

LEX/BDAD/0054/2017

Equivalent Citation: 14ADC(2017)888

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION)

Civil Appeal Nos. 82-83 of 2013

Decided On: 26.07.2017

Appellants: **Secretary, National Sports Council and Ors.**
Vs.

Respondent: **Yousuf Jamil Banu and Ors.**

Hon'ble Judges:

Surendra Kumar Sinha, C.J., Syed Mahmud Hossain and Mirza Hussain Haider, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Mahbubey Alam, Senior Advocate and Shah Monjurul Hoque, Advocate instructed by Madhumalati Chowdhury Barua, Advocate-on-Record

For Respondents/Defendant: A.M. Aminuddin, Senior Advocate and Mahbub Shafiq, Advocate instructed by Shirin Afroz, Advocate-on-Record

JUDGMENT

Syed Mahmud Hossain, J.

1. Both the appeals by leave are directed against the judgment and order dated 27.01.2013 passed by a Division Bench of the High Court Division in Writ Petition No. 16831 of 2012 making the Rule absolute. The facts, relevant for the purpose of disposal of both the appeals, in a nutshell, are:

2. On 23.01.2012, the Executive Committee of the Bangladesh Cricket Board (BCB) called an Extra-Ordinary General Meeting (EGM) on 1st March, 2012 for considering amendment of its constitution. In the said EGM, the members present approved the amendment of the constitution of BCB. Accordingly as per provisions of Article 11.1 of the Articles of Association, the BCB by letter dated 28th August, 2012 sent the proposed amendment to the National Sports Council (NSC) and sought final approval. The NSC upon detailed study of the proposed amendment, by the letter dated 21st October, 2012 and 22nd November, 2012 incorporated certain amendments to the proposed constitution of BCB and directed BCB to include the said amendments in its constitution and thereafter, to forward two copies of the amended constitution to the NSC for approval. As per direction of the NSC, BCB inserted the said amendment in its constitution and forwarded the same to NSC. Thereafter, NSC by Memo No. এনএস/সি/১২০/৩/জেস/৩৩২৪ dated 29th November, 2012 approved the proposed amendment to the constitution of BCB.

3. Challenging the impugned amendment and the final approval of the Constitution (গণতন্ত্র) of the BCB so made by writ-respondent No. 4 vide memo No. এনএস/সি/১২০/৩/জেস/৩৩২৪ dated 29.11.2012 (Annexure-H), the writ-petitioners filed an application under Article 102 of the Constitution of Bangladesh and obtained Rule Nisi in Writ Petition No. 16831 of 2012.

4. Writ-respondent Nos. 3 and 5 contested the Rule by filing an affidavit-in-opposition controverting the material statements made in the writ-petition. Their case, in short, is that the BCB being an affiliated body of the NSC, NSC is legally

authorized under section 20A(a) of the National Sports Council Act, 1974 (in short, Act of 1974) to frame "model constitution" for all or any of the organizations affiliated to it. It has further been stated that in compliance with the provision of Article 26 of the constitution of BCB, the impugned amendment has been made and as such, allegation of non-compliance with the aforesaid provision does not arise at all. It has also been stated that the amended constitution has been made as per instructions and standard model of the International Cricket Council and that the present ad-hoc committee of BCB is discharging its functions accordingly as per amended Constitution of the BCB. In other words, the said impugned amendment has already been acted upon.

5. The learned Judges of the High Court Division upon hearing the parties by the judgment and order dated 27.01.2013 made the Rule absolute and declared the impugned amendment of BCB approved by Annexure-H to have been made without lawful authority.

6. Feeling aggrieved by and dissatisfied with impugned judgment and order passed by the High Court Division, writ-respondent Nos. 5, Secretary, NSC as the leave-petitioner filed Civil Petition for Leave to Appeal No. 573 of 2013 and writ-respondent No. 6, BCB and another filed Civil Petition for Leave to Appeal No. 431 of 2013 before this Division and obtained leave in both the civil petitions on 25.07.2013, resulting in Civil Appeal No. 82 and 83 of 2013.

7. Mr. Mahbubey Alam, learned Senior Advocate, appearing on behalf of the appellant (NSC) of Civil Appeal Nos. 82 of 2013, submits that BCB is an affiliated body of NSC and as per provision of section 20A(a) of the Act of 1974, the authority can frame model constitution for all or any of the organizations affiliated to it and as such there is no illegality in amending the constitution of the BCB but the High Court Division without considering the same made the Rule absolute and as such, the impugned judgment should be set aside. He further submits that the High Court Division failed to appreciate that a mere Article of the Articles of the Association of BCB, namely, Article 26 cannot curtail the power of National Sports Council (NSC) under the Act of 1974 and as such, the impugned judgment is not sustainable in law. He then submits that the High Court Division erred in law in failing to appreciate that section 20A(a) of the Act of 1974 read with section 21 of the General Clauses Act and Article 11(1) of the Constitution of BCB has empowered the NSC to frame and also amend the constitution of BCB and as such the impugned judgment is not sustainable in law.

8. Mr. Rakanuddin Mahmud, learned Senior Advocate, appearing on behalf of the appellant (BCB) of Civil Appeal No. 83 of 2013, submits that the amendment of the constitution has been made as per instruction of the NSC and the present ad-hoc committee of BCB is discharging its function as per amended constitution of BCB.

9. Mr. A.M. Aminuddin, learned Senior Advocate, appearing on behalf of the writ-petitioner-respondents of both the appeals, supports the impugned judgment delivered by the High Court Division.

10. We have considered the submissions of the learned Senior Advocates of both the sides, perused the impugned judgment and the materials on record.

11. NSC is an autonomous body constituted under National Sports Council Act, 1974 (Act No. XLVII of 1974)(in short, the Act of 1974). The Bangladesh Cricket Board (in short, the BCB) is a recognized national sports organization and an affiliated body of the NSC having its own Constitution under the name and style 'বাংলাদেশ ক্রিকেট বোর্ড গঠনতন্ত্র (২০০৮ সন পর্যন্ত সংশোধিত)' (Annexure-A) being approved by NSC.

According to Article 11.1 of the Constitution, BCB has the authority to amend its constitution subject to the approval of NSC.

12. Article 26 of the constitution of BCB prescribed the procedures for amendment of its constitution. Article 26 runs as under:

‘(ক) এই গঠনতন্ত্রের কোন সংশোধনী প্রস্তাব পরিচালনা পরিষদে আলোচিত এবং উপস্থিত সংখ্যাগরিষ্ঠ সদস্যের ভোটে সুপারিশকৃত হইতে হইবে।
(খ) সংশোধনী প্রস্তাব পরিচালনা পরিষদের অনুমোদনের পর তাহা নোটিশ আকারে সাধারণ পরিষদের সভায় ৩০ (ত্রিশ) দিন পূর্বে সকল কাউন্সিলরের নিকট প্রেরণ করিতে হইবে।
(গ) যৌক্তিক কারণ থাকা সত্ত্বেও কোন সংশোধনী প্রস্তাব পরিচালনা পরিষদে আলোচনার জন্য উপস্থিত না হইলে অথবা পরিষদ তাহা অনুমোদন না করিলে সেই ক্ষেত্রে সাধারণ পরিষদের এক-তৃতীয়াংশ সদস্যের স্বাক্ষরে প্রস্তাবটি সাধারণ পরিষদের সভায় উপস্থাপন করা যাইবে।
(ঘ) সাধারণ পরিষদের বিশেষ, তলবী অথবা মূলতলবী সভায় উপস্থিত সদস্যদের দুই-তৃতীয়াংশ সদস্যের সম্মতিক্রমে গঠনতন্ত্র সংশোধনী গৃহীত হইবে।’

13. According to the aforesaid provision, the Executive Committee of BCB convened several meetings and ultimately at its 34th Extra-Ordinary General Meeting held on 01.03.2012, the proposed amendment (Annexure-C-1) had been adopted and ultimately, it was forwarded to the Secretary, NSC for final approval. In response to such amendment, NSC sent a counter proposal by the letter dated 21.10.2012 (Annexure-E) to BCB with a request to incorporate certain provisions as enumerated in the attached index "ফাইলনং" of the proposed amendment to the constitution of BCB and to send back two copies of the same for its approval. The contents of the office letter dated 21.10.2012 (Annexure-E) is quoted below:

উপস্থিত বিষয় ও সূত্রের প্রেক্ষিতে মতামতের সময়
অন্যটির জন্য উল্লেখ করা যে, কলামদ
ক্রিকেট বোর্ড থেকে প্রেরিত কলামদ ক্রিকেট
বোর্ডের প্রস্তাবিত গঠনতন্ত্র (২০১২) জাতির ঐক্য
পরিষদ কর্তৃক নিম্নোক্ত প্রস্তাব প্রণয়ন করা হয়
পরিষদ কর্তৃক ক্রিকেট ও কলামদ বিষয় পরিকল্পিত
হয় যা পরিষদ আকারে দেখান হল।
পরিষদে উপস্থিত সংখ্যাগরিষ্ঠ সদস্য প্রস্তাবিত
গঠনতন্ত্র অনুমোদন কর সন্মত গঠনতন্ত্র
০২(দুই) প্রহ জাতির ঐক্য পরিষদ প্রেরণের জন্য
নির্দেশক্রমে অনুরোধ করা হল।’

14. BCB incorporated those recommendations as mentioned in the "ফাইলনং" and had sent two copies of the amended constitution to NSC by letter dated 26.11.2012 (Annexure-F).

15. What is important to mention here is that NSC accorded final approval to the amendment which was imposed by it. The contents of the approval as contained in Annexure-H to the writ-petition are extracted below:

জাতীয় ক্রীড়া পরিষদ
৬২/৩, পুরান পল্টন, ঢাকা-১০০০।

নং এসসপি/১২০/৩/জেল/৩০২৪ তারিখ ২৯/১১/২০১২ইং

প্রেরক: সচিব
জাতীয় ক্রীড়া পরিষদ, ঢাকা।

প্রাপক: সভাপতি
বাংলাদেশ ক্রিকেট বোর্ড
শেরে বাংলা জাতীয় স্টেডিয়াম
মিরপুর।

বিষয়: বাংলাদেশ ক্রিকেট বোর্ডের প্রস্তুতি-বিভাগ গঠনতন্ত্র
অনুমোদন প্রসঙ্গে।

সূত্র: নং বিসিবি/প্রশাসন/২০১২/৫৯১ তারিখ ২৬/১১/২০১২ খ্রী:

বর্ণিত বিষয়ে সুত্রোক্ত পত্রের মাধ্যমে প্রেরিত
বাংলাদেশ ক্রিকেট বোর্ডের প্রস্তুতি-বিভাগ গঠনতন্ত্র
আংশিক সংশোধিতাকারে পরিষদের মাননীয়
চেয়ারম্যান চূড়ান্ত ভাবে অনুমোদন করেছেন। উক্ত
অনুমোদিত গঠনতন্ত্রের এক প্রস্তুতি-বিভাগ এতদ সঙ্গ্রে প্রেরণ
করত: যথাযথ ভাবে কার্যকর করার জন্য
নির্দেশক্রমে আপনাকে বিনীত অনুরোধ করা হলো।
সংযুক্তি: পত্রমতে।
স্বা/-
২৯/১১/২০১২
(মো: শফিক আনোয়ার)
সচিব
জাতীয় ক্রীড়া পরিষদ

16. Now it is to be resolved whether NSC can amend the Constitution of the BCB of its own accord without the amendment being approved by BCB as per Article 26 of the Constitution.

17. Section 10 of the Act of 1974 deals with the function of NSC constituted under section 3(1) of the Act of 1974. Clause (b) of section 10 of the Act of 1974 provides that NSC shall have the power to grant recognition and the affiliation to the sports organizations. Section 12(2)(f) of the Act of 1974 provides that the Executive Committee of NSC shall have the power to issue such directives as it may deem necessary in the interest of promotion of the sports.

18. Section 20A of the Act of 1974, in particular, in clause (a) provides that NSC shall have power to frame model constitution for all or any of the organizations so affiliated to it. The relevant provision of section 20A of the Act of 1974 is quoted below:

"20A. Notwithstanding anything contained in any other law for the time being in force, or in any agreement, contract, memorandum or articles of association or any other legal instrument, the Council shall have power-

(a) to frame model constitution for all or any of the organisations affiliated to it;

(b).....

(c).....

(d).....

19. As regards the amendment of the Constitution, BCB has its authority to do so as per Article 26 of the Constitution as stated earlier.

20. In this connection, it is to be mentioned here that Article 11 of the Constitution of BCB provides the power of General Body (পরিষদ পরিষদ)। Article 11.1 states as under:

“অনুচ্ছেদ ১১: সংস্কার পরিষদের ক্ষমতা ৭
পরিষদ ক্ষমতী ও কর্তব্যসিদ্ধি নিম্নলিখিত হইবে
১১.১ বিধি, গঠনতন্ত্র, প্রস্তাব ও প্রস্তাবনা
সংস্কার। যাহা প্রস্তাবিত হইবে এবং পরিষদ
কর্তক অনুমতি হইতে হইবে।
১১.২ _____
১১.৩ _____”

21. There is no gainsaying the fact that NSC is the controlling authority of all sports organizations of the country including BCB. As per section 20A of the Act of 1974, the NSC has framed the Constitution of BCB or has approved the constitution as framed by BCB.

22. According to Article 11.1 read with Article 26 of the Constitution of BCB, the power to amend the constitution has been given to BCB subject to the approval of NSC. By section 20A of the Act of 1974, the legislator has given the power to NSC to frame constitution and pursuant to that power the constitution has been duly framed and NSC by doing so delegated the power of amendment of the Constitution to BCB with its approval. Record reveals that BCB in exercise of the power of amendment has effected amendments to its constitution on previous occasions with the approval of NSC. Pursuant to the provisions of Articles 11.1 and 26 of the constitution, a right has accrued to BCB to amend its constitution which cannot be curtailed by NSC. It is of course correct that NSC has the power to accord approval to any amendment to the constitution of BCB but NSC cannot impose any amendment on BCB. If such a practice is allowed then the provisions of Articles 11.1 and 26 of the Constitution of BCB will become meaningless. Moreover, BCB should be allowed to work freely in respect of amendments of its constitution without any direct interference by NSC which, of course, has the power to accord approval to such amendment.

23. It is contended that section 20A(a) of the Act of 1974 read with section 21 of the General Clauses Act, 1897 authorities NSC to amend the Constitution of BCB.

24. Section 21 of the General Clauses Act, 1897 provides as under:

"Power to make to include power to add to, amend, vary or rescind, orders, rules or bye-laws-Where, by any Act of Parliament or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

25. Under section 21 while the power to add, to amend, vary or rescind notifications, orders, rules or bye-laws are available such power does not include the authority to take away validly acquired rights. Under section 21 of the General Clauses Act, the power conferred on NSC is not plenary power so as to make the power of BCB nugatory so far the amendment of the constitution is concerned unless such power is expressly conferred by the parent statute.

26. The power conferred under Article 11.1 read with Article 26 of the Constitution is derived from the Act of 1974 and NSC had delegated the power to BCB to amend its constitution. By the memo dated 21.01.2012 (Annexure-E) NSC gave direction to BCB

to include the proposed provisions in the Constitution of BCB and pursuant thereto BCB included those proposals of NSC and sent two copies of its constitutions to NSC for approval. NSC cannot do so in exercise of power under section 21 of the General Clauses Act ignoring the procedure for amendment of the constitution as contained in Articles 11.1 and 26. NSC, in fact, has usurped the power of BCB to amend its Constitution.

27. Therefore, the High Court Division was justified in making the Rule absolute.

28. Having considered all aspects of the case, we are of the view that the BCB is at liberty to amend its Constitution at any time as per provision of Article 11.1 and Article 26 of its Constitution so that the requirements of International Cricket Council is met subject to the approval of NSC. Accordingly, both the appeals are disposed of with the observations made in the body of the judgment.

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