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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 18.12.2013

% **PRONOUNCED ON: 09.05.2014**

\+ W.P. (C) 2310/2012
CM APPL.4946 & 17545/2012

INDIAN OLYMPIC ASSOCIATION ..... Petitioner
Through: Mr. Sunil Gupta, Sr. Advocate with Mr. Rohit and Mr. Lovkesh Sawhney, Advocates.

versus

UNION OF INDIA ..... Respondent
Through: Mr. Mohan Parasaran, SG, Mr. Rajeeve Mehra, ASG, Mr. Jatan Singh, CGSC with Mr. Devvrat, Mr. Kartikey Mahajan, Mr. Shoaib Qureshi, Ms. Aarthi S. Anand and Mr. N. Meyyapan, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

1. The Indian Olympic Association (hereafter IOA) seeks appropriate directions that the National Sports Code, issued by the respondent Union Government (hereafter "UOI") is beyond its executive power (since Parliament does not possess legislative power to enact a law in that regard) and that its provisions are violative of its (IOA's) rights guaranteed under Articles 14, 19(1) (c) and 21 of the Constitution of India.

2. IOA is registered under provisions of the Societies Registration Act ("the Societies Act"). It is part of the Olympic movement, and the apex body for all sports bodies and federations in India. It ensures that decisions of the International Olympic Committee ("IOC") are observed; at the national level it promotes and safeguards the Olympic movement in India in accordance with the Olympic charter ("the Charter"). It also backs and encourages the spread of sports ethics, and fights against doping (drugging) and other obnoxious practices. Some of its objects contained in its Constitution are relied upon; they are extracted below:

> *"9. To have full and complete jurisdiction over all matters pertaining to the participation of India in the Olympic Games and other Games under the patronage of the IOC as well as the IOA.*
>
> *10. To participate in the Games of the Olympiad by sending athletes and to constitute, organize and lead its delegation at the Olympic Games and at the regional, continental or world multi-sports competitions patronized by the IOC. It shall also ensure that the members of the delegation shall conduct themselves in a responsible and dignified manner at all such meets.*
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> *XXXXXXXXXXXXXXXXXXXXXXXXX*
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> *11. To undertake with the assistance of National Sports Federations the financing, management, transportation, maintenance and welfare of teams from India taking part in the Olympic Games and other Games under the patronage of the I.O.C. as well as I.O.A.*
>
> *12. To certify the eligibility of competitors from India for such international competitions as require such certification."*

3. In terms of its objectives IOA acts as the channel of communication between national Sports Federations and the Central Government for financial or other assistance (Clause 14); it has to, in terms of Clause 21 collaborate and help national Sports Federations (NSFs), State Olympic Associations and other sports bodies in the training of the sports administrators for the effective sports information dissemination in India. It is autonomous from the UOI or any State Government, in its functioning, activities or governance. Its members elect its office bearers, in accordance with its Constitution. It is answerable to its members in terms of its Constitution, and to the extent it fosters the Olympic spirit, and involves the athletes and other sports persons who participate in various Olympic games, it is bound by the decisions – and the Charter of the IOC. The IOA repeatedly underlines that it does not receive financial assistance, or any direct financial support from the Government and any other NSFs Federations. Most of the expenditure incurred by IOA is towards travel, boarding and lodging of sports persons, directly or through its agencies like Balmer Lawrie & Co., or the Sports Authority of India ("the Authority"). In fact, the major expense is for the salary of the Officers of SAI. No money given by the UOI for the day to day activities of the Federations/Associations. The petitioners support themselves through individual contribution, annual fee from members or sponsorship.

4. It is submitted that the world of international sports has a hierarchical structure whereby participation of a country's team in any international event is governed by the concerned International Federation and participation in multi- disciplinary events is governed by the IOC. World

Level Association/Federation/Bodies exist in every sport, which are affiliated to IOC. At the national level, there is IOA, corresponding to the International Olympic Committee. Its affiliating organizations are NSFs, one for every sport; these also affiliate to their respective World/ Association/Federation/Body, and are recognized by them. In the absence of such affiliation or recognition, no player can compete in any international tournament or competition.

5. The Charter requires the NSF to be autonomous bodies. Hence, any mandate for interference with the autonomy is *per se* bad. The IOA and each national sports association are independently registered under the Act and are governed by their constitutions and bye-laws. They function in terms of their Constitutions. The NSFs, under IOC's Charter are required to be autonomous bodies and the Act assures that autonomy. This arrangement is in keeping with the Charter, and necessary to safeguard the independence of sports in India.

6. The petitioners refer to a letter of the UOI, dated 20th September, 1975 on the subject of "*Improvement of standard of sports and games in the country—Conditions for financial and other assistance to National Sports Federations/Associations, etc".* This letter had, for the first time, sought to regulate and control certain aspects of the functioning of the IOA and the NSFs. The regulations were particularly with respect to the tenure of office bearers of such associations (IOA). The relevant extracts of that letter are as follows:

> *"3. The Government of India have carefully considered the matter, in consultation with the All India Council of Sports, and have*

decided, in the interest of promotion of sports and games, that Government's financial and other assistance shall be extended only to those national organizations dealing with sports and games which fulfill the following conditions:—

(i) An office bearer of a National Federation/Association may hold office as such for one term of 4 years, and may be eligible for re-election for a like term or period.

(ii) No such office bearer shall hold office consecutively for more than two terms or 8 years:

Provided that in the event of election for the second term, an office bearer who has completed one term shall only be deemed to have been elected if he/she secures a majority of not less than two third of the members of the national Federation/Association concerned. In the event of failure to obtain such majority, the concerned office bearer shall be deemed to have lost the election. The office would thereafter be filled by election under the normal procedure from amongst candidates other than the office bearer seeking re-election.

Explanation 1: For the purpose of this clause, the expression "office bearer" means:—

(a) the President,

(b) the Secretary/Secretary-General, or any corresponding office,

(c) the Treasurer.

Provided that the provisions of this clause shall not apply to the post of Treasurer if, under the constitution of National Federation/Association, the Treasurer does not possess the right to vote in any of its meetings, and his duties and responsibilities shall be confined only to the management of the finances of the Federation/Association; however, he shall not be eligible to seek

election to the office of the President or Secretary/Secretary-General or Vice President after having held the office of the Treasurer consecutively for eight years, till the expiry of a period of at least four years from the date on which he last vacated the office of the Treasurer.

Explanation 2

(i) No person who has already held the office of the President or Secretary/Secretary General or both in a National Federation/Association consecutively for two terms or eight years shall be eligible to seek re-election to any of the said offices or Vice President or Treasurer till the expiry of a period of at least four years from the date

on which he last vacated his office.

(ii) The National Federation/Association may, if they wish, apply the provisions of clause 1 to the offices of Vice President, Treasurer (not being an office bearer) and members of important Organizations such as heir executive committee, selection committee, etc. 65

(iii) No office bearer of a National Federation/Association shall be eligible to be the office bearer, simultaneously, of any other National Sports Federation/Association, excepting the Indian Olympic Association.

(iv) That the annual accounts of the organization have been properly maintained and regularly audited and that the various business meetings as required under its constitution have been duly held.

(v) That each national Sports Federation/Association, in its particular field of specialization, has been appointing or would appoint a National Coach who possesses a valid coaching diploma. Prior approval of the All India Council of Sports would

be necessary if the person already appointed or proposed to be appointed as National

Coach does not possess requisite coaching qualifications.

(vi) That the National Sports Federations/Associations, in their respective fields of specialization, have been holding or would hold, where feasible, not less than two competitions annually for specified age groups at the Junior and Sub-junior levels; these competitions should be organized through Inter-Block and Inter-District competitions in each State, leading to the competition at the National level.

(vii) That the membership of the National Sports Federations/Associations, within their particular fields of specialization, is confined to the corresponding State and other special units affiliated to the National Sports Federations/Associations, and that where any of the National Sports Federations/Associations grants membership for individual clubs or individual persons, such membership does not confer on such members the right to vote in any of the Federations/Associations meetings.

4. The guidelines, as enumerated above, have been finalized after careful consideration of the points raised by the Indian Olympic Association, National Sports Federations/ Associations, consequent on issue of this Ministry's earlier letter No. F.11-4/74-YS 1(2) dated 9th April, 1974, and on the basis of the advice of the All India Council of Sports. The views expressed by these organizations have been accommodated to the fullest extent possible, consistent with the purpose for which the guidelines are prescribed.

5. However, at the request of the IOA, Government have agreed, as a special case to give time to the IOA and the concerned National Sports Federations to change their respective

constitutions, finalize fresh elections where necessary and take all other consequential action to fully and finally implement the guidelines before the dates indicated below:

(i) National Sports Federations/Associations 1.12.1975

(ii) Indian Olympic Association 31.1.1976

6. The IOA/National Sports Federations/Associations are now requested to confirm immediately, but not later than 15.10.1975, that the guidelines as stipulated in this letter, are acceptable to them, and that necessary action to implement the "Guidelines" has been initiated. Details of the arrangements made with regard to the amendment of the constitutions and holding of fresh elections may also please be intimated."

7. Having regard to the autonomy of the IOA and the NSFs, such attempts at regulating their functioning and controlling tenure of their office bearers affected their independence, violated the Charter in letter and spirit and sought to interfere with the societies' functioning by imposing provisions contrary to those contained in their Constitutions. It is argued that there is no bar to tenure of office holding under the Act. Therefore, the UOI could not impose such conditions by way of guidelines/office directions/letter. It is further stated that further guidelines (hereafter "revised guidelines" or "2001 guidelines") were sought to be made in 14.8.2001. These revised Guidelines were intimated to the petitioners as well as the federations. The said Guidelines, particularly with regard to the term of the office bearers had originally been formulated during the period of Emergency in the year 1975; they were opposed by IOA and other Federations. It is urged that in view of the strong sentiment against the guidelines, a committee headed by Shri A.K. Pandaya, DG Sports Authority

of India to review the position was set up; its report submitted in 1992, the Committee unanimously recommended the scrapping altogether, provisions limiting terms of the office bearers. After hearing the views of the Government, IOA and NSFs, the committee in its report submitted in 1995, refrained from expressing any view, thus implying that it was not inclined to the restrictions imposed during the Emergency. The IOA had also set up an independent four member Committee to frame formal comments on the alleged Guidelines. The said Committee in its report dated 16.7.1997, while dealing with the tenure of the office bearers strongly expressed the view that the said article in the Guidelines should be scrapped forthwith. It is submitted that in the circumstances the revised guidelines too could not regulate activities of IOA and the NSFs. It is argued that even if such instructions are being followed, it cannot be said that these instructions are being followed under any authority of law.

8. The petitioners question UOI's authority to frame the guidelines, contending that 'Sports' is covered under Entry 33 of the List II, in Schedule VII; likewise the authority to register, incorporate and regulate unincorporated corporations and societies is that of the State legislatures exclusively, by virtue of Entry 32, List II (Seventh Schedule to the Constitution of India. Neither Parliament has the authority to make laws in that respect, nor does the Union Government have executive power over that subject matter, as executive power is only co-extensive with legislative authority. Consequently, the Union Government does not possess any power to impose – through guidelines- restrictions on the functioning of autonomous bodies (which are societies) such as IOA and NSFs. The

petition mentions a development which took place in October 2001, when the IOA and NSFs were consulted; at that stage, on 11-10-2001, the UOI felt that it could not issue such guidelines in the absence of Parliamentary power. Then, the UOI had taken note of the earlier unsuccessful move to give effect to the National Sports Policy of 1984, by amending the Constitution. The petitioners refer to states' meeting and consultation, and the Constitution (61st Amendment Bill) 1988 which was introduced in the Rajya Sabha on 24th November, 1988. The Bill sought to move "sports" to the Concurrent List, from the State List; however, the move was unsuccessful. The petitioners then refer to the decision of the Union Minister for sports dated 24-08-2002 directing that the 1975 Guidelines should be scrapped. The petitioners also rely on an affidavit of the UOI filed in a previous litigation (*Narender Batra* v. *Union of India*, WP No.195/2010) where its express stand was that sports is an exclusive State subject, because of Entry 33, List II, Seventh Schedule to the Constitution of India.

9. The petitioners blame the media and the executive government for adverse publicity about mis-utilization of funds, which they say is entirely baseless. They point out that the UOI does not give sufficient funding and upgrade infrastructure which is so necessary to encourage and promote sport and that the issue is mired in red-tape. Contesting allegations of misuse of funds, it is stated that the amounts given or disbursed are for specific heads of expenditure such as travel and tour expenses etc, which are all accounted for. Contrary to public perception, state the petitioners, the IOA and the NSFs function in a completely transparent manner; the provisions of the Right to Information Act are made applicable to the IOA as well as all sports

federations. The petitioners adversely comment on the general apathy to sports in India, and state that the lack of infrastructure and the unwillingness to upgrade it, or even make basic sports equipment available, kills initiative and stifles talent. Infrastructure at grass root level is completely lacking and the states are unwilling to give necessary budgetary allocation.

10. The Petitioners argue that the Sports Code of 2011 and the letter of 01-05-2010 are illegal and without authority of law, to the extent that they impose cap on tenure of various office bearers of the IOA and the NSFs. It is submitted that these bodies are registered under provisions of the Act which nowhere speaks about cap on the tenure or on the number of re-elections of the office bearers. The guidelines issued by the Government to this effect are illegal as they are trying to override an Act passed by the Parliament. It is submitted that these restrictions violate Article 19 (1) (c) as well as Article 14 of the Constitution of India, because there are many NGOs which receive Government aid and grants but have no such caps on their tenures or re-elections. It is urged that infliction of such terms is utterly unreasonable. In any event, being non-statutory and mere guidelines, they cannot abridge or affect fundamental rights. The revised 2001 guidelines, sought to be imposed through the impugned letter and the National Sports Code, so far it mandates a cap on tenure to the extent of two terms, and also mandates a time limit for such tenure and similar restrictions, imposing a ban on individuals holding office in more than one association or sports body, robs these federations and independent societies of their right to exercise free choice. When none of the members of these societies voiced any objection to the existing rules in that regard, the UOI cannot, in the guise of

recognizing these bodies for the purpose of grants, impose something that is neither a compulsion by law, nor mandated by individual constitutions.

11. The provisions of the Charter are self-explanatory and leave no doubt that the autonomy of the IOA and its member units cannot be compromised and has to be preserved at any cost so as to remain a member of the Olympic family. The Charter specifically provides that no interference/compromise with the autonomy shall be allowed and if attempts by the countries are made to hamper the Olympic activities or their autonomy is compromised, such National Olympic Committee or NSFs shall be suspended and its recognition to participate in the Olympic Games shall also be withdrawn. The effect of the interference in the functioning of the NOC's and making it subservient to the dictates of the Government, bureaucrats would result in non-participation of the Indian players in the Olympic Games. The same result would ensue in the Asian Games, Common Wealth Games as well as the games controlled, supervised and managed by various international federations. Recognition as a National Sports Federation is by the International Body and that is most essential. Further, Federations/Associations have been granted recognition earlier and the same cannot be withdrawn by imposing conditions subsequently.

12. It is submitted that merely because the UOI recognizes, gives diplomatic clearances or rail concessions would not mean that it can control the NSFs. It is submitted that if UOI is allowed to impose conditions by way of executive orders in the running, functioning, management of the federations as a condition for grant of recognition and assistance by the Government, it would lead to Government interference and dictates in the

affairs of the NSFs, which is impermissible. It is urged that while Rule 19.2.2 of the International Olympic Committee prescribes duration of term of members of the IOC executive bearers as 4 years and a maximum of 2 successive terms, there is no such condition in the IOA nor has the IOC ever asked the IOA to amend its Rules and bring in the term restriction. Even otherwise the provisions of the Memorandum of one Society cannot be imposed on another society. Permitting Government to control the affairs of the NSFs would lead to chaos and the same would adversely affect the international sporting activities of the petitioners. It also affects and severely undermines the democratic process put in place by each individual society through its members. In effect, it restricts the democratic choice of members of each national federation as well as the individual federations in the IOA.

13. Elaborating on the pleas taken, Shri Sunil Gupta, learned senior counsel submitted that executive power of the Union cannot extend to framing policies in respect of sports. It was argued in this regard that Entry 33 of List II clearly enumerates sports as falling within the field of State legislation. It was argued that India had participated in the Olympics before 1950 as well. The history of the entry "sports" clearly demonstrates that the Constitution framers consciously placed the subject field in the State list. It was submitted that under the Government of India Act, 1935 ("1935 Act"), societies and associations, including those relating to sports were included in the State list (List II, Entry 33). Theatre, dramatic performances, cinema, etc were included in List II, Entry 35. This position continued in the Draft Constitution (Entries 42 and 44, List II, draft Constitution). All the time, sports as a subject matter was under the residuary head, falling within the

exclusive domain of the Governor General – who could empower the federal or the provincial legislature to enact laws on the subject, under Section 104 of the 1935 Act. In this background, the removal of sports from the residual item and its placement in the State List (Entry 33, List II) by the Constituent Assembly on 02.09.1949, which took final shape with the expressions "*sports, entertainments and amusements*" signified that the Constitution makers wished that this should be in the exclusive field of State legislative power. Arguing next that the Constitution had specifically employed devices to demarcate fields of overlapping legislative power, counsel submitted that these included the use of expressions such as *"but not including", "subject to", "other than", "not specified in List I"* etc. Likewise, State power could be made subject to Parliamentary declaration by law of the matter being of national importance (List I, Entries 62, 63, 64 and 67); national highways or waterways (list I, Entries 23, 24 and 30); or a matter being subject to Parliamentary declaration by law that its control *"is expedient in public interest".* (List I, Entry 52, 54, 56 and Entry 33, List III). Learned counsel relied on the decisions reported as *State of Madras* v. *Gannon Dunkerley*, AIR 1958 SC 560, *Diamond Sugar* v. *State of UP*, 1961 (3) SCR 242 and *Synthetics & Chemicals* v. *State of UP*, 1990 (1) SCC 109 in support of the argument that the widest import should be attached to each entry in the three lists in the Seventh Schedule to the Constitution of India since the framers did not intend any term to be a surplus age. It was emphasized that one entry or term cannot be narrowly construed to give effect to a wider import to another term. Only when there is a direct conflict is perceived should the court apply the "pith and substance" test. Likewise, each general word

should be held to comprehend allied, ancillary and subsidiary matters that can be fairly and reasonably accommodated within it.

14. It was next argued that the UOI also does not possess the power to regulate societies. Counsel relied upon Entry 32, List II and the decision reported as *Board of Trustees, Auyrveda Unani Tibbia College* v. *State of Delhi*, AIR 1962 SC 458 and submitted that societies constituted under the Societies Act are not incorporated entities. Counsel emphasized that the IOA and many NSFs existed as societies long before the Constitution was drawn and that this has to be taken into consideration. He contrasted the terms used in Entry 44 of the Union List, which reads *"corporations, whether trading or not, with objects not confined to one state".* Reliance was also placed on the ruling in *S.P. Mittal* v. *Union of India*, 1983 (1) SCC 51 in this regard.

15. Mr. Gupta submitted that the UOI's position that the subject of sport falls in Entries 10 and 13 of the Union List is untenable. He traced the history of these entries to Entry 3 of the federal list under the 1935 Act ('external affairs') and stated that the expression "external" and "foreign" mean *"belonging to or attached to another jurisdiction, made, done or rendered in another state or jurisdiction"*. For this, reliance was placed on the Black's Law Dictionary (VI edn., at page 646). It was argued that these entries (10 and 13) clearly relate to relation between India and foreign states. But, the UOI is not part of IOC or any Olympic Games and any law which seeks to regulate internal election matters of such societies cannot fall within those legislative heads. Contending that the principle *noscitur a sociis* applies to entries in the Lists of the seventh schedule to the Constitution, counsel relied on *Godfrey Philips India Ltd* v. *State of Uttar Pradesh*, 2005

(2) SCC 515 and urged that Entry 13 *"participation in international conferences, associations and other bodies"* has to be read contextually with the preceding and succeeding entries. These clearly suggest that only state participation was envisioned by the Constitution framers and not participation by non-State actors in non-State events, such as IOC conclaves and meetings. The implementation of decisions during such meetings cannot be the subject matter of Union legislative concern; nor can it be embodied in international treaties and covenants. Considering all these circumstances, argued Shri Gupta, the UOI's argument that sports falls within the residuary entry (Entry 97, List I read with Article 248 of the Constitution) cannot be countenanced. The test for determining applicability of the residuary entry is to see when lack of State competence under List II or List III is clearly established. He relied on *International Tourist Corporation* v. *State of Haryana*, 1981 (2) SCC 318, in this context.

16. It was next submitted that originally "education" was in the State list as Entry 11. However, through the 42nd Constitutional Amendment, it was placed in the Concurrent List (List III) as Entry 25. A similar attempt was made by the UOI to place sports in the concurrent list (List III) through the 61st Amendment Bill in 1988. That move however did not succeed. The Amendment was never carried. It is urged that this attempt strengthens the petitioners' argument that the UOI has no legislative or executive power to deal with sports or even societies. It was argued that the attempts of the Union to regulate sports bodies and societies, including the IOA and its federating organizations, through the Code, first indicated in 1975, later in 2001 and then in 2010 and subsequently through the impugned code,

constitutes a fraud on the Constitution. Counsel relied on the decision in *D.C. Wadhwa* v. *State of Bihar*, 1987 (1) SCC 378.

17. It was further urged that the question of Parliamentary competence to enact law concerning sports or sports-based societies on the doctrine of extra-territorial jurisdiction of the law – premised upon the view that State laws are confined to the respective boundaries – is without foundation. Learned counsel relied upon *The State of Bombay* v. *R.M.D. Chamarbaugwala*, 1957 (1) SCR 874, *The State of Bihar* v. *Charusila Dasi*, 1959 Supp. 2 SCR 601 and *The State of Bihar* v. *Bhabapritananda Ojha*, 1959 Supp. 2 SCR 624 to say that any event within the territories of the State regardless of its inter-state, national or international character would lie within the exclusive competence of the State.

18. Mr. Gupta argued that even if it is conceded that the UOI had the power to fund sports of all nature and hues by virtue of Article 282 of the Constitution, that would not by itself enable the Parliament or the UOI to frame guidelines or policies that would impinge adversely on the autonomy of the IOA or the sports federations. In this regard, it is urged that the receipt of funds by sporting federations, or IOA, cited as 'an excuse' for of imposing restrictions to curtail the tenure of their office-bearers has no correlation with the Parliamentary concern to audit the accounts and ensure that funds are properly utilized. Highlighting that the Parliament has exclusive power to make laws with respect to audit of accounts of the Union and the State under Entry 76 of the First Schedule, learned counsel argued that such power enables the UOI to put in an appropriate mechanism to oversee the utilization of funds. In other words, submitted learned counsel,

the need to ensure proper fund utilization has no correlation with the imposition of tenure and other restrictions that directly impinge on the autonomy of sports federations and the IOA.

19. Learned counsel emphasized that the UOI in fact under Article 282 has the obligation to provide such funds for social objects, having collected it for the specific purpose from citizens. But that would not mean that financial assistance for sports can be the excuse for wide-ranging and intrusive restrictions that rob the citizens of their right to self-governance of institutions created through their charters.

20. Learned counsel submitted that the impugned policy is not law and cannot divest the citizens of their rights under Part III of the Constitution. He further emphasized that the Right to Free Speech under Article 19(1)(c) and the Right to Freedom of Association under Article 19(1)(c) can be subject to lawful and reasonable restrictions on specific rights, such as "public order". The petitioners argue that imposing tenure restrictions can never fall within the term "public order" as to justify the impugned policy in that regard. Learned counsel relied upon the decision reported as *Damyanti Naranga* v. *The Union of India (UOI) and Ors.*, 1971 (1) SCC 678, *Bijoe Emmanuel & Ors.* v. *State of Kerala and Ors.*, 1986 (3) SCC 615 and *Zoroastrian Co-operative Housing Society Ltd. and Anr.* v. *District Registrar Co-operative Societies (Urban) and Ors.*, 2005 (5) SCC 632.

21. Learned counsel lastly argued that the impugned executive measures are arbitrary and unreasonable. They violate Article 14 of the Constitution by interference with internal affairs of the IOA and the NSFs. In this context, it was submitted that the Directive Principles of achieving

international peace under Article 51-A of the Constitution has been undermined through the impugned policy. Elaborating upon this, it was submitted that the IOC is the supreme authority of the Olympic movement and the policy strikes a discordant note with the Charter. The IOC Charter had not imposed the nature and quality of restrictions, leaving it to the best wisdom of individual National Olympic Federations and Sports Federations. The imposition of impugned guidelines and policies has resulted in the destruction of the autonomy guaranteed to the IOC by the Charter. This resulted in the IOA's suspension and de-recognition by the IOC on 04.02.2012. This was consequent to the election held under supervision of a Commission with the presence of a government observer pursuant to the orders of this Court in C.M. 2218/2013. The impugned policy, it is submitted, amounts to pressurizing and coercing the IOA and NSF's of their original autonomy guaranteed by the IOC Charter. Therefore, it is arbitrary. The decision in *Bhim Singh* v. *Union of India (UOI) and Ors.*, 2010 (5) SCC 538 emphasized the UOI's duty to furnish grants for guaranteeing the purposes of Directive Principles of State Policy. Learned counsel argued that the impugned policy, to the extent it erodes the independence of IOA and imposes the UOI's will in regard to choice of leadership and office-bearers, is arbitrary.

22. The UOI in its counter-affidavit refutes the petitioner's contentions. The learned Solicitor General highlighted that in a previous litigation, i.e. *Mr. Narinder Batra* v. *Union of India*, W.P.(C) 7868/2005, a learned Single Judge had located the source of legislative power of the UOI to Entries 10 and 13 of List I. It was further argued that in the said decision, the Court

emphasized that international sporting events are recognized as an essential part of democratic relations between the nations and that political and diplomatic clearances are required before teams participated in international tournaments. The State Governments would be unable to exercise such jurisdiction or undertake the task. The validity of the impugned guidelines, submitted the Solicitor General, thus, was settled by the Court in *Mr. Narinder Batra* (supra). It was also argued in addition that the UOI is also competent to make a law or policy on the subject and issue executive directions by invoking Entry 97 of the First List. In this regard, it was submitted that the nature of the activity, i.e. inter-state and international sports and the various facets applicable to it such as the need to secure diplomatic clearances, realize significant Union funding and the general necessity of fulfilling a common policy or approach to sports generally in India cannot be catered to in by individual States. This would lead to disharmony and chaos. The corollary, therefore, is that the power to frame laws would be appropriately found in Entry 97 of the First List.

23. It was argued by the UOI that it neither seeks to interfere with the autonomy nor working of the sports federation or IOA but it only seeks to achieve transparency in their functioning. Learned counsel highlighted that all guidelines issued by the UOI are in accordance with the provisions of Olympic Charter and that the insistence on the impugned provisions would not lead to the disqualification of the respective international federations. It was emphasized that as many as 52 NSFs have given their consent and are bound by the impugned guidelines and that the bogey of eroding of autonomy has been raised only by the IOA. The UOI relied upon a list of

such federations that agreed to amend their respective bye-laws/constitutions. Reliance was also placed on the order withdrawing recognition of the IOA in respect of Archery Federation on 07.12.2012 on account of its failure to amend the bye-laws.

24. The Solicitor General submitted that the materials on record would show that roughly Rs. 435 crores was released to the sports federations during the last four years. Apart from this, the sports federations received indirect assistance, such as 100% Income Tax and Customs Duty exemption; 50% exemption in Income Tax for the donors, for those who donated money to the IOA and recognized NSFs, which helps them secure such donations, railway concession extended to sports personnel for participation in national and state-level tournaments and infrastructure created by the Sports Authority of India (SAI), given at considerable subsidized rates. It is stated that these subsidies cannot be quantified easily as they are provided by various field units of the UOI located at various places. Other than these, stated learned counsel, the UOI also provides for basic playfields and block *panchayats* under various programmes and schemes, aimed at achieving sports development. Learned counsel also emphasized that the petitioner's argument about the elections held through intervention of government being the cause for de-recognition by the IOC is no longer correct. It was stated that the Union Sports Minister met the IOC in a meeting at Lausanne when various aspects were discussed and finally it was resolved that the Government, even while respecting the IOCs (and IOA's) autonomy would draw a Sports Bill in consultation with all concerned.

25. The Solicitor General also relied on the "aspect theory" mentioned and applied by the Supreme Court in its decision reported as *All India Federation of Tax Practitioners* v. *Union of India*, 2007 (7) SCC 527 and urged that one legislative entry may seemingly cover all facets of the subject matter, but in reality one or more aspects may properly fall within the domain of another legislative authority, under another field. It was therefore urged that international sports, by its very nature was incapable of being encompassed within the field of "sports" falling in the State List.

26. Sh. Rahul Mehra, who intervened and was heard during the proceedings in public interest, argued that the Sports Code outlines provisions for the good governance of the IOA and NSFs. It is submitted that these bodies in fact perform public functions and possess monopoly to regulate, manage and control their respective sports disciplines in India. This is a kind of sponsorship given by the State through recognition. The jurisdiction of such bodies extends over the whole of India. These State bodies and the IOA control the sports disciplines in the country at all levels, especially complete control over team selection and appointment of referees and umpires of various events and coaching. Crucially, they have access to extremely important resources, such as National Sports Coaches and facilities provided, generated, developed and maintained by the UOI. The UOI in fact facilitates the tasks of these sports bodies in hiring international coaches and access to sports goods, equipments and materials in international sporting events. Further, Mr. Mehra urged these federations and office-bearers represent the entire country, and thus must maintain the highest standards. The federations enjoy exemptions and subsidies in the

form of income tax subsidies, Entertainment Tax, Excise and Customs rebates etc.

27. The intervener argued that there can be no denial that the IOA and all other Respondent NSF's are performing key public functions which are akin to State functions and thus ought to be accountable, responsible and transparent in their functioning. It is submitted that IOA and all NSFs, are "State" under Article 12/226 of the Constitution of India as they perform key public functions. For this, reliance is placed on *Rahul Mehra & Anr.* v. *UOI and Ors.*, 114 (2004) DLT 323, *Zee Telefilms Ltd.* v. *UOI and Ors.*, JT 2005 (2) SC 8, *Mr. Narinder Batra* v. *Union of India*, ILR (2009) 4 Delhi 280, *G. Bassi Reddy* v. *International Crops Research Institute*, 2003 (4) SCC 225 and *Federal Bank Ltd.* v. *Sagar Thomas*, 2003 (10) SCC 733

28. The intervener argues that the Union of India possesses legislative competence to frame laws for regulating sports at the inter-state, national and international level in view of Article 245 and 246 of the Constitution of India taking recourse to the doctrine of Pith and Substance. He urges that supremacy of Parliament has been provided for by the *non obstante* clause under Article 246(1) of the Constitution of India and the words 'subject to' in Article 246 (2) and (3). Under Article 246 (1), if any of the entries in the three lists overlap, the entry in List I will prevail. It is submitted that State legislatures have no legislative competence to legislate with regard to any subject outside the territorial boundary of the State be it subject of "Sports". In this context, it is urged that under Entry 33, it cannot be contended or held that a State Government can regulate national teams; inter-state and international sporting events, national level coaching or international events

or inter-state, national and international sporting relations. The State Government also cannot issue guidelines on the manner in which the Central Government is to dispense its largesse including financial assistance. It cannot also regulate the manner in which the Central Government shall grant recognition to a sports association or federation as a national level body. It cannot also be argued that without such recognition, the association can select a national team. When Entry 33 of List II is so read, it is clearly evident that the general and residuary powers in all matters relating to sports at the national level remain beyond the legislative competence of the State. Sports are not exclusively mentioned as a subject in List I or III. Sporting activity at the macro-level is beyond not only the boundaries of the State but also beyond national boundaries. Several important issues of expertise and diplomatic relations have come into play. The consideration of sports at the narrow state level loses all significance when examined from these angles. The intervener also relies on other entries in List I and List III, which state as follows:

> *"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."*

29. Mr. Mehra submits that sports has always been considered as an integral part of education and human resources development and for this reason there is a department under the Ministry of Human Resource Development. Any educational programme would be incomplete without sports as an essential part. Moreover, participation of the Indian team puts at stake the national reputation involving matters of rules, regulations and sporting policies. It is essential that national level bodies or their personnel

are involved in international level decision making. Mr. Mehra supports the submission of the Solicitor General for the UOI that the subject matter of international sports falls within Entries 10 and 13 of List I. He says that international sporting events are an essential part of diplomatic relations of the nations. Hostility in political relations, issues of defense, security concerns of players, public policy concerns with regard to discriminatory practices, apartheid and perceived human right violations have guided nations in decisions to or not to participate in sporting events in different countries. Political and diplomatic clearance is required by the Indian teams before participation in the international tournaments and forums. No State Government can undertake such exercise. This is clearly the province of the Union Government. Furthermore, grant of visas for sportsmen and administrators, provision of security to teams etc fall within the domain of the Union. It is undisputed that the resources which are placed in the hands of Ministry of Youth Affairs and Sports form a considerable part of the budgetary allocation. There is extensive real estate in the form of stadia, sports fields and facilities etc. which is also under its jurisdiction which is put to the utilization of the encouragement and development of sports. Thus, sports and attendant activities is one subject which, for different purposes would be covered under different entries in different Lists in the Seventh Schedule to the Constitution of India.

30. It is submitted that IOA and all sporting federations are substantially funded by the UOI. Other assistance given includes national coach selection; availability of facilities developed by UOI agencies such as Sports Authority of India, financial assistance for acquisition of sports goods and materials;

organization of programs etc, all show exclusive Union participation. State Governments do not have the legislative competence to enact laws with regard to any subject at the national and international level. The power, therefore, of the State legislature to frame laws regulating sports under Entry 33 of List II is restricted to matters relating to sports within their boundaries. Such empowerment certainly cannot prohibit or denude the Parliament from its legislative competence to regulate sports at the national and international level.

31. Additionally, while conferring primacy on the Union, the Constitutional provisions clearly delineate the jurisdiction of the State. The residuary power, to legislate in regard to un-enumerated subjects, in the Concurrent List or the State List has conferred upon Parliament by virtue of Article 248. Entry 97 of List I gives effect to the power conferred on the Union under Article 248. When sports becomes part of the national or international level as at the level of selection of sportspersons for representation of the country; appointment of national coaches, sports activity and exchanges at the national and international level, etc., the Central Government alone would have the power and competence to regulate the same. The powers are clear and distinct. The entries in the Lists when meaningfully and harmoniously construed, display no conflict of jurisdiction or overlap.

32. Further, it is urged that the minority view in *Zee Telefilms* (supra) considered the law/rule-making power of the National level sports body. It was noticed that an NSF is entitled to represent the nation and regulate the sport in the country. It would have duties to perform towards players,

coaches, umpires, administrators and team officials. Aspects of ensuring several rules for the sport to prevent physical injury to all concerned has to be continuously reviewed. Health, sociability and play are important values to be recognized in the human being. International sporting events promote and aim at good relations in the comity of nations; promote peace and prosperity for the people even at the domestic level. Development of sport at the national level would include nomination of players for national awards, such as the Arjuna Award, which are accepted by the Government. The intervener also refers to the fact that now the Department of Sports falls within the jurisdiction of the Union Ministry of Youth Affairs & Sports; it was earlier a part of the Ministry of Human Resource Development till its segregation in terms of Item 6 of the 2nd Schedule of the Rules for Allocation of Business framed in exercise of powers under Article 77. It is vested with the power to recognize a federation or association as a national federation and also to regulate interaction at the international level. It performs the essential task of coordinating between the activities of different states.

33. It is, therefore, submitted that till the time all the recognized NSF's, including the IOA continue to perform the aforementioned public functions which are akin to State functions such as selection of Team India, etc. and till such time that these Federations/Associations continue to be substantially funded, directly or indirectly, by the State and/or its instrumentality they cannot seek absolute autonomy without any accountability, responsibility and transparency and must conform to the Sports Code notified by the Ministry of Youth Affairs and Sports to ensure

adoption of good democratic principles and best international practices essential for making India a sporting superpower.

Analysis and Conclusions

Issue 1 - Legislative competence:

34. The petitioners on the one hand urged that Parliament lacks legislative competence over sports, as well as societies which are "unincorporated corporations", and that consequently the impugned National Sports Policy framed under executive authority is beyond the power and jurisdiction of the Central Government. The position of the UOI and the intervener on the other hand is that Olympic sports are international in nature and that consequently the UOI is competent to frame policies, since Parliament is entitled to enact laws under Entries 10, 13 & 97 of List I. The competing entries in this regard are as follows:

> *"List II: 33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements."*
>
> "List I: *Entry 10*
>
> *10. Foreign affairs; all matters which bring the Union into relation with any foreign country.*
>
> XXX
>
> *List I:Entry 13*
>
> *13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.*
>
> XXX
>
> *List I: Entry 97*

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

35. For the sake of completeness it would also be essential at this stage to notice the powers of the State to legislate upon societies and other such bodies, which is found in Entry 32 of List II:

"*32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.*"

36. The competing entry enabling the Parliament to enact laws in regard to unincorporated Corporations is Entry 44 of List I:

"*44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.*"

Finally, Entry 43 of List I reads as follows: -

"*43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.*"

37. The petitioners had relied upon *Tibia College* (supra) to urge that State Legislature possesses exclusive power to enact laws and State Governments possess powers to frame policies in respect of societies. The principal argument in support of applicability of that decision was that societies are unincorporated entities and cannot be called 'corporations'. In *Tibia College*, the precise question which arose for consideration was as to the status of a society registered under the provisions of Societies

Registrations Act, the functions and management of which were transferred to a Board created by State enactment. The Supreme Court rejected the contention that a society is a corporation. The contention made in that regard was as follows:

> "*The point which the learned Advocate for the petitioners has emphasized is that under Section 21 aforesaid the extent of the legislative power of the Delhi State Legislator was limited to making all laws in the whole or any part of Delhi State with respect to any matter enumerated in the State List or in the Concurrent List of the 7th Schedule to the Constitution …*
>
> *8. The argument of the learned Advocate for the petitioner is that the old Board which was registered under the Societies Registration Act, 1860 and is petitioner no.1 before us was a Corporation whose object was not confined to State of Delhi, therefore, any Legislation with regard to it would fall under Item 44 of List I and not under Item 32 of List II. This argument consists of two parts - first is that the old Board was the Corporation and secondly that its object was not confined to one State.*"

38. The conclusions of the Supreme Court were as follows:

> *"19… It appears to us that the legal position is exactly the same with regard to the provisions in Sections 5, 6, 7 and 8 of the Societies Registration Act, 1860. They do not show any intention to incorporate, though they confer certain privileges on a registered society, which would be wholly unnecessary if the registered society were a corporation. Sections 13 and 14 do not carry the matter any further in favour of the petitioners. Section 13 provides for dissolution of societies and adjustment of their affairs. It says in effect that on dissolution of a society necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the society; if there be no rules, then as the governing body shall find it expedient*

> *provided that in the event of any dispute arising among the said governing body or the members of the said society, the adjustment of the affairs shall be referred to the Court. Here again the governing body is given a legal power somewhat distinct from that of the society itself; because under s. 16 the governing body shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.*
> *20. We have, therefore, come to the conclusion that the provisions aforesaid do not establish the main essential characteristic of a corporation aggregate, namely, that of an intention to incorporate the society …*"

39. It is thus clear that in *Tibbia*, the Supreme Court held that societies are unincorporated associations and could therefore be regulated by valid laws enacted by the State legislature under Entry 32 of List II. This however did not determine completely what constitutes 'regulation' of a corporation under that Entry. This aspect was built upon, in part, in a later decision, *S.P. Mittal* v. *Union of India*, AIR 1983 SC 1. The question that arose there was whether Parliamentary was competent to enact a legislation enabling take-over of management of the affairs of the petitioner society, incorporated under a law governing societies in West Bengal. The Court held that Parliament was competent. After referring to *Tibbia*, the Court held:

> *"The fact that the Society, which was registered under the West Bengal Act, has been a channel of funds for the setting up of the cultural township of Auroville and has been managing some aspects of Auroville, does not bring Auroville under the domain of the West Bengal Act. The right of management of property is itself a property right.*

The Solicitor General also tried to bring the subject matter of the impugned legislation under various other entries of List I or List III of the Seventh Schedule viz., entries 10, 20, 41 and 42 of List III and entry 10 of List I. But it is not necessary for us to examine whether the subject matter of the impugned legislation falls under any of the entries of List I or List III if once we hold that the subject matter does not fall within the ambit of any of the entries of List II. Even if the subject matter of the impugned legislation is not covered by any specific entry of List I or List III, it will be covered by the residuary entry 97 of List I.

In our opinion the impugned Act even incidentally does not trench upon the field covered by the West Bengal Act as it is in no way related to constitution, regulation and winding up of the Society In R.C. Cooper v. Union(1) it was laid down that a law relating to the business of a corporation is not a law with respect to regulation of a corporation.

Having heard the counsel for the parties, our considered opinion is that the subject matter of the impugned Act is not covered by entry 32 of List II of the Seventh Schedule. Even if the subject matter of the impugned Act is not covered by any specific entry of List I or III of the Seventh Schedule of the Constitution it would in any case be covered by the residuary entry 97 of List I. The Parliament, therefore, had the legislative competence to enact the impugned Act." (emphasis supplied)

The Sports Code in this case similarly concerns regulations relating to how the IOA and NSFs are *run* (i.e. their business). Having regard to the above decisions, this Court is of the opinion that the sports code cannot be said to fall within Entry 32, as is sought to be contended by IOA.

Does the National sports code fall within Entry 33 (List II) or any entry in the Union List

40. The respondents' claim is, and indeed, a first impression may be that the content and import of the National Sports Code falls within, at least in part, Entry 13 of List I of the VII Schedule, which reads: "*Participation in international conferences, associations and other bodies and implementation of decisions made thereat*." Such a reading, however, would be erroneous and twist the core of Entry 13. This entry allows the Central Government to manage the foreign affairs of the country, and to that end, participate in international conferences, discussions at international associations and other bodies. The reason for the inclusion of Entry 13 was to ensure that in the international sphere the Central Government would not have its hands tied behind its back in terms of its negotiating ability, if the content of the discussion at the international forum relates to subject matter found in List II. The focus, therefore, is on vesting power in the Central Government to represent a unitary view of the sovereign Indian state at international *fora*, rather than to provide a power to regulate *private* conduct at an international level (i.e. in private conferences, associations and other bodies). The fact that Entry 13 is focused on sovereign (i.e. state) conduct abroad, rather than the relations of non-state actors internationally, is evident not only from the entries surrounding Entry 13, i.e. foreign affairs (Entry 10), diplomatic, consular and trade representation (Entry 11), United Nations Organization (Entry 12), entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries (Entry 14), all of which relate to ensuring a breadth of

power to regulate sovereign conduct at the international level, but also by the Constituent Assembly Debates surrounding this entry.

41. On 25th August, 1947, an amendment by way of a *proviso* to Entry 13 was proposed in the following terms: "*Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the Province or of the State.*" This amendment was ultimately rejected by the drafters of the Constitution, but the consensus reached on certain aspects during the debate in the Constituent Assembly is instructive in this case. Some comments are extracted below in order to support the view that Entry 13 relates to empowering the Parliament to legislate, and the Central government to act in its executive authority, in relation to matters at the international level. For example, Mr. Munshi stated, on 25th August, 1947, that Entry 13

> "*does not refer to bilateral treaties, but refers to international conferences. Now, as the House knows very well, in this age international relations are not necessarily governed by treaties. There are various conferences at which India sends out her representatives and she will be sending them out in much larger measure in the future. At these conferences decisions are taken on the footing that the representatives of India have got the power to implement those decisions; no representative of India will be heard with any weight at all, if he has to keep a reservation that he would come back to this country and ask his 35 unit Governments and if one of them disagrees he would not be able to implement those decisions. In this present world it would be impossible for India in such conditions to take part effectively in any conference, except of course as in a debating society without coming to any decision. Therefore it is highly essential that the central legislature as well as the Central*

> *Government should have ample power not only to participate in these conferences but to implement the decisions arrived at there.*"

Similarly, Pandit Hirday Nath Kunzru noted:

> "*The National Government, before accepting any responsibility, will naturally consider whether the responsibility will be one which can be discharged by the units with their own unaided resources, or only with the aid of the National Government. It will not be in a hurry to enter into agreements which will involve large expenditure, because it will in that case be morally bound to help the Provinces to fulfil the obligations accepted by it' Honourable Member may be afraid that the acceptance of international conventions might involve the units in expenditure which they would be unable to bear.*"

42. Even for those who supported the amendment, for example Sardar KM Panikkar, the idea that Entry 13 related to sovereign conduct abroad was clear, and the disagreement related to whether the Centre should be vested with such powers vis-à-vis the provinces (which, in fact, also supports the view that the core of Entry 13 goes towards sovereign conduct undertaken by the Centre abroad that affects the provinces locally):

> "*Therefore, the issue that arises is if the Union goes not merely to a recognized international conference as the U.N.O. or is a party to the I.L.O. as India may be, but say to the Moral Re-armament conference at Switzerland, are we in position to give effect to the decisions? In order to do so, it is absolutely necessary that it must be related to a substantial item in the federal or concurrent legislative list and the federal or concurrent legislative lists have been made in such a manner as to include every possible thing which may be of common interest. So, what is left to the Provinces or States are purely*

> *matters of local administration, not of an all-India or of a common character. That being so, to entrust wide powers such as the enforcing of decisions by legislation, the implementing of any agreement or arrangement reached at international association-itself a very dangerous definition, what kind of international association or conferences it is not mentioned-is most dangerous which will, nullify every provincial and State constitution, because it is not limited to the subjects in the federal or concurrent legislative list. After all, Section 106 of the Government of India Act, as it stands, specifically limits the power of implementing such decisions. I am as anxious as any other Member here that the Central Legislature should have ample powers to give effect to treaties and agreements reached with other countries. But in order to do so it must be related to one or other subject in the concurrent or the federal legislative lists …*"

43. A perceptive response to this assertion is that the drafters did not foresee a question such as the one this Court is faced with today – a world in which *private* bodies such as the IOA, in their engagement with internationally recognized, but again private, sports bodies such as the International Olympic Committee, would acquire such a monopoly over entire fields of public activity. Indeed, it is plausible to claim that the drafters did not imagine a state of events where an Indian private entity would regulate activities within its field of activity with a strong public character and as pervasively as Government regulation. Indeed, that the IOA and other sports associations have acquired a quasi-norm creating character, such that they regulate activities between a host of private entities in the field of sports is undeniable. Plausibly, the associations' connections with their international counterparts, and realization of decisions reached by the latter locally, are of grave importance, and are coloured by the same shade of 'public' activity.

What may flow from this depiction is the argument that Entry 13 should thus be read to include such activities which are private in form but public in substance, so truly give effect to the import of Entry 13. In an insightful work '*Lex Sportiva- What is Sports Law?*' (ed. Robert C. Siekmann & Janwillem Soek, Springer Publishers), Franck Latty ('Trannational Sports Law') criticizes the theory that international sporting bodies do not *make law* and that the rules they frame are not law:

> "*However, it is these bodies which, even before the states, organize sporting competition in its manifold aspects (rules of play, technical rules, qualification of athletes, anti-doping rules, in some cases, the status and contracts of athletes, etc.). Taking the view that these standards cannot claim to have the quality of legal rules amounts to having a highly restrictive conception of the law, which is well out of step with the realities on the ground. The "Sports and the Law" theory finds its roots in state positivism that necessarily links the law to the state, the sole entity capable of imposing compliance through physical constraint. However, pluralist theories have shown that neither power nor law in essence linked to the state…*"

Therefore, whilst the depiction (of content of Entry 13 being broad and not confined to participation by state agencies or the state alone) is true, the argument does not follow. The expansion of private activity means that many activities traditionally, or at least previously, controlled by sovereign States are now in fact, controlled by private entities. Nonetheless, the distinction between public (sovereign) and private actions cannot be ignored, or papered over, by this development. The two remain, and with good reason, legally dissimilar. The scope of Entry 13 is to regulate *sovereign* representations abroad, and to regulate the scope of power

possessed by the Centre as against the States, and *not* for the Centre to assume control over private entities in their relations internationally (at private meetings/conferences/associations, which is precisely what the IOA engages in), no matter how pervasive they may be. Indeed, that the Centre possesses the capacity to act in relation to such private activities may be true otherwise, but for the present purpose, the exercise of that power cannot be included under Entry 13, lest the clear and unambiguous import of the entry be skewed. The other construction would lead to horrendous consequences, whereby non-sovereign or non-state participation by bodies (or associations) and decisions taken in such meetings would be the basis for a Central legislation, which, on account of Article 253 might well claim primacy, and override concerns of the multitude of states forming the Indian Union.

44. The Code is a comprehensive set of guidelines dealing with various aspects of sporting activity, which are separable from each other, and not all the provisions are subject to the above reasoning. The Code, broadly, deals with three aspects: *first*, to define the areas of responsibility of the various agencies involved in the promotion and development of sports. *Second*, to identify NSFs eligible for coverage under the guidelines, set priorities and to detail the procedures to be followed by the Federations, for availing Government sponsorship and assistance. *Third*, to state eligibility conditions for receipt of Government recognition and grant.

45. The Code is a repository of all relevant notifications and circulars, issued by the Central Government concerning NSFs, and made "*with a view to bringing together all orders/notifications/instructions/circulars issued post 2001 guidelines … these are now amalgamated with necessary*

modifications, into one Comprehensive Code …" (Ref to Communication No. F.23-2/2011-SP-I, dated 31st January, 2011, which introduced the Code). Accordingly, various aspects are dealt with under the Code, though they are in reality standalone matters that do not necessarily depend on the other parts of the Code. Here, it is useful to identify one thread of regulation, i.e. permission for sending sports teams/persons abroad, which is covered under Annexure VI to the Code, and for inviting foreign teams/sportspersons to India, covered under Annexure VIII to the Code (and related communications issued in this regard which are included in the Code, as for example, Communication No. F.9-68/2009-SP-I, dated 11th October, 2009, which concerns

> "*drawing an advance calendar for participation of Indian teams in competitions and training abroad and holding of international (sic) event in India*";

In a similar manner, Letter No. F.8-6/2010-SP.III, dated 20th March, 2010, which concerns

> "*[g]uidelines for security clearance for holding International Conference/seminar/workshop etc., in India*";

Another communication, i.e. letter No. F.8-8/2009-SP.III, dated 13th August, 2009, mandates "*[p]rior intimation to Indian Missions abroad about visits of Indian Team.*")

46. The decision on whether to allow such teams/persons to go from India, or to come to India, involves, amongst other things, a crucial foreign affairs angle which is covered under Entry 10, List I, which states: "*Foreign affairs, all matters which bring the Union into relation with any*

foreign country." In such cases, the decision to field a team representing the Indian Union abroad, or to invite a team from another nation, is one that may critically involve an external affairs question that only the Central Government is competent to decide upon. In fact, this very question was discussed by this Court in *Mr. Narinder Batra* v. *Union of India*, WP(C) 7868/2005 (decided on 2nd March, 2009), in the following observations:

> "*86. There can be no argument that international sporting events have been considered an essential part of diplomatic relations of the nations. Nuances of hostility in political relations, issues of defence, security concerns of players, objections on account of policies of discrimination, apartheid and perceived human right violations have guided nations in decisions to or not to participate in sporting events in different countries. Political and diplomatic clearance is required by the Indian teams before participation in the international tournaments and forums. No State Government would have the competence or the jurisdiction to undertake such exercise. This is clearly the province of the Union Government.*"

Thus, in relation to such parts of the Code, and such parts *alone*, it is clear that the Central Government is competent to act in its execute power under Entry 10, List I.

47. The next claim – this one by the petitioners – is that the National Sports Code falls within Entry 33, List II (which includes sports), and is thus exclusively within the domain of the State executive. The question that concerns the Court is whether the National Sports Code pertains to sport in the sense contemplated by Entry 33. Clearly, regulation of sports does come within the state list. However, it would be more accurate to

note that states have exclusive competence over sports *within their territory*, i.e. *in* the state/province, any regulation of sport is to be conducted by the state and not the centre. The question before the Court today, however, is different, i.e. who regulates sporting activity *between* states (nationally) and as regards the Indian Union internationally. Or more accurately put, though in principle the same question, the question is who regulates the private bodies that regulate such activities.

48. At present, the Central Government regulates various national and international sporting activities in India. An exhaustive list of these activities, even if possible, would be vast, and the Court will only narrate a few instances to provide context to the following discussion on the scope of Entry 33 of List II. For example, the Centre organizes coaching camps for national teams representing India (Code, paragraph 10.2), as well as getting coaches (Code, paragraph 10.7), organizes for participation of Indian teams in international competitions and training abroad (bearing costs of the sportspersons, their boarding, travel etc., Code paragraph 10.4), acquires clearances for, and assists in financing and conducting, international tournaments organized by the NSFs in India (Code, paragraphs 10.9, 15(1)(b)), provides funds for meeting the expenses on local hospitality of foreign teams visiting India under cultural exchange programmes (Code, paragraph 11), oversees selection of national teams by the NSFs based on principles of merit (Code, paragraph 13), overseeing national (inter-state) tournaments within India (Code, paragraph 15(1)(c)) etc. Undeniably, various executive issues- without which national teams cannot operate (and the organization of international tournaments,

amongst other issues would not be possible) are also touched by the Centre through various levels in the Ministry of Youth Affairs and Sports. For example, Communication No. F.63-3/07-SP.III (dated 20th February, 2008) concerns boarding and lodging facilities to the national campers during transit national coaching camps at Delhi, Communication No. F.52-12/2000-SP.III/SP.I (dated 5th November, 2007) concerns procurement of sports and other equipment required for the training of national teams, Letters F.8-2/2009-SP.III (dated 10th November, 2009) and F.8-4/2009-SP.III (dated 23rd February, 2009) concern grant of out of pocket expenditure to national teams going abroad and permissions for managers to travel with their teams. Equally, various other activities involving a foreign relations aspect, as noted above, are conducted by the Centre.

49. If the petitioner's argument were to be correct, regulation of sports between states and internationally (i.e. *inter alia* the various activities mentioned above) would fall within a legal vacuum. This is because the states would lack the competence to legislate and to act beyond their borders; even more importantly, there would be chaos and conflicting regulatory regimes, within each State concerning inter-state sports. The Union on the other hand, would be enjoined through its inability to locate this power under List I or List III. These activities, though relating to sports, would be left unregulated- worse, prey to potentially conflicting *regimes*, reducing effective regulation of inter-State and International sport to farcical proportions. Clearly, the intent of the drafters was not to prevent regulation of sports at the national or international level, which is the necessary conclusion of a reading of Entry 33, List II which makes the

entire field of sports as an activity under state control. In fact, this very question was touched upon by Justice Sinha in *Zee Telefilms* v. *Union of India and Others*, (2005) 4 SCC 649, where he noted as follows:

> "*We may notice at this juncture that the Union of India in exercise of its executive functions in terms of the Allocation of Business Rules framed under Article 77 of the Constitution of India created a separate Ministry of Youth Affairs and Sports for the said purpose. One of the objects of the Ministry is to work in close coordination with national federations that regulate sports. Keeping in view the fact that the Union of India is required to promote sports throughout India, it, as of necessity is required to coordinate between the activities of different States and furthermore having regard to the International arena, it is only the Union of India which can exercise such a power in terms of Entry 10, List I of the Seventh Schedule of the Constitution of India and it may also be held to have requisite legislative competence in terms of Entry 97, List I of the Seventh Schedule of the Constitution of India."*

Although the ground of lack of constitutional competence was not taken by the petitioners there, the Court in that case also noted the existence of guidelines issued by the Ministry of Youth Affairs and Sports, constituted under the Central Government, to the IOA and other recognized Sports Federations.

50. This question can seen from another angle. NSFs, definitionally, deal only with sports bodies at the *national* level, and thus, only those sports which have a national/international presence. This excludes regulation of both local sports (i.e. sports that are played only within certain states) and local/state level sports bodies that regulate intra state

sports, within a particular state/district, which squarely fall within a state's competence under Entry 33. In fact, as the Code recognizes in its

> '*Guidelines for Recognition of National Sports Federations*' (Annexure II), "*the voluntary sports body at National level (hereinafter referred to as Federation) has a corresponding State/UT level body affiliated to it which in turn, has affiliated District level/local level voluntary sports bodies referred to as Federation) has a corresponding State/UT level body affiliated to it which in turn, has affiliated District level/local level voluntary sports bodies.*"

The Code, revealingly, concerns itself only to regulating NSFs, and not that corresponding State/UT or district/local level bodies. This is a clear dividing line in determining the import of the Code, leading one to conclude that it regulates only *those* sports which have a pan-India or All India presence, and only *those* organizations that are created to regulate sports at *that* level.

51. It is important here, to note the legislative history of the VII Schedule, and the place of sports within in. While the Government of India Act, 1935 did not even mention 'sports' as a relevant field of legislation under either of the lists (Entry 35 being limited to "*[t]heatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition*"), in the Draft Constitution of India of 1948, it was added during the debates of the Constituent Assembly as part of a larger entry of "*sports, entertainments and amusements*." This addition was made by way of an amendment moved by Shri T.T. Krishnamachari on 2nd September, 1949. This proposal did not draw any

discussion within the Assembly on the question of 'sports'. However, on 2nd September, 1949, Shri Shibban Lal Saxena proposed to transfer Entry 33 (or, as it was then, proposed entry 44) from List II to List III. While this amendment was rejected, this does not imply an exclusion of control by the Centre over any activity associated with sports. Rather, that amendment was moved with, and the subsequent discussion related to, a rather different aspect of the entry. This is apparent from the record of the debates on that day, which are extracted below:

> "*Prof. Shibban Lal Saksena: Sir, I beg to move: "That in amendment No.111 of List I (Sixth Week), the proposed entry 44 of List II be transferred to List III." My only reason for moving this amendment is that I consider theatres, cinemas and dramatic performances to be very important modern means of promoting adult education. In our country, if we want to bring literacy to everybody, this entry should go to List III so that there can be co-ordination and regulation of the production and use of the films for educational purposes of the whole nation. By putting this in List III we would not be taking away anybody's powers.*"

52. The debates then address various other amendments proposed to this entry, but no further debate took place upon this particular amendment, and the matter was put to vote. Therefore, a close reading of this amendment, by way of the drafting history of Entry 33, does not lead to the conclusion that any control of the Centre over sports – at least in the sense currently in question – was excluded. Rather, one must consider whether the question of regulating sports, and crucially, sports regulating societies, in the manner in which they exist today, was *contemplated* during the Constituent Assembly debates. The complete lack of discussion

within the Constituent Assembly on this question of coordinating sporting activity internationally or between states, *despite* the discussion on co-ordination between States, and action by the Centre, with respect to films and cinemas, is a strong indicator in this regard. In fact, it would not be inaccurate to recognize, without entering minute details, that the spread of NSFs or organizations, sports, and indeed, international sports organizations regulating sports in India through dictates to these federations, was not a matter to be considered at the time of the Constituent Assembly debates. Here, it is useful to recall the words of Shri Jawaharlal Nehru, Chairman of the Union Powers Committee, in a letter addressed to the President of the Constituent Assembly on 20th August, 1947, sent along with the first draft of the Constitution and specifically the various entries in the three lists of the VII Schedule:

"*We think that residuary powers should remain with the Centre. In view however of the exhaustive nature of the three lists draw up by us, the residuary subjects could only relate to matters which, <u>while they may claim recognition in the future, are not at present identifiable</u> and cannot therefore be included now in the lists*." (emphasis supplied).

53. Accordingly, this case is suitable to categorize in that field of activity which should fall within Entry 97. The drafters of the Constitution recognized that certain fields of activity, or spheres of action, may *develop* with the course of time. Given that these matters were not capable of identification, debate and placement in either of the lists, Entry 97 was inserted into List I to allow the Centre's legislative and executive power to expand accordingly to regulate such matters. The breadth of Entry 97,

moreover, was considered by the Supreme Court in *Union of India* v. *Shri Harbhajan Singh Dhillon*, (1971) 2 SCC 779, as follows:

> "*It seems to us that the function of Article 246(1), read with entries 1-96 List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly, we do not interpret the words "any other matter" occurring in entry 97 List I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the entries 1 to 96. The words "any other matter" had to be used because entry 97 List I follows entries 1-96 List I. It is true that the field of legislation is demarcated by entries 1-96 List I, but demarcation does not mean that if entry 97 List I confers additional powers we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of entry 97 List I is removed by the wide terms of Article 248: It is framed in the widest possible terms. On its terms the only question to be asked is : Is the matter sought to be legislated on included in List II or in List III or is the tax sought to be levied mentioned in List-II or in List III No question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter or tax.*"

54. It is also noteworthy that the Seventh Schedule does not confer the power to legislate, but only demarcates the legislative field between the Centre and the States (see, *Harakchand Ratanchand Banthia* v. *Union of India*, (1969) 2 SCC 166,), limiting the power to legislate based on a restrictive reading of entries clearly runs counter to the plenary power to legislate, and act. As neither Entry 13, List I, nor Entry 33 List II, cover the field within which the National Sports Code operates, the plenary

power to legislate under Article 248, under the residuary field of Entry 97, covers the National Sports Code in this case.

55. This issue is also to be viewed from another important angle. Whilst the Code concerns the regulation of several societies, (and other entities) which are properly governed under Entry 32, List II, the focus of the regulation is not against societies *per se*, but rather societies in their character as NSFs (hereafter "*NSFs*"). These NSFs are societies registered under state laws, undoubtedly, but it is their characterization as NSFs that triggers regulation by the Code. Essentially, their legal character as *societies* is not the relevant factor, and they may continue being just societies without any Central Government interference. However, in order to lay claim to the character of an NSF, their regulation concerns the possession of *that* characteristic, rather than being targeted at the 'societies'. The scope of Entry 32 and regulation (legislative or executive) that in pith and substance falls within the entry is on the regulation of societies as distinct legal entities recognized under state law. That a regulatory measure concerns a society, but is truly aimed at the regulation of another characteristic of that body (and not to its being a society), cannot be said to fall within Entry 32. The necessary characteristic sought to be regulated by the Sports Code of the IOA is its tag of a NSF (National Sports Federation). In other terms, absent a positive act of recognition by the Central Government, IOA would not be an NSF entitled to conduct the various activities that it does. Accordingly, since it recognized as such a body, and vested with those powers, its regulation (insofar as it concerns its functioning as an NSF, i.e. to promote betterment of sports at the

national and international level) rests with the Centre. On the other hand, regulation of societies regulating sports purely at a state level, i.e. state level federations/associations by the Centre would be impermissible by this standard, a conclusion that is not only internally coherent in terms of how these various entries are read, but one that also recognizes the placement of sports in Entry 33 of the List II, and gives that placement a full and appropriate meaning to ensure that no sphere of activity lies in a legal vacuum where neither the Centre nor the State can legislate.

56. It is important to recognize that being a NSF, the IOA is entitled to a host of benefits, and its failure to comply with Central Government guidelines result in adverse consequences. The Code itself recognizes this aspect, with the following observation at paragraph 3.6:

> "*The National Sports Federations who have the recognition including the annual recognition of Government of India in the Ministry of Youth Affairs and Sports, enjoy various facilities/concessions provided by the Government of India. However, failure to comply with the Government Guidelines issued from time to time could result in one or more of the following consequences for the NSF concerned.*"

57. For example, an NSF, without its tag, would not be able to select the national teams and resent India in any international event or international forum; under the Emblems and Names (Prevention of Improper Use) Act, 1959, cannot use the word "India" in its name since its inclusion suggests the patronage of the Government of India; cannot regulate sporting activity outside the state in which they are registered as societies, and thus, lose their 'All India' character; would not be able to avail themselves of Customs Duty Exemptions for the import of sports

goods, sports equipment, sports requisites *as an* NSF (as under Notification No. 5/2010-Customs, dated 19th January, 2010, and Notification No. 146/94-Customs, dated 13th July, 1994,

> "*goods … imported into India by … (2) a National Sports Federation for its own use or for the use of its State/District Affiliate Associations, in a national or international championship or competition, to be held in India or abroad or for the purposes of training , under a certificate issued by the Sports Authority of India*" are exempt from "*the whole of the duty of customs leviable thereon which is specified in the said First Schedule and from the whole of the additional duty leviable thereon under section 3 (of the Customs Tariff Act, 1975) …*"

58. It would also not be able to avail itself of special dispensation available to NSFs to remit funds towards sponsorship, prize money etc. for activities abroad (as under Row 9, Schedule II of the Foreign Exchange Management (Current Transaction Rules), 2000,

> "*[r]emittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000*"

requires approval of the Union Department of Youth Affairs and Sports of the Ministry of Human Resources Development, but since NSFs qualify as a "National" sports body given the Department's recognition, they may remit such amounts automatically and without prior approval). Significantly, these benefits, and the label 'NSF', are available *only* through, and because of, recognition by the Ministry of Youth Affairs and

Sports. That is to say that the relationship between the NSF (here, the IOA) and its regulatory powers is critically dependent on its recognition and characterization as an NSF. Accordingly, the regulation of the IOA is, in the relevant part, regulation of an NSF which is conducting tasks that it could other have not without that characterization.

59. Significantly, the IOA admits that, as a matter of law, NSFs in themselves are legal. It nevertheless argues that their regulation by the Centre is beyond its competence. However, these two strands of argument cannot proceed together. NSFs themselves are entities *created* by the Government of India, in that a society/association is recognized as an NSF by the Government of India (under Annexure II of the Code) through a process of accreditation and affiliation. Without the positive action of the Government of India, the IOA would not exist independently as an NSF. The IOA does not argue that this process of recognizing sports bodies as NSFs transgresses into the State's powers under Entry 33, List II. Crucially, if this is the case, then, as a necessary implication, their subsequent regulation by the Centre is justified on the *same* ground. Having legally (and with the requisite competence) created NSFs, their regulation is only consequential. Such regulation may be seen and do constitute terms and conditions of affiliation/recognition. If any sports body currently recognized as an NSF wishes to free itself from such regulation by the Centre, it may choose to discontinue being an NSF. However, it is unconvincing to claim that the Centre is acting with competence in conferring benefits upon such sports bodies (by

recognizing them as NSFs and giving them consequential benefits), but acting outside its competence in creating guidelines for them.

60. The Court at this stage notes that the various regulatory measures under the Code concern elections within NSFs and the conditions of tenure of the office-bearers (for example, Communications No. F. 11-4/74-SP.I, dated 20th September, 1975, and F.8-17/2009-SP.III dated 1st May, 2010). They have not gone unnoticed, but rather, are precisely the sort of guidelines that are covered by this line of reasoning. It is irrelevant whether the content of the regulation concerns elections to the NSFs or terms of office-bearers, on one hand, or the conduct of national sports meets on the other, in that *both* those extremes still concern regulation of NSFs *qua* that characteristic (as discussed above), and not *qua* their legal form as a society, which would fall within Entry 32, List II.

61. The Code therefore does not fall (subject to the limited exceptions mentioned above) within any specific entry under any of the lists in the Seventh Schedule. Fairly, the crux of the Code revolves around the regulation of NSFs (which are *sui generis* entities recognized by the Central Government), their terms of affiliation and in a broader sense, sporting activity nationally and internationally. Accordingly, this Court is of the opinion that the Code falls under Entry 97, List I.

62. To summarize the above discussion, it is held that though "sports" *per se* falls within the legislative field of the state, international sports, and Olympic sports, involving international and inter-state ("national") ramifications are covered under Entry 97 of List I. The impugned code

therefore cannot be held to be beyond the executive power of the Union, under Article 73 (1) of the Constitution of India.

> *Is the impugned code not valid and binding as it is not "law" under Article 13 of the Constitution of India and whether the provisions impugned are unreasonable restrictions?*

63. This Court proposes to deal with both aspects, since they are closely inter-related. *Kharak Singh* v. *State of Uttar Pradesh*, AIR 1963 SC 1295 undoubtedly holds that executive orders and fiats cannot restrict fundamental rights and that such measures would require enactment of a valid law by the competent legislature. The Supreme Court held to the same effect in *Bijoe Emmaneul* (supra). Likewise, the holding in *Damayanti* (supra, relied on by IOA) establishes that any order, or statutory measure, which has the effect of foisting, or imposing members in a society, or dictating a management, as part of a state measure, would not be considered a "reasonable" restriction. There is no gainsaying that mere executive orders cannot regulate or restrict fundamental rights. Such restrictions – through orders – would have to possess statutory flavor, i.e. be subject to enacted law. However, what the IOA is seeking here is a declaration that the Union is not possessed of any power to regulate how it chooses to sanction sports grants. The petitioners' argument is premised on its right to form associations and carry out activities for which it is incorporated, by exercise of its rights under Article 19(1)(c) of the Constitution of India. The reference to *Damayanti* is therefore in the context of its assertion of autonomy to carry out its activities, uninterrupted by state regulations. Now, the decision of the Supreme Court in *All India Bank Employees Association* v. *National Tribunal*, AIR

1962 SC 171, is an authority for the proposition that the right to form an association does not entitle the citizen or individual, or group, forming the association a concomitant right to claim that the objects for which the association is formed too is part of the (larger) fundamental right to form association. In that case, the precise question before the Court was the regulation of unions to go on strike. The petitioners had urged that such regulations were impermissible, given the limited nature of restrictions which could be imposed under Article 19(4). It was asserted that the right to protest or strike was one such concomitant right, intrinsically protected under Article 19 (1)(c). The Constitution Bench of the Supreme Court rejected this contention, observing as follows:

> *"the argument of the learned Counsel, viz., that the right guaranteed to form "an union" carries with it a concomitant right that the achievement of the object for which the union is formed shall not be restricted by legislation unless such restriction were imposed in the interest of public order or morality, that calls for critical examination. We shall be referring a little later to the authorities on which learned Counsel rested his arguments under this head, but before doing so we consider it would be proper to discuss the matter on principle and on the construction of the constitutional provision and then examine how far the authorities support or contradict the conclusion reached.*
>
> *The point for discussion could be formulated thus: When sub-cl. (c) of cl. (1) of Art. 19 guarantees the right to form associations, is a guarantee also implied that the fulfilment of every object of an association so formed is also a protected right, with the result that there is a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality*

set out in cl. (4) of Art. 19? Putting aside for the moment the case of Labour Unions to which we shall refer later, if an association were formed, let us say for carrying on a lawful business such as a joint stock company or a partnership, does the guarantee by sub-cl.(c) of the freedom. to form the association, carry with it a further guaranteed right to the company or the partnership to pursue its trade and achieve its profit-making object and that the only limitations which the law could impose on the activity of the association or in the way of regulating its business activity would be those based on public order and morality under cl. (4) of Art. 19? We are clearly of the opinion that this has to be answered in the negative. An affirmative answer would be contradictory of the scheme underlying the text and the frame of the several fundamental rights which are guaranteed by Part III and particularly by the scheme of the seven freedoms or groups of freedoms guaranteed by sub- cls. (a) to (g) of el. (1) of Art. 19. The acceptance of any such argument would mean that while in the case of an individual citizen to whom a right to carry on a trade or business or pursue an occupation is guaranteed by sub-cl. (g) of cl. (1) of Art. 19, the validity of a law which imposes any restriction on this guaranteed right would have to be tested by the, criteria laid down by cl. (6) of Art. 19. if however he associated with another and carried on the same activity-say as a partnership, or as a company etc., he obtains larger rights of a different content and with different characteristics which include the right to have the validity of legislation restricting his activities tested by different standards, viz., those laid down in el. (4) of Art. 19. This would itself be sufficient to demonstrate that the construction which the learned Counsel for the appellant contends is incorrect, but this position is rendered clearer by the fact that Art. 19-as contrasted with certain other Articles like Arts. 26, 29 and 30-grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, i.e., in right 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.

The resulting position way, be illustrated thus If an association were formed' for' the purpose of carrying on business, the right to form it would be Guaranteed by sub-cl. (c) of cl. (1) of Art. 19 subject to any law restricting that right conforming to cl. (4) of Art. 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-cl. (g) of cl. (1) of art. 19 subject to any relevant law on the matter conforming to el. (6) of Art. 19 ; while the property which the association acquires or possesses would be protected by sub-el. (f) of cl. (1) of Art. 19 subject to legislation within the limits laid down by cl. (5) of Art. 19.

We consider it unnecessary to multiply examples to further illustrate the point. Applying what we have stated earlier to the case of a labour union the position would be this : while the right to form an union is guaranteed by sub-el. (c), the right of the members of the association to meet would be guaranteed by sub-el. (b), their right to move from place to place within India by sub-cl.(d), their right to discuss their problems and to propagate their views by sub- cl. (a), their right to hold property would be that guaranteed by sub-cl. (f) and so on each of these freedoms being subject to such restrictions as might properly be imposed by cls. (2) to (6) of Art. 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 a fair and liberal sense, it is quite another to read which guaranteed right as involving or including 'Concomitant rights necessary to achieve the object which might be supposed to under lie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result."

64. In the present case, what is in issue is whether the Union Government, through the Code (primarily designed to act as guidelines for its functioning, in admissibility of concessions and state privileges, such as customs duty waivers, access to state owned property, stadia, grants for training, coaching, travel expenditure and foreign travel clearances, etc. to the associations, which can claim such privileges) is violating the right of these associations under Article 19(1)(c). Specifically, the standards impugned in this case are the tenure restrictions of office bearers of such associations. The reliance on *Damayanti*, (supra), as shall be presently seen, by the petitioners, is inapt. That was a case where through legislation certain individuals were imposed onto the membership of existing association, (i.e. the Sammelan). These new individuals were not part of the association's membership. The Supreme Court held the imposition to be unreasonable, but even while doing so it took note of the previous ruling in *All India Bank Association:*

> *"It is true that it has been held by this Court that, after an Association has been formed and the right under Art. 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 Associate on. 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 Art. 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.."*

65. The petitioners had also relied on *Bijoe Emmanuel* and *Zorastrian Co-operative Society.* The first was in line with the decision in *Kharak Singh* that fundamental rights under Part III cannot be impaired without legislative enactment. The latter was relied upon for a similar proposition, and also in support of the argument that the right to association under Article 19(1)(c) is infringed by impugned provisions of the Code. As far as the question of the Code not being "law" is concerned, this Court proposes to deal with the submission while answering the issue pertaining to provisions for aid, recognition and largesse. So far as the right to association goes, the Court in *Zorastriaion Co-operative* was called upon

to decide whether the judgment of the Gujarat High Court holding that the restriction imposed by the petitioner co-operative society was invalid as it affected the right to property and more specifically, the right to deal with such property. The petitioner co-operative society had resolved not to permit the sale of properties by its members to non-Parsis. An individual member approached the High Court, impugning this as an unreasonable restraint. The challenge was upheld by the High Court. Invoking the principle in *Damayanti,* the Supreme Court held that the conditions for inducting members was within the legitimate power of the co-operative society to formulate and that so long as the condition of non-alienation existed, and did not fall foul of any statutory condition or restriction, the Courts could not coin and impose their own notions of public interest. Without in any manner seeking to undermine the apparently wide nature of observations in the judgment, this Court holds that the *ratio* has to be viewed in the narrow prism of what were the facts and the fair application of *Damayanti*. The Court held that if the association were to be compelled to admit new members, as would be the inevitable consequence of transfer (of the properties by its members) the freedom of existing members to choose who ought to be members of the co-operative society would be affected and impaired.

66. The impugned provisions of the Code in this case *do not* impose anyone as a member. Nor does any part of the Code mandate that an unrelated individual or nominee of a government or state agency should be part of the IOA or any of its NSFs. Nor are non-members directed to be elected. All that the impugned provisions direct is that to qualify for the

privileges and concessions, for which these associations, including NSFs and IOA, apply frequently, their respective charters or constitutions should impose tenure restrictions, disentitling individual members from monopolizing positions of power and influence for definitely spelt out period(s). These conditions are qualitatively different from the kind in scrutiny before the Supreme Court in *Damayanti* (supra) and *Zorastrian Co-operative* (supra). In the latter decision the Court also cautioned that public policy can be an "*unruly horse*" which should be sparingly, if ever, resorted to in matters of contract entered into voluntarily, as would be the case, where parties agree to form an association. The Court held that in the absence of a statutory interdict, Courts should not *'read in'* conditions that are absent in such associations' constitutions, as doing so would undermine the basis of their formation. In *Raghubar Dayal Jai Prakash* v. *Union of India & Ors.*, 1963 (2) SCR 547 it was held that if the statute imposes conditions subject to which alone recognition could be accorded or continued,

> *"it is a little difficult to see how the freedom to form the Association is effected unless, of course, that freedom implies or involves a guaranteed right to recognition also which it did not".*

67. In view of the above discussion, it is held that the impugned stipulations in the Sports Code, spelling out tenure restrictions, for various officer bearers, and their concurrent operation, do not violate the Petitioners' rights under Article 19 (1) (c).

> *Are the impugned regulations to be held unenforceable as they impose disproportionate or unreasonable conditions violating*

Article 14 and expose the IOA or NSFs to the risk of disaffiliation or de-recognition by IOC or other such international bodies.

68. There are norms within the country which insist that even in purely private companies – in which the State or the Government has no shareholding, the managing director (appointed under Section 26 of the Companies Act, 1956) cannot function as managing director of more than one company. This restriction can be relieved if the second company, through its Board of Director, *unanimously* resolves to appoint one who is already a managing Director of another public limited company (Section 316(2)). Such an individual cannot hold office as Managing Director of more than two companies. This norm exists, even in cases of entirely private commercial organizations, and is put in place in because of the regulatory power of the state, despite the commercial concern not seeking aid or finance from the State or UOI. Likewise, in the case of banking companies under the Banking Regulation Act, 1949, the Chairman of a bank has to be a full time employee of the bank; he cannot be director in some other company or companies, and has a tenure of five years, is entitled to re-election or appointment (Section 10-B). His or her term can be curtailed by removal, by the Reserve Bank of India; the provisions of Section 10-B prevail, by virtue of Section 10-D. *These apply whether or not a banking company is a nationalized bank or a private bank.*

69. The existence of norms such as the instances pointed out in the preceding paragraph are manifestation of society's concern that companies and banks should be regulated in a particular manner *regardless of whether they seek or are dependent on aid, or recognition for their activities.* In the

case of IOA and NSFs, the concerns are equally, if not greater; every international event requires great degree of Union involvement – funding, international clearance, co-ordination with other agencies, etc.

70. It is also relevant here that the IOA's argument that prescribing tenure or other restrictions, as a condition for Central assistance or recognition, undermines its autonomy, central to continued recognition by IOC, is not correct. There are laws in several parts of the world- for instance in Malaysia (through the Sports Development Act, 1997), in the United states (through the Amateur Sports Act, 1978- also called the Ted Stevens Olympic and Amateur Sports Act) that conditions of recognition of such sporting bodies are regulated. The US enactment (36 US Code Chapter 2205 at 2205-22, 'Eligibility requirements') *inter alia* provides that the body or association seeking recognition**:**

> *"(11) provides for reasonable direct representation on its board of directors or other governing board for any amateur sports organization that—*
>
> *(A) conducts a national program or regular national amateur athletic competition in the applicable sport on a level of proficiency appropriate for the selection of amateur athletes to represent the United States in international amateur athletic competition; and*
>
> *(B) ensures that the representation reflects the nature, scope, quality, and strength of the programs and competitions of the amateur sports organization in relation to all other programs and competitions in the sport in the United States.."*

71. In fact both the enactments referred (Malaysia as well as the United States) prescribe standards, including the standards concerning internal governance etc. which sports bodies have to comply. The US statute stipulates these conditions as applicable to the US National Olympic federation, or sporting body. The New Zealand Sport and Recreation Act, 2002, likewise established a statutory agency whose functions are to *(m)facilitate co-ordination between national, regional, and local physical recreation and sport organisations:* and "*(n)represent the Government's policy interests in physical recreation and sport internationally.*" So is the Australian Sports Commission Act, 1989 premised on overriding state interest in regulation of sports, especially international sports including the funding and co-ordination of functioning of Olympic sports bodies. This is achieved through a statutorily mandated company or corporation, known as the Australian Sports Foundation. The argument of the petitioners therefore that State regulation or stipulations tenure restrictions impinge on the autonomy of IOA and NSFs falling foul of the Charter is unappealing.

72. An added reason why the petitioners' argument has to fail is that even otherwise, the laws of the land – as well as norms which are binding upon citizens and entities such as the petitioners when they engage with the state or seek its aid or assistance – must prevail in a uniform and non-arbitrary manner. Surely, neither IOA nor any NSF can complain that the operation of provisions of law, which affect their functioning, such as grant of tax exemptions, state policies enabling them to claim access to resources, labour and employment laws and a host of general laws applicable to all others would apply. The argument of governance

autonomy in such cases cannot prevail over those principles and provisions of law or norms uniformly made applicable to all, who might access those very resources. The ruling in *The Ahmedabad St. Xaviers College Society* v. *State of Gujarat*, AIR 1974 S. C. 1389 is, in this context, instructive as well as significant. The Supreme Court held that the seemingly absolute nature of a linguistic or religious minority community to establish and administer an educational institution of its choice, under Article 30 of the Constitution of India, does not extend to an *entitlement to claim affiliation without fulfilling the prescribed conditions*, or immunity from observation of general laws or policies which have to be applied.

73. State or social concern in regard to regulation of sports can be achieved, *inter alia*, through the method of requiring certain definitive policies to be followed by the NSFs and the IOA to ensure its representative character, aimed at the larger common good in the world of sport and to avoid development of *cliques* or cabals in sporting federations or bodies. Such cabals beget not only concentration of power, but thrive in opaqueness in all their dealings- functioning, finances and most importantly selection of sportspersons to represent the country in the concerned field of sport. The overriding concern of the Central Government in ensuring that the decision making are by bodies which such cabals operate, is sought to be achieved by such tenure restrictions. So long as the Central Government has the authority to recognize the national sporting federations and the IOA, even for the purpose of funding and declaring which of them is entitled to use the national emblem or use the term "India", insistence on such regulations, is legitimate. The important aspect here is that the Central Government, through the Code is

not saying that absent such compliance, there would be any deprivation of an existing right; all that it suggests is that if recognition and funding for various purposes is sought (towards travel, boarding and lodging, coaching facilities, tax exemptions, etc) the NSF has to comply with these guidelines. In other words, it is not as if the violation of such norms leads to any adverse consequence, in the form of a penal sanction, or blacklisting. The body simply cannot claim to select a team that represents "India" or hold itself out as "Team India". The Petitioners' argument that Sports Code provisions are unenforceable, as they are not "law" therefore, is without merit.

Are the norms otherwise unreasonable and arbitrary and amount to deprivation of the right of the NSFs and IOA to govern themselves, by insisting on tenure restrictions as a precondition to recognition and access to funding, etc.

74. The Petitioners had independent of the submission that the Code is unenforceable because it is not law and that it violates their fundamental rights, also argued that though Article 282 empowers the Central Government to defray expenses and fund activities which it is not competent to regulate through legislation, the conditions for grant should be reasonable. Insistence on tenure restrictions have no nexus with the object of sports promotion, and therefore not legitimately the concern of the Central Government; such regulations are also arbitrary.

75. It has been held in several judgments that as a condition for granting aid, the Government or state agency can direct that the recipient institution should be managed in a particular manner. Thus, in *TMA Pai*

Foundation v. *State of Karnataka*, 2002 (8) SCC 481, it was held by a larger, 11 judge bench that

> *"Once aid is granted to a private professional educational institution, the government or the state agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution…"*

This understanding is based on the reality that funds so given never lose their imprint as public funds, made available by the tax payer. *P.A. Inamdar* v. *State of Maharastra*, 2005 (6) SCC 537 a later seven judge Bench decision, acknowledged that aided institutions can be subjected to a great degree of control and regulation in their management and functioning. The intention for granting such funds would be that its use for is public advancement. Conversely, the use of public funds or those which retain the imprint of public funds can never be for private purposes. In *Bhim Singh* (supra), while interpreting Article 282, the Supreme Court held that:

> *"49. In this context, the scope of Article 282 requires to be considered. Article 282 allows the Union to make grants on subjects irrespective of whether they lie in the Seventh Schedule, provided it is in public interest. Every article of the Constitution should be given not only the widest possible interpretation, but also a flexible interpretation to meet all possible contingencies which may arise even in the future. No article of the Constitution can be given a restrictive and narrow interpretation, particularly, when the said article is not otherwise subject to any other article in the Constitution. Article 282 is not an insertion by Parliament at a later date, on the other hand, the said article has been in the Constitution right from the inception and has been invoked for implementation of several welfare measures by Central grants.*

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52. *The expression "public purpose" under Article 282 should be widely construed and from the point of view of the Scheme, it is clear that the same has been designed to promote the purpose underlying the directive principles of State policy as enshrined in Part IV of the Constitution of India. It is not in dispute that the implementation of the directive principles is a general responsibility of the Union and the States. The right to life as enshrined in Article 21 in the context of public health is fully within the ambit of State List Entry 6, List II of the Seventh Schedule.*

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54. *Even under the Government of India Act, 1935, a similar provision was contained in Section 150(2) under the heading "Miscellaneous Financial Provisions". The Constitution-makers have clarified the expression "purpose" by making it a "public purpose" thereby clearly circumscribing the general object for which Article 282 may be resorted to, that is, for a "public purpose". It was pointed out before us that similar provisions are also found in the Constitutions of other countries such as USA and Australia. Reference was made to the first clause of Article I(8) of the Constitution of the United States of America, which states that:*

> *"8. The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States;"*

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56. *The analysis of Article 282 coupled with other provisions of the Constitution makes it clear that no restriction can be placed on the scope and width of the article by reference to other articles or provisions in the Constitution as the said article is not subject to any other article in the Constitution. Further, this article empowers the*

Union and the States to exercise their spending power to matters not limited to the legislative powers conferred upon them and in the matter of expenditure for a public purpose subject to fulfilment of such other provisions as may be applicable to the Constitution their powers are not restricted or circumscribed. Ever since the inception of the Constitution several welfare schemes advancing the public purpose/public interest by grants disbursed by the Union have been implemented. It is pointed out that MPLAD Scheme is one amongst the several schemes which have been designed and implemented under Article 282."

76. State aid or recognition in matters such as sport can be premised on fulfillment of certain pre-conditions. At this stage, it would be relevant to analyze some of the important contents of the Sports Code. Annexure II contains the Guidelines for Recognition of NSFs. This prescribed the eligibility requirements to be registered as an NSF. Importantly, Clause 3.5 regulates the tenure of Office bearers in accordance with Government orders (which are found in Annexures XI and XIII). Annexure XI is Order No. F. 11-4/74-SP.1, dated 20th September, 1975, and in Clause 3(i) and 3(ii) regulates the term of an office bearer (i.e. President, Secretary and Treasurer only), and the maximum period for which the office may be held (4 years, and a period of 8 years consecutively maximum). Further, this order prescribes that an office bearer in one NSF cannot hold office in another NSF, except the IOA. Subsequently, Annexure XIII is a letter, F. No. 8-17/2009-SP-III, dated 1st May 2010, making certain changes to the tenure requirements "*after taking into account the facts and circumstances of the case, and the views expressed by the Hon'ble Courts and Parliament, and the prevailing public opinion on the matter, and with a view to encouraging professional management, good governance, transparency, accountability,*

democratic elections etc." That letter introduces a maximum age limit to hold office, i.e. 70 years, and further, indicates that the President may hold the position for a maximum period of 12 years, and other office bearers must, after two successive terms of 4 years, have a cooling off period of 4 years. Following up on this, Annexure XIV is a letter F. No. 8-17/2009-SP-III, dated 17th May, 2010, asking the NSFs to comply with the government guidelines on good governance, especially provisions relating to the tenure and election of office bearers, as indicated above, in the context of the Olympic Charter, the 'Basic Principles of Good Governance of the Olympic and Sports Movement' and the decision taken in the XIII Olympic Congress indicating that essential nature of athletes' involvement in decision making, with full voting rights and the establishment of a grievance redressal mechanism for athletes. Similarly, Annexure XXXVII is the "*Model Election Guidelines to be Followed by All National Sports Federations*", which ensures that the process of elections is fair and transparent, without any issues of bias. (this also provides the form of the ballot papers, result of counting of votes, declaration of results, list of contesting candidates, list of the electoral college, manner of election, scrutiny of candidates and so on in great detail). Annexure XXXII is a letter, F. 14-82/2009-SP.IV, dated 18th December, 2009, indicates that in terms of Rule 15(2) of the CCS (Conduct) Rules, 1964, no Government servant can be an office bearer, or run for elections to that post, in any NSF, unless otherwise permitted. This is supplemented by Annexure XXXIII, No. 14-82/2009-SP.IV, dated 4th February, 2010, which reiterates this rule.

Financial Regulation

77. Annexure IX (modified partially by Annexure LIII) is a letter F. No. 1-27/B6-D.I(SP) dated 2rd September, 1988, prescribing guidelines for providing financial assistance NSFs for meeting the pay and allowances of Joint Secretaries/Assistant Secretaries employed by them, and prescribing the qualifications for appointment of such Joint Secretaries and Assistant Secretaries, by a letter F. No. 1-28/88-SP-IV, dated 21st February, 1989. Annexure XXXVI is a letter, No. 9-1/2008-SP.I, dated 18th February, 2009, indicating the documents required by the Government for releasing the grant in aid to the NSFS.

Suspension or Recognition of NSFs:

78. Annexure III indicates the grounds for which the NSF status can be suspended. This includes, *inter alia*, suspension by the concerned international or Asian federation, failure to hold elections as prescribed in the Constitution of the NSF or in accordance with the government guidelines or gross irregularities in election procedures, failure to submit an annual audited account, non-compliance with the conditionalities prescribed by the Government etc. Annexure XXXIX, No. 9-6/98-SP.II/SP.I (Vol. II), dated 11TH June, 2009, indicates the conditions to be fulfilled by that sport for the Sport Associating regulating it to be recognized as an NSF (game should have an all-India spread, should be recognized by the School Games Federation of India etc.) in respect of sports which are not included in the Olympic, Commonwealth or Asian Games,

79. Development/Regulation of Sporting Activity is dealt with in Annexure X which contains guidelines for preparation of a 4 year Development Plan (corresponding to the Asian Games cycle of 4 years) for

the future development of sport, i.e. to develop sports infrastructure, improve training, encourage competitions, improve the availability of equipment to sportspersons etc. This document provides guidelines for the headings that the Development Plan of each NSF Should consider, such as athlete development, coaching, officiating, development of clubs, participation in international tournaments etc. Similarly, Annexure XXI, F. 49-3/2008-SP-II, dated 18th September, 2008, provides guidelines to NSFs on how to ensure efficient management of coaching camps, selection of coaches and athletes to ensure quality is maintained in such processes. Equally, Annexure XL, F. No. 63-3/07-SP.III, dated 20th February, 2008, concerns the mechanism for providing board and lodging facilities to sportspersons in National Camps during Transit National Coaching Camps in Delhi.

80. Crucially, Annexure XLVIII is a letter, F. 13-27/2007-SP.III, dated 10th January, 2008, asking NSFs to prepare a data-base of performance of individual players in national and international events, including the number of times the player has had foreign exposure, his/her performance in the past one year, the justification for being included in the proposed tour and the comments of the Government Observer.

81. Annexure XVI, F. 32-18/2009-SP.III, dated 25th November, 2009, is a letter indicating measures to be taken to curb age fraud in sports, and a letter, F. No. 8-10/2010-SP-III, dated 12th August, 2010, ensuring compliance with the judgment of the Supreme Court in *Vishakha* on the prevention of sexual harassment of women in sports. Annexure XX, F. 49-3/2008-SP-II, dated 18th September, 2008, are guidelines for dope testing

procedures, indicating how the procedure should be unbiased and transparent, and ensuring compliance with the World Anti-Doping Authority Code. Importantly, Annexure XXXI is a letter, No. 94-11/2007-SP.I, dated 31st August, 2010, read with a previous letter of 18th August, 2010, concerns the management of para athletes and their training, especially as regards such athletes' ability to take escorts along for assistance.

82. Some regulation concerns the acquisition of equipment – Annexure XXIII (read with Annexure XXX) is a letter, F. 52-12/2000-SP-I, dated 4th February, 2010, and Notification No. 5/2010 and 146/94 of the Customs Authorities indicating that sports equipment ordered by NSFs is exempt from import duty. Similarly, Annexure XXV is Policy Circular No. 31/2009-2014, dated 26th April, 2010, (read with Notification No. 101/2010 of the Customs Authorities) facilitating the import of weapons by renowned shooter, by rationalizing and liberalizing the procedure. Annexure XXVII XXVIII and XXIX also operate in this field, prescribing the procedure by which such shooting equipment can be procured, and Annexure XLI concerns procurement of sporting equipment generally for training of National Teams and in National Coaching Camps.

83. The Code contains various forms, for various purposes: Annexure IV, is a form for application for financial assistance to the NSF for holding coaching camps, Annexure VI, is an application form for obtaining approval for sending sports teams/persons abroad; Annexure VII is an application form for financial assistance to the sports federations/associations for national championships; Annexure VIII is an application form for obtaining approval of the Government of India for inviting foreign

teams/sportspersons to India; Annexure XII is an application form for recognition of NSF; Annexure XLII is an application form for financial assistance of purchase of equipment (supplemented by Annexure XLIII, which prescribes the procedure for such purchases). Annexure XV is a letter, F.9-69/2009-SP-II, concerning the management of records of NSFs, which are to be forwarded to the Government. Annexure XVIII is a letter, F. 26-2/2010-SP-II, declaring NSFS as public authorities under the Right to Information Act. Annexure XIX is a letter, F. 9/68/2009-SP-I, dated 11th October 2009, indicating that NSFS must draw an advance calendar of teams travelling abroad, and foreign teams coming to India, in order to obtain clearance from the Ministry of External Affairs. This is supplemented by Annexure L concerning the provision of security clearance for teams/persons from certain countries, XLVII indicating when permission is required to be taken, and XLVI, which deals with managers of teams also going abroad. Annexure XXII is a letter, F. 45-5/2008-SP-I, dated 26th December, 2008, indicating that only Indian citizens can represent India internationally. Annexure XLV, F. 8-2/2009-SP.III, dated 10th November, 2009, provides for an out of pocket allowance for sportspersons representing India abroad.

84. The breadth of the above regulations – which go to the extent of prescribing the staffing requirements and pay, salaries etc of NSFs and IOA, and stating that irregularities in the manner of holding elections, or failure to hold elections can result in loss of recognition – show that the Central Government has placed measures which enable it to oversee the activities of these bodies, for ensuring that the funds are properly utilized. It is necessary

to emphasize that aid given to these bodies and organizations is not in the form of monetary grant alone; it enables sportswomen and sportsmen as well as sports administrators to travel stay abroad, buy equipment, attend international events, whenever necessary obtain coaching expertise, attend administrative or international non-sporting meetings, etc. Besides, sports and sports related equipment (specialized medical equipment geared for sports) are imported, on payment of nominal or nil duty. Many organizations might be obtaining sponsorships or international sponsorships or endorsements, or be the canalizing bodies for such endorsements and sponsorships on account of the conditions they impose on sportsmen and administrators, and in the process earn considerable revenue, or facilitate it. These are at least in many cases based on official recognition. That the petitioners has not an issue with the manner the Central Government dictates how funds are to be utilized, in all the verisimilitude of controls and guidelines discussed above, is at once interesting and revealing. The petitioners are not aggrieved by such degree of control – their objection is *only as to the tenure restrictions.*

85. In the opinion of the Court, aid or recognition is not a one way street. The Central Government's legitimate right to recognize these sporting bodies, for the purpose of use of the expression "India" enabling national sports teams sponsored by these NSFs and the IOA to in turn use that appellation, carries with it, the right to insist that certain basic standards are followed. With the right to grant or withhold such recognition is also the right to spell out conditions, for the grant of aid- as such is undoubtedly the case, because travel expenditure, and assistance for procurement of

equipment would be aid (apart from use of state resources such as stadia, customs duty waiver for importation of equipment, facilitation and co-ordination during international events etc). The figure mentioned on behalf of the Central Government towards positive grants for use these last four years for travel purposes alone was Rs. 435 crores. Considering that the NSF and IOA are free to use the national status conferred upon them by the recognition and garner revenue, in the form of endorsement, sponsorships, sale of event coverage rights to the media, etc, there cannot be two opinions about existence of an overriding public or state concerns that such bodies do not remain the preserve of the few, or worse, the moneyed and the powerful.

Conclusions

86. For the foregoing reasons, it is held that the petitioners' contentions are rejected. The Court reiterates its conclusions that international sports and regulation of NSFs, and IOA, in respect of the matters which are the subject of these proceedings, falls within Entry 97 of the First List to the Seventh Schedule to the Constitution of India. The Central Government can insist upon adherence to these provisions, without the aid of legislation. It is also held that the Sports Code does not violate the freedom under Article 19(1)(c) of the Constitution. Neither are its provisions arbitrary. The tenure restrictions impugned in this case can and are insisted upon as a part of the public interest in efficient and fair administration of such NSFs. This Court also specifically notes the letter/notice dated 20.09.1975, which forms part of the Sports Code, as modified by the later letter of 01.05.2010, to the following extent:

"i. The President of any recognized National Sports Federation, including the Indian Olympic Association can hold the office for a maximum period of twelve years with or without break:

ii. The Secretary (or by whatever other designation such as Secretary General or General Secretary by which he is referred to) and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, may serve a maximum of two successive terms of four years each after which a minimum 'Cooling off period of four years will apply to seek fresh election to either post.

iii. The President, the Secretary and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, shall cease to hold that post on attaining the age of 70 years.

iv. The other provisions in respect of the tenure limit as contained in the letter of 1975 mentioned above shall remain as it is.

v. The above dispensation will come into operation with immediate effect."

This regulation (subject to any subsequent amendments) should, till appropriate legislation is framed by Parliament, bind the parties and all NSFs as a condition for recognition, aid and crucially, for the use of the term "India" by any team in International Olympic sporting event.

87. Sports administration in this country appears to have reached depths from where neither sporting bodies nor the State seem to care any longer for the successive generations' sporting future. Reform is to be introduced urgently by the State. Sports administration appears to be mired in power play, where money, influence and chicanery play a dominant part and those who had participated in competitive sports at some stage are given token

representation at best, or mostly marginalized. As the cliché goes, the state of sports is in a lockjaw where roughly 1.2 billion people have to rest content with a harvest of medals so meager as to be surpassed by just one individual like Micheal Phelps. The London Olympic saw India notch up a tally of six medals. This averages to one medal for roughly every 207 million inhabitants. It is not without truth that the common perception that Karnam Malleswari, Col Rajyavardhan Singh Rathore, Abhinav Bindra, Sushil Kumar Tehlan and Vijender Singh were driven for individual personal reasons to focus on competitive sports. Sport administration, the way it is run in India, through coteries, cabals, manipulations and intrigues, seems to discourage a vast majority of the population to devote itself to athletics, shooting, judo, table tennis, gymnastics, soccer, boxing, fencing and the like. Sports can be popularized and made successful, when those who genuinely feel the need to inspire and attract talent, and are themselves driven by inspiration, evolve policies that result in a range of sporting activities becoming as or even somewhat as rewarding as cricket. As a nation too, we should not be deadened to news that sportspersons sell their proudly and hard earned medals to fight off penury (as in the case of Sita Sahu, a mentally challenged teenager from Rewa who won two Bronze Medals in the 2011 Olympic Games). Till the time that India, with her more than a billion, continues to have a feeble sporting outlook, those who excel will do so *despite* the state of NSFs and sports bodies controlling them.

88. In view of the above conclusions, the writ petition has to fail. It is

dismissed, but subject to directions contained in paragraph 86. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

MAY 09, 2014