



RESEARCH ARTICLE

AMENABILITY OF WRIT JURISDICTION OF PRIVATE BODIES AND RELATED ISSUES: A STUDY

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ARTICLE INFO

Article History:

Received 18th April, 2017
Received in revised form
11th May, 2017
Accepted 19th June, 2017
Published online 31st July, 2017

ABSTRACT

The research article covers the issues regarding BCCI's amenability to the High Court's writ jurisdiction were a crucial question for the court to decide. The most important issue to determine in this regard is whether the BCCI comes within the definition of 'State' under Art 12 of the Constitution.

Key words:

BCCI's amenability,
Writ jurisdiction, state

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Citation: Dr. Mukund Sarada and Dr. Bhagyashri Deshpande, 2017. "Amenability of Writ Jurisdiction of private bodies and related issues: A Study", *International Journal of Current Research*, 9, (07), 55282-55284.

INTRODUCTION

1. Sporting frauds like match fixing and betting have become most common in these days in the conduct of sports activities and in particular the Board of Control of Cricket in India¹. The Supreme Court observed:-

"Cricket being more than a just sport for millions in this part of the World, accusations of malpractices and conflict of interests against those who not only hold positions of influence in the BCCI but also own franchises and teams competing in the IPL format have left many a cricketing enthusiasts and followers of the game worried and deeply suspicious about what goes on in the name of game. There is no denying of the fact that lower the threshold of tolerance for any wrong done higher is the expectation of the people from the system. And cricket being not only a passion but a great unifying force in the Country, a zero tolerance approach towards any wrong doing alone can satisfy the cry for cleansing"².

2. most important issue to determine in this regard is whether the BCCI comes within the definition of 'State' under Art 12 of the Constitution which states as follows:-

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"...for the purposes of Part III of the Constitution the expression 'State' includes the Parliament of India, the Government and legislature of each of the State and local or other authorities of the Government of India".

The above definition was interpreted in a number of decisions of courts to determine whether or not a particular entity is 'State' for the purposes of Art 12. It is useful to refer to some important decisions of the courts to consider whether BCCI comes within the definition of 'State' and if it does, the question of amenability of writ jurisdiction becomes patently visible.

3. In *Sukhdev and others*,³ the Supreme Court held that employees of the statutory corporations can claim protection of Art 14 (Fundamental Rights) of the Constitution. Reliance was placed on *Marsh Vs. Alabama*⁴ wherein the US Supreme Court held that when a private corporation performs public function, it is bound by the constitutional standard applicable to all State actions. In this case⁵ the following statement of law was laid down:-

i) The more an owner, for his advantage, opens up his property for use by the public in general, the more do his

¹ Board of Cricket for Control in India's case AIR 2015 SC P.3194 and it is referred to for Board of Cricket for Control (as BCCI throughout this study).

² Ibid Para 1.

³ *Sukhdev and others Vs. Bhagatram Sardar Singh Raghuwamshi*, AIR 1975 SC P.1331.

⁴ 326 US P.501.

⁵ Ibid.

rights become circumscribed by the statutory and constitutional rights of those who use it;

- ii) The owners of privately held bridges, ferries, twinpikes and railroads may not oppose them as freely as a farmer does his farm;
- iii) Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to State regulation.

4. In *Sukhdev*,⁶ the Supreme Court further laid down as follows:-

- i) The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a 'State agency';
- ii) If a given function is of such public importance and so closely related to government functions as to be classified as an agency then even the presence or absence of State financial aid might be irrelevant in making a finding of State action;
- iii) If the function does not fall within such description then mere addition of State money would not influence the conclusion;
- iv) Any private organisation dealing with public Rights have been held as subjected to constitutional standards in USA such as political parties, labour issues etc.;
- v) Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed Government agencies.

5. If the functions of a corporation are of public importance and closely related to Government functions, they can be considered as an instrumentality or agency of the State.⁷ This view of the Supreme Court was followed in *Ramana Dayaram Shetty*.⁸

6. The Supreme Court further elaborated the concept of State in *Ajay Hasia & others*⁹ thus:

- i) The constitutional philosophy of a democratic socialistic republic requiring the Government to undertake socialistic republic requiring the Government to undertake a multitude of socio-economic operations, and the political advantage of functioning through the legal device of a corporation for a myriad of commercial and economic activities;
- ii) Such contrivance cannot enumerate the Government of its basic obligations to respect the fundamental rights of the citizens, for otherwise it would be the easiest thing for any Government to assign to a plurality of corporations almost every State business and thereby cheat the people of this Country of the fundamental rights guaranteed to them (in Part III of the Constitution of India).

There is a need to incorporate in Art 12 the expression "instrumentality or agency of the State".

7. In *Pradeep Kumar Biswas's case*,¹⁰ the facts of a case must be examined, whether the body is 'financially, functionally and administratively' dominated by or under the control of

Government and such control must be particular to the body in question and must be pervasive to make such body to be within the ambit of Art 12 of the Constitution. A mere regulatory control whether under Statute or otherwise would not be sufficient to consider its 'States' as 'an instrumentality or agent of the State. When a Board controls over the sports of cricket is so deep and pervasive exercising enormous public functions, it is obligatory for the Board to follow the doctrine of "fairness and good faith".¹¹

8. In a recent case,¹² the Supreme Court laid down the following:-

- i) The nature of 'duties and functions' to be examined which indicated.
 - a) BCCI has a complete sway over the game of cricket in the Country;
 - b) It regulates and controls the game to the exclusive of all others;
 - c) It formulates rules, regulations, norms and standards covering all aspects of the game;
 - d) It enjoys the power of choosing the members of the national team, and the umpires;
 - e) It exercises the power of disqualifying players which may at times put an end to the sporting career of a person;
 - f) It spends crores of rupees on building and maintaining infra-structure like stadium, running of cricket academies and supporting State associations;
 - g) It frames pension schemes and incurs expenditure on coaches, trainees, trainers and others;
 - h) It sells broadcast and telecast rights and collects admission fees to venues whether the matches are played;
 - i) All above activities are undertaken with the tacit concurrence of the State Government and Central Government who are not only aware but supportive of the activities of the Board;
 - j) The State has not chosen to bring any law or taken any other step that would either deprive or dilute Board's monopoly in the field of cricket;
 - k) The Boards activities are applauded by the entire nation when the team chosen by its wins tournaments like the Prime-Minister congratulating the team for winning games etc.;
 - l) The distinguished people in the game are conferred national awards like 'Padma Shree' and other titles;
 - m) The functions of BCCI are clearly public function despite the fact that it has been registered under Societies Registration Act.

In view of the above factors, the BCCI even though a private body is amenable to the writ jurisdiction of the High Court under Art 226 of the Constitution of India.

9. In conclusion, the following suggestions are offered in these terms:-

- i) Art 12 of the Constitution be amended by incorporating a suitable provision in Art 12 of the Constitution as follows:-

"Provided that a private individual or body or an institution or entity performs a public function or operates for public benefit

⁶ See Note 3 Paras 97, 101 and 102.

⁷ See *Evans Vs. Newton* 1963 1 All ER P.590 and *New York Vs. United States* 326 P.1628.

⁸ AIR 1979 SC P.1628.

⁹ AIR 1981 SC P.487.

¹⁰ (2005) 5 SCC P.111. *Over-ruling Sabhajit Tewary* AIR 1975 SC P.1329.

¹¹ *Board of Control for Cricket in India Vs. Netaji Cricket Club and others* AIR 2005 SC P.392.

¹² See Note 1 Para 30.

or of public importance closely related to Government functions, or dealing with public rights or matters of high public interest or has complete control over the activities to the exclusion

..... of others, irrespective of the fact whether it is financially aided or supported by the Government or not, shall be regarded as 'State' and the registration under any law of such bodies, by whatever name they are called, would suffice".

ii) Such an amendment will put an end to all controversies of an individual, body, institution or entity regarding its status as an instrumentality or agent of the State and its amenability to the writ jurisdiction of the High Court under Art 226 may be put an end to.
