

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

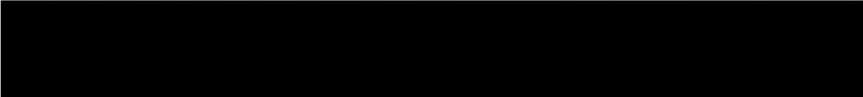
COMPLAINT NO. 5/2019

In re:

Complaint dated 5th July 2019 received from:

Mr. Sanjeev Gupta

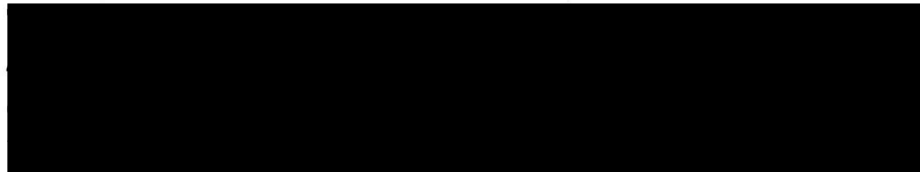
...Complainant



In the matter of:

Mr. Mayank Parikh, Manager, BCCI

...Respondent



AND

COMPLAINT No. 7 of 2019

In re:

Complaint dated 5th August 2019 received from:

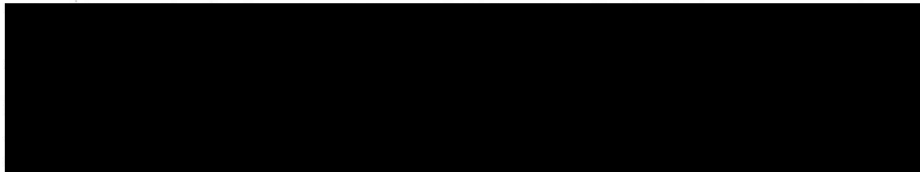
The Supreme Court Appointed
Committee of Administrators
The Board of Control for Cricket in India,
Mumbai

...Complainant

In the matter of:

Mr. Mayank Parikh, Manager, BCCI

...Respondent



APPEARANCES:

For the Complainant:

1. Mr. Sanjeev Gupta - in person

For Mr. Mayank Parikh:

1. Mr. F. E. De Vitre, Senior Advocate

A blue ink signature, likely of the ethics officer, located at the bottom left of the page.

2. Mr. S. R. Halbe, Advocate
3. Ms. Sneha Phere, Advocate
4. Mr. Mayank Parikh - in person

For BCCI:

1. Mr. Indranil Deshmukh, Advocate
2. Mr. Biswa Patnaik, Senior Legal Advisors, BCCI
3. Mr. Rahul Johri, CEO, BCCI

ORDER
21.07.2020

1. This order shall dispose of the two Complaints, first one dated 5th July 2019 and other one 7th August 2019, 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") and the Committee of Administrators of the BCCI (for short "the COA"), appointed by the Hon'ble Supreme Court of India respectively, under Rule 39(2)(b) of the Rules and Regulations of the BCCI (for short "the Rules") against an employee/Manager of the BCCI - Mr. Mayank Parikh. In the Complaints it is alleged that Mr. Mayank Parikh is occupying more than one post, as enumerated in Rule 38(4) as well as Rule 38(2) of the Rules, at a single point of time, in violation of the said Rules and as such, he must relinquish one of the posts. The two posts, which Mr. Mayank Parikh is stated to be occupying at the same time, are as follows:

- a. BCCI Manager/Employee.
- b. Owner of 6 Cricket Clubs/Academies in Mumbai, named in Complaint No. 5/2019, wherein he is the Authorized Signatory of the Clubs in his capacity as



the Honorary Secretary and that the Clubs are members of the Mumbai Cricket Association (for short "the MCA") with voting rights.

2. According to the Complainant, the said two posts are covered under clauses(l)- CEO and Manager (p) - owner of a Cricket Academy, of Sub-Rule 4 of Rule 38 of the Rules, respectively, and as such, give rise to a conflict of interest, as defined in Rule 1(A)(g) of the Rules.
3. In the Complaint, filed by the BCCI it is stated that on the request of the COA, Mr. Mayank Parikh, disclosed that he was the Authorized Signatory/Honorary Secretary of some Clubs affiliated with the MCA but he does not have any voting rights in the MCA nor can he be a member of any Sub-Committee or contest for position of Office Bearer in the MCA. However, on further queries, by the COA, Mr. Parikh stated that the Clubs receive financial assistance as reimbursement of match expenses incurred by these Clubs. It is also stated that the COA has been informed that in addition to the above, the MCA also provides financial assistance in the form of interest on the corpus maintained by the MCA. The COA has requested the Ethics Officer to take cognizance of the conflict of interest and provide guidance and resolution for the same.
4. Notices on the Complaints were issued to Mr. Mayank Parikh, calling upon him to file his response, in writing.
5. In his reply, filed on Affidavit, Mr. Mayank Parikh has refuted the allegation of any kind of conflict of interest, as alleged in the



Complaints. While asserting that there was never any conflict of interest existing and/or potential between his ownership of the Clubs affiliated to the MCA and his duties as "Manager", he has stated that he had disclosed his ownership of the Clubs to the BCCI Management under the new Rules and Regulations and even prior to it, to the COA. In support, he has relied upon his disclosure made to the BCCI vide Disclosure Form dated 23rd February 2017, wherein he had disclosed that he was discharging his duty as Manager in Logistics and Hospitality/Cricket Operations; that he had no voting right in the MCA and that he was not entitled to be in any sub-committee as well. Laying emphasis on the phrase "establish coaching academies" used in Clause 2(b) of the Memorandum of Association of the BCCI, he seeks to distinguish the term "Academy" from the term "Club" which term, according to him, is not defined in the Rules. According to Mr. Parikh, the use of word "establish" denotes "permanency" and thus, a "Club" not being a permanent entity is different from the term "Academy", as stipulated in Sub-Clause (b) of Clause 4 of Rule 38. His plea is that for establishment of a "Cricket Academy" it is necessary to have: (i) a definite place with facilities for teaching; (ii) existence of a cricket ground and pitches; (iii) Trainees coming regularly at that place to learn cricket; and (iv) Team of Faculty members- Coaches, physiotherapists, physical trainers etc. to teach and supervise the training of the students. According to him, all these pre-requisites for a "Cricket Academy" are missing in a "Club". It is urged that none of the Clubs, which he and his family own, have any Coaching Academy nor do they

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have a Ground for training and therefore, it is not possible for his Clubs to establish a Coaching Academy. It is further pleaded that a club participating in a tournament cannot be elevated to the position of a "Cricket Academy", otherwise all the other 211 'Maidan Clubs' in Mumbai would be elevated to the position of a "Cricket Academy".

6. In so far as the Complaint filed by the COA is concerned, in his reply, Mr. Parikh, while contesting the allegation of any kind of conflict of interest, as alleged, has submitted that in the Complaint (No.7/2019), it has not been elaborated in what manner conflict of interest has arisen as an employee of the BCCI or any linkages under Rule 38, though he affirms that the six Clubs are members of MCA but with only 6/329% (i.e. 1.82%) of the voting rights and that the Clubs are only a platform for the Cricketers to showcase their talents and that the MCA pays only for match expense and kit/equipment. It is asserted that his duty as per duty chart drawn by the COA is for operations and coordination of matches in Mumbai and to report to the CEO, and thus, he has no authority or power in General Body even with respect to voting.
7. On being supplied with the copies of the Replies filed by Mr. Parikh, in his Rejoinder, dated 10th September 2019, the Complainant has focussed on the admissions made by Mr. Mayank Parikh to the effect that: he and his family owns 6 cricket Clubs; they are the voting members of the MCA, which is equal to 1.82% of the total voting rights of the MCA and that the MCA is a

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full voting member of the Parent Body - the BCCI; the 6 cricket Clubs are entrusted with the role of producing cricketers for Mumbai and for showcasing the talents in the MCA; all 329 members of MCA (Cricket Clubs), act as nurseries of Cricket in Mumbai, who have produced number of cricketers and are allotted 4 free tickets for being parties to Association's functioning. It is emphasized that both "Club" and "Academy" are mere nomenclature having the same motive of promoting cricket and cricketers, congruent with the objects of the BCCI. It is thus, stressed that there is a blatant violation of clauses (l) and (p) of Rule 38(4) and therefore, Mr. Parikh deserves to be removed from one of the post.

8. Having regard to the afore-noted rival stands, it was considered proper and expedient to afford an opportunity of personal hearing to the Parties. Accordingly, the Parties were called upon to appear before the Ethics Officer on 26th September 2019 at Mumbai and make their submissions.
9. Mr. Mayank Parikh appeared with his Counsel, Mr. F. E. De Vitre, Senior Advocate, assisted by Mr. S. R. Halbe, Advocate. The Complainant appeared in person, while BCCI was represented by Mr. Indranil Deshmukh, Mr. Adarsh Saxena, Advocates and Mr. Biswa Patnaik, Senior Legal Advisor, BCCI. The Ld. Counsel were heard at length. However, due to some vagueness in the Complaint filed by the COA, the BCCI was asked to file its response in Complaint No. 5/2019, filed by Mr. Sanjeev Gupta, as well as on the oral submissions made by the



Complainant and on behalf of Mr. Mayank Parikh. Mr. Parikh was also permitted to file written response to the oral submissions made by the Complainant and on the response to be filed by the BCCI, in terms of the directions issued on that day.

10. In compliance thereof, the BCCI made a volte face by way of a letter dated 17th October 2019, whereby it took the stand that no conflict of interest was involved in the present case. For ease of reference, the stand of the BCCI is extracted below:

“After considering the rival contentions, BCCI believes that there is substance in what is stated by Mr. Mayank Parikh that the BCCI Constitution uses the words “cricket academy” and “cricket club” distinctively and not synonymously. Whilst there is an element of commercial conflict which may emerge from running the cricket academy where young cricketers are trained for a fee, there is no such commercial element involved in running cricket club which participates in local cricket tournaments by fielding teams. For example, an instance of conflict of interest may arise if an administrator or manager of the BCCI uses his perceived clout and influence to enrich himself by garnering a following amongst young cricketers to whom he charges fees for training/Coaching in his cricket academy. This may not be true in case of a cricket club. As such in case Mr. Mayank Parikh is found only to own cricket club which do not impart training/Coaching to cricketers and merely fields teams in local tournaments then in the BCCI’s view there would not be any conflict of interest in the present case.”

11. Pertinently, in the said letter, the BCCI has also recorded its disagreement with the stand of the MCA on the issue, which the MCA had placed before the Hon’ble Supreme Court of India, by



way of an interim Application.

12. Armed with the letter of the BCCI dated 17th October 2019, vide his reply dated 27th November 2019, while taking a cue from the Covering Letter of the CEO of the BCCI, indicating difference of opinion amongst the three members of the COA on the subject issue, the majority opinion being in his favour, Mr. Parikh has pleaded that the Complaint filed by the COA (Complaint No. 7/2019) stands abated and in any event, should be rejected. The Certificates, stated to have been issued by the MCA, certifying that the six concerned Clubs do not have their own ground nor do they have any academy and they are only ordinary 'Maidan Clubs', have been annexed with the said reply. It is urged that in light of the said Certificates, even the other Complaint (No. 5/2019) should also be put to rest.
13. Responding to the letter dated 17th October 2019 and Mr. Parikh's submissions dated 27th November 2019, the Complainant, while reiterating his stand, with point-wise reference to the pleas raised by Mr. Parikh, strongly objected to the BCCI being a Party to these proceedings.
14. Having regard to the aforesaid revised stand of the BCCI in the matter, and to have more clarity on the issue, it was considered proper to grant personal hearing to the Parties, particularly to the Complainant in Complaint No. 5/2019. Accordingly, the Parties were asked to appear before the Ethics Officer on 27th December 2019.



15. At the commencement of the hearing, the Complainant filed Written Arguments, supplementing the submissions contained in his response dated 10th September 2019. Mr. Gupta addressed the Ethics Officer at considerable length. However, Ld. Counsel appearing for Mr. Parikh prayed for some time to collect the information adverted to in the Written Submissions filed by Mr. Gupta. In the interest of justice, one weeks' time was granted to Mr. Parikh to respond to the written arguments. The decision on grant of further personal hearing, as prayed for on behalf of Mr. Parikh, was deferred for being considered after the filing of the responses by the Parties. Pursuant to his further request, Mr. Parikh was permitted to file his response on or before 10th January 2020 and Mr. Gupta was permitted to file his rejoinder thereto on or before 17th January 2020.
16. In the Written Submissions filed by Mr. Mayank Parikh on 9th January 2020, while reiterating his earlier version, it is now pleaded that the six Clubs in question have since been converted into Public Charitable Trusts and being mere trustees, he and his family members can, in no manner, be said to have any personal interest in the Clubs. Nevertheless, without prejudice to his contention that no case of conflict of interest under the BCCI Rules has been made out, he has tendered his resignation as trustee of all the six Clubs and therefore, no cause of action for the complaint survives.
17. In his Rejoinder dated 17th January 2020, to the submissions filed



by Mr. Parikh on 9th January 2020, it is stressed by Mr. Gupta that the conversion of the six Clubs into Public Trusts and his resignation as trustee of these Clubs is merely an eye-wash, in as much as all the Trusts are registered at the address of his mother and the trustees are his family members. In support of his allegation that Mr. Parikh has used his 'colossal influence' of being the BCCI Manager for cricket operations/logistic dealings with State Associations and handling cricket operations with the MCA in obtaining the six Certificates dated 2nd November 2019, containing many clarifications, in order to influence this case, Mr. Gupta has highlighted that in his Application dated 15th October 2019, Mr. Parikh had only sought Affiliation Certificate from the MCA and nothing more, yet the MCA went on to comment on the status of the Clubs. It is also asserted that in the illustrations under Rule 38(i)(v) of the Rules, "Cricket Academies" have been equated with "Cricket Clubs" for determining an instance of conflict of interest as owning/running Club or Academy. It is pleaded that both the "Clubs" and "Academies are covered under Rule 38(4)(p) of the Rules, as their objectives are the same, viz. promotion of cricket and the cricketers.

18. Unfortunately, before the orders in present matter could be pronounced, the term of the Ethics Officer came to an end in the month of February 2020. Upon being reappointed as the Ethics Officer w.e.f, 8th June 2020, since considerable time had elapsed since the time final arguments in the Complaints were heard, vide notice dated 16th June 2020, the Parties were directed to



indicate as to whether they required any further hearing in the matter.

19. In response, Mr. Mayank Parikh submitted that though he would prefer to have a personal hearing but in view of the prevailing circumstances, it would not be feasible to have further personal hearing in the matter. However, in the said communication, he has reiterated what he had already stated in his earlier Affidavit, namely: (i) six Clubs have been certified by the MCA as ordinary 'Maidan Clubs' and not Cricket Academies; (ii) the Clubs in question have only 1.82% of the voting rights in the MCA, the objects of which are congruent with that of the BCCI; (iii) as the Manager of BCCI, he is only involved in 'cricket operations' and there was never any question of conflict of interest in the performance of his duties; and (iv) pursuant to change in the Constitution of the MCA, the six Clubs have been converted into Public Charitable Trusts and he and his family members, as Trustees, could in no manner be said to have any personal interest in the Clubs and in any event, he had also tendered his resignation as a trustee of all the six Clubs. The Complainant, on the other hand, vide his email dated 16th June 2020, has requested the Ethics Officer to pronounce the verdict taking into consideration the written submissions already filed by him in the matter.

20. Since all the Parties are ad-idem that Mr. Mayank Parikh is a "Manager of BCCI" within the meaning of Clause (l) of Sub-rule (4) of Rule 38 of the Rules, the issue falling for consideration is



whether his erstwhile and present association, which he now claims stands severed, with the six Clubs, still attracts Clause (p) of Sub-rule(4) of Rule 38 of the Rules, giving rise to a situation of conflict of interest, as contemplated under the Rules?

21. The concept of conflict of interest, is not necessarily a question about something one does or intends to do but a question of what it can possibly or potentially do. However, in so far as the Rules of the BCCI are concerned, the said principle has been codified in Rule 1(A)(g) read with Rule 38(1)(i) of the Rules. Rule 1(A)(g) of the Rules refers to the 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 favoritism, lack of objectivity, bias, benefits (monetary or otherwise) or linkages, as set out in Rule 38 of the Rules. Hence, the question of conflict of interest has to be considered on the touchstone of the definition, which clearly brings within its ambit all situations, which even have the potential or perception of giving rise to apprehension of any kind of favouritism, lack of objectivity, bias, benefits (monetary or otherwise) or linkages by or to a person associated with the BCCI, in any capacity.

22. In some of the earlier complaints, *inter-alia*, against Mr. V. V. S. Laxman, on examination of the issue of inter-play between Rule 1(A)(g) of the Rules, defining conflict of interest, Sub-rule (1) of Rule 38 of the Rules enumerating various forms, which may

constitute conflict of interest and Rule 38 of the Rules and the object of the Rules, the undersigned had observed that a conjoint reading of the provisions of the Constitution as also the Rules of the BCCI leads to a conclusion that one of the basic ideas behind the introduction of the Rules, especially the definition conflict of interest in Rule 1(A)(g) and the provisions of Rule 38 of the Rules was to implement the principle of 'one man one post', in the larger interest of the game of Cricket. Evidently, it is aimed at avoiding concentration of power in a few hands, using the influence which a person may be able to exercise by virtue of his holding one post to further his/her interest in the other post and also for ensuring larger participation of the persons having vast knowledge and experience in the game of Cricket. Looked at from that angle, it was held that the use of the word "may" in Rule 38(4) of the Rules does not mean that the provisions contained therein are merely directory. *Inter-alia*, observing that it was no longer *res integra* that mere use of the words such as "may" or "shall" would not necessarily make a provision mandatory or directory and on the contrary, whether a provision is mandatory or directory, depends upon the intent of Legislature and not upon the language used in the provision, it was held that the issue of conflict of interest is to be examined keeping in focus the context, the subject matter and the object of the statutory provisions in question. It was thus, held that the provisions contained in Sub-rule (4) of Rule 38 of the Rules cannot be held as merely directory. Accordingly, it was opined that Sub-rule (4) of Rule 38 of the Rules is a stand-alone Rule and not dependent on the applicability of various forms of conflict of



interest some of which are illustrated in the said Sub-rule.

23. However, subsequently, while dealing with the Complaint against Mr. Rahul Dravid, on a reconsideration of the entire issue of conflict of interest particularly the interplay of the various Rules, the undersigned felt that the afore-stated literal interpretation of Sub-rule (4) of Rule 38 of the Rules had led to a situation where the other provisions contained in the Rules, in particular, Rule 1(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, had been rendered otiose. Thus, bearing in mind the doctrine that where literal meaning of the words used in the 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, the undersigned felt impelled to reconsider the entire afore-noted view. Having done so, *inter-alia*, observing that the effect and significance of the definition of conflict of interest in Rule 1 (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 and 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, on a harmonious and meaningful construction of all the provisions in the BCCI Rules, it was opined that the said Sub-

rule(4) cannot be divorced from sub-Rule (1) of Rule 38 of the Rules. It was thus, held that 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 as also the instances illustrated in *extenso* in Sub-rule (1) of the Rule 38 of the BCCI Rules and other possibilities of potential/actual conflicts as envisaged in Rule 1(A)(g) have to be kept in view.

24. Therefore, the undersigned is of the opinion that for examining whether facts of a given case give rise to a conflict of interest under the present Rules of the BCCI, 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 Rule 1(A)(g) of the Rules.
25. Tested on the touchstone of the afore-noted analysis of the BCCI Rules, the undersigned is of the view that a case of conflict of interest, as contemplated under the Rules is made out in the present case. Admittedly, the six Clubs, now certified by the MCA as ordinary "Maidan Clubs, stated to have been converted into Public Charitable Trusts, have mostly his family members as the Office Bearers/Trustees/Members, with 1.82% of the total voting rights in the MCA; all the six Clubs are affiliates of the MCA, with

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voting rights, *albeit* a small percentage and the MCA not only reimburses the expenses incurred by these Clubs for participating in club tournaments, the interest earned by the MCA on its corpus is also paid to each of such Clubs. It may not be wrong to assume that for its functioning the MCA has to largely depend on the BCCI. Under the circumstances, his capacity as the Manager of BCCI, involved in 'cricket operations', undoubtedly gives rise to a serious apprehension that Mr. Parikh, by virtue of the position he holds in the BCCI, namely a Manager, is in a position to use his influence in the MCA for monetary or other benefits/gains for the six Clubs, managed and controlled by his family members. Undoubtedly, Mr. Parikh continues to be the alter ego of the six Clubs, despite his alleged snapping of links with the six Clubs, on paper. Incidentally, the issuance of the, identically worded, six Certificates by the MCA all dated 2nd November 2019, during the pendency of these proceedings, now being pressed into service by Mr. Parikh to highlight that the six Clubs in question are ordinary members of the MCA and are ordinary "Maidan Clubs" and do not have their own ground or an Academy, reflects the clout he enjoys with the MCA. In my opinion, the percentage of the voting right of the six Clubs in the MCA is immaterial, as the fact remains that the six Clubs, through their functionaries, who mostly happen to be his family members (at least five out of seven) do have the right (in any case the potential) to influence the decision-making process of the MCA. For the view I have arrived at on the facts of the instant case, I deem it unnecessary to delve into the question of the distinction between a "Club" and an "Academy", raised by



Mr. Parikh in his defence.

26. For all the aforesaid reasons, I am convinced that on the facts at hand, a case of conflict of interest as enshrined in the Rules is made out. Accordingly, it will be open to the BCCI to grant an opportunity to Mr. Mayank Parikh to either himself resign from the post of the Manager, BCCI or to wind up all the Clubs in question forthwith or by taking any other steps, which shall ensure that the situation of conflict of interest is resolved to the satisfaction of the BCCI. On the failure of Mr. Mayank Parikh to take adequate steps in that regard, the BCCI may take appropriate action to ensure that this conflict of interest, ceases to exist at the earliest.
27. Both the complaints stand disposed of in the above terms.

21ST JULY 2020


JUSTICE D. K. JAIN
ETHICS OFFICER, BCCI