

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

COMPLAINT 5/2020

In re:

**Complaint dated 23rd November 2020 received from:
Mr. Sanjeev Gupta**

In the matter of:

**Ms. Rupa Gurunath
President, Tamil Nadu Cricket Association & BCCI Administrator**

APPEARANCES:

**For the Complainant:
Mr. Sanjeev Gupta- in person**

**For Ms. Rupa Gurunath:
Mr. P. R. Raman, Sr. Advocate with Mr. Rahul Mascarenhas, Advocate**

**ORDER
03.06.2021**

1. This order shall dispose of the Complaint dated 23rd November 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 Ms. Rupa Gurunath (hereinafter referred to as "the Respondent"). In the Complaint, it is alleged that the Respondent is occupying more than one post, as enumerated in Rule 38(4) read with Rule 38(1)(i) of the Rules and Regulations of the BCCI (for short "the Rules"), at a single point of time, in violation of the Rules and as such, she

Deam

must relinquish one of the posts. The two posts, which the Respondent is stated to be occupying at the same time, are as follows:

- a. Being the Office Bearer of a Member covered under Clause (m) of Rule 38(4) of the Rules
- b. Being the Contractual Entity covered under Clause (o) of Rule 38(4) of the Rules

2. Briefly stated, the facts as emerging from the Complaint, are as follows:

- i. The Respondent is the President of Tamil Nadu Cricket Association (for short "TNCA"), a member affiliate of the BCCI and hence, an Office Bearer of a Member. She also holds the post of a Whole-Time Director in India Cements Limited (for short "ICL") and the post of Director in seven other companies, which are the subsidiary companies of ICL.
- ii. The Chairman and certain Directors of Chennai Super Kings Cricket Limited (for short "CSKCL"), the corporate entity that owns Indian Premier League Franchise Chennai Super Kings (for short "CSK"), also hold the post of Director in various subsidiary companies of ICL.
- iii. It is alleged that Respondent has an indirect relationship with the Directors of CSKCL as she sits on the Board of subsidiary companies of ICL along with some of the Directors of CSKCL,



giving rise to a case of conflict of interest under Rule 38(1)(i) of the Rules. Moreover, ICL along with its subsidiary companies and CSKCL share the same official address.

3. Notices on the Complaint were issued to the Respondent and the BCCI, calling upon them to file their response.
4. Pursuant thereto, the Respondent filed her response to the Complaint on 23rd December 2020. However, no response was filed by the BCCI.
5. In her reply, filed on Affidavit, the Respondent has refuted the allegation of any kind of conflict of interest, as alleged in the Complaint. She has pleaded that her duty as the President of TNCA has never been compromised by being on the Board of either ICL or its subsidiary companies where Directors of CSKCL have also been present. Denying any close association with CSKCL or any of the Directors of CSKCL, it is urged that, she is not associated with CSKCL in any capacity whether by being on its Board or as a part of its management or shareholder; merely because she is a Director along with Directors of CSKCL on the Board of certain Companies, which are not connected with CSKCL, it cannot be said that she has an interest in CSKCL; there is no contractual arrangements, either present or past, involving her, the TNCA, the BCCI and CSKCL of any nature let alone the contractual arrangements as contemplated under Rule 38(1)(i) of the Rules - one of the core elements to establish a case of conflict of interest; and she, as the President of TNCA, or the TNCA itself, has no role in the organisation of the IPL,



which is organised by the BCCI at the central level and therefore, she is not in a position to cause any prejudice to the game of Cricket. It is asserted that, the alleged conflict of interest against her should be tested only in the context of relationship, if any, between TNCA as a member of the BCCI and CSKCL. It has nothing to do with the position held by her in ICL since ICL does not own any stake in CSKCL. It is further pleaded that the two directors of CSKCL, namely Mr. Rakesh Singh and Mr. R. Srinivasan, who are also the employees of ICL and report to her, are in no way in a position to influence her in discharge of her duties as the President of TNCA.

6. The Complainant filed Rejoinder to the Reply filed by the Respondent supplementing his submissions, to establish a case of 'Direct or Indirect Interest', as enumerated under Rule 38(1)(i) of the Rules. Some instances, pressed into service in this behalf are: the decision by the Board of ICL, intimating the National Stock Exchange (for short "the NSE") by a letter dated 6th February 2015, about the transfer of ownership of IPL Franchise CSK to CSKCL, the then wholly owned subsidiary of ICL was taken in the presence of the Respondent; TNCA being dependent on the BCCI for their functioning and finances as the BCCI distributes around 70% of yearly income earned by holding IPL matches to Full Members to perform roles and functions of governance & management of the BCCI Funds; and being the President of TNCA and an Administrator, as defined in Rule 1(A)(a) of the Rules, she is in governance and management of the BCCI, which includes the distribution of the funds received from CSKCL, owners of BCCI IPL Team CSK, thereby making the Respondent a part and parcel of the



agreement between CSKCL and the BCCI. It is alleged that her Reply regarding any kind of her influence on CSKCL in any form, be it as a shareholder or a Board Member, though evasive, has otherwise no bearing on the present Complaint in as much as the same has not been filed under Rule 38(1)(v) of the Rules, which refers to 'Position of Influence' but under Rule 38(1)(i) of the Rules, which contemplates 'Direct or Indirect Interest'.

7. Having regard to the afore-noted rival stands, it was considered proper and expedient to hear the Parties. Accordingly, the Parties and Representative(s) of the BCCI were called upon to appear before the Ethics Officer on 16th March 2021, by virtual mode, due to COVID-19 restrictions. However, on the request received on behalf of the Respondent, the hearing was deferred to 3rd April 2021.
8. At the commencement of the hearing, the Complainant appeared in person and filed his Written Submissions. Mr. P. R. Raman, Sr. Advocate represented the Respondent. The BCCI remained unrepresented. After making his opening submissions, Mr. Raman, Ld. Senior Counsel, submitted that since the Complainant has raised certain new points in his Written Submissions, an opportunity may be granted to the Respondent to respond to the same. The request was accepted and two weeks' time was granted to the Respondent to respond to the Written Submissions filed by the Complainant. The Complainant was also granted two weeks' time to file Rejoinder to the response to be filed by the Respondent. The next hearing was scheduled for 6th May 2021.

byan

9. In the Written Submissions dated 3rd April 2021 filed by the Complainant, while reiterating his earlier stand, reliance is also placed on the intimation letter dated 23rd September 2015 sent to the NSE, communicating the decision of the ICL Board regarding the constitution of India Cement Shareholders Trust (for short "ICL Shareholders Trust"), the Trustees of which are independent Directors of ICL. NSE was intimated that all shares of CSKCL were being transferred to ICL Shareholders Trust, which were to be distributed to Non Promoter Shareholders of ICL free of cost, in the ratio of 1:1, which exercise was ultimately completed and intimated to the NSE by letter dated 4th January 2019. Relying on the Annual Report of CSKCL for the Year 2019-20, it is pointed out that ICL Shareholders Trust holds the largest ownership stake of 30.08% in CSKCL. Likewise, Sri Saradha Logistics Pvt. Ltd. (for short "Saradha Logistics"), a subsidiary of ICL and allegedly a part of India Cements Capital Pvt. Ltd. (for short "IC Capital"), an associate company of ICL, holds second largest stake of 6.88% in CSKCL. It is alleged that it is a mere change in the nomenclature of ICL to CSKCL and subsequently to ICL Shareholders Trust and ICL continues to be the heart and soul of CSKCL – an IPL Franchisee in contract with the BCCI. Additionally, it is also contended that a Director of Saradha Logistics is a common director with the Respondent in one of the subsidiaries of ICL, Trinetra Cement Ltd. It is also pleaded that there exists a perpetual contract between CSKCL, TNCA and the BCCI whereby CSKCL pays TNCA for hosting matches and training camps of CSKCL in TNCA's stadiums (home grounds), which goes on to show that since the BCCI is in Franchise Agreement with CSKCL and the Respondent, being the



President of TNCA and the Whole Time Director of ICL, has a direct interest in CSKCL, and thus, a clear case of conflict of interest is made out. It is also alleged that the Respondent has also failed to make mandatory disclosure of potential conflict of interest as mandated under Rule 38(2) of the Rules and even the BCCI has also failed to obtain the same from her.

10. In her response dated 17th April 2021 to the Written Submissions filed by the Complainant, the Respondent has denied the averments made in regard to the stake held by ICL in its subsidiary company Saradha Logistics. It is submitted that ICL does not have any stake in Saradha Logistics, which makes the stake of 6.88% in CSKCL held by Saradha Logistics irrelevant in the present case. It is pleaded that as far as IC Capital is concerned, it is an associate company of ICL which neither owns any shares in CSKCL nor the Respondent has any stake in IC Capital. It is stressed that the alleged link sought to be drawn between Saradha Logistics and IC Capital, is wholly without any basis. As far as the perpetual contract between CSKCL, TNCA and the BCCI is concerned, the existence of any such contract is stoutly refuted. It is asserted that the Respondent has no role to play in the contract between CSKCL and the BCCI since, it is the BCCI which grants the IPL Franchisee the right to play in the stadium owned/operated by the State Associations upon entering into an annual contract with the Franchisee and Member State, on the uniform commercial terms/fees, which the Member States are to collect from home teams or any other team. Lastly, it is asserted that the Complainant has failed to show as to how the Respondent could benefit or compromise her duties as an elected representative of



TNCA to provide any extra benefit to CSKCL by virtue of having any alleged control over an IPL Franchisee, while being an Administrator of TNCA.

11. In the hearing held on 6th May 2021, it was pointed out by Mr. P. R. Raman, Ld. Senior Counsel appearing for the Respondent, that a large number of additional documents had been filed by the Complainant on 2nd, 4th and 5th May 2021, after the filing of the Rejoinder without seeking the permission of the Ethics Officer. It was also alleged that in the Rejoinder filed by the Complainant, a new point was raised which was neither raised in the Complaint nor in the Written Submissions. Therefore, in the light of the submissions made by the Ld. Senior Counsel, another opportunity was granted to the Respondent to file her Sur- Rejoinder limited to the alleged additional averment in the Rejoinder, as also to the additional documents filed by the Complainant.
12. By way of additional averment raised in the Rejoinder by the Complainant, while asserting that there exists a contractual arrangement between ICL and CSKCL, reliance is placed on certain documents, claimed to have been downloaded from the official website of CSKCL and the media reports.
13. In the Sur-Rejoinder, filed by the Respondent on 18th May 2021, the above-noted averments/allegations are sought to be rebutted as follows: CSK was transferred to CSKCL in the year 2015, in which neither ICL nor the Respondent owned any shares; the Sponsorship Agreement between ICL and CSK existed even before the



Respondent was elected as the President of TNCA and the said Agreement was renewed on 5th March 2021 for a further period of 1 year; the Respondent is neither a signatory to the Sponsor Agreement nor any decision pertaining to the Sponsor Agreement was taken by her; all decision making power lies in the hands of the BCCI even regarding the remuneration to be paid to each venue including TNCA; State Members have no role to play in the conduct of the IPL matches; an Administrator is permitted by the Rules to have a contract with an entity, which in turn, has a contract with the BCCI, as in the case of a broadcaster; only those contracts that result in or create a situation where an Administrator's role is compromised, should be considered as violative of Rule 38(1)(i) of the Rules and routine sponsorship or endorsement contracts should be excluded from the ambit of the said Rule; and if at all any actual or perceived conflict arises in the case, it is tractable and may be resolved by issuing appropriate directions.

14. In the final hearing held on 22nd May 2021, Mr. P. R. Raman and the Complainant reiterated their respective afore-noted stands. Emphasizing on the scope of applicability of Rule 38(4) and Rule 38(1) of the Rules, the Complainant submitted that the ambit of Rule 38(1) of the Rules is wider in nature and includes Rule 38(4) of the Rules, but the reverse is not true. Differentiating the said two provisions, it was stressed that if an individual occupies two posts at a time, Rule 38(4) of the Rules is squarely attracted but on the other hand, if a post does not find reference in Rule 38(4) of the Rules, a case of conflict of interest could still be established on the touchstone of Rule 38(1) of the Rules if it takes any of the five forms



enumerated thereunder. Evidently, the plea is raised to bring home the point that even if it is held that the Respondent does not hold two posts as enumerated under Rule 38(4) of the Rules, still a case of conflict of interest is made out when tested on the anvil of Rule 38(1)(i) of the Rules.

15. The concept of conflict of interest, is not necessarily a question about something one does or intends to do but a question of what can possibly or potentially be done. 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) 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 favouritism, 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 may have even 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.

16. As noted above, the Complainant has attempted to build a case of conflict of interest in the context of 'Direct or Indirect Interest', as contemplated under Rule 38(1)(i) of the Rules, by highlighting that the Respondent has a direct interest in CSKCL, which is in a



Franchise Agreement with the BCCI. As aforesaid, in order to establish the breach of Rule 38(1)(i) of the Rules, it would be necessary to read the said Rule conjointly with Rule 1(A)(g) of the Rules. Therefore, it is imperative that one has not only to show that there exists a contractual arrangement between the BCCI and CSKCL - an admitted fact, it is also to be proved that in CSKCL, the Respondent or her relative, partner or close associate has an interest, along with an apprehension of lack of objectivity or bias or benefits (monetary or otherwise) or linkages, as set out in Rule 38 of the Rules, on her part in discharging her duties as the President of TNCA - an Office Bearer of a Member of the BCCI, a post covered under Rule 38(4)(m) of the Rules.

17. In the present case, the following facts clearly emerge from the material placed on record by the Complainant: since the time the Board of ICL transferred the IPL Franchise CSK to CSKCL and subsequently, till the time of transfer of all shares of CSKCL to IC Shareholders Trust, which were then transferred to Non-Promoter Shareholders of ICL, the Respondent has throughout been the Whole-Time Director of ICL; evidently, she was also part of the meetings held concerning CSKCL and initial IPL Franchise CSK; the Annual Report of CSKCL for the Financial Year 2019-20 shows that IC Shareholders Trust, the Trustees of which are the Independent Directors of ICL, hold the largest ownership stake of 30.08% in CSKCL, followed by Saradha Logistics, a subsidiary company of ICL, holding 6.88%; admittedly, the Respondent, holds 0.01% stake in ICL, and also sits as a Director on the Boards of various subsidiary companies of ICL, where Directors of CSKCL are also

By


present; ICL, CSKCL, IC Shareholders Trust, subsidiary companies of ICL, IC Capital, all share the same official address; and ICL has been one of the sponsors of CSKCL Franchisee CSK.

18. All these facts go on to show that a circuitous web of entities, including CSKCL has been created under the umbrella of ICL. The management and governance of all of such entities directly or indirectly, lies in the hands of Board of ICL, notwithstanding the defence pleaded that ICL has no stake in CSKCL. In the given factual scenario, it can be safely inferred that the Respondent, in her capacity as the Whole Time Director and Promoter of ICL, has close association with the Trustees of IC Shareholders Trust and the Directors of CSKCL, both of which indirectly or directly have interest in CSKCL, which has a Franchise Agreement with the BCCI. This is one of the recognised forms of conflict of interest, as identified in Rule 38(1)(i) of the Rules. Thus, her interest in CSKCL tends to give rise to an apprehension that the Respondent, associated with the BCCI in her capacity as the President of TNCA, by virtue of her position and stake in ICL, has the potentiality of giving rise to the apprehensions envisioned in Rule 1(A)(g) of the Rules. Therefore, in view of the connections between ICL and CSKCL, undoubtedly, the Respondent has at least indirect (if not direct) interest in CSKCL which has entered into an agreement/contract with the BCCI, thus, attracting one of the forms of conflict of interest, enumerated in Rule 38(1)(i) of the Rules, irrespective of the fact that the Respondent has termed the said association/links that ICL has with CSKCL, to be too remote to establish that the Respondent's participation, performance and



discharge of administrative functions as the President of TNCA would be compromised.

19. For all the aforesaid reasons, the Ethics Officer is of the view that a case of conflict of interest is made out against the Respondent. It is held accordingly.
20. Having arrived at the aforesaid conclusion, the BCCI shall take requisite steps, in accordance with law, to ensure due compliance of Rule 38(2) of the Rules in the case of the Respondent.
21. The complaint stands disposed of in the above terms.


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