

BEFORE JUSTICE D.K. JAIN, FORMER JUDGE, SUPREME COURT OF INDIA
ETHICS OFFICER, THE BOARD OF CONTROL FOR CRICKET IN INDIA
COMPLAINT 3/2020

In re:

Complaint dated 4th January 2020 received from:
Mr. Sanjeev Gupta

In the matter of:

Mr. Jaydev Shah, President, Saurashtra Cricket Association

ORDER
05.06.2021

1. This order shall dispose of the Complaint dated 4th January 2020 received by the Ethics Officer of the Board of Control for Cricket in India (for short "the BCCI") from Mr. Sanjeev Gupta, (hereinafter referred to as "the Complainant") against Mr. Jaydev Shah (hereinafter referred to as "the Respondent") under Rule 39 of the Rules and Regulations of the BCCI (for short "the BCCI Rules"). In the Complaint, it is alleged that the Respondent by occupying the following posts is occupying more than one post, as enumerated in Rule 38(4) of the BCCI Rules, at a single point of time, in blatant violation of the said Rule and as such, he must relinquish one of the posts:



- i. Representative of the Saurashtra Cricket Association (for short "the SCA") to the BCCI; and
- ii. The President of the SCA

According to the Complainant, the said two posts are covered under clauses (f) and (m) of Sub-rule (4) of Rule 38 of the BCCI Rules respectively, and consequently, holding of these two posts at the same point of time gives rise to a case of conflict of interest, as defined in Rule 1(A)(g) of the BCCI Rules.

2. Notices on the Complaint were issued to the BCCI and the Respondent. On being asked to respond to the Complaint, both the Respondent and the BCCI filed their respective Replies, refuting the allegations in the Complaint, to which, the Complainant filed Rejoinder, reiterating his stand made in the Complaint.
3. In its Reply dated 27th February 2020, the stand of the BCCI is that if a person is an elected Office Bearer of a Member and a Representative of a Member of the BCCI, then such a situation will not come under the purview of Rule 34(4) of the BCCI Rules. It is averred that any situation of conflict will have to fit into the categorisation as stated in the provision of conflict of interest in the BCCI Rules. The functions of the two posts held by an individual would require one to be obligated to the other or in opposition thereof in a negative manner, which situation does not arise in the present case, as the posts of a Representative of a Member of the BCCI and Office Bearer of the Member are in no manner obligated or in opposition to each other. It is further stressed that Rule 1(A)



of the BCCI Rules allows the definition of “Administrator” as contemplated in Rule 1(A)(a) of the BCCI Rules, to be construed to have a different meaning since neither the SCA Rules nor the BCCI Rules disqualify an Office Bearer of a Member from being the Representative of the Member of the BCCI.

4. In his Reply filed on Affidavit on 6th January 2021, the Respondent has also refuted the allegation of any kind of conflict of interest, as alleged by the Complainant. The Respondent has put forth a similar stand as that of the BCCI, viz. his posts as an Office Bearer of the SCA and as the SCA Representative to the BCCI are not in opposition or beholden to each other as provided under Rule 38(1)(ii) of the BCCI Rules, and hence would not get hit by conflict of interest. It is stressed that he does not hold any post of Office Bearer in the BCCI nor is he a Member of the Apex Council of the BCCI, and therefore, he cannot be said to be in governance, management or employment of the BCCI. He has asserted that the definition of “Administrator” as enumerated in the BCCI Rules ought to be harmoniously construed only to include the Office Bearers of the BCCI and the Members of the Apex Council of the BCCI and not a Representative of the Member of the BCCI.
5. Upon receipt of the Replies from the BCCI and the Respondent and Rejoinder by the Complainant, the Parties were directed to appear before the Ethics Officer on 15th March 2021 for a personal hearing.



6. At the hearing held by virtual mode due to COVID-19 pandemic, Mr. Sanjeev Gupta – the Complainant, appeared in person, Mr. Ashwin Shanker, Advocate, appeared for the Respondent, and Mr. Abhinav Mukherji along with Ms. Melinda Colaco and Mr. Prakhar Maheshwari appeared for the BCCI before the Ethics Officer. The Parties were heard at considerable length.
7. Upon conclusion of the oral submissions, the Parties were permitted to file written submissions, which have been filed.
8. The question, falling for consideration is whether the mere fact that the Respondent holds two posts enumerated in Rule 38(4) of the BCCI Rules viz. (i) the President of the SCA and (ii) the Representative of the SCA to the BCCI, he is occupying the post of “Administrator/Office Bearer” as defined in Rule 38(4)(f) of the BCCI Rules and being an Office Bearer of a Member, covered by Rule 38(4)(m) of the BCCI Rules, at a single point of time, gives rise to a situation of conflict of interest as defined in Rule 1(A)(g), read with Rule 38 of the BCCI Rules?
9. The term “Administrator” has been defined in Rule 1(A)(a) of the BCCI Rules, to:

“mean and include present and former Presidents, Vice Presidents, Honorary Secretaries, Honorary Treasurers, Honorary Joint Secretaries of the BCCI, past and present Presidents and Secretaries of Members affiliated to the BCCI, a representative of a Member of the BCCI, and any person connected with the Governance and Management of the affairs of the BCCI or of its Committees.”



Similarly, Rule 1(A)(g) of the BCCI Rules, defines "Conflict of Interest", as referring:

"to situations where an individual associated with the BCCI in any capacity acts or omits to act in a manner that brings, or is perceived to bring the interest of the individual in conflict with the interest of the game of cricket and that may give rise to apprehensions of, or actual favouritism, lack of objectivity, bias, benefits (monetary or otherwise) or linkages, as set out in Rule 38."

10. So far as an individual associated with the BCCI is concerned, Rule 38(1) of the BCCI Rules details five situations, with illustrations, which may take the form of conflict of interest.
11. As mentioned above, Rule 38(4) of the BCCI Rules states that no individual "may" occupy more than one post, as mentioned thereunder, at a given point of time, except where provided under the Rules. The Complainant's case is that mere occupation of more than one post, as enumerated under Sub-rule (4) of Rule 38 of the BCCI Rules *per se* leads to a conflict of interest.
12. The issue of inter-play between Rule 1(A)(g) of the BCCI Rules, defining "Conflict of Interest", Sub-rule (1) of Rule 38 of the BCCI Rules enumerating various forms, which may constitute conflict of interest and Sub-rule (4) of Rule 38 of the BCCI Rules and the object of the Rules, has already been examined by the Ethics Officer in extenso in the case of Mr. Rahul Dravid, wherein it was observed as follows:



- "16.literal interpretation of Sub-rule (4) of Rule 38 of the Rules has resulted in a situation where the other provisions contained in the Rules, in particular, Rule1(A)(g) of the Rules- defining "conflict of interest" and Sub-rule (1) of the Rule 38 of the Rules- elucidating by way of illustrations, at least, five circumstances, which may take the form of a "conflict of interest", are rendered otiose.
17. It is trite law that where literal meaning of the words used in statutory provisions leads to making a part of the same provision or some of the provisions in the same statute meaningless and ineffective, it is legitimate and even necessary to adopt the Rule of liberal construction so as to give meaning to all parts of the provisions and to make the whole of the statute effective and operative.
18. Looked at from that angle, I am of the view that while giving a literal interpretation in the earlier decision of Mr. Ganguly to Sub- rule (4) of Rule 38 of the Rules, Sub-rule(1) of Rule 38 of the Rules altogether stood divorced from the said Rule and in the process, Sub-rule (4) got treated as a stand-alone provision. Resultantly, the effect and significance of the definition of "conflict of interest" in Rule1(A)(g) of the Rules, which is and ought to be treated as relevant for Rule 38 of the Rules, to define the said expression, is altogether lost.....
.....
19. Having reconsidered the matter in the light of the afore-stated provisions, while maintaining that on a literal interpretation, it may not be possible to hold that Sub-rule (4) of Rule 38 of the Rules, is merely directory. Nevertheless, on a harmonious and meaningful construction of all the provisions in the BCCI Rules, I am of the opinion that the said Sub-rule (4) cannot be divorced from sub-Rule (1) of Rule 38 of the Rules. Hence, while examining the question whether or not there is a "conflict of interest" in the case of a particular individual, the actual or potential consequences of the instances illustrated in extenso in Sub-rule (1) of the Rule 38 of the Rules or other



possibilities of potential/actual conflicts similar to those given in Sub-rule (1) of the Rule 38 of the Rules, have to be kept in view. To put it differently, for examining an instance of "conflict of interest", mere holding of post/s by an individual associated with the BCCI, as identified in Sub-rule (4) of Rule 38 of the Rules, may not *per-se* be sufficient for arriving at the conclusion of existence of "conflict of interest". But whether holding of such post(s) gives rise to "conflict of interest" or not must also be tested on the anvil of reasonable apprehensions of, or actual favoritism, lack of objectivity, bias, benefits, etc., as contemplated in the definition of "conflict of interest" in Rule1(A)(g) of the Rules."

13. The Ethics Officer is, therefore, of the view that the term "Administrator" defined in Rule 1(A)(a) of the BCCI Rules has to be read harmoniously and holistically in the light of other provisions of the BCCI Rules. On a plain reading of the definition of the term "Administrator", it may be said that "a representative of a Member of the BCCI" falls within its ambit, however, it is also to be read within the meaning of the term conflict of interest in which, it is required to be applied. Rule 1(A) of the BCCI Rules itself admits of such a situation by use of the expression "unless the context otherwise requires." That such leverage in the definition clause is with the intent and purpose of not making other provisions of the BCCI Rules or the MCA Rules as meaningless or ineffective, on a literal interpretation of a particular definition. As already observed above, it is well settled that it is not only legitimate but even necessary to adopt the rule of liberal construction so as to give effect to every provision to make the statute complete, effective and operative.



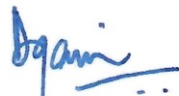
14. Thus, the Ethics Officer is of the opinion that the effect and significance of the definition of "Conflict of Interest" in Rule 1(A)(g) of the BCCI Rules has to be tested on the yardstick of Sub-rule (1) of Rule 38 of the BCCI Rules and not solely on the literal meaning of the term "Administrator" given in Rule 1(A)(a) of the BCCI Rules, even in the context of Rule 38(4) of the BCCI Rules. A case of conflict of interest cannot ipso facto be established on the mere fact that a person is holding two posts under Rule 38(4) of the BCCI Rules, unless there is an actual or potential likelihood of favouritism, lack of objectivity, bias, benefits etc., as contemplated in Rule 1(A)(g) of the BCCI Rules.
15. In the instant case, as pleaded by the Complainant, it goes without saying that on a plain reading of Rule 1(A)(a) of the BCCI Rules, by the nomination of the Respondent as the Representative of the SCA to the BCCI, he falls within the ambit of definition of an "Administrator" as mentioned in Clause (f) of Sub-rule (4) of Rule 38 of the BCCI Rules, because Rule 1(A)(a) says so. Nevertheless, the Ethics Officer is of the view that in order to make out a case of conflict of interest, as contemplated in Rule 1(A)(g) of the BCCI Rules, it has to be seen whether his position as a Representative of the SCA to the BCCI gives rise to an apprehension of or actual favouritism, lack of objectivity, or bias while discharging his functions as an "Office Bearer" - being the President of the SCA or vice versa.



16. Bearing that in mind, upon a comprehensive examination of the two posts held by the Respondent in the present case, viz. Office Bearer of the SCA and Representative of the SCA to the BCCI, the Ethics Officer is inclined to hold that no instance of conflict of interest is made out (or at least none has been established by the Complainant), as his position as an Office Bearer of the SCA and as a Representative of the SCA are not in opposition or beholden to each other as provided under Rule 38(1)(ii) of the BCCI Rules and/or brings or can be perceived to bring his interest in conflict with the interest of the game of Cricket or may give rise to an apprehension of, lack of objectivity or bias while discharging his functions assigned to him by the SCA. Moreover, a Representative of a Member State cannot be considered to be any post either under the BCCI or Member State. Furthermore, it is difficult to fathom that the Respondent would be in a position to influence the decision of the rest of the voting Members in favour of his Association, attracting Rule 38(1)(v) of the BCCI Rules, since each Representative is vested with a right of only one vote.
17. Therefore, on a harmonious construction of all the relevant BCCI & SCA Rules, the Ethics Officer is of the opinion that, by virtue of the Respondent's nomination as the Representative of the SCA to the BCCI and by holding the post of President of the SCA, a case of conflict of interest as enshrined in the BCCI Rules is not made out against him.



18. Resultantly, the complaint is dismissed being bereft of any merit.
19. This order will be communicated to the Respondent, the Complainant and the BCCI. The signed copy of this Order shall be kept in the folder of the Complaint.


(JUSTICE D. K. JAIN)
ETHICS OFFICER, BCCI