

Ravinder Dongre vs Union Of India & Ors on 31 May, 2022

Author: Najmi Waziri

Bench: Najmi Waziri

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IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA 362/2022
RAVINDER DONGRE

Through: Mr. Manish Kaushik
Singh, Advs.

versus

UNION OF INDIA & ORS.

Through: Mr. Manish Washish
Mr. Sanjay K. Chad

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% 31.05.2022 The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 25663/2022(exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed-off. LPA 362/2022 & CM APPL. 25664/2022

3. The learned counsel for the appellant submits that in terms of the Sports Code, the Secretary of a National Sports Federation (NSF) who contests for the second successive term, needs to secure majority of not less than two-third of the members of the National Sports Federation (NSF). It is not only the members who are present in the voting exercise but also all the members in the Electoral College of NSF. The relevant guidelines in this regard, were issued by the Government of India on 20th September, 1975 and are reproduced hereunder:-

"....3.The Government of India have carefully considered the matter, in consultation with the All India Council of Sports, and have decided, in the interest of promotion of sports and games, that Government s financial and other assistance shall be extended only to those national organisations dealing with sports and games which fulfil the following conditions:-

(i) An office bearer of a National Federation/Association may hold office as such for one term of 4 years, and may be eligible for re-election for a like term or period.

(ii) No such office bearer shall hold office consecutively for more than two terms or 8 years:

Provided that in the event of election for the second term, an office bearer who has completed one term shall only be deemed to have been elected if he/she secures a majority of not less than two third of the members of the national Federation/Association concerned. In the event of failure to obtain such majority, the concerned office bearer shall be deemed to have lost the election. The office would thereafter be filled by election under the normal procedure from amongst candidates other than the office bearer seeking re-election.

Explanation 1: For the purpose of this clause, the expression "office bearer" means:--

(a) the President,

(b) the Secretary/Secretary-General, or any corresponding office,

(c) the Treasurer.

Provided that the provisions of this clause shall not apply to the post of Treasurer if, under the constitution of National Federation/Association, the Treasurer does not possess the right to vote in any of its meetings, and his duties and responsibilities shall be confined only to the management of the finances of the Federation/Association;

however, he shall not be eligible to seek election to the office of the President or Secretary/Secretary-General or Vice President after having held the office of the Treasurer consecutively for eight years, till the expiry of a period of at least four years from the date on which he last vacated the office of the Treasurer.

Explanation 2

(i) No person who has already held the office of the President or Secretary/Secretary General or both in a National Federation/Association consecutively for two terms or eight years shall be eligible to seek re-election to any of the said offices or Vice President or Treasurer till the expiry of a period of at least four years from the date on which he last vacated his office.

(ii) The National Federation/Association may, if they wish, apply the provisions of clause 1 to the offices of Vice President, Treasurer (not being an office bearer) and members of important Organizations such as their executive committee, selection committee, etc.

(iii) No office bearer of a National Federation/Association shall be eligible to be the office bearer, simultaneously, of any other National Sports Federation/Association, excepting the Indian Olympic Association.

(iv) That the annual accounts of the organization have been properly maintained and regularly audited and that the various business meetings as required under its constitution have been duly held.

(v) That each National Sports Federation/Association, in its particular field of specialisation, has been appointing or would appoint a National Coach who possesses a valid coaching diploma. Prior approval of the All India Council of Sports would be necessary if the person already appointed or proposed to be appointed as National Coach does not possess requisite coaching qualifications.

(vi) That the National Sports Federations/Associations, in their respective fields of specialisation, have been holding or would hold, where feasible, not less than two competitions annually or specified age groups at the Junior and Sub-junior levels; these competitions should be organised through Inter-Block and Inter-District competitions in each State, leading to the competition at the National level.

(vii) That the membership of the National Sports Federations/Associations, within their particular fields of specialisation, is confined to the corresponding State and other special units affiliated to the National Sports Federations/Associations, and that where any of the National Sports Federations/Associations grants membership to individual clubs or individual persons, such membership does not confer on such members the right to vote in any of the Federations/Associations meetings.

(emphasis supplied)

4. For the past 17 years R-3 has been in the Managing Committee/ Executive Committee of All India Chess Federation, as evident from the chart reproduced hereunder:-

5. The R-3 has held the position of the post of Secretary of the NSF from 2017 to 2021. In terms of the Sports Code, he ought to have secured two-third majority of the members of the NSF for his second successive term. The record shows that the tenure of the Secretary should have been from 2017- 2020, for some reason it got extended till 2021. Elections for the Office Bearers for the period 2020-2023 were held in 2021, in which R-3 has secured merely 35 votes, this is not 2/3rd majority, it should have been 44 votes out of the total number of 64 votes polled, even if the majority is considered of only the members present and voting. Ex-facie he does not qualify to be elected as the Secretary for the second consecutive term.

6. The learned counsel for the respondents, who appears on receipt of advance copy of the petition, seeks time to obtain instructions and file an affidavit before the next date. Let it be so done.

7. Issue notice. The learned counsel named above accepts notice on behalf of R-2. Mr. Anil Soni, learned CGSC is directed to accept notice on behalf Union of India. He seeks time to obtain instructions. It is expected that appropriate action will be initiated apropos All India Chess Federation. In particular, in terms of the judgment of this court in Aslam Sher Khan Vs Union Of India & Ors in W.P.(C) 5703/2020 dated 25.05.2022 which directed inter alia as under:-

"Accountability34. Individuals who have exhausted their age and/or tenure in terms of the Sports Code automatically disqualify themselves from contesting for any Executive Posts. The mere fact that the constitution of the NSF is not aligned with the Sports Code of 2011 and the law, it will not be to the advantage of either the NSF or its office-bearers. The age and tenure restrictions came into effect from 1st May 2010. The Sports Code only reiterates it in 2011. Persons who have been in posts such as Life President, Life Member and "CEO on the Management Committee" (with voting rights), which is clearly in breach of the Sports Code, and have enjoyed benefits of such office and expenses have been incurred on them by a NSF in breach of the law must be asked to return the expended amounts. Revenues generated by a NSF is largely on account of recognition granted to it by the Government of India. In the absence of such recognition, the Society/Association would have no legitimacy or occasion to seek or attract sponsorship for any tournament, sporting event, travel, accommodation, training and/or other administrative measures. The monies which are so generated by a NSF, are more in the nature of public trust and the same is to be utilized in the public interest i.e. promotion of the sport and representation of India in international tournaments. The CoA shall ascertain the amount spent on such individuals and initiate process for recovery of the same, so shall the GOI. Expenses incurred on such supernumerary, innovative and illegal posts need to be recovered and there has to be accountability. Details of the amounts expended on such persons will be furnished by Hockey India before the CoA. The latter too shall examine the records and seek refund of monies from the current Life President and the Life Members, as may be.

.....

36. Logically then, the non-refund of such monies, as may be quantified, would render the individuals „ineligible for holding any „Post in the Managing Committee of a NSF. No premium can accrue to a person or entity for non-compliance with the law. It is a matter of record that R-3, the current „Life-President of Hockey-India, had successfully pursued the removal and derecognition of the erstwhile Indian Hockey Federation („IHF) because its then President was entrenched as its President for 11 years. In R-3 s said writ petition this court had directed Government of India to investigate and enquire, if deemed necessary, apropos expenses made and to examine all complaints regarding breach of guidelines and grant of financial and other assistance to IHF.

37. In Mahipal Singh the Court had directed the GOI to take steps regarding recovery of monies expended on persons who had occupied illegal positions in the Amateur Kabaddi Federation of India.

38. It was directed as under:

" 78. Given the totally clandestine and surreptitious manner in which the provisions of the MOA were illegally amended, in order to enable Respondent No. 5 to contest for the post of President, we further direct that Respondent No. 5 render accounts of all financial benefits, which have enured to Respondent No. 5, as and in her capacity as President of the AKFI since the time of her appointment to the said post on 19th May, 2013 until date, and the same be recovered from her, forthwith."

39. It is not known what was the follow-up, if any ensued. The age and tenure restrictions of the Sports Code as well as the cooling-off period between successive terms in the Managing Committee of a NSF, coupled with the necessary 2/3rd votes for the second term, are clear safeguards against permanent positions in a NSF. What cannot be done "per directum" is not permitted "per obliquum" meaning thereby, that, whatever is prohibited by law cannot be effected by an indirect or circuitous contrivance.".....

8. The unserved respondent be served through ordinary process, approved courier, Speed Post, WhatsApp, e-mail, SMS, Signal, and other viable modes of electronic service, through counsel as well, returnable on 02.06.2022.

9. Renotify on 02.06.2022.

NAJMI WAZIRI, J VIKAS MAHAJAN, J MAY 31, 2022/dss