

08.02.2019

To: The Secretary / President

All Affiliated units of AKFI

Sir,

For Holding Elections of Office Bearers of AKFI as per directions given by Hon'ble High Court of Delhi in Writ Petition No. 4601/2013 decided on 03.08.2018, for the constitution of "Electoral College" for elections, names of authorised representatives from affiliated units of AKFI were invited. Simultaneously objections against names of authorised representatives were also called for ensuring correctness and genuineness of final constitution of the "Electoral College". Objections were received in number of the affiliated units against the names of authorised representatives and the focus of objections was the violation of Sports Code by the affiliated units. Since directions were issued by the Hon'ble Delhi High Court to hold elections of office bearers of AKFI in compliance of Model Election Guidelines, part of the National Sports Code of India, and since after the first round of elections of Office Bearers of AKFI the elected body was to take up the amendment of the Constitution / MOA of AKFI, in compliance of directions of the Hon'ble Delhi High Court, objections were decided and the importance and relevance of the observance of directions and guidelines of Sports Code was found to be equally relevant for an efficient and transparent functioning of the affiliated State / UT Kabaddi Associations, directions were issued to State Associations to amend their constitution and to hold elections so as to be in compliance with Sports Code. For your benefit the observations made while deciding objections are reproduced as below:

*"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 Treasurer 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.

The Sports Code Guidelines have been issued primarily to National Sports Federations but then taking into consideration that AKFI has to amend its constitution to bring it in conformity with Sports Code and also considering that State of Andhra Pradesh has issued directions for recognised Sports Bodies in the State to enforce the Tenure and Age limit for the Office Bearers, while deciding objections referred above, it was held:

“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".

In most of the instances where objections in respect of affiliated units were decided, directions have been issued to those units to amend their constitution to bring it in compliance with Sports Code and to hold elections of its Office Bearers in accordance with Model Election Guidelines and in compliance with Sports Code. Similar instructions need to be issued to rest other affiliated units also and are repeated in respect of affiliated units where instructions were issued while deciding objections, to amend their constitution so as to bring it in compliance with the Sports Code. In case the Office Bearer of the Association are in post in breach of the Sports Code then hold elections for those posts of Office Bearers to make their elected body in compliance with the Sports Code.

It may be observed that "Electoral College" constituted for the election of Office Bearers of AKFI is for a limited purpose of the first round of elections as per directions of the Hon'ble Delhi High Court. The directions made by Hon'ble Delhi High Court on the point are as below:

(ii) The Administrator shall ensure that the Electoral College of the AKFI is prepared, and elections held, in accordance with the Model Election Guidelines, within three months thereof.

(iii) The body so elected shall carry out the amendments to the MOA, to bring it in conformity with the NSCI.

(iv) Once this is done, a fresh round of elections shall be carried out, as per the amended MOA and in terms of the NSCI, ensuring that all stipulations in the NSCI, including age and tenure restrictions, are strictly complied with.

Above directions be followed strictly in a time bound frame preferably within one month from to-day and compliance report be submitted as soon as possible.

Date: 08.02.2019

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Administrator
AKFI