BOARD OF CONTROL FOR CRICKET, INDIA AND ANR. A

v.

NETAJI CRICKET CLUB AND ORS.

JANUARY 10, 2005

[N. SANTOSH HEGDE AND S.B. SINHA, JJ.] B

Societies—Tamil Nadu Societies Registration Act, 1975—Appellant-Board, a society registered under the Act controlling the sport of cricket in India—Enjoying monopoly status as regard regulation of cricket in terms of its Memorandum of Association and Articles of Association—"Fairness" and "good faith" in its action—Requirement of—Held: Having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities—It has a duty to act reasonably and cannot act arbitrarily, whimsically or capriciously—Both public good and welfare of cricket must be kept in view—It is wholly undesirable that a body incharge of controlling the sport of cricket should involve in litigations completely losing sight of the objectives of the society. C D

Code of Civil Procedure, 1908—Section 114 and Order XLVII, Rule 1—Undertaking given by counsel on behalf of party—Conditional order passed by High Court on that basis—Review application filed alleging breach of the undertaking—Maintainability of—Held: Application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason—A mistake on the part of the Court which would include a mistake in nature of an undertaking may also call for review—It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event—On facts, where the High Court accepted its own mistake in understanding the nature and purport of the undertaking given by the counsel appearing on behalf of the Appellant-Board and its correlation with as to what transpired in the AGM of the Board, the subsequent event may be taken into consideration by the Court for purpose of rectifying its own mistake—Furthermore, the impugned order passed in review is only interlocutory in nature and not wholly without jurisdiction so as to warrant interference—Discretionary jurisdiction under E F G

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A *Article 136 of the Constitution not required to be exercised—However directions given in terms of Art.142 of the Constitution—Constitution of India, 1950—Articles 136 and 142.*

Doctrines—Doctrine "**actus curiae neminem gravabit**"*—Applicability of.*

B

Words and Phrases—Words 'sufficient reason' in Order 47, Rule 1—Meaning of .

Respondent No.1 filed suit for declaration and injunction in the High Court, expressing apprehension that Appellant-Board in its ensuing C **election of office bearers would not permit some candidates to contest on ground of residence. Single Judge of the High Court appointed Mr. S. Mohan, a former Supreme Court Judge as a Commissioner to conduct the elections. In Letters Patent Appeal before the Division Bench, an undertaking was given by the counsel appearing on behalf of the Board** D **that the Board would not disqualify any candidate for the post of President on the ground of residence, whereafter with consent of the parties, the suit itself was withdrawn and the appeal disposed of with conditional directions in accordance with which the Annual General meeting (election meeting) was directed to be convened. After the meeting was held, Respondent No.1 filed review petition *inter alia* contending that the purported undertaking** E **given by the counsel appearing on behalf of the Board was not adhered to and furthermore no appeal had been filed by the Appellants against the order of injunction passed by the Single Judge.**

The review petition was admitted by the Division Bench which observing that the undertaking given by the counsel of Appellant-Board F **across the Bar being not been given effect to in its letter and spirit, accordingly passed an interim order of injunction. Hence the present appeals, in which issues regarding validity of the election meeting (AGM) on ground of use of casting vote by the Chairman, Mr. Jagmohan Dalmiya and regarding exclusion of a member, i.e. the Maharashthra Cricket** G **Association from voting through Mr. Agashe or any other person arose for consideration.**

Disposing of the appeals, the Court

HELD: 1.1. The Board is a society registered under the Tamil Nadu H **Societies Registration Act. It enjoys a monopoly status as regard regulation**

of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It *inter alia* enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State Associations except, Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deeply pervasive and complete. [198-E-H; 199-A]

1.2. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards. [199-B]

1.3. An association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative. Necessarily, the office bearers in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner, keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body incharge of controlling the sport of cricket should involve in litigations completely losing sight of the objectives of the society. It is furthermore unfortunate that a room for suspicion has been created that all its dealings are not fair. The Board has been accused of shady dealings and double standards. The conduct of the Board is not above board. The manner in which the Board had acted leaves much to desire. [199-C-D; 204-C]

T.P. Daver v. *Lodge Victoria No. 363, S.C. Belgaum,* (1963) SC 1144: [1964] 1 SCR 1; *Parsion Devi and Ors.* v. *Sumitri Devi and Ors.,* [1997] 8

A SCC 715; *Hyderabad Karnataka Education Society* v. *Registrar of Societies and Ors.*, [2000] 1 SCC 566; *K. Murugan* v. *Fencing Association of India, Jabalpur and Ors.*, [1991] 2 SCC 412 and *St. Johnstone Football Club Limited* v. *Scottish Football Association,* (1965) SLT 171, referred to.

Nagle v. *Feilden and Ors.,* (1966) 2 QB 633, referred to.

B

2.1. Indisputably, an undertaking had been given by the Counsel appearing on behalf of the Board. In the impugned order, the Division Bench before whom such undertaking had been given was of the opinion that it was misled. This Court having regard to the understanding of such undertaking by the Division Bench does not intend to deal with the effect C and purport thereof and as the Division Bench of the High Court itself is competent therefor. [200-G-H]

2.2. Furthermore, the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 D CPC empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 CPC in terms whereof it is empowered to make such order as it thinks fit. [201-B]

E 2.3. Order 47, Rule 1 of the CPC provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the court which would include a mistake F in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the CPC is wide enough to include a G misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*". [201-C-E]

2.4. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into H consideration a subsequent event. In a case of this nature when the Court

accepts its own mistake in understanding the nature and purport of the undertaking given by the counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake. [202-G] A B

2.5. Furthermore, the impugned order is interlocutory in nature. This Court, it is trite, ordinarily would not interfere with an interlocutory order admitting a review petition. The order is not wholly without jurisdiction so as to warrant interference of this Court at this stage. The Division Bench of the High Court had jurisdiction to admit the review application and examine the contention as to whether it can have a re-look over the matter. [204-A-B] C

Lily Thomas and Ors. v. *Union of India and Ors.*, [2000] 6 SCC 224 and *Rajesh D. Darbar and Ors.* v. *Narasingrao Krishnaji Kulkarni and Ors.*, [2003] 7 SCC 219, relied on. D

Moran Mar Basselios Catholicos and Anr. v. *The Most Rev. Mar Poulose Athanasius and Ors.*, [1955] 1 SCR 520, referred to.

3. Earlier, this Court had after hearing the parties observed that if a situation arises this Court would go into the validity of the election of the office bearers of the Board, but, this was done under a mistaken belief that the Board would be represented by the new office bearers and, thus, all parties would be before it. However, it now stands admitted that the office bearers either in their personal capacity or official capacity are not before this Court. They may have notice of the pendency of this proceeding. They may be sitting on the fence and watching the proceedings of this Court. But, unless they are made parties in these proceedings, this Court would not be in a position to entertain the dispute as regard validity of the meeting resulting in the election of the office bearers. Giving an opportunity of hearing to the elected members in a dispute of this nature is imperative and not a matter of mere procedure, formality or technicality. The election dispute, therefore, must be adjudicated upon by a proper forum. [199-F-H; 200-A] E F G

4.1. The question as to whether the Maharashtra Cricket Association has unjustly been deprived of its right to participate in the AGM through Mr. Agashe whereas DDCA and the Rajasthan Cricket Association had H

A been allowed to participate therein is a question which would require deeper probe and a detailed scrutiny. A person may either be entitled to represent an association or he is not. A person's right to represent an association ordinarily would not vary with the nature of the meeting unless otherwise provided in the statute. [204-D, G]

B 4.2. Different standards cannot be adopted by the Board, viz., one for the purpose of requisitioned meeting for inviting Mr. Dalmia to become the patron-in-chief of the Board and other for the purpose of attending an AGM. In other meetings, Maharashtra Cricket Association had admittedly been represented by Mr. Agashe. It is also doubtful as to C whether the Board could have gone into, if at all, the validity or otherwise of the meeting of the Maharashtra Cricket Association. [205-A-B]

4.3. Whether sending a representative of the Maharashtra Cricket Association is a matter of policy warranting interference by the observers appointed by the Bombay High Court is again a contentious issue. The D members of the Association could not have undermined the importance of electing its representative for the ensuing Annual General Meeting of the Board. [205-D]

4.4. The Maharashtra Cricket Association itself has filed a Special Leave Petition questioning the order of the Division Bench of the High E Court. In a situation of this nature, this Court may not exercise its jurisdiction under Article 136 of the Constitution of India because the order impugned before it is not correct. The jurisdiction of this Court under Article 136 of the Constitution is a discretionary one. [205-E-F]

F 4.5. However, keeping in view of the fact that the elected office bearers are yet to take over charge, with a view to do complete justice to the parties, in exercise of jurisdiction under Article 142 of the Constitution it is directed that the adjourned meeting should immediately be convened. As regard the election of the office bearers of the Board, it would further be open to an aggrieved party to question the legality or validity of the G said meeting. Respondent No.1 also may, if it is otherwise permissible in law, subject to an appropriate order that may be passed by the High Court, may file an application for amendment of the plaint or take such other step or steps as it may be advised. Keeping in view the fact that when the impugned order was passed the new Board had not taken over as also having regard to the prayer made in the interim application filed by H Respondent No.1 for grant of interim injunction restraining the newly

elected Board from functioning in the interim, the interim order earlier passed by this Court staying the operation of the part of the order whereby Mr. Justice S. Mohan was appointed as an interim Administrator absolute leaving the parties to file such interim applications as may be necessary in the changed situation. [207-F-H; 208-A] A

4.6. However, in view of the fact that interim order of injunction as regard Agenda Item Nos. 1(b) and 13 had been passed by a District Court at Chennai, the suit filed by Bharathi Cricket Club, it is not necessary to pass any other order at this stage as regard invitation to Mr. Jagmohan Dalmia to become the patron-in-chief of the Board. Also it would not be appropriate to restore the order of the Single Judge as the purpose for which Mr. Justice S. Mohan was appointed has lost its efficacy. [208-B-C] B C

4.7. It is also not necessary to pass separate orders in the Special Leave Petition filed by the Maharashtra Cricket Association. The Maharashtra Cricket Association shall, however, be at liberty to file an appropriate application for getting itself impleaded in the proceedings pending before the High Court, subject to any objection that may be taken by the Board. Furthermore, keeping in view the facts and circumstances of this case that part of the order of the Division Bench whereby and whereunder the Board was directed to pay a further sum of Rs. 1 lakh to Mr. Justice S. Mohan as additional remuneration cannot be sustained. It is set aside accordingly. [208-D-E] D E

4.8. Keeping in view the peculiar fact situation obtaining herein, the High Court is requested to consider the desirability of disposing of the matters pending before it as expeditiously as possible. [208-F] F

Municipal Board, Pratabgarh and Anr. v. *Mahendra Singh Chawla and Ors.*, [1982] 3 SCC 331; *Taherakhatoon (D) by LRs.* v. *Salambin Mohammad*, [1999] 2 SCC 635; *Chandra Singh and Ors.* v. *State of Rajasthan and Anr.*, [2003] 6 SCC 545; *Ram Chandra Singh* v. *Savitri Devi and Ors.*, [2003] 8 SCC 319; *Rajesh D. Darbar amd Ors.* v. *Narasingrao Krishnaji Kulkarni and Ors.*, JT (2003) 7 SC 209 and *M.P. Special Police Establishment* v. *State of M.P. and Ors.*, [2004] 8 SCC 788, relied on. G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 237-239 of 2005.

From the Judgment and Order dated 8.10.2004 of the Madras High H

A Court in C.M.P. Nos. 16418 and 16419/2004, R.P. No. 166/2004 in O.S.A. No. 225/2004 and C.M.P. No. 16420/2004 in S.R. No. 103036 of 2004.

WITH

C.A. Nos. 249, 232-33, 234-236 of 2005.

B Dr. A.M. Singhvi, C.S. Vaidyanathan, S.S. Ray, F.S. Nariman, Harish N. Salve, Shanti Bhushan and K. Ramamoorthy, Ms. Radha Rangaswamu, U.N. Banerjee, Jaideep Kar, Siddhartha Chowdhury, Ms. Bharthi Tyagi, Gopal Jain, Ankur Chawla, Ms. Ruby Singh Ahuja, R.N. Karanjawala, Ms. Meenakshi Grover, Subhash Sharma, Ashish Jha, Gaurav Vatts, Bharat Sinuri, Mrs. Manik Karanjawala, E.C. Agrawala, Sushil Kumar Jain, Naresh Kaushik, Ms. Shilpa C Chohan, Mrs. Lalita Kaushik Ms. Sushmita Banerjee, Ms. Minakshi Sharma, Tarun Johri and Harishanker K., for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted in all SLPs.

D

These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

The basic fact of the matter is not in dispute.

Netaji Cricket Club (Netaji) is a member of Tamil Nadu Cricket E Association. Tamil Nadu Cricket Association is admittedly a member of the Board of Control for Cricket in India (Board). Netaji filed a suit for declaration and injunction in the Madras High Court which was marked as Civil Suit No. 765 of 2004 *inter alia* for the following reliefs:

> F "1. A declaration to declare that the eligible candidates who are entitled to contest for the post of President in the BCCI proposed a member of the North Zone should be permitted to contest in the election process and also be entitled to be elected as the President and act as such for the term in the election to be conducted in the Annual General Meeting on 29th and 30th of September, 2004 at Hotel Taj G Bengal, Kolkata.
>
> 2. For a permanent injunction restraining the defendants, their agents, servants and men from in any manner seeking to disqualify any eligible person or persons proposed by any member of the North Zone, as representative from the said zone representing a member in the North H zone as their candidate for the Presidential Post of BCCI by virtue of

such candidate not being a resident member within the zone not being a member of the said association giving him the representation." A

In the said suit, an apprehension was expressed that the Board in its ensuing election of office bearers would not permit some candidates to contest on the ground of residence.

B

In the said suit, two interim applications bearing No. OA No. 803 of 2004 and OA No. 804 of 2004 were filed. Whereas in OA No. 803 of 2004 a prayer was made to the effect that the Annual General Meeting (AGM) be conducted under the Chairmanship of a retired Supreme Court Judge with absolute power to scrutinize and approve the list of authorized representatives from member associations eligible to vote in the AGM; in OA No. 804 of 2004 a prayer for injunction was made for restraining the Appellants herein from interfering with the proposal of any representative of any member of the North Zone for the post of President on the basis of residential qualification. C

By an interim order dated 28.9.2004, a learned Single Judge of the said High Court appointed Shri S. Mohan, a former Judge of this Court as a Commissioner to conduct elections and to take necessary decision with regard to qualification, nomination and conduct of elections. The third respondent was further prohibited from disqualifying any member of BCCI and prevent them from voting. D

The Board aggrieved by and dissatisfied with the said order dated 28.9.2004 preferred a Letters Patent Appeal before the Division Bench of the Madras High Court. Before the said Division Bench, an undertaking was given by the learned Senior Counsel on behalf of the Board that the Board would not disqualify any candidate for the post of President on the ground of residence. Pursuant to or in furtherance of the said undertaking a statement was made by the learned counsel appearing on behalf of 'Netaji' that the apprehension of the plaintiff/ first respondent which formed the basis for moving the Court by filing a suit for the relief as stated above is vanished in air. With the consent of the parties, the suit itself was withdrawn and both the appeal and the suit were disposed of in the following terms: E F G

"(i) We are of the view that the impugned order need not be in existence and hence, the same is set aside;

(ii) the elections scheduled on 29.9.2004 at 10.30 a.m. shall be continued by the first defendant/ appellant Body strictly in accordance with the provisions of their Constitution and the rules or bye-laws H

framed thereunder;

(iii) the counsel on record for the first defendant/ appellant herein made an endorsement to the effect that "the appellant shall not disqualify any candidate for the post of President on the ground of residence". The said undertaking has been given by the learned Senior Counsel, Mr. T.R. Rajagopal across the bar and the same is recorded and we direct that the undertaking should be given effect to in letter and spirit without any deviation;

(iv) the first defendant/ appellant herein is hereby directed to receive Hon'ble Mr. Justice M. (sic) Mohan, who was appointed as Commissioner under the order on appeal and offer due respect and all comforts during his stay at Kolkata without giving any room for the learned Judge to feel embarrassed and the learned Judge should be treated with high dignity. The first defendant/appellant herein shall pay a further sum of Rs. 1,00,000 (Rupees one lakh only) as final remuneration to Hon'ble Mr. Justice S. Mohan, apart from other incidental expenses; and

(v) in default of conditions (ii) and (iii), referred to above, if any party who is a member of the first defendant/appellant - Board is aggrieved, he is at liberty to workout his relief in appropriate proceedings before the competent court."

It appears that another suit was filed in the Court of VII Assistant City Civil Court, Chennai by Bharathi Cricket Club against the Appellants herein as also the Tamil Nadu Cricket Association praying for the following reliefs:

"(a) Declaration that the resolution in so far as it relates to Item 1 passed at the Special General Meeting of the First Defendant held on 12.9.2004 at 11.30 a.m. at the Taj Coromandel, Nungambakkam High Road, Chennai, electing the Third Defendant as the Patron in Chief as null and void.

(b) Order of Permanent Injunction restraining the First Defendant from passing the resolution in relation to Item 1(b) and Item No. 13 of the Agenda of the Notice dated 27.08.2004 issued by the First Defendant for convening the Annual General Meeting on 29th and 30th September, 2004 at Hotel Taj Bengal or at any other place, consequently restraining the First Defendant from passing any resolution in any manner whatsoever having the effect of nominating

the Third Defendant as Patron-in-Chief thereby empowering the Third Defendant to attend the International Cricket Council and Asian Cricket Council Meetings representing the First Defendant."

In the said suit, a prayer was made by the plaintiff thereof for grant of an ex-parte ad-interim injunction, whereupon the Court by an order dated 28.9.2004 granted an ex-parte ad-interim injunction restraining the Appellants herein from passing resolutions confirming the nomination of Shri Jagmohan Dalmia as Patron-in-chief for three years under Agenda No. 1(b).

A Civil Review Application marked as CRP No. 1734/2004 thereagainst was filed before the Madras High Court which is said to have been heard in part and is still pending.

The Annual General Meeting was convened on 29.9.2004. In the said meeting although no person was prevented from contesting the election for the post of President of the Board on the ground of residence but it stands admitted that Maharashtra Cricket Association was not permitted to take part in the election through Mr. D.C. Agashe or any other person. We shall deal with the said matter separately hereinafter. It further stands admitted that Shri Jagmohan Dalmia, who chaired the meeting, had cast one vote as a result whereof equal number of votes i.e. 15 each were polled on both sides whereupon he gave his casting vote. The AGM, however, on 30.9.2004 was adjourned till 26.10.2004. The Board herein filed a Special Leave Petition on limited grounds against the said order of the Division Bench dated 29.9.2004. However, after the AGM was held, a review petition was filed by 'Netaji' marked as Review Petition No. 166 of 2004 *inter alia* contending that the purported undertaking given by the learned Senior Counsel appearing on behalf of the Appellant herein was not adhered to and furthermore no appeal had been filed by the Appellants herein against the order of injunction passed by the learned Single Judge in OA No. 803 of 2004.

A review petition was also filed by Mr. D.C. Agashe seeking review of the said order dated 29.9.2004 contending that he had not been allowed to participate in the said election having been disqualified therefor although no order of disqualification was served.

The said review application was admitted by the said Division Bench of the High Court on 8.10.2004 observing that the undertaking across the bar given by the learned senior counsel appearing on behalf of the Board had not been given effect to in its letter and spirit. On an application made in this

behalf by 'Netaji', an interim order also came to be passed. The High Court opined:

> "3. We feel that we had been misled by the undertaking made on behalf of the first respondent herein, namely the appellant in the O.S.A. No. 225 of 2004 (first defendant in the suit O.S. No. 765 of 2004), which culminated into the passing of the judgment dated 29.9.2004 made in O.S.A. No. 225 of 2004 and C.S. No.765 of 2004, which is sought to be reviewed in the review application No. 166 of 2004.
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> 4. We are of the considered opinion that the undertaking offered on behalf of the first respondent/Board not to disqualify any member from any of the zone, across the bar, has not been given effect to in letter and spirit as directed in our judgment dated 29.9.2004 made in O.S.A. No. 225 of 2004 and C.S. No. 765 of 2004 and *prima facie* there are reasons to believe as to the alleged breach of the said undertaking and hence, we are satisfied that a *prima facie* case has been made out for granting injunction and, therefore, there shall be an order of interim injunction as prayed for until further orders in C.M.P. No. 16419 of 2004. Notice.
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> 5. Taking note of the facts and circumstances of the case, which led to the filing of the O.S.A. No. 225 of 2004 and the admitted fact that the first respondent in the review application had not preferred any appeal against the order made in Application No. 803 of 2004 whereunder Hon'ble Mr. Justice S. Mohan, Judge, Supreme Court (Retired) was appointed as a Commissioner, and that the meeting held on 29-30.9.2004 stands adjourned as on date, we are inclined to appoint Hon'ble MR. Justice S. Mohan, Judge, Supreme Court (Retired) as an interim administrator until further orders, of course, subject to His Lordship's consent for the same, which shall be obtained through the Registry. In such event, the Hon'ble Mr. Justice S. Mohan, Judge, Supreme Court (Retired) shall be paid a remuneration of Rs. 1,00,000/- per month apart from other administrative, travelling and incidental expenses, by the first respondent/ Board. Notice."

The SLP (C) Nos. 21820-22/2004 have been preferred by the Appellants herein questioning the said order dated 8.10.2004. In the Special Leave Petition filed by the Board, the Delhi and District Cricket Association has joined wherefor an application for permission to file the same has been prayed for.

This Court passed the following order on 11.10.2004: A

> "List this matter for final hearing on 26th October, 2004. In the meantime the impugned order to the extent of appointment of Administrator is stayed. In the meantime Election/ appointment of Respondent No. 3 Patron-in-Chief is also stayed until further orders. B
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> Correction and rectification if any be completed by them."

Submissions have been advanced by Dr. A.M. Singhvi, learned senior counsel, on behalf of Appellant No. 1, Mr. C.S. Vaidyanathan, learned senior counsel on behalf of Appellant No. 2 and Mr. S.S. Ray, learned senior counsel, on behalf of Shri Jagmohan Dalmia, whereas Mr. F.S. Nariman, learned C senior counsel appeared on behalf of Maharashtra Cricket Association and Mr. Agashe and Mr. Harish N. Salve, on behalf of 'Netaji'. An intervention application was filed by 'Club of Maharashtra', represented by Mr. Shanti Bhushan, learned senior counsel. Intervention applications were also filed by The Karnataka State Cricket Association, Rajasthan Cricket Association and Saurashtra Cricket Association. D

Contention of Dr. Singhvi appearing on behalf of the Appellant was that the suit was filed by 'Netaji' only on an apprehension that a representative or a member club would be debarred from contesting the election to the post of President on the ground of residence and, no contention had been raised E as regard the right of an association to vote in the said meeting.

Dr. Singhvi would submit that there had been similar instances in the past where the Chairman of the meeting had cast two votes one in terms of Rule 25 and another in terms of Rule 26. The learned counsel would urge that as the rules of the Board constitute contract between the members, only F the 'doctrine of fairness' shall apply in the conduct and affairs of the Club, and, thus, even minor deviations are permissible in law. Reliance in this behalf has been placed on *T.P. Daver* v. *Lodge Victoria No. 363, S.C. Belgaum,* (1963) SC 1144 : [1964] 1 SCR 1.

It was urged that the High Court wrongly exercised its jurisdiction in G entertaining the review application. Reliance in this regard has been placed on *Parsion Devi and Ors.* v. *Sumitri Devi and Ors.,* [1997] 8 SCC 715 and *Lily Thomas and Ors.* v. *Union of India and Ors.,* [2000] 6 SCC 224.

The learned counsel would argue that the undertaking given by the learned counsel appearing on behalf of the Appellant before the Division H

A Bench of the Madras High Court was in consonance of the contention raised in the Memo of Appeal itself which had been duly recorded and the said undertaking having not been violated, the application for review was not maintainable. Taking us through the Memo of Appeal in OSA No. 225 of 2004, the learned counsel would contend that on a perusal thereof it would be evident that an appeal was preferred against the order dated 28.9.2004 B passed by the learned Single Judge passed both in OA No. 803 of 2004 and OA No. 804 of 2004. It was contended that Netaji had no locus to file a suit or pray for an order of injunction as it was not a member of the Board. In the Annual General Meeting, Dr. Singhvi would submit, no person contesting for the post of President having been disqualified on the ground of residence, C the review petition was not maintainable wherein, a shift was made to the right of voting *vis-a-vis* the right to contest for the post of President which was not the basis for filing of the suit. Such a change in the stand on the part of 'Netaji', Dr. Singhvi would urge, is impermissible in law. In any event, the learned counsel would contend, that the same might give rise to an independent cause of action and, thus, keeping in view the scope and purport of the suit D the review application should not have been entertained. It was further pointed out that in the said suit Mr. Agashe being not a party, the contention that he was not allowed to represent the Maharashtra Cricket Association could not be taken to be a ground for entertaining a review application. A breach of an undertaking in any view of the matter, according to Dr. Singhvi, cannot give E rise to a revival of suit particularly when, how and in what manner the violation of such undertaking had taken place had not been specified. The interim order, according to Dr. Singhvi, goes far beyond the scope of the suit.

As regards the legality of the said meeting dated 29.9.2004, the learned counsel had taken us through the orders passed in the litigations concerning F the Maharashtra Cricket Association and submitted that in view of the order of the Bombay High Court dated 1.3.2004 and furthermore having regard the objections raised by Mr. Thorve, Mr. Agashe could not have been permitted to take part in the said meeting as a representative of Maharashtra Cricket Association.

G As regards the contention that Mr. Agashe was permitted to represent the said Association on 12.9.2004 despite the protest by Mr. Thorve in terms of his letter dated 10.4.2004, the learned counsel would submit, it was so done in terms of the legal opinion obtained in that behalf and in any event the same was an EGM and not AGM. It was contended that the said EGM H was convened having regard to the requisitions made by 27 out of 30 members

to invite Mr. Dalmia to become the patron-in-chief of the Board and, thus, the result thereof was a foregone conclusion. Furthermore, from the minutes of the meeting held on 12.9.2004, it would appear that the same was a requisitioned meeting and not an AGM. On the other hand, in terms of order dated 21.9.2004 passed by the Bombay High Court both the observers appointed by it were entitled to attend the meeting and further a direction was issued to the effect that the Managing Committee of the Association shall not take any major policy decision, save and except with the consent of the two observers.

Drawing our attention to the notice dated 25.9.2004 issued by the Maharashtra Cricket Association as regard the proposed meeting to appoint the representatives of the Maharashtra Cricket Association in the forthcoming Annual General Meeting of the Board, scheduled on 29th and 30th September, 2004 at Kolkata; it was urged that the same was illegal.

The learned counsel would contend that representation of the Maharashtra Cricket Association in the Annual General Meeting which is an annual affair was a matter involving major policy decision which could be taken only in a duly constituted meeting. The said notice dated 25.9.2004 was illegal as it was not issued in terms of Rule 32 of the Rules of the Maharashtra Cricket Association which postulates four clear days' notice before convening an ordinary meting and in relation to urgent matters, the Rule postulates one clear day's notice which had not been done in the instant case as had also been pointed by Mr. Deshmukh in his letter dated 27.9.2004.

It was contended that Mr. Agashe and Mr. Thorve filed suits in the Pune Civil Court. Mr. Agashe furthermore filed an application for grant of ad-interim injunction directing the Maharashtra Cricket Association to allow it to be represented through him which was not granted. In the aforementioned premise, upon obtaining legal opinion and upon hearing the contending and contesting parties, a decision was taken by the Board that neither Mr. Agashe nor Mr. Thorve can represent the Maharashtra Cricket Association.

On the aforementioned premise, it was submitted that there was a fundamental difference between the meeting held on 12.9.2004 and 29.9.2004 particularly in view of the fact that the Board had before it the letter of Mr. Deshmukh, suits were filed and furthermore there was a possibility of the members of the Board facing a proceeding under the Contempt of Courts Act for violating orders of the Bombay High Court. It was argued that in any event, the decision being not an arbitrary one, the same could not have been

A questioned in the review application.

As regards, the representation of DDCA, it was contended that no question was raised by any person whatsoever in the meeting to represent it before the Board and in fact in the Annual General Meeting the said representative of DDCA indeed was elected as an election officer. It was
B pointed out that even in the review application, the said question was not raised.

As regards, invitation of Mr. Dalmia for holding the post of patron-in-chief, our attention was drawn to Rule 8 of the Articles of Association and it was submitted that by reason thereof merely his contribution to the field
C of cricket was recognized. The said post, according to Dr. Singhvi, is an ornamental post who has no power or official authority in the management of the Board.

Mr. C.S. Vaidyanathan, learned senior counsel appearing on behalf of
D the DDCA would submit that as regards legality or otherwise of its participation neither any objection was taken in the plaint nor in the review petition nor any document was filed and in that view of the matter the Respondents cannot be permitted to raise a contention for the first time in this Court.

Drawing our attention to the order dated 18.9.2004 passed by the
E Company Law Board, the learned counsel would contend that by reason of the said order, DDCA was merely directed to maintain the status quo, i.e., restrained to holding the AGM.

Mr. S.S. Ray, learned senior counsel appearing on behalf of Mr. Jagmohan Dalmia would adopt the submissions made by Dr. Singhvi and
F would submit that as the Articles of Association of the Board constitute a contract amongst the members, they are bound thereby unless the same are found to be illegal, malafide and contrary to the statute. Reliance in this behalf has been placed on *Hyderabad Karnataka Education Society* v. *Registrar of Societies and Ors.*, [2000] 1 SCC 566.

G The learned counsel would contend that having regard to the sequence of events borne out from records and having regard to the various litigations pending before different courts and in particular the directions issued by the Bombay High Court in Writ Petition No. 1465 of 2004 and writ petition No. 1559 of 2004 nobody chairing a meeting as important as Annual General
H Meeting of the Board could have allowed Mr. Agashe or Mr. Thorve to

represent the Maharashtra Cricket Association. A

The learned counsel would contend that having regard to Rule 20(iii) the old Managing Committee continues to function till the next meeting and in this connection our attention has been drawn to Ramaiya's Company Law, Table A, Chapters 7 to 8 at pages 4119 and Buckley's Companies Law, Vol. I, 19th edition, pages 1016-17. B

The learned counsel would, by way of example, draw our attention also to Regulation 54 of Table A of the Companies Act as regard the right of the Chairman to exercise his option for casting vote in terms of the statute.

It was argued that the AGM had to be adjourned and did not terminate. C Therefore, Rule 20(iii) became operative.

As regard maintainability of the review application filed by the Respondents herein, Mr. Ray would submit that the subsequent events could not have been taken into consideration for the aforementioned purpose. It D was urged that the order admitting the review application and the interim order passed by the Madras High Court is contrary to the relevant provisions of the Code of Civil Procedure (Code) and on a wrong understanding of the dispute relating to Maharashtra Cricket Association.

The learned counsel has taken us through various purported achievements E of Shri Jagmohan Dalmia and submitted that in the interest of the sport of cricket Shri Jagmohan Dalmia had been invited to become patron-in-chief of the Board so that he can represent India in the ICC meetings.

Mr. Shanti Bhushan, learned senior counsel appearing on behalf of Intervenor - Club of Maharashtra which is said to be a member of Maharashtra F Cricket Association would submit that the meeting held on 27.9.2004 authorising Mr. Agashe as a representative of the Association was not a valid one as mandatory notice therefor had not been given.

A valid resolution, according to Mr. Shanti Bhushan, would mean one passed in a properly constituted meeting of the Maharashtra Cricket Association G as its participation in the AGM of the Board was a matter of importance and not a day to day affair.

The learned counsel would contend that the suit filed by 'Netaji' before the Madras High Court being based only on apprehension, the same was not maintainable. In any event, it was submitted that the Netaji having conceded H

A that its grievance had been satisfied a review application could not have been entertained.

Mr. Shanti Bhushan would argue that as the elected persons have not been impleaded as parties herein, this Court cannot go into the question of validity or otherwise of the said election.

B

Mr. F.S. Nariman, learned senior counsel appearing on behalf of the Maharashtra Cricket Association and Mr. Agashe would, on the other hand, submit that in the facts and circumstances of the case and having regard to the materials brought on records the appointment of interim Administrator by the Madras High Court was justified, particularly, when it was not certain as C to whether the old body or the new body had been functioning.

Drawing our attention to the order of injunction passed by the District Court, Madras in the suit filed by Bharathi Cricket Club, the learned counsel would contend that they could have excluded both Item Nos. 1(b) and 13 of D the Agenda which pertained to Mr. Jagmohan Dalmia or proceeded to hold the meeting but it could not have been done partially.

The learned counsel would contend that in terms of the Rules only elected representatives represent the Board but in the instant case, elected representatives allegedly in terms of Rule 20(iii) had not taken charge and E the old body is still continuing.

Drawing our attention to the affidavit filed by Shri Jagmohan Dalmia in S.L.P. (C) No. 22361-22363 of 2004, the learned counsel would contend that he claimed to be continuing as Chairman both de facto and de jure.

F According to learned counsel, 'good faith' is at the core of the function of a body like the Board. The election was to be held at the end of the meeting and having regard to the fact that the meeting had been adjourned, an odd situation has come into being, viz., that the elected Board cannot function and Mr. Dalmiya continues to be the President of the Board so long he is not elected as patron-in-chief. According to the learned counsel, malafide G on the part of the President of the Board is apparent inasmuch as he wanted confirmation of his own invitation as patron-in-chief before the process of election was completed.

Mr. Nariman pointed out that in the Special Leave Petition, no statement H as to what had happened on 29th September, 2004 regarding election of the

office bearers of the Board had been made but the same had been disclosed only in an additional affidavit filed in the S.L.P. of MCA.

Drawing our attention to the fact that Mr. Agashe after having been debarred from attending the Annual General Meeting made a representation on 29th September, 2004 itself to the President of the Board asking for reasons as regard his disqualification to participate in the meeting on behalf of Maharashtra Cricket Association but he refused to accept the representation and in that situation it had to be ultimately served on the Secretary of the Board but no reply thereto has yet been received either by Mr. Agashe or by Maharashtra Cricket Association.

The learned counsel would contend that although a resolution was passed in the meeting of the Maharashtra Cricket Association in favour of Mr. Agashe but he was not allowed to participate and if the AGM of the Board was to be adjourned this item could also have been adjourned.

Drawing our attention to the additional affidavit filed on 20th October, 2004 wherein a special pleading has been made that at the Annual General Meeting an opportunity of hearing had been given allegedly to both Mr. Agashe and Mr. Thorve it was contended that the same was wholly unnatural and, thus, gives rise to another controversy.

The learned counsel would contend that Mr. Thorve in his letter dated 10th April, 2004 took a positive stand that Mr. Agashe should not be permitted to represent the Maharashtra Cricket Association but he was permitted to do so by Mr. Dalmia as would appear from his letter dated dated 3rd May,2004 purported to be upon obtaining legal opinion stated:

> "Your letter dated 10 April 2004 addressed to our Board was forwarded for legal opinion.
>
> According to the legal opinion received, the orders of the High Court as well as the Apex Court were restricted to the "affairs of MCA" only and not BCCI. Under the order of the Apex Court, the MCA shall not undertake any "policy" decision until disposal of the Appeal by the District Court.
>
> The legal opinion further states that the restriction on taking any "policy" decision by the Maharashtra Cricket Association has nothing to do with representing the Association in the meetings of the Board.

A Even if any policy decision is taken by the Board through its Working Committee, it shall be the policy of BCCI and not MCA."

Mr. Nariman would contend that the legal opinion received by the Board, which, having regard to the tenor of the said letter dated 3rd May, 2004, evidently was a written one, has designedly been withheld from this B Court. It is, thus, evident that there exists two contrary opinions whereupon the Board had relied upon in two different situations. It was contended that there was no reason as to why Mr. Jagmohan Dalmia himself did not affirm any affidavit in this regard clarifying his position.

C Mr. Nariman would submit that the fact that in a similar situation Rajasthan Cricket Association was permitted to be represented in AGM proves malafide on the part of the Board.

The learned counsel had also drawn our attention to the letter of Mr. B.G. Deshmukh, one of the observers appointed by the Bombay High Court D and submitted that neither he could raise any objection as regard requisitioning of the meeting nor could he have forwarded his letter to Mr. Ajay B. Shirke and Mr. S.G. Thorve on the ground that they had asked for the copy of his letter for being placed before the MCA. Such an act on the part of Mr.Deshmukh, Mr. Nariman would contend, was improper particularly when the said addressees had no concern with the said notice and, more so, when E the same was received by them even before the service thereof on the Maharashtra Cricket Association. Our attention was also drawn to the counteraffidavit filed by the Respondent No. 1 wherein it has been alleged:

"It is pertinent to state that the said observer resides in Pune and the F meeting was also to be held in Pune itself and inspite of notice being served on him, he does not attend the meeting. It is also submitted that no objection as to the appointment of Mr. D.C. Agashe to represent Maharashtra Cricket Association has been raised by the said observer. It is also peculiar that Mr.S.G. Thorve and Mr. Ajay B. Shirke who had no concern with the said notice was also given a copy even G before the same could be received by Maharashtra Cricket Association. The deponent also wishes to point out that Mr. R.G. Deshmukh, the learned observer is the Chairman of one of the companies owned by Mr. Ajay B. Shirke."

It was submitted that if the representation of Maharashtra Cricket Associ-

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ation through Mr. Agashe in the earlier meetings of the Board had not been a policy decision of Maharashtra Cricket Association, then why all of a sudden it became so for the AGM. Only. A

Drawing our attention to the affidavit of Mr. Agashe filed in S.L.P. No. 21820-21822 of 2004, the learned counsel would submit that the Chairman of the Board in the meeting firstly created an artificial right for casting one vote as chairman and then exercised his right of casting vote again, i.e., voting twice which was in contravention of the Rules. B

In terms of Rule 3, there are 30 full members and in terms of Rule 5 only full members have right to vote. The Chairman of the Board is not a member as he does not represent an Association. It was pointed out that it is not necessary that the President of the Board would be the Chairman of the meeting and in that view of the matter Rules 25, 26 and 27 must be construed in such a manner so as to hold that the Chairman of a meeting cannot vote twice but only once. In any event, the learned counsel would contend that in a case of this nature the Chairman ought not to have exercised his discretionary power to cast vote twice. C D

Mr. Nariman would draw our attention to the Judges Summons in O.A. No. 803 of 2004 wherein the following prayers were made:

> "(1) This Hon'ble Court should not be pleased to treat the application as ugent? E
>
> (2) Why this Hon'ble Court should not be pleased to pass an order of AD-INTERIM INJUNCTION to restrain the Chairman oblique President of BCCI from conducting the Annual General Meeting on the 29th and 30th of September, 2004 at Kolkata and direct that the said meeting be conducted under the Chairmanship of any person or persons of the stature of a retired Supreme Court Judge or High Court Judge or any other person or persons as to be named by this Hon'ble Court with absolute powers to scrutinize and approve the list of authorized representatives from member associations eligible to vote in the said Annual General Meeting of the 1st Respondent." F G

Our attention has further been drawn to the order dated 28.9.2004 passed by the learned Single Judge of the Madras High Court in OA No. 803 of 2004 and OA No. 804 of 2004, para 14 whereof is as under:

H

A "14. The third respondent is further prohibited from disqualifying any member of BCCI and prevent them from voting."

The learned counsel would point out that the Division Bench in its order had referred to paragraphs 11 to 13 of the order dated 28.9.2004 passed by the learned Single Judge but omitted to notice paragraph 14 thereof. Even B otherwise in the Memo of Appeal, no ground was taken questioning the said order of injunction as contained in paragraph 14 of the order passed by the learned Single Judge.

Mr. Nariman would further submit that the undertaking given by a C senior counsel must be construed in the light of the understanding of the learned Judges before whom the same had been given across the bar and in this connection our attention has been drawn to paragraphs 3 and 4 of the impugned order, as noticed supra.

In this regard, our attention has also been drawn to the 4th question D raised in the S.L.P. filed by the Board which is in the following terms:

"(iv) Whether the Hon'ble High Court was right in concluding that the Learned Senior Counsel appearing for the Petitioners herein gave an undertaking to the effect that no one would be disqualified from voting despite the fact that the actual undertaking given by the Learned E Counsel to the effect that no one would be disqualified on the ground of zonal representation to contest the election?"

Our attention has also been drawn to the Ground (b) of the Special Leave Petition which is to the following extent:

F "It is submitted that the Learned High Court had erred in coming to the conclusion that the undertaking given by the Learned Senior Counsel had been violated, when in fact no such undertaking was given by the Learned Senior Counsel. It is submitted that the undertaking given by the Learned Senior Counsel was duly recorded in the Order dated 29.09.2004 passed by the self same Learned G Division Bench. It is submitted that the Learned Senior Counsel who earlier appeared on 29.09.2004 also appeared on 08.10.2004 before the Learned Bench and expressly recorded the submissions that were made by him on 29.09.2004."

H and contended that there was no reason as to why such a question had not been raised before the Division Bench itself.

According to Mr. Nariman, the learned Senior Counsel appearing on behalf of the Board before the Madras High Court has not filed any affidavit as regard tenor of his undertaking and in this view of the matter the statement of the Judge in the impugned order should be accepted.

Mr. Harish Salve, learned senior counsel appearing on behalf of 'Netaji' would submit that the Board is a federal head of cricket associations. Having regard to the evolution of sports of cricket in this country and in particular the fact that the Board controls the sport in India, a higher standard of rectitude in the affairs of the Board is expected. Mr. Salve would submit that in an Annual General Meeting of the Board, the aspirations of an individual member could not have been given priority having regard to the fact that the Board does not have private member. It was argued that even the Rajasthan Cricket Association was not registered and time had been taken to get it registered, but despite the same it was allowed to vote but Maharashtra Cricket Association was not permitted although the Board knew that litigations have been going on not only in relation to the Maharashtra Cricket Association but also in relation to the Rajasthan Cricket Association and Delhi & District Cricket Association and, thus, in a situation of this nature, the Chairman ought to have acted judiciously.

Relying on a decision of this Court in *K. Murugan* v. *Fencing Association of India, Jabalpur and Ors.*, [1991] 2 SCC 412, Mr. Salve would argue that even therein a retired Judge of this Court was nominated so long a valid election was not made only with a view to see that the body like the Olympic Association or the Board must act in the interest of the sports of the country.

As regard exercise of right of 'casting vote' by Mr. Dalmia, the learned counsel would contend that the same could be exercised when there was a genuine tie and not an artificial or a created one. Election of the office bearers of the Board, according to Mr. Salve, should not only be a fair one but must be appear to be such. It was argued that the adjournment of the AGM was illegal and what happened on 29th September, 2004 was far below the standard of conduct/expected from a body like the Board and furthermore the manner in which the meeting was conducted clearly creates an air of suspicion.

As regard functioning of the Board, it was urged that the same being based on trust, the "power and abuse" would bring into focus administrative

A law situation. Reliance in this behalf has been placed on *Nagle* v. *Feilden and Ors.*, [1966] 2 QB 633 at 643 and 644 and *St. Johnstone Football Club Limited* v. *Scottish Football Association.*, (1965) SLT 171.

Mr. Salve would argue that the Chairman of the meeting should have acted as an umpire having regard to the role of the Board as a federal B association and keeping in view the mandate of Rule 5 in terms whereof only 30 full members could exercise their right of franchise. According to Mr. Salve, keeping in view the larger public interest, the technicality of absence of the elected members in these proceedings should not stand in the way of this Court declaring the election void particularly in view of the fact that all C the elected members have knowledge of the proceedings but are sitting on the fence.

Dr. Singhvi, in reply, would draw our attention to the prayer for an interim order by 'Netaji' in the review application, i.e., for restraining the newly elected body which, according to the learned counsel, would mean that D the old body had ceased to continue and pursuant to or in furtherance of the said prayer only, the impugned order of injunction was passed by the Division Bench.

As regard the AGM held on 29.9.2004, it was contended that some of the items of Agenda, particularly, item Nos. 1(c) and 2 to 6 were taken up E and they were considered and resolutions thereupon were passed. Further on 30.9.2004, some other items of Agenda were taken up but item Nos. 1(b) and 13 could not have been taken up in view of the order of injunction passed by the District Court of Madras. According to the learned counsel, by reason of such adjournment of the meeting, Mr. Dalmia did not derive any benefit F inasmuch as his nomination as representative of the Board to ICC could have been passed in that AGM and in any event, even without such resolution he would have continued to act as a representative before the said body.

The learned counsel would contend that the meeting was adjourned with concurrence of all the participants present in the meeting and with no G opposition. According to Dr. Singhvi, the only persons who have been taking objections were 'Netaji' or 'Bharathi' who are not even the members of the Board and could not have participated in the election process.

As regard the power of the Chairman to cast two votes, the learned H counsel would submit that the rules envisage casting of votes by President only and not by any other member, as would appear from the Rules 5 and

25 of the Rules. Rule 26 provides that the decision taken by the majority shall prevail except in case of equality of votes when casting of vote may be necessary by the Chairman. By reason of first part of Rule 27, Dr. Singhvi would contend, no diminution of power is contemplated inasmuch as by reason thereof the right of the Chairman to exercise his right as regards 'casting vote' is preserved and the expression 'subject to rules' must be held to mean subject to Rule 26. Dr. Singhvi would contend that having regard to the precedent as two votes had been cast by the Chairman even earlier, the rule should be interpreted in the same way as was understood by all concerned. He would argue that the subject matter of voting contained in Rules 25 and 27 contemplate two different situations, as the context in which Rule 25 is attracted is radically different from Rule 27.

The rule of harmonious construction, according to Dr. Singhvi, should be applied in a situation of this nature inasmuch as, if Rule 27 is held to be subject to Rule 5, the first part thereof shall become nugatory. Pointing out the difference between Rule 26 and Rule 27, it was argued that whereas Rule 26 applies for all meetings, Rule 27 applies only to Annual General and Special General Meeting.

According to Dr. Singhvi, having regard to Rule 43(1)(c) of the Rules, an election dispute should be raised in terms thereof and in a case of this nature the court should not entertain any election dispute when there exists an alternative remedy.

Dr. Singhvi would argue that when there exists substantive laws governing resolution of dispute in relation to election of office bearers of the Board, this Court should not exercise its jurisdiction under Article 142 of the Constitution.

Mr. S.S. Ray, learned senior counsel appearing on behalf of Mr. Jagmohan Dalmia would submit that right of casting vote is not a common law right but one granted by the statute. The provision for exercise of right of casting vote is essentially for maintaining a status quo which in the cases of clubs and associations should be construed to be the second vote.

The learned counsel would contend that in the meeting dated 29.9.2004 no member had been disqualified but in absence of any authorized member to represent it, nobody could cast vote on its behalf. Keeping in view the fact that the Board has nothing to do with the internal dispute of the Maharashtra Cricket Association, this Court should not interfere in the matter, particularly,

A when even in the next meeting a similar problem may arise. Distinguishing the decision of this Court in *K. Murugan* (supra), the learned counsel would contend that the factual matrix obtaining therein was different and in the present case, there is no allegation of mis-management, malfunctioning or mal-administration nor any allegation has been made against Mr. Dalmia.

B When the matter was listed before this Court on 11.10.2004, this Court was given an impression that having regard to the fact that the election of the office bearers of the Board had already taken place on 29.9.2004, the new Board had taken over. An impression was also created that if the Board was not allowed to function a stalemate would ensue, particularly, having regard C to the proposed test series and one dayers' which were to be played between South Africa and India and one day cricket between India and Pakistan. The impugned order appointing the Administrator by the Division Bench of the Madras High Court, it was submitted, if allowed to continue, would, thus, be detrimental to the interest of the sport of cricket. It was in this situation, this Court stayed the operation of the impugned order to the extent of appointment D of Administrator. However, a different picture was presented before us at the hearing stating that the new Board had not taken over at all and the old Board had been functioning purported in terms of Rule 20(iii) of the Rules. Thus, in law the old board could continue, the Appellants were not seriously prejudiced and in any event no emergent situation arose as had been projected E before this Court.

The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. F It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State Associations except, Association of Indian Universities, Railway Sports Control Board and Services G Sports Control Board. As a member of ICC, it represents the country in the international foras. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the H country. Its control over the sport of competitive cricket is deep pervasive

and complete.

In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards.

An association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative. Necessarily, the office bearers in terms of the Memorandum and Articles of Association must not only act within the fourcorners thereof but exercise their respective powers in an honest and fair manner, keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body incharge of controlling the sport of cricket should involve in litigations completely losing sight of the objectives of the society. It is furthermore unfortunate that a room for suspicion has been created that all its dealings are not fair. The Board has been accused of shady dealings and double standards.

We have noticed the contentions raised by the parties herein at some length not because they were absolutely necessary for the purpose of arriving at a decision but with a view to show that the rival contentions necessitate a deeper probe and scrutiny. Unfortunately, for the reasons stated hereinafter, we are at this stage not in a position to do so and leave the contentions wide open to be agitated by the parties before the appropriate forums.

On 11th October, 2004, we had, after hearing the counsel for the parties observed that if a situation arises this Court would go into the validity of the election of the office bearers of the Board held in the meeting dated 29th September, 2004, but, as indicated hereinbefore, we did so under a mistaken belief that the Board would be represented by the new office bearers and, thus, all parties would be before us. However, it now stands admitted that the office bearers either in their personal capacity or official capacity are not before us. They may have notice of the pendency of this proceeding. They may be sitting on the fence and watching the proceedings of this Court. But, unless they are made parties in these proceedings, we would not be in a position to entertain the dispute as regard validity of the meeting of 29th September, 2004 resulting in the election of the office bearers. Giving an

A opportunity of hearing to the elected members in a dispute of this nature is imperative and not a matter of mere procedure, formality or technicality. The election dispute, therefore, must be adjudicated upon by a proper forum.

The events leading to these appeals, as narrated hereinbefore, raise a abysmal picture and a sordid state of affairs.

B

In the suit filed by Netaji, two interim applications were filed being OA No. 803 and OA No. 804 of 2004. Indisputably, in OA No. 803 of 2004, the Court granted an order of injunction restraining the Board from disqualifying any members of the Board and preventing them from voting. Although in the C Memo of Appeal filed by the Board before the Division Bench of the Madras High Court against the said order, the orders passed both in OA Nos. 803 and 804 of 2004 were sought to be questioned, no ground in relation thereto appears to have been raised in the Memo of Appeal in relation to the said order of injunction and no argument appears to have been advanced before the Division Bench in that behalf. The Division Bench of the High Court D while passing the order on 29th September, 2004 noticed paragraphs 11 to 13 of the order of the learned Single Judge dated 28th September, 2004 but its attention probably was not drawn to paragraph 14 thereof. Even the attention of the Division Bench to the said effect does not appear to have been drawn by the learned counsel appearing on behalf of the Plaintiff - Respondent No. E 1 herein. Had the intention of the Division Bench specifically been drawn to the said order of injunction, we are sure that the learned Judges would have dealt with it specifically. However, in law the said order of injunction did not subsist as the suit itself was withdrawn with the consent of the parties and both the appeal and the suit were disposed of by the order dated 29.9.2004. However, whether the suit itself could have been withdrawn and disposed of F by the Division Bench in purported exercise of its power under Sub-section (2) of Section 107 of the Code as well as on the basis of the determination of the learned judges is open to question. We are also not aware as to whether the original side Rules of the Madras High Court contemplate such a situation.

G Indisputably, an undertaking had been given by a learned Senior Counsel appearing on behalf of the Board. In the impugned order, the Division Bench before whom such undertaking had been given was of the opinion that it was misled. This Court having regard to the understanding of such undertaking by the Division Bench does not intend to deal with the effect and purport thereof and as we are of the opinion that the Division Bench of the Madras H High Court itself is competent therefor. If paragraph 14 of the order of the

learned Single Judge is to be taken into consideration, it is possible to contend that the learned Judges of the High Court were correct. A

We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. B

Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. C

Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit". D E

It is true that in *Moran Mar Basselios Catholicos and Anr.* v. *The Most Rev. Mar Poulose Athanasius and Ors.*, [1955] 1 SCR 520, this Court made observations as regard limitations in the application of review of its order stating : F

> "Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the G H

A exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule.",

but the said rule is not universal.

Yet again in *Lily Thomas* (supra), this Court has laid down the law in the following terms:

C

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. *Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court* from rectifying the error"

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(Emphasis supplied)

It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake.

H In Rajesh *D. Darbar and Ors.* v. *Narasingrao Krishnaji Kulkarni &*

Ors., [2003] 7 SCC 219, this Court noticed: A

"4. The impact of subsequent happenings may now be spelt out. First, its bearing on the right of action, second, on the nature of the relief and third, on its importance to create or destroy substantive rights. Where the nature of the relief, as originally sought, has become obsolete or unserviceable or a new form of relief will be more B efficacious on account of developments subsequent to the suit or even during the appellate stage, it is but fair that the relief is moulded, varied or reshaped in the light of updated facts. *Patterson* v. *State of Alabama,* [1934] 294 U.S. 600, illustrates this position. It is important that the party claiming the relief or change of relief must C have the same right from which either the first or the modified remedy may flow. Subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation except in a narrow category (later spelt out) but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by D subsequent events save where there is a change in the law and it is made applicable at any stage. *Lachmeshwar Prasad* v. *Keshwar Lal,* AIR (1941) FC 5 falls in this category. Courts of justice may, when the compelling equities of a case oblige them, shape reliefs - cannot deny rights - to make them justly relevant in the E updated circumstances. Where the relief is discretionary, Courts may exercise this jurisdiction to avoid injustice. Likewise, where the right to the remedy depends, under the statute itself, on the presence or absence of certain basic facts at the time the relief is to be ultimately granted, the Court, even in appeal, can take note of such supervening facts with fundamental impact. This Court's judgment in *Pasupuleti* F *Venkateswarlu* v. *Motor & General Traders,* AIR (1975) SC 1409 read in its statutory setting, falls in this category. Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is G caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in cause of action or relief. The primary concern of the court is to implement the justice of the legislation. Rights vested by virtue of a statute cannot be divested by this equitable doctrine - See *V.P.R.V.* H

A *Chockalingam Chetty* v. *Seethai Ache,* AIR (1927) PC 252."

Furthermore, the impugned order is interlocutory in nature. The order is not wholly without jurisdiction so as to warrant interference of this Court at this stage. The Division Bench of the High Court had jurisdiction to admit the review application and examine the contention as to whether it can have
B a re-look over the matter. This Court, it is trite, ordinarily would not interfere with an interlocutory order admitting a review petition. The contentions raised before us as regard the justification or otherwise of the Division Bench exercising its power of review can be raised before it. Furthermore, the court having regard to clause (ii) of its order dated 29.9.2004 may have to consider
C as to whether the election was held in accordance with the constitution of the Board and the rules and bye-laws framed by it.

The conduct of the Board furthermore is not above board. The manner in which the Board had acted leaves much to desire.

D The question as to whether the Maharashtra Cricket Association has unjustly been deprived of its right to participate in the AGM through Mr. Agashe whereas DDCA and the Rajasthan Cricket Association had been allowed to participate therein is a question which would require deeper probe and a detailed scrutiny.

E The Board had not filed even legal opinion which it obtained before replying to Mr. Thorve's letter dated 10th April, 2004. The tenor of the Board's letter dated 3rd May, 2004 clearly demonstrates that a written opinion was obtained as therein the following expressions have been used:

"the legal opinion further states"

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In the said legal opinion a distinction appears to have been made between a policy decision to be taken by Maharashtra Cricket Association *vis-a-vis* representation of the Association in the meetings of the Board. No distinction might have been drawn therein as regard different types of meetings of the Board, viz., Extraordinary General Meeting and Annual General Meeting or
G any other meeting, nor do we find any. A person may either be entitled to represent an association or he is not. A person's right to represent an association ordinarily would not vary with the nature of the meeting unless otherwise provided in the statute. So far no satisfactory explanation has been furnished as to why another legal opinion was sought for and acted upon in
H preference to the first one.

One of the question is whether Mr. Agashe could have represented the Maharashtra Cricket Association in terms of resolution dated 27.09.2004. Different standards cannot be adopted by the Board, viz., one for the purpose of requisitioned meeting for inviting Mr. Dalmia to become the patron-in-chief of the Board and other for the purpose of attending an AGM. In other meetings, Maharashtra Cricket Association had admittedly been represented by Mr. Agashe. It is also doubtful as to whether the Board could have gone into, if at all, the validity or otherwise of the meeting of the Maharashtra Cricket Association held on 27th September, 2004. It is also a matter of contention as to whether Mr. Deshmukh had exceeded his jurisdiction not only in taking his stand as contained in his letter dated 27th September, 2004 but also sending copies thereof to Mr. Thorve and Mr. Ajay B. Shirke before it was received by the Maharashtra Cricket Association.

Mr. Deshmukh in terms of the order of the Bombay High Court prima facie was merely to attend the meeting and give his approval or withhold it as regard any policy decision which may be taken. Whether sending a representative of the Maharashtra Cricket Association is a matter of policy warranting interference by the observers appointed by the Bombay High Court is again a contentious issue. The members of the Association could not have undermined the importance of electing its representative for the ensuing Annual General Meeting of the Board.

The Maharashtra Cricket Association itself has filed a Special Leave Petition questioning the order of the Division Bench of the Madras High Court dated 29th September, 2004. In a situation of this nature, this Court may not exercise its jurisdiction under Article 136 of the Constitution of India because the order impugned before it is not correct. The jurisdiction of this Court under Article 136 of the Constitution is a discretionary one.

In *Municipal Board, Pratabgarh and Anr.* v. *Mahendra Singh Chawla and Ors.*, [1982] 3 SCC 331, it was held:

> "6. What are the options before us. Obviously, as a logical corollary to our finding we have to interfere with the judgment of the High Court, because the view taken by it is not in conformity with the law. It is at this stage that Mr. Sanghi, learned counsel for the respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and, therefore, this Court is not bound to tilt at every approach found not in consonance or conformity with

A law but the interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, 'rule of law must run akin to rule of life. And life of law is not logic but experience. By pointing out the error which according to us crept B into the High Court's judgment the legal position is restored and the rule of law has been ensured its prestine glory. Having. performed that duty under Art. 136, is it obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the C element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Art. 136"

In *Taherakhatoon (D) by LRS.* v. *Salambin Mohammad,* [1999] 2 SCC 635, this Court held:

D "20. In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error - still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion..."

E

The said decision has been followed by a 3-Judge Bench of this Court in *Chandra Singh and Ors.* v. *State of Rajasthan and Anr.,* [2003] 6 SCC 545.

Yet again in *Ram Chandra Singh* v. *Savitri Devi and Ors.,* [2003] 8 F SCC 319, this Court observed::

"In such an event also, the Court may have to find out a remedy which would be just and equitable.

The High Court furthermore failed to notice the principle 'actus G curiae neminem gravabit'.

In *Rajesh D. Darbar and Ors.* v. *Narasingrao Krishnaji Kulkarni & Ors.*, JT (2003) 7 SC 209, this Court noticed:

"The courts can take notice of the subsequent events and can mould H the relief accordingly. But there is a rider to these well established

principles. This can be done only in exceptional circumstances, some of which have been highlighted above. This equitable principle cannot, however, stand in the way of the court adjudicating the rights already vested by a statute. This well settled position need not detain us, when the second point urged by the appellants is focused. There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court. There is a well recognised maxim of equity, namely, actus curiae neminem gravabit which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia, i.e. the law does not compel a man to do that what he cannot possibly perform"

Recently, in *M.P. Special Police Establishment* v. *State of M.P. and Ors.*, [2004] 8 SCC 788, this Court held:

"31. We have, on the premises aforementioned, no hesitation to hold that the decision of the Council of Ministers was ex facie irrational whereas the decision of the Governor was not. In a situation of this nature, the writ court while exercising its jurisdiction under Article 226 of the Constitution as also this Court under Articles 136 and 142 of the Constitution can pass an appropriate order which would do complete justice to the parties. The High Court unfortunately failed to consider this aspect of the matter."

However, keeping in view of the fact that the elected office bearers are yet to take over charge, with a view to do complete justice to the parties, we would in exercise of our jurisdiction under Article 142 of the Constitution direct that the adjourned meeting should immediately be convened. As regard the election of the office bearers of the Board, it would further be open to an aggrieved party to question the legality or validity of the said meeting dated 29th September, 2004. Netaji also may, if it is otherwise permissible in law, subject to an appropriate order that may be passed by the Madras High Court, may file an application for amendment of the plaint or take such other step or steps as it may be advised.

Keeping in view of the fact that on 8th October, 2004 when the impugned order was passed the new Board had not taken over as also having regard to the prayer made in the interim application filed by Netaji for grant of interim injunction restraining the newly elected Board from functioning in

A the interim, we make our interim order dated 11th October, 2004 staying the operation of the part of the order whereby Mr. Justice S. Mohan was appointed as an interim Administrator absolute leaving the parties to file such interim applications as may be necessary in the changed situation.

However, keeping in view of the fact that interim order of injunction
B as regard Agenda Item Nos. 1(b) and 13 been passed by a District Court at Chennai, the suit filed by Bharathi Cricket Club, we are of the opinion that it is not necessary to pass any other order at this stage as regard invitation to Mr. Jagmohan Dalmia to become the patron-in-chief of the Board.

We are, however, of the opinion that it would not be appropriate to
C restore the order of the learned Single Judge dated 28.9.2004 as was submitted by Mr. Nariman as the purpose for which Mr. Justice S. Mohan was appointed has lost its efficacy.

In view of the orders passed by us, we do not think it necessary to pass
D separate orders in the Special Leave Petition filed by the Maharashtra Cricket Association. The Maharashtra Cricket Association shall, however, be at liberty to file an appropriate application for getting itself impleaded in the proceedings pending before the Madras High Court, subject to any objection that may be taken by the Board. We, however, furthermore are of the opinion that keeping in view the facts and circumstances of this case that part of the order of the
E Division Bench dated 29th September, 2004 whereby and whereunder the Board was directed to pay a further sum of Rs. 1 lakh to Mr. Justice S. Mohan as additional remuneration cannot be sustained. It is set aside accordingly.

Keeping in view the peculiar fact situation obtaining herein, we would
F request the High Court to consider the desirability of disposing of the matters pending before it as expeditiously as possible.

These appeals are disposed of with the aforementioned directions. No costs.

G B.B.B. Appeals disposed of.