

Promoting good governance in sports: A critical analysis of *S. Nithya v. The Secretary to the Union of India* case

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Abstract

The case of *S. Nithya v. The Secretary to the Union of India & Ors.*, decided by the High Court of Madras on 19 January 2022, marks a significant step towards promoting good governance in the realm of sports in India. The case highlights that sports governance issues have penetrated all levels of the system, and it advocates for transparency, merit-based athlete selection, and the involvement of experienced sports personnel in decision-making processes. The commentary highlights the judgment's significance in terms of compliance with the National Sports Development Code, 2011, the need for statutory regulation of sports federations in Tamil Nadu, and athlete participation on sports boards. It critically analyses the board composition of federations and recommends the restriction of executive board membership to sportspersons. Although a High Court judgment, the decision has the potential to pave the way for increased accountability, representation, and legal regulation towards a more transparent and inclusive sport governance framework in India.

Keywords

Sport governance, athlete representation, transparency and accountability, national sports federations

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1. Introduction

The case of *S. Nithya v. The Secretary to the Union of India & Ors.*,³ (*S. Nithya*) decided by the High Court of Madras on 19 January 2022, marks a (small but) positive step towards promoting good governance in the realm of sports in India. The judgment, delivered by a single judge bench, addresses issues such as the limits of the existing legislative framework within sport governance in India, best practice with respect to board composition and concerns regarding arbitrary decision-making within sports organisations. It advocates for transparency, merit-based athlete selection, and the involvement of experienced sports personnel in decision-making processes. The case highlights that issues pertaining to sports governance have not only affected national level athletes, but such issues are reflected in every level in the federal sport governance system.

This case note discusses the importance of this High Court decision, with a particular focus on the importance of compliance with the National Sports Development Code of India, 2011 (Sports Code), the requirement of a statutory regulation governing the functioning of sport federations and the need for increased participation of athletes on sports boards. Furthermore, it provides a critical analysis of the judgment's implications, particularly the Court's directives to restrict executive board membership within sport federations exclusively to sportspersons.

2. Factual background and contentions

The petitioner is an accomplished athlete with a strong track record in Discus Throw competitions, having secured numerous medals both within the state of Tamil Nadu and in South India.⁴ The petitioner contends that “despite her stellar performance, she was denied entry to participate in the Open National Championships for the years 2017 and 2018 by the Tamil Nadu Athletics Association (the sixth respondent)”.⁵ The petitioner seeks a writ of mandamus under Article 226 of the Constitution of India, urging the respondents to implement an online registration system for athletics events, disclose athlete funding details, and enforce the Sports Code in Tamil Nadu.⁶ The petitioner highlights discrepancies in training camps’

³ 2022 SCC Mad 318.

⁴ *S. Nithya v. The Secretary to the Union of India & Ors.*, 2022 SCC Mad 318, para 2.

⁵ *Ibid*, para 3.

⁶ *Ibid*, para 5.

records and misuse of funds, alleging a lack of strict implementation of the Sports Code in Tamil Nadu that would ensure transparency.⁷ It was also argued that there is a lack of sports personnel in decision-making positions within sports organisations, leading to poor management and selection decisions.⁸

The respondents one to three (the Ministry of Youth Affairs and Sports, the Sports Authority of India and the Athletic Federation of India) argued that they had no role in athlete selection.⁹ The responsibility of selection lies with state-level sports associations. The Youth Welfare and Sports Development Department, Tamil Nadu (the fourth respondent) against the petitioner's plea that there were no proper safety measures asserted that safety arrangements and accommodations are the responsibility of the Sports Development Authority of Tamil Nadu (the fifth respondent) for the District/State Level Chief Minister Trophy competition.¹⁰ The fifth respondent contended that all the safety measure have been provided for the said competition and its role is limited to sanction grants to develop sports and forwarding complaints (if any received).¹¹ It further argued that the sixth respondent (the Tamil Nadu Athletic Association) had failed to implement the Sports Code.¹² The sixth respondent countered the petitioner's claims, stating that athlete selection is based on merit and eligibility criteria.¹³ They defended their financial management, transparency, and argued that there are practical difficulties in the implementation of an online registration system.¹⁴

3. Legal framework: Analysing the implications of the judgment

3.1. Power to legislate

The judgment primarily addressed the issue of jurisdiction between the State and Union governments under the Constitution of India regarding matters related to 'sports'. Sports is

⁷ Ibid, para 4.

⁸ Ibid, para 5(v).

⁹ Ibid, para 6.

¹⁰ Ibid, para 7.

¹¹ Ibid, para 8.

¹² Ibid.

¹³ Ibid, para 9.

¹⁴ Ibid.

categorised under Entry 33 of the State List (List II) of the Seventh Schedule of the Constitution of India. This assigns the legislative competency to the states to govern all facets linked to sports at state level. Additionally, the Union Parliament can enact laws concerning sports at the national level by utilising its residual powers,¹⁵ within the ambit of Entries 10 and 13 of the Union List (List I) of the Constitution of India.¹⁶ The government by exercising its executive powers, notified the Sports Code in 2011 (which is an amalgamated version of various order/circulars issued from time to time by the government) to inter alia promote good sport governance practices in India.

Despite the absence of specific legislation pertaining to sports or its development, the Union government externally exercises control over sports entities, with a particular focus on National Sports Federations (NSFs).¹⁷ The Sports Code made annual recognition of NSFs mandatory.¹⁸ Some states (including Kerala, Rajasthan, Himachal Pradesh, and Haryana) have established Sports Councils at various levels, which have the authority to register and recognise sports organisations, including state units of NSFs. These laws pertain to the governance of sports organisations, associations and federations, and the establishment of Sports Councils at both the district and the state-level.

Within the context of this case, the Court emphasised the significance of improving the regulation of sports organisations. In a specific directive, the Court called upon the State government to contemplate the creation of a legal framework that enforces statutory regulation over the governance and operations of all sport organisations, clubs, and associations, including state units of NSFs, across all sports.¹⁹

3.2. Sports bodies and judicial review

¹⁵ Article 248 r/w Entry 97 of List I of the Seventh Schedule of the Constitution of India vests the residuary power with the Union Parliament to make any law with respect to any matter not enumerated in the State List or the Concurrent List.

¹⁶ Entry 10 of List I provides for “Foreign affairs; all matters which bring Union into relation with any foreign country”; Entry 13 of List I provides for “Participation in international conferences, associations and other bodies and implementing of decision made thereat”.

¹⁷ *S. Nithya v. The Secretary to the Union of India & Ors.*, 2022 SCC Mad 318, para 18.

¹⁸ *Ibid*, para 18.

¹⁹ *Ibid*, para 44.

The issue here pertains not only to the right of participation in sporting events, but importantly whether sports organisations are amenable to judicial review by the High Court under Article 226 of the Constitution. In various instances, the Supreme Court has held the significance of subjecting sports bodies to judicial review under Article 226 of the Constitution.²⁰ This conclusion has been reached given the substantial influence and control that NSFs have on sports. The case relating to the Board of Control for Cricket in India (BCCI) serves as a prime example where the Supreme Court has held that the BCCI is amenable to judicial review under Article 226 of the Constitution.²¹ Although BCCI did not qualify as a ‘State’ under Article 12 of the Constitution, it was deemed to be amenable to judicial review.²² The rationale behind this determination lies in the fact that the BCCI performed functions of a public nature due to its extensive control over the sport of cricket.²³ This encompassed inter alia team selection, rule formulation and selection/control of the cricket players who represent India. The deep and pervasive control over the game and its affairs exercised by sport organisations renders them liable to judicial review as the nature of such functions is not private. Consequently, even private entities undertaking public functions – such as NSFs – fall under the purview of writ jurisdiction as stipulated by Article 226 of the Indian Constitution.

In the present case, the High Court explicitly broadened the scope of judicial review under Article 226 to encompass all sports organisations, including state branches of NSFs, sports associations, and sports clubs at both state and district levels. This shift empowers the public interest and reinforces the principle of accountability across all tiers of sports organisations.

3.3. Compliance with the National Sports Development Code, 2011

The regulation and governance of NSFs in India is governed by the Sports Code, 2011, and the National Sports Policy, 2001 notified by the Union government. The Code currently governs NSFs due to the absence of dedicated legislation, and its validity has been upheld by

²⁰ Zee Telefilms and Anr v. Union of India and Ors. (2005) 4 SCC 649; Board of Control for Cricket in India v. Cricket Association of Bihar & Ors. (2015) 3 SCC 251; Board of Control for Cricket in India & Anr. v. Netaji Cricket Club & Ors. (2005) 4 SCC 741.

²¹ Board of Control for Cricket in India v. Cricket Association of Bihar & Ors. (2015) 3 SCC 251; Zee Telefilms and Anr v. Union of India and Ors. (2005) 4 SCC 649.

²² Ibid.

²³ Ibid.

various Courts including the Supreme Court.²⁴ Compliance with the Sports Code is mandatory for the Indian Olympic Association (IOA) and all NSFs if “*they are desirous of regulating and controlling sports in India or using the name of ‘India’ while representing India within or outside India or availing themselves of various benefits and concessions.*”²⁵ While these sports bodies might be incorporated in various states under the Societies Registration Act, 1860 or the Companies Act, 2013 their recognition as the peak governing body of a particular sport is contingent on their compliance with the guidelines set by the government. There have been several instances where NSFs have failed to comply with the Sports Code, 2011,²⁶ leading to suspension of their recognition by the government. While the Union government has aimed to incentivise compliance through positive measures, a ‘carrot and stick’ approach has been adopted, withdrawing these incentives in response to non-compliance with government directives.²⁷

3.4. Involvement of sports persons in decision making process

The High Court highlighted that while the Sports Code has provided detailed guidelines for several aspects of board composition, it lacks clarity regarding federation’s leadership, such as the President or Chairperson, should possess expertise and experience in their specific field of sport.²⁸ The Court noted that a Chairperson without adequate experience in that particular sport could result in unequal opportunities and the denial of appropriate chances of success to deserving athletes.²⁹ The Court referenced the *Kirandeep v. Chandigarh Rowing Association* case,³⁰ which held that it was necessary to involve sportspeople in the selection process. The reasoning of the single-bench in this case stemmed from the fact that, despite delegating substantial authority to national coaches in participant/athlete selection, the role of the President of the NSF remains pivotal in the appointment of the national coach, in accordance with the guidelines set forth in the Sports Code.³¹ Therefore, it is important that the President

²⁴ *Maharashtra Archery Association v. Rahul Mehra and Ors.* (2019) 18 SCC 287; *Indian Olympic Association v. Union of India*, 2014 (212) DLT 389.

²⁵ *S. Nithya v. The Secretary to the Union of India & Ors.*, 2022 SCC Mad 318, para 23.

²⁶ *Hussain* (2020); See also, *Modi and Star* (2022); *Rahul Mehra v. Union of India*, W.P. (C) No. 195/2010, para 21.

²⁷ *S. Nithya v. The Secretary to the Union of India & Ors.*, 2022 SCC Mad 318, para 27.

²⁸ *Ibid*, para 30.

²⁹ *Ibid*, para 32.

³⁰ AIR 2004 (P&H) 278.

³¹ *S. Nithya v. The Secretary to the Union of India & Ors.*, 2022 SCC Mad 318, para 35.

of the NSF is a person of eminence having experience and knowledge in that particular sport. In this context, the Court issued the following directive:

*The positions of President, Vice President, and Secretary within every sports Association/organisation, as well as key functionaries within such entities, including those of the state unit of the National Sports Federation, shall exclusively be held by individuals with a background in sports. It is imperative to ensure that a minimum of 75% of the members constituting any sports body/organisation/association/NSF consist of distinguished sports personalities, and these individuals shall be vested with voting rights.*³²

Despite the above directive of the High Court, the executive officers within the Tamil Nadu Athletic Federation do not consist of sportspersons only.³³

While the directive proposes a more prominent role for athletes and former athletes in decision-making positions, it is important to recognise that leadership positions solely comprised of sportspersons might not yield the most effective outcomes. The significance of diversity within sports boards is widely acknowledged by scholars.³⁴ Board skill stands as an key indicator for the effective governance of an organisation, including a sport federation; a diverse and rich skill-set are crucial for both board sustainability and performance.³⁵ The potency of decisions often arises from a board composed of individuals with varied skills, as opposed to a homogenous group.³⁶ Such skill diversity provides a wide range of expertise, fresh perspectives, and insights that enhance the board's ability to execute its duties efficiently, particularly in intricate and multifaceted tasks.³⁷

Ingram and O'Boyle (2017)³⁸ caution against an overly sports-centric board composition. They point out that a heightened level of involvement from those with sporting backgrounds might not necessarily be advantageous, given their potential lack of the business acumen necessary

³² Ibid, para 44(v).

³³ Tamil Nadu Athletic Association (2023). The official website reflects the President and Senior Vice President to be a Public Administrator (IPS).

³⁴ McLeod et al. (2021); Ingram and O'Boyle (2017); Bhinder and Bhargava (2021); McLeod and Star (2020).

³⁵ Booth et al. (2014).

³⁶ Woolley et al. (2015).

³⁷ McLeod et al. (2021).

³⁸ Ingram and O'Boyle (2017).

for board success. Furthermore, such directors might predominantly contribute to sport-specific discussions, potentially side-lining other critical matters. Moreover, a disproportionately high number of board member with sporting backgrounds could jeopardise the independence of the board.³⁹ Independence here refers to the absence of previous affiliations with the organisation or individuals within it. Sporting affiliations may compromise this independence. Introducing independent directors can enhance the diversity of experience and skill sets, facilitating the commercial growth and development of the sport.⁴⁰ Furthermore, the term ‘eminent former athlete’ requires careful definition, as those who retired from active competition decades ago might lack contemporary insights into the ever-evolving landscape of sports governance.

Therefore, it is necessary for sports organisations to strike the right balance between diverse occupational backgrounds, encompassing skills in finance, accountancy, and law, with experience in the sport. The importance of diversity is outlined in Principle 4 of Sports Governance Principles, 2020 provided by Sport Australia.⁴¹ This principle calls for a diverse board in terms of skills and gender. While representation of athletes or individuals with sports background is crucial to ensure that sport’s expertise remains embedded within the board given their critical influence in decision-making processes, there is a need for a more balanced approach.

The directive issued by the Court also proposes 75% representation of sportspersons on the board.⁴² However, there should be caution against mandating such a high proportion which will adversely impact skill diversity on the board. The institutionalisation of athlete representation in the United States of America under §220522(a)(10) of the Ted Stevens Act Olympic and Amateur Sports Act, 1987, provides that the Board of Directors should contain at least 20% athlete representation, reflecting the importance of athlete representation, but also acknowledging the need for diversity.⁴³ Similarly, Clause 3.20 of the Sports Code, 2011 provide that “*the strength of such prominent sportspersons with voting rights should be a certain minimum percentage (say 25%) of the total members representing the federation and selection*

³⁹ McLeod ([2019](#)); Modi et al. ([2021](#)).

⁴⁰ Ibid.

⁴¹ Sport Australia ([2020](#)).

⁴² S. Nithya v. The Secretary to the Union of India & Ors., 2022 SCC Mad 318, para 35.

⁴³ Prakash et al. ([2021](#)).

of such sports persons should be in consultation with this Department”.⁴⁴ The Delhi High Court in the *Rahul Mehra v. Union of India* (Rahul Mehra case),⁴⁵ noted the above clause and mandated inclusion of 25% prominent sportspersons of outstanding merit with voting rights in the executive committee of the IOA.⁴⁶ Considering the Indian context, where 41.1% of board members have a sporting background, compared to countries such as Australia (32.71%), China (24.75%), Russia (62.03%) and the USA (50%),⁴⁷ it is important to tread cautiously before mandating a significantly high proportion such as that the proposed 75% of board members being distinguished sports personalities. Such a high threshold would hinder board diversity.

The imperative to incorporate sports perspectives in leadership positions should not necessarily lead to a blanket requirement of sportspersons only. In light of the challenges posed by high levels of political involvement, a thoughtful consideration would be to ban sitting politicians from occupying board positions, aligning with the propositions outlined in the draft National Code for Good Governance in Sports, 2017 and Supreme Court’s decision to ban politicians in the apex council of BCCI.⁴⁸ This approach carefully addresses the concern without imposing limitations on professionals from other fields, thus fostering a diverse and capable leadership. Scholars argue that the ‘deep institutionalisation’ of politicians in sports governance in India is an exceptional case and banning politicians is warranted due to the inherent drawbacks associated with political involvement.⁴⁹

Addressing the apprehension surrounding the president’s role in athlete selection, a viable solution entails strengthening and implement a comprehensive policy as outlined in the under Annexure XXI of the Sports Code that establishes a structured committee responsible for athlete selection. This committee includes individuals with sporting background for athlete selection.⁵⁰ This strategy can be adopted as it highlights the significance of a tailored procedure designed to ensure active athlete engagement in the selection process.

⁴⁴ S. Nithya v. The Secretary to the Union of India & Ors., 2022 SCC Mad 318, para 31.

⁴⁵ W.P. (C) No. 195/2010, para 72-73.

⁴⁶ See also, Modi and Star (2022).

⁴⁷ Star and McLeod (2021); McKeag et al. (2023).

⁴⁸ Board of Control for Cricket in India v. Cricket Association of Bihar & Ors. (2015) 3 SCC 251.

⁴⁹ McLeod and Star (2020).

⁵⁰ S. Nithya v. The Secretary to the Union of India & Ors., 2022 SCC Mad 318, para 44(vi) provides that the selection committee should comprise of sportspersons only.

Another important aspect of diversity within board composition concerns gender balance. A review of the office bearers of the Tamil Nadu Athletic Association (TNAA) as provided by the petitioner reveals that out of the 16 office bearers, only one is a women.⁵¹ Empirical research indicates that in western countries there is a representation of over 30% women on NSFs board.⁵² Regrettably, the figure is considerably lower in India (8.1%).⁵³ In the *Rahul Mehra case*, the Delhi High Court emphasised the importance of reaching equitable representation, even mandating that women should make up half of the sportsperson category with voting rights on the IOAs board, marking a significant step towards progress.⁵⁴ Therefore, despite the presence of only one female office bearer on the board, the High Court missed an opportunity to promote gender diversity, which is essential for achieving improved governance in sports.

4. Ensuring transparency and accountability and need for legislation

The Court granted the petitioner's plea for the immediate implementation of an online registration system encompassing district, state, and national athletic championships and competitions, that promotes transparency and accountability.⁵⁵ Additionally, the demand for online publication of funds allocated and expended on individual athletes for these events holds equal importance to transparency and accountability (especially since such funding from state associations predominantly flows from government). Simultaneously, every association engaged in diverse sports domains must be answerable to the corresponding NSFs. These federations, in turn, must adhere to the obligations outlined in the Sports Code to secure recognition from the Union government.⁵⁶ This commitment to accountability is exemplified by legislation such as the Rajasthan Sports (Registration, Recognition and Regulation of Associations) Act, 2005 and the Haryana Sports Council Act, 2016. These statutes highlight the creation of State, District, Block, and Town Sports Councils, enhancing the regulatory framework. Organisations operating at the state or district level can be registered with the State

⁵¹ Ibid, para 13.

⁵² Star and McLeod ([2021](#)); McLeod et al. ([2021](#)); McKeag et al. ([2023](#)).

⁵³ Ibid.

⁵⁴ Modi and Star ([2022](#)).

⁵⁵ S. Nithya v. The Secretary to the Union of India & Ors., 2022 SCC Mad 318, para 38.

⁵⁶ Ibid, para 39.

Sports Council, enabling them to access grants. The Court issued several directions to promote good governance, some of which are discussed above.⁵⁷

5. Conclusion

The judgement in *S. Nithya* case heralds a small but important step towards redefining sports governance in India. This case implies that regulating only NSFs would be insufficient. Instead, it is crucial to hold all representative organisations accountable. This accountability should extend to their actions and the financial assistance they receive from the state. The call for transparency and accountability is paramount, reflected in the demand for online registration systems and funding disclosures. It acknowledges the value of sports expertise. However, the authors argue that diversity should not just be limited to board members with athletic backgrounds; a high performing board should include a variety of perspectives that contribute to robust decision-making. While athletic experience is important, excessive representation might lead to a monolithic approach that overlooks valuable insights from others. Striking a balance, where athletes contribute alongside individuals with varied skills and expertise, will likely result in a more effective and well-rounded sports governance structure. Therefore, mandating such high levels of athlete representation on boards is not necessarily the answer.

In conclusion, the focus of the *S. Nithya* case on issues of accountability, representation, and legal regulation is important. Many of the recommendations of the Court provide a useful roadmap of potential reform towards a more robust, transparent, and inclusive sport governance framework in India. However, policymakers and judges should also learn from best practice measures discussed in sport governance literature and implemented in many other jurisdictions across the world. While this decision is a positive step towards better governance, it remains to be seen if the good governance recommendations will be implemented in practice by sport governing bodies in Tamil Nadu, and in India more generally.

⁵⁷ Ibid, para 40-42.

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