SUPREME COURT OF INDIA

A.C.Muthiah

Vs.

Bd. of Control for Cricket

C.A.No.3753 of 2011

(J.M.Panchal and Gyan Sudha Misra,JJ.,)

28.04.2011

JUDGMENT

J.M. Panchal,J.,

SLP(Civil)No.12181 of 2010

1. Leave is granted in each petition.

2. These appeals are directed against common judgment dated March 24, 2010, rendered in OSA Nos. 226 to 229 of 2009 by the Division Bench of the High Court of Judicature at Madras, by which, the order dated July 13, 2009 in OA No. 1042 of 2008, filed in Civil Suit No. 930 of 2008 with OA Nos. 1299, 1300 and 5740 of 2008, filed in Civil Suit No. 1167 of 2008, refusing to grant four reliefs sought, namely, (1) to grant mandatory temporary injunction directing the respondent No. 1 herein to act under Clause 32(ii) of Memorandum and Rules and Regulations ("Regulations" for short) of the respondent No. 1 by appointing a Commissioner to make preliminary inquiry against the respondent No. 2 pending disposal of Civil Suit No. 930 of 2008, (2) to suspend the amendment to Clause 6.2.4 in the Regulations for players, team officials, managers, umpires and administrators and Board of Control for Cricket in India (for short "BCCI") Code 2008, which permits an administrator to have directly or indirectly commercial interest in the matches or events like Indian Premier League ("IPL" for short) or Champions League Twenty 20, (3) to grant temporary injunction restraining the respondent No. 2 from functioning as Secretary of BCCI and (4) to grant mandatory temporary injunction directing BCCI not to permit the respondent No. 2 to contest any of the posts of office bearers in future for a reasonable number of years as the Court thinks fit, is upheld.

3. In order to understand the controversy raised in the instant cases it will be relevant to notice the essential facts emerging from record of the case. The BCCI was formed in the year 1928. Initially it was functioning as an unregistered association of persons. However, subsequently it was registered in the year 1940, under the Societies Registration Act, 1860. After the enactment of the Tamil Nadu Societies Registration Act, 1975, which came into

effect from April 22, 1978, it is registered under the said Act. Under Section 6 of the Act of 1975, any society seeking to register itself has to submit its Memorandum of Association and regulations/bye-laws/rules. In respect of BCCI, the Memorandum of Associations and the Regulations/Rules, as required by the said Act, have been submitted. The record of the case shows that registration of BCCI as a Society is governed by those two documents. The object of BCCI is to control the game of cricket in India and give its decision on all matters which may be referred to it. Another object is to encourage the formation of State, regional or other cricket associations in the country. The other objects have been enumerated in detail in the Memorandum of Association, but the Court is of the opinion that it is not necessary to make a detailed reference to the same. The respondent No. 1, i.e., the BCCI sent an invitation to India Cements Limited based at Chennai and represented by its Managing Director Mr. N. Srinivasan, who is respondent No. 2 herein, on December 29, 2007, to participate in the auction conducted by IPL. It may be mentioned that at that time the respondent No. 2 was also the Honorary Treasurer of BCCI and the President of Tamil Nadu Cricket Association. The respondent No. 2, on behalf of India Cements Limited, participated in the auction and was awarded the franchised IPL rights for ownership of Chennai Super Kings team by the BCCI.

4. The appellant is the Ex-President of BCCI. According to him, he is an administrator as defined in Clause 1(n) of the Regulations framed by BCCI. The appellant addressed a letter dated September 5, 2008 to the President of BCCI and made complaint about the violation of Clause 6.2.4 of the Regulations by the respondent No. 2. In the said letter it was claimed by the appellant that the respondent No. 2 was liable to be penalized since he is the Managing Director of India Cements Limited, which was one of the franchisee of IPL and IPL being an event of BCCI, the respondent No. 2 had thereby acquired commercial interest and violated the terms of Clause 6.2.4 of the Regulations. The appellant wrote another letter on September 19, 2008 to the President of BCCI reiterating his grievance against the respondent No. 2 and urged the then President of BCCI to take action against the respondent No. 2. Since no action was taken by the President of the BCCI on the complaints submitted by the appellant, the appellant has filed Civil Suit No. 930 of 2008 in the High Court of Madras at Chennai seeking a permanent injunction to restrain BCCI from permitting the respondent No. 2 to participate in the General Body Meeting scheduled in Mumbai on September 27, 2008 or on any other subsequent date, which would be convened in relation to election of new office bearers. The appellant has also sought permanent mandatory injunction directing BCCI to initiate inquiry under clause 32(ii) of the Regulations, by appointing a Commissioner to make a preliminary inquiry against the respondent No. 2. Another relief claimed by the appellant in the said suit is for mandatory injunction directing the respondent No. 1 to exercise his powers as per Clause 8(6) of the Regulations by suspending the respondent No. 2 as Treasurer of the respondent No. 1 pending inquiry. The said suit is filed on the ground that the respondent No. 2, who was then holding the post of Honorary Treasurer of BCCI and was also the Managing Director India Cement Limited, should not have been awarded franchised IPL rights for ownership of Chennai Super Kings Team by BCCI and award of such rights amounted to an act of indiscipline or misconduct within the scope of Clause 32(ii) of the Regulations.

5. Along with the plaint of the suit, the appellant also filed three applications, particulars of which are as under: -

> "OA No. 1041 of 2008 in which it was prayed to issue temporary injunction restraining the respondent No. 1, i.e., BCCI, from permitting the respondent No. 2 to participate in the General Body Meeting scheduled at Mumbai on September 27, 2008 or any other subsequent date for consideration of election of the new office bearers of the respondent No. 1 and for restraining the respondent No. 2 from contesting the election for the post of Secretary pending disposal of the suit. The record unerringly shows that the said OA was dismissed by the High Court vide order dated September 26, 2008. OA No. 1042 of 2008 was filed praying to issue a mandatory temporary injunction directing the respondent No. 1 to act under Clause 32(ii) of the Regulations framed by the respondent No. 1, by appointing a Commissioner to make a preliminary inquiry against the respondent No. 2, pending disposal of the suit. The third application, i.e., OA No. 1043 of 2008 was filed by the appellant seeking temporary injunction directing the respondent No. 1 to exercise his powers under Clause 8(6) of the Regulations."

6. As the Court did not grant ex-parte temporary injunctions as prayed for by the appellant, the respondent No. 2 participated in the Annual General Meeting, which was scheduled in Mumbai on September 27, 2008. Wherein the respondent No.2 was elected as Secretary of the respondent No. 1. On the same day an amendment in Clause 6.2.4 of the Regulations for players, team officials, managers, etc., was made with effect from September 27, 2008 and the amended Clause 6.2.4 provided as under: -

> "No administrator shall have directly or indirectly any commercial interest in the matches or events conducted by BCCI excluding events like IPL or Champions League Twenty 20." Aggrieved by the amendment carried out in the Regulations of the respondent No. 1, the appellant has filed another suit in the High Court, i.e., Civil Suit No. 1167 of 2008 alleging that the amendment in Clause 6.2.4 of the Regulations was made to protect the interest of the respondent No. 2. The main prayer made in the said suit is to: (1) declare that Clause 6.2.4 of the Regulations insofar as it excludes the IPL and Champions League Twenty 20 is illegal and opposed to public policy (2) For permanent injunction restraining the respondent No. 2 from functioning as Secretary of BCCI and (3) For mandatory injunction directing BCCI not to permit the respondent No. 2 from contesting any of the posts of the office bearers.

7. The appellant also filed three other interim applications for reliefs pending the above numbered suits. The appellant filed OA No. 1299 of 2008 in Civil Suit No. 1167 of 2008 with a prayer to suspend operation of the amendment made in Clause 6.2.4 of the Regulations. OA No. 1300 of 2008 was also filed in the said suit claiming temporary injunction to restrain the respondent No. 2 from functioning as Secretary of BCCI. Further OA No. 5740 of 2008 was filed in the later suit seeking mandatory temporary injunction directing the BCCI not to permit the respondent No. 2

to contest any of the posts of the office bearers in future for a reasonable number of years as the Court thought fit.

8. The learned Single Judge of the High Court dismissed OA No. 1042 of 2008, which was filed in Civil Suit No. 930 of 2008 as well as OA No. 1299 of 2008, 1300 of 2008 and 5740 of 2008 filed in Civil Suit No. 1167 of 2008 vide order dated July 13, 2009.

9. Feeling aggrieved by order dated July 13, 2009 of the learned Single Judge of the High Court, the appellant filed OSA Nos. 226 to 229 of 2009, particulars of which are as under: - OSA No. 226 of 2009 was filed against order in OA No. 1042 of 2008, OSA No. 227 of 2009 was filed against order in OA No. 1299 of 2008, OSA No. 228 of 2009 was filed against order in OA No. 1300 of 2008 whereas OSA No. 229 of 2009 was filed against order in OA No. 5740 of 2008. In each appeal, reply was filed by the respondents. After considering the rival claims of the parties, necessary issues for determination were framed. Ultimately, by the impugned judgment dated March 24, 2010, the High Court has dismissed the appeals which has given rise to the instant appeals.

10. It would be relevant to notice the findings of the High Court, in short, which are as under: Before the High Court the contention of the appellant was that the suits were filed by him in the capacity of past President of BCCI as he was an administrator within the meaning of the said phrase, as defined in Clause 1(n) of the Regulations. The respondent No. 1 contended that the suits were instituted by the appellant in his individual capacity and, therefore, the decision would be binding only on him but the nature of the reliefs claimed indicated that the suits were filed in public interest and, therefore, the suits in individual capacity were not maintainable. The High Court noticed that the proper course for a person for instituting a suit in representative capacity was to obtain permission of the Court before instituting the suit. The High Court found that in the present case no such permission was taken even after filing of the suits. Having so held, the High Court expressed opinion that this question could be decided only after trial was held but for the purpose of grant or refusal of the injunction orders claimed only a prima facie consideration was required. Thus, considering the matter prima facie, the High Court found that neither in the two complaints made by the appellant nor in the para relating to cause of action in the plaint of Civil Suit No. 930 of 2008, the appellant had stated that he was filing the suit in the capacity of an administrator and, therefore, both the suits were filed by the appellant in his individual capacity and not in the capacity of an administrator. The High Court noticed that the application by the appellant, i.e., O.A. No.1041 of 2008, praying for an injunction to restrain BCCI from permitting the respondent No.2, to participate in the General Body Meeting etc, was rejected by the High Court vide order dated September 26, 2008, the said order was not challenged by the appellant. The High Court was also of the view that on mere allegations, an injunction could not be ordered against the respondent No.2 from participating in the General Body Meeting convened, to elect the office bearers, as those allegations were yet to be substantiated at the time of the trial. The contention of the appellant that the provisions of clause 6.2.4 should be read with MOA and Regulations of BCCI was not accepted. The High Court was of the opinion that the clause as it stood today, excludes certain events wherein even the administrator can franchise a team in Twenty-20 matches, which is an activity purely

commercial in nature. According to the High Court no materials were placed before the Court to indicate whether IPL matches were official matches conducted by BCCI or they were conducted on commercial basis and in the absence of the relevant materials as well as in view of the fact that parties were also entitled to let in evidence at the time of trial, the exclusion in the clause which was incorporated in the Rules and Regulations cannot be stayed unless a strong prima facie case was made out. The Court was also of the opinion that by way of interim order, the very clause, which is subject-matter of the challenge in the suit, cannot be suspended and there was no reason to hold that such clause is opposed to public also. According to the High Court except the two complaints dated 5.9.2008 and 19.9.2008 no other subsequent complaints were filed by the appellant. The Court noticed that clause 32(ii) of the Rules enjoined BCCI which is the authority to receive the complaints and to refer the same within 48 hours to the Commissioner to be appointed by BCCI to make a preliminary inquiry and in the event such Commissioner was not appointed and inquiry was also not ordered, clause 37 could be pressed into service for referring such a dispute to arbitration but such a course was not adopted by the appellant. While considering the question as to how the power to grant an ad-interim injunction should be exercised, the Court referred to the decisions in Dalpat Kumar And Another Vs. Prahlad Singh And Others (1992) 1 SCC 719 and S. Krishnaswamy Vs. South India Film Chamber of Commerce AIR 1969 Madras 42) and ultimately dismissed the application for injunctions vide order dated July 13, 2009.

11.Dr. Abhishek Manu Singhvi referred to clause 1(n) of the BCCI Regulations of 1994 and argued that the said clause imparts locus to all the administrators which includes former President and, therefore, the finding recorded by the Division Bench of the High Court in the impugned judgment that the appellant has no locus standi is not only recorded in ignorance of the first complaint filed by the appellant on 5.9.2008 in the capacity of the former administrator and second complaint dated 12.92008 by which jurisdiction of BCCI was invoked by the appellant in the capacity of former President of BCCI but is contrary to what is averred in para 4 of the plaint and the same deserves to be set aside. According to the learned counsel for the appellant, the power of a Civil Court under Section 9 of the CPC is plenary, unrestricted and extremely wide, subject only to specific statutory curtailment thereof and, therefore, implied circumscribing of the power of Civil Courts should not have been readily assumed or casually inferred as was done by the High Court in the impugned judgment. The learned counsel emphasized that in the present case there is no statutory curtailment of the power of Civil Court to grant interim or injunctive relief and those who feel aggrieved are not intended to be rendered remedy less by the Rules and Regulations of BCCI.

12. As against this Mr. G.E. Vahanvati, learned Attorney General for the respondent No.1 and Mr. R.F. Nariman, learned Senior counsel for the respondent No.2 argued that the contention of the appellant based on the definition of "Administrator" is not consistent with the plaint in the civil suit filed before the Madras High Court in which the appellant has primarily described himself as someone interested in the promotion of the game of cricket in India and in maintaining the purity of the administration of the BCCI. It was stressed that reference to the appellant being a past president in the plaint is only incidental and by way of

narrative, but no right as administrator is sought to be enforced by filing the suit. According to the learned counsel for the respondents, the reference to a past president or former office bearer in the definition of administrator is to make the administrator subject to the constraints of Rule 32 of the Rules and Regulation so that if it is found that an administrator including a former office bearer has committed any misconduct, he can be debarred, on conclusion of an inquiry, if found guilty, from holding any position or office with the respondent No.1 in future or to be admitted in any sub committee or as an associate member of the respondent No.1 BCCI. The learned counsel for the respondents explained that in the entire Rules and Regulations the word "Administrator" is found only in rule 32 and on proper construction as well as reading of Rules 32(i), (iv) and (v) show that an administrator can be appointed to a committee and, therefore, merely because the appellant is an administrator, i.e., past president of the respondent No. 1, that fact does not confer any right on him as a member of the respondent No.1 BCCI. What was maintained before the Court by the learned counsel for the respondents was that a public interest suit is unknown to law and as such a suit can be filed invoking the provisions of Section 91 of CPC, but to maintain a suit under Section 91 of CPC the plaintiff will have to get the leave of the Court before institution of the suit and two or more persons will have to join as plaintiff in the suit and as admittedly the present suits were not filed invoking the provisions of Section 91 of CPC, the suits in the public interest would be maintainable. It was submitted that the appellant could have maintained a writ petition as public interest litigation but he did not file a writ petition because he would have been required to disclose that he had lost the election against the respondent No. 2 by huge margin which would have destroyed the public interest element and thus even if he would not have disclosed as was not done in the present proceedings also, the respondent would have pointed out relevant facts to the Court. Another reason which had weighed with the appellant in not filing the writ petition as public interest litigation was that in all probability the petition would have been summarily dismissed on the ground that it involved determination of highly disputed question of facts. The learned counsel asserted that good grounds have been recorded by the High Court for coming to the conclusion that civil suits of the nature filed by the appellant were not maintainable and, therefore, the judgment impugned should be upheld by this Court.

13. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeals and the relevant Regulations framed by the BCCI.

14. In view of the rival contentions raised by the learned counsel for the parties, this Court will have to consider the question whether the appellant can be regarded as administrator within the meaning of the Rules and Regulations of the BCCI. Admittedly, the appellant is not a member, as defined in Clause 1(b) of the Regulations of the respondent No. 1. It is not his case that either he is a Full Member or an Association member or an Affiliate Member of the respondent No. 1 within the meaning of Clause 3 of the Regulations. Though the term "Administrator" includes a past president, the same would be applicable to a past president only in so far as he is connected with the administration of BCCI in representing as a nominated member of the sub-committee of the BCCI. Clause 1(n) defining the term "Administrator" reads as under: -

"Administrator : An Administrator shall mean and include present and former Presidents, Vice Presidents, Hony. Secretaries, Hony. Treasurers, Hony. Jt. Secretaries of the Board of Control for Cricket in India ("the Board"), past and present Presidents and Secretaries of members affiliated to BCCI, a representative of member or an Associate member or affiliate member of the Board and any person connected with any of the sub-committee appointed by the Board as defined in the Memorandum and Rules and Regulations of the Board."

Whereas Clause 32 of the Regulations, relied upon by the learned counsel for the respondents, reads as under: -

"32. MISCONDUCT AND PROCEDURE TO DEAL WITH :

(i) The Board shall have a power to frame Bye-laws regarding the discipline and conduct of the players, umpires, team officials, administrators, referees and selector and shall have a power to amend the same from time to time.

(ii) In the event of any complaint being received from any quarter or based on any report published or circulated or on its own motion, in the subject matter of any act of indiscipline or misconduct or violation of any of Rules and Regulations by any Player, Umpire, Team Official, Selector or any person appointed or employed by BCCI, the President shall refer the same within 48 hours to a Commissioner appointed by the Board to make a preliminary enquiry. The commissioner shall forthwith make preliminary inquiry and call for explanations from the concerned person(s) and submit his report to the President not later than 15 days from the date of reference being made by the President. On receipt of the report, the President shall forthwith forward the same to the Disciplinary Committee.

(iii) (a) Immediately on receipt of a Report as contained in Clause 32 (ii) above, the committee would call for all particulars and unless it decides, that there is no prima facie case and be accordingly dropped, commence hearing the subject case and complete the same as expeditiously as possible and decide the subject issues by providing reasonable opportunity to the parties of being heard. None of the parties shall be entitled to be represented by any lawyer. If, despite due notice, any party fails to submit any cause or submits insufficient cause, the Committee shall after providing reasonable opportunity of hearing to the parties concerned, take appropriate action. In the event any party refuses and or fails to appear despite notice, the Committee shall be at liberty to proceed ex-parte on the basis of the available records and evidence. The Place of hearing shall be decided by the Committee from time to time. The Committee shall have the power to impose penalties as provided in the Regulations for players, Team officials managers and Umpires of the Board.

(b) The decision of the Committee shall be final and binding and shall come into force forthwith on being pronounced and delivered.

(iv) If any Member or Associate Member or any Administrator of the Board commits any act of indiscipline or misconduct or acts in any manner which may or likely to be detrimental to the interest of the Board or the game of cricket or endanger the harmony or affect the reputation or interest of the Board or refuses or neglects to comply with any of the provisions of the Memorandum and/or the Rules and Regulations of the Board and/or the Rules of conduct framed by the Board, the Hony. Secretary of the Board, on receipt of the complaint shall, in consultation with the President, forthwith issue Show Cause Notice calling for explanation and on receipt of the same and/or in case of no cause or insufficient cause being shown, shall refer the same to the Committee. The Committee shall after providing opportunity of hearing to the parties concerned shall submit its findings to the Board. The Board shall at the Special General Meeting specially convened take appropriate decision by majority of 3/4th members present and voting at the said meetings.
(v) Any Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selector being
found guilty and expelled by the Board, shall forfeit all their rights and privileges as Member, Associate Member, Administrator, Player, Umpire, Team Official, referee, Selector as the case may be. In the case of any Administrator, Player, Umpire, Team Official, Referee or the Selector, he shall not, in future, being entitled to hold any position or office or be admitted in any committee or any member or associate member of the Board.
(vi) A member or Associate Member or an Administrator expelled may, on application made after expiry of three years since expulsion, be readmitted by the Board, provided the same is accepted at a General Body Meeting by 3/4th members present and voting, for re- admission.
(vii) Pending inquiry and proceeding into complaints or charges or misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selector (including the privilege and benefits such as subsidies to the Member or Associate Member) may be suspended by the President from participating in any of the affairs of the Board until final adjudication. However, the adjudication should be completed within six months."
This becomes evident from the definition itself that it speaks of any person being nominated to any of the sub-

committees of the BCCI. A past president may be nominated on any of the sub-committees of BCCI and only then he would be deemed to be an administrator and not otherwise. Having regard to the well settled principles of interpretation, this Court is of the opinion that purposive interpretation of the term "Administrator"

will have to be adopted and only such an interpretation would lead to a harmonious construction of various clauses of the Regulations. In terms of Clause 32(v), any administrator found guilty can be expelled by the Board and in future such an administrator would not be entitled to hold any position or office or be entitled to be

admitted in any committee or would be entitled to be a member or an associate member or affiliate member of the Board. A bare reading of Clause 32(v) of the Regulations makes it more than clear that it includes only those past office bearers who are included in any committees or sub-committees of the Board. Regulation 6.2.1 provides for debarring a guilty administrator for a period of one year but such debarment would be possible only if the administrator is holding any office or is part of any sub-committee in the present. It is worth noting that in the entire Regulations, the word administrator is found only in Clause 32. A conjoint and meaningful reading of Clauses 32(i), (iv) and (v) makes it more than clear that an administrator including a past president can be appointed on a committee. Admittedly, the appellant is not appointed as a member of any committee formed by the BCCI. Therefore, merely because he was associated in past, with the administration of the BCCI, that fact by itself will not clothe him with any legal right to maintain an action in law against the BCCI. Also, the appellant does not claim to be a member of the registered society, namely, the BCCI.

15.In the light of discussion made above the appellant will have to be considered as an outsider and it will have to be held that he is not entitled to maintain two suits against the BCCI claiming that he is an administrator. In fact, the appellant has no where claimed in the plaints of the two suits that he seeks to maintain the suits as an administrator. Thus the finding recorded by the learned Single Judge of the High Court which is confirmed by the Division Bench of the High Court that the appellant does not claim or seek to maintain the suits as an administrator, will have to be upheld by this Court and is hereby accordingly upheld.

16. Further, the appellant has sought declaratory decrees in both the suits. However, the declarations sought can be granted only in terms of Section 34 of the Specific Relief Act, 1963. A bare reading of Section 34 of the Specific Relief Act would indicate that the plaintiff in order to be entitled to a legal character or to any right will have to seek declaratory relief. The averments made in the plaints of the two suits do not indicate that the appellant is claiming that he is entitled to declaration relating to a legal character or he is claiming any legal character. The only exception to Section 34 of the Specific Relief Act can be found in the Copyright Act and the Patents Act, wherein suits can be filed notwithstanding the provisions of Section 34 of the Specific Relief Act to declare that any threat of infringement of copyright or patent is groundless. Further, Section 41(J) of the Specific Relief Act provides that an injunction claimed should be refused when the plaintiff has no personal interest in the matter. Averments made in paragraph 18 of the rejoinder do not make the provisions of the Specific Relief Act applicable to the facts pleaded by appellant in the two suits.

17.An attempt was made to argue that the appellant is entitled to maintain the two suits because what is claimed by the appellant is that he is the past president of BCCI and, therefore, both the suits instituted to declare that the respondent No. 2, i.e., Mr. Srinivasan has no right to hold any position in

BCCI due to conflict of interest relates to right to property. However, on going through the averments made in the plaints, this Court finds that no right is claimed under Section 34 of the Specific Relief Act.

The record does not indicate that any personal right of the appellant is infringed. Prima facie the appellant, who is claiming declaratory decrees against the respondents, would not be entitled to the same because no personal right of the appellant is infringed.

18.The averments made in the two plaints would show that the appellant is not claiming any legal character in the BCCI nor is he claiming any right to any of the properties of the BCCI. Therefore, it is clear that the appellant has not instituted the two suits under Section 34 of the Specific Relief Act.

19.Once it is held that the appellant is neither a member or the administrator of BCCI, has filed the two suits under Section 34 of the Specific Relief Act, the next question which needs to be considered is in which capacity the appellant has filed the two suits and what is the nature of the suits filed. Therefore, it will have to be determined whether the appellant has filed suit in a representative character spoken of, and referred to in Order I Rule 8, Code of Civil Procedure or whether he has filed public interest suits as mentioned in Section 91 of CPC.

20. Order I Rule 8 of CPC is an exception to the general rule that all persons interested in a suit should be impleaded as parties thereto. Where large body of persons is interested in one issue, the said provisions facilitate an individual to approach the court without recourse to the ordinary procedure. It is also intended to avoid multiplicity of suits being filed on common issue. In Tamil Nadu Housing Board vs. T.N. Ganapathy AIR 1990 SC 642, this Court had occasion to examine the scope and object of Order I Rule 8 of CPC. After examining the scheme envisaged by the said provision, this Court has held that before filing a suit under Order I Rule 8 CPC, permission of the Court, as contemplated by Clause (b) of sub-Rule I, has to be obtained to enable a person to file a suit in a representative capacity for and on behalf of numerous persons, where they have same and/or common interest. As per provisions of sub-Rule (2) of Rule 8 of Order I the Court has to give notice of the institution of the suit to all persons so interested, at the expense of the plaintiff. The notice to be given may be either by personal service or where by reason of number of persons or any other cause, such service is not practicable, by public advertisement, as the Court in each case may direct. Sub-Rule (3) of Rule 8 of Order I provides that any person on whose behalf or for whose benefit a suit is instituted under sub-Rule (1) may apply to the court to be made a party to such suit. The proper procedure to be followed while instituting a suit in a representative capacity has been fully explained in the decision of this Court in State of A.P. vs. G.V. Suryanarana AIR 1965 SC 11. The record of the case doe not indicate that the appellant had filed any application seeking permission of the court under Order I Rule 8 sub-rule (1) CPC nor the averments made in the plaints of two suits indicate that the suits are purportedly filed in a representative capacity. A careful scrutiny of the averments made in the plaints of the two suits prima facie indicates that the appellant has filed the suits in his individual capacity. All that the appellant has stated in the plaints is that he is the past

President of BCCI and, therefore, he is interested in the promotion of the game of cricket in India and in maintaining the purity of administration of BCCI. The paragraph which deals with cause of action inter alia mentions that the appellant has filed the suits in the capacity of an Administrator. The averments made in the plaints prima facie indicate that what is asserted by the appellant is that that he had questioned the conduct of Mr. N. Srinivasan by sending two complaints dated September 5, 2008 and September 19, 2008 to BCCI and that no action was taken by BCCI against Mr. N. Srinivasan. The two complaints have been produced on the record of the appeals. A glance at those two complaints does not indicate that it is mentioned by the appellant therein that he is making the complaint in the capacity of past President.

21. With regard to public interest involved in the suit it is relevant to notice that a public interest suit is not unknown to law. As such a public interest suit can be filed by invoking the provisions of Section 91 CPC for removal of public nuisance or other wrongful act affecting or likely to affect the public at large. However, to maintain a suit under Section 91, the plaintiff has to obtain the leave of the court before institution of the suit and two or more persons must join as plaintiffs in filing the suit. Admittedly, the present suits have not been filed by the appellant invoking the provisions of Section 91 of CPC. Except Section 91, the CPC does not contemplate filing of suit for removal of public nuisance and/or other wrongful act affecting or likely to affect the public. Though on running page 586 of the SLP, which is part of rejoinder filed by the appellant, he has asserted that he has not filed the suits in his personal capacity but has filed the suits in public interest, it is not claimed by him that he has followed the requirements of Section 91 CPC. At this stage, it may be mentioned that the appellant could have filed a Public Interest Litigation in the form of writ petition. However, the fact remains that the Public Interest Litigation / Writ Petition was not filed by the appellant. The reason as suggested by the respondents is that the appellant would have been required to disclose the fact that he had lost the election to the answering respondent No. 2 by huge margin and the disclosure of the said fact would have robbed of the public interest element of the writ petition. Another reason suggested by the respondents, which induced the appellant not to file writ petition of Public Interest Litigation nature, is that the court would have been required to determine numerous disputed questions of facts and the court, having regard to the law declared by this Court relating to a petition filed under Article 226 of the Constitution involving determination of disputed questions of facts, would have dismissed the writ petition summarily. The reasons as to why the appellant did not file writ petition of Public Interest Litigation nature, can be stated only by him but it is not in dispute that such a writ petition was not filed by the appellant.

22. The result of above discussion may be summarized as follows: The appellant is not a member of the respondent No.1 society. It is not his case that he is either full member of associate member or an affiliate member of the respondent No. 1 society. His claim that he is an administrator of the BCCI and has filed two suits in that capacity is rightly not accepted by the High Court. The suits claiming declarations are neither filed under Section 34 of the Specific Relief Act nor the suits are filed in a representative capacity under Order I Rule 8 nor the appellant has filed public interest suits as contemplated by Section 91 of CPC.

23. In the light of above discussion, the question arises as to whether the two suits filed by the appellant, who is not a member of the respondent No. 1 Society, are maintainable. There is no manner of doubt that BCCI is a private autonomous Society registered under the Tamil Nadu Societies Registration Act, 1975. Therefore, its actions have to be judged only like any other similar society or body and cannot be judged like an instrumentality of State or other authority exercising public functions. The BCCI like any other private body is entitled to make its own memorandum, rules and bye-

laws to govern the activities of its members. The memorandum, rules and bye-laws framed by the BCCI were found to be in conformity with the object of the Act and, therefore, it was registered as a Society under the Tamil Nadu Societies Registration Act, 1975. It is an admitted case between the parties that no amendment has been made to the registered memorandum, rules and regulations or bye-laws. Regulation 6.2.4 is only a subsidiary regulation introduced by the working committee of the BCCI. The amendments that are challenged by the appellant in his second suit are those made to the subsidiary regulation. The validity of said amendment will have to be tested only in the light of the interest of the society and its members and not vis-`-vis the interest of non members/strangers. The rule that the public policy of a society must be in consonance with the statute under which it is registered or is being governed and not public policy as indicated in the constitution has been laid down by this Court in the Zoroastrian Cooperative Housing Society Ltd. vs. District Registrar, Cooperative Societies (Urban) (2005) 5 SCC 632. In the said case a person became member of a cooperative society formed for the purpose of erecting house for the residential use of its members. The membership was confined to Parsi community. No member was free to sell the property obtained by way of membership to anyone outside the Parsi community. He challenged this particular provision in the bye-laws alleging inter alia that it is infringing his Fundamental Right guaranteed by Article 19(1)(d) and 19(1)(g) of the Constitution and thus is against the public policy.

24. This Court did not agree with the contention and observed that the answer to the question "what is public policy" has to be searched within the confines of the statute because the Legislature imbibes it in the statute. Hence the public policy in the context of cooperative society has to be considered essentially in the context of Cooperative Societies Act and the Rules made thereunder. In that case this Court held that the provisions contained in the bye-laws putting restriction on the freedom of members to part with the property to any one outside the Parsi community was not against the public policy as it did not militate against the provisions or the Act or rules made thereunder. What was held by the Court in paragraph 22 of the reported decision while judging validity of a bye-law, the interest of the society is paramount and that interest would prevail so long as there is nothing in the Act or the rules prohibiting the promotion of such interest. This Court further observed that going by Chheoki Employees' Cooperative Society Ltd. case, neither the member, respondent No. 2, nor the aspirant to membership, respondent No. 3, had the competence to challenge the validity of the bye-laws of the society or to claim a right to membership in the society. The reference to the case of Chheoki Employees' Cooperative Society Ltd. made by this Court in the above mentioned paragraph refers to the decision of this Court in State of U.P. and another vs. Chheoki Employees' Cooperative Society Ltd. (1997) 3 SCC 681. In the said case

what is laid down is that a member of a society has no independent right qua the society and he cannot assail constitutionality of the Act, rules and bye-laws. This Court has further explained in the said case that the person who is member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time and he has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate and, therefore, the individual person do not have any Fundamental Right to the management of the committee except in accordance with the provisions of the Act, rules and bye-laws. In the present case the appellant has failed to establish that the amendment made in the subsidiary regulation 6.2.4 is opposed to the policy laid down in the Tamil Nadu Societies Registration Act, 1975 or the memorandum and rules and regulations and/or bye-laws of the BCCI approved under the said Act. Therefore, the second suit at the instance of the appellant is not maintainable at all. In a private society what is in the interest of society has to be primarily decided by the society alone and such a question is not left for determination of an outside agency. The interest of the society is paramount and that interest would prevail so long as there is nothing in the Act or the rules governing the society prohibiting the promotion of such interest. As per the decision in Zoroastrian Cooperative Housing Society Ltd. case neither the member nor the aspirant to membership has the competence to challenge the validity of the bye-laws of the society. On the basis of the principles laid down in the said case it will have to be held that the appellant, who is not even a member of the society, cannot challenge validity of the bye-laws of the society, which have been validly passed by the General Body of the society. As is evident from the record of the case the amendments in the subsidiary regulation were made by the General Body unanimously and, therefore, the second suit will also have to be regarded as not maintainable.

25. According to the learned counsel for the appellant, the BCCI discharges important public functions such as the selection of the Indian team and the control on the players and as it has discharged its important public functions arbitrarily, whimsically and capriciously, the two suits are maintainable. What was maintained before the Court was that the respondent No. 1 enjoys a monopoly status as it controls the sport of cricket and lays down the law thereof as well as enjoys benefits by way of tax exemption etc, while exercising enormous public functions and, therefore, it must be judged on a higher pedestal like an instrumentality of State.

26. In support of above mentioned plea the appellant has relied on the decision in the case of BCCI vs. Netaji Cricket Club (2005) 4 SCC 741. Placing reliance on the observations made in para 80 at page 762 of the reported decision, it was argued that as BCCI's control over the sport of cricket is deep, pervasive and complete, the suits would be maintainable. According to the appellant, as a member of ICC, the BCCI represents the country in the international fora and it has the authority to select players, umpires and officials to represent the country in the international fora, it is an instrumentality of the State and the suits are maintainable against it. Paras 80 and 81 of Netaji Cricket Club case (supra) are as under:-

> "80. The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regards 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 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.

81. 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."

27. As against this the respondents have relied upon Constitution Bench decision of this Court in Zee Telefilms Ltd. Vs. Union of India (2005) 4 SCC 649, to contend that the respondent No. 1 BCCI cannot be regarded as State within the meaning of Article 12 of the Constitution. The majority judgment in Zee Telefilm Ltd. Case (supra) holds that the assumption that the respondent No. 1 BCCI is the recipient of largesse by the State is incorrect and that the respondent No. 1 does not enjoy a monopoly status conferred by or as a product of the State. It is further held in the said decision that the respondent No. 1 does not enjoy a deep or pervasive control over the game of cricket and that the functions of the respondent No. 1 are not public functions nor are they closely related to governmental functions. A glance at paragraphs 25 and 31 would indicate that the Court assumed for the purpose of argument that some functions might partake of the nature of public duties but categorically held that the exercise of such functions are in a very limited area of the activities of the respondent No. 1 BCCI. In para 29 of the said judgment this Court proceeded on an assumption that some functions of the respondent No. 1 like the selection of a team to represent India in international matches, may amount to public duties but in the end held that this is not sufficient to hold that the respondent No. 1 is a State for the purposes of Article 12 of the Constitution. The categorical findings in paragraphs 23, 24, 25, 28, 29, 31, 33 and 34 of the Zee Telefilm Lt d. C ase are as under: -

23. The facts established in this case show the following:

"1. The Board is not created by a statute.

2. No part of the share capital of the Board is held by the Government.

3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board.

4. The Board does enjoy a monopoly status in the field of cricket but such status is not State-conferred or State-protected.

5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions.

6. The Board is not created by transfer of a government-owned corporation. It is an autonomous body."

24. To these facts if we apply the principles laid down by the seven-Judge Bench in Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology (2002) 5 SCC 111, it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.

25. Assuming for argument's sake that some of the functions do partake the nature of public duties or State actions, they being in a very limited area of the activities of the Board, would not fall within the parameters laid down by this Court in Pradeep Kumar Biswas case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions, even then, as per the judgment of this Court in Pradeep Kumar Biswas, that by itself would not suffice for bringing the Board within the net of "other authorities" for the purpose of Article 12.

28. There is no doubt that Article 19(1)(g) guarantees to all citizens the fundamental right to practise any profession or to carry on any trade occupation or business and that such a right can only be regulated by the State by virtue of Article 19(6). Hence, it follows as a logical corollary that any violation of this right will have to be claimed only against the State and unlike the rights under Articles 17 or 21 which can be claimed against non state actors including individuals the right under Article 19(1)(g) cannot be claimed against an individual or a non State entity. Thus, to argue that every entity, which validly or invalidly arrogates to itself the right to regulate or for that matter even starts regulating the fundamental right of the citizen under Article 19(1)(g), is a State within the meaning of Article 12 is to put the cart before the horse. If such logic were to be applied every employer who regulates the manner in which his employee works would also have to be treated as State. The pre-requisite for invoking the enforcement of a fundamental right under Article 32 is that the violator of that

right should be a State first. Therefore, if the argument of the learned counsel for the petitioner is to be accepted then the petitioner will have to first establish that the Board is a State under Article 12 and it is violating the fundamental rights of the petitioner. Unless this is done the petitioner cannot allege that the Board violates fundamental rights and is therefore State within Article 12. In this petition under Article 32 we have already held that the petitioner has failed to establish that the Board is State within the meaning of Article 12. Therefore assuming there is violation of any fundamental right by the Board that will not make the Board a "State" for the purpose of Article 12.

29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it and that the Board is discharging these functions on its own as an autonomous body.

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32.

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case (supra), hence there is force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable.

34. At this stage, it is relevant to note another contention of Mr. Venugopal that the effect of treating the Board as State will have far reaching consequences in as much as nearly 64 other national sports federations as well as some other bodies which represent India in the international forum in the field of art, culture, beauty pageants, cultural activities, music and dance, science and technology or other such competitions will also have to be treated as a "State" within the meaning of Article 12, opening the flood gates of litigation under Article 32. We do find sufficient force in this argument. Many of the above mentioned federations or bodies do discharge functions and/ or exercise powers which if not identical are at least similar to the functions discharged by the Board. Many of the sport persons and others who represent their respective bodies make a livelihood out of it (for e.g. football, tennis, golf, beauty pageants etc.). Therefore, if the Board which controls the game of Cricket is to be held to be a State for the purpose of Article 12, there is absolutely no reason why other similarly placed bodies should not be treated as State. fact that game of Cricket is very popular in India also cannot be a ground to differentiate these bodies from the Board. Any such differentiation dependent upon popularity, finances and public opinion of the body concerned would definitely violate Article 14 of the Constitution, as any discrimination to be valid must be based on hard facts and not mere surmises (See State of Kerala v. T.P. , (1979) 1 SCC 572) Therefore, the Board in this case cannot be singly identified as "other authority" for the purpose of Article 12. In our opinion, for the reasons stated above none of the other federations or bodies referred to hereinabove including the Board can be considered as a "State" for the purpose of Article 12." In view of above noted categorical observations made by the Constitution Bench, this Court is of the firm opinion that the observations made in paras 80 and 81 of Netaji Cricket Club case (supra) are no longer good law. The contention that the judgment in Netaji Cricket Club case still holds the field and is a good law cannot be accepted. What is relevant to notice is that one of the learned Judges of the two Judge Bench, which decided Netaji Cricket Club case, was also one of the learned Judges of the Constitution Bench, which decided the Zee Telefilms case. In fact the decision in Zee Telefilms case was delivered by the Constitution Bench of this Court, about three weeks after the judgment was delivered by two Judge Bench in Netaji Cricket Club case. The judgment delivered by the Constitution Bench makes it clear that the judgment of the two Judge Bench, delivered in case of Netaji Cricket Club, was specifically cited before the Constitution Bench and was considered by the Constitution Bench. Further, the judgment in Zee Telefilms case was first prepared by the learned Judges, who had written the judgment in Netaji Cricket Club case and this is evident from the fact that the learned Judges, who had delivered majority judgment in Zee Telefilms case, have recorded that they had read the

opinion of the learned Judge but did not agree with the conclusions recorded therein. In view of the healthy traditions established by the legendary Judges of this Court, the learned Judges, who constituted majority in Zee Telefilms case, have refrained from using the expression that law laid down in Netaji Cricket Club case is not a good law or that the decision in Netaji Cricket Club case stands overruled because the learned Judge, who had written judgment in Netaji Cricket Club case, was also one of the learned members of the Constitution Bench. However, there is no manner of doubt that judgment in Netaji Cricket Club case cannot be regarded as good law in view of firm pronouncement of legal principles by the Constitution Bench of this Court in the case of Zee Telefilms.

28. In view of the above mentioned principles emerging from the judgment of this Court in Zee Telefilms case, the BCCI cannot be regarded as an instrumentality of State and it will have to be held that the two suits filed by the appellant are not maintainable.

29. As this Court has held that two suits filed by the appellant are not maintainable, the question of grant of mandatory and/or temporary injunctions as prayed for does not arise at all and the appeals must fail. However, it was insisted by the learned counsel for both sides that the other points having been argued threadbare, they should also be considered and/or dealt with by the Court. Under the circumstances, this Court has considered the other contentions raised by the learned counsel for the parties.

30. It was contended on behalf of the appellant that unamended clause 6.2.4 of the Rules and Regulations clearly stipulated that no administrator shall have directly or indirectly any commercial interest in the matches or events conducted by the Board and, therefore, the respondent No. 2 being Treasurer of BCCI, could not have participated in the bidding process for IPL team. According to the learned counsel for the appellant the respondent No. 2 had committed clear violation of unamended clause 6.2.4 of the Rules and Regulations and there being factual as well as palpable conflict of interest, the prayers claimed in the applications should have been granted.

31. As against this it was pointed out by the learned counsel for the respondent No. 1 that the players regulations promulgated on September 29, 2000 did not cover T20 or IPL as the same were not born and unknown to the world of cricket at that time and, therefore, participation by the respondent No. 2 in the bidding process for the IPL team did not violate provisions of clause 6.2.4 of the Rules and Regulations. It was argued that the appellant failed to point out factual and palpable conflict of interest, more particularly, when the purpose of IPL or Champions League T20 events was to maximize outreach of the game and exploit its commercial potential as well.

32. On behalf of the respondent No. 2 it was contended that no specific allegations against Members of the BCCI or directors of the India Cement Limited have been leveled against the respondent No. 2 and, therefore, the plea based on conflict of interest was rightly negatived by the High Court. It was maintained before this Court that India Cement Limited is a Company, which is managed through a Board of Directors of which respondent No. 2 is the Vice Chairman and Managing Director, but his holding of shares is only 0.05% and,

therefore, it is wrong to say that the respondent No. 2 takes decision without approval of the Board of Directors of the Company. What was pleaded was that India Cement Limited has thousands of share holders and the Company has an independent legal existence from its share holders whereas all the decisions regarding management and administration of BCCI are taken by its Managing Committee consisting of nine members of whom the respondent No. 2 is only one of the members and, therefore, there is no conflict of interest as is claimed by the appellant. It was further argued that all the decisions of the Managing Committee of the BCCI have to be approved by its General Body and as there are no specific allegations against the Members of the General Body to the effect that they were also actuated by mala fide, in favouring the respondent No. 2, the plea based on conflict of interest should not be entertained by this Court.

33. Even if it is assumed for the sake of argument that the two suits filed by the appellant are maintainable, on examination of Rules and Regulations of BCCI this Court finds that players regulations promulgated on September 29, 2000 had not contemplated nor covered the events like IPL, Champions League T20, etc., because they were unknown and never existed. This becomes clear if one notices the definitions of (a) Test Match, (b) ODI Match, (c) Twenty 20, (d) Tour, (e) Tour Match and (f) Domestic Matches, as given in the Regulations for Players, Team Officials, Managers, Umpires and Administrators.

34. The definitions of the above terms as given in the above mentioned Regulations read as under: -

> "Test Match : Any cricket match of not less than five days scheduled duration played between teams selected by Full Members as representatives of their Member Countries and accorded with the status of Test by the ICC. ODI Match : A limited over international match classified as a One Day International in accordance with the ICC's regulations headed "Classification of One Day International Matches".
>
> Twenty20 : A limited over international match classified as Twenty20 in accordance with ICC regulations.
>
> Tour : A series of matches where at least one of the competing teams is an international team representing a Member country playing a country other than its own and comprising of atleast one Test Match or atleast one ODI Match. For the purposes of this Regulations a Tour shall start on (and include) the first day when the touring squad of Players (or the first of touring squad players) arrives in the country of the tour until (and including) the day on which the touring squad of Players (or the last of touring squad of players) leave to return to their Member country.
>
> Tour Match : Any match other than a Test Match or ODI Match, or T20 in which at least one of the teams comprises Players selected from the squad of players chosen to represent a Member Association.

Domestic Matches : All tournaments any/or matches conducted under the aegis of BCCI."

To argue that purposive interpretation of unamended Players Regulations would include events like ODI Match, Twenty20, etc. is to ignore the hard ground realities and completely brush aside the definitions of those terms mentioned earlier.

35. The expression matches or events in the unamended clause 6.2.4 of the Rules and Regulations cannot be construed to include the events like T20 cricket as those events were introduced after the year 2000. Therefore, the contention of the appellant that the respondent No. 2 violated the unamended Players Regulations and injunctions as prayed for should have been granted, cannot be accepted and is hereby rejected.

36. The next question which falls for consideration is whether the Players Regulations were properly amended or the amendments made are illegal as pleaded by the appellant.

37. The argument that Clause 6.2.4 of the Players' Regulations was not properly amended and, therefore, the same should be regarded as illegal is devoid of substance. All the rules relating to agenda of notice were properly followed. The amendment in Clause 6.2.4 can be traced back to the working committee meeting, which took place on June 22, 2008. The record would show that in the said meeting it was observed by one of the participants that the Players' Regulations needed to be amended to address the changes in the ICC Code of Conduct particularly those relating to the penalties for Anti Racism, Anti Doping, Use of foul language, etc. The use of the words "particularly" and "etc." indicate that the Working Committee did not limit its suggestions only to the issues of Anti Doping, Anti Racism or Use of foul language. Pursuant to the suggestion made by the Working Committee, the President of BCCI formed a two-man committee to recommend suitable changes. The two-men committee met on September 12, 2008, i.e., well before the first suit, i.e. Civil Suit No. 930 of 2008 which was instituted by the appellant in the Madras High Court and recommended three amendments, two of which were with reference to Twenty20 cricket and the third amendment related to Clause 6.2.4 of the Regulations. The members of the respondent No. 1 BCCI unanimously approved the two-men committee's recommendations in the 79th Annual General Meeting. The record would indicate that what was placed for the consideration of the members at the 79th Annual General Meeting was the report of the Working Committee as well as the recommendations of the two-man committee. The notice of all the items of business conducted at the 79th Annual General Meeting was validly given to the members. Although Rule 16(M)(iv) of the Rules and Regulations requires the Secretary to forward the agenda at least 21 days prior to holding of the Annual General Meeting, Rule 16(M)(i) also provides that the attending members may consider "any other business which the President may consider necessary to be included in the agenda". The notice of 79th Annual General Meeting specifically stated about consideration of the motion given by a member, 21 days before the Annual General Meeting, and consideration of any other business which the President might consider necessary in the agenda. The contention of the appellant that 21 days' notice is needed even for those items to be considered under any other business is based on a misconception of the ordinary principles governing the meetings.

One of the essentials of a valid notice is that the time between the service of notice and the date of the meeting should be at least 21 days and that it is absurd to suggest that this notice must also contain the particulars of items which would be taken up by the members under the heading "any other business". It is implicit in the concept of special business to be taken up for discussion at the behest of the Chairman that no particular mention is required of other business which is to be conducted at the meeting. When a member gets his notice, he is deemed to have knowledge of the Regulations of the body concerned and, therefore, of the agenda items. In any event only members could have objected to the process for amending the Players' Regulations. The record shows that not a single member objected to the proposed amendment. On the contrary the record unerringly shows that the resolution relating to the impugned amendment was passed unanimously by the members. The Rules and Regulations, which are the organic and constitutional documents of the association, are framed under the Tamil Nadu Societies Registration Act, 1975. A plain reading of Section 12 of the said Act makes it very clear that it is only if a bye-law or the objects of association mentioned in the Memorandum is intended to be amended that such amendment is required to be registered. This provision has no application to amendments of the Players' Regulations, which have been framed by the respondent No. 1's working committee. Even if a member has limited rights against the body/institution of which he is a member, a member must show that the impugned act is ultra vires the constitution or the Memorandum of Association or the bye-laws of the society and that the act complained of constitutes a fraud on the member or that the impugned action is illegal. The appellant is admittedly not even a member of the respondent No. 1 BCCI and is, therefore, not entitled prima facie to challenge the process of amendment. The amendments carried out in Clause 6.2.4 are perfectly legal and valid.

38. The contention relating to conflict of interest is thoroughly misconceived and proceeds on certain presumptions which have no factual basis. As far as BCCI is concerned, all decisions relating to management and administration are taken by its Managing Committee. It has come on the record of the case that the Managing Committee consists of nine members of whom respondent No. 2 is one of the members. The bye- laws of BCCI unerringly indicate that all the decisions, which may be taken by the Managing Committee of the BCCI, have got to be approved by General Body. Though the appellant has claimed that there is factual and palpable conflict of interest, the appellant could not explain to the Court as to what was the factual conflict of interest and how BCCI was put to financial loss because of participation by the respondent No. 2 in bidding process for the IPL team. The appellant having claimed that there was factual and palpable conflict of interest between BCCI and India Cement Limited, should have attempted to make the same good by necessary and specific averments.

39. Further, the argument of the appellant with regard to the alleged conflict of interest and duty proceeds on a complete misconception of what T20 matches are all about. A brief history of T20 cricket is important to understand the context in which this new form of the game was introduced. Cricket as a game was fast losing spectator support. Attendance at the test matches was found thin and decreasing day by day. Even ODI matches were not attracting huge crowds. As against this, football was found to be a fast paced, action packed game and it did not last for more than two hours. Therefore, it was considered necessary to

have a new format, which was not conducted on lines of international cricket, but was conducted purely on commercial lines. If maximum boost was to be given to the cricket, it was through organizing T20 matches on a commercial basis. Thus it stands to reason that any person who is interested in the game should be able to participate in the commercial aspect of T20. For this purpose, a tender process had to be used. The attempt was to maximize interest and participation in T20 by way of acquisition and funding of teams. This could be done if there was a widest possible participation both by franchisees and stakeholders including the spectators. The process of bidding by the franchisees for the various participating teams establishes the commercial nature of IPL and Champions League T20 cricket. Therefore, it is difficult to uphold the contention of the appellant regarding conflict of interest in an IPL since the purpose of this new model of cricket was to maximize outreach of the game and exploit its commercial potential as well. record does not indicate that any franchisee or any other member of the respondent No. 1 BCCI has complained of any alleged conflict of interest. It is nobody's case that the team was purchased by the respondent for a smug and that he had prevented others who wanted to offer more price for purchase of the team and thereby caused financial loss to the BCCI. Thus, the plea of conflict of interest is substanceless and is hereby rejected.

40. The plea that the amendment made in Clause 6.2.4 of the Regulations is mala fide and, therefore, reliefs prayed for by the appellant cannot be accepted. As is rightly pointed out by the learned counsel for the respondent No. 2 that India Cement Limited is a Company incorporated under the provisions of the Companies Act, 1956. It is a Public Limited Company and is being managed by Board of Directors. Naturally it being a Public Limited company, it has several share holders. The assertion made by the respondent No. 2 that he holds only 0.05% of shares in India Cement Limited, cannot be demonstrated to be untrue. Therefore, it would be wrong to contend that the respondent No. 2 personally takes decisions without approval of the Board of Directors of the Company.

41. As observed earlier the second respondent personally cannot take any decision relating to the India Cement Limited without the approval of the Board of Directors of the Company. So far as his role as Office Bearer of the BCCI is concerned, it is to be noted that all decisions regarding management and administration of the BCCI are taken by its Managing Committee subject to the approval by General Body consisting of all the members, associate members and affiliated members. In the present case the necessity to amend the Players' Regulations was recommended by all members of the Working Committee. The two-man Committee made recommendation to amend Clause 6.2.4. That recommendation was approved by the Managing Committee and unanimously adopted by the General Body of the BCCI. If the appellant was to allege bias on the part of the respondent No. 2 in amending Clause 6.2.4 of the Players' Regulations, the same will have to be against all other members who were part of the sub-committee, the Managing Committee and also members of the General Body. However, there is absolutely no allegation against any of the persons who are part of the various committees of BCCI. There is no specific allegation against any of the members of the General Body being actuated by mala fides in favour of the respondent No. 2. Prima facie it appears that in the absence of any specific allegation of mala fides in the plaints of both the suits, the appellant, who is plaintiff in the suits, would not be entitled to any of the main

reliefs claimed in the two suits and reliefs claimed in interlocutory applications. The assertion made by the appellant that the amendment in Clause 6.2.4 of the Rules and Regulations was carried out at the behest of the respondent No. 2 would in turn suggest that the respondent No. 2 exercised undue influence over the other members of the Managing Committee and General Body of BCCI and the various other persons constituting various committees. When such allegations of undue influence are pleaded by any party to a suit, it is the requirement under Order VI Rule 4 CPC that particulars must be given in detail. However, the pleadings do not even remotely satisfy the requirements of Order VI Rule 4 CPC. There are no specific allegations in the plaints of both the suits. A reading of the plaint in CS No. 1167 of 2008 discloses that there are no particulars or specific allegations of mala fides against the sub-committee, Managing Committee or General Body of BCCI. The amendment in Clause 6.2.4 was introduced after it had passed scrutiny of the three different committees. In the absence of necessary pleadings it would be difficult for the appellant to get any relief in the two suits. Therefore, the plea based on malafides in amending Clause 6.2.4 cannot be accepted.

42. What is important to notice is that the present appeals are directed against the orders of the learned Single Judge and the Division Bench, refusing to grant mandatory temporary injunction/temporary injunctions as claimed by the appellant.

43. The appellant has failed to establish strong prima facie case in his favour for the grant of mandatory temporary injunctions. On analysis of the averments made in the plaints of the two suits, this Court has come to the conclusion that the suits are not maintainable. Therefore, the appellant is not entitled to any interim relief. The amendment impugned is not found to be contrary to the provisions of the Tamil Nadu Societies Registration Act, 1975. Similarly, the appellant has failed to establish that because of so called conflict of interest, the respondent No. 2 has caused financial loss to the BCCI. Further irreparable injury is likely to be suffered by the respondent No.2, if the interim reliefs as claimed by the appellant are granted. The respondent No. 2 has explained in his pleadings that, in terms of the Memorandum and Regulations of BCCI, he will not be able to contest election for the post of President for the next twelve years if he is restrained from contesting for the post of President this year.

44. The Memorandum and Regulations indicate that the office of President is by Zonal rotation. For the purpose of election of the President, the BCCI is divided into five zones, i.e., South, Central, North, West and East and, therefore, the turn of the President from South zone would come once in 12 years only. This position is not disputed by the appellant. Therefore, there is no manner of doubt that prejudice would be caused to the respondent No.2 if the injunctions as prayed for by the appellant are granted. Further, the balance of convenience is also in favour of the respondent No.2 because even if the suits are decreed, no personal relief would accrue for the benefit of the appellant. As noticed earlier, the appellant had lost to the respondent No.2 in the elections of the Tamil Nadu Cricket Association. Moreover, the two suits were filed in the year 2008 and no interim relief/reliefs has/have been granted by the learned Single Judge of the High Court as well as by the Division Bench of the High Court. This Court is of the opinion that after passage of over two years, it would

not be in the fitness of things to grant mandatory temporary injunction as prayed for. What is relevant to notice is that if the injunctions as prayed for are granted the suits would stand decreed without adjudicating the claims raised by the respondents, on merits. Such a relief is not called for in the facts of the case. Therefore, the appellant is not entitled to the injunctions claimed by him in different interlocutory applications which were filed before the High Court.

45. The appellant has filed an application seeking permission of the Court to permit him to produce additional documents in the present appeals. It is an admitted position that the additional documents sought to be produced before this Court were not part of the records before the learned Single Judge or the Division Bench of the High Court. As such no reasons are stated as to why these two documents, though in existence, were not placed before the High Court. Therefore, no case is made out by the appellant to permit him to produce certain additional documents in the present appeals.

46. Even if those two documents are taken into consideration this Court finds that the two documents do not indicate in any manner, any conflict of interest as is sought to be made out on behalf of the appellant. The first document is an extract from the accounts of the BCCI. This document is relied on to show that payments were made to Rajasthan Royals and Chennai Super Kings to compensate for the losses caused to those teams due to cancellation of the Champions League Twenty-20 tournament in December 2008. The record shows that the Champions League Twenty-20 tournament is played between the champion teams from various countries who had won their local T-20 tournaments. In the year 2008 Rajasthan Royals and the team owned by The India Cements Limited i.e. Chennai Super Kings were the winners and runners-up respectively. Therefore, only these two teams were eligible to play the Champions League Twenty-20 which was to be played in Mumbai in December, 2008. Unfortunately, due to the infamous Mumbai Terror Attacks in November, 2008 the tournament had to be cancelled in the last hours due to security reasons as players were to come from around the world. The teams eligible to participate had made all the arrangements by making payments for the players and officials to participate in the Champions League Twenty-20. Because of the sudden cancellation of the tournament, the expenses incurred by the teams and the loss of potential earnings were decided to be compensated by the Governing Council of Champions League Twenty-20. And, therefore, the payments were made not only to the two Indian teams eligible to participate but also to the Cricket Boards of South Africa and Australia, who had jointly organized the Champions League Twenty-20. The respondents have asserted that these payments were reflected in the Balance Sheet of BCCI for the financial year ending March 2009. The payments were first sanctioned by the then Chairman of the Governing Council of IPL and later on ratified by all the Governing Council Members and the same was approved by General Body of BCCI. Thus, the first document does not indicate any conflict of interest so far as Respondent No.2 is concerned.

47. The next document sought to be relied upon is Minutes of Meeting of the Governing Council of the IPL dated August 11, 2009. This document reflects the deliberations between the various members of the Governing Council on the issue of transfer of players from one IPL franchise to the other at the end of three years. Nine members including eminent

cricketers who are members of the Governing Council participated in the meeting and the Respondent No.2 had also expressed his views on the issue of transfer of players. The record shows that ultimately, the views expressed by the Respondent No.2 were not accepted. This document proves that the Governing Council is not influenced by the views of one person and the Respondent No.2 is not in a position to exercise undue influence over the other members of the Governing Council, as alleged.

48. As noticed earlier the learned Single Judge of the High Court before whom the suits were instituted as well as the Division Bench of the High Court have refused to grant equitable relief of injunction claimed by the appellant. This Court is of the opinion that grant of interim relief as prayed for can amount to decreeing the suit without adjudicating the claims raised in the pleadings of the parties. Such a course is not permissible at all. This Court has deprecated the practice of grant of interim relief, which amounts to decreeing the suit in several reported decisions. The averments made in the plaints would show that the final reliefs claimed are almost the same as claimed by way of interim reliefs. Whether the appellant is entitled to equitable relief of injunction or not, will have to be decided after several questions raised in the plaints are decided on the basis of evidence, which may be adduced by the parties. The questions of law sought to be raised by the appellant are at the best mixed questions of law and facts. As observed earlier the appellant has failed to disclose certain material facts nor the appellant has been able to prima facie establish that his legal rights have been violated as required under Sections 34 and 41(j) of the Specific Relief Act, 1963. The appellant is not justified in seeking a permanent injunction restraining the respondent No. 1 from permitting the respondent No. 2 to contest election for an Office Bearer's post. I.A. No. 1041 of 2008 in CS No. 930 of 2008 was dismissed by the High Court. The said order was never challenged before higher forum by the appellant and has thus attained finality. No material is placed by the appellant on the record of the case on the basis of which a reasonable finding can be recorded that if interim relief as sought for by the appellant is not granted, the appellant would suffer irreparable loss or that great prejudice would be caused to his case as pleaded in the plaints of the suits. Though this Court has prima facie come to the conclusion that the suits are not maintainable on the basis of the plaint allegations themselves, several allegations made would require evidence to be let in by the appellant so as to entitle him to any interim relief. On this ground also the interim reliefs claimed cannot be granted.

49. The appellant has filed application seeking permission of this Court for filing additional documents. Normally, additional documents would be permitted to be produced before this Court when they are brought on the record of the case. Here, in this case, the documents sought to be brought on record by the Interlocutory Application are not on the record of the trial court. The Interlocutory Application filed by the appellant is absolutely vague and not in terms of Order XVI Rule 4(1)(d)(ii) of the Supreme Court Rules because it does not give particulars of (a) how the appellant came to be in possession of those documents, (b) at what point of time he acquired possession of documents, (c) the source from which the documents were secured and (d) what prevented the appellant from placing the documents on record of the trial court. Though the appellant has filed quite lengthy rejoinder, these questions have not been addressed by him in the rejoinder. The contention that the respondents have failed to respond to the merits of the Interlocutory Application and, therefore, those documents

should be considered, cannot be accepted, more particularly, when no ground is made out for granting permission to the appellant to produce the documents sought to be produced along with the said Interlocutory Application.

50. The upshot of the above discussion is that the learned Single Judge and Division Bench of the High Court were justified in not granting the temporary injunction claimed by the appellant. It is difficult to hold that either the learned Single Judge or the learned Judges of the Division Bench of the High Court had failed to exercise jurisdiction vested in them or had exercised jurisdiction not vested in them or had exceeded the jurisdiction vested in them by law. A reasonable reading of the judgment impugned in the instant case would indicate that a just approach has been adopted by the learned Single Judge and Division Bench of the High Court in not granting interim prayers claimed by the appellant. No ground is made out by the appellant either to interfere with the decision of the learned Single Judge or with that of the Division Bench of the High Court. Therefore, the appeals, which lack merits, deserve dismissal. For the foregoing reasons the appeals fail and are dismissed. In the peculiar facts of the case it is directed that there shall be no order as to costs.

JUDGMENT

Gyan Sudha Misra,J.,

51. Leave granted.

52. When the world at large is endeavouring to eradicate conflict of interest in public life as also in private venture and the respondent - Board of Control for Cricket in India (shortly referred to as the `BCCI'), which enjoys monopoly status as regards regulation of the sport of Cricket in India, and is perceived to follow the doctrine of "fairness" and "good faith" in all its activities, has itself recognized its value and importance by incorporating in its Regulation that "No administrator shall have directly or indirectly any commercial interest in any events of the BCCI," then whether any exception diluting its effect could be carved out of that without any just cause by introducing an amendment into the same, is the question which essentially falls for consideration in these appeals.

53. Consequently, the question also arises whether the amendment was fit to be kept under suspension by grant of an order of injunction against the same as a result of which the respondent No. 2 would be restrained from functioning as an office bearer of the BCCI in any capacity as his commercial interest comes in conflict with the activities of the BCCI. In this context the question of locus standi and legal competence of an `Administrator' of the BCCI to file a suit for assailing the amendment introduced in the BCCI Regulation, also arose for determination in the event of which only, the challenge could be sustained at his instance.

54. While the suits are still pending in the High Court of Madras, the applications for injunction have been rejected against which these appeals arise wherein extensive arguments

have been advanced by learned counsel for the contesting parties in support of their respective pleas.

55. Having deliberated and meticulously considered the same in the light of the background, facts and circumstances giving rise to these appeals as also having the benefit of the views expressed in the judgment and order of my learned Brother Panchal, J., I find it hard to subscribe to the view expressed therein and hence record reasons respectfully dissenting from the view on the issues raised in these appeals. For this purpose as also to test the relative strength and weaknesses of the arguments advanced and to have an overall view of the controversy involved, I deem it essential to relate the genesis and background of the matter under which these appeals arise.

56. The 1st respondent in these appeals which is the Board of Control for Cricket in India (for short `BCCI') is a society registered under the Societies Registration Act which has its own Memorandum of Association, Rules and Regulations. Apart from these, BCCI also has regulations for Players, Team Officials, Managers, Umpires and Administrators which controls the game of Cricket in India and discharges public functions which enjoys monopoly status as regards regulation of the sport of Cricket. It thus earns huge revenues and is perceived to follow the doctrine of "fairness" and "good faith" in all its activities. Fortunately, the Regulations of the BCCI which incorporates rules for Players, Team Officials, Managers, Umpires and Administrators itself has incorporated a clause which is Clause 6.2.4 stating that "No Administrator shall have directly or indirectly any commercial interest in any events of the BCCI", thus prohibiting conflict of interest of an Administrator with that of the BCCI.

57. The Regulation further incorporates the definition which states that an office bearer of BCCI is an administrator and Regulation of the BCCI also elaborately defines as to who is an `Administrator'.

58. However, putting laws and regulations on paper, does not mark the end of fight against `conflict of interest' in public service and more so in private venture. More appropriately, this step has to be viewed as a beginning. Effective implementation and execution is absolutely crucial if these laws and regulations are to be meaningful. Managing `conflict of interest' is a relatively young system, but these young systems require maturing in the form of sincerity, will and dedication and they must be effective in all spheres if they are to survive and become engrained in the institutional structures of governance by public as well as private bodies. In absence of this, even better established programmes for conflict of interest management could wither quickly, if ignored.

59. Bearing the aforesaid principle in mind, it may be relevant to record the essential details and background of the matter which indicate that the appellant herein - Sri Muthiah who is the past president of the BCCI initially filed two complaints on 5.9.2008 and 19.9.2008 before the President of the BCCI in his capacity as past President and hence an Administrator alleging disqualification suffered by the second respondent Sri N. Srinivasan who being the Chairman and M.D. of India Cements Limited should not have been allowed to participate in

the auction held for owning Indian Premier League (`IPL' for short - a separate sub-committee unit of BCCI) in which he was declared a successful bidder and thus owned Chennai Super King. The Complainant/Appellant therefore sought action against him as he brought to the notice of the BCCI-President that the second respondent - Sri N. Srinivasan being an office bearer of the BCCI who is also heading a company named `India Cements' had commercial interest giving rise to a "conflict of interest" with the Indian Premier League (for short `IPL') Tournament for which an auction was conducted by the BCCI, in so far as he was in substantial control of the India Cements Ltd. which became the successful franchisee of the Chennai Super King and at the same time is also in the governing council of the IPL Tournament which disqualified him to participate in the bid for owning Chennai Super King.

60. The appellant's complaint did not meet with any response whatsoever from the BCCI which prompted him to file a suit in the Madras High Court on 24.9.2008 bearing C.S.No.No.930/2008 wherein the plaintiff- appellant herein sought to enforce Clause 6.2.4 against the second respondent - Sri N. Srinivasan as in the year 2008, respondent No.2 - Sri N. Srinivasan who is the Managing Director of India Cements Ltd. became the successful bidder for the Chennai Super King in the IPL auction held by the BCCI and also held the office of the Vice Chairman and Managing Director of India Cements Ltd. which derived commercial interest in the events of the BCCI. Hence, the Plaintiff/Appellant herein raised an issue in the suit that the respondent No.2 - Sri. N. Srinivasan being the Vice- Chairman and Managing Director of India Cements Ltd. and also being Office Bearer in BCCI, violated the Regulation 6.2.4 which specifically lays down that no `Administrator' shall have direct or indirect commercial interest in any of the events of the BCCI.

61. Just after a few days of filing of the suit by the Plaintiff/Appellant herein - Sri Muthiah, wherein he sought to enforce the policy in Clause 6.2.4 against the second respondent - Sri N. Srinivasan, the BCCI met on 27.9.2008 and introduced an amendment to Clause 6.2.4 carving out an exception therein which reads as follows:

> "No Administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI excluding IPL, Champions League and Twenty 20."

62. Thus, by one stroke of an amendment, which was introduced with racing speed, without any deliberation by the BCCI, and without notice of 21 days to the members on this agenda which was required under the Regulation, the most commercial event of BCCI namely IPL, Champions League and Twenty 20 matches were excluded from Clause 6.2.4 diluting the entire effect of Clause 6.2.4, reducing this salutary clause into a dead letter.

63. The amendment introduced by the BCCI to Clause 6.2.4 was, therefore, challenged by the appellant by filing a second suit bearing C.S.No. 1167/2008 wherein the appellant also filed an interim application seeking an order of injunction in both the suits for restraining the BCCI from giving effect to the new amendment by keeping the same under suspension which according to the appellant, had been introduced surreptitiously merely to benefit respondent No.2 - Sri N. Srinivasan who had participated in the auction in pursuance to the

tender issued by the BCCI for persons and corporates to own and operate a team for IPL matches wherein respondent No.2 - Sri N. Srinivasan who is the Vice-Chairman and Managing Director of a company known as India Cements Ltd., became the successful bidder for the Chennai Super King in the IPL auction which according to the case of appellant, could not have been permitted in view of Clause 6.2.4 as it stood prior to the amendment. But in order to obviate the bar imposed by Clause 6.2.4 which came in the way of Respondent No. 2 from participating in the auction for IPL, an amendment was hurriedly and most expeditiously introduced in Clause 6.2.4 in order to permit second respondent-Sri N. Srinivasan to participate in the bid in which he was a successful bidder and consequently owned Chennai Super King in spite of the bar of clause 6.2.4 which was operating against him prior to its amendment and was introduced subsequent to the auction which was held for owning Chennai Super King, in absence of which he would have been ineligible to participate in the bid and hence disqualified. The appellant, therefore, filed two applications for injunction and in the first application bearing No. 1041/2008 he had sought a temporary injunction restraining the BCCI from permitting Respondent No.2 - Sri N. Srinivasan to participate in the General Body Meeting but in the second application he sought injunction against the amendment introduced by pleading to put it under suspension.

64. However, the main thrust of the argument of learned counsel for the plaintiff/appellant all through in the suit and in the appeal before the High Court as also in the injunction application was to the effect that the amendment introduced by the BCCI in Clause 6.2.4 was an abuse of the amending power exercised by the BCCI, in so far as the power of amendment had been used not to promote Cricket, but to promote the interest of the second respondent. But the learned single Judge before whom the applications for injunction were filed in the suit was pleased to dismiss the interim applications for injunction as the single Judge compared the BCCI to private clubs and held that no outsider can question the regulations of the society and the courts also cannot interfere in the internal management of the society. The learned single Judge, however, did not consider the main issue in the two suits in the context of the amended Clause 6.2.4 and the amendment introduced in Clause 6.2.4 due to which the plaintiff-petitioner filed an appeal before the Division Bench against the rejection of the applications seeking injunction. But even on appeal, the Division Bench dismissed the appeals against which these appeals by special leave have been filed and were heard at length.

65. The first and foremost question that requires consideration in this appeal by special leave is whether the plaintiff/appellant herein can be held to be having any locus standi to file a civil suit challenging the amendment introduced by the BCCI in Clause 6.2.4 of the Regulations as he is merely the past president of the BCCI and whether the same can confer any right on him as an Administrator so as to challenge the amendment introduced by the BCCI diluting the bar of commercial interest of the Administrator in the activities of the BCCI thus generating `conflict of interest', and in case the answers were to be held in the affirmative, then whether the amendment introduced by the BCCI in Clause 6.2.4 was fit to be injuncted by keeping the same in abeyance/suspension as it clearly gave rise to conflict of interest between the BCCI and respondent No.2 since he indulged in promoting his commercial interest while functioning as an office bearer/Administrator of the BCCI who

participated and succeeded in the auction for owning IPL Chennai Super King. To clarify it further, it may be reiterated that if the petitioner/appellant can be held to be having the competence or locus to file a suit against the BCCI, then whether the suit can be held to be maintainable at his instance so as to enter into further question whether the alleged amendment introduced in Clause 6.2.4 can be held to be having any conflict of interest with the interest of BCCI as in that event it would permit respondent No. 2 to hold the field by functioning as office bearer of the BCCI and thus participate in all its policy decisions as well as deliberations, while continuing also as Vice Chairman/ Managing Director of his firm India Cements Ltd. and simultaneously also own Chennai Super King as successful bidder in the IPL auction.

66. The preliminary question on which the entire edifice of the case rests which will have the effect of making the entire case stand or crumble down, is the question as to whether the plaintiff/appellant has the locus standi to file a civil suit in the High Court of Madras so as to challenge the amendment introduced by the BCCI under Clause 6.2.4. In this context, it is extremely relevant to record the definition of the term `Administrator' in the BCCI Regulations. Clause 1(n) defines the term `Administrator' as under:-

> "Administrator: An Administrator shall mean and include present and former Presidents, Vice Presidents, Hony. Secretaries, Hony. Treasurers, Hony. Jt. Secretaries of the Board of Control for Cricket in India ("the Board"), past and present Presidents and Secretaries of Members affiliated to BCCI and any person nominated in any of the sub committee appointed by the Board as defined in the Memorandum and Rules and Regulations of the Board."

67. The plaintiff/appellant is admittedly a past President of the BCCI and hence in view of the unambiguous definition of the `Administrator' which include past and present Presidents and Secretaries and Members affiliated to BCCI, it is difficult to accept the position that the petitioner/appellant had no locus standi to file a civil suit challenging the amendment introduced by the BCCI. I find it hard to approve of the view taken by learned Brother Panchal, J. that only if a past President is nominated on any of the sub-committees of the BCCI, he would be deemed to be an `Administrator' and not otherwise as it is clearly contrary to the express definition of an `Administrator' given out in the Regulations of the BCCI 2008. Clause 32 of the Regulation no doubt deals with misconduct and procedure required to deal with complaint received from any quarter or based on any report published or circulated or on its own motion in the subject matter of indiscipline or misconduct. Clause 32 (v) of the Regulation also deals with a provision regarding expulsion of any Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selector, as the case may be, and in case any of them is found guilty and expelled by the Board, he shall not in future be entitled to hold any position or office or be admitted in any Committee or any Member or Associate Member of the Board. Clause 32 thus clearly deals with the misconduct and procedure to deal with office bearers including all its constituents referred to hereinbefore of the BCCI and for this purpose it also lays down as to who will be the competent persons as member of the sub committee to deal with misconduct. But to hold that in spite of the definition of an `Administrator' given out in Clause 1 (n) of the Regulation

which specifically includes President and past President of the BCCI, the same would not include an Administrator unless he is a member of the sub committee of the disciplinary committee which is constituted for dealing with the misconduct of any office bearer including all its constituents as envisaged under Clause 32, would be a far fetched interpretation so as to hold that unless an Administrator is appointed on a sub committee for the purpose of constituting a disciplinary committee under Clause 32 of the Regulation, he cannot be treated as an `Administrator' within the meaning of Clause 1(n) of the Regulation and that it would not clothe him with any legal right to maintain an action in law against the BCCI even for challenging the arbitrary amendment, is difficult to agree and accept.

68. On the contrary, I find sufficient force and substance in the contention of the counsel for the appellant that the suits were filed by the appellant in the capacity of past president of the BCCI since he was an Administrator within the meaning of the said definition enumerated in Clause 1(n) of the Regulation. As such, he was competent to institute a suit in his individual capacity since Clause 1(n) of the Regulation cannot be allowed to result into a provision rendering it nugatory by overlooking the express provision of the definition of Administrator which unambiguously includes past President, by extracting or attributing interpretation to it with the aid of Clause 32 of the Regulation, which is not even remotely connected with the definition and meaning of the expression `past President' but is a separate and specific provision to deal with merely the consequence of misconduct and its procedure to deal with the cases of alleged misconduct which does not envisage dealing with cases wherein the legality and efficacy of any amendment to the Regulation of the BCCI is under challenge.

69. In the instant matter while dealing with the question of `locus standi' as to whether the petitioner/appellant was legally entitled to institute a suit for challenging the amendment or not, Clause 1(n) of the Regulation which includes `past President' within the definition of `Administrator' is the only relevant provision in my view and to dilute its effect, reliance cannot be placed on Clause 32 of the Regulation as it deals exclusively with the procedure for dealing with the cases of misconduct of the office bearers of the BCCI and its other constituents like Player, Umpire etc. In my view, this interpretation on the ground that the same would lead to a purposive interpretation of the expression `Administrator' is neither literal nor purposive. When Clause 1(n) clearly and explicitly defines the term `Administrator' and declares expressly that an `Administrator' shall mean and include present and former Presidents, Vice Presidents, Hony. Secretaries, Hony. Treasurers, Hony. Jt. Secretaries of the Board, and includes even past and present Presidents and Secretaries of Members affiliated to BCCI so much so that even a representative of Member or an Associate Member of Affiliated Member of the Board and any person connected with any of the sub committee appointed by the Board as defined in the Regulation of the BCCI has been included within the definition of Administrator, it would be difficult to hold that such Administrator also has to be a member of a sub committee which is constituted for dealing with misconduct in order to challenge the amendment introduced in the Regulation completely missing that the power to challenge amendment of BCCI is altogether different from dealing with cases of misconduct against players, umpires or administrator.

70. A plain and literal interpretation of the Rule clearly indicates that the past presidents also have been unequivocally included within the meaning of `Administrator' and while an Administrator can also be included as a Member of the Sub-Committee for the Disciplinary Committee, it cannot be interpreted so as to infer that former president stands excluded from the definition of Administrator until and unless he is a member of the Sub-Committee for disciplinary proceedings. It is difficult to accept that this would be so in order to give it a purposive interpretation as no purpose in my opinion can possibly be inferred from this, on the contrary, the purpose is writ large that it amounts to grant exemption to Respondent No.2 from getting trapped into the bar imposed by Clause 6.2.4 of the Regulation of the BCCI which laid down that "Administrator shall have no direct or indirect commercial interest in any event of the BCCI." With utmost respect, to hold it to be a purposive interpretation would amount to overlooking the express provision of the definition of Administrator given out in Clause 1(n) of the Regulation which lays down that the Administrator will include not only existing presidents of the BCCI but also past president, so much so that even a representative of member or an associate member have been included within the definition of Administrator.

71. It is explicitly clear and not even remotely ambiguous that the object and purpose of Clause 32 is merely to lay down the procedure for dealing with misconduct of any player, umpire, administrator etc. and it is not even vaguely connected with the procedure, object or efficacy of the amendment in the Regulation nor the mode and manner of introducing amendment in the Regulation so as to infer that unless an Administrator whether past or present is member of the disciplinary committee or sub- committee, he cannot be held competent to initiate action against any illegality of the BCCI introduced by way of amendment into the Regulation or otherwise, is clearly an argument which is out of context and has absolutely no relevance to the question of locus standi of an administrator to challenge an amendment introduced in the Regulation.

72. To say that past president would mean to infer only those past president who are members of the sub committee of a disciplinary proceeding, in my view, amounts to deviating from the express meaning and intention of the Rule so as to oust the past president from the affairs of the BCCI, contrary to the express provision of the Regulation which cannot be held to be a correct or purposive interpretation of the Rule as this does not give effect to any purpose or laudable object which can be held to be serving the cause of justice, fair play and interest of the BCCI.

73. On the contrary, it results into a restraint or hindrance to guarding the interest of the BCCI from indulging in any malpractice obstructing the course of justice and fair play.

74. We have also to bear in mind at this stage that the instant matter is not even remotely connected with any disciplinary action to be taken against any member, as the specific issue in the suit is whether the amendment could have been introduced by the BCCI in Clause 6.2.4 ignoring and overlooking the fact that the existing office bearer of the BCCI cannot be allowed to participate in the auction for owning IPL or Twenty 20 matches as it would clash and conflict with the interest of the BCCI.

75. We have to remind ourselves the well-settled principle of interpretation that when the language in a statute is plain and admits of one meaning, the task of interpretation can hardly be said to arise, as in the instant matter, where the definition of `Administrator' has been clearly given out in the Regulation of the BCCI. But in order to oust the past President and his competence to challenge the action of BCCI from questioning the speedy and hurried amendment introduced by the BCCI in order to assist respondent No.2 from participating in the bidding process for owning Chennai Super King and then to interpret the definition of `Administrator' so as to hold that he was not competent to file a suit, can hardly be held to be giving effect to a purposive and meaningful interpretation to the expression `Administrator' as the purpose or object to serve some just cause is totally missing.

76. If we were to dig at the labyrinth of the archives of judicial precedents, we may take note of the case of The Attorney General vs. The Mutual Tontine West Minster Chambers Association, Limited (1876) 1 Ex.D. 469 as also Charles Bradlaugh vs. Henry Lewis Clarke, (1883) VIII A.C. 354, wherein it was held that "if there is nothing to modify, alter or clarify the language which the statute contains, it must be construed in the ordinary, natural meaning of the words and sentences". The safer and more correct course of dealing with a question of construction is to take the words themselves and again if possible at their meaning without any first instance reference to cases. Literal construction of a provision cannot be allowed to assume a restrictive construction without considering its effect or consequence which would result from it for they often point out the real meaning of the words. It is no doubt true that if the application of the words literally would defeat the obvious intention of the legislation and produced a wholly unreasonable result, we must "do some violence" and so achieve that obvious intention and produce a rational construction. But the question of inconvenience and unreasonableness must be looked at in the light of specific events as was held in the case of Attorney General vs. Prince Ernest Augustus of Hanover, (1957) A.C. 436, wherein the question was whether the words used in the statute were capable of a more limited construction. If not, the well settled rules of interpretation lays down that we must apply them as they stand, however unreasonable or unjust the consequence and however strongly we may suspect that this was not the real intention of the law maker.

77. It would also be difficult to overlook the well settled position that if a particular construction does not give rise to anomalies and the words used are plain, arguments regarding inconvenience is of little weight. It is also equally well settled rule of construction of statutes that in the first instance the grammatical sense of the words is to be adhered to and the words of statute must prima facie be given their ordinary meaning. Where the grammatical construction of a statute is clear and manifest, that construction ought to prevail unless there be strong and obvious reason to the contrary but when there is no ambiguity in the words, there is no room for construction. If the language of a statute is clear and unambiguous, the court must give effect to it and it has no right to extend its operation in order to carry out the real or supposed intention of the Legislature/Law maker. When the language is not only plain but admits of just one meaning, the task of interpretation can hardly be said to arise. What is not included by the Legislature (law maker), the same cannot be undone by the court by principle of purposive interpretation. This was the view expressed

by this Court also in the matter of Dental Council of India and Anr. Vs. Hari Parkash and Ors., (2001) 8 SCC 61 wherein it was held that it cannot ignore the obvious (provision) and object and the intention of the Legislature apparent from the context and so interpret and construe it, so as to enlarge the scope of its application by imparting into it, meaning by implication, which do not necessarily arise.

78. Taking into consideration the aforesaid salutary principles of interpretation, I am clearly of the view that the definition of the term `Administrator' does not exclude the past president from the meaning of Administrator so as to hold that the action taken by the Administrator by filing a civil suit and questioning the amendment introduced by the BCCI in Clause 6.2.4 was not fit to be entertained on the ground that the appellant had no locus standi to challenge the amendment on the ground of his competence or locus standi. I, therefore, find it hard to subscribe and agree with the view that only if a past President is nominated on any of the sub-committees of disciplinary committee of the BCCI, he would be deemed to be an Administrator and not otherwise, is a difficult proposition to accept.

79. I also find sufficient force and substance in the contention of learned counsel for the appellant that as the BCCI discharges important public functions such as the selection of Indian Team and the control on the players and has to discharge important public function, it cannot be expected to act arbitrarily whimsically and capriciously so as to hold that the two suits are not maintainable at the instance of the appellant who although admittedly is the past president of the BCCI and hence an Administrator, had no locus standi to file even a civil suit and seek order of injunction for suspending the effect of amendment on the plea that as he was not a member of the sub-committee, he was not competent to challenge the amendment introduced in the BCCI Regulation.

80. However, extensive arguments have been advanced by learned counsel for the respondents that assuming there is violation of any fundamental right by the Board, that will not make the Board a `State' for the purpose of Article 12 of the Constitution. This submission although may be correct in view of the ratio of the judgment delivered in the matter of M/s. Zee Tele Films Ltd. And Anr. Vs. Union of India And Ors. (2005) 1 SCR 913, what is missed by the counsel for the respondents is that the appellant herein has not moved the High Court under its writ jurisdiction under Article 226 or Article 32 of the Constitution before this Court so as to offer a plank to the respondents to contend that as the Board is not a `State' within the meaning of Article 12, an Administrator under the Regulation cannot file even a civil suit in the capacity as former past President and hence an `Administrator' so as to challenge an unconstitutional amendment in the Regulation of the BCCI. The counsel for the respondents has ignored while dealing with this question that the appellant had not moved the High Court for enforcement of his fundamental right under Articles 226 and 227 of the Constitution nor a writ petition in this Court under Article 32 of the Constitution has been filed alleging infringement of his fundamental right, but has moved the High Court by taking recourse to the civil remedy of filing civil suits in the capacity as former president of the BCCI merely to ensure suspension of the amendment by way of seeking injunction which was introduced as the same was not in the interest of the BCCI, since it gave rise to direct or

indirect commercial interest of respondent No.2 with the events of BCCI and is barred under Regulation 6.2.4 which is sought to be diluted by introducing the amendment in the same.

81. It may be reiterated that this appeal by special leave is not a petition under Article 32 of the Constitution but is an appeal under Article 136 of the Constitution arising out of an order passed in a civil suit refusing to grant injunction which was filed in two regular civil suits. I, therefore, find it difficult to accept the contention of the counsel for the respondents and accepted by brother Panchal, J. that merely because the BCCI cannot be regarded as an instrumentality of the State, it will have to be held that the two suits filed by the appellant are not maintainable. In order to decide whether the plaintiff has a right to file a civil suit or not, locus standi or competence of the plaintiff alone is to be established and not the question whether the Board is a State within the meaning of Article 12 of the Constitution which is a condition to be fulfilled for invoking the jurisdiction under Article 226 and/or 227 of the Constitution as also Article 32 of the Constitution but surely not for filing a civil suit or injunction application. It is perhaps in view of the Constitution Bench judgment delivered in the matter of Zee Tele Films (supra) due to which the appellant herein had to file a civil suit in the capacity as an Administrator that he has neither filed a writ petition under Article 226 and 227 of the Constitution before the High Court nor any writ petition under Article 32 of the Constitution before this Court so as to hold that he had no locus standi to file even a civil suit although he comes clearly within the meaning of definition of an `Administrator'. Hence, the ratio of the decision in Zee Tele Films (supra) is wholly inapplicable and irrelevant to the issue involved in this appeal which arises out of civil suits and injunctions and the question of locus standi as to who can file a suit or whether the suit filed by the appellant could be held maintainable is the only relevant issue for the purpose of maintainability of the suit and the injunction applications. When a civil suit is filed, the question as to whether a party comes under the purview of instrumentality of a State does not arise at all and the whole and sole consideration would be as to whether the plaintiff had a cause of action to file a civil suit, whether he is competent to file a suit and whether the suit is maintainable at his instance. If the civil suit is maintainable on the basis of existence of a cause of action, there is no room for assailing it by raising a constitutional issue that the suit is not maintainable since the BCCI is not an instrumentality of the State, as the said question is not relevant for adjudication of a civil suit under the provisions of the Code of Civil Procedure nor the civil courts are the Constitutional Courts to enter into that question.

82. In fact, it may be relevant by way of assistance to mention regarding one latest order dated 31.1.2011 of the Supreme Court passed in Special Leave Petition (Crl.) No. 10107 of 2010 wherein a coordinate Bench of this Court upheld the judgment and order of the Kerala High Court whereby it was held that the elected honorary office bearers of the Kerala Cricket Association and others like players, coaches, managers, members of various committees etc. are public servants within the meaning of Section 2 (C) of the Prevention of Corruption Act 1988 and the High Court of Kerala had reversed the judgment of the Special Court at Kerala which had held that they are not public servants. To elaborate it slightly, it may be stated that Special Leave Petition (Crl.) No. 10107/2010 titled T.C. Mathew vs. K.Balaji Iyengar and Ors. was filed challenging the judgment of the Kerala High Court wherein the substantial question of law which was raised before the Supreme Court in the

aforesaid special leave petition was whether the elected office bearers of Kerala Cricket Association could be prosecuted under the Prevention of Corruption Act alleging offences under Section 13(1) (c) and (d) read with Section 13(2) of the Prevention of Corruption Act and whether Section 409, 420, 468, 471, 427 (a) and 201 of the Indian Penal Code was rightly initiated against elected honorary office bearers of the Kerala Cricket Association viz. honorary members of various committees, players, coaches, manager, boys team members etc. A Bench of this Court was pleased to dismiss the special leave petition in limine by order dated 31.01.2011 and thus upheld the judgment and order of the Kerala High Court which had held that the aforesaid elected officer bearers of the Kerala Cricket Association could be prosecuted under the Prevention of Corruption Act and hence the prosecution had rightly been launched. This judgment although is not on the point as to whether the past President is an Administrator or he has locus standi to challenge any illegal action of the Kerala Cricket Association, it surely has a pursuasive impact on the larger issue that the action of the BCCI and its state units are open to challenge even under the Prevention of Corruption Act at the instance of anyone who is concerned with its activities, more so an office-bearer/Administrator who is a past President in view of the definition of Administrator incorporated in the BCCI Regulation.

83. Thus once, it is held that the Plaintiff/Appellant is also an Administrator of the BCCI in view of the definition of Administrator, his competence to challenge the amendment introduced in the regulation of BCCI cannot be held as not maintainable on the ground that BCCI is not a `State' within the meaning of Article 12 of the Constitution as civil suits can surely be filed and can be held maintainable if the plaintiff is able to make out a case that cause of action has arisen for filing a suit and if he is able to sustain the cause of action and he also is able to establish that he is the proper party to the suit, the same will have to be tried by the Court and cannot be dismissed on the ground of its maintainability. In fact, when a civil suit is filed for seeking civil remedy, the question whether the contesting party satisfies the condition that it is an instrumentality of the State is of no relevance as the civil courts do not have to discharge constitutional function so as to enter into this question. If it does, it would be traversing beyond the boundaries of its jurisdiction. Hence, in my opinion, this question is clearly irrelevant for the purpose of the controversy raised in this petition.

84.The next question that needs to be addressed in this appeal is whether the High Court was justified in rejecting the application for injunction at least to the extent of keeping the amendment introduced in Clause 6.2.4 of the Regulation of the BCCI in abeyance specially when the appellant succeeded in making out a prima facie case to the effect that participation of respondent No.2 in the bid held for IPL matches and thus own Chennai Super King directly or indirectly came in conflict with the interest of BCCI as respondent No.2 during and after bidding process for the IPL Team admittedly held positions in four capacities which are as follows:-

> "(c) Treasurer of BCCI;
>
> (d)Vice-Chairman and Managing Director of India Cements Ltd.

(e)Chairman, Managing Committee, Chennai Super King; and

(f) Ex-officio Member of the Governing Council of IPL. Additionally, with effect from September 2008, respondent No.2 became the Secretary of BCCI and, therefore, the Ex-officio Chief Executive of BCCI and also Convener of the Meetings of the Committees of BCCI including IPL and Champions League. In this context, I find substance in the plea of learned counsel appearing for the appellant that conflict of interest does not require actual proof of any actual pecuniary gain or pecuniary loss as the principle of `conflict of interest' is a much wider, equitable, legal and moral principle which seeks to prevent even the coming into existence of a future and/or potential situation which would inhibit benefit or promise through any commercial interest in which the principal actors are involved. I also equally find substance in the contention that the entire purpose of `conflict of interest' rule is to prevent and not merely to cure situations where the fair and valid discharge of one's duty can be affected by commercial interests which do not allow the fair and fearless discharge of such duties. On this aspect, it has been substantiated that respondent No.2 necessarily was privy to highly sensitive information about the bidding process, the design of the tender, the rules of the game, the future plans of BCCI in respect of IPL and so on and so forth. It is contended that it is inconceivable that such insider information to which any major office bearer of BCCI would necessarily be privy, would not have used and misused both potential and actual materials by respondent No.2 in the capacity of a bidder through his company India Cements Ltd. Thus, I find it is correct to submit that no artificial Chinese walls can be assumed to exist between the multiple personalities and activities of respondent No.2 both as tender issuer and as a bidder. It is for this reason that courts have levied and lined the principle of `conflict of interest' both with the fiduciary character of a person who should not put himself in a conflict situation and with the principles of a trustee dealing with a cestui que trust. In support of this submission, learned counsel has relied on Pierce Leslie Peter & Co. Ltd. vs. Violet Ouchterlony Wapshare & Ors. (1969) 3 SCR 203 paras 3 and 4. In this context, the reasoning to the effect that there was no clear case of `conflict of interest' which could be cited by the appellant with adequate proof has no force in view of Clause 6.2.4 as it clearly incorporates that no Administrator shall have any direct or indirect commercial interest in the events of the BCCI and amendment was introduced in this clause making IPL Champions League and Twenty -20 the international matches an exception to the same. Thus although anyone might not have indulged in creating actual loss to the BCCI by any of his actions, the fact remains that by virtue of his position as a Chairman of a company which participated in the bid to own IPL tournament and at the same time holding the position of an office bearer of the BCCI, is clearly bound to result into conflict of interest of the BCCI. It is altogether a different matter that the appellant has also tried to cite example that the respondent No.2 as franchise holder for Chennai Super King was compensated approximately for Rs.47 crores by respondent No.2 on account of cancellation of a match. However, this is not the stage to rely on this part of the allegation even if it is by way of an example as the suit is still pending before the High Court, but the fact remains that the

> respondent No.2 by virtue of his position as Vice-Chairman and Managing Director of India Cements Ltd. and ex-officio Member of the Governing Council of IPL clearly came in his way to participate in the auction held by the BCCI for IPL matches and it is for this very purpose that the amendment was hurriedly introduced so that the respondent No.2 may not be held disqualified from owning IPL Chennai Super King.

85. In fact, the concept of `conflict of interest management' has increasingly drawn the attention of governments and citizens alike in all advanced countries including United States of America over the last several years as has been the case in much of the rest of the world. Even a century ago in the case of Bray vs. Bradford (1896) A.C. 44, it was held that the directors as fiduciaries must not place themselves in a position in which there is conflict of interest between the duties to the company and their personal interests or duties to others. The courts have adopted a severe method of ensuring that the trust and confidence reposed in a fiduciary such as a director are not abused and the fundamental principle was stated by Lord Herschell in the aforesaid case (supra) when it was held as follows:-

> "it is an inflexible rule of a court of equity that a person in a fiduciary position...is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principle of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus, prejudicing those whom he was bound to protect. It was therefore deemed expedient to lay down this positive rule".

In fact, the BCCI itself took care to ensure this principle by incorporating clause 6.2.4 wherein it laid down that "no administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI". But thereafter, the BCCI without any deliberation and discussion introduced an amendment into this clause by making Twenty -20 IPL or Champions League Matches an exception to this rule for which the respondent could not come out with any plausible explanation.

86. Thus in my view, the appellant clearly came out with a strong prima facie case that the amendment was introduced with an oblique motive to benefit respondent No.2 so that he could not be held disqualified from participating in the auction and own Chennai Super King while continuing as Treasurer and thereafter as Secretary of the BCCI and hence an Administrator and thus the appellant in my considered opinion, succeeded in establishing his plea that the amendment introduced by the BCCI in Clause 6.2.4 was an abuse of the amending power exercised by the BCCI in so far as the power of amendment was introduced not to promote the game of cricket but to promote the interest of the 2nd respondent as it is more than clear that without the amendment, Respondent No. 2 would not have been entitled to participate in the bid as he was a Treasurer of the BCCI and hence without the amendment he was not eligible even to participate in the bid and enjoy dual status of that of an office bearer of the BCCI as Treasurer and also own Chennai Super King.

87. The plaintiff/appellant in my view and perception based on consideration of the concept of conflict of interest and its implication surely succeeded in making out a prima facie case that this resulted in serving commercial interest of respondent No. 2 which gave rise to conflict of interest with the activities of the BCCI since Respondent No.2 as Administrator/office bearer was able to influence the decision of the BCCI by being a treasurer and simultaneously also participated in the IPL auction, clearly giving rise to commercial interest which is barred if the amendment had not been introduced. Even at the risk of repetition, it is essential to highlight that the BCCI regulation itself acknowledges this position when it lays down in clause 6.2.4 that "no Administrator shall have direct or indirect commercial interest in any events of the BCCI", but dilutes its effect by amending it and making IPL, Champions League and Twenty-20 matches as an exception which is the most lucrative and revenue generating event. If the Administrator is clearly barred as per Regulation from having any commercial interest in the events of BCCI, it is beyond my comprehension as to how only one class of matches which was IPL, Twenty-20 and Champions League could be treated an exception by allowing an office bearer to participate in the bid but preventing him from other matches including Test Matches. The plaintiff/appellant, in my opinion thus, fully succeeded in making out a prima facie case that this amendment smacks of arbitrariness and bias in favour of the Respondent No.2 and hence it was a fit case for grant of injunction keeping the impugned amendment introduced in Clause 6.2.4 of the BCCI Regulation under suspension or abeyance.

88. However, since the Respondent No.2 has already participated and succeeded in the bid and is also owning the Chennai Super King, it may be appropriate to leave it open to him to exercise his option whether he wishes to continue as an office bearer of the BCCI or own IPL Chennai Super King since in view of Regulation 6.2.4, bereft of amendment, he was not eligible even to participate in the IPL auction as it clearly generated commercial interest of an office bearer/Administrator in the events of BCCI, directly or indirectly. In my considered view, the plaintiff/appellant succeed in making out his case to the extent that the amendment was fit to be kept under suspension by granting an injunction against the amendment at least until the suit was finally decided. The Courts below while considering the application for injunction was fully competent to mould the relief in a given circumstance or situation which it has miserably failed to do. But as the event of bidding has already taken place even before the amendment was introduced in the BCCI Regulation and the amendment was fit to be suspended, the respondent No. 2, in my opinion, will have to exercise his option whether he wishes to continue owning IPL and operate Chennai Super King or is more interested in managing the affairs of BCCI as an Administrator with fairness, probity and rectitude by divesting himself from commercial interest which directly or indirectly results in conflict of interest with the activities of the BCCI which was clearly barred under Regulation 6.2.4 but has been diluted by introducing an amendment after the IPL auction had already been held when Respondent No.2 was ineligible even to participate in the auction. Hence, the impugned amendment dated 27.9.2008 was fit to be suspended by granting injunction against the same. This is clearly so as it would be difficult to overlook that multiple loyalties can create commercial interest with the activities of BCCI thus resulting in conflict of interest since the financial or personal interest of the Board would clearly be inconsistent with the

commercial and personal interest of the Administrator of the Board. In addition, the rule of equity and fairness provides that no one who stands in a position of trust towards another can in matters affected by that position, advance his own interests for example, by trading and making a profit at that other's expense as the rule of legal prudence mandates that once a fiduciary is shown to be in breach of his duty of loyalty, he must disgorge any benefit gained even though he might have acted honestly and in his principal's best interest. In the instant matter, when the BCCI held auction for owning IPL Team and an Administrator - the respondent No.2 participated in the bid, variety of real and/or perceived conflict of interest cannot be ruled out. These included access to insider information, possible undue influence on the decision makers who held the auction and the like.

89. Hence, I deem it appropriate to allow these appeals and grant injunction by directing suspension of operation of the impugned amendment dated 27.9.2008 introduced in Regulation 6.2.4 of the BCCI. In case, the Respondent No. 2 - Sri. N. Srinivasan opts to continue owning and operating IPL Chennai Super King, he shall be at liberty to do so but in that event he shall be restrained from holding any office in the BCCI in any capacity whatsoever in view of the reasons assigned hereinabove.