

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

**COMPLAINT 1/2019**

**In re:**

**Complaint dated 25<sup>th</sup> March 2019 received from:**

**Ms. Bhaswati Santua**

[REDACTED]

**In the matter of:**

**Mr. Sourav Ganguly**

[REDACTED]

**Along with  
COMPLAINT 2/2019**

**In re:**

**Complaint dated 4<sup>th</sup> April 2019 received from:**

**Dr. Debasish Mukherjee**

[REDACTED]

**In the matter of:**

**Mr. Sourav Ganguly**

[REDACTED]

**ORDER  
16.06.2019**

1. This common order shall dispose of two complaints received by the Ethics Officer of the Board of Control for Cricket in India (for short "the BCCI") from (i) Ms. Bhaswati Santua, the Complainant in Complaint 1/2019 (hereinafter referred to as "Complainant No. 1") and (ii) Dr. Debasish Mukherjee, the Complainant in Complaint 2/2019 (hereinafter referred to as "Complainant No. 2"), under Rule 39 of the Rules and Regulations of the BCCI (for short "the Rules") against Mr. Sourav Ganguly. It is alleged in the two Complaints that Mr. Sourav Ganguly is occupying more than one posts enumerated in Rule 38(4) of the Rules at 'a single point of time' and therefore, there is a "Conflict of Interest" as stipulated in the said Rule. The posts, which Mr. Ganguly is stated to be occupying at the same time are as under:



- a. A member of the Cricket Advisory Committee (for short “the CAC”) of the BCCI;
- b. An Advisor to an Indian Premiere League (for short “the IPL”) Franchisee- ‘Delhi Capitals’; and
- c. An office bearer of one of the members of the BCCI i.e. being the President of the Cricket Association of Bengal (for short “the CAB”), which, in turn is a Member of the BCCI.

Thus, according to the Complainants, since Mr. Sourav Ganguly is occupying the afore noted posts at a single point of time, all of which, squarely fall within the ambit of clauses (b), (j) and (m) of sub-Rule 4 of Rule 38 of the Rules, respectively, this gives rise to a “conflict of interest” on the part of Mr. Ganguly.

2. Notices were issued to Mr. Sourav Ganguly and the BCCI to file their written response to the said complaints on or before 13.04.2019.
3. Mr. Sourav Ganguly filed his written response on Affidavit, refuting the allegations of any “conflict of interest”. Reply to the said complaints was also filed on behalf of the BCCI.
4. Vide order dated 13.04.2019, it was directed that Mr. Sourav Ganguly and the Complainants may file their response to the reply received from and on behalf of the BCCI, on or before 19.04.2019. Similarly, the BCCI and the Complainants were permitted to respond to the reply received from Mr. Sourav Ganguly, on or before the said date. It was further directed that the Parties may appear before the Ethics Officer, BCCI for a personal hearing on 20.04.2019 at 11.00 A.M. at New Delhi.
5. Pursuant thereto, insofar as the Complainant No. 1 is concerned, on 18.04.2019, a mail was received from her expressing her inability to appear for personal hearing on account of financial constraints and paucity of

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time. She, however, stated that the Ethics Officer may go ahead and decide her complaint on merits, even in her absence.

6. On 20.04.2019, Mr. Sourav Ganguly, appeared in person. The Complainant No. 2 was represented by his Counsel-Mr. Biswanath Chatterjee. The BCCI was represented by its Chief Executive Officer Mr. Rahul Johri, along with Mr. Indranil Deshmukh, Advocate.
7. Mr. Sourav Ganguly and Ld. Counsel appearing for Complainant No.2, and the BCCI addressed their arguments before the Ethics Officer, at length. However, in the course of submissions on behalf of the BCCI, certain legal issues relating to the interpretation of certain Rules were raised. Faced with the situation, Mr. Sourav Ganguly sought some time to put forth his stand on these legal issues. In the interest of justice, the prayer made was acceded to. The BCCI was directed to file Synopsis of its submissions within 2 days from that date. Mr. Sourav Ganguly and Ld. Counsel for Complainant No. 2 were also permitted to file their response to the submissions made by the BCCI within 2 days of its receipt, which has been done.
8. Since the issues raised in both the complaints are identical, both the complaints were clubbed and as such, are now being disposed of by this common order.
9. In his defence, the stand of Mr. Sourav Ganguly is that:
  - i. Previously, he had been part of CAC, BCCI Technical Committee, the IPL Technical Committee and the IPL Governing Council but he had resigned and/or withdrawn himself from all the aforesaid committees and therefore, he is not part of any Committees referred to in clause (b) of Sub-Rule 4 of Rule 38 of the Rules.
  - ii. That w.e.f. 15.03.2019 he is informally involved with the franchisee team viz. 'Delhi Capitals', owned by JSW-GMR Cricket Pvt. Ltd., as its Advisor; his involvement with the team 'Delhi Capitals' is in the

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nature of an informal engagement, where he was only sharing his cricketing experience and expertise with the cricketers in the team; he is not in governance, management or employment of JSW-GMR Cricket Pvt. Ltd. or of 'Delhi Capitals'.

- iii. The Cricket Association of Bengal (CAB) is a Society registered under the West Bengal Societies Registration Act, 1961 and is run and managed in accordance with its own Constitution. The Eden Gardens, Kolkata, where Cricket matches are held by the CAB is on the land owned by the Union of India under the control of Ministry of Defence. In his capacity as president of the CAB, he is not in a position to exercise any influence over the IPL matches, which are held at the Eden Gardens or elsewhere. He is not connected with the administration, management or running of the IPL, whether by being a Member of any of the committees or other organizational units set up by the BCCI in connection with the IPL or otherwise. The IPL is run and organized by the BCCI and at present, he does not hold any post whatsoever in the BCCI. He is neither a Member of the Apex Council of the BCCI nor an office bearer thereof, nor a Member of any of the Cricket Committees constituted under the BCCI Constitution.

He has, thus asserted that under the given circumstances, there is no "conflict of interest" as envisaged under the Rules and hence, the question of his resigning either from the post of the President of CAB or as an Advisor to 'Delhi Capitals' does not arise.

10. In its response, the stand of the BCCI is that:

- i. Mr. Ganguly is the President of the CAB, which is a member of the BCCI and hence by virtue of being the President of CAB, Mr. Ganguly is an "office bearer" of a member of the BCCI, and therefore, by virtue of his involvement as Advisor of 'Delhi Capitals', an instance of "Conflict of Interest" has arisen;
- ii. Although Mr. Ganguly in his email dated 12.03.2019, addressed to the Committee of Administrators had resigned from Membership of





the BCCI Technical Committee and IPL Technical Committee, in the said mail, he had also stated that he is happy to continue as a Member of the CAC and therefore, in view of Mr. Ganguly's role as Member of the CAC, in addition to being an Advisor to 'Delhi Capitals' franchisee, it may have to be examined as to whether the "conflict of interest" is tractable or intractable;

- iii. That if it is found that the "conflict of interest" can be resolved by full disclosure of the "conflict of interest" and by direction to Mr. Ganguly to recuse himself from performing such functions vested in him, which are in any way connected with or associated with his other role/ post, Mr. Ganguly may be permitted to perform his current role, since his cricketing knowledge and experience is invaluable for the development of the talent and game of Cricket in India.
  - iv. The BCCI has also pleaded that the "conflict of interest" of the nature alleged, for being intractable under the two posts held simultaneously must be so opposed to each other or be such as to create a real apprehension that the concerned individual will not be able to perform majority of its functions in one role without being beholden to his other role and therefore, the answer to the question raised would involve examination of the role and responsibilities of Mr. Sourav Ganguly as President of the CAB in conjunction with his role as Advisor to the 'Delhi Capitals' franchisee.
11. In the written submissions filed on behalf of Complainant No. 2, it is asserted that as Mr. Ganguly is presently enjoying the privilege of three posts; viz (i) President of the CAB, (ii) Member of the CAC and (iii) Team Advisor of IPL Franchisee 'Delhi Capitals' and as such, a case of "conflict of interest" as contemplated under Rule 38(4) of the Rules is clearly made out. It is stressed that in his affidavit dated 12.04.2019, Mr. Ganguly has made untrue statements on oath, in as much as it was only in his capacity

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as a Team Advisor of 'Delhi Capitals' that he had been granted IPL Central Accreditation in respect of the IPL matches, he is wearing official jersey of 'Delhi Capitals' and is also sitting in the "dugout" during the IPL matches; his travel and stay expenses during the matches in IPL 2019 were being borne by the 'Delhi Capitals' – the Franchisee; during the IPL match held on 12.04.2019 at Eden Gardens, Kolkata he was seen inspecting the cricket pitch on 10.04.2019 with the Pitch Curator of the CAB in the capacity as Advisor of Delhi Capitals in spite of holding the post of President of CAB and thus, his appointment as a Team Advisor of 'Delhi Capitals' is, as a professional and hence squarely hit by Rule 38(1)(iii) and Rule 38(1)(v) of the Rules.

12. In his written submissions, while reiterating his stand in his earlier affidavit, Mr. Ganguly has asserted that he does not hold posts as enumerated in Clause 38(4)(b) and 38(4)(j) of the Rules. It is asserted that in the year 2015, he was appointed as a member of the CAC by the BCCI but was under the impression that unlike the Standing Committees and the other Cricketing Committees, as envisaged in the BCCI Constitution, the CAC is not an ongoing functional committee which meets regularly but is constituted from time to time only to meet specific objectives in special contingencies as mentioned in the BCCI Constitution. Referring to a communication received by him from the BCCI, it is stated that he was under the impression that, as and when, the CAC is tasked with the duty to perform any specific role, he would receive an appropriate letter of appointment and hence, it could not be said that he continues to be an active member of CAC. To buttress his point, Mr. Ganguly has referred to an instance when a Head Coach for the Indian Women's Cricket Team was picked up without consulting the CAC. He has, however, stated that in the event of his previous presence in the now defunct CAC is construed as his being its Member, his earlier communication to the Ethics Officer may be construed as his resignation from such CAC with immediate effect. It is asserted that he is neither involved in the governance nor management of the franchisee; there is no occasion during which, a 'Team Official' of 'Delhi





Capitals' and the President of CAB can be said to be beholden to one another or in opposition to one another under any circumstances and hence there is no "conflict of interest" whatsoever by his engagement as Advisor of 'Delhi Capitals' while being the President of CAB.

13. In so far as the question of whether Mr. Ganguly is a member of the CAC, as noted above, the stand of the BCCI is that he continues to be so. In this regard, the BCCI has referred to an email sent by Mr. Ganguly on 12<sup>th</sup> March 2019 wherein he has stated that he will be happy to continue as a member of the CAC. The CAC is a Cricketing Committee under Rule 25 and Rule 26 of the Rules and hence covered by Rule 38(4)(b) of the Rules and that there would be a "conflict of interest" with respect to his role as President of the CAB and with that of Advisor to the 'Delhi Capitals'. However, according to the BCCI both the conflicts of interest are tractable conflicts and the same could be resolved by full disclosure of the "Conflict of Interest" and by direction to Mr. Ganguly to recuse himself from performing such functions vested in him, which are in any way connected with or associated with his other role/ post. The BCCI has further pleaded that Mr. Ganguly may be permitted to perform his current role, since his cricketing knowledge and experience is invaluable for the development of the talent and game of Cricket in India.

14. I have bestowed my anxious consideration to the entire matter, bearing in mind the fact that under the Rules no unidimensional framework or guidelines are prescribed for dealing with the cases of "Conflict of Interest". Nevertheless, Rule 39(3) of the Rules vests the Ethics Officer with wide jurisdiction to issue appropriate directions in the Complaints received, including the power to impose fine and even bar the individual concerned for life from involvement with the game of Cricket, if the Ethics Officer comes to the conclusion that the case involves conflict of interest.

15. Generally speaking, the concept of "Conflict of Interest", is not necessarily a question about something one does or intends to do but a

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question of what one could do. It is also quite possible that the person concerned may be wholly unaware of the existence of such conflict till it is pointed out to him/her. However, in so far as the BCCI is concerned, the said principles have been codified in Rule 1(A)(g) read with Rule 38 of the Rules. Rule 1(A)(g) refers 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 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 have the potential, perception and reasonable apprehension that there is a "conflict of interest" on account of some action or inaction on the part of the person concerned who is associated with the BCCI in any capacity.

16. Bearing in mind the afore stated principles, clearly spelt out in the said Rules, I may advert to the facts at hand. In order to answer the question, namely, whether or not, on facts at hand, a case of "Conflict of Interest", as contemplated in Rule 38 of the Rules is made out, the first and the foremost question to be considered is whether Mr. Sourav Ganguly is associated with the BCCI and is holding three posts as alleged in the Complaints?

17. In so far as the post of the CAC is concerned, the submission of Mr. Ganguly is that unlike the Standing Committees and other Cricket Committees as envisaged under the BCCI Constitution, the CAC is not an ongoing functional Committee, which meets regularly, but is constituted from time to time, only to meet specific objectives in special contingencies as mentioned in the BCCI Constitution. To buttress his stand that he has never considered himself to be a regular member of the CAC, he has referred to his response to the communication received by him in March 2019 from Mr. Saba Karim (General Manager, Cricket operations, BCCI),

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requesting him to join the meeting of the CAC for the selection of Head Coach for the Women's team. While expressing his inability to attend the meeting because of short notice, he had asked for a formal appointment letter as a member of the CAC, which he never received. Finally, Mr. Ganguly has stated that if despite this, his presence in the CAC has resulted in a "Conflict of Interest", as envisaged under Rule 38 of the Rules, his reply, supported by his Affidavit dated 12.04.2019, may be considered as his resignation from the CAC with immediate effect.

18. The functions of the CAC are stated in Rules 24 (5) and 26 (2) A of the Rules. As per the said Rules the functions of the CAC are to select head coaches and the Committee to select Men's Team. Further, Rule 26 of the Rules expressly clarifies that the Cricket Committees are Committees comprised exclusively of former players, who are tasked with selection, coaching and evaluation of team performances. Additionally, the letter dated 12.03.2019 sent by Mr. Ganguly, in response to Mr. Saba Karim's communication leaves little scope for doubt that by his own understanding, Mr. Ganguly continues to be a member of the CAC, irrespective of the fact whether he has been informed about the terms of his engagement, as alleged by him. Having regard to the functions and responsibilities assigned to the CAC, I have no hesitation in coming to the conclusion that Mr. Sourav Ganguly continues to be a member of the CAC and thus, falls within the ambit of clause (b) of Sub-Rule (4) of Rule 38 of the Rules. I hold accordingly.

19. In so far as the prayer of Mr. Ganguly that if his continuing as a member of CAC gives rise to any "Conflict of Interest", his initial reply, supported by an Affidavit dated 12.04.2019 may be treated as his resignation from the CAC, it is for the BCCI to take a call on the offer of resignation made by Mr. Ganguly. Needless to add, that even otherwise, BCCI is obligated to ensure that the Rules are strictly adhered to by guiding/notifying the individual(s) concerned that their action or inaction, as the case may be, may give rise to a possible "Conflict of Interest".





20. The next issue is whether, being an Advisor to the IPL Franchisee 'Delhi Capitals', Mr. Ganguly occupies any post enumerated under Sub-Rule (4) of Rule 38 of the Rules?
21. As stated above, the stand of Mr. Ganguly, on the issue, is that since 15.03.2019, he has been informally involved with the Franchisee team 'Delhi Capitals', which is owned by JSW-GMR as its Advisor; at present he does not hold any post or stake in JSW-GMR; he is not in governance or management or employment of JSW-GMR or 'Delhi Capitals'; none of the parameters or attributes or characteristics of a person in governance or management or employment of an organization is applicable in his capacity as an "Informal Advisor" to the team with no strings attached. According to Mr. Ganguly, a person can be said to be in governance or management or employment of a franchisee only if such person has a responsibility or role or accountability in connection with the conduct and its affairs and its administration. Therefore, merely helping out in an informal manner by sharing inputs with regard to his cricketing experience and expertise with the Cricketers in the team, without any monetary consideration, cannot be said to be his being in "management" whether of cricketing matters of the franchisee or other matters as envisaged in clause 38(4) of the Rules. Lastly, it is also pointed out that his present engagement as Advisor to 'Delhi Capitals' is coming to an end in May 2019 and as such, on the conclusion of the IPL even a slightest chance of any "Conflict of Interest" will not remain.
22. In the definition of "Team Official" under the IPL Operational Rules, which mandate compliance with the BCCI "Conflict of Interest" Rules [see Rule 6 in Section 1 of the IPL Rules], "Team official" inter alia means any person who has been provided IPL Central Accreditation on behalf of a team or Franchisee or is a Consultant to the team or the franchisee. In its response, it is stated by the BCCI that the name of Mr. Ganguly figures in the list of persons submitted by the 'Delhi Capitals' for the purpose of being





provided accreditation to be part of the franchisee team. Complainant No. 2, in his reply to Mr. Ganguly's response has also asserted that Mr. Ganguly not only sits in the 'dugouts' of 'Delhi Capitals', on 12.04.2019, when 'Delhi Capitals' were to play its match at Eden Gardens, Kolkata, he was found to be inspecting the Cricket pitch on 10.04.2019. In support of his stand he has placed on record few photographs showing Mr. Ganguly in 'Delhi Capitals' attire, in conversation with the Head Coach of 'Delhi Capitals' and his inspecting the pitch.

23. Further, in his reply dated 05.04.2019, Mr. Ganguly has also averred that a Team includes a host of support personnel like Coaches, Mentors, Advisors to others, so as to ensure better performance by the players on the field. While defining the role of a Cricket Advisor he has himself admitted that an Advisor assesses and supervises the strength and weaknesses of the team based on an invaluable insight, experiences and skills and renders advice in the areas of winning or losing matches within the team.
24. In the light of the said explanation about the role of an Advisor by Mr. Ganguly himself and in the light of the definition of "Team Official" in the IPL Rules, the stated role and functions of an Advisor, in my view, Mr. Ganguly is in governance and management of 'Delhi Capitals', an IPL Franchisee and he occupies a post, which is covered by clauses (c) and (j) of Sub-Rule 4 of Rule 38 of the Rules. In my opinion for determining the question at hand, factors such as non-receipt of any monetary consideration by Mr. Ganguly from the IPL Franchisee or his not holding any post or stake in JSW-GMR is of no consequence. I hold accordingly.
25. The question whether Mr. Ganguly is an office bearer of a member, as envisaged in clause (m) of the Rule 38(4) of the Rules, there is little scope for doubt that being the President of the CAB, which is a member of the BCCI, the said clause is clearly attracted in this case. I hold accordingly.



26. Thus, the upshot of the entire discussion on the nature of the afore stated three posts is that being a member of the CAC, the President of the CAB and an Advisor to 'Delhi Capitals', Mr. Ganguly is occupying three posts as enumerated in Rule 38(4) of the Rules, at a single point of time.
27. Having come to the conclusion that presently Mr. Sourav Ganguly occupies three posts at a single point of time, a situation expressly sought to be avoided by sub-Rule 4 of Rule 38 of the Rules, the question which may require consideration is whether such situation leads to the conclusion that there is a "conflict of interest" as contemplated in sub-Rule (1) and (2) of Rule 38 of the Rules?
28. A conjoint reading of the provisions of the Constitution as also the Rules of the BCCI leads to an irresistible conclusion that one of the basic ideas behind the introduction of the Rules, especially the definition of "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 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 has to be 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. It is no longer *res Integra* that mere use of the words such as "may" or "shall" would not necessarily make a provision mandatory or directory. On the contrary, whether a provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which, the intent is clothed. Thus, the issue is to be examined keeping in focus the context, subject matter and object of the statutory provisions in question. The Court may find out what would be the consequence, which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow there from and



as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid. [See **May George Vs. Special Tehsildar (2010) 13 SCC 98**].

29. As such, to hold that the provisions contained in Rule 38 (4) of the Rules as merely directory, in my opinion, would be doing violence to the very spirit of the Constitution and the Rules of the BCCI.

30. In that background it would suffice to hold that having regard to the nature of the posts presently being occupied by Mr. Sourav Ganguly, apart from other things, Mr. Ganguly is definitely in a 'position to influence' as envisaged in sub- Rule 1 (v) of Rule 38 of the Rules. Having regard to the bar imposed in Rule 38 (4) of the Rules, in cases, such as the present one, wherein an individual is found to be holding multiple posts at the same time, it would be unnecessary to go into the actual or possible or potential consequences of Mr. Sourav Ganguly holding multiple post at the same time, all of which, I have already concluded, are the posts mentioned in Rule 38(4) of the Rules.

31. The question now surviving for consideration is whether the "Conflict of Interest" involved in the present case is "Tractable" or "Intractable" as contemplated in Rule 38(3) of the Rules. The said provision provides that "Conflict of Interest" may either be "Tractable" or "Intractable" under Rule 39(3)(a) of the Rules. It provides that, in case, the Ethics Officer comes to the conclusion that "Conflict of Interest" is tractable, then the Ethics Officer may declare it to be so and direct the Individual concerned to recuse from discharging the obligations and duties so vested in him or relinquish the interest that causes the conflict. However, if the "Conflict of Interest" is declared to be intractable, then the Ethics Officer may direct that the Individual concerned be suspended or removed from his post and impose suitable monetary or other penalty and bar that person from involvement with the game of Cricket for life or for a specified period.






32. In the instant case, having regard to the afore noted stand of Mr. Ganguly, viz. (i) that if it is found by the Ethics Officer that his presence in the CAC has resulted in a “conflict of Interest” situation, as envisaged in Rule 38 of the Rules, his Reply in these Complaints may be treated as his resignation there from with immediate effect and (ii) that his involvement with the IPL Franchisee has come to an end in May 2019, I declare that in the present case the “Conflict of Interest” is tractable. Although, it is trite law that the ignorance of law is no excuse and, Mr. Ganguly was obliged to disclose the requisite information as stipulated in Rule 38(2) of the Rules, but bearing in mind the fact that the Rules have come into existence only after August 2018, I am inclined to give benefit of doubt to Mr. Ganguly that perhaps he may not have realized that his occupying the said three posts did involve “Conflict of Interest”. Accordingly, I direct the BCCI to ensure that Mr. Sourav Ganguly relinquishes his interests, which give rise to “Conflict of Interest” and does not continue to occupy more than one post as enumerated in Rule 38(4) of the Rules at any given point of time.

33. Both the complaints are disposed of accordingly.

34. This order will be communicated to Mr. Sourav Ganguly, the BCCI and both the Complainants. The signed copies of this Order shall be kept in the folders of both the complaints.

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