

BEFORE JUSTICE D.K. JAIN, FORMER JUDGE, SUPREME COURT OF INDIA
ETHICS OFFICER, THE BOARD OF CONTROL FOR CRICKET IN INDIA
COMPLAINT 1/2020

In re:

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



In the matter of:

Mr. Sanjay Naik, Secretary, Mumbai Cricket Association



ORDER
05.06.2021

1. A Complaint has been 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"), under Rule 39 of the Rules and Regulations of the BCCI (for short "the BCCI Rules") against Mr. Sanjay Naik (hereinafter referred to as "the Respondent"). The Complainant alleges that the Respondent 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. The two posts, which the Respondent is stated to be occupying at the same time are stated to be as follows:

- i. Being the Representative of the Mumbai Cricket Association (for short "the MCA") to the BCCI; and

A handwritten signature in blue ink, appearing to be 'bpm'.

- ii. Being the Secretary of the MCA.

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 as such, 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. On the directions issued by the Ethics Officer, the Respondent and the BCCI filed their respective Replies to the Complaint, refuting the allegations made by the Complainant, pursuant to which, the Complainant filed Rejoinder, reiterating his stand made in the Complaint.
3. The BCCI, in its Reply dated 27th February 2020, stated 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 Rule 38(1) of 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 the 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 MCA 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 14th January 2021, the Respondent has also denied the allegation of any kind of conflict of interest, as alleged by the Complainant. On a similar footing as that of the BCCI, the Respondent submitted that his posts as an Office Bearer of the MCA and as the MCA 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 granted personal hearing on 15th March 2021.



6. At the hearing held by virtual mode due to COVID-19 pandemic, Mr. Sanjeev Gupta – the Complainant, appeared in person, Mr. Vikas Warerkar, 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 Secretary of the MCA and (ii) the Representative of the MCA to the BCCI, 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. At this juncture, it will be pertinent to refer to Rule 1(A)(a) of the BCCI Rules, which defines “Administrator” 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.”



10. Likewise, the term "Conflict of Interest" is defined in Rule 1(A)(g) of the BCCI Rules, 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."

11. Further, Rule 38(1) of the BCCI Rules, specifies five situations, with illustrations, concerning an individual associated with the BCCI, which may take the form of conflict of interest.
12. Pertinently, Rule 38(4) of the BCCI Rules states that no individual "may" occupy more than one of the posts, as enumerated thereunder, at a single point of time, except where prescribed under the Rules. As noted above, the Complaint is based on the premise that mere occupation of more than one post, mentioned under Sub-rule (4) of Rule 38 of the BCCI Rules *per se* leads to a situation of conflict of interest.
13. 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 Rule 1(A)(g) of the Rules. "

14. In light of the above, a plain reading of the definition of the term "Administrator" in Rule 1(A)(a) of the BCCI Rules may be said to bring within its ambit "a representative of a Member of the BCCI", however, the Ethics Officer is of the view that the said definition has to be construed harmoniously and holistically with other provisions of the BCCI Rules and also 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 warrants such a situation by use of the expression "unless the context otherwise requires." Needless to add, that such leverage in the definition provision is with the sole intent and purpose that a literal interpretation of a particular definition may not lead to making any other provision in the BCCI Rules or the MCA Rules meaningless, ineffective or absurd. Reiterating the observation made 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.



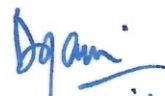
15. Having said that, the Ethics Officer opines that the effect and significance of the definition of "Conflict of Interest" in Rule 1(A)(g) of the BCCI Rules has to be established on the touchstone and the anvil of Sub-rule (1) of Rule 38 of the BCCI Rules and not solely on the literal meaning of the term "Administrator" given in Rule 1(A)(a) of the BCCI Rules, even in the context of Rule 38(4) of the BCCI Rules. The fact that a person merely holds two posts under Rule 38(4) of the BCCI Rules, will not ipso facto bring out a case of conflict of interest, 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.
16. Given the facts at hand and pursuant to the pleadings made by the Complainant, it cannot be denied 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 MCA 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, for the reason Rule 1(A)(a) says so. Nonetheless, 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 the Respondent's position as a Representative of the MCA 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 Secretary of the MCA or vice versa.



17. In view of the foregoing, upon consideration of the two posts held by the Respondent in the present case, viz. Office Bearer of the MCA and Representative of the MCA to the BCCI, the Ethics Officer is convinced 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 MCA and as a Representative of the MCA 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 MCA. Be that as it may, a person being a Representative of a Member State cannot be considered to be holding any post either under the BCCI or Member State. Furthermore, it is highly unlikely that with a vested right of one vote per Representative, 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.
18. Therefore, on a harmonious construction of all the relevant BCCI & MCA Rules, the Ethics Officer is of the opinion that, by virtue of the Respondent's nomination as the Representative of the MCA to the BCCI and by holding the post of Secretary of the MCA, a case of conflict of interest as enshrined in the BCCI Rules is not made out against him.



19. Resultantly, the complaint is dismissed being bereft of any merit.
20. 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