R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE R. DEVDAS

WRIT PETITON NO.15525 OF 2023(GM-RES)

C/W

WRIT PETITON NO.19134 OF 2023(GM-RES)

IN WP NO.15525/2023:

BETWEEN

1 . BITSPORT PRIVATE LIMITED
PROMOTER OF THE GRAND PRIX
BADMINTON LEAGUE,
A COMPANY REGISTERED UNDER
THE COMPANIES ACT 1956,
HAVING ITS REGISTERED OFFICE
AT NO.316, IST J MAIN ROAD,
KASTURI NAGAR,
BENGALURU-560043
KARNATAKA, INDIA,
REPRESENTED BY ITS
DIRECTOR AND AUTHORISED REPRESENTATIVE
MR.PRASHANTH KUMAR PILLAREDDY.

2 . MR. PRASHANTH KUMAR PILLAREDDY
S/O LATE V PILLAREDDY,
AGED ABOUT 42 YEARS,
HAVING OFFICE AT NO.316,
IST J MAIN ROAD, KASTURI NAGAR,
BENGALURU-560043
KARNATAKA, INDIA,
ONE OF THE SHAREHOLDERS OF
BITSPORT PRIVATE LIMITED.

3 . MR. ARVIND BHAT
S/O LATE B. PRABHAKAR,
AGED ABOUT 44 YEARS,
CHIEF COACH,
LEVEL UP BADMINTON ACADEMY,
HAVING ADDRESS AT NO.25/1A,
HALANAYAKANAHALLI,
OFF SARJAPURA ROAD,
NEAR WIPRO OFFICE,
BENGALURU, KARNATAKA,
INDIA.

...PETITIONERS

(BY SRI. UDAYA HOLLA, SR. COUNSEL A/W
SRI. LOMESH KIRAN N, MS. TWINKLE J CHADWA, &
MS. RACHITA SHAH, ADVOCATES)

AND

1 . UNION OF INDIA
REPRESENTED THROUGH THE SECRETARY,
MINISTRY OF YOUTH AND SPORTS,
SHRI ASHOK KUMAR VIDYARTHI,
ROOM NO.15-C WING, SHASTRI BHAVAN,
NEW DELHI-110001, INDIA.

2 . BADMINTON ASSOCIATION OF INDIA
REPRESENTED BY ITS
HONBLE GENERAL SECRETARY,
MR. SANJAY MISHRA,
SECRETARY D-6/10,
GROUND FLOOR, VASANT VIHAR,
NEW DELHI-110057, INDIA.

…….RESPONDENTS

(BY SRI. UNNIKRISHNAN M, CGSC FOR R1
PROF. RAVIVARMA KUMAR, SR. COUNSEL FOR
SRI. K.N. SUBBA REDDY, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING / SETTING ASIDE THE IMPUGNED CIRCULARS, NAMELY, IMPUGNED CIRCULAR NO. 1 DATED APRIL 10, 2023 BEARING NO. BA/GEN/141/2023 ISSUED BY R2 (PRODUCED AS ANNEXURE-A HERETO) AND THE IMPUGNED CIRCULAR NO. 2 (BEARING NO. BAI/NOTICE/2023/2022 DATED JULY 5, 2023 ISSUED BY R2 (PRODUCED AS ANNEXURE-B HERETO) AS THEY ARE UNCONSTITUTIONAL, ILLEGAL AND WITHOUT THE AUTHORITY OF LAW AND ETC.

IN WP NO. 19134/2023:

BETWEEN

1. MR VINOD H V
   C/O VENKATARAVANAPPA H N
   AGED ABOUT 32 YEARS,
   CERTIFIED BADMINTON UMPIRE FROM
   THE KARNATAKA STATE,
   HAVING ADDRESS
   AT SAPTAGIRI NILAYA,
   BEHIND KALIDASA HIGH SCHOOL,
   KALIDASA BADAVANE, KORATAGERE,
   TUMKUR - 572 129
   KARNATAKA, INDIA.

2. MR. AKSHILESH MAHTO,
   S/O PUSUA MAHTO, AGED 29 YEARS,
   BADMINTON COACH AND PLAYER
   AT BADMINTON ASSOCIATION OF INDIA,
   HAVING ADDRESS AT BINKA,
   PS-SONUA, WEST SINGHBHUM,
   JHARKHAND – 833105, INDIA

...PETITIONERS

(BY SRI. SRINIVASAN RAGHAVAN. V, SR. COUNSEL FOR SRI. L. SRINIVAS, ADVOCATE)

AND

1 . UNION OF INDIA
REPRESENTED THROUGH THE SECRETARY,
MINISTRY OF YOUTH AND SPORTS,
SHRI ASHOK KUMAR VIDYRTHI,
ROOM NO.15 C-WING,
SHASTRI BHAVAN,
NEW DELHI - 110 001
INDIA

2 . BADMINTON ASSOCIATION OF INDIA
REPRESENTED BY ITS
HONBLE GENERAL SECRETARY,
MR. SANJAY MISHRA
SECRETARY, D-6/10, GROUND FLOOR,
VASANT VIHAR,
NEW DELHI - 110 057
INDIA.

…….RESPONDENTS

(BY SRI. M PRADEEP, CGC FOR R1
SRI. VIVEK SUBBA REDDY, SR. COUNSEL FOR
SRI. H.V. MANJUNATH, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO A. QUASHING / SETTING ASIDE CIRCULAR NO. 1 DATED APRIL 10, 2023 BEARING NO. BA / GEN/ 141/2023 ISSUED BY R2 (PRODUCED AS ANNEXURE-A HERETO) AS IT IS UNCONSTITUTIONAL, ILLEGAL AND WITHOUT THE AUTHORITY OF LAW AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 06.10.2023 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT MADE THE FOLLOWING:

COMMON ORDER

These writ petitions once again raise a long lingering contentious issue regarding the sports persons' right to participate in a tournament conducted by an entity not being the sole registered entity recognized by the apex body at the global level controlling the sports. For the present, we are concerned with the Badminton Association of India (hereinafter referred to as 'the BAI', for short), although similar issues have arisen with other sports such as Basket Ball, Hockey, Chess, Football, etc.

2. Initially, writ petition No.15525/2023 was filed by M/s.Bitsport Private Ltd., a company incorporated under the provisions of the Companies Act, 1956, being aggrieved of the BAI turning down its request to approve a tournament under its aegis, and thereafter, another writ petition was filed by a badminton player and a coach/umpire seeking a

declaration that the BAI is not entitled to take any coercive action against the badminton players/ coaches/technical staff, who are registered with the BAI, in pursuance of the impugned circulars dated 10.04.2023 and 05.07.2023. In both the writ petitions a challenge is raised to clause 21 of the Memorandum of the BAI, that it is unconstitutional, illegal and without authority of law. Consequently, both the writ petitions were clubbed, heard together and are being disposed of by this common order.

3. In essence, the grievance of the petitioner-company is that though the respondent-BAI had approved a tournament conducted by the petitioner – company in the year 2022, nevertheless, its request for approval of a tournament to be conducted between 27.08.2023 to 09.09.2023 was declined by the BAI and consequently, the mammoth preparation made by the petitioner-company to conduct the second edition

of GPBL (Grand Prix Badminton League) failed on account of the impugned circulars issued by the BAI, warning all the players/coaches/technical staff, etc., not to participate in the tournament.

4. It has been pointed out by the learned Senior Counsels Sri.Udaya Holla and Sri.Srinivas Raghavan, appearing for the writ petitioners that the BAI has a history of issuing circulars and directives to affiliate organizations and state badminton associations, including players/coaches/technical staff, directing them not to participate or be affiliated in any manner with "unrecognized" and/or "unauthorized" tournaments/ competitions. It is submitted that in the year 2017 the BAI issued such communication restraining the players from participating in "PNB MetLife Junior Badminton Championship". The organizers of the tournament approached the High Court of Delhi challenging such communication as

being unconstitutional and without authority of law. The Delhi High Court examined the validity of the circular and held it to be without authority of law. The circular dated 19.04.2017 was set aside. Having realized that the bye-laws of the BAI did not permit the BAI to issue such circulars restraining the players, Clause 21 was incorporated in the bye-laws of the BAI.

5. During the month of November 2022, the respondent-BAI issued a circular preventing its players/coaches/technical staff from participating in a Junior Badminton League proposed to be conducted by another entity, at Chennai. The organizers of the tournament approached the High Court of Madras and the High Court of Madras stayed the operation of the circular, having noticed that Clause 21 was inserted in the BAI constitution subsequent to the orders passed by the High Court of Delhi. It is submitted that having

taken note of the affidavit filed by the Assistant Secretary of BAI, which was held to be contemptuous, the matter was placed before the Hon'ble Chief Justice for initiation of criminal contempt proceedings. It is submitted that the SLP filed by the BAI was rejected by order dated 05.04.2023, reserving liberty to the BAI to take recourse/steps as advised before the Division Bench of the High Court of Madras.

6. During the course of these proceedings, initially, by order dated 21.07.2023, this Court had stayed the impugned circular while restraining the BAI from taking any coercive action against the players/ coaches/technical staff. The interim protection was granted keeping in view the orders passed by the Delhi High Court. The interim order dated 21.07.2023 was questioned before the Hon'ble Supreme Court in SLP No.17855/2023. The Hon'ble Supreme Court, by order dated 22.08.2023 held, "the impugned

judgment and order being an *exparte* order passed by the High Court, the learned Senior Counsel for the parties agree that the same be quashed and set aside, and the High Court be directed to decide the writ petition pending before it, afresh."

7. However, the Judge hearing the matter recused from hearing the matter and consequently, by special orders the matters were placed before this Court. Since interim orders were required to be passed by this Court having regard to the fact that the tournament was scheduled to commence from 27.08.2023, this Court passed another interim order dated 24.08.2023 directing that the petitioner-company shall not be prevented from conducting the tournament as scheduled. It was also directed that if the players have already given their consent and have participated in the auction which was conducted, then the players who were selected may proceed to

participate in the tournament. However, it was made clear that the permission granted by this Court shall not be treated as any decision given on the merits of the matter. The said order dated 24.08.2023 was questioned by the respondent-BAI before the Division Bench of this Court and the Division Bench refused to interfere. Nevertheless, it is submitted that the respondent-BAI issued one more communication styled as "General Information" dated 25.08.2023 stating that the interim orders passed by this Court would be subject to the final outcome of the writ petition and therefore, it is to be noted that this Court has not yet finally decided about the legality and validity of the tournament, and, in case, the writ petition fails, after final hearing, BAI will be at liberty to take appropriate action in terms of applicable rules and regulations. It is submitted that despite relief being given by this Court, the players, having been

threatened of dire consequences, pulled out of the tournament.

8. It is submitted that the petitioner-company incurred huge losses on account of the illegal, unauthorized circulars issued by the respondent-BAI. Consequently, I.A.No.5/2023 was filed by the petitioner-company seeking leave to amend the writ petition and to incorporate additional prayers, *inter alia* seeking damages amounting to INR 9,88,84,665.96/- from the respondent-BAI for the losses incurred by the petitioner-company. This Court had directed that the I.A. shall be heard along with the main matter. However, objections have been filed at the hands of the respondent-BAI to the I.A. as well as the main petition.

9. Preliminary objections were raised regarding the maintainability of the writ petition on the ground

that the respondent-BAI is a society registered under the Societies Registration Act and it is not a State for the purposes of Article 12 of the Constitution of India and therefore, the respondent-BAI was not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. It was also contended that the petitioner-company had no locus to file this writ petition, since the Memorandum of Association or its Articles of Association did not substantiate that the petitioner-company had anything to do with sports, let alone badminton and it did not consist of any objective of carrying on activities of conducting sports tournaments. Certain allegations were also sought to be made by Prof.Ravivarma Kumar, learned Senior Counsel appearing for the respondent-BAI, that the sponsorer of the tournament was involved in a betting racket and it would not be in the interest of the players participating in such tournaments.

10. As regards maintainability, Prof. Ravivarma Kumar, sought to place reliance on ***Zee Telefilms Ltd., And Another Vs. Union of India and Others (2005) 4 SCC 649*****.** It was submitted that the Apex Court has held in paragraph No.28 as follows:

> *"28. There is no doubt that Article 19(1)(g) guarantees to all citizens the fundamental right to practise any profession or to carry on any trade, occupation or business and that such a right can only be regulated by the State by virtue of Article 19(6). Hence, it follows as a logical corollary that any violation of this right will have to be claimed only against the State and unlike the rights under Articles 17 or 21, which can be claimed against non-State actors including individuals, the right under Article 19(1)(g) cannot be claimed against an individual or a non-State entity. Thus, to argue that every entity, which validly or invalidly arrogates to itself the right to regulate or for that matter even starts regulating the fundamental right of the citizen under Article*

19(1)(g), is a State within the meaning of Article 12 is to put the cart before the horse. If such logic were to be applied, every employer who regulates the manner in which his employee works would also have to be treated as State. The prerequisite for invoking the enforcement of a fundamental right under Article 32 is that the violator of that right should be a State first. Therefore, if the argument of the learned counsel for the petitioner is to be accepted then the petitioner will have to first establish that the Board is a State under Article 12 and it is violating the fundamental rights of the petitioner. Unless this is done the petitioner cannot allege that the Board violates fundamental rights and is therefore State within Article 12. In this petition under Article 32 we have already held that the petitioner has failed to establish that the Board is State within the meaning of Article 12. Therefore assuming there is violation of any fundamental right by the Board that will not make the Board a "State" for the purpose of Article 12."

11. It was further pointed out from paragraph No.264 of the said decision that it was clarified that the judgment is rendered on the facts of the case, pertaining to the Board of Control for Cricket in India (BCCI), and it does not lay down the law that all National Sports Federations would be 'State'. It was noticed that the game of cricket has a special place in India. No other game attracts so much attention or favour. Of course, each case may have to be considered on its own merits not only having regard to its public functions but also the memorandum of association and the rules and regulations framed by it. It was also held that only because a corporation or a society is a State, the same could not necessarily mean that all of its actions should be subject to judicial review. It was also pointed out that the Constitution Bench also took note of the observations made in ***Virendra Kumar Srivastava***. Paragraph

No.28 ***Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam*, (2005) 1 SCC 149** reads as follows:

> *"28. Before parting with the case, it is necessary for us to clarify that even though a body, entity or corporation is held to be a 'State' within the definition of Article 12 of the Constitution, what relief is to be granted to the aggrieved person or employee of such a body or entity is to be granted is a subject-matter in each case for the court to determine on the basis of the structure of that society and also its financial capability and viability. The subject of denial or grant of relief partially or fully has to be decided in each particular case by the court dealing with the grievances brought by an aggrieved person against the bodies covered by the definition of 'State' under Article 12 of the Constitution."*

12. On the other hand, learned Senior Counsel Sri.Vivek Subba Reddy, appearing for the BAI in the

connected matter, submitted that the learned Senior Counsels appearing for the writ petitioners have placed reliance on many decisions of the Competition Commission of India and therefore, it was clear that there is an alternative efficacious remedy available to the petitioners to go before the Commission. The writ petitions may be dismissed only on that ground. It was submitted that the Competition Commission is enabled to collect material facts and place it before the Commission through the Director General of Investigation. In that view of the matter, it is submitted that the Competition Commission being a fact finding authority, would be in a better position to collect, collate necessary information to decide the issue and therefore, the petitioners may be relegated to the Competition Commission of India.

13. *Per contra*, learned Senior Counsels Sri.Udaya Holla and Sri.Srinivas Raghavan, appearing

for the petitioners have pointed out from the judgment of the Constitutional Bench in ***Zee Telefilms*** (supra), also noticed subsequently in ***Board of Control for Cricket in India Vs. Cricket Association of Bihar And Others (2015) 3 SCC 251***, that although such National Sports Federations may not answer to the definition of 'State' under Article 12 of the Constitution of India, nevertheless, they will be amenable to the writ jurisdiction under Article 226 of the Constitution of India, having regard to the fact that when a private body exercises public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution by way of writ petition under Article 226. It was held that under Article 226, a writ issues against a State, a body exercising monopoly, a statutory body, a legal authority, a body discharging public utility services or discharging some

public function. A writ would also issue against a private person for the enforcement of the public duty or obligation, which ordinarily will have a statutory flavor.

14. Moreover, it was submitted that the Government of India has brought in the National Sports Development Code of India, 2011 and badminton is one of the sports brought within the purview of the Code. It is submitted that in the Statement of Purpose of the Code, it is clearly mentioned that sports at the national and international level falls within the realm and remit of the Union Government under its residuary powers and within the ambit of Entries 10 and 13 of Union List in the Seventh Schedule of the Constitution of India. It was also noticed that as a national policy, sport is at par with public education and public health, and like them sport is a public good and sport development is

a public function. It is for this reason, that even though national sports bodies are autonomous in nature both, the Supreme Court of India and several High Courts have, in various judgments, maintained that although national sports bodies are not 'State' within the meaning of Article 12 of the Constitution of India, they come within the writ jurisdiction of the High Courts under Article 226 of the Constitution of India because they perform state-like functions such as the selection of national teams to represent the country in international sports events and forums. The Code mandates recognition of National Sports Federations in order to maintain certain basic standards, norms and procedures with regard to their internal functioning, which conform to the high principles and objections laid down by the concerned International Federation. It is submitted that in terms of the Code, provision is made for grants to National

Sports Federations and the respondent-BAI has received grants to the tune of INR 9.2 Crores as on 31.03.2020. The Code makes provisions for long term development plans, including development of clubs and it aspires the sporting authorities to take measures to broad base and popularize sports, especially for establishment of clubs, the organization of local tournaments and the creation of infrastructure. The Code recognizes the need for marketing and business promotion of sports. Therefore, the Ministry is given the responsibility to recognize the significant commercial potential in organized sports, particularly at the senior level and aspires the Federations to develop making full use of the potential. The Ministry would therefore consider endorsing projects, which are basically commercial and self-financing, which are implanted through reputed sports promoters or other commercial

agencies. Having recognized a need for introducing more transparency in the functions of national sport federation, all such Federations receiving funds of INR 10 Lakhs or more in a financial year have been declared as Public Authority under RTI Act 2005. It was pointed out that the Code stipulates the role of the Ministry of Youth Affairs and Sports in the functioning of the sporting federations.

15. It was also pointed out that in terms of communication dated 26.10.2020 made by the Deputy Secretary to the Government of India, Ministry of Youth Affairs and Sports, respondent-BAI was directed to make categorical affirmation of the provisions of Sports Code in its constitution within six months, so as to bring the same fully in line with the provisions of the Sports Code.

16. Insofar as the alternative efficacious remedy is concerned, it was submitted that the scope of the Competition Commission Act, is restricted to promoting competition in markets, to protect the interest of consumers and ensure freedom of trade carried on by other participants in the markets in India and for matters connected therewith or incidental thereto. Moreover, Section 62 of the Act provides that the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. It is therefore submitted that Competition Commission of India is not an alternative forum available to the petitioners. Moreover, it is submitted that the constitutionality of a provision of law such as clause 21 of the constitution of the respondent-BAI cannot be called in question before the Competition Commission.

CONCLUSION REGARDING MAINTAINABILITY

17. In paragraph No.33 of ***Board of Control for Cricket in India*** (supra), it was held that majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not "State" within the meaning of Article 12. It was held that the rationale underlying that view is in the nature of duties and functions which BCCI performs. It was noticed that the Board has a complete sway over the game of cricket in India. The Board regulates and controls the game to the exclusion of all others. It formulates rules, regulations, norms and standards covering all aspects of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. The issue was therefore answered that

although BCCI may not be State under Article 12 of the Constitution of India but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India. There cannot be any doubt that all the observations in respect of the BCCI will hold good in respect of the respondent-BAI also.

18. Moreover, the respondent-BAI is brought within the purview of the National Sports Development Code of India, 2011 and Government of India, through the Ministry of Youth Affairs and Sports is exercising various control over the respondent-BAI. The respondent-BAI has been receiving grants from the Government of India. Cricket, on the other hand, is not brought within the purview of the National Sports Code. Even then, it has been held that BCCI is amenable to the writ jurisdiction of this Court. That being the position, there can be no manner of doubt

that the respondent-BAI is amenable to the writ jurisdiction of this Court.

19. Insofar as the argument regarding alternative efficacious remedy is concerned, it can hardly be accepted that Competition Act is meant to consider such grievance regarding sports persons and their right to participate in tournaments. Merely because the Competition Commission has considered some cases, albeit in a different context, it cannot be contended that the Commission is the competent authority to deal with the issues brought before this Court. As rightly pointed out by learned Senior Counsel Sri.Udaya Holla, Section 62 of the Act makes it clear that the Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force. Therefore, the issue regarding the maintainability of the writ petition is answered

accordingly and held that the writ petitions are maintainable.

ON THE MERITS OF THE MATTER:

20. It should be mentioned here that till the second interim order was passed by this Court, the respondent-BAI had not filed statement of objections. Statement of objections were filed in the connected matter W.P.No.19134/2023 on 21.09.2023. In the statement of objections it was contended that the respondent-BAI, being affiliated to the Badminton World Federation (for short 'BWF'), was bound to follow the rules and regulations of BWF. A copy of the regulations of the BWF, known as 'General Competition Regulations, version 3.0' in force from 13.11.2022 is produced as Annexure 'R1'. Since it was pointed out from the regulations of the BWF that it was mandatory for all the members of BWF to follow the regulations and to ensure that the members shall

not participate in unsanctioned tournaments and that the members shall ensure that the players do not participate in unsanctioned tournaments, failing which, disciplinary action would be initiated against the members for breach, the arguments revolved around the regulations of the BWF.

21. Learned Senior Counsel Prof.Ravivarma Kumar, appearing on behalf of the BAI took this Court through the regulations of the BWF, and more particularly, to the following provisions of the regulations:

> *"3. SANCTION*
>
> *3.1.1 The governance of the sport of Badminton is organized in a pyramid structure, with BWF as the sole and exclusive international governing body, one Continental Confederation recognised as the sole and exclusive governing body for each continent and one Member recognised and admitted into membership of BWF as*

the sole and exclusive national governing body for each country where the sport is played.

3.1.2.2 The pyramid governance structure is also vital to the proper organisation and conduct of the sporting calendar. BWF, the Continental Confederations and the Members have the right and the responsibility to maintain and control the sporting calendar so as to ensure that Tournaments are organised and staged in a coordinated fashion that does not undermine but rather promotes and furthers the development of the sport as a whole.

3.1.2.3 BWF seeks insofar as practicable to avoid fixture clashes so as to ensure that its Members have Players fully available for the preparatory periods spent in the lead-up to BWF Sanctioned Tournaments, and throughout the BWF Sanctioned Tournaments themselves.

3.1.3 Unsanctioned Tournaments threaten to undermine these fundamental sporting imperatives.

3.1.4 This Regulation 3 therefore:

3.1.4.1 confirms the right and responsibility of BWF, the Continental Confederations and the Members to maintain and control the official sporting calendar of Tournaments; and

3.1.4.2 penalise any Player or other individual who participates in any capacity in an unsanctioned Tournament as per regulation 3.5.

3.1.4.3 require a Member:

3.1.4.3.1 not to participate in unsanctioned Tournaments; and

3.1.4.3.2 to prohibit participation by Players and other organisations and individuals under its jurisdiction in unsanctioned Tournaments, and to take

disciplinary action against anyone that breaches that prohibition."

22. It was therefore contended that clause-21 of the bye-laws of BAI was accordingly inserted into the constitution in compliance of the mandatory provisions contained in the regulations of the BWF.

23. Prof.Ravivarma Kumar, learned Senior Counsel, contended that the bye-laws of the BAI or any of the provisions contained therein cannot be challenged by a third party, since the bye-laws are the constitution governing the Association with its members. The petitioner-Company will have no *locus* to challenge the provisions of the bye-law of the BAI.

24. Insofar as the challenge being raised at the hands of the petitioners in W.P.No.19134/2023 and petitioner No.2 in W.P.No.15525/2023, who are the registered players/coaches of BAI, it was contended

that they too are prohibited from raising a challenge to clause-21 of the bye-laws, since clause-21 has been inserted to ensure compliance of the mandatory provisions contained in the regulations of the BWF. It was contended that elaborate reasons are furnished in the regulations of the BWF for putting in place such restrictions. The reasons are forthcoming in clauses 3.1.3.1 and 3.1.3.2 which read as follows:

> *"3.1.3.1. They are not developed as an integrated and coordinated part of the official sporting calendar in furtherance of the best interests of the sport as a whole. Instead they cut across that calendar and the imperatives it is designed to protect, including potentially clashing with BWF Sanctioned Tournaments and thereby creating potential conflicts between different stakeholders that could be very damaging to the sport.*

3.1.3.2 They fall outside the jurisdiction of BWF, the Continental Confederations and Members, and so the organisers of and participants in unsanctioned Tournaments are not properly accountable for compliance with the rules and regulations of the sport. This poses a significant risk to the sport, because the public is unlikely to appreciate fully the distinction between unsanctioned Tournaments and BWF Sanctioned Tournaments and so if problems occur in unsanctioned Tournaments the reputation and the entire sport will suffer and public confidence in the ability of BWF, the Continental Confederations and Members to maintain the integrity of the sport will be undermined."

25. It was therefore contended that the players/coaches/technical staff are bound to follow the bye-laws of the BAI, moreso because such persons

enroll with the BAI, voluntarily. The learned Senior Counsel would therefore submit that the impugned Circulars were issued by the BAI only to apprise the member players/coaches of the consequences of participating in an unsanctioned tournament. It was submitted that the regulations of the BWF also provide that action can be taken against the member Association for violation of the provisions of the regulations at the hands of individual registered players/coaches. There is a possibility of a member Association from being expelled or losing accreditation for not ensuring that the member players/coaches do not participate in unsanctioned tournaments. It was therefore contended that the impugned Circulars cannot be faulted and there is no merit in the writ petitions.

26. Having regard to the fact that the learned Senior Counsels for the BAI centering their arguments

around the regulations of the BWF, learned Senior Counsels Sri Udaya Holla and Sri Srinivas Raghavan, appearing for the petitioners would draw the attention of this Court to the regulations of the BWF. It was submitted that no doubt, the regulations of the BWF do stipulate that the registered players/coaches/technical staff of the affiliated Association shall be prevented from participating in unsanctioned tournaments, however, the restrictions are not omnibus. It was pointed out from the regulations that provision was made for sanctioning of tournaments in clause 3.2 of the regulations of the BWF. Provision is made in clause 3.2.5 for applying for sanction. Clause 3.2.6 provides for guidelines while considering such applications seeking sanction. Having regard to such provisions contained in the regulations of the BWF, it was submitted that clause-21 of the bye-laws of the BAI cannot provide

for a blanket restriction to enable the BAI to reject any application seeking sanction of tournaments.

27. Moreover, it was pointed out from the regulations of the BWF that in clause 2.2, all the BWF Tournaments (Grade 1 - Major Events) are enumerated. Similarly, at clause 2.3, BWF World Tour (Grade 2) are enumerated and further at clause 2.4 and 2.5, the Continental Circuit (Grade 3) and Continental Championships have been enumerated. Most importantly, it was pointed out that insofar as the International Invitation Tournaments, International Team Ties and Exhibition Matches are concerned, at clause 2.8, provision is made for the member Association to accept entries by invitation from top-ranked players from other members. Similarly, at clause 2.9, provision is made for International Team Leagues and at clause 2.9.2, provision is made for National Team Leagues with

International Participation of more than three Top-Ranked Players from other members. Attention of this Court was drawn to the definition provided in clause 2.8.1 and 2.9.3 to the word 'Top-Ranked', which means players in the first 50 places in any of the five World Ranking lists valid three months before the Tournament. Insofar as National Team Leagues or Regional Team Leagues are concerned, the regulations do not seem to place any restriction, except that such tournaments should be conducted in accordance with the standards of the BWF, they should be compliant of BWF codes of conduct, anti-corruption rules, anti-doping rules and/or other rules or regulations.

28. The learned Senior Counsels appearing for the petitioners would therefore submit that the rejection of the application filed by petitioner No.1-Company at the hands of the respondent-BAI is arbitrary, illegal, capricious and therefore, this Court

should declare that the action of BAI in issuing the impugned Circulars and rejecting the application of petitioner No.1 is without authority of law and illegal. It was also submitted that for the first time, the respondent-BAI has taken shelter under the regulations of the BWF to justify the impugned action. It was not stated in the communication made by the BAI to petitioner No.1 that the regulations of BWF do not permit the BAI to sanction the tournament proposed by the petitioner-Company. It was only stated that the BAI has already entered into a contract with another Company regarding the telecast rights of the tournaments where its players would participate and therefore, the BAI does not wish to get entangled in litigation by granting permission to the petitioner-Company. On the contrary, the respondent-BAI is now trying to justify its illegal action by taking shelter under the provisions of the regulations of the BWF.

29. The learned Senior Counsels would submit that the respondent-BAI is estopped from contending that it has no power to sanction the tournament, since the BAI had indeed sanctioned such tournaments earlier. It is clear from the conduct of the officials of the BAI that they have acted vindictively towards the petitioner-Company and in the process, the BAI has not only caused financial loss to the petitioner-Company but also to the players/coaches who would have been benefited, had they participated in the tournament conducted by the petitioner-Company.

30. Heard learned Senior Counsels Sri Udaya Holla and Sri Srinivasan Raghavan V. appearing for the petitioners, Prof. Ravivarma Kumar, learned Senior Counsel and Sri Vivek Subba Reddy, learned Senior Counsel appearing for the respondent-BAI and perused the petition papers.

31. It would be relevant to notice the impugned clause (21) of the bye-laws of the respondent-BAI which reads as follows:

> *"**21. Registration of Players**:*
>
> *Registered Players/Coaches/Technical Staff xxxxx.*
>
> *A registered Player/Coach/Technical Staff/Support staff shall not participate in any Tournament which is not approved by BAI or its Affiliated Units. Approved Tournaments will mean Tournaments approved by BAI routed through Affiliated Units and Tournaments approved by Affiliated Units routed through its Districts."*

32. Clause 3.2 of the regulations of the BWF makes provision for sanction of tournaments. Insofar as the tournaments owned by the BWF as defined in Regulation 2.2, the BWF will grant sanction and decide

the time and location of the tournament. Clause 3.2 reads as follows:

> *"3.2 Sanction of Tournaments.*
>
> *3.2.1. For Tournaments owned by the BWF as defined in Regulation 2.2 the BWF will grant sanction and decide the time and location of the Tournament.*
>
> *3.2.2. For all Tournaments and competitive matches defined in Regulations 2.3 to 2.9, the Member or Continental Confederation must apply for and receive the sanction of the BWF. The BWF shall grant sanction to the Tournament in line with the Tournament Sanction Policy (BWF Statutes Section 5.3.1).*
>
> *3.2.3. Tournaments defined in Regulations 2.2 to 2.9 shall collectively be called BWF Sanctioned Tournaments.*
>
> *3.2.4. For International Multi-Sports Games and Tournaments as defined under Regulation 2.6, BWF may accept sanction*

applications directly from the Multi-Sports Games owner or the NOC of the country where the international Multi-Sports Games and Tournaments are hosted."

33. The process for filing applications is provided in clause 3.2.5 which reads as follows:

3.2.5. Applying for sanction

3.2.5.1. Applications may be granted on a conditional basis. In particular (but without limitation), BWF may specify that particular Tournaments must be played in accordance with and subject to BWF complaint codes of conduct, anti-corruption rules, ant-doping rules and/or other rules or regulations. It shall be the responsibility of the Continental Confederation and/or Member organising the Tournament to ensure compliance with that requirement.

3.2.5.2. Any sanction granted under this Regulation 3 shall amount solely to recognition of the Tournament as a BWF Sanctioned Tournament and shall not

amount to or be construed as approval by BWF of any of the safety or security or other arrangements for the BWF Sanctioned Tournament. Instead, those arrangements shall remain the sole responsibility of the BWF Sanctioned Tournament organiser.

3.2.5.3. Members and/or Continental Confederations should not issue any formal invitations to participate in the Tournament unless and until all necessary sanctions have been granted and any relevant conditions have been satisfied."

34. The regulations of the BWF have also provided guidelines for consideration of such applications seeking sanction for conducting tournaments. On going through these regulations, this Court finds that the regulations of the BWF, though mandatory, they do not cast a blanket restriction. The very fact that provision is made for receiving applications, *albeit* through the member

Association, it would very clearly show that a window is kept open for interested members/other entities to seek permission/sanction to conduct tournaments enlisting participation of the registered Players/Coaches/Technical Staff.

35. As rightly contended by the learned Senior Counsels appearing for the petitioners, this Court can take judicial notice of the fact that there may be thousands of young children/players who aspire to learn, practice and play for the country, registered with the BAI, since that is the only way to play for the Nation. The BWF, the apex body is also sensitive to the fact that only Top-Ranked players may get an opportunity to play at the international level. That is the reason why the word 'Top-Ranked' has been defined in the regulations of the BWF, which would mean players ranked from 1 to 50, for three months prior to the tournament. The regulations of the BWF

are carefully worded to ensure participation of the Top-Ranked players in the tournaments conducted by BWF and sanctioned by BWF. For that purpose, calendar of events are announced well in advance so that the member Associations, the players, coaches and technical staff are geared up for participation in such tournaments. However, when admittedly thousands of other such players who are not ranked or who are not ranked within the first 50 and are sure of not being selected to play for the Nation, at the international level, they cannot be prevented from participating in tournaments other than the ones recognised and organised by the BWF or the member Associations. That is the reason why provision is made in the regulations of the BWF for making applications and seeking sanction for tournaments.

36. This Court, is therefore, of the considered opinion that the contention of the respondent-BAI that

there is no provision to receive applications from other entities and to sanction such tournaments, cannot be countenanced.

37. Clause 3.2.6 of the regulations of the BWF provide guidelines for consideration of such applications. No doubt, it is clear from clause 3.2.6 that the organisers of the proposed tournaments are mandated to give unconditional commitment to stage the tournament in accordance with and subject to all applicable BWF regulations. The organisers are required to be transparent and accountable to the BWF as regards its application and enforcement of those regulations in relation to all organisations and individuals participating in the tournaments. It would be the responsibility of the organisers to maintain and promote the health, safety and welfare of the players and by ensuring the safety and suitability of the venue(s) intended to be used for the proposed

tournament. The organisers are required to give an undertaking regarding maintenance of the international standards of the badminton courts, venue, equipments and most importantly, anti-doping rules and other rules and regulations designed to protect participation and/or to preserve the integrity of the sport in a fair and transparent fashion. These are *sine qua non* for every applicant seeking sanction of the tournament. Obviously, if Top-Ranked players are to be invited, the calendar of events already scheduled by the BWF should also be borne in mind, to avoid clash. Again, if the proposed organisers are clear in the mind that they do not wish to involve any of the Top-Ranked players, then there is scope for the BAI and the BWF in granting sanction for such tournaments to enable the lesser ranked players or unseeded players from participating in such

tournaments which will not disrupt the BWF scheduled tournaments.

38. Having arrived at such conclusion, this Court is also of the considered opinion that the respondent-BAI is required to formulate guidelines for acceptance of application and sanctioning of tournaments, in consultation with the apex governing body viz., Badminton World Federation.

39. However, the claim of the petitioner-Company for grant of compensation, in its interlocutory application I.A.No.5/2023 cannot be allowed for the reason that the petitioner-Company took the risk of scheduling the tournament without obtaining sanction at the hands of the respondent-BAI. There is no privity of contract between the petitioner-Company and the respondent-BAI, nor is there any statutory provision casting any duty on the

respondent-BAI to consider the application filed by the petitioner-Company. The petitioner-Company has not been able to point out to any provision which confers any right on the petitioner-Company and a corollary duty cast on the respondent-BAI to sanction the tournament proposed by the petitioner-Company.

40. Consequently, these writ petitions are disposed of with a direction to the respondent-Badminton Association of India to formulate guidelines for consideration of applications seeking sanction of tournaments, in terms of clause-21 of the bye-laws of the BAI, in consultation with the Badminton World Federation. Care should be taken to make provision in the guidelines to allow unseeded players and/or players ranked below 50 in the International Circuit, in such tournaments which would be in the interest of the sport and many such players who aspire to compete in the international level. The guidelines shall

be formulated and published as expeditiously as possible and at any rate, within a period of six months from the date of receipt of a copy of this order.

Ordered accordingly.

In view of disposal of main writ petitions, pending I.As., if any, stand disposed of accordingly.

Sd/-
JUDGE

DL/JT