

Objections to the Nominations sent by Delhi State Kabaddi Association (Regd.) (in short DSKA) for the Electoral College of AKFI

ORDER

Delhi State Kabaddi Association (DSKA), an affiliate unit of Amateur Kabaddi Federation of India (AKFI) which is a National Sports Federation, sent names of its two representatives, Mr. Niranjana Singh Secretary and Mr. Zile Singh President, for the Electoral College of AKFI which has been constituted for election of the Office Bearers of AKFI. While publishing the list of Electoral College on AKFI website, objections were invited, if any, against names of representatives received from respective affiliated State / UT Kabaddi Associations. Against names of representatives of DSKA objections were received, filed by four individuals.

Objector Mr. S.P. Singh claiming to be an ex President of DSKA and an ex Associate Vice-President of AKFI did not appear.

Objectors Mr. Mahipal and Mr. Surender Kumar sought implementation of the Sports Code to the State Association alleging that Office Bearers in many of the affiliated Associations of AKFI were holding posts for last more than 25 years. They further alleged illegalities and serious irregularities in Pro- Kabaddi League arranged between AKFI and Star Sports, alleging that exchange of huge money took place.

Objector Virender Kumar raised a grievance that President and Life President of AKFI were taking money as illegal gratification from Kabaddi players while recommending their names for PKL without considering their merits. He also requested for renewal of agreement between Star Sports and AKFI which governed the Pro-Kabaddi League.

Another objection filed by Mr. Ashok, claiming to be an ex-Member Executive DSKA, alleged that elections of Managing Committee of DSKA was in violation of bye-laws and a civil suit challenging elections of State body held on 05.03.2017 was still pending, however, none appeared on his behalf at the time of hearing,

While inviting names of representatives from affiliated State / UT Kabaddi Associations, each Association was asked to provide its status explaining as to when last election of its Office Bearers were held, when and for how many terms its Office Bearers were holding the post, age of the Office Bearers and if any court case was pending involving Association. Said information was called to examine as to what extent the State Associations were in compliance with Sports Code.

Delhi State Kabaddi Association provided said information by its letter dated 08.10.2018. Document shows that last election of Office Bearers of the Association was held on 05.03.2017. Relevant proceedings of those elections were attached.

It was further disclosed that President of the Association was only in his "First Term" as elected in 2017. His age was 63 years as his Date of Birth is 05.08.1955. Its Secretary was holding post from 2004 and had been again elected in the year 2017. His age was 46 years as his Date of Birth is 28.05.1972. Term of the Treasurer was not disclosed but his age was disclosed as 56 years, his Date of Birth being 15.07.1962.

As regards court case, it is stated that Ashok Kumar, brother of the previous President, had filed a civil suit titled "Ashok Kumar VS. Delhi Kabaddi State Association and Others" and the suit was pending for order on its maintainability. During hearing on objections it was pointed out that the suit (civil suit No. 335/17) has been rejected by order dated 02.11.2018 passed by civil judge, Saket Court Delhi.

Notice of objections was given to DSKA and hearing on objections was taken up on 26.12.2018 as per hearing schedule already fixed and put on the AKFI website. Hearing was attended from both sides. Secretary Niranjana Singh DSKA appeared with advocate Mr. Karan Singh from Association side. Objectors Mr. Mahipal, Mr. Virender Kumar and Mr. Surender Kumar appeared in person to argue on objections. Both sides were heard extensively.

Objector Mahipal argued for implementation of Sports Code for State bodies also alleging that when Hon'ble High Court of Delhi has directed AKFI to implement the Sports Code by amending its Constitution and when reasons were cited for seeking compliance with Sports Code by all National Sports Federations as per the instructions and guidelines issued by the Government of India from time to time, there was no reason to keep State bodies exempt from implementing the Sports Code. Other Objector also pressed the points as pleaded in the respective objections.

From the Association side, Advocate Mr. Karan Singh argued that elections of Office Bearers of DSKA were held on 05.03.2017 in accordance with the rules and bye-laws of DSKA and in the presence of an observer deputed by AKFI and when election was challenged in civil suits but no relief or order was given by the court against election, then the names of representatives sent by DSKA for "Electoral College" were to be considered and accepted. He further argued that "Term and Age" aspect of the Sports Code should be considered applicable from 2011 when National Sports Development Code of India was introduced by

the Government of India. The Code could not be made applicable retrospectively and thereby the Secretary DSKA even if was in the post since 2004, restriction of "Term" as per the Sports Code be counted from 2011 and his election in the year 2017 could not be considered as in violation of the Sports Code.

A careful consideration has been given to submissions from both sides.

It appears to be a matter of record that General Body Meeting of the Association took place on 05.03.2017 in terms of a notice dated 09.02.2017 given by the then President Mr. Surinder Singh. One of the agenda of that meeting was the election of Office Bearers of DSKA. Election was held and was conducted by Returning Officer Shri. Karan Singh Advocate. Election proceedings were recorded by the Returning Officer which is now available on record. It shows that 33 representatives of the affiliated units of DSKA participated in the election. Mr. S.S. Lakkad was an observer appointed by AKFI in whose presence the election concluded. It is further recorded that all the Office Bearers for the term 2017-2021 were elected un-opposed. Returning Officer attached list of those elected Office Bearers wherein Mr. Zile Singh S/o Shri. Brij Lal and Mr. Naranjan Singh S/O Shri Harsarup, besides other Office Bearers, were elected as President and Honorary Secretary respectively. During arguments Mr. Surinder Singh could not deny fact that General Body Meeting for 05.03.2017 had been called by his letter dated 09.02.2017. He however tried to impress that he had called a General Body Meeting for 26.02.2017 by his letter dated 07.02.2017 but then he admitted that he remained unsuccessful in all his efforts in civil suits filed by him. As such the names of the representatives sent by DSKA for the Electoral College are the authorised names sent by duly elected body of DSKA.

Advocate Mr. Karan Singh argued that since Sports Code was introduced in 2011 it cannot have a retrospective application and present Secretary Mr. Niranjan Singh is holding post which can not be said to be in breach of Sports Code. Argument is unconvincing. There is no question of applicability of Sports Code prospectively or retrospectively. If an Office Bearer was in a post exceeding the prescribed term as per the Sports Code, or had completed the age limit, it would be irrational to contend that he would be eligible to continue in post even if elected, on a plea that Sports Code would apply in his case only from 2011. Accordingly Secretary DSKA Mr. Niranjan if has been in the post since 2004, his continuance in the post is in violation and breach of the Sports Code.

The aspect of an Office Bearer of an Affiliated State Association if holding post in violation of Sports Code has been examined in similar Objections received in other State Association Matters and it has been held and observed:

“National Sports Code of India notified on 31.01.2011 codified the instructions and Guidelines laid down from time to time by Government of India. It came to be observed that while the Sports was a State subject and Sports Development would come within the purview of the States up to the State level, at National and International level, it fell within the realm of Union of India. It was further observed though National Sports Bodies were autonomous in nature but then by virtue of various High Courts and Supreme Court judgments NSF would come within the Writ Jurisdiction of High Court because they performed State like functions such as selection of National Teams representing the Country in International Sports Events.

*National Sports Code 2011 further observed that Government of India had been taking various steps and initiatives from time to time to **Promote Good Governance practices in the management of Sports at National Level in pursuance of successive Sports Policies and those policies were based upon Basic Universal Principals of Good Governance of Olympic and Sports Movement.** Although these bodies may be registered in different States under Societies Registration Act or the Companies Act, then authority to function as NSF will be dependent on compliance with Government Guidelines. The Government had taken various steps to further improve the management of NSFs and these measures included free, fair and transparent elections by NSFs, measures to combat age fraud in Sports and Guidelines for prevention of Sexual harassment of women in sports. Code further observed that in the matter of Rahul Mehra V/s UOI and Others Delhi High Court took a serious view on the mismanagement of Sports sector in the country and expressed deep concern and the inaction on the part of the Government in implementing and enforcing its own Guidelines particularly those related to age and tenure.*

*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.

Taking into account the subject in its entirety, with a view to encouraging professional management, good governance, transparency, accountability, democratic elections etc. in NSF, the code brought into force the tenure limit provisions in modified form whereby the President of any recognised NSF could hold office for a maximum period of 12 years with or without break. The Secretary and the Treasure of any recognised NSF could serve a maximum of two successive terms of 4 years each after which a minimum cooling off period of 4 years will apply to seek fresh election. The President, Secretary and the Treasurer shall cease to hold post on attaining age of 70 years.”

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 Status of Guidelines issued by the Government

In the year 1975 the Government of India, Ministry of Sports in consultation with the All India Council of Sports issued certain guidelines and circular dated 20.09.1975 was issued to all Sports Federations. Para 3 of the circular provided as under:-

The Government of India have carefully considered the matter, in consultation with the All India Council of Sports and have decided, in the interest of promotion of Sports and Games, that Government's financial and other assistance shall be extended only to those National Organisations dealing with Sports and Games which full fill the following conditions.

I. An Office Bearer of a National Federation may hold office for one term of 4 years and may be eligible for re-election for a like term or period.

II. No Such Office Bearer shall hold office consecutively for more than 2 terms or 8 years -----

Explanation 1: For the purposes of this clause the expression "Office Bearer" means

(a) The President

(b) The Secretary / Secretary General or any corresponding Office

(C) The Treasurer (Provided that if treasurer did not possess right to vote than provisions of the clause will not apply

The term of the President stipulated in the said circular was modified by circulars dated 15.05.2010 and 17.05.2010 and it provided that:

The President of any recognised National Sports Federation including the Indian Olympic Association can hold the office for a maximum period of 12 years with or without break.

Clause 10 of these circulars of 2010 further provided that compliance to the directions shall be mandatory to receive Government Recognition and thereby to become eligible to receive financial as well as other forms of assistance from

Government of India such as Railway Concession, Income Tax Exemption, Custom Duty Exemption etc. etc.

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.

Accordingly the objections are decided to the effect that Delhi State Kabaddi Association 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. 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 DSKA 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.

21.01.2019

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Administrator
AKFI