

SUPREME COURT OF INDIA

Board of Control for Cricket

Vs.

World Sports Group(I) P.Ltd.

C.A.No.3486 of 2011

(R.V.Raveendran and A.K.Patnaik,JJ.,)

21.04.2011

ORDER

SLP(Civil)No.6483/2011

1. Leave granted.

2. An agreement dated 25.3.2009 was executed between the appellant - Board of Control for Cricket in India ('BCCI' for short) and the respondent in regard to Media Rights for rest of the World (that is World wide Rights except India) for telecasting the IPL (the Indian Premier League) Cricket Matches for the period 15.3.2009 to 31.12.2012 and 1.1.2013 to 31.1.2017. By letter dated 28.6.2010, the BCCI rescinded the said agreement dated 25.3.2009 attributing fraud and misrepresentation to the respondent.

3. Aggrieved by the termination, the respondent filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 ('AC Act' for short) before the Bombay High Court seeking a direction to restrain BCCI from creating any third party rights in regard to any of the rights conferred upon the respondent under the agreement dated 25.3.2009. The said application was dismissed by learned a single Judge on 20.12.2010. Feeling aggrieved, the respondent filed an appeal before the Division Bench of the High Court. The High Court allowed the said appeal by the impugned order dated 23.2.2011 with the following directions:

"26. Considering the aforesaid aspect in our view, till the Arbitrator is appointed, the respondent is restrained from giving the contract in question to anyone. During the pendency of this appeal, a statement was made by the respondent that they will not create any third party interest. The said protection, in our view, is required to be continued for a limited period. However, the interim protection as aforesaid shall continue, provided the petitioner takes appropriate steps within a period of one month for the purpose of appointing the Arbitrator. If such proceedings are initiated within one month, such interim protection shall continue to operate till one week after the decision is taken by the concerned court for appointment of Arbitrator. In case the

application under Section 11 of the Act is rejected, this interim protection shall automatically cease to operate. However, in case, Arbitrator is appointed, the parties may apply to the Arbitrator, within two weeks of such appointment for interim relief and till then the interim relief will continue to operate. If any such application is preferred, the Arbitrator is free to decide the said application, after hearing both sides on its own merits. It is for the Arbitrator to decide whether interim protection which is continued is required to be continued or the prayer for interim protection is required to be rejected or whether any additional interim protection is required to be granted. All these aspects are left to the Arbitrator who shall decide the same in accordance with law, after hearing both the sides and the observations made in this order shall have no effect as the said application is required to be decided de novo on its own merits. The above observations are made only in connection with Section 9 Application and the same will have no bearing in case any application under Section 11 of the Act is preferred by the petitioner. The said order is challenged by BCCI in this appeal by special leave. On 3.3.2011, while issuing notice, this court granted interim stay of the judgment of the division bench of the High Court, subject to the condition that BCCI will continue to be bound by its undertaking (given to the High Court) that it will honour all contracts (sub-licence agreements) entered into by the respondent.

4. On 8.3.2011, BCCI invited tenders for grant of global internet and mobile rights (alongwith certain television rights) with reference to broadcasting IPL matches for the four seasons from the year 2011 to 2014. On an application by the Respondent seeking an interim direction to the BCCI not to proceed or process or act upon its tender notice dated 8.3.2011 in so far as it related to the rights that had been exclusively granted to the respondent, this court, after hearing the parties, on 18.3.2011, issued the following interim directions:

“(1) In regard to the contracts (sub-Licence Agreements) already entered by the respondent with third parties, BCCI will be entitled to secure copies of the respective agreements and receive all payments due under the sub-licence agreement and remit the same to an Escrow Account with a nationalised Bank. (2) BCCI will be entitled to proceed with the awarding of Media Rights referred to in the tender notice dated 8.3.2011, subject to the condition that all amounts/deposits/consideration/licence fee received shall also be remitted to the said Escrow Account.

(3) The bids received in response to the tender notice dated 8.3.2011 shall be opened, and decision in regard to award of contract taken, in the presence of Court appointed Observer - Mr. Justice Mukul Mudgal (Retired Chief Justice of Punjab & Haryana High Court). BCCI shall make appropriate arrangement for his travel and stay in that behalf. (4) Out of the amounts remitted to the Escrow Account, BCCI will be entitled to draw every year, the licence fee that it would have received from the respondent under the Agreement dated 25.3.2009, if the said agreement had not been terminated. The remaining amount shall be kept in fixed deposit for a term of one year. The Said amount shall be dealt with as per the final order of this Court. BCCI shall file a

confirmation from the Bank that the amount will be dealt with as per the final order of this Court.

5. In pursuance of the said order, we are informed that the bids were considered and in the presence of the Observer appointed by this Court, the contract was awarded to M/s. Times Internet Ltd.

6. When the matter came up today, both parties submitted that as the said directions broadly covered the interests of parties, this matter could be disposed of in terms of the said interim arrangements made on 18.3.2011 with appropriate modifications.

7. In view of the above, this appeal is disposed of with the following directions:

“(a) BCCI shall be entitled to award any of the unawarded sub-licence media rights (to which respondent was entitled under the agreement dated 25.3.2009), by following the standard tender procedures. BCCI will be entitled to take all decisions, and do all acts, that could have been taken or done by the respondent under the agreement dated 25.3.2009, if it had been operational.

(b) All amounts/deposits/licence fees received by BCCI as consideration in respect of sub-licence agreements entered by the respondent, or by the BCCI after the termination, shall be remitted to an Escrow Account with a Nationalized Bank.

(c) Out of the amounts so remitted to the Escrow Account, BCCI shall be entitled to draw every year, an amount equivalent to the licence fee it would have received from the respondent under the agreement dated 25.3.2009 (if the said agreement had not been terminated), without prejudice to its rights and contentions.

(d) The net annual income (that is the difference between the total of amounts remitted to the Escrow Account every year less the amount equivalent to the licence fee that is drawn by BCCI in terms of agreement dated 25.3.2009) shall be kept in a fixed deposit for a term of one year. Such fixed deposits shall be renewed yearly till the final adjudication of the disputes between the respondent and the appellant by a competent court or arbitral tribunal (if the remedy of arbitration is available or agreed) as the case may be.

(e) BCCI shall file yearly accounts (after furnishing a copy thereof to the respondent) in regard to the amounts received, the amount remitted to the Escrow Account, amounts drawn by BCCI (equivalent to the licence fee under the agreement dated 25.3.2009) and the net amount invested in fixed deposits.

(f) In regard to the amounts to be received and accounted for by BCCI as aforesaid, the BCCI shall be deemed to be a Receiver appointed by this Court. Such deemed

Receivership will end automatically, on final decision by the Court/Tribunal before which the disputes are raised, or on 31.1.2017, whichever is earlier.”

8. Nothing contained in the impugned order of the High Court or this order shall be construed as expression of any opinion on the merits of the dispute. The Court or the arbitral Tribunal, adjudicating upon the disputes between the parties, will do so purely on merits on the basis of the material placed before it, uninfluenced by any observation made in any of the orders till now.

9. The Observer of this Court shall be paid a fees of Rs.1,00,000/- (Rupees one lac only) by each party apart from meeting his expenses.

10. Parties to bear their respective costs.