

To

Dated: 10.03.2021

Mr. Mahim Verma,
Hon. Secretary,
Cricket Association of Uttarakhand (CAU)

Subject: Reference No. 2.

This is in response to your communication Ref/495/CAU/G 1-18/20-21 dated 25.02.2021 whereby in its meeting dated 8th of February 2021, the Apex Council of CAU resolved to seek the following reference from me as Ethics Officer of CAU under provisions 39(2)(c) of the Constitution of CAU for providing my advice on the reference.

"That, Ms. Nishtha Pharasi, is a nominated ICA female representative in the Apex Council of CAU. The person to be appointed as representative is decided by the Indian cricketer's Association (ICA) and thereafter informed to the state association that such an individual shall represent ICA in the Apex Council of that respective State Association.

That, the CAU from time to time appoints its Office Bearers/Apex Council Members as observer on behalf of CAU. Similarly, Ms. Nishtha Pharasi at times it appointed as observer on behalf of CAU for various women's cricket activities from time to time, for which she is paid allowance as per the rules.

We seek your reference on, that does the appointment of Ms. Nishtha Pharasi as Observer for women's cricket activities from time to time attract the provisions of Conflict of Interest as she being ICA female representative in the Apex Council of CAU thereby being a member of Apex Council of CAU?"

My response to the aforesaid reference is as under:

1. That, the Conflict of Interest provisions in the CAU Constitution is established in provision 38 which reads as under :

"38. Conflict of Interest - The provisions of Rules 38(1) to 38(5) of the BCCI Constitution shall apply mutatis mutandis to the Association."

2. That, the relevant provisions that apply mutatis mutandis to the CAU from the BCCI Constitution in reference to Conflict of Interest provisions is produced as under :

"38. CONFLICT OF INTEREST

- (1) A conflict of Interest may take any of the following forms as far as any individual associated with the BCCI is concerned:

- (i) Direct or indirect Interest : When the BCCI, a member, the IPL or a Franchisee enter into contractual arrangements with entities in which the individual concerned or his/her relative, partner or close associate has an interest. This is to include cases where family members, partners or close associates are in positions that may, or may be seen to compromise an individual's participation, performance and discharge of roles.

Illustration 1 : A is an Office Bearer of the BCCI when it enters into a broadcast contract with a company where A's son B is employed. A is hit by Direct Conflict of interest.

Illustration 2 : C is a Member of the IPL Governing Council. The IPL enters into a contract with a new franchisee, the Managing Director of which is C's partner in an independence commercial venture C is hit by Indirect Conflict of Interest.

Illustration 3 : D is the Office Bearer of a State Association. D's wife E has shares in an IPL Franchisee which enters into a stadium contract with the State Association. D is hit by Indirect Conflict of Interest.

Illustration 4 : F is President of the BCCI. His son-in-law is a Team Official of a Franchisee. F is hit by Conflict of Interest.

Illustration 5 : G is employee of the BCCI. His wife runs a catering agency that is engaged by the BCCI. G is hit by Conflict of Interest.

- (ii) **Roles compromised** : When the individual holds two separate or distinct posts or positions under the BCCI, a Member, the IPL or the Franchisee, the functions of which would require the one to be beholden to the other, or in opposition thereof.

Illustration 1 : A is Coach of a team. His is also Coach of an IPL Franchisee. A is hit by Conflict of Interest.

Illustration 2 : B is Secretary of the BCCI. He is also President of a State Association. B is hit by Conflict of Interest.

Illustration 3 : C is President of the BCCI. He is also President of a State Association and member of a Standing Committee. C is hit by Conflict of Interest.

Illustration 4 : D is Selector. He is also coach of an IPL Franchisee. D is hit by Conflict of Interest.

- (iii) **Commercial Conflicts** : When the individual enters into endorsement contracts or other professional engagements with third parties, the discharge of which would compromise the individual's primary obligation to the game or allow for a perception that the purity of the game stands compromised.

Illustration 1 : A runs a cricket academy. He is appointed as a selector. A is hit by Conflict of Interest.

Illustration 2 : B is a BCCI commentator. He also runs a sports management company which contracts member of the team. B is hit by Conflict of Interest.

Illustration 3 : C is selector. He is contracted to write a column on a tour that the national team is on. C is hit by Conflict of Interest.

Illustration 4 : D is team captain. He is also co-owner of a sports management agency which is contracted to manage other team members. D is hit by Conflict of Interest.

Illustration 5 : E is a member of IPL Governing Council. He is engaged by a cricket broadcaster to act as an IPL commentator. E is hit by Conflict of Interest.

- (iv) **Prior relationship** : When the individual has a direct or indirect independent commercial engagement with a vendor or service provider in the past, which is now to be engaged by or on behalf of the BCCI, its Member, the IPL or the Franchisee.

Illustration 1 : A is President of the BCCI. Prior to his taking office, he has been engaged professionally for his services by a firm B. after A becomes President, B is appointed as the official consultants of the BCCI. A is hit by Conflict of Interest.

Illustration 2 : B is the Secretary of a State Association. Prior to his election, he ran a firm C, specializing in electronic boundary, hoardings. Upon becoming Secretary, the contract for the Association's stadium hoardings is granted to C, B is hit by Conflict of Interest.

Illustration 3 : D is the Commissioner of the IPL. Before he came into this office, he used to engage E as his auditor for his business. After becoming commissioner, E is appointed as auditor to the IPL. D is hit by Conflict of Interest.

Illustration 4 : F is the Captain of an IPL team, and G is the team's manager. When F is made Captain of the national team, G is appointed as the national team's manager. F is hit by Conflict of Interest.

- (v) *Position of influence* : When the individual occupies a post that calls for decisions of governance, management or selection to be made, and where a friend, relative or close affiliate is in the zone of consideration of subject to such decision-making, control or management. Also, when the individual holds any stake, voting rights or power to influence the decisions of a franchisee / club / team that participates in the commercial league(s) under BCCI;

Illustration 1 : A is selectors. His son is in the zone of consideration for selection. A is hit by Conflict of Interest.

Illustration 2 : B is the Secretary of a State Association. He also runs a cricket academy in the state. B is hit by Conflict of Interest.

Illustration 3 : C is an umpire. His daughter D is a member of a team which is playing a match in which C officiates. C is hit by Conflict of Interest.

Illustration 4 : E is the President of a State Association and his company F owns 12 cricket clubs in the State from which probable's are selected for the State team. E is hit by Conflict of Interest.

EXPLANATION : The Illustrations which refer to a President / Secretary / Vice-President may be read as illustrations referring to any other Office Bearer, and also to the members of the Apex Council, the Governing Council and the Committee.

- (2) Within a period of 15 days of taking any office under the BCCI, every individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a Conflict of interest, and the same shall be uploaded on the website of the BCCI. The failure to issue a complete disclosure, or any partial or total suppression thereof would render the individual open to disciplinary action which may include termination and, removal without benefits. It is clarified that a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency.
- (3) A Conflict of Interest may be either Tractable or Intractable:
- (a) Tractable conflicts are those that are resolvable or permissible or excusable through recusal of the individual concerned and/or with full disclosure of the interest involved.
 - (b) Intractable conflicts are those that cannot be resolved through disclosure and recusal, and would necessitate the removal of

the individual from a post or position occupied so that the conflict can cease to exist.

Explanation : In Illustration 3 to Rule 38(i)(i), if the wife held 51% shares, the conflict will be treated as intractable. If the wife holds 3% shares, whether the conflict is tractable or intractable will have to be decided by the Ethics Officer on the facts of the case.

If the wife holds only 100 shares out of 1 crore shares, a disclosure of the same may be sufficient.

(4) It is clarified that no individual may occupy more than one of the following posts at a single point of time except where prescribed under these Rules:

- (a) Player (Current)
- (b) Selector / Member of Cricket Committee
- (c) Team Official
- (d) Commentator
- (e) Match Official
- (f) Administrator / Office-Bearer
- (g) Electoral Office
- (h) Ombudsman & Ethics Officer
- (i) Auditor
- (j) Any person who is in governance, management or employment of a Franchisee
- (k) Member of a Standing Committee
- (l) CEO & Managers
- (m) Office Bearers of a Member
- (n) Service Provider (Legal, Financial, etc.)
- (o) Contractual entity (Broadcast, Security, Contractor, etc.)
- (p) Owner of a Cricket Academy

(5) As far as incumbents are concerned, every disclosure mandated under Sub-Rule (3) may be made within 90 days of the Effective Date."

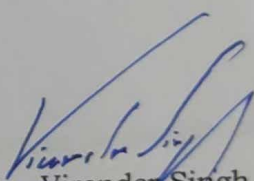
3. Additionally, on being enquired orally from the Hon. Secretray CAU on any additional information regarding the subject matter, the Hon. Secretary informed that from time to time to ensure that the activities of the Association are conducted as per requirements, and to make sure that the facilities provide to the players are in place, from time to time Apex Council members are entrusted with the responsibility to act as an observer for the activities. This not only helps in monitoring the activities of the association, but also at many occasions the players come up with their requirements or grievances to these observers and get it resolved. Ms. Nishtha Parasi being the only female member of the Apex Council is entrusted to act as observer for women cricket activities, this is done with a specific intent that females can be more comfortable discussing their issues or grievances with other female. Ms. Nishtha Parasi has been

entrusted with responsibility to act as an observer for women team conditioning camps, selection trials and practice matches. As per rules such Apex Council members who act as observers from time to time are paid allowances as per predefined policy and norms i.e. Daily Allowance being Rs. 2000 per day.

4. The definition of 'Administrator / Office Bearer' in BCCI and CAU Constitution means and includes present and former Presidents, Vice Presidents, Honorary Secretaries, Honorary Treasurers, Honorary Joint Secretaries of the BCCI / CAU, past and present Presidents and Secretaries of members affiliated to BCCI / CAU, a representative member of BCCI/ CAU, and any person connected with the Governance and Management of the affairs of the BCCI/CAU or of its committees. Since, the Apex Council is the principal body of the Association tasked with its governance as per the definition of Apex Council in CAU Constitution. *Therefore*, Ms. Nishtha Parasi though being a nominated member from the ICA, is a member of the Apex Council of the CAU comes under the definition of being an Administrator of CAU.
5. The definition of 'Match Official' in BCCI and CAU Constitution includes Umpires, Match Referees. Observers, Statisticians, Ground Staff and Scorers so appointed by BCCI/CAU from Time to Time.
6. Specific emphasis is made on the provision 38(4), wherein it clarifies that no individual may occupy more than one posts from the list provided at a single point of time. Two posts find relevance in this present instance on which reference is requested, i.e. **(e) Match Official; (f) Administrator / Office-Bearer;**
7. The provision 38(4) clearly prohibits any individual from occupying more than one posts at a single point of time, as per the above, Ms. Nishtha Parasi allegedly is holding both positions; One as Match Official being observer, and Second as Administrator being ICA's nominated member for the Apex Council of CAU.
8. The specific issue that needs to be addressed here is that, does the appointment of Ms. Nishtha Parasi to act as an observer for the women activities of CAU come under the definition of Match Official as per the provisions of CAU constitution?
9. Before dealing with this issue one must read the definition of conflict of interest as referred in the BCCI and CAU Constitutions - 'Conflict of Interest' refers to situations where an individual associated with the BCCI / CAU in any capacity acts or omits to act in a manner that brings, to is perceived to bring the interest of the individual in conflict with the interest of the game of cricket and that may give rise to apprehensions of, or actual favoritism, lack of objectivity, bias, benefits (monetary to otherwise) or linkages, as set out.
10. Let us deal with the issue at hand now, Ms. Nishtha Parasi being an Apex Council member of the CAU, and the Apex Council being primarily responsible for the governance of the Association is involved in taking all the policy decisions and governance decisions for the CAU. As a matter of practice, from time to time to ensure that the activities of the Association are conducted as per requirements, and to make sure that the facilities provide to the players are in place, from time to time Apex Council members are entrusted with the responsibility to act as an observer for the

activities, Ms. Nishtha Parasi being the only female member in the Apex Council is entrusted with the responsibility to act as an observer for women's cricket activities like women team conditioning camps, selection trials and practice matches and for which she is paid a daily allowance as per CAU policy and norms. The term observer in the CAU Constitution is included in the definition of 'Match Official', and 'Match Official' is considered as one of the post provided in provision 38(4) in relation to prohibition on any individual from occupying more than one posts at a single point of time. But, the term Match Official and the term Observer therein is specific to an appointment done for a Match like Umpires, Scorers, Ground Staff, etc, but does not include the appointment done for cricket activities like camps, selection trials, etc. Moreover, it seems to be a prudent practice that senior functionaries responsible for governance of the association are present there during cricket activities to ensure that activities of the association are conducted as per requirements, and to make sure that the facilities provided to the players are in place, also they can resolve any grievance of any player or support staff there and then itself.

11. As per above, considering all the facts brought in before me, I am of the considered opinion that, appointment of Ms. Nishtha Parasi to act as an observer for the women activities of CAU, does not constitute as being a Match Official and therefore the provisions of Conflict of Interest as regards to occupying more than one posts at a single point of time does not attract in this particular instance.
12. Accordingly, the said Reference is disposed off.


Justice Virender Singh
Former Chief Justice
Ethics Officer - CAU