

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4235 OF 2014

BOARD OF CONTROL FOR CRICKET ..PETITIONER

VERSUS

CRICKET ASSOCIATION OF BIHAR & ORS. ..RESPONDENTS

WITH

CIVIL APPEAL NO.4236 OF 2014

AND

CIVIL APPEAL NO.1155 OF 2015

J U D G M E N T

T.S. THAKUR, CJI.

1. "*Change*" it is famously said is all that is constant in the world. And yet the world hates change, no matter, it is only change that has brought progress for mankind. Statesmen, Scholars and Scientists have spoken for change and eulogised its significance. For instance *Charles Darwin* has

spoken of 'change' in the context of his theory of evolution and declared "It is not the strongest of the species that survive, not the most intelligent, but the one most responsive to change." Benjamin Franklin, put it more pithily when he said "When you're finished changing, you're finished". Albert Einstein spoke of change when he said "The world as we have created is a process of our thinking. It cannot be changed without changing our thinking." The truth is that resistance to change stems partly from people getting used to *status quo* and partly because any change is perceived to affect their vested interest in terms of loss of ego, status, power or resources. This is true particularly when the suggested change is structural or organizational which involves some threat, real or perceived, of personal loss to those involved. No wonder, therefore, that the portents of change which the recommendations made by the Committee appointed by this Court symbolizes are encountering stiff resistance from several quarters interested in

continuance of the *status quo*. The fact that the recommendations for change come from a body whose objectivity, fairness, sense of justice, equity and understanding of the problems that are crying for a solution are beyond any doubt or suspicion has made little or no difference to those opposing the recommendation.

2. These proceedings are a sequel to our order dated 22nd January, 2015 [*BCCI vs. Cricket Association of Bihar and Ors.*, (2015) 3 SCC 251]. We had by that order answered seven distinct questions formulated in para 20 thereof. Six out of those questions related to allegations of sporting fraud, conflict of interest leveled against functionaries of the BCCI and the jurisdiction of a writ court to intervene and issue directions considered appropriate in the circumstances. This Court held that even when the Board of Control for Cricket in India was not "State" within the meaning of Article 12, it was amenable to the writ jurisdiction of the

Court under Article 226 of the Constitution of India as it was discharging important public functions. Building further on that finding, this Court had while dealing with Question No.7 set up a Committee comprising Justice R.M. Lodha, former Chief Justice of India as Chairman with Justice Ashok Bhan and Justice R.V. Raveendran, former Judges of this Court as members to determine and award punishment considered appropriate on those found guilty by Justice Mudgal's Committee and to examine for any disciplinary or punitive action, the role played by Mr. Sundar Raman with the help of the investigating team constituted for that purpose. More importantly we had requested the Committee to examine and make suitable recommendations on the following aspects:

119.1. Amendments considered necessary to the memorandum of association of BCCI and the prevalent rules and regulations for streamlining the conduct of elections to different posts/officers in BCCI including conditions of eligibility and disqualifications, if any, for candidates wanting to contest the election for such posts including the office of the President of BCCI.

119.2. Amendments to the memorandum of association, and rules and regulations

considered necessary to provide a mechanism for resolving conflict of interest should such a conflict arise despite Rule 6.2.4 prohibiting creation or holding of any commercial interest by the administrators, with particular reference to persons, who by virtue of their proficiency in the game of cricket, were to necessarily play some roles as coaches, managers, commentators, etc.

119.3. Amendment, if any, to the memorandum of association and the rules and regulations of BCCI to carry out the recommendations of the Probe Committee headed by Justice Mudgal, subject to such recommendations being found acceptable by the newly appointed committee.

119.4. Any other recommendation with or without suitable amendment of the relevant rules and regulations, which the committee may consider necessary to make with a view to preventing sporting frauds, conflict of interests, streamlining the working of BCCI to make it more responsive to the expectations of the public at large and to bring transparency in practices and procedures followed by BCCI."

3. The Committee accordingly heard the individuals and the Franchisees found guilty by Mudgal Committee and by an order dated 14th July, 2015 awarded punishments considered just and proper. The Committee also by a separate report dated 18th December, 2015 examined the role of Mr. Sundar Raman and exonerated him of the charges levelled against

him. By a separate report dated 18th December, 2015, the Committee has recommended several steps and measures that would in its opinion streamline the working of the BCCI and possibly prevent any aberrations or controversies in which it has been embroiled in the past. We shall presently refer to the findings and the recommendations of the Committee in greater detail, but before we do so, we must mention that on receipt of the Committee's report and the recommendations, we had issued notice to the parties to give them an opportunity to respond to the same. The BCCI has, accordingly, submitted its reply to the reports and the recommendations made therein. In addition, several other organizations and individuals have intervened to file their responses and objections to the reports and the recommendations and raised several issues.

4. At the same time certain other intervenors have stoutly supported the report of the Committee and

the recommendations made therein. For instance, intervening applications made by Mr. B.S. Bedi and Mr. Kirti Azad, Cricket Association of Pondicherry and several others have supported the recommendations made by Justice Lodha Committee. The recommendations are also supported by the respondent Cricket Association of Bihar, who has prayed for acceptance of the recommendations and issue of directions for appropriate follow up action in implementation of the same.

5. We have heard at considerable length learned counsel for the parties and those appearing for the intervenors. As noticed earlier the task assigned to the Committee was to recommend such changes in the rules and regulations of BCCI as would in the opinion of the Committee safeguard the interest of public at large in the sport of cricket, improve the ethical standards and discipline in the game, streamline and promote efficiency in the management of BCCI, provide accessibility and transparency,

prevent conflict of interest situations and eradicate political and commercial interference and abuse and create mechanisms for resolution of disputes within the BCCI. The direction issued by this Court for all round reform in the working of the BCCI and the conduct of its affairs proceeded fundamentally on the juristic foundation that BCCI was discharging public functions and is, therefore, subject to the rigours of 'Public Law' making it mandatory for the BCCI to adhere to the principles of reasonableness, fairness, accountability and transparency.

6. The Committee had in the right earnest circulated a detailed questionnaire to various stakeholders, aficionados and patrons of the game. The questionnaire was based on the view taken by this Court in the main judgment, the existing rules and regulations of the BCCI and various articles and news reports which pointed out the flaws and loopholes in the cricket administration in this

country. The questionnaire contained 135 questions grouped under 8 distinct heads of areas of concern for cricket administration namely (a) Organization, structure and relationship (b) Source and extent of jurisdiction (c) Offices, committees and elections (d) Commercial engagements, contracts and services (e) Audit, accounts and finances (f) Player welfare and dispute resolution (g) Conflict of interest (h) Oversight and transparency.

7. The Committee conducted over 35 days of sittings at Mumbai, Bangalore, Chennai, Kolkata, Hyderabad and New Delhi in the process providing ease of access to respective representatives from various zones and primary Test Centres. The Committee also interacted with 75 persons in India including Former Captains, International and First Class Players, Coaches, Managers, Administrators, Journalists, Talent scouts, Authors, Lawyers, Club Owners, Selectors and a Former Chief Justice of a High Court. Suggestions made by those who responded to

the questionnaire and those who interacted with the Committee were summarized. The Committee also researched media reports, documentaries, published material, draft legislations, books and articles, apart from several unsolicited missives from Cricket fans, local experts and administrators about how maladministration was rife in cricket all over the country. The Committee appears to have received complaints of defalcation and siphoning of funds, opaqueness in administration, blatant favouritism and political interference in almost all State Associations, varying only in degree from place to place. The Committee prepared a comparative analysis of international sports policy and how the same were structured in their constitution, electoral process and overall management and how measures exist to check conflict of interest and enforce ethics.

8. Based on the interactions held and the responses received from various quarters, the Committee identified the problem areas in the functioning of

the BCCI, and upon an in-depth appraisal of the material and the interactive sessions held by the Committee came to the definite conclusion that BCCI has been suffering from many ills that had become endemic due to the apathy and involvement of those at the helm of the Board's administration. The Committee recorded a specific finding that the problems faced by the BCCI have been compounded by the involvement/association of many high functionaries in the Central and State Governments some of whom had remained in charge of the administration of the BCCI for several decades. It also came to the conclusion that many officials of the State Associations were holding power without any accountability and transparency by converting the Associations into personal fiefdoms. It found inequities writ large at the high table with some States over-represented in votes, tournament participation and central funding while others were made to wait endlessly in the wings for indefinite period until favoured. The Committee found that

policies had been formulated and altered to suit the needs of a few powerful individuals and that coteries had been formed around them which had polarized and compromised independent leadership. The Committee regretfully found that those who had no such agendas had remained quiet, their silence emboldening further malfeasance. It found that cricket players, who are sport's biggest drivers, had also not been spared from the apathy of the BCCI as they were treated less like assets and more like employees and subordinates of those governing the game. The Committee found that the Indian Premier League (IPL) which was a remunerative and glamourized component in India had unsavoury interference at the highest echelons of cricket and the overlapping and conflicting interests were not only condoned, but those in the management of the Board had made ex-post facto amendments to facilitate the same. Having said that the Committee did not hesitate to recognise the hardwork of BCCI staff members and match officials who had ensured

that hundreds of matches are organized annually at all levels and that updates are provided to keep the BCCI fully informed. Charity matches for national causes and humanitarian assistance is another area in which BCCI has been applauded by the Committee while stating that the Committee has consciously ensured that no measures are recommended that would limit or interfere with the good work being done on behalf of the BCCI. The report submitted by the Committee further indicates that while the Committee was still in the process of hearing the concerned, the newly elected President of the BCCI had even without waiting for the Committee's report adopted and projected the Committee's views as his roadmap for improving the functioning of the BCCI. Some of those measures like uploading of the Constitution and Bye Laws on the BCCI website, creating a policy for avoidance of Conflict of interest and appointment of Ombudsman had also been taken. The Committee, however, found that although these steps were in the right direction, the same were neither

comprehensive nor substantive. The need of the hour observed the Committee was not of making cosmetic changes but those that are fundamental for laying proper foundations on which the BCCI could function in a professional and transparent manner bringing cricket back to its pristine form and restoring the confidence of the cricketers and lovers of the game alike. The Committee said:

"At a time when the nation's highest court has been compelled to find that the game has fallen into disrepute, only extraordinary steps will bring it back from this chasm. We are conscious that some of our proposals may evoke varied responses, but the collective conscience of this Committee is clear that tough measures are called for to restore Indian cricket to its pinnacle of glory. Individual interest will have to be sacrificed for the sake of the institution, and no exigency of convenience or convention shall stand in the way of a whole scale structural overhaul. The current governance structure of the BCCI and its Member Associations is far from satisfactory and it needs to be suitably restructured. Strict terms and tenures have to be imposed on administrators, oversight and audit of member associations need to be carried out, professional management deserves to be introduced in the administration of the game, all States require an equal say in the affairs of the BCCI, financial prudence has to be exercised, independent views in Governance are imperative and cricketers have to be

protected and given a free hand in cricketing affairs. There also ought to be an Ombudsman, an Ethics Officer and an Electoral Officer who can provide institutional resolution while principles of transparency and conflict of interest need to be infused without further delay.

The report that follows is the Committee's effort to restore Indian to its deserved status by putting in place good governance structures and best practices."

9. In 'Chapter One' of its report, the Committee dealt with the Structure and Constitution of BCCI, identified the problems that arise from their current status and the need for reform in the same. For clarity and better understanding of the solutions proposed by the Committee we may gainfully extract Chapter One of the Report submitted by it.

"Chapter One: The Structure and Constitution

It was nearly 200 years after the British first brought cricket to India that its governing body was created. At a time of communal Gymkhanas and the occasional touring team from England, the princely families and other cricket patrons came together to create the Board of Control for Cricket in India, which was registered as a not-for-profit society in Madras (now Chennai). The BCCI has grown from its original composition of less than half a dozen provincial members to have

five times that number representing various groups and territorial divisions.

The Structure

The BCCI at the moment consists of 30 Full Members some of whom do not field teams, while others do not represent any territory. Twenty States and one Union Territory are included and ten States and six Union Territories remain either excluded or disenfranchised. In addition, officially there are Associate and Affiliate Members as well as so-called Future Members.

The Services Sports Control Board, the Railways Sport Promotion Board and All India Universities represent particular national service groups, who traditionally constituted the largest employers of Indian sportsmen before the advent of liberal private enterprise. Apart from these, two Clubs - the Cricket Club of India at Mumbai and the National Cricket Club at Kolkata also enjoy full membership of the BCCI.

Problems

An examination of the existing structure revealed the following anomalies:

a. Not all States are represented on the BCCI

One old State (Bihar) and two new states (Chhattisgarh and Uttarakhand) and six North-Eastern States (Sikkim, Manipur, Meghalaya, Nagaland, Arunachal Pradesh and Mizoram) are unrepresented on the Board. Of course, the most significant omission was Bihar, which, being the third most populous State in the nation required the cricket

representatives of its 100 million populace to migrate to other States to ply their trade. Apart from Tripura, the other six sister-States of the north-east had been relegated to various categories of membership (Associate, Affiliate and Future) which really have no voice on the Board.

b. Some States are over-represented

Mainly attributable to their historic legacy, both Maharashtra and Gujarat have 3 Full Members, each representing parts of their respective States. Maharashtra therefore exercises votes through the Associations of Mumbai, Vidarbha and Maharashtra while Gujarat fields the Associations of Baroda, Gujarat and Saurashtra.

c. Some members do not represent territories

The Services Sports Control Board, the Railways Sport Promotion Board and All India Universities show that territorial divisions were not the consistent criteria to determine membership of the BCCI. However, these members were represented by teams that played competitive cricket.

d. Some members neither play matches nor represent territories

Both the National Cricket Club (NCC) at Kolkata and the Cricket Club of India (CCI) at Mumbai were more in the nature of recreation clubs which neither fielded teams for tournaments nor had a geographical basis for being Full Members of the BCCI. In fact, by virtue of CCI being granted full membership, Maharashtra has garnered as many as four out of the total 30 votes on the Board.

e. Union Territories are unrepresented on the Board

Except for Delhi which enjoys a special position under the Constitution as well, none of the other six Union Territories are Full Members of the BCCI. In fact, there have been repeated representations by the Cricket Association of Pondicherry that just as Delhi, it is also a Union Territory with a Chief Minister and ought to be made a Full Member. This issue is sub judice before the Madras High Court but nonetheless, there seems that some artificial distinction exists in the extant rules between Delhi and Puducherry.

f. Ad-hoc creation of Membership categories

The Regulations of the BCCI only speak of three categories of members - Full, Associate and Affiliate. However, we find that there is a list of six "Future Members", a category that does not have a legal basis. This consists of Uttarakhand, Mizoram, Telangana, Chandigarh, Puducherry and Andaman & Nicobar. Such a classification seems a half-way house with no real purpose except to give the association an illusion that it will be promoted at some vague point in the future.

g. Arbitrary addition and removal of associations

For reasons best known to the BCCI, despite being a Full Member, the Rajasthan Cricket Association has been treated as disenfranchised, resulting in the players of the State being forced to move elsewhere to compete. The non-addition of the Bihar Cricket Association or an equivalent has also led to such a denial to the players from Bihar.

Solutions

Almost universally, apart from those who represented the associations in Gujarat and Maharashtra, the prevalent view was that the State is a fair unit of representation on the BCCI. On a consideration of the entire issue, the Committee is of the view that it is not proper for only one or two States to have multiple members when all other States have single memberships (in fact, while many States have no representation). Democratic norms require each State should have equal representation, and therefore the Committee proposes the policy of 'One State - One Member - One Vote'. In fact, this is the policy followed by other national sports associations (IHF & AIFF), each of whose members have an equal vote regardless of size or population. Even at the international level (IOC & FIFA), this is the position. Cricket ought to be no different.

It was however also stated that as far as disbursement of funds by BCCI for cricket development, it need not be uniform, but can depend on the need, infrastructure and other relevant criteria, formalized as a clear and equitable policy to incentivize Members to develop the sport.

In keeping with the above principle, and notwithstanding any sense of sentiment, there would also be no place for multiple associations from a single State. The Committee is of the view that it be left to the BCCI to decide which of the 3 associations from Gujarat and Maharashtra would be taken to represent the entire State, and the remaining 2 associations from each State would become Associate Members, who would however continue to field teams for competitions as they have done in the past. Equally, in States where there are disputes concerning the appropriate governing body [Jammu & Kashmir, Bihar,

Rajasthan, etc.], it is best left to the BCCI or the Court (as may be the case), to decide which association would represent the State.

As the Services, Railways and Universities have hitherto enjoyed Full Member rights although they do not represent a particular State, the Committee recommends that they be accorded the Status of Associate Member so that their views may still be considered while they will not have voting rights. The same principle would apply to the Clubs (CCI and NCC), which do not field cricket teams and have no cause to be treated as Full Members.

Those existing Members who are affected by the changes suggested by the Committee must appreciate that the changes are being suggested in the interest of the game as a whole and also having regard to BCCI's role as a national body to promote and control cricket in India. Governance of cricket being the central theme, the changes in membership in the BCCI are inevitable and must be seen by all concerned in the right spirit of fair representation and for the betterment of cricket administration.

While there are seven Union Territories, it was found that only Delhi and Puducherry have a Chief Minister and are treated as substantially independent governing entities. At first glance, there seems no rationale for a distinction between the two, but what cannot be denied is the fact that Delhi, apart from being the national capital, is also a major Test Centre with an international stadium and has nearly 20 times the population of Puducherry. There may thus be some merit for Puducherry not immediately being included as a Full Member, especially when the issue is sub judice. Among the Union Territories, it would however be appropriate for Puducherry to be

now inducted by the BCCI as an Associate Member which will retain rights to field a team and compete.

The consequence of the above realignments would also have an effect on how the Zones are constituted. The Zones would consist of Members in such a manner that each of them would be reasonably balanced as far as competition for the various zonal tournaments is concerned. However, this reconstitution is best left to the BCCI for the purposes of convenience and competition. It is also left to the discretion of the BCCI whether the Union Territories would field individual or combined teams for tournaments and whether, for the purposes of expediency and convenience, the teams representing the States of the North-East be combined as well.

The categories of Affiliate and Future Members are therefore to be removed, and only Full Members and Associate Members will remain, the former with voting rights and the latter without. The 4 associations from the States of Maharashtra and Gujarat which would be relegated to the category of Associate Members shall, however, continue to receive grants for cricket development, as may be assessed by the BCCI depending on infrastructure and relevant criteria. They will also field teams in the domestic tournaments and host international matches.

It is imperative that all players across the country have opportunities to represent their States and Zones and then the national team. To punish the innocent residents and players of a State for the real or perceived shortcoming of the Member Association is illogical and unacceptable. Even if an alternate Association is not readily available, BCCI should function as the *parens patriae* of Indian cricket and continue to

provide equal and alternate avenues for that particular State. The Model Memorandum of Association and Rules & Regulations of BCCI are at ANNEXURE-A"

10. In Annexure-A to the report, the Committee has proposed Model Memorandum of Association and Rules & Regulations of the BCCI which not only sets out the objects and purposes of the BCCI with commendable clarity but also the Rules and Regulations governing its affairs. It is noteworthy that neither the BCCI nor the interveners have found fault with the revised Memorandum of Association as proposed by the Committee. What has come under attack both from the BCCI and the intervenors, aggrieved of the recommendations are the Rules and Regulations proposed by the Committee.

11. Rule 3 of the proposed Rules and Regulations which deals with *Membership and Jurisdiction of Members*, inter alia, provides that Membership of the Board shall be confined to Full Members and Associate Members. It further provides that each

State shall be represented by a State Cricket Association duly recognized by the BCCI and that such associations shall be Full Members. No State shall have more than one Full Member according to Rule 3 of the proposed Rules. Rule 3-B enumerates 30 States in the country including Delhi and Goa as Full Members of the BCCI. Rule 3-C provides for recognition of only one Member out of multiple Existing Members for a State while proposing to convert the remaining as Associate Members. Rule 3-C reads as under:

"3-C. In states with multiple Existing Members, the BCCI shall recognize one of them to represent the State, while the remaining shall become Associate Members."

12. Equally important is the Rule 3(b)(1) which enumerates grounds for sanction and de-recognition of a Full Member and reads as under:

"3 (b) Grounds for sanction and derecognition of a Full Member

(1) No Member shall be entitled to any grant from the BCCI if its Constitution fails to provide for, or comply with the following within One year after the Effective Date:

(i) The Association shall not have any provision for any post to be held for more than 9 years.

(ii) The governing body of the Association shall include representatives of players and women, and a nominee of the Accountant General of the State.

(iii) The Association shall grant automatic membership to former international players hailing from the State.

(iv) The Association shall not have proxy voting.

(v) There shall be a provision whereby the Office Bearers of the Association stand disqualified under any of the grounds laid down in Rule 14(3) below.

(vi) The Association shall appoint an Electoral Officer, an Ethics Officer and an Ombudsman.

(vii) The Association shall abide by the principles of Transparency laid down in Chapter 8 of these Rules."

13. Rule 4 stipulates that each Full Member shall have one vote to be exercised through its authorized representative and that an Associate Member shall be entitled to participate in the General Body Meetings

but shall not be entitled either to vote or have its representative elected to the Apex Council.

14. In terms of Rule 3(b)(1)(v) (*supra*), a person shall be disqualified to be an Office Bearer of any association on the grounds set out under Rule 14(3) which reads as under:

"14. THE APEX COUNCIL

(3) A person shall be disqualified from being a Councillor if he or she:

(a) Is not a citizen of India;

(b) Has attained the age of 70 years;

(c) Is declared to be insolvent, or of unsound mind;

(d) Is a Minister or a government servant [except for the nominee under Rule 14(2)(c)];

(e) Holds any office or post in a sports or athletic association or federation apart from cricket;

(f) Has been an Office Bearer of the BCCI for a cumulative period of 9 years;"

15. In Chapter Two of the Report the Committee has examined the composition of the office bearers of

the BCCI and held that those at the helm of the game come from a mixed milieu - some are patrons seeking to promote the sport, while others seek to promote themselves, with no particular attention being paid to cricket itself. The Committee takes the view that cricket, with its popularity and its finances ought to be run professionally. Towards that end, the Committee considers it imperative that a strong governance structure is put in place, which will be at arm's length from the actual day-to-day management of the Associations and the game. The Committee has recorded a finding that with an individual-centric constitution the reins of cricket's richest and arguably most powerful national body remains mired in controversy and seems to have strayed from its chosen path.

16. The Committee takes the view that BCCI finds it difficult to control and manage the IPL and its most successful venture threatens its existence in its present form. There seems to be no collective

interest in the game being promoted and cricket stands without a custodian for its protection and propagation in its most passionately followed nation.

17. The Committee then identifies the problems under different headings and suggests solutions for the same in the following words:

a. Concentration of power

From overall superintendence of the Board and its affairs to taking action against players and even approving the composition of the team chosen by the Selectors, the President is all-powerful. In practice, this power was even abused with the exercise of veto over the changes in captaincy and selection of ICC representatives. Incumbents were also known to turn a blind eye when issues of corruption and mismanagement were brought to their notice, even going as far as permitting retrospective amendments to the bye-laws to favour particular interests.

b. Lack of competence

The running of an organisation like the BCCI requires a clear functioning structure with well defined ideas to be executed. The present Working Committee of the BCCI consisting of the various office bearers elected by the BCCI and other

representatives of the Members do not have any managerial expertise and requisite experience to run BCCI in a professional manner. Specialists and professionals are usually engaged in an ad-hoc manner without any terms and tenures as would be expected with any billion dollar entity.

c. Overlap of diverse functions

To borrow an analogy from political governance, it is necessary that the making of laws and regulations (legislative functions) are divorced from implementation thereof (executive functions) and those that review their validity or implementation (judicial functions). As far as the BCCI is concerned, the Working Committee not only lays down the relevant rules, regulations and bye-laws that govern the BCCI, but also oversee their implementation and takes final decisions when a Member or third party challenges either the rule or the manner of its implementation. These overlaps provide for extremely complicated and messy functioning.

d. Zonal considerations

There seems to be no rational basis for the Presidency to be rotated as per Zones, which has the effect of forsaking merit. A person who has the support of as few as two or three members in his Zone may end up as the President, if it is the turn of that Zone for election of President. Recent amendments to the rules have permitted individuals who are not even

from the zone in question to be nominated to the post. For the same reason, the Vice-Presidents who are elected from each of the five zones seem to be merely ornamental without any specific functions.

e. No representation to players

It is only by accident that players are elected to the Working Committee of the BCCI. Their views are, more often than not, ignored, and the lack of an assured position at the governance table leaves the players gravely hamstrung. With arbitrary contracts and salaries that are dwarfed by those playing for franchises, it is full credit to the national players that they continue with enthusiasm and patriotic fervour to do their best for the country when they have no say in the affairs of the very body towards which they are the primary contributors.

f. No representation to women

The BCCI has never seen a woman in the Working Committee, and for a body that runs the sport in the country, the BCCI ought to have bestowed greater attention to the women's game. Australia, New Zealand, England and even Pakistan are seen to regularly play the women's game with only governance apathy responsible for the Indian women's team playing few and far between in all forms of the game. Greater support and promotion is required so that youngsters may also be attracted to it.

g. No independent voice

The BCCI has not embraced the modern principles of open governance, which is all the more necessary when discharging such far reaching public functions. The Working Committee consists entirely of representatives of the Full Members, thereby making it's functioning a closed-door affair with no representation of players or audit experts to act as checks on governance.

h. Unlimited terms and tenures

Many individuals occupy various posts in the BCCI for multiple terms and on multiple occasions, without any ceiling limit. There has even been an instance of a former President later becoming the Treasurer.

i. No disqualifications

There appears to be no ground on which an office bearer has to demit office. No principles of conflict of interest, of age, of conviction by a criminal court or of holding an office under the Government has been laid down to disqualify an office bearer.

Solutions

The governance of the BCCI must be decentralised. No individual is more important than the institution, and so all crucial powers and functions hitherto bestowed exclusively on the President will have to be divided across the governing

body, which is to be known as the Apex Council (with a special and separate governing body for IPL, known as IPL Governing Council).

The issue of competence regarding those managing the game has to be addressed by bringing in professional managers and area experts, a theme which is discussed in detail in Chapter three.

As the zonal rotation policy is without any rational basis, and as it has been decided to keep the State as the unit to become a Full Member, it is consistent to have a president who is elected from among the Full Members, so that the best and most competent person is selected. The provision for five Vice-Presidents is detrimental to efficiency and efficacy and so only one Vice-President shall be elected to the Apex Council in the same manner as the Secretary, Joint Secretary and Treasurer.

The Apex Council should have a fair mix of elected representatives and independent members. It is recommended that it shall be a nine-member body. The five elected Office Bearers of BCCI (President, Vice-President, Secretary, Joint Secretary and Treasurer) shall be the members of the Apex Council. In addition, the Apex Council shall have four other 'Councillors' - two (one male, one female) to be nominated by the Players' Association which is to be formed, one to be elected by the Full Members of BCCI from amongst themselves and one to be nominated by the Comptroller & Auditor

General of India. These measures address the following concerns:

a. Transparency is brought in, and independent voices are heard in the governance of the BCCI for the first time;

b. The public are the primary stakeholders in the game while its players form its very core. Their involvement through these representatives is most deserving and long awaited.

c. As women are nearly half the population of the country, the anomalous fact that they do not have a voice in the governance of the sport that has a 'billion hearts' beating for it is now rectified.

d. The nominee of the C&AG also brings financial and audit experience which would bring in much required oversight into monitoring the finances of the BCCI.

e. It continues to ensure a strong say for the Full Members, as it provides that two-thirds' strength on the Council is made up of their representatives.

In order to ensure that the posts are not treated as permanent positions of power, each term should be for three years. The total period for which a person can be a member of the Apex Council shall be nine years regardless of the capacity in which such position was or is occupied. However, in order to ensure that there is an appropriate cooling-off period, no person shall be a member of the Apex Council for two consecutive terms. Any elected Councillor shall stand automatically disqualified after nine

years as an office bearer, and shall also be disqualified from contesting or holding the post if he has completed the age of 70 years, is charged under the penal law, is declared to be of unsound mind, is a Minister or government servant or holds any post of another sports body in the country. Any nominated Councillor however, would not have more than one term in office. The endeavour in this regard is to filter those who are able and enthusiastic to govern the game that is the national passion.

18. In Chapter three of its report the Committee has examined BCCI's need for reform in its cricketing and non cricketing management with the help of full time professionals with established skill-sets reporting systems, high-level IT solutions etc. The Committee has recommended that non-cricketing management ought to be handled by professional managers headed by a Chief Executive Officer at the top. Pure cricketing matters like selection, coaching and performance evaluation could however be left exclusively to ex players who have greater domain knowledge. In so far as umpiring is concerned the same could be handled

19. The Committee has out of the existing Committees recommended the continuance of two standing Committees namely; (1) Senior Tournaments Committee and the (2) Tours, Fixtures and Technical Committee for the purpose of providing guidance and advice to the CEO and his Managers.

20. In Chapter four of the report the Committee has discussed matters relating to Indian Premier League and recommended that the franchisee companies who are responsible for fostering competition and making revenues deserve to be given a role in the governance of the IPL. The Committee has opined that the IPL Governing Council needs to be reconstituted with more autonomy, comprising not only representatives of the Full Members, but also of Franchisees, Players and an independent auditor. In addition the Committee has recommended that the Committee/ Commission to be appointed under the IPL Regulations (Anti Corruption Code, Code of Conduct, Operational Rules, etc.) ought to consist of members

selected by a panel of the Ombudsman, the Ethics Officer and the CEO which shall be presided over by the Ombudsman thereby ensuring independence from the BCCI.

21. Chapter five of the report recommends two initiatives viz. (i) An Association of Players and (ii) a strict set of procedures to govern players' Agents. The Committee notes that while almost all Test playing nations have a Players' Association, there has been some reluctance on the part of the BCCI to initiate such a move, ostensibly due to the apprehension of unionisation. Similarly, both England and Australia have agents' accreditation systems in place to ensure that only those professionals who qualify through a rigorous knowledge and ethics selection process alone represent the players. These systems are administered by the National Board in conjunction with the respective Players' Associations. The Committee accordingly recommends setting up of a

Players' Association with a Steering Committee comprising four persons named in the Report. It has also proposed norms for agent's registration to be administered by BCCI in consultation with the Cricket Players' Association.

22. In Chapter six the Committee deals with Conflict of Interest and Issues Central to the Regulation of Ethical Conduct in sport. The Committee has spelt out specific types of Conflict of Interest, and applied them to individuals employed with, or connected to the BCCI with the recommendation that every Office Bearer, Player, Councillor, Employee, Administrator, Team Official, Umpire or other person connected to the BCCI, its Members or the IPL and its Franchisees is mandated to avoid any act or omission which is, or is perceived to be, likely to bring the interest of the individual in conflict with the interest of the game of cricket.

23. In Chapter Seven, the Committee has dealt with need for Ombudsman, Ethics and Electoral Officer. The Committee notes that several disputes that exist within the BCCI are born out of years of apathy in governance and gross mismanagement. The Committee has found that the relationship between the Associations, on the one hand, and the BCCI, on the other, has rarely been equitable and balanced, with the latter exercising its hegemony over the former. The Committee has therefore recommended moderation of such relationship in an objective manner. The Committee has referred to the problems of disgruntlement and litigation in the States of Bihar, Rajasthan, Delhi and Jammu and Kashmir. The Committee has found that absence of suitable dispute resolution mechanism has compounded the situation. Even the arbitration system that has hitherto existed has been found to be insufficient and palpably inappropriate when two unequals are pitted against each other, especially with the State associations remaining beholden to the Board for

matches, grants and revenues. In order to reduce the judicial role and the burdening of the courts and to expedite dispute resolution, the Committee has recommended the appointment of a retired Judge of the Supreme Court or a former Chief Justice of a High Court as the Ombudsman of the BCCI, to be appointed once a year at the Annual General Meeting to investigate any complaint received by him/her or *suo motu* and to resolve any dispute between the Board and any of the above entities or among themselves by following the principles of natural justice, production of evidence and fair hearing. So also the Committee has recommended an Ethics Officer for monitoring adherence to the principles governing avoidance of Conflict of Interest. The Committee has recommended that Ethics Officer shall have powers *inter alia* of laying down of additional guidelines or bye-laws on ethics, initiation of investigation or adjudicatory proceedings and the award of warnings, fines, reprimands, suspensions or other action as may be recommended to the BCCI.

According to the recommendation all non-IPL ethics issues shall be administered and adjudicated by the Ethics Officer who shall be a former Judge of the High Court to be appointed by the Board. Recommendation for appointment of an Electoral Officer for conducting elections of the Committee under the Rules has also been made by the Committee. The Committee has recommended that in order to ensure competence and to distance the entity from any suspicion or bias, a former Election Commissioner for India could be appointed as the Electoral Officer for the BCCI, whose decision on any subject relating to elections shall be final and conclusive.

JUDGMENT

24. In Chapter eight of the report, the Committee has dealt with issues touching transparency and oversight and has noted that BCCI in its website did not carry the existing constitution or the bye-laws of BCCI. The Committee has taken cognizance of complaints of many stakeholders that very little of

the functioning of the BCCI is done in a fair and transparent manner and that those who seek greater information are either rebuffed by the Board or won over by enticements. The Committee has observed that those whose professional livelihood depends on cricket acknowledge the BCCI's total sway over the sport, and choose to remain silent rather than upset the apple cart. The Committee, therefore, recommends that players and the public, ought to have access to all rules and regulations, codes and instructions of the BCCI in English and Hindi and that the same should be uploaded on the official website of the BCCI. The Committee further notices that the commercial angle has overtaken the enjoyment of the sport, with advertisements continuing many a times even after the first ball and again commencing even after the last ball is played thereby interrupting the full and proper broadcast of the game. Regardless of the wicket that has fallen, century having been hit or other momentous event, full liberty is given by BCCI to the broadcasters to

maximize their income by cutting away to commercial, thereby robbing the sport of its most attractive attribute - emotion. The Committee, therefore, recommends that all existing contracts for international test and one-day matches be revised and new ones to ensure that only breaks taken by both teams for drinks, lunch and tea will permit the broadcast to be interrupted with advertisements as is the practice internationally. The Committee has, further, recommended that the entire space of the screen during the broadcast will be dedicated to the display of the game, save for a small sponsor logo or sign.

25. The Committee has further found that there is need for better financial management and expenses or professional services. Keeping in mind that BCCI is not for profit, the Committee recommends that resources must be used for the development of the game and financial prudence must be exercised to avoid any unnecessary expenditure.

26. The Committee also records a finding that there are no standard norms, objectives and criteria for selection and empanelment of professionals in the field of law, audit, etc. Similarly infrastructure contracts, media engagements, television rights and supply of equipments are not regulated by any norms or procedures to ensure a fair and transparent selection and engagement of the contractors and service providers. The Committee, therefore, recommends that clear principles of transparency need to be laid down and that all rules, regulations and office orders of the BCCI, the Constitution of the various committees, their resolutions, their expenditures on the various heads, the reports of the Ombudsman, Auditor, Electoral Officer, Ethics Officer and the annual reports and balance sheet be uploaded on the BCCI Website.

27. The Committee further recommends that norms and procedures ought to be laid down for the engagement

of service professionals and contractors, and full transparency of all tenders floated and bid invited by or on behalf of the BCCI will also be maintained. The Website shall also have links to the various stadia with seating capacities and transparent direct ticketing facilities.

28. The Committee has opined that people of the country have a right to know the details about the functions of the BCCI and its activities and recommends to the legislature to bring BCCI within the purview of the RTI Act as a public authority.

29. More importantly, the Committee has recommended that the auditors engaged by the BCCI should be tasked to not only undertake a financial analysis but also a performance audit (Compliance Report) to determine whether State associations have actually expended their grants towards the development of the game and mark them on a report card which may be utilized to determine the financial support they deserve the following year. This oversight also

needs to be considered in the opinion of the Committee because of the high and unreasonable expenditure incurred by the Board under various heads which deserves to be limited and streamlined.

30. In Chapter Nine of the Report, the Committee has dealt with the menace of match fixing and betting. The Committee has noted that there is a fundamental difference between betting and match/ spot fixing. While the latter interferes with the integrity of the game and attempts to change the course of the match, the former is a general malaise indulged by different sections of the society not only with reference to cricket but other games also. The Committee considers the match/ spot-fixing as unpardonable and opines that the only way to deal with the same effectively is to make it punishable by law. The Committee in that regard recommends appropriate amendment by the legislature.

31. As regards betting, the Committee has on the basis of responses and opinions tendered before it, recommended to the legislature to make the same legal with certain safeguards enlisted in the report. While saying so, the Committee has taken the view that betting by Administrators, Players, Match Officials, Team Officials, Owners, etc., should continue to be an offence under the BCCI and IPL Rules and Regulations. The Committee has made certain recommendations to fulfill the need to educate and sensitize young players and debutants about the game ethics and the need to inculcate discipline and integrity among players. It has additionally suggested certain measures like preparing Cricketers Handbook for young players, arranging lectures and interactions with cricket players and sport persons of unimpeachable integrity with regard to game ethics and also setting up of Integrity Unit consisting of former cricket players of repute, committed to the cause of cricket, to act as mentors for the young players.

32. The Committee has in addition recommended preparation of a database of undesirable elements (bookies, fixers, etc.,) to be shared with the players and team officials. It has also emphasized the need for verifying and ascertaining whether the person controlling the prospective franchisee has any criminal antecedents.

33. In Chapter Ten of the Report the Committee identifies several other problem areas that call for reform. These problems have been identified and elaborated under the headings 'Membership and Privileges, Posts and Tenures, Voting, Compliance, Expenditure and Infrastructure, Lack of Professionalism, Dual Posts, Interference in Selection and Transparency. The Committee has, after an elaborate discussion under each one of the above headings, proposed solutions to the same in the following words:

"Solutions

There was a consistent view among respondents to the queries that many of the ills befalling Indian cricket find their roots in the State Associations and their lack of administration. The root cause for the problem is that the BCCI is making substantial annual grants regarding which there is no oversight, and so the status quo remained as it was, with little effort by the provincial administrators.

Therefore, it is necessary that there is uniformity in the constitution and functioning of the various associations (without any office being created for life), that membership of social clubs be divorced from the administration of cricket which is a sombre task, that cricketers be made members and have a say in governance and that management be made professional. The State Associations must also create avenues to generate revenue, improve infrastructure and develop the sport, all of which will be marked through a detailed report card. There also has to be an audit and independent oversight of how resources are allocated and spent. It is necessary that all State Associations immediately transition to the use of tamper-proof accounting software which either does not permit alterations or which records all alterations made.

The conflicts that arise by holding office both at the BCCI and in the State Associations ought to be brought to an end by automatic vacation of post at the local level when elected to the BCCI. Also, certain disqualifications have to be laid down that apply to those who seek office in the State Associations, along with

limits on their tenures and terms. Corrective measures are to be brought into place so that professional managers will interface with the State Governments and attempt to rectify any prevailing shortfalls or drawbacks as far as infrastructure and permissions are concerned.

The electoral process will have to be transparent and independent, for which an Electoral Officer (a retired Central or respective State Election Commissioner) will have to be appointed. In the event that no such person is available, any other former State Election Commissioner, preferably from a neighbouring State may be appointed. This officer would conduct and supervise the entire process of elections from the filing of nominations to the declaration of results and the resolution of any disputes and objections during the election.

It is also necessary to have an independent selection committee in which the Governing body of the State Association will have no say, and also for the cricket committees manned only by former players to have an independent say on coaching and evaluation of team performance, apart from the selection of players.

The policies of BCCI regarding dispute resolution and Conflict of Interest, as well as the norms for Agents' Registration will have to apply to the State Associations as well. In order to administer this, the associations may also appoint an Ombudsman-cum-Ethics Officer. It would be open to multiple States to

have a single Ombudsman / Ethics Officer so as to reduce expenditure. The person so appointed shall be an eminent person well versed in adjudicatory processes and it will be his/her task to decide all disputes between the Association and any of its constituents (Districts, Clubs, etc.), or between the constituents, or complaints of any player or member of the public, by following the principles of natural justice before rendering a decision.

As Ethics Officer, it shall be his duty to administer the principles of Conflict of Interest and recommend such action as may be deemed fit as far as an Office Bearer, Employee, Player, Team Official or other individual connected to the State Association is concerned. Needless to say, if it is an issue that concerns the BCCI as well, the Ethics Officer of the BCCI shall proceed to decide the issue. The Ethics Officer shall also decide all issues concerning the violation of the Agents' Registration norms as far as players of the State are concerned.

Each State Association will necessarily have a website that carries the following minimum details:

a. The Constitution, Memorandum of Association and Rules & Regulations, Bye-Laws and Office Orders and directions that govern the functioning of the Association, its Committees, the Ombudsman and the Ethics Officer.

b. The list of Members of the Association as well as those who are defaulters.

c. The annual accounts & audited balance sheets and head-wise income and expenditure details.

d. Details of male, female and differently abled players representing the State at all age groups with their names, ages and detailed playing statistics.

e. Advertisements and invitations for tenders when the Association is seeking supply of any goods or services (exceeding a minimum prescribed value), or notices regarding recruitment, as also the detailed process for awarding such contracts or making such recruitments.

f. Details of all goals and milestones for developing cricket in the State along with timelines and the measures undertaken to achieve each of them.

g. Details of all office bearers and other managerial staff (including CEO, COO, CFO, etc.)

h. Details of directives from the BCCI and their compliances.

These websites will have to be maintained and updated at least on a quarterly basis. All the above information will have to be maintained at the registered office of the State Association and when sought, the same shall be shared with the applicant on the payment of a reasonable fee, as may be prescribed by the Association.

The cost of construction of a stadium runs into hundreds of crores. On the other hand, formation of a cricket playing ground costs a small fraction of the cost of a stadium. It makes more sense to have

cricket playing grounds in each District, rather than having one or two stadia in a State. In fact, the Committee learns that some members are merely collecting the grants from BCCI and depositing them in a Bank so as to accumulate sufficient funds necessary for taking up construction of a stadium. The result is some smaller States have neither a stadium nor well developed cricket playing grounds. BCCI should therefore encourage the State Associations to:

- a. Have as many cricket playing grounds and fields instead of multiple stadia, which will enable greater usage and access to greater number of players.
- b. Convert existing grounds and fields into turf wickets so that international standard facilities are made available even from a young age.
- c. To make the existing stadia amenable to other sports by providing for alternate surfaces to be laid (Astroturf for hockey, Carpet for tennis, etc.) so that income may be generated and there would be all round development of sport, care being taken not to damage the pitch. But they should not be used for public functions where thousands will stomp on the ground.

The above recommendations relating to State Associations (Full Members) will also be applicable to the 4 associations relegated to the category of Associate Members and who are entitled to disbursement of the grant from the BCCI."

34. The reforms recommended by the Committee have been finally summed up under the heading "End of the Innings" in the following words:

"END OF THE INNINGS"

If there has been one unifying factor in India, it has been cricket. From C.K.Nayudu to Virat Kohli, the 32 captains of India and the men they have led have been equally deified and vilified by the masses, for such is the ability of the game to inflame passions. It is on behalf of these devotees of willow and leather that this Committee submits this effort to edify the BCCI.

In an effort to present the recommendations made by the Committee in brief, the following synopsis of our proposals are set out:

1. Membership

'One State, One Vote'

Only cricket Associations representing the States would have voting rights as Full Members of the Board, thereby ensuring equality among the territorial divisions. Any other existing members would be Associate Members.

2. Zones

'Zones for Tournaments alone'

The Zones would be relevant only for the purpose of the tournaments conducted

amongst themselves, but not for nomination to the governance of the Board or to the various Standing Committees.

3. State Associations

'State Associations - Uniformity in Structure'

The Associations that are the Members would necessarily have to restrict the tenures of office bearers and prescribe disqualifications, do away with proxy voting, provide transparency in functioning, be open to scrutiny and audit by the BCCI and include players in membership and management. They would also have to abide by the conflict of interest policy prescribed by the Board, and divorce the Association from the social club, if any.

4. Office Bearer

'Limited Tenures & Cooling Off'

While all the existing office bearers (President, Vice-President, Secretary, Treasurer and Joint Secretary) are retained in honorary positions, the number of Vice Presidents is pruned from five to one. Their duties have been realigned. The President is shorn of his say in selections. The additional vote for the President at meetings is deleted. The terms of these Office Bearers continue to be of 3 years, but with a maximum of 3 such terms regardless of the post held, with a cooling off period after each such term.

5. Governance

'Governance separated from management'

The 14 member Working Committee is replaced by a 9 member Apex Council (with one-third independent members) consisting of the Office Bearers of the BCCI, an elected representative of the General Body, two representatives of the Players Association (one man and one woman) and one nominee from the C&AG's office. Terms of eligibility and disqualification are specified with a bar on Ministers and government servants.

6. Management

'Professionalism in management'

Professionalism is brought in by introducing a CEO with strong credentials assisted by a team of managers to handle non-cricketing affairs. The large number of Standing Committees and Sub-Committees created by the BCCI has been reduced to two essential ones that would advise the CEO with reference to tours, technical aspects and tournaments.

The selection, coaching, performance evaluation and umpiring are to be handled by Cricket Committees manned only by former professionals. Specific provisions have been made to encourage cricket for women and the differently-abled.

7. The IPL

'Limited Autonomy for IPL'

The Governing Council of the IPL is reduced to 9, but includes 2 representatives of the Franchisees and

nominees of the Players' Association and the C&AG's office.

8. Players

'A voice for Players'

There shall be a Cricket Players' Association affording membership to all international and most first class men and women retired cricketers. This Association shall discharge assigned functions with the financial support of the BCCI. It shall be brought into existence by an independent steering committee.

9. Agents

'Arms length for agents'

Players' interests are protected by ensuring that their Agents are registered under the prescribed norms administered by the BCCI and the Players' Cricket Association.

10. Conflict of Interest

'Avoidance of conflicts'

Detailed norms have been laid down to ensure there is no direct or indirect, pecuniary or other conflict or appearance thereof in the discharge of the functions of those persons associated or employed by the BCCI, its Committees, its Members or the IPL Franchisees. These norms shall be administered by an Ethics Officer.

11. The Ombudsman and the Electoral Officer

'Independent monitors'

Provision has been made to have an independent ombudsman to resolve grievances of Members, Administrators, Players and even members of the public as per the procedures laid down. Similarly, an independent Electoral Officer to oversee the entire electoral process is also mandated.

12. Functioning
'Transparency'

The BCCI must provide the relevant information in discharge of its public functions. All rules and regulations, norms, details of meetings, expenditures, balance sheets, reports and orders of authorities are to be uploaded on the website as well.

13. Oversight
'Accountability'

An independent auditor to verify how the Full Members have expended the grants given to them by the BCCI, to record their targets and milestones, and to submit a separate compliance report in this regard.

14. Betting & Match-fixing
'Legalization for betting and Criminalization for match-fixing'

A recommendation is made to legalize betting (with strong safeguards), except for those covered by the BCCI and IPL regulations. Also a recommendation for

match/spot-fixing to be made a criminal offence.

*15. Ethics for Players
'Awareness and sensitization'*

Provisions to be made for lectures, classes, handbooks and mentoring of young players.

The Committee fervently hopes that this report will bring cricket fans back to the fold and put an end to regional excesses and imbalances, reign by cliques, corruption and red tape, all of which have harmed the game and the youngsters looking for nothing more than to take the field in flannels."

35. In order to give the recommendations made by the Committee a practical shape, suitable amendments to the Memorandum of Association of BCCI and the Rules and Regulations have been suggested as Annexure 'A' to the Report. The Committee has, at the same time, proposed a code for the Cricket Players' Association which forms Annexure 'B' to the Report, while Regulations for Registration of Players' Agents have been set out at Annexure 'C' to the Report.

36. In response to the notice issued by this Court, the BCCI has filed an affidavit sworn by Shri Anurag

Singh Thakur, Honorary Secretary of the BCCI and currently President of BCCI in which the BCCI claims to have accepted and implemented several recommendations made by the Committee. In Para 6 of the Affidavit the deponent has identified the recommendations accepted by BCCI and the steps already taken by it or those being taken for implementation, in the following words:

"6. Of the recommendations contained in the Report, BCCI has accepted and has either implemented or is implementing the following recommendations:

(a) Appointment of an Ombudsman: The BCCI has amended its Rules and Regulations to provide for the appointment of an Ombudsman at every Annual General Meeting to deal with complaints of conflicts of interest and any act of indiscipline or misconduct or violation of any rules and regulations of the BCCI by an administrator. Thus, the Ombudsman now contemplated by the amended Rules and Regulations of the BCCI effectively combine the functions of the Ethics Officer and the Ombudsman within the scope of the Ombudsman's functions whilst omitting disputes between the BCCI and IPL franchisees, which are covered by existing arbitration agreements. The Hon'ble Mr. Justice A.P. Shah, Former Chief Justice of the Delhi High Court, has been appointed as the Ombudsman and has taken cognizance of and disposed of several complaints already.

(b) *Avoidance of Conflict of Interest:* The BCCI has formulated Rules on Conflict of Interest, pursuant to which several persons have resigned from positions on account of conflict of interest. Any person can make a complaint to the Ombudsman regarding conflict of interest. The Rules on Conflict of Interest provide that every complaint shall be decided within a period of 30 (Thirty) days from the receipt of the complaint and the decision of the Ombudsman shall be final and binding. A copy of the Rules on Conflict of Interest is annexed hereto and marked as ANNEXURE-A (pg.61 to 63)

(c) *Availability of Rules and Regulations on BCCI Website:* All Rules and Regulations of the BCCI, Annual Reports along with the financial reports as well as details of all expenses above Rs.25 lakhs have been made available on the BCCI website.

(d) *Introduction of Professional Management:* BCCI has accepted the recommendation to professionalise its management and introduce a two-tier structure. The BCCI presently has four General Managers viz. (1) Professor Ratnakar Shetty (General Manager - Administration), who has been associated with the administration of BCCI since 2003, first as the Executive Secretary and later as Chief Administrative Officer; (2) Dr. M.V. Sridhar (General Manager - Cricket Operations), who is a former Indian Cricketer and has served as the Hon. Secretary of the Hyderabad Cricket Association; (3) Mr. Amrit Mathur (General Manager - Communication and Coordination), who is in charge of media and coordination with Government of India (Sports Ministry, Home Ministry and External Affairs Ministry) and has been involved with the BCCI for over two decades inter alia as media manager on a number of overseas tours; and (4) Mr. Dhiraj Malhotra (General Manager - Events and Leagues), who has worked in organizing ICC

World events for over a decade and was also associated with organizing a number of sports leagues including Indian Premier League, etc. A head-hunting agency has already been appointed for the purpose of identifying candidates for appointment as a CEO and a CFO.

(e) Limited Due Diligence of audited accounts of State Associations for finding out how associations have utilized the funds made available by Board to State Associations: BCCI Rules and Regulations have been amended to empower BCCI to appoint an independent auditor to scrutinize the statements of accounts of members with regard to payments made by BCCI to such member and all further payments due to such member shall be released after the receipt of diligence reports by the BCCI. BCCI immediately engaged agencies like PricewaterhouseCoopers, Deloitte and Grant Thornton to carry out due diligence of State Associations. As part of this process, a financial due diligence exercise is currently underway in respect of financial years ending 31st March 2014 and 31st March 2015.

(f) Measures to prevent match-fixing/ spot fixing: Although BCCI has implemented the Anti Corruption Code since 2012, the biggest obstacle that has been faced by BCCI in its endeavour to prevent match-fixing/ spot-fixing has been the absence powers to gather intelligence on the subject and/ or policing powers with the BCCI's Anti Corruption Unit. For this reason, the BCCI has requested the Government of Maharashtra to establish a sports integrity intelligence gathering unit under the joint aegis of the BCCI and Maharashtra Police whilst offering to fund the costs of doing so, if required. A copy of the letter dated 18th November 2015 addressed by the BCCI to the Hon'ble Chief Minister of Maharashtra is annexed hereto and marked as ANNEXURE -B (pg.64 to 65)

(g) Decentralisation of powers with the President: By virtue of being the Chairman of the Annual General Meetings and Special General Meetings of the BCCI, the President earlier had an independent vote (in addition to a casting vote) at General Meetings. Further, any dispute as to admission or rejection of a vote at General Meetings was earlier decided by the President. BCCI Rules and Regulations have been amended to do away with the independent vote of the President at General Meetings. Similarly, any dispute as to admission or rejection of a vote at General Meetings will now be decided by a simple majority.

37. Having said that, the affidavit questions the wisdom behind the one State one Vote principle evolved by the Committee and claims that the membership structure of the BCCI is based on level of cricketing activity, which according to it has a more rational nexus with the objects of BCCI than geographical limits of the States settled on linguistic basis much after the BCCI was formed.

38. The BCCI asserts equal representation/ voting rights to each State irrespective of the level of cricketing activity therein is likely to result in a situation where States with little or no cricketing

activity will abuse their representation/voting rights. BCCI also pleads legal impediments in disenfranchising and/or demoting existing Full Members or depriving them of their vested rights while assuming that it will not induct any new member from the State which already has a member and will induct only one full Member provided the requisite criteria is satisfied. BCCI also expresses difficulties in recognizing one of the three existing members in the States of Gujarat and Maharashtra as representing the said States while converting the Membership of the other two as associate members.

39. BCCI argues that there is no criteria on the basis of which it can decide as to which of the existing three members should be retained as a full member. It is submitted that even assuming that the BCCI decides to retain one of the three existing full members as a full member, jurisdiction of any such retained member will extend to the entire State

including the area over which the jurisdiction of the other two member from that State extends. This would in-turn imply that apart from being relegated as an associate member, the remaining full members from that State will no longer be in-charge of cricketing activities, cricket teams, stadia and players within their respective erstwhile jurisdictions. It would thereby disable them to field teams to participate in BCCI tournaments.

40. BCCI also apprehends that infrastructure available with the three full members each from Maharashtra and Gujarat will be wasted if the recommendation of the Committee is accepted. It is contended that Regulations 6(A) and 6(B) of BCCI's existing Rules and Regulations lay down the procedures and criteria for admitting any new members based on levels of cricketing activity in their respective territories apart from provisions that provide for promotion of an Affiliate Member to an Associate Member as well as for promotion of an

Associate Member to a Full Member to take care of the interests of all concerned. This method is in tune with the method followed by International Cricket Council (for short, "the ICC") where a member has to reach a certain level in performance and infrastructure before it may be promoted to the next level.

41. BCCI has also faulted the proposed reduction in advertisement as the same will according to it have a crippling effect on the financial health of the Board and adversely impact its ability to carry out its various programmes. Restricting advertisements only to drinks, lunch and tea breaks will substantially de-value the broadcast rights and reduce the income of the BCCI as broadcasters will in that case pay a only fraction of the amount that they are now paying for the broadcast rights. The affidavit traces the history of the growth of the activities of the BCCI and corresponding growth in its finances. Induction of a nominee of the

Comptroller and Auditor General of India (for short, "the CAG") on the Management Committee/Apex Council has also been stoutly opposed by the BCCI. Relying upon Article 2.9 (B) of the Memorandum and Articles of Association of the ICC it is urged that inclusion of nominee of the CAG would tantamount to Government interference in the administration of Cricket and would call for adverse action by the ICC against the BCCI. Objections are also taken to the proposed induction of franchisee's representatives in IPL Governing Council. The BCCI contend that there is a conflict of interest between representatives of IPL Franchisees and the Governing Council as the later decides matters such as player retention policy, posting of umpires for IPL matches, etc. So also a prohibition on re-appointment of Members of the Managing Committee recommended by the Committee has been opposed by the BCCI on the ground that there is no rationale for prohibiting any individual from being associated with the management of the BCCI beyond nine years particularly when there is an age

cap of 70 years in the Report that is simultaneously sought to be imposed.

42. Prohibition of Association of Ministers/ Government Servants/ Persons holding posts in another Sports Body in honorary capacity as recommended by the Committee has also been opposed by the BCCI. It is contended that the association of Government Servants and Ministers has benefitted the BCCI immensely and that all such persons work in purely honorary capacity. Travel, boarding and lodging costs of such office bearers only are taken care of by the BCCI. BCCI has also urged that the restriction on simultaneous holding of an office in a State association and the BCCI is unreasonable as senior citizens also make substantial contribution in sports as their counterparts in law, judiciary, public life, Parliament etc. As regards Players Association and Board representation, the BCCI has welcomed the suggestion of formation of a Players' Association but opposed any funding by the BCCI as

recommended by the Committee. It has also not favored players' representation in the Board on the ground that several players have in the past served as Office Bearers in the BCCI and State Association on their own merit. Dissolution of existing Committees too has been opposed by the BCCI. In conclusion, the affidavit filed on behalf of the BCCI submits that while the report seems to have achieved a very laudable objective the same is only recommendatory and ought not to be imposed on a society formed by private individuals who enjoy constitutional protection under Article 19 of the Constitution of India. It has also raised an issue that the Committee did not give a hearing to BCCI regarding the proposed recommendations. Although a questionnaire was sent to the office bearers of the BCCI including the honorary President, honorary Secretary and the honorary Treasurer and even when the office bearers of the BCCI had appeared before the Committee to explain their view points, the failure of the Committee to put the proposed

recommendations to the BCCI has, according to the BCCI, denied to them an opportunity to represent against the same. The affidavit finally acknowledges that BCCI has benefitted greatly from the report of the Lodha Committee and that it is committed to implementing the same to ensure greater professionalism, transparency and accountability keeping in mind the underlying objective of betterment of cricket in India.

43. Appearing for BCCI Mr. K.K. Venugopal, learned senior counsel, argued that although BCCI had received a questionnaire and although the office bearers of the BCCI also had extensive interaction with the Committee on several aspects concerning the subject matter of the proceedings, yet, justice and fairness demanded that the Committee, before submitting its final recommendations to this Court, gave an opportunity to the BCCI to respond to the same. The recommendations, according to Mr. Venugopal, came as a surprise to the BCCI and hence

need to be turned down and the matter remitted back to the Committee for considering the response of BCCI on each one of the issues covered by the same. It was contended that principles of natural justice demand that since BCCI was likely to be affected by the acceptance of the recommendations a fair and reasonable opportunity to oppose such of them as were not acceptable to was provided. Inasmuch as the Committee had failed to follow that procedure and had made its recommendations unilaterally, the report and the recommendations deserved to be rejected.

44. There is, in our opinion, no merit in the submission of Mr. Venugopal. The reasons are not far to seek. The task assigned to the Committee in terms of the order passed by this Court was to examine the issues set out in the order and make suitable recommendations in that regard. The task assigned was, in its very nature inquisitorial in which the Committee was supposed to hear the

concerned stakeholders including the BCCI and formulate its views on various aspects concerning the subject matter and make recommendations considered necessary for a more efficient, objective and transparent working of the BCCI. The Committee comprising some of the finest legal minds fully aware of the requirements of law and the need for adopting a fair and reasonable procedure, decided in its wisdom to serve a questionnaire upon the stakeholders soliciting information, apart from holding several interactive sessions with them and all those who wished to be heard in the matter including representatives from the State Associations, Journalists, Academicians, Jurists, Public Figures etc. The Committee has on the basis of the said interactions arrived at certain conclusions to which we have made reference at great length in the earlier part of this judgment. Based on the said findings the Committee has recommended certain steps which, in its opinion, are necessary to usher in structural and other reforms in the

working of the BCCI. What is significant is that the Committee was not called upon nor has it adjudicated upon any right of the applicant finally. It has simply enquired into the working of the BCCI, identified its fault, its weaknesses, failures and shortcomings and suggested ways and means by which the same can be rectified. The report submitted by the Committee is recommendatory in nature and does not *ipso facto* oblige BCCI to accept the changes suggested therein unless so directed by the Court. That being so, any grievance based on the alleged violation of the principles of natural justice and failure of the Committee to put the recommendations proposed to be made before the BCCI for its response did not, in our opinion, constitute any substantive or procedural infirmity that could vitiate the report or the recommendations or call for a remand to the Committee. Principles of natural justice, it is well settled, are not codified rules of procedure. Courts have repeatedly declined to lay down in a strait jacket, their scope and extent. The

extent, the manner and the application of these principles depends so much on the nature of jurisdiction exercised by the Court or the Tribunal, the nature of the inquiry undertaken and the effect of any such inquiry on the rights and obligations of those before it. The extent of the application of the principles also depends upon the fact situation of a given case. The legal position is so well settled that we do not consider it necessary to burden this judgment by elaborating on the subject. Reference to the decisions of this Court in *Viveka Nand Sethi v. Chairman, J & K Bank Ltd.* (2005) 5 SCC, 337, *S.L. Kapoor v. Jagmohan* (1980) 4 SCC 379, *State of Punjab v. Jagir Singh* (2004) 8 SCC 129, *Karnataka SRTC v. S.G. Kotturappa* (2005) 3 SCC 409, *Ravi S Naik v. Union of India* (1994) supp. (2) SCC 641 and *K.L. Tripathi v. SBI* (1984) 1 SCC 43 should suffice.

45. The fact that the Committee was appointed by this Court, for a specific purpose, the fact that

the Committee comprised distinguished jurists familiar with the requirements of fairness and objectivity and the need for providing a hearing to any one likely to be affected, the fact that the Committee not only served questionnaire and heard all those who wished to be heard and the fact that the report of the Committee was not *ipso facto* binding but was only recommendatory, completely excludes any chance of any prejudice to BCCI nor has any prejudice otherwise been demonstrated. The fact that we have heard BCCI on the recommendations made by the Committee also eliminates the possibility of any prejudice. At any rate there was in the facts and circumstances no legal or procedural requirement for the Committee to draw up its recommendations on a provisional basis and then finalise the report after considering the response of the BCCI. The changes proposed by the Committee remain in the realm of recommendations so long as they are not accepted by this Court and before we accept the same with or without modification, we have heard not only

the BCCI but everyone who has come forward to be heard. We, therefore, see no reason to remand the matter nor do we see any legal flaw in the procedure adopted by the Committee.

46. It was then argued by Mr. Venugopal that although several of the recommendations made by the Committee were sound and useful for improving the working of the BCCI and bringing greater efficiency and transparency, yet, several others were either legally impermissible or unnecessary apart from being impracticable keeping in view the ground realities and the historical perspective in which the BCCI was founded. Mr. Venugopal, in particular, assailed the recommendations made by the Committee that each State in the country must be represented in the BCCI by an association as a full member. It was urged that while the BCCI was not averse to conceding full membership to an association duly recognized from each State in the country to give to the BCCI a truly national character, the Committee's

recommendations that multiple full members from the States of Gujarat and Maharashtra should be discontinued and two members each from both the States reduced to associate membership of BCCI was neither just nor legally permissible. It was submitted that both Maharashtra and Gujarat have three full members in the BCCI, not only because the said members were founding members of the BCCI but also because they had, since their inception promoted cricketing activity in their respective regions and fielded teams to compete in tournaments. Denying to any one of the said six members the privilege of full membership of the BCCI would, according to Mr. Venugopal, violate Article 19(1)(c) of the Constitution. So also, the termination of the membership of other full members namely Association of Indian Universities, Railways Sports Promotion Board, Services Sports Control Board was also not justified having regard to the fact that these members had contributed to the development of cricketing activities in the country, although some

of them did not have any territory nor did they field teams. In support of his submission that the recommended change in the composition of BCCI would violate Article 19(1)(c), Mr. Venugopal placed heavy reliance upon the judgment of this Court in *Damyanti Naranga v. The Union of India And Others*, 1971 (3) SCR 840.

47. Mr. Kapil Sibal followed by Mr. Shyam Divan, Mr. Arvind Datar, Mr. Maninder Singh, Mr. B.H. Marlappalle, counsel appearing for the intervening full members mentioned above, adopted the submission of Mr. Venugopal and strenuously argued that the proposed change in the composition of BCCI would adversely affect the interest of those who had been members of the BCCI since the beginning, no matter some of them did not have a territory or a team to field, while some of them did not receive any monetary grant from BCCI and some others had club facilities other than cricketing activities. It was urged that grant of membership or a vote in the BCCI

to each State of the country may be a laudable objective to ensure promotion of cricketing activity even in the States where the same has not, during the past 60 years or so, taken off, yet removal of those who have contributed to such activities in a big way apart from founding the BCCI itself cannot be justified.

48. Mr. Vikas Mehta appearing for the respondent-Cricket Association of Bihar and Mr. Manish Tiwari appearing for Mr. Bishan Singh Bedi and Mr. Kirti Azad and Mr. Rajesh Mahale appearing for U.T Cricket Association, Chandigarh contended that the recommendations made by the Committee are well meaning and could go a long way in reforming the BCCI structurally as well as professionally. It was urged that findings of the Committee regarding the ills affecting the BCCI have not been questioned by the BCCI or by any intervenor. If those findings were correct as they indeed are, the proposed reforms become inevitable and ought to be introduced

to save the game from losing its popularity in the Indian sub continent. It was argued by Mr. Mehta that Article 19(1) (c), is in no way violated in case the recommendations made by the Committee in regard to the reform and the composition of the BCCI are accepted and directed to be implemented.

49. We have given our anxious consideration to the submissions made at the Bar. We may, before advertng to the rival submissions urged before us, point out two distinct aspects that need to be kept in mind while addressing the issues raised before us. The first is that the proceedings that led to the setting-up of the Committee arose out of a public interest petition. The directions issued by this Court proceeded on a clear finding recorded by this Court that even when BCCI is not a state within the meaning of Article 12 of the Constitution of India, it is amenable to the jurisdiction of the High Court since it discharges public functions.

That part of the controversy stands concluded by judgment of this Court in the earlier round and cannot be reopened no matter Mr. Venugopal made a feeble attempt to do so by making a reference to the Constitution Bench judgment of this Court in *Zee Telefilms Ltd. v. Union of India* (2005) 4 SCC 649. All that we need mention is that while holding BCCI to be amenable to the writ jurisdiction of the Courts, we have taken note of the pronouncement of this Court in *Zee Telefilms* case (supra). This is evident from the following passages:

"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.

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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](#)."

50. The second aspect that needs to be borne in mind is that neither BCCI nor anyone else has assailed the findings recorded by the Committee insofar as the deep rooted malaise that pervades in the working of the BCCI is concerned. We have referred at great length to the findings of the Committee in this regard which findings have not been assailed before us either in the affidavits filed or in the course of arguments at the bar. That being so, the question is whether reforms which the Committee has recommended after elaborate deliberations and consideration of all relevant factors can be stalled on the ground that the same violate Article 19(1)(c) of the Constitution or on the ground that such

reforms will cause any injustice either to the cause of the game or to those who have been associated in promoting the same.

51. With the above two aspects in mind, let us now examine whether the recommendations of the Committee have the tendency to violate Article 19(1)(c) or any other provision of the Constitution.

52. Article 19(1)(c) of the Constitution of India guarantees to the citizens of this country the right to form associations, unions or cooperative societies. It reads:

"19. Protection of certain rights regarding freedom of speech, etc. - (1) All citizens shall have the right -

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) to form associations or unions or cooperative societies

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) xxx xxx xxx

(g) xxx xxx xxx"

53. The right, it is evident from the above, is guaranteed in favour of citizens and citizens alone. Recourse to Article 19(1)(C) is not, therefore, open to juristic or other persons and entities who are non-citizens. Confronted with this position, it was argued on behalf of the BCCI and intervening associations that even when the provisions of Article 19(1)(c) may not be available to the State Cricket Associations who are members of BCCI, yet the recommendations made by the Committee, if accepted, would prejudicially affect the citizens who have come together to form such State associations. It was contended that this Court could in its discretion lift the veil to determine whether the right of any citizen/citizens was affected and grant suitable relief if the answer was in the affirmative. It was contended that once this Court decides to do so it will find that citizens comprising the State Cricket Associations are the ones actually affected by the recommendations in question.

54. We regret our inability to accept the submission so vehemently urged before us by learned Counsel for the BCCI and the State Cricket Associations. We say so, firstly because no citizen has come forward in the present proceedings or in the earlier round to complain of the violation of any fundamental right guaranteed under Article 19(1)(c) of the Constitution. Secondly and more importantly because the recommendations do not, in our opinion, affect the composition of the State Cricket Associations in any manner. Citizens who have come together to form the State Associations continue to associate as before with no change in their internal composition. If that be so as it indeed is the right guaranteed under Article 19(1)(c) stands exercised, which exercise would continue to enjoy the protection of the constitutional guarantee till the Association/Union or co-operative Society, as the case may be, continues to exist. What is, however, important is that the right under Article 19(1)(c)

does not extend to guaranting to the citizens the concomitant right to pursue their goals and objects uninhibited by any regulatory or other control. The legal position in this regard is settled by several decisions of this Court to which we may gainfully refer at this stage.

55. In *All India Bank Employees Association v. The National Industrial Tribunal (Bank Disputes), Bombay and Ors.*, AIR 1962 SC 171 a Constitution Bench of this Court while explaining the scope of Article 19(1)(c) drew a distinction between the right to form an association/union and the right to carry on any such business or other activity chosen by such union or Association. This Court declared that while the right to form a union/Association is guaranteed under Article 19(1)(c), the concomitant right of the members of the Association/Union would be governed by other provisions of Article 19. This Court held:

"If an association were formed for the purpose of carrying on business, the right to form it

would be guaranteed by sub-clause (c) of clause (1) of Article 19 subject to any law restricting that right conforming to clause (4) of Article 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by sub-clause (g) of clause (1) of Article 19 subject to any relevant law on the matter conforming to clause (6) of Article 19; while the property which the association acquires or possesses would be protected by sub-clause (f) of clause (1) of Article 19 subject to legislation within the limits laid down by clause (5) of Article 19.

While the right to form a union is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-clause (b), their right to move from place to place within India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (a), their right to hold property would be that guaranteed by sub-clause (f) and so on - each of these freedoms being subject to such restrictions as might properly be imposed by clauses (2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights...."

56. In *Tata Engineering and Locomotive Company Ltd. v. State of Bihar*, AIR 1965 SC 40 this Court

reiterated that Article 19 applies to citizens and not persons as was the position with Article 14 of the Constitution. The effect is that the provisions of Article 19 can be claimed by citizens only and not by corporations. This Court held that the fundamental right to form an association or Union cannot be coupled with the fundamental right to carry on any trade or business. As soon as citizens formed a company, the right guaranteed to them by Article 19(1)(c) stood exercised. After the incorporation of the company the business carried on by it is the business of the corporation and not the business of the citizen. The Court held:

"28. That being the position with regard to the doctrine of the veil of a corporation and the principle that the said veil can be lifted in some cases, the question which arises for our decision is; can we lift the veil of the petitioner and say that it is the shareholders who are really moving the Court under Article 32, and so, the existence of the legal and juristic separate entity of the petitioners as a corporation or as a company should not make the petitions filed by them under Article 32 incompetent. We do not think we can answer this question in the affirmative. No doubt,

the complaint made by the petitioners is that their fundamental rights are infringed and it is a truism to say that this Court as the guardian of the fundamental rights of the citizens will always attempt to safeguard the said fundamental rights; but having regard to the decision of this Court in State Trading Corporation of India Ltd.¹, we do not see how we can legitimately entertain the petitioners' plea in the present petitions, because if their plea was upheld, it would really mean that what the corporations or the companies cannot achieve directly, can be achieved by them indirectly by relying upon the doctrine of lifting the veil. If the corporations and companies are not citizens, it means that the Constitution intended that they should not get the benefit of Article 19. It is no doubt suggested by the petitioners that though Article 19 is confined to citizens, the Constitution-makers may have thought that in dealing with the claims of corporations to invoke the provisions of Article 19, courts would act upon the doctrine of lifting the veil and would not treat the attempts of the corporations in that behalf as falling outside Article 19. We do not think this argument is well founded. The effect of confining Article 19 to citizens as distinguished from persons to whom other Articles like 14 apply, clearly must be that it is only citizens to whom the rights under Article 19 are guaranteed. If the legislature intends that the benefit of Article 19 should be made available to the corporations, it would not be difficult for it to adopt a proper measure in that behalf by enlarging the definition of "citizen" prescribed by the Citizenship Act passed by Parliament by virtue of the powers conferred on it by Articles 10 and 11. On the other hand, the fact that the Parliament has not chosen to make any such provision indicates that it was not the intention of Parliament to treat corporations as citizens. Therefore, it

seems to us that in view of the decision of this Court in the case of State Trading Corporation of India Ltd.¹, the petitioners cannot be heard to any that their shareholders should be allowed to file the present petitions on the ground that, in substance, the corporations and companies are nothing more than associations of shareholders and members thereof. In our opinion, therefore, the argument that in the present petition we would be justified in lifting the veil cannot be sustained.

29. Mr Palkhivala sought to draw a distinction between the right of a citizen to carry on trade or business which is contemplated by Article 19(1)(g) from his right to form associations or unions contemplated by Article 19(1)(c). He argued that Article 19(1)(c) enables the citizens to choose their instruments or agents for carrying on the business which it is their fundamental right to carry on. If citizens decide to set up a corporation or a company as their agent for the purpose of carrying on trade or business, that is a right which is guaranteed to them under Article 19(1)(c). Basing himself on this distinction between the two rights guaranteed by Article 19(1)(g) and (c) respectively, Mr Palkhivala somewhat ingeniously contended that we should not hesitate to lift the veil, because by looking at the substance of the matter, we would really be giving effect to the two fundamental rights guaranteed by Article 19(1). We are not impressed by this argument either. The fundamental right to form an association cannot in this manner be coupled with the fundamental right to carry on any trade or business. As has been held by this Court in *all-India Bank Employees' Association v. National Industrial Tribunal*, the argument which is thus attractively presented before us overlooks the fact that

Article 19, as contrasted with certain other articles like Articles 26, 29 and 30 guarantees rights to the citizens as such, and associations cannot lay claim to the fundamental rights guaranteed by that article solely on the basis of their being an aggregation of citizens, that is to say, the right of the citizens composing the body. The respective rights guaranteed by Article 19(1) cannot be combined as suggested by Mr Palkhivala, but must be asserted each in its own way and within its own limits; the sweep of the several rights is no doubt wide, but the combination of any of those two rights would not justify a claim such as is made by Mr Palkhivala in the present petitions. As soon as citizens form a company the right guaranteed to them by Article 19(1)(c) has been exercised and no restraint has been placed on that right and no infringement of that right is made. Once a company or a corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. Therefore, we are satisfied that the argument based on the distinction between the two rights guaranteed by Article 19(1)(c) and (g) and the effect of their combination cannot take the petitioners' case very far when they seek to invoke the doctrine that the veil of the corporation should be lifted. That is why we have come to the conclusion that the petitions filed by the petitioners are incompetent under Article 32, even though in each of these petitions one or two of the shareholders of the petitioning companies or corporation have joined."

(emphasis supplied)

57. In *D.A.V. College v. State of Punjab*, 1971 (2) SCC 269 this Court was examining the validity of a legislation that provided for compulsory affiliation of religious or linguistic minority institutions to the University. It was contended that the requirement of compulsory affiliation was in violation of their right of freedom of association guaranteed under Article 19(1)(c). This court, however, rejected that contention and held that the notification providing for compulsory affiliation with the University did not in any manner interfere or attempt to interfere with the petitioners' right to form an association under Article 19(1)(c). This Court said :

"29. It is contended that the compulsory affiliation of the petitioners to the University affects their fundamental right of freedom of association as guaranteed under Article 19(1)(c), therefore the notification under Section 5(3) affiliating them to the University is bad. It is also urged that since the words "associated with and admitted to any privileges" are used in Section 5 of the Act, it would mean that petitioners are

compulsorily formed into an Association with the University. This contention however is countered by the respondents who point out that the freedom of association under Article 19(1)(c) implies association between citizens while in the case of the petitioners what is sought to be affected is an affiliation with the University which is a corporate body.

30. The right to form an association implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interests. It was sought to be suggested that the compulsory affiliation with the University affects the aims and objects of the association, as such its freedom is infringed. There is in our view a fallacy in this argument which on earlier occasions had also been repelled. In *All India Bank Employees Association v. National Industrial Tribunal*, it was observed that the right guaranteed under Article 19(1)(c) does not carry with it a concomitant right that the Associations shall achieve their object such that any interference in such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interests of public order or morality. The right under Article 19(1)(c) extends inter alia to the formation of an Association or Union."

58. In *Smt. Damyanti Naranga v. the Union of India Ors.*, 1971 (1) SCC 678 heavy reliance whereupon was placed by Mr. Venugopal, also a Constitution Bench of this Court clearly held that the right to form an association implied that the person forming the

association/Union had the right to continue to be associated with only those whom they voluntarily admit in the Association. This Court declared that the right under Article 19(1)(c) was not confined to the initial stage of forming of an association for any such restricted interpretation of that provision would render the right meaningless in a situation where no sooner the association is formed, a law is passed interfering with its composition so that the association formed may not be able to function at all. This Court, in that view, held that the right will be rendered ineffective until it is held to include the right to continue the association/union with its composition as voluntarily agreed upon by the persons forming the association. This Court affirmed the view taken in its earlier decision in *O.K. Ghosh and another v. E.X. Joseph*, AIR 1963 SC 812, and observed:

"6. It was argued that the right guaranteed by Article 19(1)(c) is only to form an

association and, consequently, any regulation of the affairs of the Association, after it has been formed, will not amount to a breach of that right. It is true that it has been held by this Court that, after an Association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the

Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association..."

59. Reference may also be made to a very recent decision of this Court in *Dharam Dutt and Ors. v. Union of India & Ors.*, (2004) 1 SCC 712. That was a case where the constitutional validity of the Indian Council of World Affairs Ordinance, 2001 was under challenge in a petition filed under Article 32 of the Constitution. One of the issues that came up for consideration was whether the legislation violated the right guaranteed under Article 19(1) (c). Relying upon the decisions in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *All India Bank Employees' Association v. National Industrial Tribunal*, AIR 1962 SC 171 and; *Damyanti Naranga v. Union of India*, 1971 (1) SCC 678 this Court held that the right under Article 19(1) (c) does not

include the right of the association or union so formed to achieve its objective whether of running an institution or otherwise. The Court said:

"From a reading of the two decisions, namely, Smt. Maneka Gandhi's case (supra), (seven-Judges Bench) and All India Bank Employees Association's case (supra), (five-Judges Bench), the following principles emerge : (i) a right to form associations or unions does not include within its ken as a fundamental right a right to form associations or unions for achieving a particular object or running a particular institution, the same being a concomitant or concomitant to a concomitant of a fundamental right, but not the fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that it must also be able to achieve the purpose for which it has come into existence so that any interference with such achievement by law shall be unconstitutional, unless the same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality; (ii) A right to form associations guaranteed under Article 19 (1) (c) does not imply the fulfillment of every object of an association as it would be contradictory to the scheme underlying the text and the frame of the several fundamental rights guaranteed by Part III and particularly by the scheme of the guarantees conferred by sub-clauses (a) to (g) of clause (1) of Article 19; (iii) While right to form an association is to be tested by reference to Article 19(1)(c) and the validity of restriction thereon by reference to Article 19(4), once the individual citizens have formed an association and carry on some activity, the validity of legislation

restricting the activities of the association shall have to be judged by reference to Article 19(1)(g) read with 19(6). A restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association; and (iv) A perusal of Article 19 with certain other Articles like 26, 29 and 30 shows that while Article 19 grants rights to the citizens as such, the associations can lay claim to the fundamental rights guaranteed by Article 19 solely on the basis of there being an aggregation of citizens, i.e., the rights of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject."

(emphasis supplied)

60. There is, in the light of the above authoritative pronouncements, no room for any doubt that the right guaranteed under Article 19(1)(c) cannot be claimed by an association or union or a co-operative Society as is sought to be done in the case at hand, even when the right to form an association or union or cooperative society extends to the continued existence of such association or union or cooperative society with its original

voluntary composition. But the right does not extend so far as to include the right of any such association or union or cooperative society to achieve its objects or to conduct its business unhindered by any regulatory or other control. Anything beyond the protection of the original composition of the association or union or cooperative society would fall outside Article 19(1) (C) and shall be governed by other clauses of Article 19 of the Constitution. For instance, the right of the association or union or cooperative society to conduct its business or pursue its objects shall be regulated under Article 19(1)(g) read with sub-Article (6) of the Constitution. So also, the right to move freely throughout the territory of India shall be governed by Article 19(1)(d) read with sub-Article 5 of the Constitution. Suffice it to say that so long as the initial voluntary composition of the State Cricket Associations who are complaining of the breach of their right under Article 19(1)(c) remains

unaffected, there is no violation of what is guaranteed by Article 19(1) (c) .

61. Seen in the backdrop of the above, the recommendations made by the Committee in the instant do not interfere with or alter the composition of the State Associations. Individual citizens who came together to form the State Associations have not been asked to discontinue their association nor do the recommendations impose upon their members an obligation to associate with others with whom they do not wish to associate. Composition of the State Cricket Associations remain unaffected, and so does the right of those forming such Associations under Article 19(1) (c) . That being so, the grievance sought to be made on behalf of citizens who have formed the State Associations does not stand scrutiny no matter none of those on whose behalf the argument is advanced is before this Court to make any such grievance. We have, in the light of the

above, no difficulty in rejecting the first limb of the submissions made by learned counsel opposing the recommendation of the committee that BCCI shall have the Cricket Association from each State as a full member.

62. That brings us to the question whether "One State One vote" recommended by the Committee suffers from any legal or other infirmity sufficient for this Court to reject the same. The recommendation made by the Committee has a two-fold impact on the current state of affairs in BCCI. The first is the reduction of some of the Associations and Clubs from the full membership of BCCI to the status of Associate Members. The other aspect of the recommendation is the reduction of the full membership of at least four existing full members to the status of associate members from the states of Maharashtra and Gujarat.

63. In the first category, fall five full members whose membership should as per the recommendation get converted to associate membership. In this category fall Railways Sports Promotion Board, Association of Indian Universities, Services Sports Control Board, National Cricket Club (Kolkata) and Cricket Club of India (Bombay). The Committee has recommended that these clubs and associations need not be continued as full members as they do not represent any geographical territory. Two of the clubs namely Cricket Club of India and National Cricket Club do not even field teams in competitive cricket. These two clubs also happen to be recreational clubs. The other three clubs mentioned above however field teams but do not receive any monetary assistance from BCCI. It was contended by learned counsel appearing for these clubs that the recommendation made by the Committee based entirely on the fact that they do not represent a territory does not do full justice to them while recommending deletion of their full membership from BCCI. It was

submitted that even when these clubs do not represent any geographical area and some of them even do not field teams, they should be continued as full members keeping in view the historical background leading to the formation of BCCI. We see no merit in that contention nor do we see any reason to disagree with the recommendation made by the committee, who has upon a thorough consideration of all facts and circumstances relevant to the working of the BCCI, recommended the conversion of the clubs and associations without a territory from full members to associate members. This is a measure which has been recommended with a view to structurally streamlining the BCCI to make it more responsive and accountable having regard to the aspiration of different regions for an equal opportunity to participate in the growth and promotion of the game in the country. The fact that clubs including the Railways Sports Promotion Board, Association of Indian Universities and Services Sports Control Board do not represent any region nor

do they receive any monetary benefit is, in our view, a good enough reason for converting their full membership to associate membership. The conversion notwithstanding they shall continue to be associated with the growth and promotion of the game, the right to vote remaining confined to full members, representing definite geographical regions or territories. The recommendation made by the committee regarding the conversion of the status of the above mentioned clubs and associations are, therefore, sound and are hereby accepted.

64. Coming to the second aspect of "One State One Vote", it was argued by learned counsel appearing for the intervening clubs from the States of Maharashtra and Gujarat that the six clubs/associations three each from the two States viz. Mumbai Cricket Association, Maharashtra Cricket Association, Vidarbha Cricket Association, Gujarat Cricket Association, Baroda cricket Association and Saurashtra Cricket Association not only represent a

definite territory and participate in competitive cricket by fielding teams but have contributed to the development of the game in their regions. It was submitted that the recommendations made by the committee that BCCI should choose one of the clubs to represent the entire state was fraught with difficulty and ignored the historical perspective and the fact that these clubs had made substantial contribution to the development and promotion of cricket in this country. It was, therefore, urged that reducing the role of four out of the six clubs from full membership to associate membership was not a sound proposition and deserved to be turned down and the associations allowed to continue their position as full members.

65. The argument advanced by the intervenor clubs cannot be lightly brushed aside. It is not disputed that three different regions are represented by three distinct Associations both in the States of Gujarat and Maharashtra. This position has continued

to exist from the inception. Some of the clubs/associations, if not all are the founding members of BCCI. That being so, a balance has to be struck with historical reality and the need for adopting a pragmatic, uniform and principled approach aimed at reforming and rationalizing BCCI's structural edifice. The recommendation made by the Committee to the extent it provides for one vote for each state is unexceptionable nor should there be any compromise with what is proposed as a reformative measure. Even so the question is whether BCCI, in the peculiar situation prevalent in these two states, is in a position to recognize one of the three Associations representing different territories in those two States as the one that would represent the entire State. Learned Counsel for the intervenors and so also Mr. Venugopal counsel for BCCI are, in our opinion, justified in contending that the process of recognizing one out of three associations representing three different regions in those two states is fraught with several

difficulties and would result in long drawn litigation and frustration for the players in particular and cricket lovers in general. What then is the way out of this conundrum. We had in the course of the hearing asked learned counsel for the parties, if it would be possible for the three associations to sync and unify their associations into a single entity. There were serious reservations expressed on that front and rightly so as each association is entitled today to field a team and receive monetary assistance. In the process of unification, the prospects of budding cricketers of these regions would go down substantially. That being so, the only reasonable and rational answer to the problem within the broad principle of One State One Vote would be to allow the full membership of BCCI to rotate among the three clubs on an annual basis. During the period one of the associations would exercise rights and privileges of a full member, the other two associations would act as associate members of BCCI. This rotational

arrangement would give each member a right to vote at its turn without violating the broader principle of one State one vote recommended by the Committee. This would also respect the historical aspect in which these associations grew to promote the game and form BCCI as a national body. Needless to say that the right of the association to field teams as before will remain unaffected subject to any changes that BCCI may make in its wisdom over a period of time. BCCI shall, however, decide the order in which the membership will rotate among the three associations in these two states. We make it clear that this arrangement of rotational membership shall continue till such time the clubs/Associations come together to form a single entity, if such a unification was to ever become a reality.

66. It was next argued by Mr. Venugopal and counsel appearing for some of the interveners including Mr. Sampath, counsel for the Karnataka State Cricket Association that the recommendation made by the

Lodha Committee as to the upper age limit of any office bearer is neither reasonable nor conducive to the development and promotion of the game in this country. It was submitted that some of the office bearers continue to contribute immensely to the development and promotion of cricket even though they have crossed the recommended upper age limit of 70 years. For instance, Shri Niranjan Shah, applicant in Interlocutory Application No.24 is more than 70 years old but has held the office of Secretary of Saurashtra Cricket Association for more than four decades. This, according to the learned counsel, shows that age had nothing to do with the capacity of the person to contribute to the promotion of the game.

67. Learned counsel appearing for the interveners who support the recommendations of the Committee, on the other hand, argued that those playing competitive cricket are in the age group of 18 to 35 years which means that anyone who has played the

game or who is actively connected with the game gets nearly 35 years to continue his active association with the game even after he has retired from competitive cricket which is a long enough period for anyone to contribute to the game and its promotion. It was also contended that the Government of India, have, in their wisdom prescribed the upper age limit of 70 years for office bearers of the National Sports Federations in terms of the National Sports Development Code of India, 2011. The Sporting fraternity has accepted the same as a reasonable upper age limit for anyone to hold office in any Sporting Federation. There is, in that view, nothing wrong with the recommendations of the Committee that those aspiring to hold any office in the BCCI or in the State Associations ought to be less than 70 years old.

68. There is no denying the fact that Cricketers who play competitive cricket generally fall in the age group of 18 to 35 years. This implies that even

after retirement from active cricket anyone who has the potential to contribute to the game can do so for over three decades till he attains the age of 70 years. The upper age limit recommended by the Lodha Committee is not, therefore, unreasonable or irrational by any standard. That apart, as rightly pointed out by the counsel supporting the recommendation, the Government of India have in the National Sports Development Code of India, 2011, inter alia, stipulated that the President, Secretary and the Treasurer of any recognized National Sports Federation including the Indian Olympic Association (IOA) shall cease to hold that post on attaining the age of 70 years. The upper age limit of 70 years is not, therefore, an unusual or unacceptable norm so as to warrant our interference with the same. The recommendation made by the Lodha Committee regarding upper age limit for office bearers is accordingly accepted.

69. Mr.Venugopal, learned counsel appearing for BCCI and counsel for some of the interveners opposing the recommendations of the Committee also assailed the Committee's recommendation that Ministers and Government Officials should be ineligible for any post in State Associations or in the BCCI. It was contended that the restrictions sought to be placed on the Ministers and Government Servants are unreasonable. It was contended that past experience of the BCCI has shown that Government Servants and Ministers are able Administrators whose association with BCCI and the Associations has resulted in substantial benefit to BCCI in the management of its affairs. It was contended that office bearers in BCCI serve in an honorary capacity and without any remuneration for their services, except that travel, lodging and boarding arrangements are taken care of by the BCCI. It was also contended that the Government of India has been, as a matter of policy, encouraging formation of Sporting Associations so that its employees are attracted towards sporting

activities and promotion of sports and development of sports related infrastructure. Also under challenge is the recommendation made by the Committee that those holding office in the State Associations shall not be eligible for holding any office in BCCI and vice versa. It was contended that administrative experience acquired by anyone in the State Associations is useful to the BCCI which need not be lost by stipulating a disqualification recommended by the Committee.

70. Learned counsel for the interveners supporting the recommendations, on the other hand, argued that the recommendations were well considered and meaningful and in the interest of the game of cricket in this country. It was contended that political bigwigs need to be kept away from the sporting arena not only because the presence of Ministers and Civil Servants brings several considerations not conducive to the promotion of the game, but, at times, results in creation of vested

interests, groupism and rivalries that harm the game far more than helping it. The fact that the Ministers and Civil Servants have been helpful in promoting the game in the past does not mean that the game would cease to get their patronage if they are disqualified from holding any office in the State Associations or the BCCI. Whatever the legitimate sporting patronage is required for the game would certainly come from the concerned supporters regardless whether they are Ministers, Civil Servants or office bearers. The contention urged on behalf of the BCCI that the restriction placed on the Ministers and Public Servants holding office would, in any manner, damage the cause of the game is, therefore, without any basis.

71. The Lodha Committee has, in its meetings, held extensive interactive sessions and deliberations with a cross section of stakeholders. The recommendations made by the Committee are based on the impressions which the Committee has gathered

from such interactions and deliberations. In the ordinary course and in the absence of any patent perversity in what has been recommended by the Committee, this Court would be slow in interfering, especially when the Committee has recommended comprehensive restructuring of the management at different levels by proposing modification of the relevant rules and regulations. The Committee has in its wisdom found that the holding of office by the Ministers and Civil Servants in the State Associations or in the BCCI is not conducive to the health and promotion of the game. The Committee has taken the view that the game would be better managed, promoted and developed if politicians and civil servants who otherwise occupy positions of responsibility in the Government that call for their complete and unstinted attention and commitment are made ineligible from holding any post in the State associations or the BCCI. The Committee has while making that recommendation observed:

"... .. Any elected Councillor shall stand automatically disqualified after nine years as an office bearer, and shall also be disqualified from contesting or holding the post if he has completed the age of 70 years, is charged under the penal law, is declared to be of unsound mind, is a Minister or government servant or holds any post of another sports body in the country."

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b. Posts & Tenures

... ..The lack of any qualifications or disqualifications also ensures that those with full time occupations superficially involve themselves, thereby compromising their commitment to the association and the game of cricket. Several public servants hold lead positions in State Associations which take a substantial toll on both sets of their respective obligations to the public."

72. In light of the above we see no compelling reason for us to reject the recommendation which disqualifies Ministers and Public Servants from holding offices in the State Associations or BCCI. The argument that since ministerial and bureaucratic support and patronage has helped the BCCI in running its affairs in the past they should be allowed to continue, lest the game suffers, has not impressed

us. We do not think that the game flourishes in this country because any minister or civil servant holds office in the State Associations or BCCI. We also do not find any basis for the argument that unless the ministers and civil servants are allowed to hold office in the State Association or in the BCCI they will refuse to do what is legitimately due to the game for its development and promotion. Nothing which is not due to the game or is not legitimate need be done by any Minister or Civil Servant. But we have no manner of doubt that what is legitimately due to the game will not be denied to the game merely because Ministers or Civil Servants do not happen to be office bearers for ought we know that there may be an overwhelming number of Ministers and Bureaucrats who are passionate about the game and would like to do everything that is legally permissible and reasonably possible within the four corners of the law even without holding any office in the BCCI or the State Associations. The contention that favours which the BCCI receives will

disappear just because a Minister or Civil Servant is not an office bearer in the State Association or BCCI has no real basis to commend itself to us. So also, the contention that it should be permissible to hold office simultaneously in BCCI and the State Association has not commended itself to us. The Committee has while recommending abolition of dual posts observed:

g. Dual posts

Strangely, while conflict of interest issues have been at the heart of recent controversies, virtually all office bearers of the BCCI continue to be office bearers in their respective State Associations at the same time. Presidents and Secretaries of State Associations are to discharge functions with the primary interest of the State in mind, but as BCCI office bearers, these interests would have to be subordinated to that of national interest. Often, with powers centred on an office bearer, that individual has been found to appoint his State associates to critical posts in the BCCI, thereby creating an imbalance.

73. There is nothing irrational about the view taken by the Committee. The argument that individuals should be eligible to hold two posts one each in the

State Association and the BCCI does not stand scrutiny in the light of the reasons given by the Committee which do not, in our opinion, suffer from any perversity to call for our interference.

74. It was next contended on behalf of the BCCI that the recommendations made by the Committee for inclusion of a nominee of the Accountant General of the State in the Governing Body of the State Associations and a nominee of the Comptroller & Auditor General of India (C&AG) as Member of the Apex Council in BCCI were both unacceptable to BCCI being unnecessary inflictions that were likely to result in the derecognition of the BCCI by the ICC. It was submitted that in terms of Article 2.9(b) of the Memorandum of Association and Articles of Association of the ICC any interference by the Government in the administration of the Cricket by a member would render the latter liable to be suspended and derecognized. Induction of the nominee of the Accountant General in the State

Association and nominee of a C&AG in the Apex Council of the BCCI brings in an element of interference by the Government which would according to the counsel for BCCI lead to suspension/derecognition of the BCCI. Any such induction was, therefore, not in the interest of the game of cricket or otherwise desirable keeping in view the fact that the BCCI cannot afford to run the risk of being derecognized or suspended by the ICC.

75. The Lodha Committee has, while dealing with the need for transparency and oversight, referred to the grievance made by the stakeholders that the BCCI was neither fair nor transparent and those who seek greater information are either rebuffed by the Board or won over by enticements. The Committee has noticed that the state of affairs prevailing in BCCI and the expenses incurred by it call for better financial management and financial prudence. The Committee has observed:

"In the light of all this, the Committee proposes that clear principles of transparency

be laid down, and the BCCI website and office will carry all rules, regulations and office orders of the BCCI, the constitution of the various committees, their resolutions, the expenditures under various heads, the reports of the Ombudsman/Auditor/Electoral Officer/Ethics Officer and the annual reports and balance sheets. In addition, norms and procedures shall be laid down for the engagement of service professionals and contractors, and there shall be full transparency of all tenders floated and bids invited by or on behalf of the BCCI. The website shall also have links to the various stadia with seating capacities and transparent direct ticketing facilities.

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The Committee also believes that the Auditor be tasked not only with a financial analysis, but also specifically carry out a performance audit (Compliance Report) to determine whether the State associations have actually expended their grants towards the development of the game and mark them on a report card which will be utilized to determine the due they deserve the following year. This oversight also needs to consider the high and unreasonable expenditures by the Board on various heads, which would have to be limited and streamlined."

76. While dealing with the question of governance in Chapter Two of the Report the Committee has recommended a Nine-Member Body as the Apex Council out of whom five shall be elected office bearers of

the BCCI while four shall be Councillors one of them to be nominated by the C&AG. The nominee of C&AG, shall, in the opinion of the Committee bring transparency and oversight in monitoring the finances of the BCCI. It is in that background that the Committee has recommended in the draft Rules and Regulations/Memorandum of Association the composition of the State Associations and the BCCI to include a nominee of the Accountant General of the State in the case of State Associations and nominee of C&AG as Member of the Apex Council in the case of the BCCI. It is evident from a careful reading of the Report that the object underlying the induction of the nominees of the Accountant General of the State and the C&AG is to bring transparency and financial oversight into the affairs of the State Associations and the BCCI. No one can possibly argue that the object sought to be achieved by the proposed nominations is not laudable or at least desirable. Transparency and financial discipline and accountability are fundamental values to which any

authority discharging public functions must be committed to. To that extent the BCCI has not faulted the report made by the Committee. What is all the same contended is that the recommendation if accepted may result in the suspension of the recognition of the BCCI as it will be seen by the ICC as Government interference contrary to Article 2.9(B) of the ICC Rules, which reads as under:

"Where a government interferes in the administration of cricket by a Member, including but not limited to interference in operational matters, the selection and management of teams, the appointment of coaches or support personnel or the activities of a Member, the Executive Board shall have the power to suspend or refuse to recognize that Member, subject to the provisions of Article 2.7."

77. There is, in our view, no basis for the argument that any measure taken by the BCCI on its own or under the direction of a competent court specially when aimed at streamlining its working and ensuring financial discipline, transparency and accountability expected of an organization

discharging public functions such as BCCI may be seen as governmental interference calling for suspension/derecognition of the BCCI. Far from finding fault with presence of a nominee of the Accountant General of the State and C&AG, the ICC would in our opinion appreciate any such step for the same would prevent misgivings about the working of the BCCI especially in relation to management of its funds and bring transparency and objectivity necessary to inspire public confidence in the fairness and the effective management of the affairs of the BCCI and the State Associations. The nominees recommended by the Committee would act as conscience keepers of the State Association and BCCI in financial matters and matters related or incidental thereto which will in no way adversely impact the performance or working of the BCCI for the promotion and development of the game of cricket. The criticism leveled against the recommendations of the Committee is, therefore, unfounded and accordingly rejected.

78. That brings us to the recommendation made by the Committee regarding the formation of a Players' Association. To the extent the recommendation provides for establishment of a Players' Association neither the BCCI nor any other association who has intervened has found fault with the view taken by the Committee. What has come under criticism by the BCCI and its supporting associations is the financial assistance which the BCCI is required to give to such an association. On behalf of the BCCI it was contended that cricket players can indeed form an association which they are in any case entitled to form, but that exercise need not be at the expense of the BCCI. The recommendation for financial support to the association is thus all that has been faulted by the BCCI. It was also contended that there was no need for providing any representation for the Association in the Apex Council of the BCCI having regard to the fact that some of the cricketers had in the past held offices in the State Associations and in the BCCI by

recourse to the democratic process, without any such reservation.

79. There are three distinct aspects of the recommendation in question. One relates to formation of the Association itself; the second touches the financial support which the BCCI must provide to the Association and; the third deals with the representation given to the Association in the Apex Council. Formation of the Association, as noticed earlier, is not under challenge and rightly so for cricket players have a fundamental right to form an association even independent of the recommendation. The question is whether the association needs to be financially supported by the BCCI. The Committee has recommended such financial support but has stopped short of specifying the extent of such support. It would, therefore, be reasonable to presume that the extent of financial support which the association may be given is left to the discretion of the BCCI. If that be so, we do not

see any merit in the objection raised by the BCCI that such support need not be given or would unduly burden the BCCI. An association of cricket players would doubtless give to the cricketing community not only an opportunity to contribute to the promotion of the game but a sense of participation also so very important for the promotion of a game that brings so much joy and feelings of nationalism among our countrymen. Financial support, to the extent possible, having regard to the resources available with the BCCI and its financial commitments in other areas relevant to the game is not therefore an unacceptable idea. The recommendation requiring financial support to the players association cannot therefore be rejected especially when the extent of such support is left to the BCCI to be decided on a fair and objective view of its financial resources and commitments.

80. The third dimension of the recommendation touching the representation given to the association

also does not call for any interference. Players' Association, it is obvious, would represent a very significant and important segment of the stakeholders in the game. Those who have played the game and are, therefore, better equipped to understand its nuances, its challenges and concerns relevant to its development and promotion cannot be left out from the management. The Committee has recommended two positions in the Apex Council as Councillors one of whom must be a female. Keeping in view the numerical strength of the Apex Council, two nominees representing the Players' Association will not unfavorably tilt the power balance within the Apex Council nor bring in any undesirable or extraneous element into the management of the BCCI. We have, therefore, no hesitation in rejecting the argument against the recommendation.

81. That leaves us with three other recommendations of the Committee to which we may advert at this stage. Of these, two recommendations are in the

nature of an appeal to the Parliament to enact suitable statutory provisions which the Committee considers essential in public interest. The first of these recommendations relates to the BCCI being under the purview of Right to Information Act and to carry out a suitable amendment to this effect. While the second recommendation is to the effect that the Parliament ought to legalize betting in cricket. Dealing with the first recommendation the Committee has observed:

"The Right to Information Act, 2005 ('RTI Act') enacts that public authorities shall make known the particulars of the facilities available to citizens. While the issue of the BCCI being amenable to the RTI Act is sub judice before the High Court of Madras in W.P.No.20229/2013, many respondents who appeared and interacted with the Committee were of the view that BCCI's activities must come under the RTI Act. Having regard to the emphasis laid by the Hon'ble Supreme Court that BCCI discharges public functions and also the Court's reference to indirect approval of the Central and State Governments in activities which has created a monopoly in the hands of the BCCI over cricket, the Committee feels that the people of the country have a right to know the details about the BCCI's functions and activities. It is therefore recommended that the legislature must seriously consider

bringing BCCI within the purview of the RTI Act."

82. We are not called upon in these proceedings to issue any direction in so far as the above aspect is concerned. All that we need say is that since BCCI discharges public functions and since those functions are in the nature of a monopoly in the hands of the BCCI with tacit State Government and Central Government approvals, the public at large has a right to know and demand information as to the activities and functions of the BCCI especially when it deals with funds collected in relation to those activities as a trustee of wherein the beneficiary happens to be the people of this country. As a possible first step in the direction in bringing BCCI under purview of Right to Information Act, we expect the Law Commission of India to examine the issue and make a suitable recommendation to the Government. Beyond that we do not consider it necessary to say anything at this stage.

83. So also the recommendation made by the Committee that betting should be legalized by law, involves the enactment of a Law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.

84. The third recommendation which has given rise to some debate at the bar touches the broadcast/telecasting of sporting events hosted by the BCCI. The Committee appears to have taken the view that commercial expediency has overtaken the need for a neat telecast of the events for the benefit of the viewers. The Committee has observed :

"Commerce has also overtaken the enjoyment of the sport, with advertisement continuing many a time, even after the first ball and again commencing even before the last ball of the over is played, thereby interrupting the full and proper broadcast of the game. Regardless of the wicket that has fallen, century having been hit or other momentous event, full liberty is granted to maximize the broadcaster's income by cutting away to a commercial, thereby robbing sport of its

most attractive attribute - emotion. It is recommended that all existing contracts for international Test & One-Day matches be revised and new ones ensure that only breaks taken by both teams for drinks, lunch and tea will permit the broadcast to be interrupted with advertisements, as is the practice internationally. Also, the entire space of the screen during the broadcast will be dedicated to the display of the game, same for a small sponsor logo or sign."

85. BCCI has filed objections in so far as the above recommendations are concerned. Firstly, it is stated that the telecast/broadcast of the game covers the entire over, namely, from the first ball to the last ball of the over and no part of the game's telecast is hampered by commercial exploitation of the event. The second contention urged is that the revision of contracts already fixed is likely to result in serious financial difficulties and other implication which will not be in the interest of the game. It is also contended that any modification of the contractual terms and conditions at this stage is likely to result in a heavy financial loss to the BCCI. To the same

effect was the submission which Mr. Venugopal, Counsel appearing for the BCCI who argued that commercial aspect of the game could be best left to be considered by the BCCI and any change if at all called for could be introduced after the expiry of the existing contracts. This was without prejudice to Mr. Venugopal's submission that the pleasure of watching the game on television sets or on radios was in no way affected by the commercial exploitation of the event.

86. The Committee's concern, it is evident from the passage extracted above is about the excessive exploitation of the commercial space granted to the broadcaster and in the process affecting the viewers' ability to view the game in the best possible way. The Committee's recommendation is obviously based on the premise that even the viewers have a right to view the game uninterrupted by any commercials and that the BCCI's ability to encash the popularity of the game may be affected if the

interest of the viewers and resultantly their numbers was reduced by excessive exploitation of the commercial space. It is, however, difficult for us in these proceedings to authoritatively pronounce upon the impact that the current contracts have on the viewers ability to enjoy the game without interruption or the financial implication that may arise in case the contracts are modified as recommended by the Committee. The proper course, in our opinion, is to leave the recommendation as it is for the consideration of the BCCI with the observation that BCCI may keeping in mind the sentiments expressed by the Committee ensure that the viewers get to see an uninterrupted broadcast of the match from the first till the last ball of the over and limiting the commercial advertisement in terms of time and space to an extent that will not deprive the viewers of the pleasure of watching the game in full. We make it clear that we have not expressed any opinion in this regard and leave it for the BCCI to examine the matter from all possible

angles and take a considered decision having regard to the recommendations made by the Committee and the feasibility of any modification in the existing contracts.

87. Last but not the least is the recommendation made by the Committee that the Governing Council of the IPL ought to be reconstituted so as to comprise three ex-officio members of the BCCI namely; the Secretary, the Treasurer and the CEO. Two representatives of the Members of BCCI to be elected by the General Body, two nominees of the IPL franchisees and one nominee each to be nominated by the C&AG and from the Players' Association. The BCCI has objected to the recommendation in so far as same pertains to induction of two nominees of the franchisees. The BCCI contends that the induction of the nominees from the franchisees is impermissible because important matters like players retention policy, posting of umpires for IPL matches, etc. are deliberated upon and decided by

the Governing Council itself. There is therefore an evident conflict of interest between the nominees of the IPL franchisees on the one hand and their role as members of the Governing Council on the other. The BCCI contends that this Court has set aside an amendment by which the BCCI had permitted persons affiliated with the franchisees to take part in the management of the IPL on the ground that the same violates the principle of institutional integrity. The induction of the representatives of the franchisee would however, bring about a conflict of interest which is neither permissible nor desirable.

88. The recommendation made by the Committee does not elaborately deal with the need for induction of the nominees of the IPL franchisees in the Governing Council. All that is said is that the Governing Council has denied any role to the franchisee companies and that there is no independent voice in the Governing Council which is dominated by the full members of the BCCI and two former cricketers. The

Committee does not appear to have addressed the question of conflict of interest in the event IPL franchisees place two nominees in the Governing Council keeping in view the fact that the Governing Council takes important decisions like players retention policy and in posting of umpires for IPL matches etc. There is *prima facie* a possibility of conflict of interest arising out of the franchisees representation in the Governing Council. Be that as it may we do not consider it necessary to finally pronounce on this aspect which can be better left to the Committee to re-examine in the light of what has been observed earlier. We make it clear that if upon reconsideration of the matter the Committee takes a view that the induction of the nominees of the franchisees will not result in any conflict of interest, it shall be free to stick to its recommendations in which event the recommendations shall be deemed to have been accepted by this Court to be formalized and carried out in such manner as the Committee may decide.

89. We may, in conclusion, deal with two other recommendations which have also come under criticism by the BCCI and the intervening associations. The first of these recommendations proposes a cap on the number of terms for which an officer bearer can serve and the optimum period for which one can be a member of the apex council. The recommendation also provides for cooling off period between two terms. It also prescribes grounds for disqualification of office bearer which were otherwise absent in the existing rules and regulations of the BCCI. These recommendations come in the wake of a finding by the Committee that under the present dispensation office bearers could continue for any number of terms. It was also noticed that no grounds for disqualifying an office bearers were prescribed. The Committee found both of these to be unacceptable and, in our opinion, rightly so. Given the problems that often arise on account of individuals holding office for any number of consecutive terms, the Committee was,

in our opinion, justified in recommending the length of a term in office. A three year term recommended by the Committee is, in our opinion, reasonable. So also, the prescription of cooling off period between two terms cannot be faulted. Similarly, an optimum period of 9 years as a member of the apex council cannot also be termed as unreasonable. Grounds for disqualification like unsoundness of mind, the member becoming a minister or holding a membership in any sporting body also meet the requirement of reasonableness and do not call for interference from the court. The contention that the recommendations have no rationale or that the same are contrary to the provisions of the Tamil Nadu Societies Registration Act deserve notice only to be rejected.

90. The other recommendation which we may deal with is the overhaul of the existing Committees of the BCCI on the ground that they do not have clearly defined terms of reference. The Committee has on the basis of a thorough consideration and deliberation

with all concerned recommended that the BCCI ought to adopt an approach that would institutionalize the management of its administrative affairs rather than such affairs being run on an ad-hoc basis. The Committee has, on that premise, recommended an administrative set up which it has evolved on the basis of its interactions with people who have the necessary expertise and insight into the needs of the BCCI and its associations. We, therefore, see no compelling reason for us to reject the recommendation made by the Committee, especially when the objective underlying the said recommendation is not only laudable but achievable through the medium of the change recommended by the Committee.

91. In the result, we accept the report submitted by the Committee and the recommendations made therein with such modifications and clarifications as have been set out by us in the body of this judgment. Having said that we must hasten to add that the

implementation of the recommendations is equally important and ought to be achieved within a reasonable period. The transition from the old to the new system recommended by the Committee shall have to be under the watchful supervision of this Court. Constrains of time and the multiple dimensions of the recommendations made however make it difficult for us to take that supervisory role upon ourselves. The supervision of the transition can, in our opinion, be left to be undertaken by the Committee not only because it has a complete understanding of and insight into the nature of the problems sought to be remedied but also the ability to draw timelines for taking of steps necessary for the implementation of the proposed reforms. We are conscious of fact that the process may be time consuming but we hope that the same should be completed within a period of four months or at best six months from today. We, therefore, request the committee headed by Justice Lodha to draw appropriate timelines for implementation of the

recommendations and supervise the implementation thereof.

92. Needless to say that the BCCI and all concerned shall cooperate and act in aid of the Committee and its directives. Should any impediments arise, the Committee shall be free to seek appropriate directions from this Court by filing a status report in that regard.

93. The Committee shall be free to determine and direct payment of its fee for the time it devotes pursuant to this order.

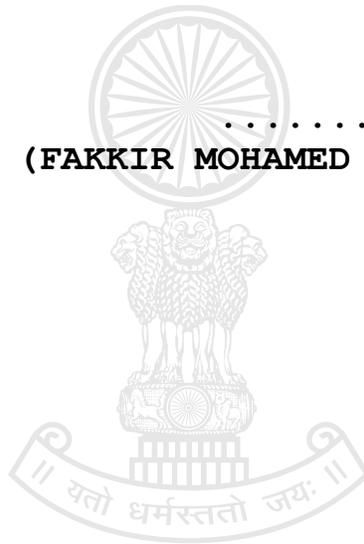
94. With these observations we dispose of the matter finally placing on record our deep appreciation for the commendable work which the Committee has done in a short period. We also place on record our appreciation and gratitude to Mr. Gopal Subramaniam,

senior advocate, for lending valuable assistance to
us as Amicus Curiae. No costs.

.....CJI.
(T.S. THAKUR)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI.
JULY 18, 2016



JUDGMENT