

(1993) 10 BOM CK 0041

In the Bombay High Court

Case No : Notice of Motion No. 335 of 1993 in Suit No. 450 of 1993

Sudhir M. Mody and Others

APPELLANT

Vs

Bombay Cricket Association

RESPONDENT

Date of Decision : 19-10-1993

Acts Referred:

Citation : (1994) 2 BomCR 601

Hon'ble Judges : M.S. Rane, J

Bench : Single Bench

Advocate : R.P. Bhatt, J.J. Bhatt and Nayna Dutia, instructed by Dhruv Liladhar and Co, for the Appellant; S.H. Doctor, R. Subramanian, S.J. Kachawala, instructed by Milan Ghosh, for the Respondent

Judgement

M.S. Rane, J.—The application herein which has been assigned to this Court is being disposed of as directed by the Supreme Court in its order dated 5th March, 1993 passed in SLP No. 2472 of 1993.

2. Both the parties herein, who claims to have avowed object in promotion of sports in particular Cricket, have been locked up in the Court litigation. Record reveals the suit herein is fifth in the series in this Court - four filed by the plaintiffs and one by the defendants. These do not include some other suits filed and pending between the parties herein in the City Civil Court at Bombay so also appeals filed against the interim orders passed in the interim applications.

3. The principal dispute or rather hot bed of controversy between the parties revolves over i) Allotment and allocation of seats during the Cricket Test Matches played at Wankhade Stadium ii) the rates of the tickets, iii) Allocation of place, iv) issuance of such tickets, v) Rights and related claim in and over the Club House and other premises attached to the Club House and stadium. As would be pointed out hereinbelow, the litigious history started in the year 1987 and since then, whenever the matches of the International Cricket teams are arranged on the stadium, for one reason or the other, parties have mostly the plaintiffs herein, as would be evident from the record of suits filed by them, knocked the

doors of the Court. Applications for interim reliefs are moved. Ad-interim as also interim reliefs, depending upon the expediency, urgency and exigency, are granted. The aggrieved parties went further in appeals.

4. The suit herein has also been filed on the eve of such first Class Cricket Test Match, which was to be played between India and England on the same stadium. i.e. Wankhade Stadium from 19th February, 1993. The suit is filed on 25th January, 1993.

5. It is noticed or rather pointed out during the course of addresses to the Court, that proceedings and averments are repetitive and reliefs overlapping. But revolve over the controversial issues between the parties listed earlier.

6. Before considering the reliefs in the suit herein, as also interim reliefs in the application, it would be useful to have brief appraisal of the background of the nature of dispute.

7. The plaintiffs are the members and office bearers of the Managing Committee of the Club House known as B.C.A. Garware Club House, which is an unregistered association. The defendant is a Society registered under the Societies Registration Act as also under the Bombay Public Trust Act.

8. Somewhere in the year 1968, the defendants acquired on lease plot of land from the Maharashtra Government for setting up a stadium and semi permanent structure for a Club House. It is noticed that after acquiring lease the defendants undertook the construction work of Stadium and Club House. The plaintiffs association also, it appears, came to be formed by the or near about the same time. Late Shri Wankhade, in whose name the Stadium is named after, was a pivotal and central figure and record shows, that he was a Chairman of the plaintiffs Association as also defendants. The plaintiffs paid a sum of Rs. One Crore Twenty lacs to the defendants at the crucial stage, which helped the defendants in constructing the Stadium and Club House. One pavilion in the stadium is named as Garware Pavilion, which has very advantageous strategic location from the point of view of the game and the plaintiffs, it may be stated at the outset, are claiming and insisting with vehemence, that they be provided the seats for all the Matches in the said Garware Pavilion. (Hereinafter referred to as Garware Pavilion for brevity's sake). Exh-A to the plaint is the plan of the Stadium wherefrom the location and situation of the said Garware Pavilion becomes clear.

9. Somewhere in the year 1974, the arrangement and understanding was arrived at between the parties herein, eventually recorded in the resolutions and the minutes of the meetings of the parties documented in the correspondence exchanged between them, the reference of which finds place in the proceedings. The main term of the arrangement in brief according to the plaintiffs, were :

i. The plaintiffs were to be allotted 6000 seats by the defendants at particular rate, which was concessional in view of their contribution as mentioned earlier.

ii. Seats were to be allocated permanently in the Garware Club only.

iii. Printing and issuance of such 6000 tickets were to be done by the plaintiffs themselves.

10. The arrangement as above, it seems, worked without any major hurdle till 1977, as, it is stated, both the parties worked in hand. However in the year 1977, the parties severed their ties and became separate from each other. Even after separation, till 1987, the arrangement in respect of distribution, allocation of tickets, etc. it appears, did not create any problem requiring any party to approach Court.

11. In the year 1987, on the eve of Matches sponsored by Reliance, plaintiffs filed 1st suit in this Court being Suit No. 2604 of 1987, principal reliefs being i) distribution of their entitlement of 6000 seats in Garware Pavilion and ii) at concessional rate. Ad-interim reliefs were refused to the plaintiffs who filed Appeal being No. 1069 of 1987, in which Hon'ble Shri D.M. Rege (Rtd.) Valuer was appointed by the order dated 18th August, 1987. The Appellate Court disposed of the Appeal and 6000 seats were allotted at the rate determined by the Valuer.

12. Plaintiffs filed second suit being No. 3148 of 1989 in this Court seeking principally the same relief as claimed in the previous suit of allocation of their quota of 6000 seats and distribution on the basis of agreement of the year 1980, wherein, by and large, the arrangement with regard to the quota of seats and allotment, etc. was kept as before. With the grant of interim reliefs the matter rested there although appeal by the defendants came to be dismissed on 8th February, 1992.

13. The defendants filed Suit being No. 1568 of 1990 against the plaintiffs, seeking various declarations, such as plaintiffs (the defendants in the suit herein) are the absolute owner of the Stadium, Club House, etc. and defendants have no right as owners or any title in the same, etc. The plaintiffs herein also filed a Suit being No. 3268 of 1990, as Cross suit, claiming almost identical reliefs in respect of portion of Club House, etc. The interim applications made by the parties in respective suit were disposed of by my brother Judge Dhanuka with common order dated 29th July, 1991, prima facie upholding the case of the defendants in this suit in respect of the ownership of Stadium and Club House, and directing the plaintiffs herein to make various payments as specified in the said order. It is also noted in the said Judgment that since the plaintiffs herein are unregistered association is not a legal entity capable of holding Immovable assets/properties. The plaintiffs have preferred two appeals being Nos. 833 of 1991 and 835 of 1991 against the said order, which are still pending.

14. The suit herein is filed as stated, on the eve of test matches between England and India, which was to be played in February, 1993. The main reason for the plaintiffs to rush to the Court, as is revealed from these proceedings, is the defendants letter dated 19th November, 1992 being Exh-L to the Plaint. Vide

said letter, defendants, while assuring the allocation of quota of 6000 seats to the plaintiffs circumscribed quantified the allotment as under. (Extracted from the said letter itself):

The exact implication of the above communication is that i) As regards allocation of seats, 898 seats were offered in Guest Stand instead of Garware Pavilion. According to the plaintiffs, as stated earlier, they are entitled to all 6000 seats allocated in Garware Club only and not elsewhere. ii) That printing and issuance of such tickets would be done by the plaintiffs only and not by the defendants. iii) That defendants are not entitled to insist for the checking of identity Cards of the members of the plaintiffs.

15. The reliefs in the suit herein have been claimed on the basis as above and application herein has been made for ad-interim and interim reliefs in consonance with main reliefs of the suit. The application of the plaintiffs for an ad-interim relief so far allocation of seats in Garware Pavilion only was rejected on 8th February, 1993, from which plaintiffs filed appeal being Appeal Lodging No. 74 of 1993, which was dismissed on 10th February, 1993. The plaintiffs approached the Supreme Court and as stated, the matter i.e. above Notice of Motion is before this Court for disposal. Although the Test Match scheduled in February, 1993 is over, the reliefs still survive as the plaintiffs have included the matches which would be played in future.

16. At the outset, during the course of arguments, the learned counsel for the plaintiffs indicated that as far as printing of tickets and checking of Identity Cards are concerned, the plaintiffs are not pressing the same in this application and leave the same for consideration at the trial of the suit. It may also be stated that on behalf of defendants it was stated and made clear that the common procedure in that respect is made applicable and followed in respect of members of all other Clubs and no exception is made for the plaintiffs. Well this is all as far as these two sets of reliefs are concerned.

17. Now the only issue that requires consideration is the insistence by the plaintiffs to have their quota of 6000 seats and that too allocated in Garware Pavilion only, for all the matches to be played in future. Great deal of submissions have been made, pleadings and various earlier Court Orders referred to, extensive correspondence relied upon, by both the parties.

18. As far as quota of 6000 seats, the entitlement of the plaintiffs, on behalf of defendants it was reiterated and stated that never in the past there was any reduction therein nor the defendants want to do so in the future. That also sorts out the quantum of quota, needing no further probe.

19. The question remains how far plaintiffs are justified in demand, claim and insistence to have all the seats of their quota to have allocated in the Garware Pavilion only. As stated, the plaintiffs have sought to base and justify their said claim by referring to agreements between the parties, correspondence, resolutions passed in the meetings, the practice followed etc. whereas, the

defendants have countered the said demand of the plaintiffs, asserting that never in the past their all quota seats (6000) were allotted in the Garware Pavilion only. They refer to and rely upon their letters from time to time allotting to the plaintiffs tickets in question. The defendants further contend that they are the main and authorised organisation to held and conduct Inter-nation Cricket Test Matches as also other main matches in Bombay under the Central Organisation namely, Board of Control for Cricket in India (in short BCCI), which organises the inter-nation matches. The defendants have to held, conduct and organise such Test Matches under the authority and instructions of the BCCI. They are required to allot 500 seats to BCCI in the main pavilion i.e. Garware Pavilion. Further they have to allot seats in the various dignitaries, such-as Government, Past Cricketers, Umpires, Ranji Trophy Players, Guests, the representatives of the other affiliated Clubs, etc. In the circumstances, defendants plead, that they have to take into consideration the other claims as above. However, defendants clarified that they would offer maximum seats to the defendants in the Garware Pavilion and balance in the Guest Stand as done in the past.

20. It may be stated that the earlier Resolutions, referred to by the plaintiffs, passed by the parties in the year 1977 mention the allotment of seats to the plaintiffs in the Garware Pavilion. However, actual allotment made since the beginning of the arrangement claimed by the plaintiffs, does not support the claim of the plaintiffs. Inasmuch as, letter dated 2nd December, 1979, being Exh-C to the plaint from the defendants to the plaintiffs, allotting the seats, 245 seats are allotted from B.C.A. Guest stand to make total of 6000 seats. Some allotment pattern is followed in the year 1987 as is evidenced in defendants' letter dated 21st September, 1987 being Exh-D to the plaint. It is still pertinent to note that the agreement of the year 1980, which plaintiffs rely upon (being Exh-E to the plaint) which is comprehensive and in respect of which plaintiffs have filed Suit (No.3148 of 1989) as valid and subsisting, some does not mention the exact place of allocation. This is how Clause "C" of the said agreement provides :

"B.C.A. to charge B.C.A. Garware Club House for test match tickets at the same rate as charged to the Gymkhana and Clubs affiliated to Bombay Cricket Association. Total number of seats allotted to B.C.A. Garware Club House will be 6000."

21. The fact that plaintiffs were allotted seats also in BCA Guest Stand to make up their quota of 6000 seats, and the plaintiffs accepted the same, without demur is manifested from their Suit No. 2604 of 1987 referred to earlier, in which in their interim application being Notice of Motion No. 2237 of 1987, vide prayer (a) (i) they have sought the relief to the effect :

"To issue and allot 319 seats in addition to 345 seats in B.C.A. Guest Stand....."

22. It is also of relevance to note that in the past the plaintiffs were unable to lift

and avail of their said full quota of 6000 seats, which is borne out from their own document being Exh-F to the plaint, which is their Circular dated 4th November, 1988, which shows that they could buy only 2859 seats against their full quota.

23. It therefore clearly emerges from the conspectus of above, that the case and the contention of the plaintiffs that they are entitled to their full quota of seats or that they were allotted their full quota in the Garware Pavilion only is not correct.

24. Apart therefrom, the explanation offered by the defendants, who are obliged to conduct and organise the test matches including of international teams, under the BCCI, have also to give due consideration to other compelling demands for allocation of seats to the dignitaries, renown past players, artists and distinguished dignitaries, which adds to such demands. It is however clear from the evidence discussed above, that the seats have been allotted to the plaintiffs to make up their sanctioned quota from BCA Guest stand and it is but fair that the defendants adhere to the same practice.

25. To sum up, therefore, I am of the view and in particular in view of the fact that the defendants have not refused and denied the seat quota of 6000 to the plaintiffs and considering the fact that the seats are made available to the plaintiffs from BCA Guest Stand and further considering the fact that the defendants as Organisers of the matches have also to meet demands for the seats as stated earlier, even on balance of convenience, I do not find the case in favour of the plaintiffs for grant of interim relief as claimed in this regard. Likewise in the matter of printing and issuance of tickets, checking of identity cards, etc. various factors would need due consideration, including the insurance of safety and security measures, which is major and current issue of the day, in course of organisation of the matches. It is to be noted that in such aspects, plaintiffs have not signaled out, plaintiffs but common procedure is made applicable to the members of the other affiliated clubs, like plaintiffs. It is heartening that, as stated earlier, the plaintiffs have not made it a contentious issue, at least at such interim stage. As far as fixing of rates of the tickets is concerned, the earlier orders and directions of the Court are still in force and circumstances do not warrant, nor case made out in that behalf for variation or substitution. It is noticed and so pointed out by and on behalf of the defendants that the principle in determination of the rates commonly made applicable to all members and it is indeed so, since in the past, when reference to the Valuer was made, dispute was sorted out. Further, my brother Judge Dhanuka in his common order dated 29th July, 1991, mentioned earlier, has ordered as under:

"The plaintiffs (i.e. the defendants herein) shall make 6000 seats available to the defendants (i.e. to the plaintiffs) for Test Matches at the same rate as charged to the Gyamkhana and Clubs affiliated to the Bombay Cricket Association". (i.e. defendant herein). (Refer para 9(a) of the said order).

Although the said order is in appeal, as far as this part of the order, it is stated its operation continues and is binding upon the defendants. It is unnecessary

therefore to rock up the same issue in this application, nor any case made justifying Court intervention.

26. Hence the following order.

(1) The defendants shall issue and allot 6000 seats to the plaintiffs allocating the same in the Garware Pavilion and B.C.A. Guest Stand for the Test Matches. The defendants shall offer such tickets to the plaintiffs with reasonable margin before the scheduled dates of the matches and the plaintiffs shall also to collect the tickets, on compliance of requisite formalities well in advance of the commencement date of the matches.

(2) The defendants to charge the rate for the tickets on the same basis as charged to their affiliated other Clubs and Gymkhanas.

(3) As far as printing of the tickets and checking of identity cards, no reliefs are granted in view of observation appearing in the body of the judgment.

(4) As far as this application is concerned, each party to bear its own costs.

(5) Issuance of certified copy is expedited.