

Dated: 10.03.2021

To

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

Subject: Reference No. 3.

This is in response to your communication Ref/496/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, the CAU appoints various individuals for taking responsibilities of various activities conducted from time to time. Responsibilities like Team Manager, Coordinators, Tournament in charge, etc. require people who have been involved in the activities of cricket in the State. CAU has members of people who run the district cricket and are associated with the association, therefore from time to time CAU takes their services to take care of some of the responsibilities.

We seek your reference, that does appointment of any members or members of district office bearers of district cricket bodies for any responsibility attract any provisions of conflict of interest as per the Constitution of CAU? Also, if any such individuals were appointed priorly and their assignment is completed can the CAU release their payments due?"

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. Since the reference was not very specific, I enquired from the Hon. Secretary CAU orally on additional information regarding the instant subject matter on which he informed that on some question being raised priorly on this issue of members being appointed as Team Managers, he had sought a legal opinion from the empaneled Legal Advisor of CAU Sh. V.B.S. Negi, Senior Advocate opined that, any member who is not in any decision making role or part of any sub-committee or standing committee or in any manner in any such position through which the decision making with regards to a team or franchise can be influenced would clearly not be in direct or indirect conflict of interest if he is appointed as a Manager of a team which falls under the definition of Team official under the CAU Constitution. And that based on this legal opinion, the same rationale is also applicable to appointments with other responsibilities like Coordinators, Tournament incharges etc.

4. Before going further, 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.

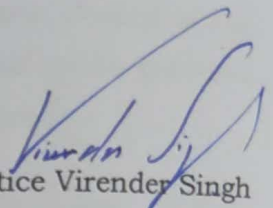
5. Further, the provisions that apply mutatis mutandis to the CAU from the BCCI Constitution in reference to Conflict of Interest defines the forms of conflicts as far as any individual is associated with CAU/BCCI, like; Direct or Indirect Interest, Roles compromised, Commercial conflicts, Prior relationship, Position of influence and also prohibition on an individual for occupying more than one posts at a single point of time.
6. The sub provisions that may attract the present matter are 38(1)(v) and 38(4), one deals with Position of influence and other prohibits an individual for occupying more than one posts at a single point of time.
7. First, let us deal with the provision 38(1)(v) which reads as that, 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/CAU. This provision makes its abundantly clear that any individual (in this case a member) who is not in any decision making role or part of any sub-committee or standing committee or in any manner in any such position through which the decision making with regards to a team or franchise can be influenced would clearly not be in direct or indirect conflict of interest of he is provided with any responsibility for the association and its activities. If such a person is in a position to call for decisions of governance, management or selection like being a Administrator, member of Apex Council, member of Standing Committee, Selection Committee, any sub committee, and if he himself or his close affiliate or relate is into zone of consideration or subject to such decision making then it tantamount to conflict of interest. The present reference, talks about any member of the association or member of the district affiliate or office bearer of the district affiliate being appointed for any responsibility, in this case it does not attract the above mentioned provision of conflict of interest as such member / member of district body / office bearer of district body is not in the decision making body or part of governance of the CAU, therefore the provision for conflict of interest is not applicable.
8. Secondly, the provision 38(4) states and clarifies that no individual may occupy more than one posts from the list provided at a single point of time. From the list of posts that are mentioned in this provision at no where the post 'Member' (i.e. Member of CAU) is mention, also at no place 'Member of the affiliate' (i.e. Member of a district body within CAU) is mentioned. Whereas 'Office bearer of a Member' is mentioned in the list. Therefore, it is clear that there is no restriction on a Member of CAU or Member of a district body within CAU from being appointed for any responsibility like Team Manager, Coordinators, Tournament incharges, etc. Whereas, If a 'Office Bearer

of a Member' i.e office bearer of district association is appointed for any responsibility like Team Manager, Coordinators, Tournament incharges, etc. it will attract the provision 38(4) as conflict of interest as such appointed individual will be occupying more than one post at a single point of time.

9. Even otherwise let us understand the principle of conflict of interest which is to be followed mutatis mutandis to the relevant provisions of BCCI provisions, but there is a fundamental difference in the structure of Membership in BCCI and State Associations. BCCI does not have the concept of individual Membership whereas in State Associations, individual memberships are in existence.
10. It is, therefore, important to understand and take into consideration the fundamentals of Cricket governance at the level of State Cricket Association, operational processes and multi tasking necessities for human resources etc. while dealing with the instances of conflict of interest and only after carefully analysing the factual position and understanding the best practices, the real impact of instance of conflict of interest can be ascertained. In State Associations, generally individual memberships are granted to individuals who are involved in the Cricketing activities and contribute to the development of Cricket in that very State. If such individual who is Member of the State Association is entrusted with any responsibility by his State Association based on his expertise and ability and for that task such an individual has to be monetarily compensated for his services. Whether the individual in question who has been entrusted with a responsibility or task is only a Member of Association or is part of Governance structure or otherwise part of decision making in the Association can be a question for determining an instance for conflict of interest. **If**, the answer to the question is that the individual in question is part of governance structure or a part of decision making in Association, then **yes**, principle of conflict of interest would be attracted. **If**, the answer is that such individual is only a Member of the Association, then **no**, the principle of conflict of interest is not attracted as being only a Member is like a minor shareholder in a Company who is not involved in governance, policy making or day to day decision making of the said organisation. Therefore, in no way the individual is in a position to appoint himself for and to undertake any responsibility with monetary compensation and it would be the other person who are part of the Management, governance like officer bearers, Apex Council Members, Sub Committee Members who would take such decisions.
11. As above, it is therefore clarified that appointment of any member of CAU or members of any district body of CAU for any responsibility does not attract the provisions of conflict of interest within the Constitution of CAU. But if any office bearer of any district body of CAU is appointed for any responsibility, it may attract the provisions of conflict of interest as per the Constitution of CAU.
12. Also an ancillary reference is put forward to me stating that, if any such individuals (i.e. positions of conflict of interest) were appointed priorly and their assignment is completed can the CAU release their payments due?. It is made clear that in capacity of being an Ombudsman, this question was already dealt and decided in the matter of Mr. Kumar Thapa & Anr. Vs. Mahim Verma and Anr. (Compliant No. 1/OBDS/CAU/2020). Therefore, if such an individual appointed had completed his

assignment to the satisfaction of the CAU, then there is no question as to why his/her payment due should be kept on hold and not released. Moreover, any instance of conflict of interest would survive till either the conflict is surviving or assignment or task in question is continuing. Any allegations for that matter cropping up post facto in a stale matter would become infructuous by efflux of time.

13. Accordingly, the said Reference is disposed off.



Justice Virender Singh

Former Chief Justice

Ethics Officer - CAU