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The Conundrum of Competition Law in Sporting Authorities: Challenges and Way Forward

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ABSTRACT

Regulating sporting authorities presents a difficult conundrum from a Competition law standpoint. The absolute power of these authorities and handling anti-trust matters creates a disparity in its jurisdiction point of view. Sports has been competitive traditionally, but a growing economy and two-faced force, namely globalisation and industrialisation, has turned sports into a global business². Organising sports nowadays have had a unique evolution, where the sporting authorities expense millions of cash to organise the same. The advertisement sponsorship, Ott rights, and many other sponsorships provide an unimaginable digit profit to the authorities; there, anti-trust's question comes in; it is said that in the last IPL (2020) board (BCCI) almost have had 220-million-dollar sourcing³. Tiger woods, an internationally renowned golf player, made 2.07\$ million by winning the 2019 title.

In India, the competition commission scrutinised BCCI and All India Chess Federation for their anti-competitive behaviour, especially their abuse of dominant position. Sports governance is still new age to the Indian Governance model. Competition Law in the EU⁴ governed the sporting authorities for decades in India; it is still evolving. The monopolistic nature of sporting authorities has resulted in many economic problems as revenue sharing, non-clause profit and credits. These problems inevitably attracted the attention of the competition commission, which aims to secure the market by assuring fair play. This paper will discuss sports governance and competition law and cases in India.

Keyword: *Sports Governance, Monopolistic Practice, Competition Law, Abuse of Dominance, BCCI Case.*

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²Bhattacharjee, S., 2021. How competition law is affecting sports in India: a look at the emerging case law - LawInSport. Available at: <https://www.lawinsport.com/topics/regulation-a-governance/item/how-competition-law-is-affecting-sports-in-india-a-look-at-the-emerging-case-law?category_id=157> [Accessed 31 December 2021].

³ Rough data on statistical websites and new channel, Kindly Pardon, if there's any huge disparity,

⁴ Abbreviation for, European Union

I. WHAT IS SPORTS GOVERNANCE?

“Good Governance does not guarantee success, but the absence of it certainly assures guarantees failure.”⁵

The above quote itself describes the need for governance in sports. Now Sports Governance is a two-faced process, where one evolves the Oversight⁶, i.e., To ensure that the authorities follow the rules and regulations accordingly (including, Legislation, code of conduct and other bye-laws). Secondly, Direction refers to the overall functioning of the authority to facilitate sports and to ensure etiquette by the official likewise, interaction with young players, assuring good grounds for practices and developing sports science and infrastructure. This thing ensures the governance of the sport and makes a certainty to fair play in sports. The whole concept of competition law is under the sphere of Good governance.

Governance has two forms. The first one is organisational governance that establishes the working and governing methodology of the organisation. It refers to the method of how an organisation should be managed what its key structure needs to be followed are. It involves dynamic composition, the structure of the organisation and its responsibility of it. Secondly, there is systematic governance dealing with the federal distribution of power and pyramidal structure of organisation for better governance and organisation balance and to refrain abuse of power. This governance shall include collaborating and assuring institutional performance by the shared outcome.

II. INTRODUCTION

The size of the sports industry in India is estimated to be around INR 5894 crore that is (796 million \$)⁷. With employment opportunities and the dream destination of many youths, Sports is the most celebrated sector in India. But when it comes to economic perspective, India lacks proper functioning of sporting agencies in terms of revenue sharing, credits and monetary activities. Unfair practice in sports appears in different forms. It can be physical unfair practice, cheating or unfair financial practice. Competition Law henceforth deals with unfair trade practices. It is to be noted that most of the private players are regulated by an umbrella agency that has to say over most of the financial decisions taken by the player. So, the players’

⁵Australian Sports Commission, Governance reform in sport. 2016, Canberra:

⁶Shilbury, , L. Ferkins, and L. Smythe, Sport governance encounters: Insights from lived experiences. Sport Management Review, 2013. 16(3): p. 349-363

⁷ Bhattacharjee, S., 2021. *How competition law is affecting sports in India: a look at the emerging case law - LawInSport*. [online] Lawinsport.com. Available at: <https://www.lawinsport.com/topics/regulation-a-governance/item/how-competition-law-is-affecting-sports-in-india-a-look-at-the-emerging-case-law?category_id=157> [Accessed 31 December 2021].

exploitation over revenue sharing and credit transfer are associated mainly with the governor body and player or governing body and other entity. In India, cricket is considered a most crowded and popular game, hence making more green money from the market; the BCCI is the sole body and what if BCCI is practising unfair trade or abusing its dominant position? The same issue is to be addressed by the competition law governing body competition commission. Unfair practise is a very broad term; it may be done by sponsors with players or sportsmen with a franchise or regulatory body with sponsors. Competition commission envisages all such cases related to economic activities and revenue making under the definition of enterprise.

(A) Competition Law framework in India

The competition law in India is regulated by the competition commission of India created by the Competition act, 2002. Earlier, the law was governed by MRTP Act⁸, referred to as monopolies and restrictive trade practices. The act was introduced in the year 1969. The act's primary focus was to cease monopoly trade practices, but it lacks the accountability for ensuring fair trade practice. So, the same was repealed in the year 2002 by the competition Act. The later act focuses on preventing unfair trade practices and adverse effects on the market. It promotes fair trade practice and ceases anti-competitive agreement⁹ and abuse of dominance under section 3 and section 4, respectively. The competition law is still in its novice stage in India. Comparatively, with USA and EU, the competition law in India is also explored in different industries having revenue generation and market. The cartel formation is also on the check by the competition commission, and the sports sphere is a new addition to the journey of competition law in India. With pronouncements over BCCI abuse of dominant power, the commission marked its presence in the sporting world.¹⁰

(B) Competition Law in Sports; Confluence of Competition Off Field

The modern century could not separate economy and sports. For any country, Sports is a significant contributor to the economy. In Europe, football league matches construe around 1.7 percent of total GDP. Similarly, sports are recognised as a substantial sector in India and enthralling millions of youth dreaming for the same. The country is rich in sporting events, with more than 100 sports facilities and 288 SAI training centres. The growth of professional sports is of international standard in India. Government-based programmes such as khelo India,

⁸The Monopolies and Restrictive Trade Practices Act, 1969

⁹ Section 3 Competition Law

¹⁰Malik, S., 2021. "Role of Competition Law in Sports". [online] Penacclaims.com. Available at: <<http://www.penacclaims.com/wp-content/uploads/2020/02/Saksham-Malik.pdf>> [Accessed 31 December 2021].

the National development programme for sports scheme, and Panchayati Yuva Khel¹¹ are organised events by India's government. The growth of the professional sporting culture also resulted in disparity and economic truff by the authorities over sharing of profit, treatment to the players, rights to OTT platforms. These problems inevitably attracted the attention of the competition commission, which aims to secure the market by assuring fair play.

The development of competition law is still in its novice stage in India. Comparative analysis with the EU, the law is unclear on many issues over OTT rights, digital media rights, and others. Competition commission over the years been regulating the market, and the interface of competition law in sports came to light after a few of the scrutinised cases on BCCI¹² and chess federation of India. The two cases will be discussed in this paper.

(C) Cricket League case (BCCI and ICL conundrum)

Competition Commission of India scrutinised one of the cases between BCCI and ICL (International cricket league) Case - A complaint got filed against BCCI alleging it over section 4 of competition law 2002 that is an abuse of dominant position by the authority. The circumstance was

- Introducing Indian premier league (IPL) as the same format to ICL - a move to counter the league.
- Restricting various stakeholders, players, officials to take part only in events organised by BCCI or subsidiary.
- Imposition of a virtual ban on players participating in ICL¹³

1. BCCI is not an enterprise

The counsel argued that BCCI is not an enterprise. It is not driven to earn profit and do business; rather, it facilitates and foster the cricketing spirit and endorse the players and game. The argument was rejected as being involved in the economic growth of the said, and DG clarified it as BCCI indulged in revenue aspect, the same shall fall into the scope of economic activities. So, the commission gave BCCI a valuation of the enterprise.

“Position of Dominance– The roots of BCCI's dominance sprouts from the fact that it is the sole regulator for the game in the country. Section 4 of the Act chalks out the meaning of dominant position in words “dominant position means a position of strength, enjoyed by an

¹¹Objectives of Panchayat YuvaKrida Khel Abhiyan, PRESS INFORMATION BUREAU

¹²Abbrev. For BCCI, Board of control for cricket in India

¹³*Pan India Infra projects Private Limited v. Board of Control for Cricket in India (BCCI), Case No. 91 of 2013*

enterprise in the relevant market”. BCCI handles all the major aspects of the game ranging from providing organisational facilities to exercising complete control over the participants in the game. The adjudicating authority while assessing its position also considered BCCI’s attitude towards ICL.”¹⁴

IPL and ICL were at loggerheads with each other

“The problem arose with a new entrant in the cricket world, namely ICL, which was brought on board by the Zee group. To some degree, the entry of ICL had the potential to jeopardise the dominant position enjoyed by BCCI in the relevant market as it came into the market as a rival competitor. For the purpose of maintaining its gate-keeping, BCCI resorted to certain harsh practices against those players who decided to participate in ICL and against the ICL itself. Such harsh practices firstly include discontinuance of the journey of such players from playing in the Indian Cricket team as well as in the domestic matches permanently. Secondly, BCCI denied ICL access to use the stadiums, and other essential facilities which are in complete control of it whose access, if not provided, can create a substantial barrier for ICL. This constituted as one of the strong reasons for ICL turning into a catastrophe.”¹⁵

2. Analysing

For BCCI, the relevant market was identified as private, professional cricket and events related to it¹⁶. CCI found under DG investigation, BCCI being the only regulator, has created a monopoly in the game, which ceases other sporting agencies to grow in the market by introducing barriers in the players, league and stakeholders and other supplementary rights. So, the commission found BCCI primarily guilty as of section 4 abuse of dominant position by the authority on the ground of imposing the other party restriction to enter into the relevant market by not recognising it and putting barrier clauses in their players. In this instance, DG alleged BCCI and asked for 52.25 crores as a penalty for abusing its dominant position.¹⁷

The presence of competition commission in the sporting Industry was shown in the case where it was seen how private bodies could have a humongous impact on the relevant market. The ICL was a league supported by our entertainment and other associates, but with the introduction of IPL, the league demise rapidly, and IPL made a huge market capitalisation with the overall

¹⁴iPleaders. 2021. *Role of competition law in sports commercialization in India - iPleaders*. [online] Available at: <<https://blog.ipleaders.in/competition-law-sports-commercialization/>> [Accessed 31 December 2021].

¹⁵iPleaders. 2021. *Role of competition law in sports commercialization in India - iPleaders*. [online] Available at: <<https://blog.ipleaders.in/competition-law-sports-commercialization/>> [Accessed 31 December 2021].

¹⁶See SUPRA note 13

¹⁷Re Surinder Singh Barmi v. Board of Control of Cricket in India, Case No. 61/2010

asset being more than 7 billion dollars¹⁸.

(D) Chess federation case (AICF)

All India Chess Federation was declared an enterprise under section 2(h) of the competition act. It has some discretion over organising professional chess events and revenue sharing like BCCI in *Surinder Singh barmi and Dhanraj pulley case* (Hockey). The Delhi high court made this decision.

The federation introduced a few of the restrictions as

- Refrain completely from taking part in any of the unsanctioned events
- Share 50 % of any monetary gain from any other league with the federation.

The relevant market was defined as “Organising events of chess tournaments in India”¹⁹. The findings declared AICF in contravention of the provision of section 4 competition act. The reasons were as it is the only somebody organising the events of chess, and it is restricting the other entity to enter into the market by making their players sign the agreement resulting in them being unable to take part in any other event²⁰.

The pyramid structure of sports governance in India acknowledge a very strong regulatory measure, and the government of India shall take time to time look and regulate these agencies. In most of the cases dealing with sports agencies, the case majority relates with the regulatory function and economic activities; the competition commission is a sole body looking after case by case, and the government shall address the same from time to time²¹.

III. ANTI-TRUST EXEMPTION OF BASKETBALL IN USA

Baseball is one such traditional sporting event in America; back in the 1850s, it was a cultural event, and anticipation of any commercial viability was near. With a growing economy and capitalism, baseball is worth over 1.65 billion dollars²². Leagues like NFL and MLB are making all the greens from their events. In the year 1922, the first case in the sporting industry was subjected to anti-trust laws; the case was of the Federal Baseball club of *Baltimore, Inc v. National league of professional basketball clubs*²³. This case was the first case where the question of anti-trust in sports arose and was granted exemption from anti-trust law. The

¹⁸IPL brand value rises 7% to \$6.8 billion in 2019, THE HINDU BUSINESS LINE (12 October 2019, 5:09 PM),

¹⁹*Hemant Sharma v. All India Chess Federation*, Case No. 79 of 2011

²⁰*ibid*

²¹ *ibid*

²²Mike Ozanian, Baseball team values 2018, FORBES

²³*Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922) [hereinafter *Federal Baseball v. NLPBC*].

complaint was made against the baseball league over violation of the Sherman act. The league introduced the “reserved clause” for a player that gives them perpetuity in their contract period.²⁴

The decision was in favour of the complainant. Still, it was reversed in the appeal court, where it was held that the matches played in MLB is only under a state, and even if clubs are located elsewhere, the same shall not be subjected to interstate trade. Henceforth, it is not a subject to be regulated by federal anti-trust law.²⁵

The exemption permitted in the Baltimore case had an enormous scope and was followed for years, but in 1993, the concept of the reserved clause was narrowed. In the case of *Piazza v. Major League baseball*²⁶, a court held that the anti-trust would be subject to the sporting league restraining sale, purchase, transfer of player, relocation and transfer of terms and conditions. It resulted in the amendment of the Sherman Act, which narrowed down the concept of the reserved clause and its exemption. Now the exemption is provided to all the players like other sports events, and it involves the authority to court over directly affect the employment of the baseball players. The exemption on franchise location got reaffirmed in 2015 in the case of *Portland baseball*. This was one such example where anti-trust law exempted up to a certain extent.

IV. CONCLUSION: A WAY FORWARD FOR COMPETITION LAW IN SPORTS

The growing technology and introduction of innovations in the sports industry. The online platform is more into the economically viable option for the sorting agencies. The economic benefits of OTT rights, broadcasting rights, online sponsorship is a more revenue-generating method. We have seen how in Europe in the time of the covid pandemic, the matches were played in empty stadiums, and the sales were made on digital platforms, making a lot of green cash by these authorities. The rights were shared between BT sports and amazon, signifying diversity in the relevant market. None of the less, the competition commission seeks to address these issues by balancing the concepts with IT law, 2000 and the competition act 2002. The government also needs to bring the legislation to facilitate these online streaming and ensure fair play in the market.

Few of the suggestions, I would like to make

- Certain accountability must be there on the part of these agencies. A rule book over

²⁴*Idib.*

²⁵Federal Baseball v. NLPBC, supra note 21

²⁶*Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993).

these shall be introduced, and any infringement to that shall result in abuse of competitive ethics.

- A fair market can be achieved by fair play; that is, transparency in sporting events shall be paramount, rejection of any player, the sponsorship details, distribution of media rights shall be fair, clear and transparent so that it hindrance by the competitive authority be reduced.
- It is also hard for the sporting bodies to organise an event and to ensure perfection. So, a minimum hindrance shall be done by the commission and accountability and Independence shall be harmoniously interpreted.
- The board entirely depends on the revenues generated by the private players, so the government involvement over revenue sharing will discard weights from the shoulder of the authority.
