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Case Comment: ZEE Telefilms Ltd. vs Union of India: Can BCCI be called a ‘State’ under Article 12 of the Constitution of India?

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INTRODUCTION

The First Petitioner, in this case, Zee Telefilms Ltd., is one of India’s biggest entertainment technology companies with a vertically integrated media group and the Union of India(UOI) is the First Respondent. The Second Respondent in this matter is the BCCI (Board of Control for Cricket in India) which is a society registered under the Tamil Nadu Societies Registration Act, 1975 and recognised by the UOI, the Ministry of Youth Affairs and Sports. The President and Secretary of the BCCI (Second Respondent) are the Third and Fourth Respondents respectively. ESPN Star Sports, which is the Fifth Respondent, marked as "ESS" is a US-based company having a unit in Singapore. The Sixth Respondent, a firm of chartered accountants that the Board named in connection with the tender on August 7, 2004. In continuance of a notice welcoming bids for granting exclusive TV rights by the BCCI for the time being of 4 years, a few entertainment groups comprising of the Fifth Respondent and the Petitioners in this place submitted their proposals. The First Petitioner proposed a payment of US \$ 260,756,756.76 (INR equal to Rs.12,060,000,000/- @ INR 46.25/US \$) or US \$ 281,189,189.19

(INR equal to Rs.13,005,000,000/- @ INR 46.25/US \$). Following discussions with both the First Petitioner and the Fifth Respondent, the Board agreed to accept the former's offer, in exchange for which Rs. 92.50 crores(the US \$ 20 million) was advanced in the State Bank of Travancore. The First Petitioner agreed to comply with the offer's terms and conditions, in response to the Board's draft letter of intent. In the meantime, the fifth respondent filed a writ petition in Bombay High Court [Writ Petition (L) No. 2462 of 2004]. In the aforementioned proceeding, the parties filed their affidavits. The Board supported its decision to award the contract to the first petitioner in its affidavit. The case was scheduled for hearing on a daily basis. Before beginning its argument on 21.09.2004, the Board claimed to have annulled the whole bidding process based on the grounds that no finished-up contract had been made among the parties because no letter of intent had been issued. The first petitioner, on the other hand, claimed that such a contract had been reached. Taking into account the advice for the Board's announcements, the Fifth Respondent appealed to the court for dismissing its writ request, which was granted.

In an arbitrary decision, before the Hon'ble High Court at Bombay, the BCCI revoked Zee's telecast rights by terminating its earlier agreement made on 07.08.2004. The Board decided to cancel the entire procurement procedure of tender determining telecasting rights for all matches played between 2004-2008 on 21.09.2004. And, the security in the form of a bank guarantee, as well as any money deposited by the first petitioner was refunded. As the agreement was made in order to broadcast the test matches played between 2004-2008 on television. The aggrieved party(First Petitioner) appealed to the Hon'ble Apex Court under Article 32¹ of the Indian Constitution, against the BCCI for the revocation of telecasting rights and alleged that its right has been violated. In its writ petition filed by the First Petitioner under Article 32, the Board's order terminating the agreement on 21.9.2004 was challenged, which claimed that the Board's conduct was arbitrary and hence in violation of Article 14² of the Constitution of India. The Petitioners have asked for the previous communication to be set

¹ Constitution of India, 1950, art.32

² Constitution of India, 1950, art.14

aside, as well as the issuing of a writ of mandamus compelling the Board to act in light of the 5.9.2004 decision.

LEGAL ISSUES INVOLVED

The case brought up two legal issues before the Hon'ble Apex Court to consider:

1. Is a writ Petition filed against the BCCI under Article 32 maintainable?
2. Is the BCCI a State as defined by Article 12³?

On behalf of the Second Respondent, Mr. K.K. Venugopal, a learned Senior Advocate, raised a question about the writ petition's maintainability. As a petition filed under Article 32 can only be maintained against those authorities who come under the term "State" as specified in Article 12 of the Indian Constitution. The question thus rose to whether or not the BCCI, the sports governing body of India, falls under the term 'State' as specified in Article 12 of the Indian Constitution.

PARTIES TO THE CASE

The parties to the case were:

- **Hon'ble Judges:** N. Santosh Hegde, B.P. Singh, H.K. Sema, S.B. Sinha and S.N. Variava, JJ.
- **Appellant:** Zee Telefilms Ltd. and Ors.
- **Respondents:** Union of India and Ors.

ARGUMENTS MADE ON BEHALF OF THE PETITIONER

The following are the factors asserted by the writ petitioners in this case that would indicate that the BCCI is a body that comes under the term "state" as specified in Article 12 and is also bound by the Part III of the Indian Constitution:

³ Constitution of India, 1950, art.12

1. Cricket is a prominent sport in India, and the BCCI is the entity that supervises and controls it. The BCCI is responsible for all cricket-related activities in India, including entering into contracts for commercial revenue at the stadium, telecast and broadcasting rights, and so on. For the government, it is the monopoly body in charge of sports.
2. The BCCI's team competes as the "Indian Team" by selecting the players to represent the country abroad to play One Day Internationals and Test Matches, its victories are a source of national pride. They wear national flag-themed outfits and are considered India's sports ambassadors. Hence, it functions almost like an indirect body of the government by selecting players to represent the country abroad and also by recommending the cricketers for the Arjuna Awards.
3. The BCCI compensates the sportsmen handsomely for devoting their lives and participation in the game. As a result, sportsmen have the right to be considered for participation in the game of cricket under Article 19(1)(g)⁴. In the execution of its disciplinary powers, the BCCI claims the ability to debar players from playing cricket, which has a direct impact on the player's fundamental rights. Clearly, it is portrayed as a body that would purport to exercise control over the citizen's rights. Therefore, BCCI should constitute an "authority" within the expression of "other authorities" under Article 12 of the Indian Constitution.
4. The BCCI has the exclusive control over the cricket, the authority to arrange such games, and to choose a team that would play; is performing a public function and must abide by the constitutional discipline of Part III of the Constitution. If the events arranged are public events, the body that is in charge of them would undoubtedly be subject to the Indian Constitution's Articles 14 and 19⁵.
5. All representative cricket in India even domestically can only be in under BCCI's control. No representative championship can be held at any level of cricket without the BCCI or its affiliate's permission.

⁴ Constitution of India, 1950, art.19(1) (g)

⁵ Constitution of India, 1950, art.14 and art.19

6. The BCCI is subject to the Apex Court's writ jurisdiction under the Constitution since it is executing one of the country's most significant public functions with the Government of India's approval and recognition and also, and the Board and its affiliates get benefited from government, including low stadium's rent.

ARGUMENTS MADE ON BEHALF OF THE RESPONDENT

In its Counter Affidavit, the Second Respondent argued in support of its claim that it is not a "State":

1. BCCI is an autonomous/private organisation whose functions and powers are limited to its members. It is registered as a society under the Tamil Nadu Societies Registration Act, 1975. It is a non-profit organisation committed to the growth of cricket, whose functions are governed and regulated by its own Rules and Regulations which are not drawn from any statute. Its rules and regulations are only applied to its members and are self-contained entities.
2. The entire business and management of BCCI are overseen by the Working Committee which is elected from among its members in accordance with its own Rules. There is no representation of the government or other statutory body of any kind in it, in any manner. Also, there is no control of the government or any other authority, including the Union of India(First Respondent), over BCCI's capacity, fund, administration, management, and issues.
3. No public or statutory responsibility is discharged or performed by BCCI.
4. BCCI is financially independent and receives no government subsidies or allowances in any manner. As a result, the writ petition could not be filed against it and is not maintainable because it is not a statutory body.
5. BCCI organises all tournaments and cricket matches between its team members and those from the International Cricket Council (ICC), which is also an autonomous body independent of any government authority. Matches are organised at either location

belonging to Members in India or locations belonging to ICC Members only. For the purpose of organising any match or tournament with foreign teams, BCCI requires standard and planned permissions from the Ministry of Sports for travel of foreign teams, it acquires a similar status as other private organizations, particularly in the area of foreign exchange.

6. BCCI has been granted no monopoly status, either by statute or by the government. Organizing Tournaments and Cricket Matches amongst Teams of BCCI Members and co-members of ICC cannot be considered a part of a public duty or government in nature.

The Counsel representing Second Respondent further argued that placing an institution like the BCCI under the jurisdiction of the state in Article 12 would have a negative influence on the very functioning of the government and judiciary. This would imply that all sports federations at the national level, as well as other organisations that represent India in disciplines such as culture, art, music or dance events, beauty contests, science competitions, and so on, will come under the Article 12's definition of "States". As a result, there will be a huge number of pending lawsuits before the courts. And, also if any board player is disqualified or banned from the sport, the player's application to the Court for fundamental rights enforcement will be ineffective since it will have a negative impact on the game's standard. This means that the Board's day-to-day operations will be hampered.

Hence, under Article 12 of the Indian Constitution, the Board should be excluded from the purview of the state.

JUDGMENT

The Supreme Court ruled in this case that the CCI did not fall under the definition of "State." The BCCI is a society that was established under the Tamil Nadu Registration of Societies Act, 1975. The Apex Court decided that, while BCCI is not a state as defined by Article 12 of the Indian Constitution, it is subject to writ jurisdiction under Article 226⁶ of the Indian

⁶ Constitution of India, 1950, art.226

Constitution due to the public nature of the tasks and functions it performs. The functions performed by the Board or the Board's responsibilities include the following:

1. It establishes all parts of the game's rules, laws, conventions, and standards.
2. It has the authority to disqualify athletes, which can put a stop to a person's sporting career.
3. It invests crores of rupees on stadium construction and maintenance, as well as running cricket schools and supporting state associations.
4. It creates pension plans and spends money on coaches and trainers, among other things.
5. The Board sells the transmission and broadcasting rights of the matches, as well as the collection of entry money.

The court here questioned whether the Board is operationally, financially, and authoritatively dominated by or substantially affected by the government in light of the overall circumstances as they are set up. This form of control should be specific to the body in question and inevitable if it is discovered that the body is a State within the ambit of Article 12. Even though when the control is purely regulatory, either by statute or otherwise, it will not come under the ambit of Article 12. The judges, while giving the judgement of this case, heavily relied upon the case of *Pradeep Kumar Biswas v Indian Institute of Chemical Biology*.⁷ Hence, the judges gave the decision not to consider BCCI within the ambit of State because of the following reasons:-

1. The Government of India does not possess a major portion of the share capital of the Board of Directors.
2. The government provides little or no financial assistance to cover the Board's complete or partial needs.
3. The Board has a restricting infrastructure status in cricket, but this status is neither granted nor guaranteed by the state.
4. The Board isn't established by a government agency. It is a self-contained entity.

⁷ *Pradeep Kumar Biswas v Indian Institute of Chemical Biology* (2002) 5 SCC 111

5. There is no evidence of extensive and pervasive government control. If there is any control, it is strictly regulatory in character, as is the case with other such entities. This control isn't explicitly enforced in any Board-related extraordinary resolution. The Board's functions aren't all public, and they're not all intimately tied to government functions.
6. A statute does not establish a board.

If indeed the criteria put forth in Pradeep Kumar Biswas's case are implemented, it will become evident that the facts presented don't collectively show that the Board is in any way administratively, politically, or technically controlled by or is susceptible to government control. In this approach, the Government's limited authority over the Board isn't inexorable in nature. Such restrained control is purely administrative, and that's all there is to it. In light of the foregoing and according to the opinion of the majority, BCCI cannot be considered as a state under Article 12. As a result, the writ filed under Article 32 is unconstitutional. Thus, the petition was held to be non-admissible in the court of law. However, as the remedy to the aggrieved party, the court stated that "when a private body, even if it is not a State, executes its public powers, the aggrieved party has a recourse not only under ordinary laws but also under the Constitution of India through the provision of a writ petition under Article 226." The court determined that BCCI performed public functions and that the aggrieved party if he/she wishes, can pursue the BCCI through a writ petition under Article 226 of the Indian Constitution.

CRITICAL ANALYSIS: CONCLUDING REMARKS

The Apex Court of India ruled that the BCCI does not certify as a "State" under Article 12 of the Constitution. By making use of the precedent of the Pradeep Kumar Biswas case, the court determined that the BCCI does not come under the term "other authorities" as stated in Article 12 of the Indian Constitution. The BCCI, as the single governing body for cricket in India, has exclusive control over an eminent fundamental right, i.e. Article 19(1)(g) of the Indian Constitution, which allows citizens to engage in trade, commerce, or profession. It must be acknowledged that this control should be exercised only by the Indian government. If it is

carried out by any other organisation, it must be designated as a "public function" by that authority and should be brought under the jurisdiction of the "State" to ensure that no fundamental rights are being violated. Despite the fact that BCCI is an autonomous entity that is not under the control of the Indian Government either financially, functionally, or administratively, the public nature and pervasive control of the Board must not have been overlooked while considering this matter. The Hon'ble Court decided that, while BCCI isn't a state within the definition of Article 12 of the Indian Constitution, a petition against it isn't maintainable under Article 32 and thus it is subject to the Article 226's writ jurisdiction because of the public nature of tasks and functions it performs. Any writ petition filed under Article 32 can only be made against the government. Hence, by not putting the BCCI under the "State", it is also impossible to pursue a writ petition under Article 32 against BCCI. And, if BCCI infringes on any citizen's fundamental rights, the Supreme Court will not hear a writ petition against it.