

To

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

Subject: Reference No. 1.

This is in response to your communication Ref/494/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, Mr. Gyanendra Pandey, is a nominated ICA male 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, recently, Mr. Gyanendra Pandey has been appointed as Head Coach for Uttar Pradesh Cricket Association Men's Senior Team, and has been with the UPCA Team as a coach for the SYED MUSTAQ ALI Trophy and also the ongoing Vijay Hazare Trophy.

We seek your reference on, that does the appointment of Mr. Gyanendra Pandey as head coach of UP Cricket Association team and he being an ICA male representative in the Apex Council of CAU thereby being a member of Apex Council of CAU attracts the provisions of Conflict of Interest?"

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

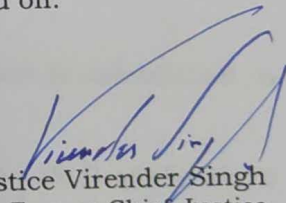
- (f) Administrator / Office-Bearer
- (g) Electoral Office
- (h) Ombudsman & Ethics Officer
- (i) Auditor
- (j) Any person who is in governance, management or employment of a Franchisee
- (k) Member of a Standing Committee
- (l) CEO & Managers
- (m) Office Bearers of a Member
- (n) Service Provider (Legal, 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. Specific emphasis can be made from the provisions 38(4), wherein it is clarified that no individual may occupy more than one post from the list provided at a single point of time. Two posts find relevant in this present instance on which reference is made i.e. (c) **Team Official**; (f) **Administrator/Officer Bearer**.
4. The definition of 'Team Official' in BCCI/CAU Constitution refers to the support staff appointed by BCCI/CAU and it includes coaches, Managers, Physiotherapist, Nutritionist, Trainers, Analyst, Councilors and Medicos. In this situation since Mr Gyanendra Pandey is not appointed by either BCCI or CAU, but is appointed by the UP Cricket Association as Head Coach for UPCA Men's Senior Team, hence it comes under the definition of a 'Team Official' for UPCA.
5. The definition of Administrator/Officer Bearer in BCCI and CAU Constitution means and includes present and former Presidents, Vice-Presidents, Hon. Secretaries, Hon. Treasurers, Hon. Joint Secretaries of BCCI/CAU, Past and Present President 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 BCCI/CAU or of its Committees. Since the Apex Council is the Principal Body of Association tasked with its governance as per the definition of 'Apex Council' in CAU Constitution, Mr. Gyanendra Pandey though being a nominated member from ICA is a member of Apex Council of CAU, therefore, comes under the definition of being an Administrator of CAU.
6. Since the provision 38(4) dealing with Conflict of Interest clearly prohibits any individual from occupying more than one post at a single point of time, as per the above situation, Mr. Gyanendra Pandey seems to be holding both the positions viz. one as Team Official being Head Coach of UPCA Team and second as Administrator being ICAs nominated member for the Apex Council of CAU. It needs to be mentioned here that on being enquired orally from Hon. Secretary CAU on additional information regarding Mr. Gyanendra Pandey, he informed that as per admission of Mr. Gyanendra Pandey, in the Apex Council meeting his appointment as Head Coach for UPCA Men's Senior Team is a position which he is holding in an honorary capacity without taking any professional fees for the same.
7. Though it may look as an open and shut case of conflict of interest as per provisions 38(4) as referred to hereinabove but a specific issue needs to be addressed here.
 - A. Mr. Gyanendra Pandey is an Administrator of CAU but is Team Official for UPCA and not CAU, so can he be attracted by provision of conflict of interest?
8. Before dealing with these 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.

9. Let us deal with the issue now, Mr. Gyanendra Pandey being an Apex Council member of the CAU, and the Apex Council being primary responsible for the governance of the Association is involved in taking all the policy decisions and governance decisions for the CAU, whereas management of cricketing matters is solely in the hands of 'Cricket Committee' and is independent of the Apex Council which takes governance decisions. Mr. Gyanendra Pandey being a head coach of UPCA, i.e. another state association can only be involved with the UPCA Men's Team as a coach. Also, as far as the definition of 'Team Official' is concerned, Mr. Gyanendra Pandey although having being not appointed admittedly either by BCCI or CAU and is appointed as Head Coach by the UPCA for its Men's Senior Team, he in that eventuality would fall under the definition of Team Official for UPCA only and cannot be by any stretch of imagination would fall under the ambit of Team Official for Cricket Association Uttarakhand (CAU), therefore, he, not coming in ambit of definition of Team Official of CAU in any manner whatsoever, the provisions of conflict of interest are not attracted in his case.
10. As per above, considering all the facts brought in before me, I am of the considered view that nomination of Mr. Gyanendra Pandey as male representative of ICA is being done by ICA which is an external body, as per the process adopted by ICA, and CAU has no role or involvement in it. Also, Mr. Gyanendra Pandey being appointed as a head coach of UPCA Men's Team is also done by another state association, whether honorary or not, but CAU has no role or involvement in it too. Since, the appointment of Mr. Gyanendra Pandey, as head coach of UPCA comes under the ambit of being a Team Official for UPCA and not CAU, thereby it doesn't come under the ambit of Team Official as far as CAU is concerned, hence under the present set of circumstances as emerged, provision of conflict of interest is not attracted in his case.
11. Accordingly, the Reference at hand stands answered and disposed off.


Justice Virender Singh
Former Chief Justice
Ethics Officer - CAU