Case Analysis Of Cricket Association Of Bihar V. BCCI, CSS 2015

With the changing time and years, we have seen that every aspect of human life has evolved. The same applies to the various institutions of a state, may that be the Legislature, the Executive, or the Judiciary.

“The State, which forms an integral part of the present society guided by values of liberalism, democratization, etc. also has new duties as compared to the state pre-libertarian era. The new State does not only function as a police state but also acts as a welfare state. Accordingly, with the change in the duties and functions of the State, the powers of various functionaries of the State have also evolved to keep pace with the changing times.”

‘The three institutions keep a check on each other thereby maintaining a balance between the various organs of the State with respect to the functions and powers of the same. But in recent times, this distinction in this work the author has analyzed the case of Cricket Association of Bihar V. BCCI (2015) SSC 251 where the Supreme Court of India (SC) had to deal with the question of the extent of state power and executive function in a situation where the private state was alleged to have violated the fundamental rights of any sates vested in them by the Constitution of India without a legislative sanction. This landmark judgment delivered by our apex court in the wake of our independence is now acting as a touchstone for understanding the State feature of the Indian Constitution through separation of powers.

Facts of the Case

Entry 33 of the State List in the Seventh Schedule of the Constitution governs Sports within the territory of India.

The particular Entry of the Seventh Schedule broadly deals with entertainment and amusements. However, due to the presence of international sporting events, the Department was granted full powers and converted to a full Ministry, which was thereafter, bifurcated under Independent Secretaries in 2008. The powers of both Independent Secretaries have specified in the Government of India (Allocation of Business) Rules, 1961 dated January 14, 1961

The functions of the particular Departments need not be enumerated. However, one of the functions that find reference in the functions enumerated is ' Matters relating to the Indian Olympic Association and National Sports Federations.'

National Sports Federations are established as autonomous bodies which are not under the direct control of the Government. Therefore, they are essentially private bodies that carry out functions that are public in nature.

“Taking a cue from the Government of India Rules, 1961, administration of sports disciplines at the Centre was carried out by the National Sports Federations ('NSF') and administration of Sports within States was to be carried out by Sports Associations of particular States. Examples

of NSF are 'All India Tennis Association' and 'All India Football Federation' amongst others and examples of State Federations can be 'Cricket Association of Bengal', 'Delhi Basketball Association', etc.

Apart from domestic sporting tournaments, International Sporting Tournaments are also conducted over which NSF does not have any jurisdiction. Provision for this has also been made in the Government of India Rules, 1961 by granting recognition to the Indian Olympic Association, which while being instituted under the Olympic Movement, nevertheless is indicative of the Indian presence at Commonwealth Games, Olympic Games, Asian Games and other similar international tournaments. Any disputes connected to the International Arena are automatically referred to the Disciplinary Committee of the International Olympic Committee or the Olympic Council of Asia, without recourse to domestic courts.

Article 12 of the Constitution of India gives an inclusive definition to the expression ‘State’, and says that for purposes of Part III of the Constitution, the expression ‘State’ includes the Parliament of India, the Government and the Legislature of each of the States and Local or other authorities within the territory of India or under the control of the Government of India.

The issue, therefore, is not simply whether Sports Federations should be 'State' within the overall aegis of the Constitution, but whether such Sports Federations are competent to be Judicially reviewed for their actions. The holistic umbrella of 'State' has only been sought to be imposed to grant accountability to such public functions and to permit review of actions that would ensure an overall improvement in the standard of Sports Administration within India. For the sake of clarification, 'Public Functions' in relation to NSF means selling of tickets, holding of tournaments, maintenance of sporting complexes, and incidentally advertising about sports tournaments.

A five-judge bench of the Supreme Court of India in 1981 laid down six tests to determine when an institution may be considered to be a 'State'.

These tests, while being general in nature, nevertheless laid down the determining criteria.[footnoteRef:1] Arriving at a determination as to this fundamental factor would go on to swiftly resolve all doubts. The significance of Article 12 lies in the fact that it lies within the Fundamental Rights covered under Part-III of the Constitution, which grants recourse against any infringement under Articles 32 and 226 of the Constitution. This recourse is important as it permits a sense of closure to affected parties, who might otherwise feel that they have no place to turn in the event that their rights are infringed. [1: Ajay Hasia and others V. Khalid Mujib sehravardi and others (1981) SCC Khalid Mujib sehravardi and others (1981) SCC 722.

One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.

Where the financial assistance of the State is so much as to meet the almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

It may also be a relevant factor...whether the corporation enjoys monopoly status which is the State conferred or State protected.

The existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

The present discussion is hinged around a recent judgment delivered by a two-judge bench of the Supreme Court of India on January 22, 2015, titled as BCCI V. Cricket Association of Bihar and others - Civil Appeal No. 4235 of 2014. One of the many issues framed for determination was whether the BCCI could be considered to be 'State'.

Conclusion

“The author while concluding wants to say that this case is indeed an important one in India in the context of understanding the constitution's federal structure and separation of power among the 3 wings of the government, i.e. the “Legislature, Executive and Judiciary”. The case is also important for understanding the scope till which an executive body can interfere in a private right without any specific legislative backing”.

“This case apart from this separation of power and federalism aspect is also important in understanding the changing paradigm of the constitutional need, especially the executive power which, according to the court should now be interpreted broadly to cover all the necessary power needed to act for the development and uplifting the society”.

Bibliography-

1. https://www.legallyindia.com/home/bcci-vs-cricket-association-of-bihar-ors-game-changer-for-sports-administration-in-india-20150218-5620 (Visited on April 06, 2020)