

Right to Information and Good Governance

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Lecture 44


Public Authority - XII

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Sports bodies as PA?

- Whether IOA is a PA? Indian Olympic Association v Veeresh Malik Delhi High Court 2010. The IOA is a registered society.
- "the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is "public authority" under the meaning of that expression under the Act". The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports.



Interestingly however the matter when it came before the Delhi High Court and finally when the Delhi High Court decided the matter in 2010, they actually clubbed 3 writ petitions together in deciding whether all the 3 could be together decided under section 2(h) to be determined as public authorities or not.

And the institutions that were in question were the Sanskriti school, the Indian Olympic Association and the organizing committee of the Commonwealth Games. So, all these 3 were brought together in the writ petition to be decided whether they should comply within the requirements of the rule on the RTI Act, and whether they should appoint a public information officer and provide information or not.

Now, as for the Indian Olympic Association, the Delhi High Court clearly acknowledged the fact that it is a registered society and no doubt there is no state or public involvement in the establishment of the administration of IOA. That is completely fine. It is completely acceptable in that sense.

And, the Court also said that definitely it is acknowledged here that it does not receive grants as in the traditional sense or in the traditional way or manner in which grants are supposed to be given by the government. However, it should, must be noted that the Indian Olympic Association is the national face of the Olympic movement in India.

Interestingly, what the IOA says, its word determines the fate of sports and sportsmen who attend and participate in Olympic events. And it is not only confined to Olympics but also embracing specified international events, regional meets, etc and etc.

It affiliates or recognizes bodies which regulate sports that aspire to participate in the Olympics and at international events. Its approval is essential for any sport in India continuing to be part of Olympics and in the international movement.

Now, the factual position that emerges from the auditor's report, interestingly right from the year 1995, the auditor's report were perused by the Delhi High Court and the grant received or receivable from the central government were also taken duly note of.

Now, the Delhi High Court also looked into the 5-judge bench of the Supreme Court in Zee Telefilms versus Union of India where the issue of BCCI whether it is a state or not was also taken due note and consideration for.

Now, what the court said that, looking at the preeminent position enjoyed by Olympic Association as the sole representative of Olympics, International Olympics, as the regulator of affiliating national bodies armed with the power to impose sanctions against institutions even individual for that matter, if there is doping and so on and so forth.

The circumstance that it is funded for the limited purpose of airfare and such other activities of sportsmen who travel for events is not a material factor. Interesting. So, what is material is probably the kind of function role it actually plays. Funding comes later on. So, interestingly selection of coaches, selection of sportsmen to represent the country are more prominent in this case.

The court also said that the annual reports placed by it on record also repeats that IOA is autonomous from the central government in its affairs and management and is not

discharging any public function. However, on the contrary, the funding by the government consistently is a part of the balance sheet of IOA.

And IOA depends upon such amount to aid and assist travel transportation of sportsmen and sports managers alike. And it serves an underlying public function. Without such functioning, IOA perhaps will not work effectively. Taking into all this consideration, it was held that the Indian Olympic Association is definitely a public authority.

Now, secondly on the fact whether the organizing committee of the Commonwealth Games is the public authority or not? The material on record did disclose that the games committee is a society set up as a part of the commitment to the Commonwealth Games. This was before the 2010 games.

It though had an autonomous management character, and it was not dependent on the center for its decision making, that is definitely that. But however, the committee did received 767 crores as advance by the central government.

This was to organize a Commonwealth Games exclusive. And the central government had clearly released this money and the total allocation for the games committee to organize the Commonwealth Games was nearly 1780 crores.

So, this could not be denied by the games committee that it had received this funding to organize the Commonwealth Games. And equally, the position regarding repayment of interest is that the central government had agreed that such repayment can be from the surplus generated due to the receipt of the games. In other words, it said that the repayment was not a precondition. That was what was put across in this case.

The Court also, interestingly, was looking at the fact of the working: how are these agencies working and whom are they accountable for? Now, the organizing committee of the Commonwealth Games was in-charge of housing, posting all events.

And this would mean that they were completely representing the government in terms of the games being organized and the games being conducted in that sense. So, it means that generally such a funding that was supposed to be given for the committee could be written off

as well.

So, that is something that they could have done. So, I think both the Indian Olympic Association and the Commonwealth Games committee were undoubtedly to be held as public authority is what the Delhi High Court finally came into the conclusion.

And hence, what the Delhi High Court did was they did not interfere with the order of the Central Information Commission. And they were happy with the fact that the CIC had applied its mind adequately enough in bringing about or holding the IOA to be a public authority as the case may be.

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Whether BCCI is a PA?

- CIC in its order in 2018 brought back BCCI as PA under RTI Act.
- The CIC held that the SC has also reaffirmed that the BCCI is the 'approved' national-level body holding virtually monopoly rights to organize cricketing events in the country," Citing the Law Commission report, he said it not only affirmatively recognized the economic (monopoly) nature of the BCCI acting as a sports federation for cricket but also outlined the power and ability of such a body to impact the human rights of athletes and potential athletes.
- Hence despite no substantial funding, it was held to be a PA.



Now, when it comes to sporting federations and bodies, obviously, the next big question that is in the minds of everybody is about the Board of Control for Cricket in India. In short, we generally call or referred to it as BCCI. Now, for a long period of time, the BCCI has not been held to be a public authority.

And the struggle to hold whether BCCI is a public authority or not started parallelly with the Indian Olympic Association for a long period of time. And you will notice that some of the judgments of the CIC in the past itself did not hold the BCCI to be a public authority.

However, when the matter again came up in 2018, the Central Information Commission decided that it should be brought within the purview of the Right to Information Act because the BCCI interestingly is amenable to the writ jurisdiction under Article 226 and Article 32 of the Constitution of India.

And with the Supreme Court's intervention in trying to bring about reforms in the Board of Control for Cricket in India through the application of the writ jurisdiction, I think the Central Information Commission was encouraged to bring in transparency and accountability which was something that was emphasized by the Supreme Court time and again.

And hence, in 2018 as you would all appreciate that the CIC decided in a case of holding the BCCI to be a public authority. And they said that look, the BCCI like the India Olympic Association is probably representing the country in this sport of cricket. And it has control

and affiliation from state organization. It is probably the richest sporting federation in this country. And it has a national character and very importantly has a monopoly right on organizing cricketing events in this country.

Citing the Law Commission report, the commission said that the kind of activity that the BCCI is empowered and the kind of impact that it can have on players, coaches, athletes, I think there should be no doubt that the BCCI should be a public authority under section 2(h) of the Right to Information Act.