

**BEFORE JUSTICE D. K. JAIN, FORMER JUDGE, SUPREME COURT OF INDIA
ETHICS OFFICER, THE BOARD OF CONTROL FOR CRICKET IN INDIA**

COMPLAINT 4/2019

In re:

**Complaints dated 17th April 2019 & 20th April 2019 received from:
Mr. Sanjeev Gupta**

In the matter of:

Mr. V.V.S. Laxman

**ORDER
20.06.2019**

1. This order shall dispose of two complaints, on the same subject matter, received by the Ethics Officer of the Board of Control for Cricket in India (for short "the BCCI") from Mr. Sanjeev Gupta, (hereinafter referred to as "the Complainant"), under Rule 39 of the Rules and Regulations of the BCCI (for short "the Rules") against Mr. V.V.S. Laxman. It is alleged in the Complaints that Mr. V.V.S. Laxman is occupying more than one posts enumerated in Rule 38(4) of the Rules at 'a single point of time' and therefore, there is a "Conflict of Interest" as contemplated in the said Rule. The posts, which Mr. Laxman is stated to be occupying at the same time are as under:

- a. A member of the Cricket Advisory Committee (for short "the CAC") of the BCCI;
- b. Mentor to an Indian Premiere League (for short "the IPL") Franchisee- 'Sunrisers Hyderabad'; and
- c. A Commentator in Indian Cricket Matches.

Thus, according to the Complainant, since Mr. Laxman is occupying the afore noted multiple posts at a single point of time, all of which, fall within the ambit of clauses (b), (d) and (j) of sub-Rule 4 of Rule 38 of the Rules,

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respectively, and as such, give rise to a “conflict of interest”, as defined in Rule 1(A)(g) of the Rules.

2. On 24.04.2019, notices were issued to Mr. V.V.S. Laxman and the BCCI to file their written response to the said complaints, on or before, 28.04.2019.
3. Mr. Laxman filed his written response on Affidavit, on 28.04.2019, stoutly refuting the allegation of any “Conflict of Interest”, whatsoever.
4. Vide email dated 29.04.2019, the Ethics Officer granted an opportunity to the BCCI and the Complainant to file their Rejoinder to the reply received from Mr. Laxman, on or before, 01.05.2019. However, on Complainant’s request, time to file the Rejoinder was extended up till 07.05.2019.
5. The Complainant and the BCCI filed their respective Rejoinders to the response of Mr. Laxman to the Complaints. Vide email dated 06.06.2019, the parties were granted an opportunity of personal hearing before the Ethics Officer on 14.05.2019 at 2.00 P.M. at New Delhi. On 14.05.2019, Mr. Laxman, appeared in person along with his Counsel, Mr. P. Sri Ram, Advocate. The Complainant appeared in person. The BCCI was represented by its Chief Executive Officer Mr. Rahul Johri, along with Mr. Indranil Deshmukh, Advocate. Since on that date in another Complaint, the parties had been called for personal hearing and the arguments in that matter got stretched beyond 2 pm, Mr. Laxman appeared before the Ethics Officer in the midst of the other proceedings and filed a Memorandum of his submissions before the Ethics Officer. He stated that the Ethics Officer may take a decision on the Complaints on the basis of the material already on record and the said Memorandum of submissions filed on that date. Mr Sanjeev Gupta, the Complainant and Ld. Counsel for the BCCI submitted that in view of the statement made by Mr. Laxman before the Ethics Officer they did not wish to make any further submissions. Accordingly, final orders in the Complaints were reserved.



6. In his defence, Mr. Laxman has stated that at the time of his nomination as a member of the CAC, he was given to understand that it was only a honorary invitation to help the BCCI in certain difficult decisions, as and when required by them. At the time of his nomination as member of the CAC, in the year 2015, he was already associated with 'Sunrisers Hyderabad', a fact known to the BCCI. Since then, there have been four seasons of the IPL and all throughout, this period, he had been the Mentor for 'Sunrisers Hyderabad', but no issue of "Conflict of Interest" was ever raised. As a matter of fact, in December 2018, he along with the other two members of the CAC, while expressing their inability to participate in the process of selection of the Head Coach for Indian Women's Team, had requested the Committee of Administrators, BCCI to clarify the scope of role and responsibilities of the CAC but, till date, there has been no response to the said request. It is, therefore asserted that there being no overlapping of the responsibilities between his being a CAC member and the Mentor of the 'Sunrisers Hyderabad' there is no scope for one role to have any bearing on the decisions taken in the other role.
7. In so far as his role as a Commentator is concerned, it is averred that he is in no manner a BCCI Commentator and has never signed any agreement with the BCCI in this regard. It is pleaded that his contract with a private sports production company as a Commentator can in no manner be brought under the ambit of clause (d) of Sub-Rule (4) of Rule 38 of the Rules. It is thus, stressed that there has been no infraction of any Rule on his part and therefore, the Complaints against him be closed. However, in the Memorandum of Arguments filed on behalf of Mr. Laxman, by his lawyer, it is pleaded that if the Ethics Officer finds a "Conflict of Interest" on his part, for being the member of the CAC and Mentor of the IPL Franchisee, Mr. Laxman may be provided an opportunity to resolve the same by resigning from the so called CAC and ensure that his services to the game of Cricket in India continue without further hindrance such as the subject Complaints.

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8. In its Rejoinder, dated 01.05.2019, to the response filed by Mr. V.V.S. Laxman, the stand of the BCCI is that presently, Mr. Laxman does occupy three posts; viz. (i) a member of the CAC, to which, post he was nominated on 26.04.2015; (ii) a Mentor to the 'Sunrisers Hyderabad' - an IPL Franchisee and (iii) a Commentator, and all these posts are covered under Rule 38(4) of the Rules. Thus, according to the BCCI, an instance of "Conflict of Interest" has arisen in the case of Mr. Laxman. However, the BCCI has pleaded that both the "Conflict of Interest" of the nature alleged are tractable, in terms of Sub-Rule (3)(a) of Rule 38 of the Rules and can be resolved. It is urged that in so far as "Conflict of Interest" arising from Mr. Laxman being a Mentor to 'Sunrisers Hyderabad', the "Conflict of Interest" can be resolved by directing Mr. Laxman to declare the "Conflict of Interest" in a fair and transparent manner with a further direction to him to recuse himself from any discussions or directions with the CAC of the BCCI where any individual being considered for selection is or has been associated with 'Sunrisers Hyderabad'. As regards the "Conflict of Interest" arising from Mr. Laxman being a member of the CAC and being a Commentator, the "Conflict of Interest" can also be resolved by directing Mr. Laxman to declare the "Conflict of Interest" in a fair and transparent manner with a further direction that while discharging his duties as a commentator, he will maintain strict confidentiality with regard to the matters that have come to his knowledge in his capacity of being the member of the CAC and/or matters discussed in CAC meetings.

9. In his Rejoinder to the Memorandum of written submission filed by Mr. Laxman, the Complainant has asserted that while Sub-Rule (1) of Rule 38 of the Rules only mentions as illustrations the forms of "Conflict of Interest" viz. (i) Direct or Indirect Interest (ii) Roles Compromised; (iii) Commercial Conflicts; (iv) Prior Relationship and (v) Position of Influence, but Sub-Rule (4) of Rule 38 of the Rules is absolute in terms, barring an individual from occupying more than one of the posts enumerated therein, at a single point of time. According to the Complainant no exception to

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Sub-Rule (4) of Rule 38 has been carved out in the Constitution of the BCCI or the Rules framed there under.

10. I have considered the matter, keeping in view the fact that under the Rules no unidimensional framework or guidelines are prescribed for dealing with the cases of "Conflict of Interest". However, for resolving a case involving "Conflict of Interest", Rule 39(3) of the Rules vests in the Ethics Officer a wide jurisdiction to issue appropriate directions in the Complaint(s) received, including the power to impose fine and even to bar the individual concerned for life from involvement with the game of Cricket, of course when the Ethics Officer returns a finding that the facts of the case involve "Conflict of Interest."
11. Generally speaking, the concept of "Conflict of Interest", is not necessarily a question about something one does or intends to do but a question of what one could do. It is also quite possible that the person concerned may not even be conscious of the existence of such conflict till it is pointed out to him/her. However, in so far as the institution of BCCI is concerned, as of now the general principles have given way to the codified Rules. Rule 1(A)(g) refers to situations where an individual, associated with the BCCI in any capacity, acts or omits to act in a manner that brings, or 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 favouritism, lack of objectivity, bias, benefits (monetary or otherwise) or linkages, as set out in Rule 38 of the Rules. Therefore, the question of "Conflict of Interest" has to be examined on the touchstone of its definition in Rule 1(A)(g) of the Rules, which clearly brings within its ambit all situations which have the potential, perception and reasonable apprehension that there is a "Conflict of interest" on account of some action or inaction on the part of the person concerned who is associated with the BCCI in any capacity.

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12. Thus, for deciding the question whether or not a fact situation has given rise to a "Conflict of Interest" the afore stated provisions have to be kept in view. In so far as the instant case is concerned, in order to answer the question, namely, whether or not, on facts at hand, a case of "Conflict of Interest", as contemplated in Rule 38(4) of the Rules is made out, as alleged by the Complainant, the first and the foremost question to be examined is whether Mr. Laxman is associated with the BCCI and is holding three posts enumerated in the said Rule?
13. In so far as the post of the CAC is concerned, the submission of Mr. Laxman is that unlike the Standing Committees and other Cricket Committees as envisaged under the BCCI Constitution, the CAC is not an ongoing functional Committee, which meets regularly, but is constituted from time to time, only to meet specific objectives in special contingencies as mentioned in the BCCI Constitution. He has also stated that there was a lack of clarity with regard to his role and responsibility as a CAC member. In this regard, Mr. Laxman has referred to his reply to the communication requesting him to join the meeting of the CAC for the selection of Head Coach for the Women's team. While expressing his inability to attend the meeting because of short notice, he had asked for a clarification on the scope of his role and responsibility in the CAC, which he never received. Finally, Mr. Laxman has stated through his Affidavit dated 28.04.2019 that if it is found by the Ethics Officer that there is a "Conflict of Interest" in his roles, he may be provided an opportunity to resolve the same by resigning from the CAC.
14. The functions of the CAC are stated in Rules 24 (5) and 26 (2) A of the Rules. As per the said Rules the functions of the CAC are to select head coaches and the Committee to select Men's Team. Further, Rule 26 of the Rules expressly clarifies that the Cricket Committees are Committees comprised exclusively of former players, who are tasked with selection, coaching and evaluation of team performances. Having regard to the functions and responsibilities assigned to the CAC, I have no hesitation in

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coming to the conclusion that Mr. Laxman is associated with BCCI as a member of the Cricket committee and is being treated as such by the BCCI. Thus, his post falls within the ambit of clause (b) of Sub-Rule (4) of Rule 38 of the Rules. I hold accordingly.

15. The next question falling for consideration is whether being a Commentator, Clause (d) of Sub-Rule (4) of Rule 38 is attracted in his case. As noted above, the stand of Mr. Laxman in this regard is that he is neither a BCCI Commentator nor has he ever signed any such agreement with the BCCI. He is doing commentary under a private agreement with a private Sports Production Company, and therefore, his position as a Commentator is not covered under the aforesaid clause.

Although, in its Rejoinder the BCCI has not clarified whether it has any direct or indirect role/control over the engagements of the Cricket Commentators when private agreements /contracts/ arrangements, are entered into by the Cricketers, but its categorical stand on the issue is that in the present case Rule 38(1)(ii)-Roles Compromised and Rule 38(1)(ii)-Commercial Conflicts are attracted. Be that as it may, clause (d) of Sub-Rule (4) of Rule 38 of the Rules does not carve out any distinction between a "Commentator" engaged by or through the BCCI or such a contract/agreement is entered into by the individual directly. If an individual, is associated with the BCCI in any capacity, and is a "Commentator", in my view clause (d) of Sub-Rule (4) of Rule 38 gets attracted. I hold accordingly.

16. The next issue is whether, being a Mentor to the IPL Franchisee 'Sunrisers Hyderabad', Mr. Laxman occupies the post contemplated in clause (j) Sub-Rule (4) of Rule 38 of the Rules, as alleged by the Complainant?

17. As stated above, admittedly Mr. Laxman, is associated with the 'Sunrisers Hyderabad' for over 7 years in the capacity of a Mentor. His role as a Mentor includes offering to the players the insights and guidance on

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Cricket. Furthermore, admittedly, he also takes part in the bidding for the players for the said IPL franchisee during the process of such auctions.

18. In the definition of "Team Official" under the IPL Operational Rules, which mandate compliance with the BCCI "Conflict of Interest" Rules, "Team official" inter alia means any person who has been provided IPL Central Accreditation on behalf of a team or Franchisee or is a Consultant to the team or the franchisee. It is not in dispute that Mr. Laxman is in the list of persons submitted by the 'Sunrisers Hyderabad' for the purpose of being provided accreditation to be part of the franchisee team. It has also been alleged that Mr. Laxman sits in the team 'dug out' during the match and as noted above, plays an active role in the selection of the players and the management of the team. Although, it may not be a significant factor, but it is not the case of Mr. Laxman that he does not receive any consideration, monetary or otherwise from the IPL franchisee.
19. In light of the admitted factual position, there is little room for doubt that Mr. Laxman is a "Team Official" in governance and management of the IPL franchisee and his said post is squarely covered by clause (j) of the Sub-Rule (4) of Rule 38 of the Rules.
20. The upshot of the above analysis of the nature of the afore stated three posts is that being a member of the CAC, a Commentator and a Mentor to 'Sunrisers Hyderabad', Mr. Laxman is occupying three posts as enumerated in Rule 38(4) of the Rules, at a single point of time.
21. Having come to the conclusion that presently, Mr. Laxman occupies multiple posts at a single point of time, a situation expressly sought to be avoided by sub-Rule 4 of Rule 38 of the Rules, the question, which may require consideration is whether such situation leads to the conclusion that there is a "conflict of interest" as defined in Rule 1(A)(g) and contemplated in sub-Rule (1) of Rule 38 of the Rules?

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22. A conjoint reading of the provisions of the Constitution as also the Rules of the BCCI leads to an irresistible conclusion that one of the basic ideas behind the introduction of the Rules, especially the definition of “Conflict of Interest” in Rule 1(A)(g) and the provisions of Rule 38 of the Rules was to implement the principle of ‘one man one post’, in the larger interest of the game of Cricket. Evidently, it is aimed at avoiding concentration of power in a few hands and also for ensuring larger participation of the persons having vast knowledge and experience in the game of Cricket. Looked at from that angle, it has to be held that the use of the word “may” in Rule 38 (4) of the Rules does not mean that the provisions contained therein are merely directory. It is no longer *res integra* that mere use of the words such as “may” or “shall” would not necessarily make a provision mandatory or directory. On the contrary, whether a provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which, the intent is clothed. The real intention of the legislature may have to be ascertained keeping in view the context, the design and the nature of legislation; the consequences, which would flow from construing it in one way or the other and above all, whether the interpretation would not defeat and frustrate the very object of the legislation. (See: State of U.P. v Babu Ram Upadhaya AIR 1961 SC 751 and May George Vs. Special Tehsildar (2010) 13 SCC 98].

23. As such, to hold that the provisions contained in Rule 38 (4) of the Rules as merely directory, in my opinion, would be doing violence to the very spirit of the Constitution and the Rules of the BCCI.

24. In that background it would suffice to hold that having regard to the nature of the posts presently being occupied by Mr. V.V.S. Laxman, the situations as envisioned and illustrated in clause (ii) – “Roles Compromised”; clause (iii)- “Commercial Conflicts” and clause (v)- “position of influence” are clearly attracted. However, having regard to the bar imposed in Sub-Rule (4) of Rule 38 of the Rules, in cases, such as the present one, wherein an individual is found to be holding multiple posts at

the same time, it would be unnecessary to go into the actual or possible or potential consequences of his holding multiple post at the same time, all of which, I have already concluded, are the posts mentioned in Rule 38(4) of the Rules. I therefore, declare that the holding of the afore stated posts by Mr. V.V.S. Laxman at a single point of time, has given rise to a situation of "Conflict of Interest".

25. The question now surviving for consideration is whether the "Conflict of Interest" involved in the present case is "Tractable" or "Intractable" as contemplated in Rule 38(3) of the Rules. The said provision provides that "Conflict of Interest" may either be "Tractable" or "Intractable" under Rule 39(3)(a) of the Rules. It provides that, in case, the Ethics Officer comes to the conclusion that "Conflict of Interest" is tractable, then the Ethics Officer may declare it to be so and direct the Individual concerned to recuse from discharging the obligations and duties so vested in him or relinquish the interest that causes the conflict. However, if the "Conflict of Interest" is declared to be intractable, then the Ethics Officer may direct that the Individual concerned be suspended or removed from his post and impose suitable monetary or other penalty and bar that person from involvement with the game of Cricket for life or for a specified period.

26. In the instant case, having regard to the afore noted stand of Mr. Laxman, that if it is found by the Ethics Officer that his presence in the CAC has resulted in a "conflict of Interest" situation, as envisaged in Rule 38 of the Rules, he may be provided an opportunity to resolve the same. I declare that in the present case the "Conflict of Interest" is tractable. Further, notwithstanding the fact that Mr. Laxman was obliged to otherwise disclose the requisite information as stipulated in Rule 38(2) of the Rules, but bearing in mind the fact that the Rules have come into existence only after August 2018, I am inclined to give benefit of doubt to Mr. Laxman that perhaps he may not have realized that his occupying the aforesaid multiple posts did involve "Conflict of Interest". Accordingly, I direct the BCCI to ensure that Mr. V.V.S. Laxman relinquishes his



interests, which give rise to "Conflict of Interest" and does not continue to occupy more than one post as enumerated in Rule 38(4) of the Rules at any given point of time, within two weeks of receipt of this order.

27. The complaints are disposed of accordingly.

28. This order will be communicated to Mr. V.V.S. Laxman, the BCCI and the Complainant. The signed copy of this Order shall be kept in the folder of the Complaint.



(JUSTICE D. K. JAIN)
ETHICS OFFICER, BCCI