

The N. Srinivasan case and ‘conflict of interest’ in sport

On 22 January 2015, the Supreme Court of India rendered a landmark judgment disallowing former President of the Board of Cricket Control in India (‘BCCI’), Mr N. Srinivasan from contesting elections for the top post of the game’s administrative body. The apex court struck down the amendment to Rule 6.2.4 of the BCCI Rules and Regulations which permitted BCCI office bearers to have a commercial interest in owning teams in the Indian Premier League (‘IPL’) and Champions League T20. For the first time in the history of Indian sport, a judicial precedent has been set expounding the principle of what constitutes a conflict of interest in a sporting environment. In this article, Amrut Joshi, Aditya Shamlal, Vishnupriya Sainath and Mahit Anand of GameChanger Law Advisors analyse the rationale to the Supreme Court’s judgment and argue that Indian sport will never be the same again. The authors also analyse in detail the concept of ‘conflict of interest’ as expounded by the Supreme Court’s judgment.

In a meeting in September 2007, the working committee of the BCCI decided to launch the IPL, to be run and administered by a sub-committee of the BCCI known as the IPL Governing Council. In December 2007, the IPL Governing Council invited tenders for IPL franchises in an open bidding process. India Cements Ltd (promoted by Mr N. Srinivasan) was awarded the Chennai City franchise, known as Chennai Super Kings (‘CSK’). At the time India Cements Ltd was awarded the CSK Franchise, Srinivasan was also the



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Treasurer of the BCCI and President of Tamil Nadu Cricket Association. Allegations of a conflict of interest first surfaced when Mr A.C. Muthiah (Ex-President of BCCI) wrote to the then President of the BCCI, Mr Sharad Pawar, on 5 September 2008, highlighting that a violation of Rule 6.2.4 of the BCCI Regulations had been committed by Srinivasan during the IPL auction, by virtue of the fact that India Cements Ltd had acquired the CSK Franchise. Rule 6.2.4 of the BCCI Regulations stipulated that ‘No Administrators shall have, directly or indirectly, any commercial interest in the matches or events conducted by the Board.’

As no action was taken by BCCI, Mr Muthiah filed a petition before the Madras High Court on the grounds that Srinivasan’s actions amounted to an act of indiscipline and misconduct under BCCI Rules and Regulations¹. The Court refused to pass an *ex-parte* temporary injunction and Srinivasan was allowed to participate in the Annual General Meeting of the BCCI where he was elected as Secretary. In the same meeting, Rule 6.2.4 of the BCCI Rules and Regulations was amended to exclude events like the IPL and Champions League T20 from its purview.

Aggrieved by the amendment, Muthiah approached the Madras High Court, contending that the amendment to Rule 6.2.4 of the BCCI Rules and Regulations was made to serve the personal interest of Srinivasan and that it contravened public policy. However, the Madras High Court held that the amendment was purely commercial in nature and was not in violation of any public policy. Muthiah appealed this decision before the Hon’ble Supreme Court of India in 2011². On hearing his appeal, a two

judge bench of the Supreme Court arrived at a split verdict³. Justice J.M. Panchal agreed with the decision of the Madras High Court and held that the amendment made to Rule 6.2.4 was not *mala fide* in nature and was not opposed to public policy. He based his decision on the fact that India Cement Ltd was a public company and Srinivasan held a mere 0.05% in shares. Further, Justice Panchal was of the opinion that Srinivasan’s decisions in his capacity as an office bearer of the BCCI were subject to the approval of the General Body consisting of all members of the BCCI. On these grounds, Justice Panchal rejected Muthiah’s appeal.

However, Justice Gyan Sudha Mishra in her judgment held that “conflict of interest does not require actual proof of any actual pecuniary gain or pecuniary loss as the principle of ‘conflict of interest’ is a much wider, equitable, legal and moral principle which seeks to prevent even the coming into existence of a future and/or potential situation which would inhibit benefit or promise through any commercial interest in which the principal actors are involved.” Justice Mishra concluded that as Secretary of the BCCI, Srinivasan was privy to “highly sensitive information about the bidding process, the design of the tender, the rules of the game, the future plans of BCCI in respect of IPL and so on and so forth,” which could have been misused in his capacity as a bidder through his company India Cements Ltd. Thus, Justice Mishra concluded that it was correct to submit that “no artificial Chinese walls can be assumed to exist between the multiple personalities and activities of respondent No.2 both as tender issuer and as a bidder.”

Since there was a difference in opinion, the matter was placed

before the Hon'ble Chief Justice of India for assignment to a larger Bench. However, the appeal went into cold-storage until fresh circumstances arose to bring the ball back to the Supreme Court. In 2013, the Special Cell of the Delhi Police received a tip-off that certain people involved in organised crime were fixing matches played during the 2013 edition of the IPL. At around the same time, Mr Gurunath Meiyappan, son-in-law of Srinivasan, was arrested on allegations of spot-fixing and betting⁴. Soon after his arrest, the BCCI constituted a Probe Commission comprising of two former Judges of the High Court of Madras to investigate the allegations. Almost simultaneously, Srinivasan announced that he was stepping down from the post of President until the probe against Meiyappan was complete.

The two-member Probe Commission appointed by the BCCI submitted its report stating that no evidence or findings were recorded against Meiyappan for his alleged involvement in the betting and spot-fixing scandal. At this point, the Cricket Association of Bihar ('CAB') filed two writ petitions in the High Court of Bombay seeking the following reliefs: (i) to direct the BCCI to recall the probe panel declaring it to be *ultra vires* the BCCI Rules and Regulations; and (ii) to remove Srinivasan from the post of President of the BCCI and the cancellation of the CSK Franchise from participation in the IPL.

On 30 July 2013, the Bombay High Court passed an order declaring that the two-member probe was not validly constituted by the BCCI⁵. However, the Court declined to conduct an inquiry and maintained that the constitution of the probe was the BCCI's prerogative under its Operational Rules.



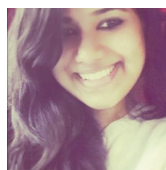
Aditya Shamlal

The Mudgal Committee

The appeal made by the CAB against the decision passed by the Bombay High Court came up before the Supreme Court on 27 September 2013, when an order was issued permitting Srinivasan to participate in the election for the post of President of the BCCI subject to the condition that, in the event Mr Srinivasan was elected as President, he would not take charge until further orders were passed by the Court⁶.

This matter then came up before the Supreme Court on 8 October 2013. The Court constituted a three-member Probe Committee to conduct an independent probe into the betting and match-fixing allegations against Meiyappan, certain players of the Rajasthan Royals Franchise and Mr Raj Kundra, the owner of Rajasthan Royals. The committee held that Meiyappan was an integral part of the CSK franchise and was regarded as the team official of CSK within the meaning of IPL Operational Rules. The Committee further held Meiyappan guilty of placing bets in favour and against his team.

The Mudgal Committee also highlighted the issue of conflict of interest. The Committee recognised that this issue was not within its terms of reference but, stated that "While it is evident that the questions raised before us about conflict of interest are serious and may have large scale ramifications on the functioning of cricket, we do not deem it proper to pronounce our opinion on this issue as it is not directly in our terms of reference. However, since several stakeholders repeatedly stressed on this issue, we thought it proper to bring this issue to the attention of this Hon'ble Court." This served as a trigger for the Supreme Court to debate the issue of conflict of interest further.



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The 'conflict of interest'⁷

The CAB contended that the amendment to Rule 6.2.4 of the BCCI Rules and Regulations was *mala fide*, as the purpose of the amendment was to protect the grant of the CSK franchise to India Cements Ltd, which was a clear breach of Rule 6.2.4 as it existed before its amendment. As treasurer of the BCCI, Srinivasan could neither have acquired nor held any commercial interest in any BCCI event including the IPL and Champions League T20.

The CAB also contended that the amendment was hurriedly brought in, without supporting recommendations, without an agenda item for deliberations and without providing proper notice to members. The amendment was pushed through as 'any other item' on the agenda even though it had implications on a fundamental imperative applicable to all events organised by the BCCI.

These contentions of the CAB, and the findings of the Mudgal Committee, formed the basis for the Supreme Court to conclude that the amendment to Rule 6.2.4 permitted its administrators to have commercial interests in the events organised by the BCCI and this amended provision disregarded potential conflicts of interest between an administrator's duty as a functionary of the BCCI on one hand and their interest as the holder of any such commercial interests on the other.

Srinivasan's personal interest

In addition to the contentions raised by the CAB, there were certain instances which clearly indicated a conflict between the duty owed by Srinivasan to the BCCI and his personal interest in owning the CSK franchise.

The first instance arose when the BCCI awarded compensation of INR 104 million to CSK for

cancellation of the Champions League T20 Tournament in 2008. It was not disputed that Mr Srinivasan was among the decision making panel which approved the amount, which was paid to his own team and to Rajasthan Royals. This implied that Srinivasan most likely participated in proceedings leading to the award of compensation to his own franchise. A similar award of INR 131 million was paid to the CSK franchise in 2009. Though it was argued that this amount was returned by India Cements Ltd, the decision to award such an amount raised the pitch for Srinivasan's removal from the BCCI on grounds of conflict of interest⁸.

Lastly, the alleged attempt by Srinivasan to set up a probe commission comprising of two judges of the Madras High Court to cover up allegations against Meiyappan indicated a conflict of interest, as a finding in favour of Meiyappan would have meant that the CSK franchise would have been found to be in breach of Clause 11.3(c)⁹ of the franchise agreement with the BCCI. The CAB's submission was that as President of the BCCI, it was Srinivasan's duty to ensure a free and fair probe into allegations of betting and spot-fixing in the IPL. However, the CAB maintained that as a franchise owner and father-in-law of the person implicated, Srinivasan's actions in hurriedly constituting a probe panel without complying with the BCCI Rules, were a clear indicator that Srinivasan was deviating from his duties as President of the BCCI to protect his personal interests.

A conflict of interest in sport

The CAB case has prompted much debate on what constitutes a conflict of interest in a sporting context. Justices T.S. Thakur and Fakir Mohammed Ibrahim

This judgment has set a precedent for all sporting organisations and federations to ensure that their administrators are free of any conflict of interest and that they place the interest of the sport above personal commercial gain



Mahit Anand

Kalifulla who authored the judgment in the CAB case, have, like Justice Mishra before, concluded unequivocally that an administrator of a sport cannot have a commercial interest in the same sport and continue to hold their administrative position in the governing body of such sport. The Court's attention was also drawn to other instances where former sportspersons, because of their proficiency in cricket, were often engaged as coaches, mentors or commentators for the IPL while being a part of the BCCI. The court has reserved comment on whether such situations would be tantamount to a conflict of interest. In the Court's own words "whether or not a player who is an 'administrator' by reason of an existing or earlier assignment held by him can acquire or hold a commercial interest in any BCCI event, will depend upon the nature of the interest that such person has acquired and whether the same is purely professional or has any commercial element to it."

What next?

We believe that an exposition of the principle of conflict of interest was an overdue step required to restore integrity in the administration of cricket. This judgment has set a precedent for all sporting organisations and federations to ensure that their administrators are free of any conflict of interest and that they place the interest of the sport above personal commercial gain. The Supreme Court has ordered a three-member committee to make recommendations to amend the BCCI's practices, procedures and rules with a view to making the BCCI's internal mechanisms more transparent.

Internationally the matter of conflict of interest has received attention from a number of sports

governing bodies. Sport England, in 2004, published a Good Governance Guidance which made it mandatory for all sporting organisations which sought funding from Sport England to disclose pertinent information. Sporting organisations are required to demonstrate their commitment by ensuring that there are no conflicts of interest that influence the decisions of the organisation¹⁰. The Committee constituted by the Supreme Court would do well to analyse all such governance and recommend the formulation of similar codes and processes.

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1. http://judis.nic.in/judis_chennai/qrydis.p.aspx?filename=25306

2. A.C. Muthiah v. Board of Cricket Control in India and another, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=37944>

3. A.C. Muthiah v. Board of Control for Cricket in India, <http://indiankanoon.org/doc/1333395/>

4. Para 7 of the Judgment in Board of Control for Cricket in India v. Cricket Association of Bihar and Ors, http://supremecourtindia.nic.in/FileServer/2015-01-22_1421928541.pdf

5. The Bombay High court held that the Probe Commission was not duly constituted and was contrary to Rules 2.2 and 3 of Section 6 of the IPL Operational Rules.

6. Para 10 of footnote 4.

7. Paras 66-69 of footnote 4.

8. IPL Verdict, <http://www.firstpost.com/sports/ipl-verdict-three-instances-that-demonstrate-n-srinivasans-conflict-of-interest-2059981.html>

9. Clause 11.3 (c) of the Franchise Agreement reads as 'BCCI-IPL may terminate this agreement with immediate effect by written notice if the franchisee, any group company of the franchisee and/or any owner acts in any way which has a material adverse effect upon the reputation or standing of the league, BCCI-IPL, BCCI, the franchisee, the team (or any other team in the league) and/or the game of cricket.'

10. 'Good Governance Guidance,' <https://www.sportengland.org/media/32986/Good-governance-guidance.pdf>