteed by Article 21 of the Constitution of India because he is deprived of his right to play cricket at the level where he can earn his livelihood. No doubt, right to life is a precious right and nobody can deprive another person of such right except according to procedure established by law. However, such procedure in cases relating to gains arising from contract with private persons will depend upon the terms of contract or in terms of Rules accepted by the parties. Rules relating to service under a private person or authority which have no statutory backing cannot stand on any better footing than a contract of service. This proposition is only in the context of facts of the present case relating to deprivation of means of livelihood and not to deprivation of actual life or personal liberty which must stand on a still higher pedestal and can be put in peril only according to procedure established by law as may be understood with the help of Article 13 of the Constitution of India which refers only to law passed or made by a Legislature or other competent authority. Considering the case laws relating to service jurisprudence, a fine

distinction has to be maintained between right to life and right to livelihood. If livelihood is dependent upon terms of service contract or other forms of contract, every breach of such service contract or other contract cannot be accepted as a violation of right to life guaranteed by Article 21 of the Constitution of India. A contrary view would make it impossible for any private employer to terminate the service of its employees on the spacious plea that termination of contract would violate Article 21 of the Constitution on account of absence of any law made by the Legislature or any competent authority laying down procedure for terminating such service. Hence, loss of benefits on account of alleged breach of a contract cannot be treated as a violation of Article 21 of the Constitution of India. The position may be slightly different if the grievance is against State or its instrumentality which has to adhere to rules of fair play on account of Articles 14 and 16 of the Constitution of India in all matters including obligation under a valid service contract.

8. In view of aforesaid discussions, it is not possible to grant any relief to the petitioner for the alleged violation of fundamental rights under Article 19(1)(g) or 21 of the Constitution of India on account of penalties imposed by the BCCI in purported exercise of its rights under the relevant Rules and Regulations which have no statutory backing.

9. The next contention advanced on behalf of the petitioner is that the penalty and the findings under challenge are in violation of Rule 32 which relates to misconduct and procedure to deal with the same and provides for giving reasonable opportunity to the affected parties of being heard.

10. At this juncture, the relevant facts of the case may be noted in brief. The petitioner claims to be a devoted and professional cricketer who represented the State of U.P. in Ranji Trophy which is First Class cricket, in the year 1999. He has also played in Duleep Trophy, Deodhar Trophy and Irani Tournaments. He was selected in the Indian Cricket Team for under 19 World Cup 2000 played in Sri Lanka wherein he distinguished himself as a bowler. He joined IPL in its 3rd session in 2010 and played for Kings XI Punjab and was declared to remain in the team for further three years. In a sting operation conducted by two journalists-Jamshed Khan and Sushant Pathak, video recordings were made involving five players including the writ petitioner. On 14.5.2012, a News Channel India TV reported the sting operation and the television footage showed the players in poor light who were ready for malpractices for monetary considerations. The BCCI President on viewing the television footage exercised his authority and in consultation with the IPL Governing Council suspended all the five players with effect from 15th May, 2012. He also requested Shri R.N. Sawani, a retired IPS Officer, Anti Corruption Head of the ICC to enquire and submit a report to BCCI. On receipt of his report as a Commissioner appointed by the BCCI for making such preliminary inquiries, the President in terms of Rule 32 (ii) of the Rules and Regulations of BCCI forwarded the same to the Disciplinary Authority. It is not in dispute that in the preliminary enquiry, oral statement of

petitioner was also recorded to which he has appended his signature. In the counter-affidavit, it has been claimed that respondent No. 6 - Mr. Sawani, Inquiry Officer, collected the unedited footage of the entire sting operation on an external hard drive as well as its transcripts in Hindi from the management of India TV and then he examined all the concerned five players between 23rd and 26th May, 2012. Statement of petitioner bearing his signature and date 24.5.2012 is available as Annexure-6 to the writ petition. A perusal of that statement discloses that the petitioner not only admitted meeting the Sting Operators on more than one occasion but also admitted that he had been shown the footage (video and audio) of meeting on 27.3.2012 and it was a true video and audio footage of the meeting which roughly lasted for two hours. The video and audio footage of other meetings were also admitted to be correct. He also admitted that the transcript of an audio phone conversation was correct. In the last part of his statement, he has admitted that during meeting with two agents he spoke very loosely and irresponsibly. Besides apologizing for that, he took the defence that though he had spoken irresponsibly, he never took any benefit from the agents nor he actually under-performed in any game in which he had participated. However, he further admitted that he had not played any game during that IPL season.

11. It is further not in dispute that on the basis of video footage etc. and the findings in the preliminary enquiry, notices were issued to the players including the petitioner on 25th June, 2012 asking them to appear before the Disciplinary Committee on 30th June, 2012. Copy of the enquiry report was also sent to the players. Three of the players appeared in person whereas two players including, the petitioner neither appeared in person nor gave any written representation. However, the proceedings of the Disciplinary Committee disclose that when the petitioner failed to appear despite service of notice, in order to comply with principles of fair play and natural justice, the Committee contacted him on telephone. He informed that he was going to Shirdi and therefore could not appear. He was then given opportunity of defending himself on telephone and all the members of the Disciplinary Committee heard him at length by using an amplifier. The gist of his statement on telephone has been recorded by the Disciplinary Committee in its proceeding contained in Annexure-2 and then findings have been recorded that in his detailed conversation with the Sting Operators, the petitioner demanded Rs. 10 lacs in place of Rs. 5 lacs for suggested spot fixing: The Committee held that though there was no evidence of actual match fixing or money changing hands in the case of petitioner, he was guilty of grave misconduct and misdemeanor in speaking to an unauthorised person and not reporting it to BCCI and in consenting to negotiate a future contract by charging black money and agreeing to spot fixing as well as making unsubstantiated allegations against BCCI and other players.

12. The aforesaid facts have been noted only because they were referred to in length in course of arguments on behalf of petitioner to claim benefit from the fact that he was not given accommodation to appear on another date for the

purpose of being heard and that no penalty should have been imposed upon him when he had actually never under-performed in any match nor he actually received any money on account of alleged conversation with the Sting Operators.

13. Absence of any written request from the petitioner to the Disciplinary Committee for adjournment of hearing coupled with the fact that BCCI gave the petitioner further opportunity by allowing him to give his version on telephone which was heard by all the members, *prima facie*, suggests that the Disciplinary Committee acted in accordance with provisions contained in Rule 32 (iii) (a) of the Rules and Regulations of BCCI which requires the Disciplinary Committee that if a case is not dropped, it would commence hearing and complete the same as expeditiously as possible and decide the subject issues by providing reasonable opportunity of being heard. The Rule further provides that none of the parties shall be entitled to be represented by any lawyer and if, despite due notice, any party fails to submit any cause or submits insufficient cause, the Committee shall after providing reasonable opportunity of hearing to the parties concerned take appropriate action. It also provides that in the event any party refuses and or fails to appear despite notice, the Committee shall be at liberty to proceed *ex parte* on the basis of available records and evidence. However, no detailed discussion or finding is required on this issue in view of nature of order proposed to be passed in this case.

14. A large number of other grievances were also raised on behalf of petitioner including bias on the part of the Inquiry Officer and the Disciplinary Committee. It was also submitted that evidence was not sufficient to support the findings given in the preliminary enquiry or that given by the Disciplinary Committee. It was also suggested that the statement of petitioner should not have been recorded in the manner it was done during preliminary enquiry, and that video footage or audio conversations should have been proved in the course of enquiry to be genuine and untampered.

15. We are not persuaded to go into aforesaid submissions in exercise of writ jurisdiction because in our considered view the impugned decision whereby BCCI has chosen to impose penalty on the petitioner cannot be treated to be an act in discharge of a public duty. The decision in question is in respect of an individual cricket player who, at the relevant time, was under a contract for playing in IPL matches for one of the various teams. Such players under the contract were bound to adhere to BCCI Regulations and not to commit misconduct under various Regulations such as Regulations 3.1 (vi), 3.1 (viii), 3.2 (ii), (xii) and (xiv) of which petitioner has been found guilty. Such disciplinary action in purported implementation of contract/Regulations in respect of an individual player cannot be a matter under public law domain or a matter involving any public duty on the part of BCCI.

16. In paragraph 12 of the Division Bench judgment of Delhi High Court in the case of Rahul Mehra (*supra*), it has been observed that the BCCI discharges several functions which normally should have been discharged by the sovereign

State. Many of such functions are in the nature of public functions, but it has been further held as follows:

...There are many which are purely private in nature. Insofar as the public functions are concerned a writ petition would be maintainable against BCCI. At the same time, as regards private matters having no public law element, a writ would not lie.

Again in paragraph 17, it has been reiterated that many other functions of BCCI may be in the field of private law such private contracts, internal rules not affecting the public at large etc. We are in respectful agreement with the aforesaid views and following the same, in the present case, it has to be held that the duty involved in this case is in the field of private law involving provisions in the private contract and internal Rules of BCCI and the duty discharged by BCCI in the disciplinary proceeding against an individual player such as petitioner, does not affect the public at large. In this view of the matter, this Court would like to restrain itself from interfering in the present matter.

17. There is another aspect which persuades us not to interfere in the matter in exercise of writ jurisdiction. As held in several judgments of the Apex Court, such as in the cases of *Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others*, *Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , *Rajureshwar Associates Vs. State of Maharashtra and Others*, and *Binny Ltd. and Another Vs. V. Sadasivan and Others*, , ordinarily a contractual obligation cannot be enforced under writ jurisdiction. The consistent view flowing from those judgments is to the effect that in the absence of constitutional or statutory rights being involved, a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State. Such limitation on Article 226 may be a result of judicial pronouncements and self-restraint on the part of High Courts but it cannot be disregarded, more so when the rights claimed arise out of contract or private rules and are sought to be enforced against a private person or a society such as BCCI which has been held by the Supreme Court not to be a State within the meaning of the term under Article 12 of the Constitution of India.

18. In view of above, although the writ petition is not dismissed on account of maintainability, it is dismissed on the finding that the duty exercised by BCCI in the present case is not a public duty and impugned action does not lie under public law domain. It is also dismissed because there is absence of constitutional or statutory rights to be enforced through this writ proceeding and the claim is based solely upon contractual obligations or obligations arising from private Rules and Regulations of BCCI. For seeking any relief, if petitioner is so advised, he may move a Civil Court of competent jurisdiction. As a result, the writ petition is dismissed with the aforesaid liberty. In the facts and circumstances of the case, there shall be no order as to cost.

Devendra Kumar Arora, J.

I agree.