

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

Second Appeal No.: CIC/MOYAS/A/2018/123236

Smt. Geeta Rani

Appellant

Versus

CPIO, M/o Youth Affairs & Sports

Respondent

Order Sheet: RTI filed on 04.12.2017, CPIO replied on 14.12.2017, FAO on 02.02.2018, Second appeal filed on 12.04.2018, Hearing on 01.10.2018;

Proceedings on 26.06.2018: Appellant absent, Public Authority represented by Mr. Arun Kumar Singh, Under Secretary. Directions and show cause issued.

Proceedings on 01.10.2018: Appellant represented by Mr. V.M. Popli, Advocate and Mr. Subhash Chandra Agarwal at CIC, Public Authority represented by Mr. Ashok Kumar Patro and Ms. Bihu Sharma, Advocate at CIC;

Date of Decision – 01.10.2018: Disposed of with directions.

ORDER

FACTS:

1. The appellant sought information about provision/ guidelines under which the BCCI has been representing India and selecting players for the country. He specifically sought for whether the players selected by BCCI are playing for India or BCCI, how can BCCI (a Pvt. Association) represent our country in the National/ International cricket tournament, what is the benefit of Indian Govt. to give rights/ authority to BCCI to represent our country in Domestic and International Tournament etc through 12 points. The CPIO replied on 14.12.2017 that the information is not available with the undersigned CPIO and BCCI has not been declared as Public Authority, hence RTI Application could not be transferred to BCCI. The appellant filed the first appeal regarding the same. The FAA upheld the decision of CPIO. Being dissatisfied with the above response the appellant approached this Commission.

2. The Commission's order dated 10.07.2018:

2. Mr. Arun Kumar Singh, Under Secretary submitted that the Law Commission's declaration as public authority is still under examination. He attended the hearing without any supporting documents and hence this Commission summoned entire files concerning to the subject matter. Upon perusal of the files including note-sheet, communication/correspondences, submitted by the respondent public authority, Commission finds it necessary to hear the question whether BCCI is public authority under section 2(h) of RTI Act, 2005.

3. The appellant has raised a very important issue regarding the status of the Cricket team selected by BCCI. Her question whether it is "a Team India" or "Team BCCI", raises an issue of exclusive authorisation of BCCI to select team for India. In fact, this exclusiveness of authorisation created a monopoly in favour of federal body of sports for Cricket called BCCI and because of which all its wealth is created. The Apex Court and other High Courts have expressed many a time that the BCCI performs a public function and it is straight away related to public activity because of which the BCCI should be accountable to public in general and in public interest. There have been several doubts raised by Ministry of Law and Ministry of Youth Affairs and Sports, even after the recommendation of the Law Commission as to whether the BCCI do come under the purview of RTI Act.

4. The Commission thinks that it is the responsibility of the Central Information Commission to put an end to this prolonging uncertainty which makes the BCCI non-transparent and unaccountable without any moral backing and legal reasoning. Hence, the Commission thinks in public interest, in the interest of fair Cricket and for fair process of selection of Indian Cricket team members, the BCCI should be made transparent, accountable and answerable under the Right to Information Act, 2005.

5. Hence, the Commission directs the CPIO/authorized representative of BCCI to explain why the Commission should not declare the BCCI as public authority in view of various judicial pronouncements and the Law Commission's recommendation in its 275th Report.

6. The Commission also directs the CPIO of Ministry of Youth and Sports Affairs to present their case in this regard. All the written explanations should reach this Commission on or before 31.07.2018. The instant case is posted for compliance on 01.08.2018 at 3:00PM.

Decision :

3. Shri A.K. Patro, Under Secretary in his note bearing no. F.9-10/2015/SP.I, Government of India, Ministry of Youth Affairs and Sports put up before Director (Sports), explains as under:

"Government of India has promulgated the RTI Act 2005 on 15/6/2006 to achieve, inter-alia, the objective of "setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

2. In clause 2(h) of the above Act, the public authorities have been defined which are as under:-

"(h) "public authority" means any authority or body or institution of self-government established or constituted.

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

3. From the preamble of the Act read with the definition of the 'public authority', it is clear that the Government and their instrumentalities are accountable to the Governed for providing information as per the Act. From the definition of the 'public authority' it is also clear that any institution/body/organisation established or constituted under law of the parliament is a 'public authority'. Hence, all the sports organisations registered under these Acts are 'public authorities' whether recognized and funded by the Government or not.

4. In so far as the Sports bodies working in India are concerned, those are registered either under the Societies Act or under the Companies Act. These laws are promulgated by the Parliament. Hence all the sports organisation registered these Acts may have to be declared as public authorities as per the provisions of the RTI Act 2005 whether recognized and funded by the Government or not.

5. The rationale behinds these provisions may be due to the fact that all the bodies which discharge 'State' like functions should be transparent in their functioning and remain accountable to the governed i.e. the public. Some of the State like functions discharged by this kind of bodies, though not recognized/funded by the Government are given below:-

i) using India or Indian in their nomenclature.

ii) selecting Indian teams for their sports discipline.

iii) participation on behalf of the country in the Seminars, conference etc. at the international fora.

iv) inviting foreign delegates to India on behalf of the country.

v) raising funds from various organizations and public for use in sports activities and other public purposes.

6. Vide this Ministry's letter No. F.36-2/2010/SP.II dated 21/4/2010 all the NSFs receiving grants of Rs. 10.00 lakhs have been declared as public authority under Section 2(h) of RTI Act. Since, only the recognized organizations are receiving grant from this Ministry, the provisions of RTI Act does not seem to be fully implemented since this order does not cover the federations which are not recognized by MYAS.

7. In the case of BCCI V/S Cricket Association of Bihar & Ors. In Civil Appeal No. 4235 of 2014 with Civil Appeal no. 4236 of 2014 and SLP (C) 3428 of 2014, Hon'ble Supreme Court vide order dated 22/1/2015 has given detailed observations. According to para-19 and 20, BCCI does discharge several important public functions which make it amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Under Para 30 of the order, it observed that the majority view favour that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not "State" within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the 'nature' of duties and functions which the BCCI performs. It is common ground that the respondent-Board has a complete say over the game of cricket in this country. It regulates and controls the game to the exclusion of all others. It formulates rules, regulations norms and standards covering all aspects of the game etc. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the boards monopoly in the field taken any other step that would either deprive or dilute the Boards monopoly in the field of cricket. On the contrary, the Government of India have allowed the Board to select the national team which is then recognized by all concerned and applauded by the entire nation including at times by the highest of the dignitaries. Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards institutes by the Government. Any organization or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the Board are clearly public functions, which, till such time the State intervenes to take over the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Therefore, BCI may not be State under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.

8. With the aforesaid observations, the Hon'ble Supreme Court of India has amplified the scope of the RTI Act while defining the public functions discharged by Sports bodies and making them accountable to the public. The Hon'ble Supreme Court has also made an observation towards the Government that:-

"All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring

any law or taken any other step that would either deprive or dilute the Boards monopoly in the field taken any other step that would either deprive or dilute the Boards monopoly in the field of cricket. On the contrary, the Government of India have allowed the Board to select the national team which the then recognized by all concerned and applauded by the entire nation including at times by the highest of the dignitaries. Those distinguishing themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government”.

9. *In view of the above, it may be incumbent upon this Ministry to bring all the Sports bodies working at the national level to bring them under RTI Act even if those may not have been recognized and funded by the Government.*

10. *We may seek legal opinion in the matter as to whether all sports bodies whether recognized and funded by the Government or not can be declared as public authorities as per the provisions of the Act mentioned in paras 1 and 2 of this note.*

Sd/-

22/

(A.K. Patro)

Under Secretary

Director (Sports)

Notes from Page 1/N may please be seen.

“Order of NSFs stating that receiving grants of 10 Lakhs or more are Public Authorities and are under RTI act since they are substantially financed is at 3 to 6/c. Relevant pages of the RTI ACT are at 1-3/c. Para 2(h) of the ACT defines Public authority. This definition does not include a body performing state like functions to be designated as Public Authority.

2. *As per para 2(h)(b) of the RTI Act any entity constituted by any other law made by parliament woul, be a public authority. I do not agree with the interpretation of under secretary in para 4 of his note that any entity registered under Societies or Companies act would be a public authority. This is so because the body has to be made specifically under a law of the Parliament.*

3. *As per order of Hon’ble Supreme Court referred to in para 7 on 2/N, it is clear that BCCI is discharging public functions i.e. state like functions. However the issue is that can such a body be designated as Public Authority as per RTI Act. Refer para 2(h) of the Act. Legal opinion may be sought on this issue.*

It is also stated that there is a stay in Hon’ble Chennai High Court on the hearing of full bench of CIC on the issue to review its earlier order that BCCI is not under RTI ACT. Order at 30-31/c and legal opinion on the same at 25-29/c. The same is with reference to procedures of CIC and not on if BCCI is under RTI ACT or not. This may also please be seen.

4. It is proposed that legal opinion may be taken from Legal Consultant Shri Mendiratta on the following :-

- (i) Whether BCCI / other Sports federations recognized by their International bodies would be public authorities irrespective of the fact that they have been recognized as NSF by MYAS or not and whether they are funded by the Govt. or not?
- (ii) Action required to be taken by MYAS to designate bodies as stated in para 4(i) above as Public Authorities and thereby bring them under the RTI ACT.

Submitted for approval of proposal in para 4 above.

Sd/-
23/6/15

JS (Sports)

Pl. place a copy of the S.C. order on file and seek advice of Shri Mendiratta. Apart from the issue of RTI, is there any other actionable issue arising out of the S.C. Order? Shri Mendiratta may pl. advise on this aspect as well.

Sd/-
24/6/15

Dir (SP) Sd/-
25/6/15

US (SP-I) Sd/-
25/6

Ref. JS (SP)'s note on prepage.

Copy of Hon'ble Supreme Court of India's Judgement dt. 22-1-2015 is placed below (F/X). The entire matter related to BCCI/IPL controversies/role of BCCI.

We may request our Legal Consultant Mr. Mendiratta for his opinion.

Sd/-
29/6/15

US (SP I) Sd/-
29/6

Legal Consultant

"The main question for consideration is whether the Board of Control for Cricket in India (BCCI), and other NSFs recognized by their international bodies can be considered and specified as a 'public authority' within the meaning of the Right to Information Act, 2005 (RTI).

2. The object and purpose of enacting the RTI Act by the Parliament can be gathered from the preamble to that Act which, *inter alia*, states that it is an Act 'to provide for setting out the practical regime of Right to Information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the work of every public authority'; that 'the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed'; that 'revelation of information in actual practice is likely to conflict with other public interest including efficient, operations of the Government, optimum use of limited fiscal resources and the reservation of confidentiality of sensitive information'; that 'it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal'; and that 'it is expedient to provide for furnishing certain information to citizens who desire to have it'. The Act thus provides for disclosure of information to the general public, and particularly to those who desire to have, all such information to the general public, and particularly to those who desire to have, all such information in the possession of the Government and its instrumentalities so as to provide transparency and accountability in their functioning. Such obligation of disclosure of information is not confined only to the Governments (Central and State) and their Ministries/Departments but also extends to their instrumentalities may be defined under the Act as 'public authorities'.

3. Section 2(h) of the Act defines 'public authority' to mean any authority or body or institution of self government established or constituted: (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate government, and includes any (i) body owned, controlled or substantially financed, and (ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate government. It is now to be considered whether the BCCI (other NSFs and sports bodies recognized by their international federations/bodies) can be said to fall in any of the categories enumerated in the definition of 'public authority' under section 2(h) of the RTI Act.

4. Confining our examination first in relation to BCCI, we may have a look at the functions performed and powers exercised by, and the duties enjoined upon the BCCI. The best light on all the above aspects has been thrown by the Hon'ble Supreme Court in its decision dated 22nd January 2015, in the case of Civil Appeals Nos. 4235 and 4236 of 2014 (Board of Control for Cricket in India Vs. Cricket Association of Bihar and Others, etc.). The two-fold question in the above appeals before the Apex Court was whether the BCCI could be regarded as a 'State' within the meaning of Article 12 of the Constitution, and even if it cannot be considered as State under Article 12 whether it was amenable in the matter of its functioning to the writ jurisdiction of the High Courts under Article 226 of the Constitution. While examining the above question, the Apex Court has observed that:

"..... the question whether or not BCCI is 'State' within the meaning of Article 12 may not make any material difference to the case at hand view of the **admitted position** that respondent – BCCI does discharge several important **public functions** which

make it amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India”.

5. The Apex court had also an occasion to consider the role and nature of functions being discharged by BCCI in Board of Control for Cricket in India and Another Vs. Netaji Cricket Club and Others [2005(4) SCC 741] wherein the Court observed that “the Board’s control over the sport of cricket was deep and pervasive and that it exercised enormous public functions which made it obligatory for the board to follow the doctrine of ‘fairness and good faith’ “. In the said judgment, the Hon’ble Supreme Court observed that:

“80. The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. **It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same.** As a member of ICC it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international for a. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deep pervasive and complete.

81. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of ‘fairness’ and ‘good faith’ in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. **As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards.”**

6. Again, in the case of Zee Tele Films Limited and Another Vs. Union of India and Others [2005 (4) SCC 649], though the Hon’ble Supreme Court held that the BCCI could not be brought within the expression ‘State’ appearing in Article 12 of the Constitution, it held that the BCCI ‘was discharging some duties like the selection of Indian Cricket team, controlling the activities of the players **which activities were akin to the public duties of state functions**, so that if there is any breach of a constitutional or a statutory obligation or the rights of other citizens, the aggrieved party shall be entitled to seek redress under the ordinary law or by way of a Writ Petition under Article 226 of the Constitution. Therefore, in conclusion, the Hon’ble Supreme Court has held in Board of Control for Cricket in India Vs. Cricket Association of Bihar (Supra) that the BCCI, even if it is not ‘state’ within the meaning of Article 12, it is amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. While coming to the above conclusion, the Hon’ble Supreme Court has held that the BCCI ‘has a complete sway over the game of cricket in this country’; ‘it regulates and controls the game to the exclusion of all others’; ‘it formulates rules, regulations, norms and standards covering all aspects of the

game'; 'it enjoys the power of choosing the members of the national team, disqualifying players which may at times put an end to a sporting career of the persons'; 'it spends crores of rupees on building and maintaining infrastructure like, stadia, running of cricket academies and sporting state associations'; 'it frame pension schemes and incurs expenditure on coaches, trainers, etc.'; 'it sells broadcast and telecast rights and collects admission fee to venues where the matches are played'. The Court further observed that the Government of India has allowed the BCCI to select the national team which is then recognized by all concerned and applauded by the entire nation including at times by the highest dignitaries, and those distinguishing themselves in the international arena are conferred highest civilian awards like, the Bharat Ratna, Padam Vibhushan, etc., apart from sporting awards instituted by the Government. The Court went on to observe that 'Any organization or entity that has such pervasive control over the game and its affair and such powers as can make dreams end up in smoke or come true **cannot be said to be undertaking any private activity'. The functions of the Board are clearly public functions**, which till such time the state intervenes to take over the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law take over or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature for public functions, **it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable to the standards generally applicable to judicial review of state action'**.

7. Having regard to the above observations and the ratio decidendi of the Hon'ble Supreme Court that the BCCI is amenable to the writ jurisdiction of the High Courts under Article 226 of the Constitution because it is performing important public functions which the governments themselves should ordinarily perform and undertake, there is no reason, in my view, not to treat the BCCI as an instrumentality of the government and declare it as a public authority within the meaning of section 2(h) of the RTI Act, 2005.

8. In this context, the observation of the Hon'ble Supreme Court in the case of *Sukhdev and Others, etc. Vs. Bhagatram Sardar Singh Raghuvanshi and Another, etc.* [1975(1)SCC 421], in para 97, also supports my above view: 'if a given function is of such public importance and so closely related to governmental functions to be classified as a governmental agency, then even the **presence or absence of State financial aid** might be irrelevant in making a finding of State action'. The Court further observed in para 102 in *Sukhdev's case (supra)* that 'Institutions engaged in matters of high public interests or performing public functions are by virtue of the nature of the function performed government agencies'.

9. here, it may also be pertinent to add that Article 226 of the Constitution does not apply to the private matters between individual citizens or private entities, as a writ does not lie against a private body [see, for example, *Francis John Vs. Director of Education (AIR 1990 SC 423)*, *Utkal Highways Vs. State of Chhattisgarh (AIR 2006 Chhat 29)*, etc.]. The very fact that the BCCI has been held by the Apex Court to be

an authority performing public functions and whose acts are liable to be challenged before the High Courts under Article 226 of the Constitution, it has to be held, as a logical consequence, as a public authority. It defies logic that the acts of the BCCI can be questioned by the general public before the High Courts under Article 226, but the general public is not to be allowed access to the nature or details of its actions as that would undoubtedly deprive the general public to know the state of affairs of the BCCI and their right to question them before the High Court if they are violative of any law or the rights of the general public. The right of the general public to know the state of affairs of the BCCI can be ensured only if the BCCI is treated as a public authority within the meaning of the RTI Act and whereby the BCCI becomes obliged to disclose matters relating to its functioning to the general public.

10. *In view of the above, the MYAS may like to declare/notify the BCCI as a public authority under section 2(h)(d) of the RTI Act, 2005. The same considerations would apply, in my view, in the case of other NSFs and bodies recognized by the international organizations who also perform similar public functions in their respective sports fields. All such NSFs and other organizations may also be declared as public authorities under the said section 2(h)(d) of the RTI Act, 2005.*

11. *In so far as further action pursuant to the order dated 22nd January, 2015 of the Hon'ble Supreme Court is concerned, the same is indicated in para 110 of the above order and it is mainly for the Special Committee constituted by the Hon'ble Supreme Court vide para 110(II) to take the necessary follow up action.*

Sd/-
S.K. MENDIRATTA
LEGAL CONSULTANT
06.07.2015

Director (Sports)
May pl. see. DFA w.r.t. para 10 above would be put up on return of file.

Sd/-
7/7/15

JS (Sports)
Legal Consultant has very well analysed the matter in this note dated 6.7.15. We may issue orders on the lines recommended by him para 10 of the note (p.12/N). Since the issue of applicability of RTI has already been discussed there threadbare earlier, in my view, no further consultation with BCCI and other such sports bodies is required prior to issuing the orders.

Sd/-
9/7/15

Secy (SP)

MOS (I/C) YAS

I believe there is some litigation going on in the matter. In the Tamil Nadu High Court, to which we are not a party. Do we need to take cognizance of the same before we take action as proposed above?

Sd/-
AJIT M. SHARAN
Secretary

JS (SP) Sd/-
20/7/15

Dir (SP)

1. With reference to the query of Secretary (Sports) on pre page it is submitted as follows:-
 - a) Following may please be referred to:-

My note at 'A' on 4/N, 30-31/C – specially Paras 'B' & 'C' on 31/C of the stay order, Legal opinion at 'D' on 26/C.
 - b) As can be seen from above references that the stay in Hon'ble Madras High Court is on the power of CIC to review its own decision taken by a two member bench by a full bench of 3 members.

It is not on the issue that BCCI is under RTI Act or not.
2. In view of above, it is proposed to declare BCCI as a Public Authority under Section 2(h) (d) of the RTI Act 2005 as per draft.

DFA Please. This may be vetted by Department of Legal Affairs.

Sd/-
Vivek Narayan
21/7/15

JS(Sports)
Matter was discussed with JS (Sports). Revised DFA is put up please. DFA may be vetted by Department of Legal affairs.

Sd/-
VivekNnarayan
23/7/15

JS(Sports)
Papers placed on the file and the notes above indicate that the CIC's decision as of now is that BCCI is not under RTI Act. This decision was re-iterated by a bench of CIC subsequently. Can we now declare BCCI under RTI Act on the strength of the Supreme Court order or are we required to wait for a review of its decision by CIC? Kindly advise. Also, kindly have a look at the draft order.

Sd/-
24/7/15

Sh. Mendiratta, Legal Advisor

"From perusal of the previous notes in the file, it appears that the BCCI was not treated as public authority under the RTI Act by the CIC – first, by a Single bench and, later on, by a Division Bench of that Commission – some time in 2012 or 2013. When a subsequent appeal was filed by some other aggrieved person seeking some information from the BCCI, the CIC referred the matter to a Full bench comprising three members of the Commission for review of its earlier decision taken by a Division Bench. A notice in this case issued to the aggrieved person was stayed by

the Madras High Court in Writ Petition No. 20229 of 2013 and MP No. 2 of 2013 filed by the BCCI against CIC, by its interim order dated 24th July, 2013. Thus, in the pending matter before the Madras High Court, the basic question relates to the power of the CIC to review its own order passed by a Division Bench by a Full Bench of the Commission. In view of the above, I am of the opinion that there is no bar against the Government taking a decision with regard to the BCCI being declared or not as a public authority under the RTI Act, independently of the above decision of CIC.

Further, from the above, it is also apparent that when the CIC took the decision somewhere in 2012/2013 to say that the BCCI is not a public authority, that Commission obviously did not have the benefit of the Supreme Court's order dated 22nd January, 2015 in the case of BCCI vs. Cricket Association of Bihar and Ors. Based on the said decision of Supreme Court on 22nd January, 2015. I reiterate my views at pages 5-12/notes.

Insofar as the draft order on the file as prepared by Director(Sports), I have made a small modification in para 11 of that draft which may kindly be seen for consideration. On second thought, I feel that it would be more desirable to invoke the entire section 2(h) of the RTI Act while declaring the BCCI as a public authority, as that would bring all provisions of clause (h) of the said section 2 into play, instead of invoking the provisions of clause (h)(d), as was suggested in my earlier note at page 12/notes.

Sd/-
S.K. MENDIRATTA
LEGAL CONSULTANT
03.08.2015

JS (Sports)

Notes from p.14/N onwards may kindly be perused w.r.t. the query of Secy (sp) on p.13/N.

In view of the opinion of the Legal Consultant, the draft order is submitted for kind approval.

Sd/-
7/8/15

Secy (SP)

Discussed with Secy (SP). Pl. collect the orders of CIC on this issue and then refer the file to Law Ministry for opinion.

MOS(I/C) YAS

Sd/-
14.8.15

Dir (SP II)

Sd/-

14.8.15

US (SP I)

Sd/-

Ref. JS (SP)'s note dt. 14-8-2015 on prepage.

2. This is regarding whether BCCI and other Sports Bodies recognised by their International Bodies can be considered as a 'public authority' under RTI Act, 2005. This has been examined in the Ministry w.r.t Hon'ble Supreme Court's order dt. 22-1-2015 (F/x) placed on the file in consultation with the legal consultant vide note from pp 1-16/N.

3. CIC's Order dated 21-1-2018, 11-7-2011 and 30-6-2012 issued relating to BCCI placed on the file (F/Y). In those orders it has been clearly stated that BCCI is not a public authority in terms of section 2(h) of the RTI Act.

4. In view of above, we may seek the views of the M/o Law & Justice (D/o. Legal Affairs) regarding the issue of the proposed draft order declaring BCCI as a "Public Authority" under RTI Act, 2005.

US (SP I) Sd/-
17/8/15

May be shown to JS (Sports) before sending it to M/Law.

DLA/RKS

Sd/-
18/8/15

Dir - (Sports - II)

Sd/-
20/8/15

JS (SP) Sd/-
20/8/15

Dir (SP II)

Sd/-
20/8/15

US (SP I) Sd/-
20/8/15

M/Law

4. On 25.01.2016, Shri R.K. Srivastava, Deputy Legal Adviser in his note bearing no. FTS No. 229116/Adv.B/2015, Ministry of Law & Justice, Department of Legal Affairs wrote as under:

"Reference note on pre-page.

2. Department of Sports has sought our advice on the proposed draft order for declaring BCCI as a 'Public Authority' under Section 2(h) of the Right to Information Act, 2005 (RTI Act).

3. Section 2(h) of the RTI Act, reads as under:

"public authority" means any authority or body or institution of self-government established or constituted,—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any—

(e) body owned, controlled or substantially financed;

(f) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

4. Section 2(h) of the RTI Act only defines the term 'public authority'. It does not empower the Government to declare any authority, body or institution as a 'public authority'. In the absence of any such enabling provision, the proposed order cannot be issued under the provisions of section 2(h) of the RTI Act.

Sd/-
(R.K. Srivastava)
Deputy Legal Adviser
25.01.2016

JS&LA (Sh. G.S. Yadav)

Sd/-
25-1-16

DLA (RKS)

Sd/-
25/1

Deptt. Of Sports

Stamp and Sd/-

Ref. our Note on p=17/N.

DLA, D/o Legal Affairs note dt 25-1-16 above is submitted for kind perusal and further orders, if any.

Sd/-
27/1/2016

US (AKP)

Stamp and Sd/-
27/1/16

Dir (Sp II)

Sd/-
28.1.16

JS (SP)

May pl. give your comments on the advice of the Law Ministry.

Sd/-
1/2/16

Sh. Mendiratta, L.A

The Ministry of Law and Justice, Department of Legal Affairs has opined that section 2(h) of the RTI Act only defines the term 'public authority' and it does not empower the Government to declare any authority, body etc. as a public authority.

It is true that the said section 2(h) defines 'public authority'; but there also does not seem to be any specific provision in the Act empowering any other authority to declare an authority or body or institution as a public authority which answers any of the criteria laid down in the said section 2(h) defining a public authority. Even in the absence of such express provision in the Act, CIC has been declaring several authorities as public authorities (see decision dated 3rd June, 2013 of the CIC in the matter of six national political parties declaring them as public authorities under the RTI Act (copy placed below at flag 'A').

A perusal of the above order would show that if an authority which falls within the definition of section 2(h), and fulfils the criteria laid down under that section to be treated as such, refuses to treat itself as a public authority, then there has to be some other authority which may determine whether such body or authority or institution is a public authority or not within the meaning of said section 2(h) of the RTI Act. In my view, in respect of the National Sports Federations (whether recognized by the MYAS or not) which fulfil the criteria under section 2(h) to be treated as 'public authority', it is the Department of Sports, Ministry of Youth Affairs and Sports, which has to determine the above question.

*In my above view, I am fortified by the provisions of section 25(2) of the RTI Act which provides that 'Each Ministry or Department shall, **in relation to the public authorities within their jurisdiction**, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as it required to prepare the report under this section... ..' Undoubtedly, the NSFs fall within the jurisdiction of the Sports Ministry and the Ministry is obliged to furnish information if asked for by the CIC in respect of any of the NSFs.*

However, in case of any doubt, the opinion of the Nodal Ministry administratively concerned with the RTI Act may also be obtained.

Incidentally, paras 11 and 12 of the proposed draft order relating to BCCI may be slightly modified as suggested below:-

"11. In view of the above, BCCI shall, therefore, be treated as a public authority within the meaning of section 2(h) of the RTI Act, 2005, for the purposes of the Act.

12. This order shall also apply to all the sports bodies recognized by the international organizations which perform similar public functions in their respective sports fields. Therefore, all such sports bodies and other organizations shall also be treated as public authorities within the meaning of the said section 2(h) of the RTI Act, 2005, for the purposes of that Act."

Sd/-
S.K. MENDIRATTA
LEGAL CONSULTANT
15.02.2016

JS (Sports)

The position taken by the legal consultant appears to be reasonable.

We may seek the advice of DOP&T which is administratively concerned with the RTI Act.

Submitted for kind approval.

Sd/-
19.2.16
OnkarKedia
Joint Secretary (SP)

Secy (SP)

Advice of DOP&T in the matter may be solicited. A proper referece enclosing Law Deptt's opinion needs to be made out. Pl. discuss also.

Sd/-
23/2/16

JS (Sp)

Discussed pl. put up draft for approval of Secy (Sp)

Sd/

Dir (SP II)

Pls put up a draft for approval of Sec (Sp).

Sd/-
24.2.16

Ref. note on pre-page

Draft OM to DOPT placed below for approval please.

Sd/-
29/2/2016

US (AKP)

Sd/-
2/3/16

Dir (Sp II)

Sd/-

3/3/16

JS (SP)

Sd/-
4/3/16

Secy (Sp)

Sd/-
8/3/16

MOS (I/C) YAS

Pl. discuss

Sd/-

Pl. spk.

Sd/-

Secy (SP)

Sd/-

JS (Sp)

UN Tour

Sd/-

Dir (SP II)

May pl. discuss with Sec (SP)

Sd/-
15.3.16

JS (Sp)

Discussed. Since this issue is also sub-judice before Hon'ble Supreme Court reg. Lodha Committee recommendations to be followed by BCCI – this being one of those, we may await for S.C. Order in the matter.

Sd/-
21/3/16

US(AKP)

Sd/-
21/3/16

5. F. No. 23-12/2011 SP-I, Government of India, Ministry of Sports & Youth Affairs, Department of Sports wrote with a subject that

"Puc is placed below for perusal. In this file we are dealing with the matter relating to declaration of BCCI as Public Authority under RTI. Chairman Law Commission of India vide his letter dated 18.04.2018 (F/X) has submitted a report No. 275 of Law Commission of India titled "Legal Frame Work: BCCI vis-à-vis Right to information Act" to law Ministry for consideration of the Govt. The report was prepared based on the directions issued by the Hon'ble Supreme Court of India. The said commission was asked to examine whether BCCI would be covered under the ambit of the RTI Act, 2005. Accordingly they prepared a report and submitted it to Law Ministry which was later received in this office through Law Secretary D.O. letter dated 09.05.2018 (PUC) with direction to implement the Report as Department of Sports Ministry of Youth Affairs is administratively concerned with the subject applicability of RTI on BCCI. Law Secretary has also directed to communicate the decision regarding implementation of report.

In this connection is submitted that before implementation the report of Law Commission by this Ministry, if approved, we may send it to our legal Consultant for offering his comments as there are several legal issues involved.

Submitted for favour of perusal and orders please.

Sd/-
Consultant, S.O (SP-I)

DS (SPST)

Legal Consultant (S.K. Mehendiratta)

Notings of page-20 to 22 may kindly be perused.

2. Law Secretary has forwarded a report No. 275 of Law Commission on the subject whether BCCI would be covered under the ambit of RTI Act, 2005. Law Secretary vide his D.O. Letter dated 09.05.2018 has requested this Ministry for communicating the decision regarding implementation the report of Law Commission as Deptt. Of Sports, ministry of Youth Affairs is administratively concerned with the subject applicability of RTI on BCCI. Accordingly, the report was sent to legal consultant (Shri S.K. Mehendiratta) for comments. In turn he suggests that a copy of the present report to law Commission may be placed before the Supreme Court through the learned Sr. Counsel representing the UOI in the matter with the prayer that provision be made in the Constitution of BCCI that BCCI will be Public Authority under the RTI Act and a copy of report to be sent to Standing Committee of Administrator for their consideration and necessary action.

3. In view of above if approved we may send it to the Committee of Administrator appointed by the Hon'ble Supreme Court first for necessary action.

4. Submitted for favour of perusal and orders please. Subject to approval a draft letter addressed to Shri Vinod Rai, Head of the Committee of Administrator is place below for approval please.

Sd/-
11/6/18
Contractual-SO

US (AKS)

Pl link up with earlier recommendation of M/o Law & Justice & put up (L/F) in light of the same.

SO SP II

Consultant (SP-II)

With reference to remarks at pre-page (p/23 of note), it is submitted that earlier we have forwarded a case alongwith draft order to M/o Law and Justice for their views on declaring BCCI as a 'Public Authority' under RTI Act 2005. In reply Dy. Legal Adviser of M/o Law & Justice has intimated vide their notings (Page-18 of link file No. 9-10/2015/SP-I) that section 2(h) of the RTI Act only defines the term 'Public Authority'. (It does not empower the Govt. to declare any authority, body o institution as a 'public authority'. In the absence of such enabling provision, the proposed order can not be issued under the provisions of Section 2(h) of the RTI Act.

But now vide their D.O ltrtd 9/5/2018 Law Secretary has only forwarded the report No. 275 of Law Commission on the subject issue to this Ministry for Communicating the decision regarding implementation the report of Law Commission without giving any specific views.

In view of above it is proposed that we may seek the...

6. On 26th June, 2018, Shri Rahul Bhatnagar, IAS, Secretary, Department of Sports, addressed to Shri Suresh Chandra, law Secretary, Govt. of India, Ministry of Law & Justice, Deptt. of Legal Affairs as under:

"Please refer to your D.O. Letter No. IC-11/2/2018-Img. Cell dated 09.05.2018 vide which you have enclosed a report of Law Commission of India with regard to bringing BCCI under the ambit of Right to Information Act, 2005.

2. It has been observed from you letter that views of Ministry of Law Justice has not been communicated on the recommendations of Law Commission. It is also brought to your notice that previously when this Ministry had sought views of the Ministry of Law & Justice and declaring BCCI as a Public Authority under Section 2(h) of RTI Act, 2005, it was opined that Section 2(h) of the RTI only defined the term

'Public Authority' and it does not empower the Government to declare any authority, body etc. as a public authority.

3. *In light of the position explained above, I would be grateful if you could get the matter examined and advise us on this legal tenability and ramification of the recommendations of the Law Commission.*

7. The appellant in her written submissions, explained as under:

1. *That the appellant sought informations from the government / sports authority / ministry etc. The information(s) were not sought from the BCCI at all.*
2. *The appellant has specifically mentioned in Para II of application under RTI that appellant is not seeking any information from the BCCI. The appellant is well aware that BCCI is a private association and do not come under ambit of RTI Act.*
3. *The sport of Cricket is being governed solely by BCCI which actually ought to be regulated by the Ministry of Sports / government authority as government has authority to make measurement for the development of sports and by doing so the BCCI transgress into the sphere allotted to Ministry of Sports / government authority under constitutional scheme.*
4. *And that if, the government does not have any authority to control the sport of Cricket (which now solely governed by BCCI) then why government has not taken any action against BCCI which without any authority and affiliation from the government governing the sport of Cricket by misusing/abusing the name/Status of India and representing unofficially the nation without any express authority and sanction from the government of India in this regard.*
5. *It is only respondent department / MOYAS / Government of India which has to disclose that on which basis, BCCI a private association has been allowed to represent our country on National level & International level in cricket and why any other association/society would not be allowed to so for any of the sports including cricket?*
6. *It is only respondent department / MOYAS / Government of India which has to disclose that whether respondent department / MOYAS / Government of India, issued any notification / circular etc authorizing BCCI to hold cricket matches at National & international level in the name of our country.*
7. *The BCCI in Writ Petition (Civil) 541 of 2004 titled as Zee Telefilms Ltd. & Anr vs Union of India & Ors on 2 February, 2005 has cleared its stand and Mr.K.K. Venugopal, Sr. Advocate, on behalf of BCCI, has contended before the Hon'ble Supreme Court as under and quoted by the court in following terms:-*

"Board is not created by any stature and is only registered under the Societies Registration Act 1860 and that it is an autonomous body, administration of which is not controlled by any other authority including Union of India,

(U.O.I), the first respondent herein. He further submitted that it also does not take any financial assistance from the Government nor is it subjected to any financial control by the Government or its accounts are subject to the scrutiny of the Government. It is his submission that though in the field of Cricket it enjoys a monopoly status the same is not conferred on the Board by any statute or by any order of the Government. It enjoys that monopoly status only by virtue of its first mover advantage and its continuance as the solitary player in the field of cricket control. He also submitted that there is no law which prohibits the coming into existence of any other parallel organization. The learned counsel further submitted that as per the parameters laid down by this Court in Pradeep Kumar Biswas vs. India Institute of Chemical Biology & Ors. (2002 5 SCC 111), the Board cannot be construed as a State for the purpose of Article 12 and the said judgment being a judgment of Seven Judge Bench of this Court is binding on this Bench. The argument of Mr. K.K. Venugopal is supplement and supported by the arguments Dr. A.M. Singhvi and Soli J. Sorabjee appearing for the other contesting respondents."

8. *These informations have to be provided by the ministry/government authorities and not by the BCCI. The ministry has to disclose that why a private association has been working ostensibly as a government authority and has been misusing the status of the country.*
9. *The appellant has no concern with BCCI and don't want any information from it. The appellant has no concern as to bring BCCI in the ambit of RTI or make it accountable and transparent.*
10. *That the present team can be called as Indian team as it's a team of BCCI. As the sports authority of India or government authority has no concern with BCCI therefore, to suppress this true fact, the government officials are not deliberately and intentionally not providing information in this regard."*

8. Mr. A.K. Singh, Under Secretary to the Government of India vide his letter dated 28.08.2018 wrote a letter to Secretary, Department of Legal Affairs relating to bringing the Board of Control for Cricket in India under the ambit of RTI Act, 2005. In that letter, it was intimated as under:

"I am directed to refer to your Ministry's D.O. No. IC-11/2/2018-Imp.Cell dated 09.05.2018 and a Note dated 13.07.2018 of Asstt. Legal Advisor of the Department of Legal Affairs, on the subject cited above. The Law Commission's report has been examined in the Ministry. Based on the recommendations of the Law Commission the following has been decided:

- i) *The Ministry of Youth Affairs and Sports agrees with the recommendations that the Board of Control for Cricket in India (BCCI) shall be declared as public authority under the Right to Information Act, 2005.*
- ii) *However, as regards the recommendations regarding inclusion of the BCCI in the list of National Sports Federations available on the website of the Ministry, the same has not been found feasible because the BCCI has not been given specific recognition by the Ministry. Inclusion of the BCCI in the list would*

entail the inclusion of many such sports bodies in the list of the Ministry. This may lead to legal and administrative complications.

2. In view of above, further necessary action as per rules may kindly be taken under intimation to this Ministry.

This has the approval of Hon'ble MOS (IC) YA&S."

Analysis & Decision

9. **Supreme Court's intervention in functioning of BCCI:** The IPL betting scam shook the foundation of belief in the sanctity of the sport and also pointed out the need for the sports law in India. In that context the Supreme Court intervened into the functioning of the BCCI. SC stressed the need for regulation to ensure good governance in sports, which is contributing to the nation's fast growing economy, in **Krishanlal Gera v State of Haryana and Ors**, (2011) 10 SCC 529, **Union of India v Abhimanyu Tiwari** (2016) SCC online SC 395, **Balram Sharma v Union of India** (2010) 15 SCC 393. After three cricketers were arrested in 2013 IPL on charges of spot-fixing, the Supreme Court examined the affairs of BCCI in **BCCI v Cricket Association of Bihar & Anr.**, (2015) 3 SCC 251. Further investigations discovered involvement of BCCI President N Sreenivasan's son-in-law Gurunath Meiyappan, who was also arrested, and Supreme Court suggested N Sreenivasan to step down from Presidentship warning to pass a direction to step down. SC also suggested his team not to contest for BCCI elections again. (<http://lex-warrier.in/2014/11/ipl-sport-fixing-srinivasan-step-sc/> last accessed on 30.9.2018)

10. **Justice Mukul Mudgal Committee:** The apex court ordered Justice Mukul Mudgal Committee to investigate this further. Justice Mudgal Committee pointed out lacunae in intelligence tools to find out sporting fraud, wanted a strong investigation wing to be constituted and interference from BCCI office holders should be strictly prevented. The Committee also recommended that players, including extras should not be allowed to own or have an interest in any stake in player agencies or companies involved with the game unless such interests are in the nature of sponsorship. Such interest must be declared 15 days prior of accruing on such interest. (Justice Mudgal IPL Probe Committee, Supreme Court, *A Report on allegations of Betting and Spot/Match Fixing in the Indian Premier League* (2014).) The Mudgal Committee came to the conclusion that IPL COO Sundar

Raman, Chennai Super Kings' owner Meiyappan and Rajasthan Royal's owner Kundra are guilty for betting and that BCCI chief Srinivasan did not act upon the accused despite knowing their violations. Accepting most of recommendations of Mudgal, the SC appointed Justice RM Lodha Committee for more stringent regulation of BCCI. One of the important tasks before Lodha was to make BCCI a transparent body, for which it prepared a questionnaire, secured opinions and finally suggested revolutionary reforms which change entire power structure and functioning of this sports body. Among various suggestions the Lodha directed BCCI officials shall disclose their assets to the Boards so that they could be certain about the non-involvement of BCCI officials in betting. The most important recommendation proposed by the committee was to legalize betting in India. Legalizing betting might fetch a lot of revenues to the government and will pull up the GDP of our nation but it will also significantly increase match fixing in the game of cricket. Even if the government has not legalized betting, it is still prevalent in the nation. As per the recent survey, betting money involved in IPL-7 and IPL-8 were around 7000 crores and 12000 crores, respectively. Illegalization of betting has led to flow of black money in the economy. (<https://www.mykhel.com/cricket/oneindia-exclusiveipl-betting-dossier-bookies-put-in-rs-7000-crore-in-2014-019255.html>.)

11. **Public function and public duty:** The Amicus Curie in BCCI case, eminent lawyer Shri Gopala Subrahmaniam questioned BCCI when it was refusing to answer under RTI Act on the ground that it was a private body and also engaged in prolonged legal battle:

"You discharge public function but you want to enjoy private status. If you have public persona then you have to shed private persona. This cannot be done. It selects national team for the country, it cannot be a private society. It is a public entity"

12. **Justice Lodha Committee:** Then the apex court in 2015 found that the functions of the BCCI to be by their very nature, 'public functions' but held that the BCCI may not be a 'state' under Article 12 of the Constitution and constituted the Justice Lodha (former CJI) Committee to suggest reforms. (Paras 117-120) The Lodha Committee submitted report on 18th December 2015 recommending significant measure to streamline the working of the BCCI. The Committee found

the BCCI to be lacking in fairness and transparency and proposed measures to ensure transparency. It felt that the people of the country have a right to know the details about the BCCI's functions and activities. Thus it recommended bringing BCCI within the purview of the RTI act. It was a forceful plea to bring it under RTI Act. The Lodha Committee concluded that, having regard to the emphasis laid by the Supreme Court that BCCI discharges public functions and also the Court's reference to indirect approval of the Central and State Governments in activities which has created a monopoly in the hands of the BCCI over cricket, it felt that the people of the country have a right to know the details about the BCCI's functions and activities. It therefore recommended that **"the legislature must seriously consider bringing BCCI within the purview of the RTI Act."** (Page 58)

13. The BCCI was strongly resisting this proposition on two grounds – that it is a Society registered in Tamil Nadu and that it does not receive government funds. So it should be treated as a private entity, not public authority. In 2011, the then sports minister, Ajay Maken, piloted what was called National Sports Development Bill based on the recommendations of Justice Mukul Mudgal Committee. The Bill made it categorically clear that only those sports bodies which would agree to come under the purview of the RTI Act would enjoy the right to use 'India' as the team's name – " In order to represent India at international events and to have a right for a particular sports federation to use 'India' or 'Indian' in the sport scenario, the federation shall have to comply with Chapter IV (Unethical Practices in Sports) and Chapter IX (Applicability of Right to Information Act)". It is clear that if the BCCI wanted to continue as the apex and exclusive cricket body of nation selecting the official Indian cricket team for international games, then it should be answerable under the RTI net.

14. A media report criticised that might of cricket lobbyists was so strong that they could influence change of sports portfolio of Mr. Ajay Maken, the *firstpost.com* wrote:

"The message of the sports ministry was loud and clear – if the BCCI wanted to continue as the body that was responsible for the selection of the official Indian cricket team for international games, then it could not escape the RTI net.....But then the sports minister's bold proposal to reform the sports bodies came to a nought when the Manmohan Singh cabinet rejected the Bill. The rejection was on expected lines. There were several ministers in the Manmohan government who had

built deep routes in the BCCI over the decades; they presided over the kitty comprising thousands of crores; they wanted to keep the shenanigans of the BCCI under wraps...The leading opposition party, the BJP, too did not make any hue and cry over the matter as many of its leaders were leading lights of the cricket body as well as other national sports federations....The collective might of these politicians with vested interest in sports bodies succeeded in ousting Ajay Maken from the sports portfolio. With his ouster the sports bill died a natural death. No sports minister, thereafter, has mustered the courage to revive the bill meticulously drafted by the Mukul Mudgal committee".<https://www.firstpost.com/sports/after-years-of-resistance-will-lodha-panel-report-finally-force-bcci-to-come-under-rti-act-2575444.html>(Last accessed on 30th September 2018)

15. **The stay by Madras High Court:**In 2013, Mrs. Madhu Agarwal, an RTI activist, sought information from the BCCI regarding some of its policies. But the BCCI refused to respond to her request. She then moved the Central Information Commission (CIC) for a directive to the BCCI to provide the information. On 10 July, 2013, the CIC sent notice to the BCCI to appear before it and present its case. On 24.7.2013 the Madras High Court in WP No 20229 of 2013 and MP No.2 of 2013 between BCCI vs CIC & Madhu Agrawal, issued an interim stay of all further proceedings, pursuant to the impugned order in the meantime. The BCCI challenged the CIC notice of hearing and power of CIC to constitute Full Bench. After this order, no further proceedings are recorded. The learned counsel for BCCI presented to this Commission on 1.10.2018, a photocopy of this stay order of Madras High Court dated 24.7.2013 and told that there were no further orders after this.

16. **Validity of interim order:** Now the issue is effect of the stay dated 24.7.2013 on different proceedings of this Commission on the subject of bringing BCCI under purview of RTI Act, 2005. By a judgment delivered on 28 March 2018 in **Asian Resurfacing of Road Agency Private Limited & Anr v Central Bureau of Investigation** (Criminal Appeal Number 1375-1376 OF 2013), a three Judge bench of the Hon'ble Supreme Court comprising of Hon'ble Mr Justice R F Nariman, Hon'ble Mr Justice AK Goel and Hon'ble Mr Justice Navin Sinha has restricted the validity of stay in both criminal as well as civil trials to a period of 6 (six) months. The Supreme Court explained as under:

33. If contrary to the above law, at the stage of charge, the High Court adopts the approach of weighing probabilities and re-appreciate the material, it may be certainly a time consuming exercise. The legislative policy of expeditious final disposal of the trial is thus, hampered. Thus, even while reiterating the view that there is no bar to jurisdiction of the High Court to consider a challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction, exercise of such jurisdiction has to be limited to rarest of rare cases. Even if a challenge to order framing charge is entertained, decision of such a petition should not be delayed. Though no mandatory time limit can be fixed, normally it should not exceed two-three months. **If stay is granted, it should not normally be unconditional or of indefinite duration.** Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, **if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months.** Where the matter remains pending for longer period, the order of stay will **stand vacated on expiry of six months**, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.

34. In **Imtiaz Ahmad versus State of U.P.** [(2012) 2 SCC 688] this Court after considering a report noted:

- "(a) As high as 9% of the cases have completed more than twenty years since the date of stay order.
- (b) Roughly 21% of the cases have completed more than ten years.
- (c) Average pendency per case (counted from the date of stay order till 26-7-2010) works out to be around 7.4 years.
- (d) Charge-sheet was found to be the most prominent stage where the cases were stayed with almost 32% of the cases falling under this category.

The next two prominent stages are found to be 'appearance' and 'summons', with each comprising 19% of the total number of cases. If 'appearance' and 'summons' are considered interchangeable, then they would collectively account for the maximum of stay orders." After noting the above scenario, the Court directed:

"55. Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice: While analysing the data in aggregated form, this Court cannot overlook the most important factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:

- (i) Such an extraordinary power has to be exercised with due caution and circumspection.

(ii) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.

(iii) The High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued.

56. It is true that this Court has no power of superintendence over the High Court as the High Court has over District Courts under Article 227 of the Constitution. Like this Court, the High Court is equally a superior court of record with plenary jurisdiction. Under our Constitution the High Court is not a court subordinate to this Court. This Court, however, enjoys appellate powers over the High Court as also some other incidental powers. But as the last court and in exercise of this Court's power to do complete justice which includes within it the power to improve the administration of justice in public interest, this Court gives the aforesaid guidelines for sustaining common man's faith in the rule of law and the justice delivery stem, both being inextricably linked."

35. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned *sine die* on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, **we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended.** In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, **we declare the law** to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. **In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where**

stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

37. *The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage.*

17. Thus, the Supreme Court directed that the stay shall automatically expire after such period and can only be extended by a speaking order. Further, such order for extension must only be granted in exceptional circumstances wherein the continuation of stay order is warranted more than expeditious final disposal of the trial.

18. In view of the above, the stay order of Madras High Court dated 24.7.2013 was valid for six months from date of the order of Supreme Court referred above, i.e., from 28th March 2018 to 28th September 2018. Hence, the Commission considers that the order Madras High Court dated 24.7.2018 was not extended by any express order, had it been there, the Ld Counsel of BCCI could have produced it on 1.10.2018 or any day earlier, as the Commission gave ample time of more than 3 months by deferring the hearing in this case.

19. ***Apex Court on BCCI in 2016:***The Supreme Court on May 2, 2016 said that it wants all state cricket associations to "fall in line" with the suggestions made by the Justice RM Lodha led-panel on structural reforms in the Board of Control for Cricket in India which was carried out in the wake of match-fixing and spot-fixing allegations. "It will no longer remain just recommendations if we say it has to be implemented. It was called recommendations as some of the findings of the committee were implemented by BCCI during the deliberations itself and some were not implemented. The apex court also pulled up Haryana Cricket Association for objecting to 70 years age cap for office bearers and said that "do some office bearers in cricket bodies think that they are indispensable."

"Do you think that some office bearers in cricket bodies think are indispensable. Nobody is indispensable leave alone the cricket administrators. There should be time when you have to say enough is enough and pave way for others to take charge,"

the bench said. The current proceedings in the apex court is the outcome of the petition filed by CAB through its secretary Aditya Verma who has alleged large scale irregularities. The apex court had on April 25 pulled up BCCI for "monopolizing" cricket in the country and had said several youngsters wanting to be Dhonis and Kohlis are not given equal opportunity if they are not on the right side of the cricket body. <https://www.indiatoday.in/sports/cricket/story/fall-in-line-with-lodha-panel-recommendations-sc-tells-state-associations-321227-2016-05-02>

20. In July 2016, in another judgment, SC accepted the recommendation of BCCI to bring it under RTI Act, saying: 'We are not called upon in these proceedings to issue any direction in so far as the above aspect is concerned. All that we need to say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in the hands of the BCCI with tacit state government and central government approvals, the public at large has a right to know and demand information as to the activities and functions of the BCCI especially when it deals with funds collected in relation to those activities as trustee of wherein the beneficiary happens to be the people of this country. In Para 93, the SC recommended the Law Commission of India to examine the issue and make a suitable recommendation to the Government.

21. **Law Commission's recommendation:** The Law Commission has come out with the 275th Report that analysed the legal status of BCCI. Explaining the status of the BCCI, the LCI stated that BCCI's actions/decisions impact the fundamental rights of the players, umpires and the citizenry in general. The Law Commission has found that the nature and character of the functions performed by the BCCI are public. With respect to regulation of cricket in India, no such legislation exists. The BCCI regulates the game and makes laws to that effect. The Law Commission has found that the BCCI operates and functions as the National Sports Federation for cricket. The LCI notes that NSFs organize national/international tournaments in the country, select sportspersons/teams, send them for training and participation in international tournaments abroad, organize training/coaching under renowned Indian and foreign coaches and in relation to cricket, BCCI exclusively performs/undertakes these activities on behalf of India. The BCCI's Memorandum of Association also states that its objects and purposes are to control, improve quality and lay down policies pertaining to the game of cricket in India at international fora. The Law Commission thus concluded that the BCCI should also be treated as public

authority in terms of the RTI Act. The central government and state governments do not extend any direct financial assistance to BCCI. However the Law Commission found that they have been giving financial assistance in other forms and manner such as granting concessions in income tax, customs duty etc, providing land at excessively subsidised rates and allowing the use of their infrastructure among others. If the government is foregoing a significant amount of money (in the form of tax or other levy) which otherwise would have been deposited in the National/State Exchequer, and would have been 'public money'- it would qualify as indirect 'substantial funding' by the government. Further allowing the BCCI to have monopoly in the game of cricket – authorising BCCI to raise funds/generate resources from numerous other sources, funds and resources, which otherwise could have been directed to the national/state exchequer also amounts to 'substantial funding' according to Law Commission. To arrive at this conclusion the LCI relied upon various decisions of SC and HCs besides decisions of CIC in RK Jain v Indian Bank Association (Manjula Prasher & M Sridhar Acharyulu, ICs) CIC MP/C/2015/000044 and CIC/SH/C/2016/000123, A Darbari v PIO Wellington Gymkhana Club CIC/SH/A/2014/000684 on 4.12.2017, CIC/AD/C/2010/001271, Subhash Chandra Agrawal case 2017 DDCA case: <https://indiankanoon.org/doc/109889644/> 4th October 2017, CIC/LS/C/2012/000565 on 16.6.2017 by this Commission.

22. **Monitoring by Supreme Court:**In BCCI v Cricket Association of Bihar & Ors, Civil Appeals No 4235, 4236 of 2014, with Civil Appeal 1155 of 2015 Supreme Court ordered on 2nd January, 2017, directing the Committee of Administrators to ensure that the directions contained in the Judgment of Supreme Court dated 18 July 2016 [(2015)3 SCC 251]which accepted the report of Lodha Committee with modifications, are fulfilled. The SC issued show cause notice to BCCI President for not implementing the reforms suggested. (<https://www.livelaw.in/10-directions-issued-supreme-court-bcci-case-read-order/>).

In the judgment dated July 18, 2016, the Supreme Court the Supreme Court held

"We are not called upon in these proceedings to issue any direction in so far as the above aspect [the applicability of the RTI Act to the BCCI] is concerned. All that we need say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in the hands of the BCCI with tacit State Government and Central Government approvals, the public at large has a right to know and

demand information as to the activities and functions of the BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under purview of Right to Information Act, we expect the Law Commission of India to examine the issue and make a suitable recommendation to the Government. Beyond that we do not consider it necessary to say anything at this stage." (Paragraph 82)

23. The Law Commission of India recommended in the Report that the RTI Act must apply to the BCCI and also all state cricket associations. While arriving at this conclusion, in summary, it concluded as follows:

- i. The BCCI should be considered "State", for the purpose of Articles 12 and 32 of the Indian Constitution, by virtue of being "an agency or instrumentality of the state"; (Paragraph 7.1)*
- ii. If the above is not accepted, BCCI should still be treated as a "public authority" given "state control"; (Paragraph 7.2)*
- iii. If recognised as a private body only, the BCCI should be treated as a "public authority" given its monopolistic character, its impact on human rights and, most specifically, the "substantial financing" it has received "directly or indirectly" from the central and state governments through large tax exemptions, discounts on prime real estate for stadium construction, etc.; (Paragraph 7.3)*
- iv. The BCCI's use of national names/insignia and the tacit recognition it receives from the state must be duly noted; (Paragraph 7.4)*
- v. The BCCI virtually acts as a National Sports Federation and has been recognised as such by multiple governments, even if this status has not been admitted by the BCCI itself; (Paragraph 7.5 (3))*

The BCCI would be further required to:

- i. maintain all its records catalogued and indexed in a manner and the form which facilitates the public's right to information; (Section 4)*
- ii. publish, inter alia, the particulars of its organisation, functions and duties; the powers and duties of its officers and employees, a directory of such officers and employees and a statement of their remuneration and compensation; the procedure followed in the decision making process, including channels of supervision and accountability; the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; a statement of the boards, councils, committees and other bodies, and as to whether meetings of those boards, councils, committees and other bodies are open*

- to the public, or the minutes of such meetings are accessible for public; its budget, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; particulars of recipients of concessions, permits or authorisations granted by it; (Section 4)*
- iii. *publish all relevant facts while formulating important policies or announcing the decisions which affect the public; (Section 4)*
 - iv. *provide reasons for its administrative or quasi-judicial decisions to affected persons; (Section 4)*
 - v. *designate a Public Information Officer to provide information to persons requesting for the information under this Act. (Section 5)*

24. The Law Commission of India not only affirmatively recognised the economic ("*monopoly*") nature of the BCCI acting as a sports federation for cricket but also went further to outline the power and ability of such a body to impact the human rights of athletes and potential athletes. Previously, most similar attempts at legal analysis have primarily relied on whether or not the body is funded by the state and/or uses state insignia and names. While state funding is indeed one of the elements in determining whether a non-government organisation is a "*public authority*" the economic and human rights impact of the body's powers are dominant themes of the Report and its recommendations. This represents a broader and more contemporary view of the jurisprudence backing the application of public laws to prima facie 'private' bodies in sport.

25. The Law Commission considered various other factors also, they are:

- Usage of national tri colours on the uniform of Indian cricket team (as selected by BCCI) and the Ashok Chakra on their helmets.
- BCCI, though nominates cricketers for the Arjuna Awards.
- Though Parliament proposed a Bill, it did not go further to make sports law on National Sports Federations NSF such as BCCI. Similarly the State Legislatures chose not to enact a legislation to govern the sport of cricket. This amounts to tacit recognition afforded to BCCI.

26. The Hon'ble Supreme Court in the case of ***Thalappalam Service Cooperative Bank Ltd & others v. State of Kerala & others***, it was held as under:

"BURDEN TO SHOW:

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by

the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority."

27. In exercise of this power, the Commission considering the issue raised in this second appeal as complaint against BCCI on a substantial issue that BCCI should be brought under the purview of RTI Act as 'public authority' and inquired into the facts and circumstances, law, orders of Supreme Court, the detailed report of Law Commission of India, the submissions of CPIO of Ministry of Youth Affairs and Sports and finally holds that the status, nature and functional characteristics of BCCI fulfil required conditions of Section 2(h) of RTI Act.

28. The Commission also finds that the correspondence between the Ministry of Youth Affairs and Sports and Ministry of Law appears to have been ignored the Supreme Court's emphatic decision and the power of Information Commission to decide the nature of body and declare it as public authority on fulfilment of conditions under Section 2(h) of RTI Act.

29. The SC has also reaffirmed that BCCI is the 'approved' national level body holding virtually monopoly rights to organize cricketing events in the country.

30. The BCCI should have been held accountable under all circumstances, for any violations of basic human rights of the stakeholders. As on today there is no mechanism to question such violations, except filing a general writ petition in Constitutional Courts.

31. The Ld. Counsel for BCCI Ms. Bihu Sharma, Advocate appeared and pleaded orally for some more time. The BCCI having received notices from CIC not appeared on earlier dates of hearing, nor gave any written submission. She has just produced the copy of 2013 stay order. The Commission finds that BCCI has not justified demand for more time.

32. Mr. Subhash Chandra Agrawal, noted RTI activist sought intervention in this matter. The Commission finds no need for that.

33. The BCCI should be listed as a NSF covered under the RTI Act. The RTI Act should be made applicable to BCCI along with its entire constituent member cricketering associations, provided they fulfil the criteria applicable to BCCI, as discussed in the Law Commission's Report. The LCI stated that non-consideration of the role played by the BCCI as monopolistic in regulation of the game of cricket has resulted in the board "flying under the radar of public scrutiny, encouraged an environment of opacity and non-accountability". In the absence of effective self regulation and non-applicability of public law to scrutinize and review the functioning of the sports body, the necessity of public scrutiny arose and only way for that is through RTI Act.

Directions:

34. In view of the above the Commission exercising its power under RTI Act, 2005 as interpreted by the Honorable Supreme Court in Tallapallam Bank case, considering the substantive issues concerning the nature and functioning of BCCI, based on observations of the Honorable Supreme Court and recommendations of the Law Commission of India, hereby holds the BCCI as the public authority under RTI Act and directs the President, Secretary and Committee of Administrators to designate deserving officers as Central Public Information Officers, Central Assistant Public Information Officers and First Appellate Authorities and put in place a system of online and offline mechanisms to receive the applications for information under RTI Act to respond them as early as possible but not later than 30 days from the date of application for information, immediately within 15 days.

35. The Commission directs the President and Secretary and Committee of Administrators to prepare the data for disclosing as per Section 4(1)(b) seventeen categories information about the BCCI. Section 4(1) of RTI Act says:

4. Every public authority shall—

- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;*
- (b) publish within one hundred and twenty days from the enactment of this Act,—*
 - (i) the particulars of its organisation, functions and duties;*
 - (ii) the powers and duties of its officers and employees;*
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;*
 - (iv) the norms set by it for the discharge of its functions;*
 - (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;*
 - (vi) a statement of the categories of documents that are held by it or under its control;*
 - (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;*
 - (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;*
 - (ix) a directory of its officers and employees;*
 - (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;*
 - (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;*
 - (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;*
 - (xiii) particulars of recipients of concessions, permits or authorisations granted by it;*
 - (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;*
 - (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;*
 - (xvi) the names, designations and other particulars of the Public Information Officers;*
 - (xvii) such other information as may be prescribed and thereafter update these publications every year;*
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;*
- (d) provide reasons for its administrative or quasi-judicial decisions to affected persons.*

It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to

obtain information.

For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

36. The Commission directs the BCCI to provide point-wise information sought by the appellant in this case, within 10 days from the date of receipt of this Order.

37. The Commission directs the public authority Ministry of Youth Affairs and Sports to take necessary steps to ensure implementation of this Order and updating of the information by BCCI at regular intervals. Disposed of.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner