

**Objections to the Nominations sent by Amateur Kabaddi Federation of India West Bengal State Unit (in short AKFIWBSU) for the Electoral College of AKFI**

**ORDER**

Amateur Kabaddi Federation of India West Bengal State Unit (AKFIWBSU), an affiliated State unit of AKFI has sent names of its two representatives for “Electoral College”, AKFI namely Mr. Subarata Mukherjee President and Mr. Swapan Mahapatra, Treasurer of the Association. Against these two names objections were filed by Mr. Shyamal Kumar Basu General Secretary Bengal Amateur Kabaddi Association (BAKA) and Mr. Sajal Ghosh Honorary General Secretary, West Bengal Kabaddi Association (WBKA). Objector Sajal Ghosh in the objections informed that West Bengal Kabaddi Association was formerly known as West Bengal Kabaddi Federation and it was established in the year 1951. The said association is affiliated to AKFI and Bengal Olympic Association and is recognised by West Bengal State Council of Sports. This Association from the very beginning used to participate in every event organised by AKFI. It was further stated that BAKA was formed and affiliation was given to it. Ultimately upon conducting an enquiry, AKFI on 30.01.2013 disaffiliated it. An ad-hoc Committee was formed in 2013 which was not at all justified as per rule. As per rules of Indian Olympic Association, the Apex body, AKFI cannot open a State unit throughout India. But with ill motive and illegally, AKFI opened the State Unit in West Bengal. This action of AKFI was arbitrary and bad in law.

It is further stated that on 09.06.2016, they came to know that their Association, that is WBKA, was disaffiliated on 10.02.2001. It was not communicated to them before 09.06.2016 nor any show cause notice was served. They were not given any opportunity of hearing. The said decision was behind their back. Finding no alternative WBKA filed a titled suit bearing no. 1300/16 for a declaration that the cancelation of affiliation dated 10.02.2001 was invalid and illegal. The said suit is being contested by AKFI and at present

is pending in Civil City Court, Calcutta (6<sup>th</sup> Bench) for 30.11.2018. In the mean time AKFI notified election for the Office Bearers to be held on 23.04.2017. Again WBKA filed a titled suit bearing no. 479/2017 before the City Civil Court, Calcutta. The said suit is pending and is being contested by AKFI. AKFI did not follow the procedure. As per Clause 29.1 of its constitution before disaffiliation of a State body sufficient opportunity was required to be given to the affected party. Now, the Hon'ble High Court of Delhi in Mahipal Singh V/S Union of India has set aside the election of previous President and declared it illegal. So all the actions taken by the previous President have become void and illegal as such the present Association AKFI Bengal unit cannot send names of its two representatives for "Electoral College".

Similar objections were taken by Mr. Shyamal Kumar Basu. It is stated that BAKA is the duly and only affiliated unit of AKFI in Bengal. It has been playing sincerely in all sorts of tournaments and has participated in the National Games up to 2014-2015. However on 29.06.2011 AKFI wrote a letter asking BAKA to take a resolution empowering the President of AKFI all powers of administration of West Bengal to abide by his dictum. By an unanimous resolution taken on 06.08.2011, BAKA refused to accept the proposal. Then the previous President J.S Gehlot issued showcase notice to the General Secretary of BAKA and suspended it with ulterior motive. A new Committee in the name and style of AKFI, West Bengal unit was made illegally. The Enquiry officer did not give any hearing. Subsequently without any enquiry report BAKA unit was cancelled arbitrarily and new Committee was formed without following the byelaws of AKFI. Even no communication was made as to the cancellation.

It is further stated that finding no alternative BAKA filed a titled suit No. 2064 of 2011 in the City Civil Court at Calcutta. Since the Hon'ble High Court of Delhi has given all the powers to the administrator as President, justice be done to BAKA.

Notice of these objections was sent to affiliated unit of AKFI West Bengal State Unit. Hearing on objections from both the parties was held on 08.12.2018. On behalf of the objectors Mr. Biswanath Chakroborty, Mr. Biswjit Palit, Ms. Rama Sarkar, Mr. Habib Ali, Mr. Shyamal Kumar Basu, Mr. Manoj Kumar Day, Mr. Sajal Ghosh, Mr. Dilip Palit, Mr. Nemai Ch. Biswas, Mr. K. Patra, Mr. Biswanath Ahish and Mr. Swapan Kumar Pal appeared. On behalf of the affiliated unit Mr. Subarata Mukherjee, Mr. Radhey Shyam Agarwal, Mr. Debbrata Raychaudhari and Mr. Manishankar Chatterjee advocate appeared. Both the parties were heard at length on the objections and were given effective hearing. Documents filed by both the parties in support of their objections along with written submissions were taken on record.

At the outset it may be mentioned that Mr. Sajal Ghosh General Secretary, West Bengal Kabaddi Association sent an e-mail on 15.01.2019 at 3.21 p.m. stating that he was not be concerned with West Bengal Kabaddi Association with effect from 13.01.2019 as he had left the post of General Secretary of WBKA. Apparently Mr. Sajal Ghosh did not insist for disposal of the objections filed by him on behalf of WBKA. No other Office Bearer of WBKA has come forward to pursue the objections.

On perusal of the objections and the documents on record it reveals that there are three associations presently in existence in West Bengal; one is the Affiliated unit that is AKFI West Bengal unit which has affiliation from the parent body AKFI. The other two associations claim themselves to be the genuine and original associations entitled to be represented in the "Electoral College" for holding elections of the Office Bearers of AKFI. It has come on record and is not disputed that BAKA which was earlier an affiliated unit of AKFI was disaffiliated. An ad-hoc Committee was formed in 2013 and a new Association AKFI West Bengal unit came into existence. Both BAKA and WBKA have challenged the disaffiliation / cancellation of their units by AKFI before the court of law. As mentioned

above both the associations have filed Civil Suit before the City Civil Court, Calcutta and those suit are still pending. An application under Order 1, Rule 10 CPC has been filed and all the cases have been sent to one court for disposal. All these objections taken in the present proceedings have been taken in the civil suit cases and the matter is sub-judice before the court. In the Civil suits filed by both the associations no relief whatsoever has been granted against the affiliated unit to not to send the names of its representatives for election of the Office Bearers of AKFI. The pleas taken by the objectors are to be decided on merits by the Civil Court at Calcutta.

It has come on record that both the Office Bearers of AKFI West Bengal are in office since 2013. They have performed various activities relating to Kabaddi since then. Their election as Office Bearers has not yet been set aside by any court of law. AKFI West Bengal State Unit continues to be an affiliated unit of AKFI.

The Association sent its status report vide letter dated 03.10.2018 and it reveals that last election of Office Bearers of the Association was held on 17.12.2016. As regard "Term" for which the President and Secretary were in respective posts, it is informed that President Mr. Subarata Mukherjee and General Secretary Mr. Radhey Shyam Agrawal were in their 2nd "Term", holding post since 2013. The age of President is about 72 years as his date of birth is 14.06.1946. General Secretary is about 69 years of age as his date of birth is 26.12.1949. The Treasurer Mr. Swapan Mahapatra is about 64 years of age as his date of birth is 04.03.1954.

Information further revealed that three City Civil Court cases were pending involving WBKA and BAKA but there was no interim order in force as on the date.

Question then arises the enforceability of the Sports Code in terms of various Guidelines on the subject issued by Government of India at different point of time since 1975 and finally those guidelines codified in the National Sports Development Code 2011.

Emphasis on compliance of these Guidelines has always been the object of Good Governance of the Sports Bodies, transparency in their functioning and promotion and development of their respective sports. Similar situation as about importance of these Guidelines and their enforceability as held by Hon'ble Delhi High Court in various judgements arose and was examined while considering identical Objection in other matters. In one such matter of Delhi State Kabaddi Association it has been observed and held as follows:

*“Clause 3.5 of the code mentioned gist of new initiatives taken by the Government in the recent past. Annexure XIII of the code dealt with the subject of ‘Restoration of limits on the duration of tenure of Office Bearers of Indian Olympic Association and all the recognised NSFs. Para 5 of this annexure letter observed that whereas after detailed examination of IOC charter, it was found that even the International Olympic Committee (IOC), which was the mother body of all sports federations, enforced tenure limits on its members and Office Bearers. It was further observed that Honourable Members of Parliament from across all political parties during a debate in Rajya Sabha on 24.10.2010, on the functioning of Ministry of Youth Affairs and Sports, pressed on the need to enhance transparency and accountability in the functioning of Sports Bodies by way of appropriate Guidelines including tenure limit for the Office Bearers”.*

The aspect of “Tenure and Term” limit in the Sports Code was also examined and it was observed and held as below:

*“Good Governance of Sports Bodies in context of ‘Basic Universal Principles of Good Governance of Olympic and Sports Movement’ was also then taken into consideration and some of the core principles of the Basic Universal Principles of*

*Good Governance of Olympic and Sports Movement' were considered for its being followed by the NSFs. These core principles are:*

- Elections to the Sports Bodies should be governed by clear, transparent and fair rules.*
- Adequate procedural regulations must exist to ensure there is no conflict of interests*
- The term of Office should be of a limited duration in order to allow renewal of Office Bearers on a regular basis and give access to new candidates*
- Co operation, coordination and consolation with Government to preserve autonomy.*

*National Sports Code 2011 thereby very emphatically stipulated that a National Sports Federation in order to be eligible for recognition was required to*

*I. Comply with the tenure limits prescribed in the letter dated 01.05.2010 whereby tenure for the President was a maximum of 12 years.*

*II. -----*

*III. Hold Elections for the post of Office Bearers, as per the Model Election*

*Guidelines.*

*Code stipulated that non compliance with stipulations in the NSCI would, ipso facto, disentitle the concerned NSF from the right to Recognition as well as from the facilities made available by the Government to the NSFS.*

*The model Election Guidelines which formed part of NSCI required the candidates to be members of one of the Member States / UT's / Boards / Institutions, which was one of the constituent units of the AKFI as well as to figure in the Electoral College List".*

Legal salinity and enforceability of the Guidelines has been examined by Hon'ble High Court of Delhi in various judgements and in the matter of Delhi State Kabaddi Association it came to be observed and held:

*The sustainability and enforceability in law of the guidelines issued by the Government to regulate the functioning of National Sports Federation came up for consideration before the Delhi High Court in a case Narinder Batra V/s UOI in a writ petition (C) 7868 / 2005. Hon'ble Court held that guidelines issued by the Government were validly issued and were binding for the purpose for which they were issued.*

*Enforceability of Sports Code to the NSF was again examined and approved and affirmed in Rahul Mehra I and Rahul Mehra II cases by Delhi High Court. Case of Rahul Mehra I concerned elections of the Archery Association of India (AAI), a National Sports Federation. AAI was derecognized by the Government and the Government of India raised contention before court that unless and until AAI complied with the provisions of NSCI, including tenure & age restrictions of Office Bearers and holding of free and fair elections, the Government would not consider the grant of recognition to such Sports Federation. In the circumstances Code directed that recognition would be accorded by the Government to AAI only if the elections of AAI were held in accordance with NSCI. Since directions issued by the Court were not being complied, court disposed of the writ by appointing an Administrator to take over the affairs of AAI till its constitution was amended and elections were held in terms of Court's order.*

*In Rahul Mehra II case the Electoral College of All India Football Federation (AIFF) was in a challenge before the court on the ground that it was not in accordance with Model Election Guidelines or with NSCI. Hon'ble Delhi High Court held*

*“22. The Court is of the view that insofar as the Rules of the AIFF are in breach of the National Sports Code and the Model Guidelines for the conduct of elections, the results of the elections of the AIFF declared on 21.12.2016 would have to be set aside. It is so ordered. Fresh elections shall be conducted in accordance with the Model Guidelines. Additionally, nominations would be required to be proposed and seconded by one member association each and with clear notice, as required by the Model Election Guidelines read with rules of AIFF. Furthermore, the Electoral College shall be first prepared after addressing the complaints of various members who may have grievances in this regard.”*

*It is now clear by above referred judgments by the High Court that National Sports Federations are bound to implement and follow the Guidelines issued by the Government governing the Sport concerning that NSF.*

*Clause 30 of the MOA of AKFI provides that all the affiliated member units will abide by the Constitution of the AKFI.*

*Considering the situation that AKFI has to amend its constitution as measure of good governance of its affairs and to bring it in conformity with Sports Code and when its annual recognition by the Government of India would be on a test of its being compliant with National Sports Code, then State / UTs Associations which are affiliate bodies of AKFI also must act towards objective of good governance and thereby Sports Code compliant, in particular the tenure and age limit that will guide their functioning for fair and transparent representative nature of their elected representatives. State Governments if seek to govern Sports in a State, guided by the Sports Code would be contributing to the cause if proceed further to implement the Sports Code. State of Andhra Pradesh has taken a step in the direction. Till such State laws for the Sports bodies are legislated, AKFI considers*



*appropriate to implement Sports Code, at least on the point of 'Tenure & Age limit' for the Office Bearers of its affiliated unit / associate so as to make those Office Bearers effective and true representatives of this body".*

The Sports Code has to be a guideline in the functioning of State Associations also.

Accordingly the objections are decided to the effect that Amateur Kabaddi Federation of India West Bengal State Unit will amend its Constitution to make it compliant of Sports Code and then hold elections of its Office Bearers in compliance with Model Election Guidelines in terms of Hon'ble Delhi High Court Judgment, preferably within one month after the completion of the 45<sup>th</sup> Junior National Championship (Boys And Girls). The elections be conducted under the supervision of retired High Court judge or retired district judge as per rules.

In the present situation however the "Electoral College" for the election of Office Bearers has been constituted for a limited purpose that the elected body of AKFI will amend the MOA of AKFI so as to bring it in conformity with Sports Code. Accordingly names received from AKFIWBSU for "Electoral College" are accepted as such for the limited purpose for first round of elections of AKFI in terms of judgement of Hon'ble Delhi High Court.

Objections are disposed of accordingly.

Copy of the order be sent by e-mail to both the parties for compliance and be put on the website of AKFI.

23.01.2019

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Administrator

AKFI