

**Objections to the Nominations sent by Kabaddi Association of Jharkhand
(in short KAOJ) for the Electoral College of AKFI**

ORDER

Kabaddi Association of Jharkhand (KAOJ), an affiliated State Unit of AKFI has sent names of its two representatives for “Electoral College” namely Mr. Rajeev Ranjan Mishra President and Mr. Bipin Kumar Singh General Secretary of the Association. Against these two names, objections were filed by Mr. Sanjay Kumar Jha. Notice of these objections was sent to the affiliated unit of KAOJ. Hearing on objections from both the parties was held on 05.12.2018. On behalf of the Objector Mr. Sanjay Kumar Jha with Mr. Harish Kumar appeared. On behalf of the Association Mr. Bipin Kumar Singh, Mr. Rajeev Ranjan Mishra and Mr. Ashutosh Mishra advocate appeared. Both the parties were heard on length and were given effective hearing. Documents filed by both the parties in support of their objections along with written submission were taken on record.

On perusal of the objections and documents on record it reveals that Jharkhand State Kabaddi Association (JSKA) was the original affiliated unit of AKFI. JSKA came into existence in 2000 and was recognised and conferred provisional affiliation by AKFI on 17.12.2000. Subsequently AKFI held a General Counsel Meeting at Mandaya (Karnataka) and recognised JSKA as its affiliated unit. An election to elect Office Bearers of JSKA for the session of 2009-2010 to 2012-2013 took place on 21.03.2009 at Bokaro in the presence of observers Mr. Rajiv Ranjan Mishra and Mr. Bipin Kumar Singh were elected as President and General Secretary respectively.

While inviting names of representatives from affiliated State / UT Kabaddi Associations, each Association was asked to provide its status explaining as to when last election of its Office Bearers were held, when and for how many terms its Office Bearers

were holding the post, age of the Office Bearers and if any court case was pending involving Association. Said information was called to examine as to what extent the State Associations were in compliance with Sports Code.

Kabaddi Association of Jharkhand provided said information by its letter dated 05.10.2018. Document shows that last election of Office Bearers of the Association was held on 08.01.2017. Relevant proceedings of those elections were attached.

It was further disclosed that Both President and Secretary of the Association are in their "Fifth Term", hold posts continuously ever since they were elected in 2001. Age of the President Mr. Rajeev Ranjan Mishra is about 57 years as his Date of Birth is 09.03.1961. Age of the Secretary Mr. Bipin Kumar Singh is about 44 years as his Date of Birth is 21.02.1974. Treasurer Mr. Haider Hussain is about 65 Years as his date of birth is 12.06.1953. There is no Court Case involving Association is pending.

In the objections, the Objector has stated that in the elections held in 2011/2012 Mr. Sushil Kumar and Mr. Sanjay Kumar Jha were elected as President and General Secretary respectively. Mr. Rajiv Ranjan Mishra and Mr. Bipin Kumar Singh were defeated in the said election. Thereafter they both constituted KAOJ and got it fraudulently registered in collusion with AKFI, it also got its affiliation. KAOJ claims to have got it registered in the 2013 under the Societies Registration Act which is again a fraudulent act. JSKA is the original Association and it has its Bank Account which is in operation till date. It regularly files audit reports and participates in various Kabaddi related activities. In response, the Association has controverted these allegations and stated that KAOJ is the changed name of former Association JSKA affiliated to AKFI. It is further stated that after the period of the election of 2009-2010 to 2012-2013 was over, election was conducted on 10.03.2013 for the session 2013-2014 to 2016-2017 on 10.03.2013 in which S.S Lakkad

was appointed as an Observer by AKFI to conduct the elections of JSKA in a fair manner. Mr. Prabhat Kumar Sharma was also present on behalf of the Jharkhand State Olympic Association. In the said election Mr. Rajiv Ranjan Mishra and Mr. Bipin Kumar Singh were elected President and General Secretary. It is further stated that thereafter for electing the Office Bearers of KAOJ originally incorporated as JSKA for the session 2017-2018 to 2020-2021, an election was held on 08.01.2017 at Bokaro in which Mr. Ajay Kumar Behra Secretary Orissa State Kabaddi Association was appointed as Observer by AKFI. Mr. Siri C.D Singh was an Observer from Jharkhand Olympic Association. In the said election Both Mr. Rajiv Ranjan Mishra and Mr. Bipin Kumar Singh were elected as President and General Secretary. It is urged that the objections filed by the Objector are false and malafide. No election of JSKA took place in 2011-2012 as alleged by the Objector. The Objector fraudulently registered JSKA under the Societies Registration Act on 21.01.2011 keeping in dark the original Members / Office Bearers of JSKA claiming himself to be Secretary of Ranchi District Kabaddi Association. When KAOJ went to the office of the Registrar, Societies Registration to get the Association registered, the fraud came to their notice. Since the Objector had already got registered JSKA, it was decided in the General Meeting held on 10.08.2014 at Bokaro to change the name of JSKA to KAOJ. Till date KAOJ is an affiliated unit of AKFI and has conducted various Kabaddi related activities.

The Association has placed on record the various documents showing that the name of original Association JSKA was changed to KAOJ. Its change was notified to various authorities and affiliation was given to it by AKFI. It has come on record that the KAOJ has performed various Kabaddi related activities. At no stage the Objector challenged the formation of KAOJ before any court of law. The Objector has not explained if after the alleged elections in 2011 of JSKA if any other elections in the presence of Observers from

the Olympic Organisation or AKFI or Sports Counsel were ever conducted. Since KAOJ continues to be the affiliated unit of AKFI and it has not been questioned by the Objector before any court of law till date, the names sent by it for preparation of “Electoral College” to elect the Office Bearers of AKFI for the limited purpose to amend the Constitution of AKFI in terms of the judgment of the Hon’ble High Court of Delhi are to be accepted.

The aspect of an Office Bearer of an Affiliated State Association if holding post in violation of Sports Code has been examined in similar Objections received in other State Association Matters and it has been held and observed:

*“National Sports Code of India notified on 31.01.2011 codified the instructions and Guidelines laid down from time to time by Government of India. It came to be observed that while the Sports was a State subject and Sports Development would come within the purview of the States up to the State level, at National and International level, it fell within the realm of Union of India. It was further observed though National Sports Bodies were autonomous in nature but then by virtue of various High Courts and Supreme Court judgments NSF would come within the Writ Jurisdiction of High Court because they performed State like functions such as selection of National Teams representing the Country in International Sports Events. National Sports Code 2011 further observed that Government of India had been taking various steps and initiatives from time to time to **Promote Good Governance practices in the management of Sports at National Level in pursuance of successive Sports Policies and those policies were based upon Basic Universal Principals of Good Governance of Olympic and Sports Movement.** Although these bodies may be registered in different States under Societies Registration Act or the Companies Act, then authority to function as NSF will be dependent on compliance with Government Guidelines. The Government had taken various steps to further improve the management of NSFs and these measures included free, fair and transparent elections by NSFs, measures to combat age fraud in Sports and Guidelines for prevention of Sexual harassment of women in sports. Code further observed that in the matter of Rahul Mehra V/s UOI and Others Delhi High Court took a serious view*

on the mismanagement of Sports sector in the country and expressed deep concern and the inaction on the part of the Government in implementing and enforcing its own Guidelines particularly those related to age and tenure.

*Clause 3.5 of the code mentioned gist of new initiatives taken by the Government in the recent past. Annexure XIII of the code dealt with the subject of **'Restoration of limits on the duration of tenure of Office Bearers of Indian Olympic Association and all the recognised NSFs.** Para 5 of this annexure letter observed that whereas after detailed examination of IOC charter, it was found that even the International Olympic Committee (IOC), which was the mother body of all sports federations, enforced tenure limits on its members and Office Bearers. It was further observed that Honourable Members of Parliament from across all political parties during a debate in Rajya Sabha on 24.10.2010, on the functioning of Ministry of Youth Affairs and Sports, pressed on the need to enhance transparency and accountability in the functioning of Sports Bodies by way of appropriate Guidelines including tenure limit for the Office Bearers.*

Taking into account the subject in its entirety, with a view to encouraging professional management, good governance, transparency, accountability, democratic elections etc. in NSF, the code brought into force the tenure limit provisions in modified form whereby the President of any recognised NSF could hold office for a maximum period of 12 years with or without break. The Secretary and the Treasure of any recognised NSF could serve a maximum of two successive terms of 4 years each after which a minimum cooling off period of 4 years will apply to seek fresh election. The President, Secretary and the Treasurer shall cease to hold post on attaining age of 70 years."

Good Governance of Sports Bodies in context of 'Basic Universal Principles of Good Governance of Olympic and Sports Movement' was also then taken into consideration and some of the core principles of the Basic Universal Principles of Good Governance of Olympic and Sports Movement' were considered for its being followed by the NSFs. These core principles are:

- Elections to the Sports Bodies should be governed by clear, transparent and fair rules.*
- Adequate procedural regulations must exist to ensure there is no conflict of interests*

- ***The term of Office should be of a limited duration in order to allow renewal of Office Bearers on a regular basis and give access to new candidates***
- *Co operation, coordination and consolation with Government to preserve autonomy.*

National Sports Code 2011 thereby very emphatically stipulated that a National Sports Federation in order to be eligible for recognition was required to

I. Comply with the tenure limits prescribed in the letter dated 01.05.2010 whereby tenure for the President was a maximum of 12 years.

II. -----

III. Hold Elections for the post of Office Bearers, as per the Model Election Guidelines. Code stipulated that non compliance with stipulations in the NSCI would, ipso facto, disentitle the concerned NSF from the right to Recognition as well as from the facilities made available by the Government to the NSFS.

The model Election Guidelines which formed part of NSCI required the candidates to be members of one of the Member States / UT's / Boards / Institutions, which was one of the constituent units of the AKFI as well as to figure in the Electoral College List.

Legal Status of Guidelines issued by the Government

In the year 1975 the Government of India, Ministry of Sports in consultation with the All India Council of Sports issued certain guidelines and circular dated 20.09.1975 was issued to all Sports Federations. Para 3 of the circular provided as under:-

The Government of India have carefully considered the matter, in consultation with the All India Council of Sports and have decided, in the interest of promotion of Sports and Games, that Government's financial and other assistance shall be extended only to those National Organisations dealing with Sports and Games which full fill the following conditions.

I. An Office Bearer of a National Federation may hold office for one term of 4 years and may be eligible for re-election for a like term or period.

II. No Such Office Bearer shall hold office consecutively for more than 2 terms or 8 years -----

*Explanation 1: For the purposes of this clause the expression "Office Bearer" means
(a) The President*

(b) The Secretary / Secretary General or any corresponding Office

(C) The Treasurer (Provided that if treasurer did not possess right to vote than provisions of the clause will not apply)

The term of the President stipulated in the said circular was modified by circulars dated 15.05.2010 and 17.05.2010 and it provided that:

The President of any recognised National Sports Federation including the Indian Olympic Association can hold the office for a maximum period of 12 years with or without break.

Clause 10 of these circulars of 2010 further provided that compliance to the directions shall be mandatory to receive Government Recognition and thereby to become eligible to receive financial as well as other forms of assistance from Government of India such as Railway Concession, Income Tax Exemption, Custom Duty Exemption etc. etc.

The sustainability and enforceability in law of the guidelines issued by the Government to regulate the functioning of National Sports Federation came up for consideration before the Delhi High Court in a case Narinder Batra V/s UOI in a writ petition (C) 7868 / 2005. Hon'ble Court held that guidelines issued by the Government were validly issued and were binding for the purpose for which they were issued.

Enforceability of Sports Code to the NSF was again examined and approved and affirmed in Rahul Mehra I and Rahul Mehra II cases by Delhi High Court. Case of Rahul Mehra I concerned elections of the Archery Association of India (AAI), a National Sports Federation. AAI was derecognized by the Government and the Government of India raised contention before court that unless and until AAI complied with the provisions of NSCI, including tenure & age restrictions of Office Bearers and holding of free and fair elections, the Government would not consider the grant of recognition to such Sports Federation. In the circumstances Code directed that recognition would be accorded by the Government to AAI only if the elections of AAI were held in accordance with NSCI. Since directions issued by the Court were not being complied, court disposed of the writ by appointing an Administrator to take over the affairs of AAI till its constitution was amended and elections were held in terms of Court's order.

In Rahul Mehra II case the Electoral College of All India Football Federation (AIFF) was in a challenge before the court on the ground that it was not in accordance with Model Election Guidelines or with NSCI. Hon'ble Delhi High Court held

“22. The Court is of the view that insofar as the Rules of the AIFF are in breach of the National Sports Code and the Model Guidelines for the conduct of elections, the results of the elections of the AIFF declared on 21.12.2016 would have to be set aside. It is so ordered. Fresh elections shall be conducted in accordance with the Model Guidelines. Additionally, nominations would be required to be proposed and seconded by one member association each and with clear notice, as required by the Model Election Guidelines read with rules of AIFF. Furthermore, the Electoral College shall be first prepared after addressing the complaints of various members who may have grievances in this regard.”

It is now clear by above referred judgments by the High Court that National Sports Federations are bound to implement and follow the Guidelines issued by the Government governing the Sport concerning that NSF.

Clause 30 of the MOA of AKFI provides that all the affiliated member units will abide by the Constitution of the AKFI.

Considering the situation that AKFI has to amend its constitution as measure of good governance of its affairs and to bring it in conformity with Sports Code and when its annual recognition by the Government of India would be on a test of its being compliant with National Sports Code, then State / UTs Associations which are affiliate bodies of AKFI also must act towards objective of good governance and thereby Sports Code compliant, in particular the tenure and age limit that will guide their functioning for fair and transparent representative nature of their elected representatives. State Governments if seek to govern Sports in a State, guided by the Sports Code would be contributing to the cause if proceed further to implement the Sports Code. State of Andhra Pradesh has taken a step in the direction. Till such State laws for the Sports bodies are legislated, AKFI considers appropriate to implement Sports Code, at least on the point of 'Tenure & Age limit' for the Office Bearers of its affiliated unit / associate so as to make those Office Bearers effective and true representatives of this body.

Accordingly the objections are decided to the effect that Kabaddi Association of Jharkhand Association will amend its Constitution to make it compliant of Sports Code and then hold elections of its Office Bearers in compliance with Model Election Guidelines in terms of Hon'ble Delhi High Court Judgment, preferably within one month. The

elections be conducted under the supervision of retired High Court judge or retired district judge as per rules.

As such names received from KAOJ for “Electoral College” are accepted for the limited purposes for the first round of elections of AKFI in terms of judgement of Hon’ble Delhi High Court.

Objections are disposed off accordingly. Copy of the order be sent by e-mail to both the parties for compliance and be put on the website of AKFI.

25.01.2019

-----sd-----

Administrator

AKFI