

Preliminary Exposure Draft

Comments

The desire of the Government for the development of Sports by enacting an Act is appreciated. However before commenting on the provisions of the proposed Act it is desirable that certain ground rules are agreed upon.

While accepting the prerogative of the Government to lay down policies and guidelines for the development of the sports, it is also to be kept in view that autonomous character of National Sports Committee/ Federations (NSF) is maintained.

Admittedly the subject “SPORTS” does not figure in the Concurrent list of the Constitution of India therefore, it is only the State Legislature competent to legislate in relation to any matter concerning sports. The position of law was conceded by the Union of India by filing an affidavit of Shri S.K. Sharma, Under Secretary, Ministry of Youth Affairs and Sports in Writ Petition 15058 of 2004. It is also needed to mention that the Government of India cannot issue directions / guidelines which are contrary or which overwrite the Memorandum of Association or the Constitution of any National Olympic Committee or National Sports Federation. Even this fact was also conceded by the Government in the said affidavit. It was also conceded that any issue concerning NSF can only be raised by the concerned officer appointed by the concerned State Government under which the society is registered. It was conceded that even the guidelines for assistance for NSF comes under the subject “Sports” in the State List therefore the Union Government does not have any mandate to frame rules / legislate on any matter related to Sports therefore Union of India cannot take up a stand that sports comes under Entry 13 of Union List as mention in the Seventh Schedule of Constitution of India and that the Sports bodies cannot participate in any manner in “International conference / Association”

One of the paragraphs of the proposed legislation realise upon residuary power under the constitution Entry 97 of Union List. It may be highlighted that the residuary powers come to aid of proposed legislation only if a particular subject is not covered by the main clauses that is under the State List, Central List, Union List or Concurrent list therefore no legislation can be enacted taking the shelter of residuary powers comes under the Entry 97 of the Union List.

Even the definition under fine tuning e.g. you are defining various International Games separately like Afro Asian Games instead it is desirable to have generic name of the Games recognized by the IOC, OCA, CGF, IFs, Continental Federations.

Under the head of definition Clause (SS) has sought to be introduced defining recognition in view of the fact that the National Sports Federation of any of the Sports is recognized by the International body, without such recognition no one can constitute any National Federation for Sports in any country. The recognition given by an International Sports Federation cannot be subjected to the recognition given by the Government of India. There cannot be any occasion for recognition by the Government of India even for giving financial assistance for any National Sports Federation in view of the fact that any condition imposed by the Government will contravene the Olympic Charter, it gives total immunity in every respect.

It may be useful to mention that a total mess was created in the matter of Hockey, in view of the fact that the International body in Hockey recognized Hockey India and the Government of India wish to recognize IHF the issue could not be resolved between Hockey India and IHF thereby totally jeopardizing the fate of Game of Hockey in India.

It is pertinent to mention that the NOC de-recognized IHF on the recommendations of Government of India and now the Government of India recognizes Hockey India as a body and thereafter again they recognized IHF as the recognized body. This created a total mess in the administration of Hockey in India.

By virtue of the definition clause various bodies are sought to be created as envisaged under the sub clause (gg) National Playing Fields Association of India and sub clause (kk) National Sports Promotion Organization. According to the International Federation and Olympic Charter there have to be only one National Body for one sports, therefore, it is not desirable to create multiple bodies of Sports in the country.

Referring to the Article 3 (i) the Government is the sole authority to take such measures including notification of articles, policies, rules and procedures

By enacting Section 3 by way of introducing Clause 3, power given to the Government to take all measures such as policies notifications, procedures and guidelines. Whereas in view of the Entry 33 it is a State subject.

By virtue of the Clause 4 of the proposed legislation a Sports Council is sought to be created. The past experiences have shown that such bodies are only created to give cabinet status to various political figures. There is no need to create such bodies as there is no effectiveness of such Councils

Chapter V Page 18 Clause (f)

By virtue of the Clause 8 (f) an embargo is being placed and the right which is given under 8 (e) is taken away when the approval of the Government is required in the matter of participation in the International competition sub clause (e) & (f) of Clause 8 are contradictory with each other and impinge upon autonomy of the Federation and raises a question of responsibility to select the athletes.

Recognition Chapter 7

Clause 10 is being introduced to ensure the prerogative of the Government for giving recognition to the National Sports Federations. As contended earlier the Government's recognition interfere in the autonomy of a particular National Sports Federation which agree to the rules of International Sports Federation require recognition from International Federation only hence the principle of double recognition is absolutely illegal and contradictory to the Olympic Charter.

Clause 12

Clause 12 is sought to be introduced for giving supremacy to the Government, to have a recognition first before such new sports organization is created or recognized by NOC or International Federation.

Clause 13

Clause 13 is sought to be created which is itself discriminatory and arbitrary power is given to the Government to recognize any sports Organization for the purpose of providing financial or other sports promotion.

It should be mandatory that unless Sports organization is recognized by NOC no financial assistance should be given by the Government of India.

Clause 15

Clause 15 is sought to be introduced by the virtue of which an embargo is being placed for getting elected in any sports organization unless you are less than 70 years. It may be highlighted that what age is to be put for outer limit comes under domain of a particular organization the Government should not have any power to direct to a particular sports organization to add any condition which is not under Societies Registration Act. The Charter of the International Olympic committee clearly lays down that for getting elected in any of the sports body age issue should be left to the discretion of that particular sports organization. In view of this fact only that particular body should have right to decide on this issue.

Clause 15

The same principle applies to the other sub clauses of Clause 15 where an embargo has been placed on tenure of office bearers such as contained in sub clause (6) of Clause 15.

Clause 23

Clause 23 is sought to be created for the resolution of disputes in the field of sports by way of Arbitration, conciliation and mediation. While welcoming such decision it may be highlighted that the International Olympic Committee has already given directions to all NOCs throughout the world to amend their constitution in order to create a mechanism for dispute resolution by way of Court of Arbitration for Sports which is under exclusive domain of NOC and NSF, in view of this, introduction of any such clause is contrary to IOC's directions.

Schedule 3 Page 42

The decision taken by the Government of India to propose a legislation concerning the transparency in the matter of funding of a particular sports organization is a very welcome step, the NOC totally agrees that irrespective of the proposed legislation they are prepared to go a step further to strengthen the mechanism to see that any funds given by the Government are not mis-utilized by any sports body.

The Proposed enactment treats the National Olympic Committee a Public Authority. They can not become a Public authority within the meaning of Article 12 of Constitution of India otherwise treating a National Olympic Committee as a Public authority is amenable to the jurisdiction and will run counter to Olympic Charter as contained in Clause 28 sub-clause 6 under the heading “National Olympic Committees” (NOCS) which reads as under :

The NOC must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal, religious or economic pressures which may prevent them from complying with the Olympic Charter.

It clearly states that the National Olympic Committee shall maintain full autonomy and Government should have no interference in any manner such as political, social, financial or legal.