

SUPREME COURT OF INDIA

Board of Control for Cricket In India

Vs.

Cricket Association of Bihar &Ors.

C.A.No.4235 of 2014

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud and A.M.Khanwilkar,JJ.,)

21.10.2016

JUDGMENT

Dr D.Y.Chandrachud.J.,

1 On 7 October 2016, directions were issued by this Court pursuant to a status report dated 26 September 2016, submitted by the Committee consisting of Justice R M Lodha, Justice Ashok Bhan and Justice RV Raveendran. The status report filed by the Committee set out the sequence of events that had taken place after the final judgment and order of this Court dated 18 July 2016, which accepted the report submitted by the Committee on 18 December 2015 with certain modifications. A gist of the status report has been set out in the earlier order dated 7 October 2016. After advertng to the sequence of events, the Committee has concluded that BCCI has violated its directions:

“Directions of this Hon’ble Court have been ignored, actions have been taken to present a fait accompli to the Committee, the directives of the Committee have been breached, and member associations have not been duly intimated about the directions of the Committee and the timelines fixed by it.”

The Committee has observed that “BCCI has repeatedly taken steps to undermine the Committee and this Court”, with several statements and actions which “are grossly out of order and would even constitute contempt”. The Committee noted that despite several e-mails, as well as a direction to appear before it on 9 August 2016, the President of BCCI did not furnish even a single response to the Committee. The Committee also observed that the President of BCCI had even gone to the extent of requesting ICC to issue a letter that “this Committee amounts to governmental interference” besides making several objectionable statements in the press which undermined both the Court and the Committee.”

2. The Committee submitted the above status report in pursuance of the directions contained in the judgment of this Court dated 18 July 2016. This Court had by its judgment, while

accepting the recommendations made in the earlier report of the Committee, assigned to the Committee a supervisory role for ensuring the transition from the old to the new system recommended by the Committee. While this Court in its judgment expressed a hope that the process of implementing the directions contained in the judgment would be completed within a period of four months or at best six months, the Committee was requested to draw appropriate timelines for the implementation of the recommendations and to supervise the implementation process. The Committee, while moving the status report observed that though the office bearers of BCCI had furnished assurances to it on 9 August 2016, 25 August 2016 and 20 September 2016, that they would cooperate with the Committee in fulfilling the directions of this Court (subject to any modification or review) these assurances had not been fulfilled.

3 In the previous Order of this Court dated 7 October 2016, the following prima facie, findings were recorded:-

“... The sequence of events that have been taken place since 18th July, 2016 and referred to in the status report prima facie give an impression that BCCI has far from lending its fullest cooperation to the Committee adopted an obstructionist and at times a defiant attitude which the Committee has taken note of and described as an impediment undermining not only the Committee but even the dignity of this Court with several statements and actions which according to the Committee are grossly out of order and may even constitute contempt”. This Court has noted that in spite of a direction issued by the Committee on 21 August 2016 that the AGM of BCCI which was to be held on 21 September 2016, may transact only routine business for 2015-16 and that any business or matter relating to 2016-17 may be dealt with only after the adoption of the Memorandum of Association and rules in pursuance of the recommendations of the Committee, substantial amounts running into crores of rupees have been disbursed in favour of state associations. This Court expressed the view that BCCI could and indeed ought to have avoided the disbursement of such a huge amount while the Committee was still examining the need for formulating a disbursement policy.”

4. During the course of the hearing which resulted in the earlier order dated 7 October 2016, BCCI stated that one of the reasons for its failure to adopt the proposed MOA was the reluctance of the state associations to subscribe to it. In this background, this Court observed that if that be the position, there is no reason why the state associations that are opposed to the reforms suggested by the Committee and accepted by this Court should either expect or draw any benefit from the release of grants by BCCI. The following directions have been issued by this Court on 7 October 2016:-

“i) No further amount in terms of the Resolution passed in AGM on 09.11.2015 or any subsequent resolution by the BCCI or its Working Committee shall be disbursed to any State Association except where the State Association concerned passes a proper resolution to the effect that it is agreeable to undertake and to support the

reforms as proposed and accepted by this Court in letter and spirit. Upon such a Resolution being passed, a copy of the same shall be filed before Justice Lodha Committee with an affidavit of the President of the State Association concerned unequivocally undertaking to abide by the reforms as proposed by the Committee and accepted and modified by this Court. A similar affidavit with a copy of the Resolution shall be filed before this Court also. It is only after such affidavits are filed, that BCCI may transfer the balance amount of Rs.16.73 crores each payable to the State Association. As regards the 13 State Associations to whom the payment has already been disbursed, we direct that the State Association concerned shall not appropriate the said amount except after they have passed a resolution and filed an affidavit as mentioned above before Justice Lodha Committee and before this Court. In case the affidavits are not filed, the amount disbursed to the State Associations shall be invested by the Associations in a term deposit subject to further directions of this Court.

ii) Mr. Ratnakar Shivaram Shetty, General Manager, Admin and Game development shall, in the meantime, place on record a copy of the authorization/resolution passed by the BCCI on the basis of which he has filed the affidavit supporting the response of the BCCI to the status report.

iii) Mr. Anurag Thakur, President of the BCCI shall file a personal affidavit whether he had asked the CEO of the ICC to state that the appointment of Justice Lodha Committee was tantamount to Government interference in the working of the BCCI.

iv) Mr. Arvind Datar, learned Senior Counsel to produce the original record on the basis of which the affidavit by Mr. Ratnakar Shivaram Shetty on behalf of BCCI has been filed”.

5. In pursuance of these directions, Mr Anurag Thakur, President of BCCI has filed an affidavit specifically with reference to direction (iii) above. Before we consider the affidavit that has been filed by the President of BCCI, it is necessary to advert to the response to the status report of the Committee filed by Mr Ratnakar Shivaram Shetty, General Manager, Admn. & Game Development, BCCI. In the sequence of events set out in his response to the status report, Mr Shetty has dealt with the statement made in an interview given to the electronic media by Mr David Richardson, CEO of ICC. Mr Richardson stated that the President of BCCI sought a letter from ICC that the appointment of a nominee of CAG (which has been directed by this Court on 18 July 2016 in terms of the Committee’s recommendations) would amount to governmental interference’ thereby inviting the suspension of BCCI from the membership of ICC. Mr Shetty’s response was as follows:

“It appears that an interview was given by Mr David Richardson the ICC CEO falsely stating that the BCCI President had requested the ICC to issue a letter stating that the intervention by this Hon’ble Court amounted to Governmental interference. It is submitted that no such letter or oral request was ever made to the said gentleman either by the BCCI President or any office bearer of the BCCI. It is apparent that Mr.

Richardson has confused himself in relation to the issue. This issue is required to be considered in the light of the fact that Mr. Shashank Manohar Senior Advocate had clearly opined as the BCCI President that appointment of the CAG in the BCCI shall result in suspension of the BCCI as it would constitute governmental interference. In fact the same had been submitted on affidavit before this Hon'ble Court. However, as Chairman of the ICC, Mr. Manohar had taken a contrary stand and stated that it would not amount to governmental interference. It was in this context that a discussion took place between Mr. Shashank Manohar and Mr. Anurag Thakur during a meeting in Dubai wherein a clarification as sought by Mr. Anurag Thakur during an informal discussion on what the exact status would be if the CAG was inducted by the BCCI as part of its management and whether it would amount to governmental interference as had been advised and affirmed by Mr. Manohar during his stint as BCCI President.”

Paragraph 7(d) of the response contains a statement that:

“It is being incorrectly alleged that the President BCCI made a request to the ICC to issue a letter stating that this Committee amounts to Governmental interference. This suggestion is denied”.

6. In the affidavit which has been filed by the President of BCCI on 15 October 2016, there is a denial that any such request was made by him to the CEO of ICC. Paragraph 3 of the affidavit contains the version of the President of what transpired at Dubai on 6/7 August 2016 during the course of a meeting convened by ICC:

“In this context it is respectfully submitted that there was an ICC governance review committee meeting scheduled to be held in Dubai on 6th & 7th August 2016. There were certain issues relating to financial model for which my inputs were required and as such I was invited by ICC for the said meeting. During the meeting with regard to the review of the constitutional provisions of ICC, I pointed out to the Chairman of the ICC, Mr. Shashank Manohar that when he was the President of BCCI he had taken a view that the recommendations of the Justice Lodha committee appointing the nominee of the CAG on the Apex Council would amount to governmental interference and might invoke an action of suspension from ICC. I therefore requested him that he being the ICC Chairman can a letter be issued clarifying the position which he had taken as BCCI President. Mr. Manohar explained to me at the meeting that when the stand was taken by him, the matter was pending before this Hon'ble Court and had not been decided. However, on 18.07.2016 this Hon'ble Court delivered its judgment in the matter. In the said judgment, this Hon'ble Court has rejected the submission that the appointment of the nominee of CAG on Apex council would amount to Governmental interference and had also held that the ICC would appreciate the appointment as it would bring transparency in the finances of the Board.”

7. Mr Kapil Sibal, learned senior counsel appearing on behalf of the BCCI has tendered during the course of hearing draft minutes of a Working Committee meeting of BCCI held on 22 August 2016. The draft minutes purportedly contain a record of what is stated to have transpired between Mr Shashank Manohar, the Chairperson of ICC and the President of BCCI at the meeting on 6 and 7 August 2016. The relevant part is extracted below:-

“Mr. Anurag Thakur was in the Chair and called the meeting to order and welcomed the members. He briefed the members about his meeting with the ICC Chairman at Dubai during the ICC governance review committee meeting on 6th & 7th August 2016. Certain financial mode inputs were required during the said meeting which he gave. During the meeting with regard to the review of the constitutional provisions of ICC it was informed by Mr. Thakur that he asked Chairman ICC Mr. Shashank Manohar that when he was the President of BCCI he had taken a view that the recommendations of Justice Lodha committee appointing the nominee of the CAG on the Apex Council would amount to governmental interference and might invoke an action of suspension from ICC. It was therefore requested from him that he being the ICC Chairman could a letter be issued clarifying the position which he had taken as BCCI President. Mr. Manohar thereafter explained that when the stand was taken by him the matter was pending before the Supreme Court and was not decided. However on 18th of July 2016 the Hon. Supreme Court of India delivered its judgment and the Court has rejected the submission that the appointment of the nominee of CAG on Apex council will amount to Governmental interference and had also held that the ICC would appreciate the appointment as it would bring transparency in the finances of the Board. The discussion stopped in view of his explanation on this issue”.

8. Prima facie, it appears from the response that was filed by BCCI to the status report, that a clarification was sought by Mr Anurag Thakur from Mr Shashank Manohar on what the exact status would be if a nominee of CAG was inducted by BCCI as part of its management and whether it would amount to governmental interference. The statement made by BCCI in its response to the status report contains a denial that its President made a request to ICC to issue a letter stating that the Committee amounted to governmental interference. However, in the affidavit which has since been filed by the President of BCCI in pursuance of the Court’s directions of 7 October 2016, it has been accepted that he had made a request to the Chairman of ICC for issuing a letter “clarifying the position which he had taken as BCCI President” (to the effect that the recommendations of the Committee for appointing a nominee of CAG would amount to governmental interference and might invoke an action for suspension from ICC). Significantly, Mr Shetty did not in the response filed earlier by BCCI to the status report disclose that there was a request for a letter by its President to the Chairman, ICC.

9. The draft minutes of the Working Committee purportedly dated 22 August 2016, a copy of which has been placed on the record, are in tandem with the statement made by Mr Thakur on affidavit. Prima facie, it appears that the draft minutes were not before Mr Shetty when he made a statement on behalf of BCCI in his response to the status report. If the draft minutes were before him, it would be natural to assume that the disclosure which has now emerged in

pursuance of the order of this Court dated 7 October 2016 would have been contained in the response submitted by Mr Shetty to the status report. Mr Shetty has stated that the response filed by BCCI to the status report was based on information derived from the records. If that be so, the purported draft minutes of the Working Committee could not have missed his attention or knowledge.

10. Be that as it may, it is a matter of serious concern that the President of BCCI, even after the declaration of the final judgment and order of this Court dated 18 July 2016, requested the Chairperson of ICC for a letter “clarifying” (as he states) the position which he had taken as BCCI President to the effect that the induction of a CAG nominee would amount to governmental interference and may result in BCCI being suspended from ICC. There was no occasion for the President of BCCI to do so once the recommendation of the Committee for the induction of a CAG nominee was accepted in the final judgment of this Court. In the judgment of this Court dated 18 May 2016, this Court observed as follows:-

“77. There is, in our view, no basis for the argument that any measure taken by the BCCI on its own or under the direction of a competent court specially when aimed at streamlining its working and ensuring financial discipline, transparency and accountability expected of an organization discharging public functions such as BCCI may be seen as governmental interference calling for suspension/derecognition of the BCCI. Far from finding fault with presence of a nominee of the Accountant General of the State and C&AG, the ICC would in our opinion appreciate any such step for the same would prevent misgivings about the working of the BCCI especially in relation to management of its funds and bring transparency and objectivity necessary to inspire public confidence in the fairness and the effective management of the affairs of the BCCI and the State Associations. The nominees recommended by the Committee would act as conscience keepers of the State Association and BCCI in financial matters and matters related or incidental thereto which will in no way adversely impact the performance or working of the BCCI for the promotion and development of the game of cricket. The criticism levelled against the recommendations of the Committee is, therefore, unfounded and accordingly rejected”.

11 This finding which is contained in the final judgment and order of this Court binds BCCI. Prima facie, an effort has been made by the President of BCCI to create a record in order to question the legitimacy of the recommendation of the Committee for the appointment of a CAG nominee after the recommendation was accepted by this Court on 18 July 2016. We presently defer further consideration of the action to be taken with reference to his conduct. Mr Shetty in his response to the status report claims that the CEO of ICC had “falsely” stated in his interview that the President of BCCI had requested ICC to issue a letter stating that the intervention of this Court amounted to governmental interference. The version of Mr Shetty is at variance to what is alleged to have been stated by the CEO of ICC. It may also become necessary for this Court to assess the veracity of the version of Mr Shetty and that of Mr Richardson. Mr Shashank Manohar, the then President of BCCI is presently the Chairman of ICC. A copy of this order shall be forwarded to him by the Secretary to the Committee in

order to enable him to consider filing a response setting out his version, to set the record straight and assist this Court. Mr Manohar is at liberty to obtain a report from Mr Richardson before filing his response.

12. During the course of hearing, a grievance has been made on behalf of BCCI that though in the judgment of this Court dated 18 July 2016, it had been hoped that the process of implementing the reforms suggested by the Committee “should be completed within a period of four months or at best six months from today”, the Committee has hastened the process by indicating timelines for completion even within the said period. We find that the criticism of the Committee is not justified for more than one reason. Though this Court expressed the hope that the process of transition and implementation be completed within four months or at best within six months, this Court left it open to the Committee to draw “appropriate timelines for implementation of the recommendations” and to supervise the implementation thereof. The Committee which was entrusted with the task of supervising the implementation process was permitted to lay down suitable timelines. The process of implementation requires a continuous process of monitoring and supervision and it would be only reasonable to assume, as did the Committee, that the process could not be completed in one instalment. Hence, the Committee laid down timelines for implementation.

13. Hence, the broad framework of time prescribed by this Court does not preclude the Committee from specifying timelines. On the contrary, the Committee was specifically allowed to do so to implement the judgment. The status report contains a record of proceedings before the Committee dated 9 August 2016 which indicates that when the first set of timelines was handed over to BCCI’s Secretary on 9 August 2016, he stated before the Committee that a report of compliance would be furnished by 25 August 2016. Despite this, in the report dated 25 August 2016, submitted by the Secretary, BCCI to the Committee there appears the following statement furnished by BCCI by way of a clarification at the Working Committee meeting held on 22 August 2016:

“2 The Members queried as regards to the status of the review petition filed by the BCCI. It was clarified to the members that if the review petition as well as curative petition was dismissed, the recommendations of the Lodha Committee, save those as amended by the court would become binding”.

14. The statement made on behalf of BCCI to the Working Committee that it was only if the Review Petition, as well as Curative Petition were to be dismissed that the recommendations of the Committee would be binding is patently misconceived. The recommendations of the Committee were endorsed in a final judgment and order of this Court dated 18 July 2016, subject to certain modifications. The judgment of this Court has to be implemented as it stands. A party to a litigation cannot be heard to say that it would treat a judgment of this Court as not having binding effect unless the Review or Curative Petitions that it has filed are dismissed.

15. For the reasons which have weighed with us in the earlier order of this Court dated 7 October 2016 and for those which we have adduced above, we are inclined to take a serious

view of the conduct of BCCI in the present case. Despite the prima facie findings which were arrived at in the previous order, the further hearing was deferred. There has been no change in the position of BCCI. The intransigence continues. If BCCI had any difficulties about adhering to the timelines laid down by the Committee, the appropriate course would have been to move the Committee. Even the grievance which was urged during this proceeding by BCCI, that some of the directions of the Committee have travelled beyond the parameters set by this Court can and ought to be urged before the Committee in the first instance.

16. During the course of the hearing, Shri Kapil Sibal, learned senior counsel appearing on behalf of BCCI has agreed to a course of action whereby in the first instance, BCCI would establish its bona fides before the Committee by demonstrating the compliance made by it of those recommendations which are stated to have been fulfilled. The Committee as the body appointed by this Court to monitor and supervise implementation of the judgment will verify whether there has been full compliance with the directions which are stated by BCCI to have been fulfilled.

17. The President and Secretary of BCCI shall (within two weeks) file before the Committee on affidavit their statements of the compliance effected by BCCI thus far of those recommendations which have been fulfilled. The statement shall contain an elaboration of the manner in which compliance has been made and the steps proposed to be taken to fulfil the remaining directions of this Court. The Committee is at liberty to verify the compliance statements filed on behalf of BCCI by its President and Secretary. Both the President and the Secretary shall appear before the Committee in person, and explain the steps taken for compliance and the course of action to be adopted hereafter.

18. Learned senior counsel appearing on behalf of BCCI has stated that in respect of some of the recommendations, where state associations have not agreed to implement the recommendations of the Committee, as accepted by this Court, BCCI will make a genuine endeavour to persuade the state associations to effectuate compliance. Though BCCI is in default and breach of the directions of this Court, in order to enable it to have an additional opportunity to establish its bona fides and to secure compliance with the judgment of this Court dated 18 July 2016, we grant time until 3 December 2016 for the purpose. Besides complying with the direction set out above of filing statements and appearing before the Committee, BCCI shall report compliance before this Court on 5 December 2016.

19. For the reasons which have been contained in the present order of the Court, we are of the view that the issuance of certain additional directions has become inevitable, over and above those that are contained in the previous order dated 7 October 2016. We have presently come to the conclusion that, prima facie, there is substance in the status report submitted by the Committee. Implementation of the final judgment of this Court dated 18 July 2016 has prima facie been impeded by the intransigence of BCCI and its office bearers. However, having due regard to the submission made on behalf of BCCI that it would make every genuine effort to persuade the state associations to secure compliance with the judgment of this Court, and having regard to the larger interests of the game of cricket, we are desisting from issuing a direction at this stage in terms of the request made by the

Committee for appointment of administrators so as to enable BCCI to demonstrate its good faith and the steps taken for compliance both before the Committee in the first instance and before this Court by the next date of hearing. However, certain additional directions are warranted in the interest of maintaining transparency in the functioning of BCCI, having regard to the sequence of events after 18 July 2016.

20. We accordingly issue the following additional directions:-

“(i) BCCI shall forthwith cease and desist from making any disbursement of funds for any purpose whatsoever to any state association until and unless the state association concerned adopts a resolution undertaking to implement the recommendations of the Committee as accepted by this Court in its judgment dated 18 July 2016. After such a resolution is passed and before any disbursement of funds takes place to the state association concerned, a copy of the resolution shall be filed before the Committee and before this Court, together with an affidavit of the President of the state association undertaking to abide by the reforms contained in the report of the Committee, as modified by this Court. Any transfer of funds shall take place to the state associations which have accepted these terms only after compliance as above is effected. This direction is in addition to the previous direction of 7 October 2016 in regard to the disbursement to and appropriation by the state associations;

(ii) (a) The Committee appointed by this Court is requested to appoint an independent auditor to scrutinise and audit the income received and expenditure incurred by BCCI; (b) The auditor shall also oversee the tendering process that will hereinafter be undertaken by BCCI, as well as the award of contracts above a threshold value to be fixed by the Committee; (c) The award of contracts by BCCI above the threshold fixed by the Committee shall be subject to the prior approval of the Committee; (d) The Committee shall be at liberty to obtain the advice of the auditors on the fairness of the tendering process which has been adopted by BCCI and in regard to all relevant facts and circumstances; (e) The Committee will determine whether a proposed contract above the threshold value should or should not be approved; and (f) The Committee will be at liberty to formulate the terms of engagement and reference to the auditors having regard to the above directions. BCCI shall defray the costs, charges and expenses of the auditors.

(iii) The President and Secretary of BCCI shall within two weeks from today file a statement on affidavit indicating compliance made by BCCI of those of the recommendations of the Committee which have been complied with, the manner of compliance and the steps adopted for securing compliance with the remaining recommendations. They shall appear before the Committee to explain the manner of compliance. The President and Secretary, BCCI shall also keep the Committee apprised about the steps taken pursuant to the statement recorded in paragraph 18 above.

(iv) An affidavit of compliance shall be filed before this Court on or before 3 December 2016 by the President and Secretary to BCCI in terms of paragraphs 17 and 18 above; and

(v) The Secretary to the Committee appointed by this Court shall forward a copy of this order to Mr Shashank Manohar, Chairman ICC to facilitate the observations contained in paragraph 11 of this order. BCCI shall cooperate with the Committee and with the auditors by granting, in particular, full access to records, accounts and other information as required to facilitate implementation of these directions.”

21 The hearing of the proceedings shall stand over to 5 December 2016.