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Legal Treatment of Anti-Competitive Practices in Sports and the Role of Antitrust Law in India

DR. SATYAVAN KUMAR NAIK¹

ABSTRACT

In India and across the world, the organized sports business has undergone an unexpectedly impressive development. On the other extreme, highly competitive sports have adopted uncommon practices. For instance, one growing industry that has recently gained notoriety and is already making money on a global basis is electronic sports. Given how quickly and diversely the world of sports is evolving, it is crucial that the laws governing it adapt as well. Sports and athletics have been governed by antitrust law for many years, and over time, the relationship between the two has changed significantly. The distinctive aspect of applying antitrust law to the sports business is that it inherently requires competition, preserving the interest of viewers in the fundamental principles of all sports. Assuring competition for the growth of the sports sector is in direct opposition to the dominant nature of many sports federations, who attempt to control the sport rather than assure fair play. This model of applying antitrust legislation to the sports industry would enhance sports governance and administration, which are the main contributors to India's appalling state of affairs in sports administration.

Keywords: *Idiosyncratic Structure, Enterprise, Sports Governing Body, Federation.*

I. INTRODUCTION

George Leonard –“Competition is the spice of sports, but if you make spice the whole meal, you will be sick”

This research paper will discuss the progress of antitrust law and how it relates to sports. The link will mostly be addressed with the aid of numerous important case laws. The goal of the study is to highlight the anti-competitive behaviors that are common in the sports business after first analyzing how competition and sports law interact in India. The author offers a suggestion for how competition law might make it possible to have effective sports administration.

In contrast to established countries, developing country markets are characterized by increased entry barriers, concentration ratios, informational market asymmetries, and market

¹ Author is an Assistant Professor at C.M.P. Degree College, Prayagraj, India.

fragmentation. Through a pyramidal system of sports federations akin to the European Sports model, the Indian model of sports regulation has been primarily based on the developments of the Olympic movement. The European model of sports organizations, in contrast to the American model, places more emphasis on sporting performance than on the entertainment value of the sport. The Indian model has attempted to imitate this style of government, but with more political meddling at all levels due to entry thirty three of the Indian Constitution's² inclusion of sports as a state topic.

As a result, the Indian sports model is egregiously unusual in this area of governance, which needs to be fixed to encourage efficient management and governance of sports bodies. Globally, the sports industry is regarded as a significant contributor to the national economies, and this is also true of India. These sporting organizations impose several financial and other restrictions, which could be the subject of an antitrust inquiry. However, the Competition commission has made some key rulings over the past few years that allow us to assess the many challenges brought on by this interaction between CL “competition law” and sports. Main sports leagues in Cricket, Football, Badminton, Hockey & Kabaddi have emerged, causing a number of disputes over broadcasting rights and participant restrictions and rival leagues, prompting worries about possible violations of Sec. three,³ which prohibits “anti-competitive” arrangements, and s. four,⁴ which rightfully restricts “abuse of dominance position”.

II. SPORTS AUTHORITY AND FEDERATION AS AN ENTERPRISE

It is crucial to determine if the CL provision applies to the Indian Sports “Governing Bodies & Federations” in order to determine whether they have engaged in such anticompetitive behavior. Sports “federations & governing bodies” are considered enterprises because they:

- (i) Existing as a "Person"⁵ According to the CL,⁶ “any person or Governmental Department that is engaged in the provision of services of any kind” is considered to be an enterprise. Since “a person” includes “an association of persons or a body of individuals, whether incorporated or not, in India or outside India,” federations & GB of sports can also be considered “a person” for the purposes of sec. three. Sports “Federations & governing Bodies” are exempt from government and political meddling, however some organizations, such as the “Ministry of Youth & Sports

² The constitution of India, 1950 entry 33- Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution.

³ The competition Act ,2002, Section 3.

⁴ Id. section 4.

⁵ Supra note 3 section 2(h).

⁶ Competition Law.

Affairs” can also be viewed as departments of the Government.

- (ii) The type of activity they engage in- If a “sports federation” participates in economic activity with the intention of making money, it may be regarded as an “enterprise” under The CL. Entrance fees, organizing sporting events that require ticket sales, and providing media rights are examples of activities that qualify as revenue-generating economic activities. Based on the Competition commission's rulings, it may be concluded that the "Nature of Activity" engaged in by a certain body is the deciding factor in determining whether a federation of sports is an “enterprise” or not. In light of this, “sports federations” are seen as commercial “enterprises” to the extent that they engage in such economic pursuits, and as a result, their operations fall squarely under the regulatory and judicial purview of the Competition commission.

In the mile stone judgment of *Hemant Sharma and Ors v. UOI & Ors*,⁷ on the basis that it assessed an additional fee, the “All India Chess Federation” was deemed to be an enterprise. In the “Hockey India” case, it was argued that because the organization organized sporting events that involved the sale of tickets and media rights, it should be regarded as an enterprise under antitrust law.

III. IDIOSYNCRATIC STRUCTURE OF SPORTS’ GB

A Sports GB’s Pyramid Structure the governing structure of athletic bodies is one of their unique characteristics, not just in India but globally. A system with a single member organization from each country below a globally recognized organization is known as a "Pyramid Structure," and it is one such unique arrangement. Then, in their individual nations, these member organizations acquire the distinction of becoming the top sports GB. The “Indian Olympic Association” is the dominant body in India. The “Indian Olympic Associations” is responsible for overseeing the numerous “State Olympic Associations” & “National Federations”, whose primary mission is to promote sports and plan sporting events around the country. The “Ministry of Youth Affairs and Sports”, which is part of the Indian government, is in charge of giving the “State Olympic Associations & National Federations” financial and physical support. Olympic sports are represented by the aforementioned Olympic Associations, whereas non-Olympic sports are represented by their own national federations, such as the “Board of Control for Cricket in India” and the “All India Chess Federation”, which fall under their respective International

⁷ High court of Delhi W.P.(C) 5770/2011.

Federations, much like the IOA.⁸

The IOA oversees the different "State Olympic Associations" & "National Federations" whose primary goals are to promote sports and plan athletic events around the country. The "Ministry of Youth Affairs and Sports" is in charge of giving the SOAs and NFs financial and physical support, and the GOI also plays a significant role. Olympic sports are represented by the aforementioned Olympic Associations, whereas non-Olympic sports are represented by their own national federations, such as the "Board of Control for Cricket in India" and the "All India Chess Federation," which fall under their particular international federations, much like the IOA.

As was already noted above, the Pyramid Structure is the more frequent name for the hierarchical hierarchy that occurs throughout sporting entities. Numerous Indian sports GB argue that they should be granted autonomy in governance and certain legal exemptions in light of this "pyramid structure" In light of the aforementioned argument; they further assert exclusion from market analysis under the CL Regime, arguing that it is required due to the "Specificity of Sports Bodies." Given that both sports law and CL are still in their infancy in India, the aforementioned claim put forth by Indian SGB must be examined in the context of current international standards on the subject.

IV. JUDICIAL APPROACH OF ANTITRUST LAW REGARDING SPORTS ENTERPRISES

(i) Bosman case of European commission

*In The Case Of "Union Royale Belge v. Bosman"*⁹ Professional footballers are being given the opportunity to move without interference to another club at the end of their current contract thanks to the "European Court of Justice" the argument over the nature of the connection among the legal framework for competition and sport. Similar to this, the CL Commission of India's involvement in the "BCCI" issue represents a shift away from autonomy and toward regulation of the regulator in the Indian sports sector, whose actions have an economic influence on the market.

(ii) Manipulation Of Bidding Process By BCCI & IPL for Awarding Contract

The CL Commission became significantly involved in the sports industry for the first time when it looked into the "Indian Premier League" and found that the BCCI's¹⁰ position in the "IPL Broadcast Rights" Deal among distributors not to coordinate, recognize, or assist another Indian

⁸ International Olympic Association.

⁹C-415/93.

¹⁰ Board for Control of Cricket in India.

limited overs rival tournament resulted in a misuse of dominance.¹¹

Finding of commission- The CCI consequently comes to the conclusion that “BCCI” violated Sec. 4(2) (c) by abusing its dominating position. Additionally, the fifty two Crore penalty payment must be deposited.

(iii) Imposition of Restrictive Conditions by Hockey India on Players

In the case of *Dhanaraj Pillay & Others v. HI*,¹² Dhanraj Pillay, a retired Indian hockey player, sued Hockey India, claiming that the strict rules that HI enforced through its amended Code of Conduct Policy with its participants on participating in un-sanctioned aspiring private top leagues led to unfair restrictions on participation in newly-sanctioned private top leagues despite Hockey India's already in dominant.

Finding of commission: The Competition commission determined that it had never entered any monopolistic agreements with the participants or exploited its dominating position.¹³ While Commission maintained that there was no violation of the CL, it recommended that HI enact a suitable internal management system to ensure that its regulatory authority is not utilized to make decisions about any problem pertaining to its business operations.

Through a number of cases, the European Union antitrust jurisprudence has established this premise. The European Court of Justice in the case of “*Hendry v. World Professional Billiards and Snooker Association Ltd.*”¹⁴, decided in favor of the informants and discovered that the “World Professional Billiards and Snooker Association”, the organization in charge of snooker and pool, had broken Articles 81 & 82 of the E.C. Treaty.¹⁵ The case's facts were nearly identical to those of the “BCCI” case and the Hockey India case. One of the WPBSA's rules specified that without the organization's prior approval, players could not participate in events run by any group other than the WPBSA.

(iv) Denial of Market Access by All India Chess Federation

In the case of *Hemant Sharma & ors v. all India chess federation*¹⁶, in response to the Hon'ble Delhi High Court's directives in Writ Petition¹⁷, which contested certain behavior and practices

¹¹ Re Surinder Singh Barmi and BCCI in India, CCI- Case No. 61 of 2010, 2013 SCC OnLine CCI .

¹² Case no 73 of 2011 decided on 31-5-2013.

¹³ Re Dhanraj Pillay and Hockey India, CCI- Case No. 73 of 2011.

¹⁴[2001] EWCA CIV 1127.

¹⁵ In order to ensure that the rules on competition concerning agreements, decisions of associations of undertakings and restrictive practices (Article 81) and abuses of a dominant position (Article 82), which are liable to be anticompetitive, are applied, the Commission has a number of powers to take decisions, to conduct investigations and to impose penalties. It exercises these powers when, following a complaint or on its own initiative, it finds in a given case that there has been a violation of Article 81 or 82 of the Treaty.

¹⁶ Case No. 79 of 2011 decided on 12-7-2018 by CCI.

¹⁷ Civil No. 5770 of 2011.

of “AICF”, the Informants filed the information. Through its July 2018 directive, the CL Commission came to the conclusions that engage in any unlawful actions in violation of Clause (z) of the “Chess Federation Code of Conduct” for Professionals carries very serious repercussions since it necessitates a lifetime prohibit and that there is no way to ask for permission or go through any other process where participants might have an excuse. In addition, it emphasized that neither the bylaws nor the “AICF” regulation defined what an illegal competition was, and neither did they set forth any requirements for the granting of competition licences.¹⁸ The CCI¹⁹ concluded as a result that even the restrictions and rules put in place by the “AICF” for participating in unauthorized competitions served to restrict the free will of movement of chess masters and bar potential organizers from participating.

Finding of Commission - The CCI observes that one of the most severe types of abuse of a dominant position is the restriction of market access. As a result of AICF's violation of sec. four, the CCI fines it INR 6, 92,350.

(v) Abuse of Dominance Position by BCCI

In the case of *Pan India Infra projects Private Limited v. BCCI*²⁰, the Pan India Infra Projects Private Limited filed a complaint against “BCCI”, accusing them of violating sec. four of CL.²¹ They asserted that the “BCCI” imposed numerous limitations on them. These restrictions included player suspensions, directives to affiliated organizations to eliminate player jobs associated to the “Indian Cricket League”, and a lack of infrastructure for cricket. As a result of BCCI's dominance in the management of cricket contests, the Competition commission determined that it played a significant role in the game's governance by being able to impose restrictions on tournaments and grant special privileges. The investigation concluded that “BCCI” was completely in violation of Sec., four and that it had taken discriminatory actions against the complaint by failing to recognize Indian Cricket League.

Finding of Commission-The CCI concludes that there is enough evidence to establish against the Opposing Party a prima facie charge of “abuse of dominant position” u/s 4(2)(c) of CL. In accordance with Section 26(1) of the CL, the "DG" must be tasked with looking into this situation. The DG has been instructed to conduct a thorough inquiry into the situation and provide a report to the Commission within sixty days.

¹⁸*Hemant Sharma v. AICF*, paragraphs 58-62.

¹⁹ The Competition Commission of India.

²⁰ CCI Case No. 91 of 2013 decided on 1-6-2018.

²¹ The Competition Act, 2002 (Act 12 of 2003).

(vi) Prima Facie Abuse of Dominance Position by Indian Athletics Federation

In the case of “*Department Of Sports Ministry Of Youth Affairs & Sports GOI v. Athletics Federation Of India*”²², a petition accusing “AFI” of acting unfairly toward state-level affiliate organizations, their executives, and participants who support unlicensed marathons despite “AFI” disapproval.²³

Finding of commission- The CL Commission initially determined that there was a solid case regarding a violation u/s four of the Act's provisions by “AFI” and directed the Director General to review the petition.

(vii) Allegation against Volleyball Federation of India and Baseline Ventures Private Ltd for Contravention of u/s three and four

In the case of *Mr. Shravan Yadav & Others v. Volleyball Federation of India & Others*²⁴, It has been claimed that for a ten-year period at any level in India or abroad, VFI prohibited the market of organizing Volleyball leagues for any other people/enterprises aside from Baseline. By setting restrictions on them to not take part in any other leagues in India or overseas, “VFI” has further limited the availability of volleyball players for other leagues. In accordance with the Agreement, players are prohibited from competing in international competitions such as the Asian Games, the Olympics, or the Volleyball World Cup if the dates of those competitions conflict with Baseline's Volleyball League.

Finding of commission- the CL Commission found that there are no violations against either of the opposing parties.

V. CONCLUDING REMARK

The directives of the Competition commission have raised the crucial significance of CL in the oversight of sports governing organizations in India through a thorough review of numerous sports cases. The use of CL in the aforementioned cases demonstrates the supportive role and function that professionalism be able to play in increase the transparency of these bodies, even while the use of judicial failure to notice by law and courts to regulate the sports GB has been relatively commonplace in India, with writs having been granted by the SC²⁵ & HC of various

²² CCI Case no 1 of 2015 decided on 16.03.2016.

²³ Re Department of Sports, MYAS v. Athletics Federation of India, Competition Commission of India - Reference Case No. 01 of 2015- SCC OnLine CCI 17: [2016] CCI 18.

²⁴ Case No. 01 of 2019 decided on 03/06/2021.

²⁵ Supreme Court of India.

Note-The Sherman Act, the Federal Trade Commission Act, and the Clayton Act are the key laws that set the groundwork for antitrust regulation. Predating the Sherman Act, the Interstate Commerce Act was also beneficial in establishing antitrust regulations, although it was less influential than some of the others.

States in different sports leagues. Obviously, the opportunities u/ CL are recognized by different departments of the government as a means of incorporating liability within these sports administrative bodies, as seen by the order of the Delhi High Court to facilitate an inquiry by the Competition commission and the option of the Grievance notification to be submitted by the Ministry of Sports.

The connection among CL and sports is a crucial component of the trend of expanding legal interest in the field. Professional athletes' contractual and legal status, for instance, brought labor & employment legislation issues to the forefront, and the monetization of various rights finally gave rise to issues with legislation related to IPR, particularly with regard to trademark and patent ownership. In contrast, it is also feasible to see how tort law & contract law are relevant in some situations. As a result, as explained in this article, there are more sports-related CL conflicts than ever before, particularly as sports GB become more involved in business operations. Therefore, it is crucial that thorough research be done on this agenda with the intention of ensure that organized sports develop in accordance with fair and reasonable market criteria.
