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Dr. Mukund Sarda
Principal & Dean, Bharati
Vidyapeeth University, New
Law College, Pune.

Termination of sports contract: a study in the light of Gavaskar's issue

Dr. Mukund Sarda

Abstract

The Board of Control for Cricket in India, though a private body registered under Societies Registration Act, it was held as amenable to Writ Jurisdiction for discharging public functions. In the recent period, the BCCI has come to adverse notice of the Supreme Court for indulging in acts which are not in the interest of the game of cricket. This paper focuses on the reported decision of the BCCI in terminating the contract by not renewing the same. BCCI apart from considering the huge fees paid to Gavaskar is making allegations that he has failed to toe the line of the Board. In this context various legal issues have been discussed, particularly the Wednesbury's doctrine. Suitable recommendations are made emerging out of the study, particularly to reconsider the decision of BCCI.

Keywords: Termination Simpliciter and Termination with stigma attached, Amenability to Writ Jurisdiction, Mutually beneficial society, Constitutional standards, Contract of service, Doping, match-fixation, Speaking order, Null and void ICC code of conduct for players and player support, Principles of natural justice

Introduction

1. The recent reported decision of the Board of Control for cricket in India (BCCI) ^[1] to terminate the contract with Gavaskar as a commentator has come as a rude shock to cricketing enthusiasts and followers of the game. Gavaskar happens to be a legendary figure in the sport of cricket and one would naturally expect that he would be retained to create a new generation of sportspersons in cricket, capable of competing in the international competing game and win the cricket games. The reasons attributed, appears to be that he is 'too expensive' that 'he has not toed the Board's view in his role as a commentator'. The news report ^[2] does not mention anything about legendary former opener as to how he failed to toe the board's line. Thus, it appears to be not a case of 'termination simpliciter' but is one of 'stigma attached'. Though the power of BCCI in not renewing the contract appears on the face of it as one vested with the exercise of contractual power, it is easy to comprehend that there is a hidden reason for not renewing the contract.
2. As BCCI is treated as amenable to writ jurisdiction ^[3] by virtue of various role played by it making it as a public functionary, the exercise of discretionary power to renew is subject to Wednesbury's principle, which requires the BCCI to act fairly, justly and reasonably. Legendary professionals like Gavaskar have the right to claim special fees and when it was accepted by the predecessor BCCI, it is equally binding on the present BCCI (as we have seen in various professions a special rate of remuneration is allowed for the eminent and veteran professionals. (To give an illustration an internationally renowned surgeon may claim a high rate of fees for an operation, when compared with local surgeon not of such eminence). For BCCI finances do not appear to be a problem, as it is said that it is an organisation self-sufficient in finance, and not dependent on Government, except for arrangements and facilities to be provided by Government when the sports events are conducted.
3. All is not well with BCCI as the apex court observed, ^[4] "accusations and malpractices and conflict of interest against those who not only hold positions of influence in BCCI but also own franchises and teams competing in the IPL format have left many a cricketing enthusiasts and followers of the game worried and deeply suspicious about what goes on

Correspondence
Dr. Mukund Sarda
Principal & Dean, Bharati
Vidyapeeth University, New
Law College, Pune.

in the name of game". Recently an apex court Judge remarked that BCCI is refusing to be reformed'. Yet according to another media report 'that the Supreme Court questioned the irrational method adopted by the BCCI for distribution of funds to State cricket associations and in doing so the BCCI', 'had created a mutually beneficial society'.^[5]

4. There appears to be a decision in making, that BCCI would terminate all such contracts (similar to Gavaskar's issue). This again may not satisfy the doctrine of reasonableness, which is akin to a decision of Central Government to cancel all petrol dealership on the ground that there was some irregularity in the allotment of some of them. This decision was finally quashed by the apex court.^[6] On the same parity of reasons, the decision of BCCI to cancel all sports contracts (as referred to) may be liable to be quashed.

In *Marsh vs. Alabama*,^[7] the Supreme Court of USA held that when a private corporation performs public function, it is bound by the constitutional standard applicable to all State actions. In *Sukhdev's case*^[8] the Supreme court held that the 'combination of State aid and furnishing of an important public service may result in a conclusion that the operation should be classified as a 'State agency'. When BCCI controls the sport of cricket and the control is so deep and pervasive exercising enormous public functions, it is obligatory for the BCCI to follow the doctrine of 'fairness and good faith',^[9] "despite the fact that it has been registered under Societies Registration Act".^[10]

5. In Sports contract, the important issue for consideration would be whether it is a contract of service or contract of employment. Master and servant relationship exists in a contract of service with fixed terms and terminable, if a duly stipulated notice for termination is given. Till the date of expiry, the contract continues and non-renewal of a contract would not constitute dismissal. However, it would be a case of gross misconduct on the part of the employer, if he dismisses the incumbent summarily.

6. Breach of Contract may arise for a number of reasons like incapacity of the player and inability to fulfil the contractual obligations. Reasons not attributable to misconduct may also be a case of termination like dropping of the player or due to frustration doctrine applying (Sec 52 and 58 of the Indian Contract Act).^[11] In *Gavaskar's case* it appears to be a case of misconduct attributable to him such as 'not toeing the line of BCCI and as such termination order is reviewable by the courts.

7. In *Sewaram's case*,^[12] the Supreme Court dealt with termination of contract such as :

- i. By performance
- ii. By express agreement
- iii. By the doctrine of frustration
- iv. By Breach of Contract

One instance of the application of the doctrine of frustration can be given as seen in *Ed Giddin's case*^[13], when the registration of the sports body was cancelled and also when the players of other Countries are not given visas. There could be ban on the players for violating rules such as doping, match fixation etc.

The law is well-settled^[14] that except in the case of three exceptions, there cannot be an injunction petition in a contract of personal service, either by positive or negative injunction or by a declaration that the contract subsists. The three

exceptions are:

- a) Art 311 of the Constitution of India which is applicable to Government servants;
- b) Statutory bodies or public bodies which are governed by the Statutes; and
- c) For industrial employees who are governed by Industrial Disputes Act.

8. There is no denial of the fact that when sportsman loses one season, it may result in ruining his career. One can see many instances when the player is dropped for one match, he is not to be seen for the rest of his career in the sports.^[15] Instances when the employer is guilty of misconduct clearly indicate that he is not intending to honour the terms of the contract and in such cases, the employee is entitled to leave without notice or at the end of the notice period but if he continues, he loses the right to be discharged as it amounts to electing to affirm the employer's contract.^[16] Instances such as 'bringing the sport into disrepute' are being used to impose harsh penalties in the exercise of employer's disciplinary sanctions. Not toeing the line of BCCI 'may perhaps be viewed in that context, invoking the application of principles of natural justice such as right of fair hearing, enquiry being conducted without any bias and such cases where the principles of natural justice is violated, courts have declared the decision of employers as null and void^[17]. After the fair hearing, the order passed must be "a speaking order" i.e., the order should give reasons for it. The ICC code of conduct for players and player support personal has incorporated the principles of natural justice referred to.^[18]

9. The argument that the worker's status is part-time will not find any excuse from compliance with ICC code No distinction between part-time and full-time^[19] employees could be made and thus *Gavaskar's* appointment is part-time does not hold any water.

10. By attributing to terminate order by BCCI in 'not toeing the line of BCCI' the BCCI is attributing some allegations which might have the tendency to offend the reputation of a legendary figure like *Gavaskar*. Reputation is a very important part of one's life and is one of the finer graces of human civilisation which makes life worthy living.^[20] If any wrong action of the State or its agencies, which sullies the reputation of a virtuous person, it would certainly come under the scope of Art 21.^[21]

Conclusion & Recommendations

In conclusion, the following suggestions are made:-

- i. BCCI comes within the writ jurisdiction for the exercise of its powers and is bound by the constitutional standards applicable to all State action.
- ii. In terminating or non-renewal of contracts the BCCI has to satisfy the standards of fair-play and reasonableness.
- iii. The decision of BCCI are reviewable by judiciary.
- iv. Natural justice principles have to be followed when accusations are made against sports-person.
- v. Non-renewal of contract because of some 'stigma' attached to the individuals are undoubtedly unreasonable;
- vi. Legendary figures like *Gavaskar* would have to be associated with matters connected with sports in order to make sports person to compete successfully in international events.
- vii. When the contract is concluded by predecessor Board

and accepted, it shall equally be binding on the successor BCCI.

- viii. Mere terminating contracts of all cannot justify the unreasonableness in the exercise of power in relation to Gavaskar.
- ix. It should be a matter of great honour and prestige for BCCI to retain legendary persons like Gavaskar for any capacity to which they are competent.
It should be like Emeritus professorship of retired professor in universities.
- x. as the BCCI has come to adverse notice in the eyes of the Supreme Court, it should take care to see that it acts fairly, honestly, judiciously and reasonably.
- xi. Case of Gavaskar requires rethinking and reconsideration by BCCI.

References

1. Board of Control for Cricket in India is referred to as 'BCCI' throughout this study.
2. See details of Times of India 5.4.2016 P1 and P.18.
3. Board of Control for Cricket in India's case AIR 2015 SCP 3194.
4. Ibid
5. See Deccan Chronicle dated 6/4/2016 at P.1 and P.15.
6. See for details Omkar Lal Bajaj vs. Union of India (2003) 2 SCC P.673 and 687.
7. 326 US P.501.
8. AIR 1975 SC P.1331.
9. Board of Control for Cricket in India vs. Netaji Cricket Club and others AIR 2005 SC P.392.
10. See Note 1.
11. See for details Section 52 and Sec 58 of the Indian Contract Act.
12. AIR 1993 SC P.212.
13. Sports and the Law Journal. 1997; 5(1):23.
14. SBI vs. S.N. Goyal (2008) 8 Sec 292. See also Svisi Municipality 1973; 1(SCC):58.
15. One Cricketer name Deepak Sudan who scored a century in his first appearance was not heard of till today in the game of cricket.
16. Western Excavating (ECC) Ltd. Case 1978; (1 CR):221.
17. See C.K. Thakker, Administrative Law, 216.
18. See for details ICC code of conduct for players and played support personnel. Document on 'Natural Justice.
19. G.M. Telecom vs. Nagpur (2001) Labour & Industrial Cases 2127 at Para 11. This has been reiterated in India Assurance Co 2008; 10(SCC):698.
20. Prof. S.N. Hegde vs. Lokayuktha, Bangalore, AIR NOC, 2004, 169 (Kant).
21. See for details Art 21 of the Constitution.