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COMPETITION LAW AND SPORTS IN INDIA: AN ANALYSIS

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Abstract

Sports is the biggest religion in India as it binds the viewers of different caste, creed and religion to sit in front of television for hours for a single match of cricket, football, hockey and other sports. Behind the glorious mask of this sport industry lies different aspect of sport mechanism that are inherently anti-competitive in nature. From mobile application rights to sports broadcasting rights, there are few players ruling the market. The sports industry is under the scanner of competition law because the globalization and commercialization has made sports a lucrative business. The monopolistic characteristic and the want to maintain competition in the market have given rise to many economic hurdles like revenue-sharing, non-tampering clauses, spending caps. The Indian sports administration on many instances suffered from criticism on the reasons of various corruption, nepotism and political influence.

The main aim of the Competition Act in India is to save the market from anti-competitive practices. Nowadays, well-known sports organization have become monopolistic and they enjoy undue advantage of their situation in this industry. The problem lies in the fact that there are no express body to look after the arbitrary works and decision made by these organizations.

Indian Outlook and Application of Competition Law

The Competition Act, 2002 has a provision whereby it says that an “enterprise” means a person engaged in any activity, which is related to the production of storage, supply, distribution, acquisition, or control of articles or goods or provision of services.

Section 2(1) of the act talks about “person” and the sporting coalition can be planned under this definition because they are eligible as, “an association of persons or a body of persons, whether included or not, in India or exterior to India” as per S.2 (1) (v) of the Act.¹

According to different TRP reports and revenues generated thereafter suggested that cricket in India is the highest level of entertainment according to the CCI. The amalgamation of private bodies with sports and entertainment witnessed a huge rise in the number of new genre of playing the sport while making it a distinct market in itself. The CCI considers relevant market as a market which has a reference with the relevant product market or relevant geographic market or both. There exists three main machineries to decide a market and that includes a producer on the supply side, consumer on the demand side and underlying product or service that is produced.

The CCI (Competition Commission of India) after allowing quite a few factors like the infrastructural use, control over infrastructure, , controlling players , controlling sports in the nation and entry or exit of players/leagues/ bodies into cricket association made the CCI come to this conclusion that BCCI was in a dominant position in the relevant market. The CCI studied the regulatory powers of the BCCI and was sure of the monopoly of BCCI. CCI also opined that the monopolistic nature is a natural result of the pyramid structure of the sports federation. The CCI examined the conditions of the IPL media rights conformity. The agreement contained a provision which stopped the BCCI’s regulatory powers, warning it from organizing, sanctioning, supporting and identifying any other domestic Indian T20 competition which can give competition to IPL. The agreement was entered into for 10 years creating an entry blockage for other entities to enter the market for 10 years. The CCI confirmed that it was in violation of Section 4(2) (c) of the Act.

Applicability of Competition Law

The king of sports in India is cricket, but several other sports like football, hockey, badminton etc. are gaining popularity day by day with large number of corporates investing in sponsorship and creating brand name and some overtaking popular foreign clubs to attract a huge number of young audience. IPL clearly proves the commercial feasibility it has gained, endorsement and broadcasting rights for league and club sports. It continues to be a success till date.

Sports in domestic position or in international level are prepared in a pyramid structure, where a definite sport is governed by a single International Federation (IF) with many NSFs under the umbrella of it. The IF is generally linked with the regulatory process which is laying down rules of sport, conditions for playing etc. The IF also lays down the annual calendar of that sport with the organization of international championships and other events. The importance of the pyramid structure and the risk associated to the sport due to the association of various sports federation has been recognized by IOC and have been taken message of in the European’s Commission of Helsinki Report and the White Paper on sport. Strict control, integrity and tight control over

¹ The Competition Act, s2(1)

regulations ensure non-discriminatory rules are applied to the sports across the world. It also includes actions like deferral, fines, bans etc. as to uphold the spirit of sports in the structure.

The directions of the Delhi High Court to the Competition Commission of India to look into the matters of All India Chess Federation for preventing its players to play in tournaments outside its arena, BCCI's sanction on the Indian Cricket and the conduct of World Series of Hockey by Indian Hockey Federation falls within the domain of IF/NSF.

Pious sporting culture like laying down the rules and regulations of sport, defining the size and weight of the ball and dimensions of the field which is to be used for playing shall be excluded from the ambit of competition law. If the regulatory power of the NSF/IF are used to garner commercial and financial benefit would fail to fall within the ambit provided the mentioned conditions are fulfilled:

- A) The agreements must be anti-competitive in character i.e, they should not cause adverse effect on competition.
- B) That they are not using their leading position and are not imposing unfair or arbit conditions.

These parameters are satisfied when a specific rule though restricting competition has a public objective and this objective can be achieved if the restrictive rules are applied properly in the domestic and global level.²

Broadcasting Rights

“Sports is ...particularly attractive to... commercial operators whether as a part of a general entertainment channel or specialist channels. Audience ratings can be very high for certain events, and are also popular with commercial sponsors.”

Competition dealing with the sale and attainment of sports media rights are made of three important features:

- A) Various revolution in the market of media with the progression of new technological advancements.
- B) Handful powerful players who will be in the race for rare and valuable sporting rights. In Upstream Market, the new right owners who are the associations and clubs sell rights of sports events to sports right mediators or to retailers. The Downstream Transmission Markets includes

² Gazala Parveen, Role of competition law in sports commercialization in India (Oct.25.2019), <https://blog.ipleaders.in/competition-law-sports-commercialization/>

the last stage of the value chain which covers various provisions of sports media services to consumers.

C) Sports Media Service are lucrative when broadcasted live as the value of the decision diminishes once the viewer gets to know about the result.

In accordance with international scenario, on the joint sale of media rights the Commission has put forward the main principles in UEFA Champions League, the FA Premier League and Bundesliga decisions. The Commission accepted the selling of sports media rights by football associations on behalf of the football clubs, provided certain definite parameters be fulfilled. These parameters include the selling of sports media rights through open and transparent process, breaking down of rights into different packages to allow unusual types of competition to receive rights.³

Blocking of Players and Competition

In various sports league, there remains a competition between clubs to sign a particular player subject to the regulations imposed by the league or by mutual agreement. Rules that are levied often block opposition for players. It includes a reserve list, whereby clubs shall not bid for players even after the expiry of the contract; the player can either re-sign with his prior employer or he can opt for other service.

Teams under normal circumstances select in reverse order or finish from the previous season. Recently a trend has been introduced which is known as club salary clubs, which stops a club from going into competition for players when its total payroll for players increases from a specified amount, a certain amount of luxury tax is provided on payrolls that exceed a certain given amount, in turn making it more costly for high-payroll teams to be in the competition for the service of players. There are some leagues which employ individual player salary caps that put a bar on the amount a player can get based on the service he has provided within the league or his prior salary. The sure and subsequent effect of the imposition of restraint of players by clubs is lower amount of salaries for players. This means that where is a transfer of wealth from players to clubs. If the salary restraint is too rigid, then it can affect the player's investment in training and in turn can damage the quality of sports. The main objective of competition law is to protect consumers and promote competence, but these rules can place players inefficiently in teams.

Labor restraints which are imposed by leagues which possess the monopsony power can very well exploit players by putting a bar on competitive bid to amounts which are lower than what the

³ Isha Bhalla, Sports and Competition Law, Grant of Exclusive Broadcasting Rights, (Oct.25.2019), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.398.6648&rep=rep1&type=pdf>

market would bear. There are three jurisdictions which are taken into consideration for restraining a player:

- A) To get better competitive balance.
- B) Club investment recovery in player development
- C) Achieving 'cost certainty' for clubs.

Competition law puts a stop to unnecessary restraints, can be employed simply to protect consumers and players against unnecessary labor restraints.⁴

IPL and Hockey India Scenario

The competition act after coming into force in 2009, many high-profile problems related to business of sports have been decided by the competition regulators in India. Famous sports like cricket, hockey, football, badminton, kabaddi in the last decade has given rise to many controversies on rights of media, player restriction have raised doubts and questions on violations of Section 3, which restricts anti-competitive agreements and Section 4 which restricts abuse of dominance of the Competition Act.

The first news breaking intervention of the CCI was done in the case of Indian Premier League (IPL) when it was discovered that the representation presented by the Board for Control of Cricket in India (BCCI) in the IPL Media Rights agreement that took place between the broadcasters that it will not organize, recognize or support any other rival Indian T20 competition shall amount to abuse of dominance.

Another high-profile case pertains to a complaint filed by Dhanraj Pillay, former Indian hockey player, against Hockey India (HI), claimed that the conditions which were restrictive in nature imposed by HI through its revised Code of Conduct (CoC) Agreement with the players, on taking part in un-sanctioned private professional leagues. The CCI was of the opinion that HI was in a position of dominance, it had neither abused nor entered into any anticompetitive agreement with the players. CCI found no violation to the Competition Act, but HI was asked to set up an effective internal system which includes selection of team, forming rules of the sport etc.⁵

⁴Id At.18

⁵ Rishika Mendiratta, A take on India's emerging competition law jurisprudence: Deciphering India's leading sports cases (Oct.25.2019), <https://kheladhikar.com/2018/08/25/a-take-on-indias-emerging-competition-law-jurisprudence-deciphering-indias-leading-sports-law-cases-part-2/>

Recent Decisions

The recent decision opened the doors for the principles that was laid down in the Dhanraj Pillay and IPL cases, it further clarified the standard and scope for scrutiny to sporting bodies.

All India Chess Federation

One of the earliest complaint was filed against the AICF in the AICF case. This is a very special case as it emerged from the decisions of Delhi High Court in 2011 in a writ petition that had directed the High Court to direct the Ministry of Youth Affairs and Sports and the AICF not to ban or threaten to ban chess players who had associated with the enemy body, Chess Association of India (CAI). The AICF had written to the international governing body for chess to do away with the ELO ratings of diverse players and had banned for four players for participating in unofficial competitions organized by CAI. The High Court instead asked the CCI to do enquiry pertaining to the contravention of the Competition Act.

In the order of July 2018, the CCI was of the opinion that the result of participation in any unauthorized events as per Clause (z) of the AICF Code of Conduct for the players are very rigid since it imposes life ban and there is no provision for the players to be heard. Further, it was provided that neither the byelaws nor the constitution of AICF has defined what constitutes an unauthorized tournament.

Thus, the commission in a conclusion decided that the rules and regulations imposed by AICF for taking part in non- approved tournaments possessed the objective as well as the effect of restraining free movement of chess players, thereby, restricting the entry of potential organizers.

Indian Cricket League

This complaint was filed by the proprietors of the Indian Cricket League (ICL) against the BCCI body in 2013. ICL is a privately- owned league. They put allegations on BCCI stating that the former imposed a number of restrictions on the latter as BCCI viewed ICL as a rival. The restrictions include player ban, directions to entities to terminate employment of players who were associated with ICL.

The CCI in this case, ruled that the BCCI enjoys a dominant position in the relevant market of organization of cricket teams in India and had discarded the complaint from participation in the market by not recognizing ICL. From bidding for the broadcasting right for IPL, CCI observed the nature of limit that was imposed against the company which ran ICL and the changes made in the eligibility condition were purposely imposed to prevent that company from bidding for rights

of media for IPL. The CCI held that there was abuse of dominance as mentioned in Section 4(2) (c) of the Competition Act.⁶

Conclusion

Most number of competition regimes targets to avoid anti-competitive agreement and stop firms from abuse of dominance in any specific market. The problems regarding broadcasting rights and telecast rights which rules the competition policy. The applicability of European competition policy in sports law is well determined.

The aim of the game is not to discard the weaker competitors. There is a sort of dependence between competitive adversaries and there is a need for balance between them to maintain uncertainty and a degree of equality to safeguard the spectators' interest. The different federations of sport should not be allowed to rule the competitive arena of sports in order to get rid of present or restraint new entries in the market.



⁶ Vyoma Jha, Sports And Competition Law in India, (Oct.26.2019), <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=FC738390B5848DB9F398F8CC5EA8E24F?doi=10.1.1.608.7564&rep=rep1&type=pdf>