

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
NOTICE OF MOTION (L) NO.686 OF 2018
IN
WRIT PETITION NO.1286 OF 2018

Mumbai Cricket Association ...Applicant

In the matter between

Nadim Memon ... Petitioner

Vs

Mumbai Cricket Association
 & Ors. ... Respondents

...

Mr. A.S.Khandeparkar with Mr. V.V.Warerkar I/by Warerkar & Warerkar for the Applicant.

Mr. Som Sinha I/by Som Sinha & Associates for the Respondent No.19.

Mr. Vineet Unnikrishnan, Ms. Karishni Khanna I/by Cyril Amarchand Mangaldas for R.No.6.

Mr. M.A.Saiyed, AGP for State.

CORAM :SANDEEP K. SHINDE,J.
(VACATION COURT)

DATE : 6TH NOVEMBER, 2018

P.C. :

Mentioned. Not on board. Taken on board.

The Mumbai Cricket Association/Original Respondent No.1 (In short 'MCA') has filed this Notice of Motion on 2.11.2018 wherein following reliefs are sought:

“(a) that this Hon'ble Court may be pleased to pass appropriate order to constitute and appoint an ad hoc committee of said five eligible members of the Managing Committee of Applicant association along with its Chief Executive Officer Mr. C.S.Naik or a Committee of such other persons as this Hon'ble Court may deem fit and proper to take



over charge of the affairs of the Applicant association with immediate effect with powers to take financial and administrative decisions concerning the matters more particularly described in Exhibit "E" and "F" to the affidavit in support of the Notice of Motion and continue till the Apex Council stands elected and takes over charge from said ad hoc committee;

(b) for interim/ad-interim relief in terms of prayer clauses (a) herein above;"

2 Vide order dated 6.4.2018, the Division Bench of this Court in Writ Petition (L)No.752 of 2018 (in terms of the Minutes of the Order) appointed a committee of administrators comprising of Mr. Justice H.L.Gokhale, former Judge of the Hon'ble Supreme Court (Chairman) and (2) Mr. Justice V.M.Kanade, former judge of the Bombay High Court (Member) for the purpose of ensuring implementations all the directions contained in the Principal Judgment as well as the steps set out in the timelines issued by the Hon'ble Justice Lodha Committee pursuant thereto. The Committee of Administrators were to take charge within a period of one week. Until the Committee of Administrators would assume charge, the following persons viz. (A) Adv. Ashish Shelar (President) (B) Prof. Dr. Unmesh Khanvilkar (Jt. Hon. Secretary), © Mr. Navin Shetty (Committee Member), (D) Mr. Shahalam Shaikh (Committee member), (E) Mr. Ganesh Iyer (Committee member) and (F) Mr. Arman Mallick (Committee member) were appointed to look after the management and administration of the Mumbai Cricket Association including



all work concerning the smooth running of the 11th Indian Premier League tournament. During this interim period, Adv. Ashish Shelar and Prof. Dr. Unmesh Khanvilkar were authorised to sign cheques and/or operate the bank accounts on behalf of the Mumbai Cricket Association for routine payments.

3 The Committee of Administrators took charge of the administration of the Association on 11.4.2018 and thereafter drafted Constitution of the Association and decided to hold special General Body meeting of the Association to consider the amended Constitution or before 15.4.2018. In the meantime, the Hon'ble Supreme Court of India in its order dated 1.5.2018 had taken a view that it would finalise BCCI Constitution by 7.5.2018 and thereafter Association would amend their Constitution to bring the same in synchronisation with the BCCI Constitution. The Hon'ble Supreme Court, however, could not finalise the Constitution of the BCCI and, therefore, Constitution which was sync with the BCCI Constitution could not be placed before the General Body of MCA on or before 15.6.2018 nor elections were held before 31.7.2018. In the circumstances, vide order dated 15.6.2018 in Notice of Motion NO.267 of 2018, this Hon'ble Court was pleased to extend the time to hold the elections for a period of three months from 15.6.2018 and also extended period by two months to carry out amendment.

4 It may be stated that subsequent to the order dated 15.6.2018 passed by this Court, there was change in the circumstances in view of the order passed by the Supreme Court on 5.7.2018 in Civil Appeal No.4235 of 2014 which reads as under:

“As an interim measure, it is directed that as we are going to finalise the draft constitution, no High Court shall entertain any prayer with regards to appointment of any Administrator hereinafter on the basis of the communication sent by the Committee of Administrators...”

It is further directed that no election shall be held hereinafter.

5 That on 2.8.2018, the MCA filed Notice of Motion (L) NO.478 of 2018 and sought following reliefs:

“(a) that this Hon'ble Court may be pleased to pass appropriate order by permitting the Committee of Administrators (COA) to hold a General Body meeting of the members of Respondent NO.1- Association to amend the Constitution in accordance with rules of Respondent NO.1 after the Hon'ble Supreme Court of India finalises the constitution of BCCI and also permitting Committee of Administrators to hold elections of the Managing Committee of Respondent No.1 in accordance with rules of Respondent No.1 as may be amended after the decision of the Hon'ble Supreme Court.”

6 Thus, vide Notice of Motion (L) No.478 of 2018, appropriate order was sought to hold General Body meeting of members of the MCA, to amend the Constitution in accordance with rules of association after the Hon'ble Supreme Court of India finalises the Constitution of the BCCI and to



hold the elections of the managing committee of the Association in accordance with rules as may be amended after the decision of the Hon'ble Supreme Court. The Division Bench, however, upon noticing the order dated 5.7.2018 passed in Civil Appeal No.4235 of 2014 by the Hon'ble Supreme Court has disposed of Notice of Motion (L) No.478 of 2018 on 29.8.2018 and held, thus:

“8 We are of the view that judicial propriety demands that since the issues which are sought to be raised in the present Petition are pending before the Hon'ble Supreme Court of India and when there is a specific direction issued by the Hon'ble Supreme Court in its order dated 05/07/2018 directing High Court not to appoint any Administrator and further that the extension granted by the order passed by Division Bench of this Court on 15/06/2018 is likely to expire on 15th September, 2018 and further that learned members of the Committee have themselves expressed their unwillingness to continue as Administrators, it is appropriate for the parties to move the Hon'ble Supreme Court of India seeking appropriate directions.”

In paragraph 11, the Division Bench held that continuation of the Committee of the Administrators dated 15.9.2018 is subject to any order passed by the Hon'ble Supreme Court.

7 The order dated 29.8.2018 passed by the Division Bench in the Notice of Motion (L) No.478 of 2018 was carried before the Hon'ble Supreme Court wherein following order is passed:

“ We have examined the order dated 29.8.2018 passed by the Bombay High Court in Notice of Motion (L) No.478 of 2018. We find that the High Court carried the impression that certain issues are pending before this Court and this Court has passed an order dated 5.7.2018 in Civil Appeal No.4235 of 2014 etc., directing the High Court not to appoint any Administrator. In this view of the matter and

for some other ancillary reasons, the High Court declined to exercise its jurisdiction.

We have examined our order dated 5.7.2018 relied on by the High Court for declining to exercise its jurisdiction. The operative part of that order reads thus:

“As an interim measure, it is directed that as we are going to finalise the draft constitution, no High Court shall entertain any prayer with regards to appointment of any Administrator hereinafter on the basis of the communication sent by the Committee of Administrators...”

It is common ground before us that draft constitution of the BCCI has been finalised and registered by the appropriate authority.

Now we do not see any impediment in the way of the applicants approaching the Bombay High Court for appropriate relief as may be advised.

As prayed for by learned counsel appearing for the applicants, these applications are dismissed as withdrawn with liberty to approach the High Court for appropriate relief as may be advised and permissible in law.”

8 Thus, in view of the liberty granted by the Supreme Court, present Notice of Motion is filed on 2.11.2018 in which reliefs as stated hereinabove are sought.

9 Heard Mr. Khandeparkar the learned counsel for the Petitioner, Mr. Som Sinha for the Respondent No.19 and Mr. Vineet Unnikrishnan for Respondent No.6.

10 It is an admitted fact that as on today except the Chief Executive Officer, there is none to look after the administrative affairs of the Applicant-Association. It is brought to the notice of this Court that Association has to



defray day-to-day expenses and pay the statutory dues like professional tax, provident fund of its employees. Besides, remuneration and salary is payable to its employees and coaches. Schedule of monthly expenses at page 195 shows there are 61 permanent employees of the Association besides, contract employees. Every month Association has to spend about 83,48,000/-. As on today in the absence of committee association is unable to pay statutory dues including the salaries of its permanent employees for want of authority. In other words, entire affairs of the association has come to stand-still. In the given set of facts, Mr. Khandeparkar would urge that it is need of the hour to appoint a ad-hoc Managing Committee of 5 members, who are otherwise eligible to be appointed as members of the Managing Committee of the Association along with its CEO to discharge day-to-day administrative functions of the Association. He would submit that in the given circumstances, a Committee of following four persons along with CEO be appointed as ad-hoc committee to carry out day-to-day administrative functions of the Association with power to discharge financial obligations. He would, therefore, suggest that, Dr. Unmesh Khanvilkar, the then Joint Hon'ble Secretary and Mr. C.S.Naik, CEO may be appointed as authorised signatories to sign cheques, operate bank account so as to enable the ad-hoc committee to defray the monthly expenditure as mentioned in Chart at page 195.

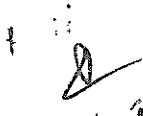
11 Mr. Khandeparkar has invited my attention to the order dated 6.4.2018 passed by this Court whereby the Ad-hoc Committee was appointed until committee of Administrators would take the charge. He would submit that ad-hoc committee may be appointed on the same line.

12 Mr. Som Sinha appearing for the Respondent No.19 and Mr. Vineet Unnikrishnan appearing for the Respondent No.6 have conceded to this position and have no objection if the ad-hoc committee of the following persons is appointed to look after day-to-day administrative functions of the said Association till the apex council assumes the charge of the Association.

13 In view of the facts as stated hereinabove, following ad-hoc Managing Committee is constituted:

- (1) Professor Dr. Umesh Khanwilkar
- (2) Mr. Navin Shetty
- (3) Mr. Shahalam Shaikh
- (4) Mr. Ganesh Iyer and
- (5) CEO Mr.C.S.Naik

14 On this point, Mr. Vineet Unnikrishnan, learned Advocate appearing for the Respondent No.6 would submit that his instructions are



limited to consent appointment of Dr. Unmesh Khanvilkar and CEO Mr. C.S.Naik.

15 Be that as it may, the committee as constituted hereinabove shall look after day-to-day administrative functions of the Association and shall not take any major policy decision without first obtaining leave of this Court. Mr. Dr. Khanvilkar and CEO Mr. C.S.Naik are hereby appointed as authorised signatories to operate bank account of the Association jointly. The Bank shall permit these two persons to operate bank account jointly. It is further clarified that nature of expenses enumerated at Page 195 are not exhaustive in nature and the said committee shall incur the necessary expenditure for carrying out the smooth functioning of the Association. However, the said Committee is directed to submit audited statement of income and expenditure with better particulars to this Court quarterly.

16 With this direction, Hearing of the Notice of Motion is deferred to 1.1.2019.

SK
(SANDEEP K. SHINDE, J.)

True Copy

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6/11/2018

(Associate)

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