



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.55 OF 2013

Cricket Association of Bihar ...Petitioner
V/s.
Board of Control For Cricket in India & Ors. ...Respondents

Dr.Virendra Tulzapurkar, Senior Counsel with Dr.Birendra Saraf, Mr.Ameet Naik, Mr.Karan Bhosale, Mr.Vaibhav M. Bhure, Mr.Tashi Phuntsog and Mr.Asadulla Thangal i/b Naik Naik & Co.for the Petitioner.

Mr.Rafique Dada, Senior Counsel with Mr.T.N.Subramanian, Senior Counsel, Ms.Ankhila Kaushik, Mr.Rahul Mascernhas, Mr.Indranil Deshmukh, Mr.Aditya Mehta and Mr.Adarsh Saxena i/b Amarchand Mangaldas & S.a. Shroff & Co. for Respondent No.1.

Mr.I.M. Chagla, Senior Counsel with Mr.F.E. DeVitre, Senior Counsel and Mr.Prashant Beri i/b Beri & Co. for Respondent No.2.

Mr.Janak Dwarkadas, Senior Counsel with Mr.Sharan Jagtiani, Mr.Rohan Dakshini, Mr.S. Bobde and Ms.Nikita Mishra i/b Federal & Rashmikant for Respondent No.3.

Mr.J.J. Bhatt, Senior Counsel with Mr.Shyam Mehta, Senior Counsel with Mr.Ashish Kamat i/b Crawford Bayley & Co. for Respondent No.4.

CORAM : S.J. VAZIFDAR &
M.S. SONAK, JJ.
DATE : 30TH JULY, 2013.

P.C. :-

1. Rule. The Writ Petition is heard finally.
2. The petition is filed as a public interest litigation.

The petitioner is registered under the Societies Registration Act, 1860. Respondent no.2 – N. Srinivasan is the President of respondent No.1 – The Board of Control for Cricket in India. Respondent No.2 is a shareholder and the Vice Chairman and Managing Director of respondent No.3 – India Cement Limited. Respondent No.3 is the owner of a cricket team / franchisee – Chennai Super Kings. Respondent No.4 – Jaipur IPL Cricket Private Limited is the owner of a cricket team / franchisee – Rajasthan Royals.

The two teams, participated in the Indian Premium League (hereinafter referred to as “IPL”) the only Twenty – 20 cricket tournament organized by respondent No.1 – conducted earlier this year.

3(A). The petitioner has sought several reliefs. Dr.Tulzapurkar, the learned senior counsel appearing on behalf of the petitioner, however, confined himself to only the following reliefs.

The petitioner seeks a writ of mandamus, directing respondent No.1 to recall its order constituting the probe panel comprising of two learned retired Judges of the Madras High Court to probe into the allegations of betting and spot fixing in IPL against respondent Nos.3 and 4 and one Gurunath Meiyappan – the son-in-law of respondent No.2. The petitioner also seeks an order

constituting a panel comprising of retired Judges of this Court to conduct the said enquiry to be monitored by this Court.

(B). It will be necessary later to refer to the other reliefs, which were not pressed by Dr.Tulzapurkar. These reliefs were referred to on behalf of the respondents in support of their contention that this is not a genuine public interest litigation. They contend that the petitioner has a private interest and is involved in other disputes with respondent No.1 and respondent No.2. They further contend that this petition has been filed at the behest of one A.C. Muthiah, who also has several disputes with respondent No.1 and respondent No.2. There are in fact proceedings pending between the petitioner and the said A.C. Muthiah against respondent No.1 and respondent No.2.

4. The respondents raised three preliminary objections viz. that there are several disputed questions of fact which cannot be adjudicated in a Writ Petition; that a Writ Petition is not maintainable against respondent No.1 and that this is not a bona-fide PIL.

It is necessary to first note the facts even to consider the preliminary objections.

5. According to the petitioner, the circumstances in which the probe commission was constituted are these. In or about April, 2013, the Duty Officer, Special Cell, Delhi Police received secret information that certain members of the underworld were involved in

fixing of on going IPL cricket matches with the active participation of some unidentified conduits based in Delhi, who were contracting with IPL cricketers at very high prices with a view to stage manage some matches for making windfall gains through other bookies, who facilitate illegal gambling in this game. This has been widely reported by the media. Based on the complaint from the Inspector, Special Cell, Delhi police, FIR No.20.2013 was registered by the Special Cell, Delhi Police on 09.05.2013. It came to light that there was a cross city bookie – player nexus, involving, *inter-alia*, several players and a film link “leading right back to respondent No.2's own IPL franchise, respondent No.3 viz. Chennai Super Kings and respondent No.4 viz. Rajasthan Royals.” On 16.05.2013, the Delhi Police Special Cell started investigating into the IPL match between two teams, Kolkatta Knight Riders and Royals Challengers held on 12.05.2013. On 16.05.2013, three Rajasthan Royals players were detained by the Delhi police on allegations of spot fixing. Respondent No.1 immediately suspended the three players. Seven bookies from Mumbai were detained by the Delhi police. The case is before the Delhi Metropolitan Magistrate. Investigations were also simultaneously conducted by the Mumbai police, which have also arrested several persons. A film actor was linked with the said Gurunath Meiyappan, who is the son-in-law of respondent No.2 and

also on the Board of Directors of respondent No.3. The said actor was arrested on 21.05.2013. Subsequently on 24.08.2013, the said Gurunath Meiyappan was arrested and was later granted bail. The said Gurunath Meiyappan has described himself as a Team Principal of Chennai Super IPL Team. Respondent No.3 however, issued a statement that Gurunath Meiyappan was not the Team Principal of Chennai Super Kings. Respondent No.1 is said to have suspended Gurunath Meiyappan from all cricket activity.

According to the petitioner, the probe panel was constituted only in view of the public pressure that started mounting to have respondent No.2 step down as the President of respondent No.1.

6. Before referring to the allegations regarding the manner in which the probe panel was constituted, it is important to note the first respondent's case, as stated in its affidavit in reply, as to how it was constituted. The affidavit is filed by one Ratnakar Shetty, who is the General Manager – Games Development of the IPL. We will refer to each of the steps mentioned in paragraph 4 of the affidavit in reply of respondent No.1 in the formation of the probe panel.

A). The affidavit refers to the media reports of 16.05.2013 regarding the three players of Rajasthan Royals having been detained by the Delhi police on allegations of spot fixing and the

media reports of 25.05.2013 regarding the arrest of the said Gurunath Meiyappan on allegations of betting and/or spot fixing.

B)(i). The affidavit then states that on 26.05.2013, an announcement was made on behalf of respondent no.1 before the media that a commission comprising of two members of respondent No.1 and one independent member would be constituted to enquire into the allegations of betting and/or spot fixing.

(ii) In the petitioner's affidavit in rejoinder, it is specifically stated that there are no details as to who took the decision for the appointment of the commission. There is no sur-rejoinder. Respondent No.1 never attempted to answer this issue even during the hearing before us.

C(i) The affidavit states that accordingly on 28.05.2013, complaints were made against the three entities viz. respondent No.3, respondent No.4 and the said Gurunath Meiyappan.

(ii) The petitioner sought inspection *inter-alia* of the complaints by its advocate's letter dated 08.05.2013. Respondent No.1 by its advocate's letter dated 08.07.2013 refused the same on the ground that the complaints were an internal affair. At our request, the complaints were tendered across the bar only for our perusal. However, as none of the respondents were willing to have the same referred to in these proceedings, we returned the same to the

respondents' advocate. We, therefore, say nothing about them.

D.(i) The affiant states that on the same day – 28.05.2013 - he called the members of the Governing Council of IPL. The first member of the Governing council he called was Mr. Arun Jaitley, who suggested that the commission should comprise of only one member of respondent No.1 and two independent members, who should be retired Judges.

(ii) This was indeed a commendable suggestion. There can be no objection to Arun Jaitley's suggestion for it promotes fairness and transparency by introducing on the commission outsiders, who would be in a majority. Whether this suggestion was implemented fairly is disputed by the petitioner.

E)(i) The affiant then states that he asked the first respondent's legal advisor to suggest the names of two retired Judges to be independent members of the commission and that he called upon the members of the Governing Council individually and informed them the availability of Mr.Justice Balasubramaniam and Mr.Justice T.J. Choutha, both former Judges of the Madras High Court and sought their approval for constituting a disciplinary commission comprising of the said Judges and the then Hon.Secretary of respondent No.1 one Sanjay Jagdale, to hear and decide upon the said complaints. This was done in terms of the Operational Rules for 2013 IPL dated

15.03.2013. The affiant states that the majority of the members of the Governing Council decided to appoint the said three members; that Respondent No.2 had no role to play in the process and was not present when he spoke with the members of the Governing Council. He states that he neither consulted nor sought the approval of respondent No.2 for the appointment of the said commission.

(ii) In the affidavit in rejoinder, the petitioner stated that there was no mention of the name of the legal advisor who recommended the names of the two Judges and where they were based. Despite the same, respondent No.1 has not filed a sur-rejoinder or cared even otherwise to furnish the details. This would be necessary to refute the petitioner's contention that respondent No.2 was responsible for the appointment of the members of the commission.

F)(i) On 29.05.2013, the affiant addressed the following letter to the members of the commission confirming their appointment :-

“Dear Sirs,

**Re: Commission formed under the 2013
IPL Operational Rules to enquire into
Complaints lodged by the BCCI**

This Letter is addressed to you in formal confirmation of your appointment to the three member Commission that as been formed in accordance with the 2013 IPL Operational Rules to enquire into complaints against the following persons/entities ;

1. Mr.Gurunath Meiyappan ;
2. Indian Cements Ltd. the owner of the

Chennai Super Kings Franchise ;

3. Jaipur IPL Pvt. Ltd. the owner of the Rajasthan Royals Franchise ;

We enclose a copy of the 2013 IPL Operational Rules, which contain the terms, which govern the proceedings to be conducted by the Commission specifically contained in Section 6 thereof. We will provide the Commission copies of the various Regulations referred to in the Operational Rules separately along with the Complaint.

In accordance with Rule 3.1 of Section 6 of the Operational Rules, we request the Commission to kindly inform the BCCI as to the Chairman of the Commission to whom the Complaints are to be filed with along with such further documents and information as may be required by the Commission.

Yours faithfully,
Board of Control for Cricket in India

Sd/-

Professor Ratnakar Shetty
Manager Game Development”

G)(i) On 31.05.2013 the said Sanjay Jagdale tendered his resignation and stated that he did not want to continue as a member of the commission.

(ii) To the affidavit in rejoinder, the petitioner annexed a letter dated 29.06.2013 addressed by it to the said Sanjay Jagdale, enquiring *inter-alia* as to who informed him about the constitution of the probe panel and who informed him about the inclusion of his name in the probe panel. By his e-mail dated 29.06.2013, the said

Sanjay Jagdale stated that it was the deponent in the affidavit-in-reply of respondent No.1, who informed him on the telephone on 28.05.2013 in the evening around 7:00 p.m. about his appointment. He also stated that he was not aware of any IPL Governing Council meeting held on 28.05.2013 to appoint the three member probe panel.

H)(i) The affidavit states that a meeting of 22 out of 24 members of the Working Committee of respondent No.1 was held at Chennai on 02.06.2013, at which he was also present. Respondent No.2 announced that he would not be involved in the day to day affairs of respondent No.1 till the said complaints had been heard and decided by the commission and that in the meantime the day to day affairs of respondent No.1 would be carried on by one Jagmohan Dalmiya.

(ii) Dr.Tulzapurkar emphasized that respondent No.2 admittedly allegedly ceased to be involved in the day to day affairs of respondent No.1 only after the commission was constituted.

I) The affidavit then states that on 06.06.2013, the said Jagmohan Dalmiya decided that in view of the resignation of the said Sanjay Jagdale, the commission would continue with only two members and communicated this decision to the affiant. Pursuant thereto, the affiant addressed a letter dated 08.06.2013 to the two

remaining members. It is further stated that the Working Committee of respondent No.1 ratified the decision at a meeting held on 10.06.2013.

J) On 14.06.2013, the complaints were made against one Raj Kundra and Jaipur IPL Cricket Limited.

7. Dr.Tulzapurkar submitted that there was a clear conflict of interest between respondent No.2 - the President of respondent No.1 and the persons / entities against whom the complaints are to be investigated. This is correct. The respondents did not even contend otherwise. In fact, respondent No.2, therefore, alleged that he had no role to play in the formation of the Commission. Whether that is done or not is the question before us.

We hasten to add that the alleged ills of one ought not to be visited upon another even if they are closely, very closely related or connected. There cannot be guilt by such association or relationship alone. However, such a relationship or association constitutes a conflict of interest when a person plays any role in a process for the adjudication of or investigation into the conduct or role of his relative or of a close associate of his. The respondents have therefore, rightly not even contended that respondent No.2 could have taken any part in the investigation including the formation of the probe commission. The question therefore, is whether, in fact

he had any role in the formation of the commission.

8. Dr.Tulzapurkar submitted that it is inconceivable that respondent No.2 had no role to play in the formation of the commission including in the appointment of the members thereof. There is no direct evidence in this regard. Indeed, it would be difficult for there to be any direct evidence. He, however, relied upon several factors/circumstances in support of this contention. They are as follows.

9.(A) Dr. Tulzapurkar submitted that the issue being enquired into is very serious. When the commission was appointed, respondent No.2 was the President of respondent No.1. That he subsequently announced that he would not be in day to day management of respondent No.1 till an enquiry was concluded, would not by itself establish that he had no role to play in the formation of the commission.

(B) We agree, but on the other hand, merely because respondent No.2 was the President of respondent No.1, it does not follow that he took part in the formation of the commission. In other words, whether respondent No.2 was the President and in-charge of the day to day affairs of respondent No.1 or whether he ceased to be in day to day management of respondent No.1, would not be conclusive on the question as to whether or not, he played any role in

the formation of the commission. His continued connection with respondent No.1 only enhances the possibility of his having played a role in the formation of the commission.

10. However, as Dr.Tulzapurkar submitted it does appear curious that in a matter as important as this the General Manager - Game Department of IPL and nobody else initiated the process and thereafter virtually orchestrated the same single-handed. The entire process was initiated and put in place by the affiant allegedly making separate phone calls to each of the members of the Governing Council of the IPL. It is not even the first respondent's case that the members of the Government Council spoke to each other. Normally on a matter of such importance, we would have expected the Governing Council to have met and deliberated the issue at a meeting or at least by way of video conferencing. There is no explanation why they did not do so. As Dr.Tulzapurkar rightly pointed out even the alleged ratification of the said Dalmiya's decision to constitute a commission of the learned Judges alone is not supported by any documentary evidence. In short the entire process leading to the formation of the commission was undertaken orally.

11. Respondent No.1 has refused to furnish any details or answer any of the questions raised in the affidavit in rejoinder. For instance, respondent No.1 has not indicated who took the decision

on the basis of which the announcement was made on 26.05.2013 that a commission comprising of two members of respondent No.1 and one independent member would be constituted to enquiry into the allegations of betting and/or spot fixing.

12. Respondent No.1 has not even disclosed the names of the legal advisor, who suggested the names of the members of the commission.

13. It is not without significance that the affiant has been barred for five years by his parent cricket association – Mumbai Cricket Association from taking part in any activity of the association including contesting the elections on account of the alleged misuse of the association's money. On the other hand, the members of respondent No.1 such as the said Sanjay Jagdale, who was the Secretary of respondent No.1 and one Ajay Shirke, the then Treasurer of respondent No.1, did not even know anything about the process of appointment of the probe panel. They were both also members of the Governing Council of the IPL by virtue of the Memorandum and Rules and Regulations of respondent No.1 (Rule 27 M read with Rule 1 (k) set out later in this judgment). The said Ajay Shirke by a letter dated 04.07.2013, in response to the petitioner's letter, stated that he was not aware of any meeting of the IPL Governing Council nor as to who suggested the names of the

members of the probe panel.

The said Sanjay Jagdale and Ajay Shirke have not filed affidavits themselves. However, their letters have been annexed to the affidavit in rejoinder. The respondents have not denied the contents thereof. It was therefore, not necessary for them to file an affidavit. The said Sanjay Jagdale and Ajay Shirke resigned immediately after the formation of the probe panel.

14. In paragraph 4(e) of the affidavit in reply, the affiant states that he called the members of the Governing Council of IPL. In the affidavit in rejoinder, the petitioner has expressly stated that there are no details as to which of the members the affiant called. There is no response to this by the respondents.

15. These facts and the failure of respondent Nos.1 and 2 to deal with them or to even attempt to answer them are factors against them. Although each of the factors by itself does not support Dr. Tulzapurkar's inference, taken together they indicate at least that the petitioner's case is not improbable. Absent anything else, they indicate a degree of probability that respondent No.2 did have a role to play in the appointment of the members of the commission.

16. However, in a matter such as this and in respect of allegations, such as these, it would be neither safe nor fair to respondent Nos.1 and 2 to draw a final conclusion against them on

the basis of affidavit evidence. Mr.Dada and Mr.Chagla's contention that this is a disputed question of fact is well founded. It is only in a trial that the Court would be able to come to a final conclusion in this regard. These are indeed very serious allegations in a matter which is even more serious. On this issue the most that can be said in favour of the petitioner at this stage and in this proceeding is that it has made out a *prima-facie* case that respondent No.2 was involved in the formation of the commission. The least that must be said in favour of the petitioner is that the respondents have not established that respondent No.2 had no role to play in the formation of the commission.

17. We would normally, therefore, have relegated the petitioner to filing a suit or any other proceedings in which it can be ascertained with a greater degree of certainty whether or not respondent No.2 played a role in the formation of the commission. However, in view of our finding that the constitution of the commission is not in accordance with the Rules and Regulations of respondent No.1, this may not be necessary.

18. Least we may be misunderstood, it is of vital importance to clarify an important aspect. What we have discussed thus far does not reflect adversely upon the members of the commission. Our observations do not even remotely suggest any collusion between

respondent No.2 and the members of the commission. Dr.Tulzapurkar himself did not make any allegations against the members of the commission. For the purpose of this hearing, he restricted himself to the point that respondent No.2 was instrumental in the appointment of the members of the commission. For the purpose of this hearing he did not go a step further and allege any collusion. In fact he reiterated the statement in the petition that the petitioner was not raising any issue of integrity of the members of the commission. However, if in fact respondent No.2 had any role to play in the appointment of the members of the commission, the process would be vitiated, for being an interested party, he ought to have had no role to play. This would be so even if there is no nexus between the petitioner and the members of the commission regarding their appointment.

19. However, as Mr.Dada and Mr.Chagla rightly pointed out, the petition is replete with serious allegations and in any event innuendos against the learned retired Judges. This is clear for instance from paragraph 7.37, where it is alleged that the appointment of the probe committee is only an eye wash and a course of action adopted only to avoid any action against respondent No.2. It is further stated that the ulterior motive of respondent No.2 is to obtain a clean chit from the committee, including that his son-in-

law is not the team owner or team principal of Chennai Super Kings and that he has no connection whatsoever with Chennai Super Kings. Then again in paragraph 7.39, the petitioner has averred that the commission is being perceived by the public at large as a cover-up exercise and hardly helps in restoring the faith of the public at large in the integrity of the game.

20. We do not intend dealing with the allegations against the learned Judges as they have not been impleaded. Moreover, the allegations were not pressed by Dr.Tulzapurkar.

21. There is, however, no substance in the petitioner's contention that it is surprising that the legal advisor recommended the names of the retired Judges from Chennai. Where the members of the commission are from is utterly irrelevant. It makes no difference where they are from. Dr.Tulzapurkar of course rightly did not press this point before us. We proceeded on the basis that there was no collusion between respondent No.2 and the members of the committee.

22. The hearing of this writ petition commenced on 12.07.2013. During the course of the hearing on 19.07.2013, we were informed by Mr.Bhatt and Mr.Dwarkadas, the learned senior counsel appearing on behalf of respondent Nos.3 and 4 that the hearing before the Commission had concluded. This is what they

stated. A preliminary meeting was held by the commission, whereat only the procedure was decided. The hearing on merits was held on only one day. On that day, respondent No.3 and the said Gurnath Meiyappan were heard together but in the absence of the other parties. Thereafter respondent No.4 and one Raj Kundra were heard together but in the absence of the other parties. Some police officers also appeared before the commission but in the absence of all the other parties. The matter was closed / concluded by the commission on that very day. Written submissions were tendered thereafter.

Respondent Nos.3 and 4 stated that they had no objection to the Commission or to the manner in which it held the hearing.

None of the parties agreed to divulge any details regarding the hearing stating that the same was an internal matter with which neither the petitioner nor any member of the public is concerned in any manner whatsoever.

23. We refrain from making any observations regarding the nature of this hearing as it is not the subject matter of this petition.

24. This brings us to the next preliminary objection raised by Mr.Dada and Mr.Chagla. They submitted that the petition is not maintainable against respondent No.1, as respondent No.1 cannot be considered to be state within the meaning of Article 12 of the Constitution of India. Mr.Chagla further submitted that respondent

No.1 owes no duty to the public. At least in so far as the IPL is concerned it is a pure commercial activity. With respect to IPL matches respondent No.1 only grants franchises, it does not select any team and the only interest of BCCI is that the tournament goes on successfully. So far as inquiries relating to IPL tournaments are concerned, respondent No.1 owes no duty or explanation to the public. Respondent No.1 is not obliged to keep the public informed about anything connected with inquiries relating to IPL tournaments. Respondent No.1, according to them, is an autonomous body. No interference with its functioning is warranted. It follows therefore, that the domestic enquiry conducted by BCCI is a purely private matter, which does not impact any public interest. The public is not concerned with and cannot be considered to be interested in any enquiry connected with IPL tournaments. The results of the enquiry do not go outside respondent No.1. They are not for public consumption. This is irrespective of the nature of the allegations that are being enquired into. The writ petition therefore, according to respondent Nos.1 and 2, is not maintainable and ought to be dismissed.

25. The question of maintainability of the writ petition is answered against the respondents and in favour of the petitioner by the judgment of a Division Bench of this Court dated 15.09.2010 in

the case of *Lalit Kumar Modi vs. BCCI & others, Writ Petition No.1909 of 2010*. In that case the petitioner challenged the rejection of his request for recusal of certain members of the Disciplinary Committee constituted by respondent No.1. BCCI had issued notice to the petitioner therein in respect of his conduct as Commissioner of the Indian Premier League (IPL). The petitioner raised objections with regard to some of the members of the Disciplinary Committee. The grounds of objection are not relevant. It was contended on behalf of BCCI even in that case that the writ would lie against BCCI only when it was acting in public domain and its activities have a public law element. Hence though a writ would lie against BCCI when it has awarded contracts, no writ petition would lie under Article 226 of the Constitution of India against BCCI when it acts within the domain of internal management. In paragraph 20, the Division Bench noted the contention on behalf of BCCI that the writ petition in respect of the challenge to the constitution of the Disciplinary Committee would not be maintainable, as there is no public law element. The Division held as under :-

“20. Mr. Sundaram's contention is that the present Writ Petition in respect of the challenge to the constitution of the Disciplinary Committee would not be maintainable, as there is no public law element. We are not inclined to reject this petition on the said ground alone. In *Rameshwar Prasad & Ors. v. Union of India & Anr.* (supra), the Apex Court has held that though the Board is not created by a statute, and

cannot be considered to be an authority within the meaning of Article 12 of the Constitution, but nevertheless, when a body has a public duty to perform, the Court may entertain Writ Petition under Article 226 of the Constitution.

21. The matter was again examined by the Apex Court in *Board of Control for Cricket in India & Anr. v. Netaji Cricket Club & Ors.*, reported in (2005) 4 SCC 741, and was dealt with in the following observations:-

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

"81. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to

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

22. In view of the above decision where the Apex Court entertained the petition challenging the election of office-bearers of BCCI, the second preliminary objection of Mr. Sundaram need not detain us further. In our view, the constitution of a Disciplinary Committee and the decision of the Disciplinary Committee of BCCI rejecting the petitioner's request for recusal of some members from the Disciplinary Committee are matters which could be subject-matter of judicial scrutiny in Writ Jurisdiction. [emphasis supplied]

26. It was not contended that the judgment does not support the maintainability of the petition. It was however contended that the judgment of the Division Bench is per incuriam and that the judgment of the Supreme Court in BCCI vs. Netaji Cricket Club relied by the Division Bench, has been impliedly over ruled by the Supreme Court in *Zee Telefilms Limited & Anr. vs. Union of India & Ors.* (2005) 4 SCC 649. (Although reported earlier in the same volume of the Supreme Court Cases, the judgment in *Zee Telefilms Ltd.* was delivered after the judgment in *BCCI v. Netaji Cricket Club.*). Before referring to this judgment, we must note that the appeal against the judgment of the Division Bench was dismissed by the Supreme Court

– (2011) 10 SCC 106. As pointed out on behalf of the respondents, the judgment of the Supreme Court did not deal with the question of the maintainability of the writ petition.

27. *Zee Telefilms Limited & Anr. vs. Union of India & Ors.* was placed before a bench of five learned Judges of the Supreme Court. The majority judgment was delivered by N. Santosh Hegde, J. and the dissenting judgment was delivered by S.B. Sinha, J. The Supreme Court considered the preliminary issue raised on behalf of the respondents in regard to the maintainability of the petition on the ground that under Article 32, a petition is not maintainable against BCCI, since it is not state within the meaning of Article 12 of the Constitution. The Supreme Court after analysing the constitution, nature and functions of BCCI, held that it was not created by a statute ; that no part of its share capital is held by the Government ; that practically no financial assistance is given by the Government to meet its expenditure and that there is no existence of a deep and pervasive State control of BCCI and that control is only regulatory in nature which is not exercised under any special statute applicable to BCCI. It was also held that though BCCI enjoys monopoly status in the field of cricket, such status is not State conferred or State protected and that it is an autonomous body. It was further held that all functions of the Board are not public functions nor are they closely

related to governmental functions. Mr.Dada and Mr.Chagla relied upon paragraphs 24, 25 and 36 of the judgment in respect of their aforesaid contention. It is however, necessary to also read paragraphs 31, 33 and 34.

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

25. Assuming for argument's sake that some of the functions do partake the nature of public duties or State actions, they being in a very limited area of the activities of the Board, would not fall within the parameters laid down by this Court in *Pradeep Kumar Biswas case (2002) 5 SCC 111*. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions, even then, as per the judgment of this Court in *Pradeep Kumar Biswas (2002) 5 SCC 111*, that by itself would not suffice for bringing the Board within the net of “other authorities” for the purpose of Article 12.

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

the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas case (2002) 5 SCC 111* hence there is force in the contention of Mr Venugopal that this petition under Article 32 of the Constitution is not maintainable.

34. At this stage, it is relevant to note another contention of Mr Venugopal that the effect of treating the Board as State will have far-reaching consequences inasmuch as nearly 64 other National Sports Federations as well as some other bodies which represent India in the international forum in the field of art, culture, beauty pageants, cultural activities, music and dance, science and technology or other such competitions will also have to be treated as a "State" within the meaning of Article 12, opening the floodgates of litigation under Article 32. We do find sufficient force in this argument. Many of the abovementioned federations or bodies do discharge functions and/or exercise powers which if not identical are at least similar to the functions discharged by the Board. Many of the sportspersons and others who represent their respective bodies make a livelihood out of it (for e.g. football, tennis, golf, beauty pageants, etc.). Therefore, if the Board which controls the game of cricket is to be held to be a State for the purpose of Article 12, there is absolutely no reason why other similarly placed bodies should not be treated as a State. The fact that the game of cricket is very popular

in India also cannot be a ground to differentiate these bodies from the Board. Any such differentiation dependent upon popularity, finances and public opinion of the body concerned would definitely violate Article 14 of the Constitution, as any discrimination to be valid must be based on hard facts and not mere surmises. (See *State of Kerala v. T.P. Roshana* (1979) 1 SCC 572). Therefore, the Board in this case cannot be singly identified as an “other authority” for the purpose of Article 12. In our opinion, for the reasons stated above none of the other federations or bodies referred to hereinabove including the Board can be considered as a “State” for the purpose of Article 12.

36. In the above view of the matter, the second respondent Board cannot be held to be a State for the purpose of Article 12. Consequently, this writ petition filed under Article 32 of the Constitution is not maintainable and the same is dismissed.”

[emphasis supplied]

28. The judgment in *Zee Telefilms Ltd.* did not expressly over rule the judgment of the Supreme Court in *BCCI vs. Netaji Cricket Club & Ors.*, reported in (2005) 4 SCC 741. Nor can it be said that it impliedly over ruled the judgment. Although the judgment in *BCCI vs. Netaji* (supra) is not referred to in the majority judgment, it is referred to in the minority judgment (paragraph 208 pg. 728). N. Santosh Hegde, J. who delivered the majority judgment records in paragraph 1 that he had the benefit of reading the minority judgment of Sinha, J. Thus, the majority judgment considered the judgment in *BCCI v. Netaji Cricket Club*. It cannot therefore be said that the learned Judges who delivered the majority judgment were unaware of and

did not consider the judgment in *BCCI vs. Netaji*.

It is also significant to note that the learned Judge who delivered the majority judgment and the learned Judge who delivered the minority judgment were the two Judges, who constituted the bench in *BCCI vs. Netaji*, which was delivered only three weeks earlier.

Apart from that the issue in *BCCI vs. Netaji* was different. In *BCCI vs. Netaji*, the original proceedings were suits filed by the respondents, whereas *Zee Telefilms Ltd vs. Union of India* was filed under Article 32 of the Constitution of India. It is in that context that the above observations must be read. The observations in paragraphs 80 and 81 in *BCCI vs. Netaji*, which were quoted by the Division Bench of this Court in *Lalit Kumar Modi vs. BCCI & Ors.* also cannot be said to have been over ruled in *Zee Telefilms Limited*. Those observations were not even in relation to Articles 32 or 226 of the Constitution. In fact paragraph 31 of the majority judgment in *Zee Telefilms Ltd.* recognizes that respondent No.1 does discharge some duties like controlling the activities of the players “and others” involved in the game of cricket and that these activities can be said to be akin to public duties or State function. The Supreme Court went on to hold that even in respect of such functions, a petition under Article 226 of the Constitution would lie. The question in each

case therefore, would be whether the action relates or pertains to a public duty or is akin to a public duty or State function.

29. The question then is whether the impugned action in the present case constituted performance by respondent No.1 of a public duty or a State function or can be said to be akin to a public duty or State function. This question was answered in the affirmative by the Division Bench of this Court in *Lalit Kumar Modi vs. BCCI & Ors.* (supra). The Division Bench expressly held that “constitution of the Disciplinary Committee are matters which could be subject-matter of Judicial scrutiny in Writ Jurisdiction.” In *Zee Telefilms Ltd*, such an issue did not arise. The Supreme Court did not consider whether constitution of a Disciplinary Committee by respondent No.1 could be subject matter of judicial scrutiny in writ jurisdiction. It cannot therefore, be said that the judgment of the Division Bench is *per-incuriam* on account of the Division Bench not having considered the judgment of the Supreme Court in *Zee Telefilms Ltd vs. Union of India*.

30. We are bound by the judgment of the Supreme Court in *BCCI v. Netaji Cricket Club* and by the judgment of the Division Bench of this Court in *Lalit Modi v. BCCI & Ors.* Accordingly it is neither necessary for nor open to us to consider the preliminary objection on principle. It must be answered in favour of the petitioner

on the authority of the judgment of the Division Bench in *Lalit Kumar Modi vs. BCCI & Ors.*

31. The last preliminary objection is that this is not a bona-fide PIL and that the petition is filed contrary to the Bombay High Court Public Interest Rules, 2010.

32. The petitioner has in paragraph 1 of the petition disclosed the pendency of an appeal between respondent No.1 and itself in the Supreme Court relating to its membership with respondent No.1. It contends however, that irrespective of this dispute, it is interested in upholding the transparency, accountability, integrity and faith of the public at large in the game of cricket. Recent events, according to the petitioner, have eroded the faith of the public at large in cricket in India. Some of the main objects of the petitioner are to promote, encourage, organize or control the game of cricket throughout the State of Bihar, to foster the spirit of sportsmanship and co-operation among the members, officials and to advance and to safe guard the interest of the game of cricket. The petitioner claims to be seriously concerned about the quality and integrity of cricket in India and that it has always taken action regarding all aspect of the game and has promoted the game in India.

33. The respondents however, have referred to a series of other litigations between the petitioner and respondent No.1 and

respondent No.2. In support of their contention that the petition is not in accordance with the Bombay High Court Public Interest Litigation Rules, 2010 (hereinafter referred to as “the said Rules”) Mr.Dada, relied upon Rules 3(e) and 5(e), which read as under :-

“3. Definition :- In these Rules, unless there is anything repugnant to the subject or context, -

(e) “Public Interest Litigation Petition” means a petition instituted *pro bono publico* and includes a legal action initiated by or in the Court for enforcement of public interest or general interest as distinguished from individual interest, in which the public or a class of the community have some interest by which their legal rights or liabilities are affected or a petition filed to protect the public law interest.

5. In the petition to be filed under Clause (e) of Rule 4, the petitioner shall disclose :-

(e) details regarding any civil, criminal or revenue litigation, involving the petitioner or any of the petitioners, which has or could have a legal nexus with the issue(s) involved in the Public Interest Litigation.”

34. Mr.Dada and Mr.Chagla stated that the petitioner has failed to disclose the following proceedings :-

A). The petitioner had filed Writ Petition No.2550 of 2009 in this Court, seeking an order for full membership of respondent No.1 from the State of Bihar. The petition was dismissed by an order and judgment of a Division Bench of this Court on 13.12.2010.

The petitioner filed Civil Appeal No.7445 of 2011 before the Supreme Court, challenging the above order, which is pending.

B). The Secretary of the petitioner claiming to be the Secretary of Saran District Cricket Association filed CWJC No.7491 of 2008 before the Patna High court, challenging the report of a second three member committee of respondent No.1, which in substance assails the registration of Jharkhand State Cricket Association under the Societies Registration Act, 1860 and sought a revival of the Bihar Cricket Association as on 14.11.2000.

The said Secretary has filed a Transfer Petition, seeking a transfer of the proceedings to the Supreme Court, which is also pending.

C). The Inspector General of Registration, Bihar, cancelled the registration of the Bihar Cricket Association, which is an associate member of respondent No.1, under the Bihar Societies Registration Act. Bihar Cricket Association filed a revision against the said order. The petitioner's said Secretary again claiming to be the Secretary of Saran District Cricket Association filed CWJC No.2012 of 2009 before the Patna High Court, challenging the jurisdiction of the Member, Board of Revenue to hear the said revision.

The Member, Board of Revenue, set-aside the order of the Inspector General of Registration, cancelling the registration of the Bihar Cricket Association under the Bihar Societies Registration

Act. The petitioner's said Secretary filed CWJC No.7117 of 2009 before the Patna High Court, to challenge this decision. The proceeding was however, dismissed for default on 12.09.2012.

The petitioner's said Secretary claiming to be the Secretary of Saran District Cricket Association, filed MJC No.4809 of 2011 before the Patna High Court under section 340 of the Code of Criminal Procedure, praying for issuance of appropriate directions for institution of a criminal case against respondent No.2 for having allegedly made a false statement in an affidavit filed in the said CWJC No.2012 of 2009. This proceeding was also disposed of by the said order dated 12.09.2012. The Patna High Court observed as under :-

“....Before parting with this order I may observe that petitioner is not interested to pursue the main writ petition which has already been dismissed for default but is pressing the per jury application only with a view to malign the highest Cricket Controlling Body in the country and having appreciated such design, I am not inclined to proceed with the per jury petition, which is dismissed.”

SLP (Cri.) No.7989 of 2012 filed by the said Secretary before the Supreme Court challenging the order dated 12.09.2012 was dismissed by an order dated 28.10.2012.

35. Mr.Chagla contended that this is a motivated litigation filed with an ulterior motive on account of the personal and vested interest of the petitioner and not by it as a public spirited litigant. The petition

is an attack on respondent No.2, as a result of the petitioner's grievance in respect of the acts done by respondent No.2 as a part of the management of respondent No.1. The petition is nothing but an attempt to extract vengeance against respondent Nos.1 and 2. Apart from details of the litigation relied upon by Mr.Dada, Mr.Chagla relied upon the contents of the petition itself in support of his contention. Mr.Chagla submitted that prayers (c) and (d) of the petition establish the same.

In prayer (c), the petitioner has sought an order directing respondent No.1 to institute disciplinary proceedings against respondent No.2 and an order directing respondent No.2 to vacate the office of the President of respondent no.1 and the President of Tamil Nadu Cricket Association pending the said disciplinary proceedings.

In prayer (d), the petitioner has sought an order restraining respondent No.2 from contesting for the post of President of respondent No.1 in future and representing respondent No.1 in the International Cricket Council.

36. In support of his contention that this is a proxy litigation on behalf of one A.C. Muthiah, Mr, Chagla relied upon the petition itself. The petitioner has referred in detail to the proceedings adopted by the said A.C. Muthiah, who was the past President of respondent

No.1, in relation to the alleged violation of clause 6.2.4 of the Regulations. The allegation is that even while respondent No.2 was the Treasurer of respondent No.1 and the President of the Tamil Nadu Cricket Association, respondent No.3 of which respondent No.2 is the Managing Director, was permitted to bid for the franchise of IPL rights for the ownership of teams and respondent No.3 was awarded the Chennai franchise named as Chennai Super Kings. This was a conflict of interest and was prohibited by clause 6.2.4 of the Regulations. Respondent No.2 was also ex-officio member of the Governing Council of IPL and ex-officio of the Standing Committee of IPL and the member of the Working Committee of respondent No.1. The Governing and Standing Committee were incharge of selecting the successful franchisees.

The said A.C. Muthiah raised the issue of conflict of interest of respondent no.1 with the then President of respondent No.1 and sought an enquiry against respondent No.2 and his suspension pending the same as per the procedure laid down in clause 38(ii) of the Rules and Regulations of respondent No.1 [The same are now renumbered as 32(2)]. As no action was taken, the said A.C. Muthiah filed a suit being CS No.930 of 2008 before the Madras High Court for various reliefs against respondent Nos.1 and 2. While the same was pending, at an annual general meeting held

on 27.09.2008, respondent No.1's regulations were amended to exclude events like IPL from the bar contained in clause 6.2.4, which provided that no Administrator shall have directly or indirectly any commercial interest in the matches or events conducted by respondent No.1. The petitioner has referred to the suit being CS No.1167 of 2009 filed by the said A.C. Muthiah before the Madras High Court, challenging the said amendment. As no interim reliefs were passed in the said suit, the said A.C. Muthiah filed Civil Appeal No.3753 of 2011 and 3754-56 of 2011 in the Supreme Court. The matter was heard by a Bench of two learned Judges. As the learned Judges were unable to agree, the matter is listed before a Bench of three learned Judges.

37. It is true that the petitioner has several disputes with respondent Nos.1 and 2. That by itself however, ought not to disentitle it to maintain this PIL. The petitioner has also referred to various proceedings filed by the said A.C. Muthiah. That does not indicate that the present petition has been filed on behalf of or at the instance of the said A.C. Muthiah. The proceedings filed by the said A.C. Muthiah are not the basis on which the reliefs have been sought in the present petition. These reliefs have been sought at least essentially on the grounds pressed by Dr.Tulzapurkar. The petitioner has its own disputes with respondent Nos.1 and 2. The petitioner

also has an interest in the game of cricket. But the fact that the petitioner has disputes with respondent Nos.1 and 2, does not disentitle it to file a public interest litigation. The grounds on the basis of which the petitioner has sought the reliefs pertain to the manner in which the Commission has been constituted - the petitioner's allegations being that it is constituted essentially if not solely by respondent No.2 and that its constitution is illegal. Respondent No.2, according to the petitioner, ought not to have constituted the Commission, as he was interested in the subject matter of the probe / investigation entrusted to the Commission viz. the allegations of spot fixing and betting of three entities – respondent No.3 of which he is the Managing Director, respondent No.4 and the said Gurunath Meiyappan, who is the son-in-law of respondent No.2.

38. The failure to disclose the proceedings adopted by the Secretary of the petitioner claiming to be the Secretary of Saran District Cricket Association does not constitute an infringement of the Bombay High Court Public Interest Litigation Rules. Rule 5(e) requires the petitioner to furnish the details regarding the proceedings involving the petitioner which has or could have a legal nexus with the issues involved in the PIL. The issues raised therein do not have any nexus with the issues involved in this PIL.

39. Mr.Chagla however, contended that prayers (c) and (d)

establish that this is not a *bona-fide* public interest litigation, but a proxy fight between respondent No.2 and the said A.C. Muthiah. In prayer (c), the petitioner has sought an order directing respondent No.1 to institute disciplinary proceedings against respondent No.2 and an order that pending the same, respondent No.2 ought to be directed to vacate the office of the President of respondent No.1 and the President of the Tamil Nadu Cricket Association. Indeed, respondent No.2 being the President of the Tamil Nadu Cricket Association, has nothing to do with the issues raised in the present petition. However, the mere fact that this relief has been claimed would not be a ground for rejecting this petition, which otherwise raises serious issues of general importance. Prayer (d), which seeks an order preventing respondent No.2 from contesting for the post of President of respondent No.1 in future and representing respondent No.1 in the International Cricket Council, may or may not be granted, may or may not be sustainable. That however, is not a ground for rejecting all the reliefs in the PIL. Nor does the mere claim for such reliefs render the PIL not maintainable. The mere fact that there is animosity between the petitioner and the respondents, does not *ipso-facto* result in the dismissal of the PIL. The grant of the reliefs sought or pressed would not further the cause of the petitioner in its other disputes with respondent Nos.1 and 2.

40. Even if we had upheld the submissions of Mr.Dada and Mr.Chagla, we would not have dismissed this PIL, as we are satisfied that it raises serious issues. We would then have considered appointing an Amicus Curiae and proceeding under Rule 4(b) or (d) which read as under :-

'4. Initiation / Commencement / Lodgment of Public Interest Litigation :- A Public Interest Litigation Petition may commence in any of the following manners :-

(b) In pursuance of an order of the Chief Justice or his nominee Judge, on a recommendation made by any Judge of the High Court :-

(d) a petition may be directed to be treated as a public interest litigation petition by a judicial order passed by the Court ;”

41. Mr.Dada and Mr.Chagla relied upon a judgment of the Supreme Court in the case of *State of Uttaranchal vs. Balwant Singh Chauhal & Ors. (2010) 3 SCC 402* [Paragraph 181 (7)] to contend that the Court should ensure that the PIL is aimed at redressal of genuine public harm or public injury and that there is no personal gain, private or oblique motive behind the PIL. They also relied upon the judgment of a Division Bench of this Court in the case of *R.S. Keluskar vs. Union of India & Ors. 2008(3) Mh.L.J. 133* paragraph 6 whereof refers to the Courts being flooded with a large number of so called public interest litigations, which resulted in waste

of valuable judicial time.

42. Mr.Chagla in particular contended that there can be no harm or public injury in a purely domestic enquiry as the public is in any event not interested in the same.

We do not agree.

43. The submission is contrary to the judgment of the Supreme Court in *BCCI vs. Netaji Cricket Club & Ors.*, reported in (2005) 4 SCC 741, paragraphs 80 and 81.

44. Even assuming that the petitioner ought not to be permitted to prosecute this PIL considering the nature of the matter, this Court cannot turned a blind eye to the issues raised therein. In *Guruvayoor Devaswom Managing Committee vs. C.K. Rajan*, (2003) 7 SCC 546, the Supreme Court held in paragraph 50 :-

“50. The principles evolved by this Court in this behalf may be suitably summarized as under:

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See *Ramsharan Autyanuprasi v. Union of India*)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See *Shivajirao Nilangekar Patil v. Dr Mahesh Madhav Gosav*)

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such Committee. (See *Bandhua Mukti Morcha, Rakesh Chandra Narayan v. State of Bihar* and *A.P. Pollution Control Board v. Prof. M.V. Nayudu*)”

45. This brings us to Dr.Tulzapurkar's submission that the constitution of the probe commission was contrary to and ultra vires the Operational Rules including Rule 2.2 of Section 6 thereof under or pursuant to which Mr.Dada contends the commission was constituted. The submission is well founded.

46. As it was contended on behalf of the respondents that there were no pleadings to support this contention, we must refer to the same.

In paragraph 7.43 of the petition, it is averred that respondent No.1 did not have power to constitute the said panel as per its constitution and all other Rules and Regulations, franchisee agreements and the Anti Corruption Code. It is also averred that the Memorandum and Rules of respondent No.1 do not contemplate the constitution of a purported independent probe panel for going into the allegations of misconduct by a IPL franchisee/owner. The paragraph goes on to demonstrate that rule 32 of the Rules and Regulations of respondent No.1 does not contemplate the formation of such a probe panel.

47. It is only in the affidavit in reply that the letter dated 29.05.2013 was disclosed as Exhibit "B" thereto. In paragraph 6 of the affidavit in reply, it is contended on behalf of respondent No.1 that the commission is validly constituted / appointed in terms of the relevant provisions of the Operational Rules. The affidavit in reply further states that the present enquiry could not have been constituted under Rule 32. The affidavit in reply however, does not state that the enquiry was under Rule 2.2 of Section 6. This contention was raised by Mr.Dada during the course of the hearing of this writ petition. We will however, assume that in view of the notice dated 29.05.2013, addressed by respondent No.1 to the members of the commission, it is open to the first respondent to raise this contention during the hearing as the notice referred to clause 3.1 and section 6 of the Operational Rules for 2013 IPL dated 15.03.2013.

48. In the affidavit in rejoinder to the affidavit of respondent No.1, it is expressly denied that the constitution of the present two member probe commission is valid in terms of the Operational Rules. That it is also contended that the appointment of the present probe commission and the manner in which it is constituted, is against fairness and suffers from conflict of interest is another matter altogether. For instance, in the affidavit in rejoinder to the affidavit in reply by respondent No.2, both the contentions are taken, as is

evident from the following sentence :-

“The procedure adopted by Respondent No.1 in appointing the probe commission is completely, mala-fide, illegal, lacking in transparency and ultra vires the Respondent No.1's Rules and Regulations_

49. Mr.Dada submitted that the constitution of the probe commission was under Rule 2.2 of the Operational Rules. He, however, first referred to the following provisions of the Memorandum and Rules and Regulations of respondent No.1 – BCCI :-

“1. INTERPRETATION

(a) “THE BOARD” means the Board of Control for Cricket in India.

(h) “WORKING COMMITTEE” means the Working Committee, to whom is entrusted by these rules, the management of the affairs of the Board.

(k) “OFFICE BEARER” means the President, Honorary Secretary, Honorary Joint Secretary, and Honorary Treasurer.

7. COMPOSITION OF THE BOARD :

(i) The Board shall be comprised of

(a) President

(b) Five Vice-Presidents, one from each zone

(c) An Honorary Secretary

(d) An Honorary Joint Secretary

(e) An Honorary Treasurer

(ii) A Member, Associate Member and an Affiliate Member shall be entitled to have one representative on the Board. A representative may be changed at any time by the Member, Associate Member or Affiliate Member concerned, provided that due intimation of such a change is given in writing to the Hon. Secretary. A person shall not at a time represent more than one affiliated member.

(iii) A Member, Associate Member or an Affiliate Member shall inform annually to the Board the names of its Office Bearers and the members of their Executive Committee and the tenure during which they shall remain as Office-Bearers and members of the Executive Committee, and shall send the Audited statement of Accounts and the Balance Sheet to the Board. In case of a Member, Associate Member, Affiliate Member failing to submit Audited statement of Accounts and the Balance Sheet, the Board may take such action against the Member or Associate Member, Affiliate Member as it deems fit.

12. WORKING COMMITTEE
(COMPOSITION, POWERS AND DUTIES) :

The affairs of the Board shall be managed by a Working Committee consisting of :

(a) The President,
The Hon. Secretary
The Hon. Joint Secretary
The Hon. Treasurer

(b) Representatives of (1) Mumbai Cricket Association (2) Tamil Nadu Cricket Association, (3) Cricket Association of Bengal, (4) Delhi & District Cricket Association, (5) Uttar Pradesh Cricket Association shall be permanent members of the Working Committee.

If an Association who has been allotted a Test Match and after a period of two years is on the normal

rotation the following year, the association will continue to be a member of the Working Committee. However, if the normal rotation merges with the two years period for having been allotted a Test match, then the Association concerned will have to wait and get elected on principles of rotation in the respective zone.

(c) From amongst the remaining members, one representative of a Member from each of the five zones viz., (1) North, (ii) East, (iii) Central, (iv) South and (v) West, to be elected on principle of rotation in the respective zones.

(d) The meeting in each zone for all purposes shall be convened by the Hon. Secretary of the Test Centres in the zone by rotation.

(e) Vice Presidents may attend and take part in the deliberations but will have no voting rights unless they represent the Member on the Working Committee.

POWERS AND DUTIES OF THE WORKING COMMITTEE :

(a) The Working Committee shall have all the powers of the Board and authority and discretion to do all acts and things except such acts as by these rules or statute expressly directed or required to be done by a General Meeting of the Board, but exercise of such powers, authorities and discretion shall be subject to the control and regulation of any General Meeting specially convened for the purpose provided that no such regulations shall invalidate any prior act of the Working Committee which would have been valid, if such regulation has not been made.

27. THE STANDING COMMITTEES :

The following shall be the Standing Committee and their powers :

M) Indian Premier League

The Committee shall be appointed by the General Body of the Board and the term of the members of the committee shall be for a period of 5 years.

The Committee shall comprise of the following :

- 1) Chairman
- 2) Four members appointed by the Board
- 3) Three Ex-Cricketers of repute

The Office Bearers of the Board during their tenure would be ex-officio members of the Committee.

All decisions relating to the League would be taken by the Committee by majority and in case of equality of votes the Chairman shall have a casting vote.

The Committee shall maintain a separate Bank Account which shall be operated by the Treasurer, BCCI.

The Committee shall submit a report of its annual activities and decisions along with the audited statement of accounts every year for the approval of the General Body at the annual General Meeting.”

50. We will now refer to the relevant provisions of the Operational Rules for 2013 IPL dated 15.03.2013. Rules 2 and 3 of Section 6 are set out in their entirety as the respondents' case is that the constitution of and the reference to the commission was under these provisions. As Mr.Dada rightly stated they provide a very detailed and intricate procedure for the investigation especially of such complaints. He initially submitted that any interference by the Court would only benefit respondent Nos.3 and 4 as they would not have to face the inquiry. He referred to the elaborate procedure

prescribed in Rule 3 to contend that “all this would be gone into in detail by the commission”. The submission was before the Court was informed that the entire hearing of the complaints concluded in one day.

“SECTION 1 : DEFINITIONS / INTERPRETATION

1. Definitions

1.1 In these Operational Rules (unless the context requires otherwise) the following expressions shall have the following meanings :

BCCI means The Board of Control for Cricket in India ;

Commission has the meaning set out in paragraph 2.2 of Section 6 ;

Commission Chairman has the meaning set out in paragraph 2.2 of Section 6 ;

Complaint has the meaning in paragraph 3.1 of Section 6 ;

IPL Code of Behavior Committee means the Committee established, amongst other things, to carry out and/or provide enquiries, investigations and rulings in relation to matters brought to its attention pursuant to these Operational Rules.

Person subject to these Operational Rules means any Franchisee, any Player, any Team Official and/or any Match Official ;

Team Official means any director, secretary, officer, management staff, employee, coach, physio (or other medical personnel) or duly authorised (express or implied) agent of a Team or Franchisee or any consultant to or other person serving in any official capacity for any Franchisee including those persons

who are accredited in connection with the League as contemplated by paragraph 1.1 of Section 4 ;

SECTION 2 : FRANCHISEE AND TEAM/PLAYER OBLIGATIONS – GENERAL

14. Conduct

Each Person subject to these Operational Rules shall not, whether during a Match or otherwise, act or omit to act in any way which would or might reasonably be anticipated to have an adverse affect on the image and/or reputation of such Person, any Team, any Player, any Team Official, the BCCI, the League and/or the Game or which would otherwise bring any of the foregoing into disrepute.

SECTION 6 : REGULATIONS AND DISCIPLINARY PROCEDURE

2 Disciplinary Procedure

2.1 All complaints and/or breaches of the Regulations or charges of misconduct under the Regulations and any dispute between a Player and Franchisee in respect of such Player's Player Contract shall (unless BCCI in its absolute discretion decides otherwise) be decided by BCCI in the manner set out below unless any individual code contains a separate disciplinary mechanism (such as, by way of examples, the BCCI Anti-Doping Rules, the IPL Code of Conduct for Players and Team Officials and the BCCI Anti-Corruption Code) in which event such mechanism shall apply to resolve or adjudicate upon complaint or breach or other such matter. If any matter which constitutes a breach of these Operational Rules also constitutes a breach of any of the Regulations which have their own disciplinary mechanism then BCCI may, in its absolute discretion, decide whether to take action in respect of such matter under these Operational Rules or the relevant set of Regulations.

2.2 BCCI will establish a disciplinary procedure Commission (the "**Commission**") to hear and decide

upon any complaint, alleged breach of or charges of misconduct under these the Regulations or any alleged breach of any Player Contract or any dispute between any Franchisee and Player under or in connection with the Player Contract between them. The Commission may be established prior to and in readiness for any matter to be decided by it under these Operational Rules or it may be established specifically to deal with any such matter. The Commission will comprise up to three members of the IPL Code of Behaviour Committee as selected by BCCI. In the light of any specific matter, BCCI may nominate additional people to join the Commission if, in BCCI's discretion, the circumstances render this appropriate. If more than one person comprises the Commission then such persons shall elect one of them to act as chairman (the "**Commission Chairman**") and each reference in this Section to the Commission Chairman shall be deemed to be a reference to such elected chairman or the sole member of the Commission if only one person comprises the Commission).

2.3 Any dispute to be heard by the Commission shall be decided fairly and impartially and in accordance with a reasonable interpretation of the Regulations and/or the Player Contract and the principles of natural justice.

2.4 The Commission shall have the right and power (but not obligation) to investigate any breaches of the Regulations or any Player Contract by any Person subject to these Operational Rules. The Commission may, in the course of or in connection with any such investigation, require any Person subject to these Operational Rules to provide any evidence (such as documentation) or any particular or general information (written or oral) on matters relating to the Regulations and/or any Player Contract as the Commission may request in writing or to attend any hearing or interview to answer questions and produce evidence such as documents or items.

2.5 Any failure by any Person subject to these

Operational Rules to comply with any request or investigation by the Commission under this Section of these Operational Rules shall constitute misconduct.

3 Complaints Procedure

3.1 Any Person subject to these Operational Rules (or BCCI) (being the “**Claimant**”) may make a complaint against any other Person subject to these Operational Rules that such Person has breached its obligations under the Regulations and/or a Player Contract (a “**Complaint**”) by notifying the BCCI Honorary Secretary in writing. Following any such notification BCCI will refer the matter to the Commission to be dealt with as set out below and BCCI will notify the Claimant as soon as practicable of the identity and relevant contact details of the Commission and the Commission Chairman. Upon such notification of the identity of the Commission Chairman, the Claimant shall as soon as practicable and in any event within the deadline set by the Commission (which shall be decided by the Commission in its discretion in light of the circumstances surrounding the Complaint) send to the Commission Chairman such information/documents relating to the Complaint as the Commission requests including without limitation the following:

- (a) full details of all facts forming the basis of the Complaint;
- (b) the identity of the Person(s) who is/are the object of the Complaint (the “**Respondent**”);
- (c) the identity of any witnesses (factual or expert) on which the Claimant intends to rely in connection with the Complaint; and
- (d) copies of any supporting documentation in relation to the Complaint

and the Claimant shall deliver to the Commission Chairman such number of copies of the Complaint and above-mentioned documents/information as the

Commission Chairman requests. The Commission Chairman shall provide the remaining members of the Commission with copies of all of the above-mentioned documents and information.

3.2 The Commission shall (unless it does not believe that the Complaint has any merit) as soon as practicable following receipt of the Complaint forward a copy of it to the Respondent, together with (provided that it is appropriate to do so) any supporting documentation supplied to the Commission Chairman under paragraph 3.1 above and the matter shall be dealt with as contemplated by the remainder of this Section 6. The Commission shall inform the Claimant as soon as practicable if it does not believe that the Complaint has any merit.

3.3 The Commission shall (unless it does not believe the Complaint has any merit) as soon as practicable following receipt of the documents referred to in paragraph 3.1 and delivery of the Complaint and any accompanying documents to the Respondent request the Respondent to submit to the Commission Chairman its response to the Complaint (the “**Response**”) within a period of time which shall be decided by the Commission in its discretion in light of the circumstances surrounding the Complaint and which shall include such information/documents relating to the Complaint as the Commission requests including without limitation the following:

- (a) full details of the Response including whether it accepts all or any part of the Complaint;
- (b) the details of any counter-claim it may wish to bring against the Claimant in relation to the Complaint (a “**Counter-Claim**” and references to the Response shall be deemed to include any such Counter-Claim) and the circumstances surrounding it but any such Counter-Claim must be related to the Complaint and must not be an unrelated issue;
- (c) the identity of any witnesses (factual or expert) on which the Respondent intends to reply in

connection with its Response; and

(d) copies of any supporting documentation in relation to the Response

and the Respondent shall deliver to the Commission Chairman such number of copies of the Response and above-mentioned documents/information as the Commission Chairman requests. The Commission Chairman shall provide the remaining members of the Commission with copies of all of the above-mentioned documents and information.

3.4 The Commission shall as soon as practicable following receipt of the Response forward a copy of it to the Claimant together with (provided that it is appropriate to do so) any supporting documentation supplied to the Commission under paragraph 3.3.

3.5 The Commission may, at its discretion and if it feels it would be helpful, convene a preliminary hearing with the Claimant and Respondent and, if they so wish, their legal representatives together with any third parties which the Commission feels would be appropriate to attend the same. Any such preliminary hearing shall take place via a telephone conference call unless the Commission determines otherwise. The Commission shall give the Claimant and Respondent as much notice as is reasonably practicable of any such preliminary hearing. The non-participation of the Claimant or Respondent in any such preliminary hearing, after the above-mentioned notice thereof has been provided to them, shall not prevent the Commission from proceeding with the preliminary hearing.

3.6 The purpose of any preliminary hearing may include all or any of the following matters together with any other matters the Commission considers appropriate but such matters may in the Commission's discretion be dealt with without such a preliminary hearing:

(a) to determine the date (if any) upon which any full hearing (the “**Hearing**”) of the Complaint and any Counter-Claim shall be held;

(b) to establish the date(s) (if any) by which the Claimant and Respondent shall be obliged to serve upon each other any documents or evidence which the Commission considers appropriate or relevant in relation to the Complaint, the Response and any Counter-Claim;

(c) to decide upon other matters which the Commission shall in its discretion consider appropriate.

3.7 Unless it (in its discretion) decides otherwise the Commission shall, as soon as practicable after the delivery to the Claimant of the Response, convene a Hearing at which the Claimant and Respondent will be invited to state their respective cases. The Commission shall give the Claimant and Respondent as much notice of the Hearing as is practicable in all the circumstances and in light of the subject matter of the Complaint, the Response and any Counter-Claim.

3.8 The procedure followed at the Hearing shall be at the discretion of the Commission, provided that the Hearing is conducted in a fair manner and in accordance with the principles of natural justice. The Claimant and Respondent will be provided with a fair and reasonable opportunity to present evidence (including the right to call and to question and cross-examine witnesses in person or by telephone or video-conference where necessary), address the Commission and present its case.

3.9 The Hearing before the Commission shall be in English, and certified English translations shall be submitted of any non-English documents put before the Commission and if there is any disagreement about any such translation the Commission may arrange for a second translation of any such document by a suitably qualified

independent translator. The cost of any such translation shall be borne by the party offering the document(s). The Commission may at its discretion make arrangements to have the Hearing recorded or transcribed. If reasonably requested by the Claimant or Respondent, the Commission shall also arrange for an interpreter to attend the Hearing.

3.10 Where video evidence of the alleged offence is available at the Hearing before the Commission, then it may be relied upon by any party, provided that all other parties shall have the right to make such representations in relation to it that they may see fit.

3.11 Unless exceptional circumstances apply, each of the Claimant and Respondent must attend any Hearing before the Commission. Where any such individual has a compelling justification for non-attendance, then he/she shall be given the opportunity to participate in the Hearing before the Commission by telephone or video conference (if available). In the event that the Claimant or Respondent is a Player then without prejudice to such person's ability to call and to question such witnesses as may be necessary, one of the Captain, Vice-Captain or Team Manager of the Team that such Player represents may also attend a Hearing before the Commission to provide support and assistance to such person.

3.12 Each of the Claimant and Respondent shall have the right (at its own expense) to be represented at the Hearing before the Commission by such representatives (including legal counsel) of its own choosing but (save with the Commission's prior written consent and at its discretion) no more than an aggregate total of two such representatives shall accompany each of the Claimant and Respondent.

3.13 The non-attendance of the Claimant and/or Respondent or its representative at a Hearing, shall not prevent the Commission from proceeding with such Hearing in its absence and issuing a ruling and (if appropriate) applying a sanction in relation to the

Claim, the Response and any Counter-Claim.

3.14 At the end of a Hearing, where the Commission considers that further evidence is necessary and/or further time is required to consider the evidence that has been presented, it shall adjourn the Hearing for an appropriate period of time and make such directions as may be necessary.

3.15 Alternatively, at the end of the Hearing:

(a) the Commission shall adjourn the Hearing (for a period of no less than ten (10) minutes and no more than two (2) hours), following which it will reconvene the Hearing and verbally announce its finding in relation to the Complaint, the Response and any Counter-Claim;

(b) where the Commission determines that all or part of the Complaint or any Counter-Claim has been proved (and therefore an “**Offence**” under the Regulations and/or any Player Contract has been committed), both the Claimant and Respondent may request a short adjournment (of no more than thirty (30) minutes) to prepare any submissions that it might wish to make in relation to the appropriate sanction that ought to be applied by the Commission in respect thereof;

(c) as soon as possible after the conclusion of the Hearing, the Commission will provide its decision in writing, with reasons, setting out: (a) the finding as to whether an Offence had been committed; (b) what sanctions, if any, are to be imposed.

(d) the Commission shall have the discretion to announce the substance of its decision prior to the issue of the written reasoned decision referred to in paragraph (c) above.

3.16 A copy of the above-mentioned written decision will as soon as practicable be provided by the Commission to the Claimant and Respondent and the Commission shall at the same time send a copy to the

BCCI Honorary Secretary.

3.17 Subject only to any appeal under paragraph 5 below, the decision of the Commission shall be the full, final and complete disposition of the matter and will be binding on all parties

3.18 BCCI will (unless it decides otherwise in its discretion) issue a public announcement regarding any decision of the Commission, as soon as is reasonably practicable after such decision has been communicated to the parties. Any such public announcement of the decision may include details of the Offence(s) committed and of the sanctions imposed, if any. Until such time as a public announcement is published, all parties and participants in the proceedings shall treat such proceedings as strictly confidential, save that BCCI may publicly confirm the date of the Hearing, the Offence that is alleged to have been committed and/or the name of the person charged. Following any such announcement of the decision, no comment shall be made in connection with the matter beyond the scope of what has been included in such announcement.

3.19 Unless otherwise described herein, the standard of proof in respect of all Complaints, Responses and Counter-Claims brought under the Regulations and/or any Player Contract shall be whether the Commission is comfortably satisfied, bearing in mind the seriousness of the allegation that is made, that the alleged Offence has been committed. This standard of proof in all cases shall be determined on a sliding scale from, at a minimum, a mere balance of probability (for the least serious offences) up to proof beyond a reasonable doubt (for the most serious Offences).

3.20 The Commission shall not be bound by judicial rules governing the admissibility of evidence. Instead, facts relating to an Offence committed the Regulations and/or any Player Contract may be established by any reliable means, including admissions.

3.21 The Commission may draw an inference adverse to the Claimant and/or Respondent based on his/her refusal, without compelling justification, after a request made in a reasonable time in advance of the Hearing, to appear at the Hearing (either in person or telephonically as directed by the Commission) and/or to answer any relevant questions”

51. As we noted earlier, the commission initially comprised of the said Sanjay Jagdale, the then Hon. Secretary of respondent No.1 and two learned retired Judges. The said Sanjay Jagdale declined to be a part of the commission. Respondent No.1 ultimately constituted the commission comprising only of the two remaining members of the commission. The question is whether the commission comprising of the two learned retired Judges is valid as per rule 2.2 or the Operational Rules.

52. Rule 2.2 mandates that : “The commission will comprise upto three members of the IPL Code of Behavior Committee as selected by BCCI. Rule 2.2 expressly permits a commission to be comprised of three members of the IPL Code of Behavior Committee as selected by BCCI. Rule 2.2 therefore mandatorily requires a member of the IPL Code of Behavior committee to be on the commission. In other words a commission cannot be constituted without at least one member of the IPL Code of Behavior Committee.

53. BCCI did select five members on the IPL Code of Behavior Committee. Respondent No.1 is entitled to nominate

additional people to join the commission. It however, does not entitle respondent No.1 to constitute the commission without any member of the IPL Code of Behavior Committee.

54. Faced with this, Mr.Dada contended that respondent No.1 was compelled to constitute the commission without any member of the IPL Code of Behavior Committee, as no such member was available. He therefore, sought to support the constitution of the committee which was contrary to Rule 2.2 on the doctrine of necessity. The necessity, Mr.Dada submitted was due to none of the members of the IPL Code of Behavior Committee being available to join the commission. The said Sanjay Jagdale and Ajay Shirke were not available for the reasons we have already mentioned. We will presume that the said Rajiv Shukla was also not available.

55. However, two other members viz. one Ravi Shastri and Arun Jaitely were also on the committee. There is no reason furnished as to why they were not appointed on the commission. There is no explanation why respondent No.1 did not appoint them. Respondent No.1 did not even ask them to be on the commission.

56. As far as the said Ravi Shasti is concerned, Mr.Dada sought to tender an explanation across the bar. He stated that Ravi Shastri travels to various destinations as a commentator.

57. We do not accept this explanation. Firstly, this is not

stated on affidavit. Secondly, his traveling to various destinations as a commentator would not disable him from discharging his functions as a member of the commission. After all as mentioned by the learned counsel for respondent Nos.3 and 4, the commission sat on only one day and closed the enquiry on the same day. There is nothing to indicate that he could not have spared a single day. Thirdly and most important is the fact that as his name appears on the IPL Code of Behavior Committee, it must be presumed that he would be in a position to discharge his function as a member of the committee. It was not suggested that there were any special reasons why the other members of the IPL Code of Behavior committee were not available on this occasion.

58. Mr.Chagla contended that the petitioner is not entitled to challenge the constitution of the commission as being contrary to Rule 2.2 of the Operational Rules, as there was no pleading to this effect in the petition.

59. The submission is not well founded. We have already referred to the pleadings. In fact respondent No.1 did not specifically state in its affidavit in reply that the commission was constituted under Rule 2.2. We are left to infer this from the letter dated 29.05.2013 annexed as Exhibit "B" to the affidavit in reply. The petitioner has alleged that the constitution of the commission was

contrary to the Rules and Regulations. That is sufficient in the facts of this case to permit the petitioner to raise this contention. No evidence is required as far as the petitioner is concerned in support of this contention. The petitioner is entitled to rely on the plain language of Rule 2.2 of the Operational Rules that mandates that at least one member of the IPL Code of Behavior Committee must be a member of the commission constituted under Rule 2.2. Admittedly the two learned Judges are not members on the IPL Code of Behavior Committee.

60. It is the first respondent that seeks to deviate from this rule and take advantage of an exception based on the doctrine of necessity. It is for the party relying upon an exemption or an exception to aver and prove that the facts justifying or entitling it to do so exist. The burden was therefore, on respondent No.1 to aver and prove that no member from the IPL Code of Behavior Committee was available to be appointed on the said commission. Respondent No.1 has not even averred anything to this effect. It has not even sought to establish the same except orally across the bar during the hearing.

61. It must be held therefore, that the said commission was not duly constituted. It was constituted contrary to and in violation of the provisions of Rules 2.2 and 3 of Section 6 of the Operational Rules.

62. Despite our conclusion that the constitution of the commission was not in accordance with the Operational Rules, we are not inclined to grant the further reliefs prayed for by the petitioner, viz. to constitute a panel comprising of retired Judges to conduct an enquiry against respondent No.3 and 4 and the said Gurunath Meiyappan with regard to their alleged involvement in the spot fixing and betting. Even if we are correct, in our view that the commission has been constituted contrary to the Operational Rules, it would not entitle this Court to constitute a fresh probe commission at least this stage and in this writ petition.

63. The constitution of a probe commission under section 6 of the Operational Rules is the prerogative of respondent No.1. We see no reason to deprive it of the same at this stage and in this writ petition. Respondent No.1 is at liberty to take such steps as it deems in this regard.

64. The other reliefs are not pressed. This writ petition is, accordingly, disposed of in the above terms.

Mr. Subramaniam's application on behalf of respondent No.2 for the stay of this judgment is rejected.

There shall be no order as to cost.

(M.S. SONAK, J.)

(S.J. VAZIFDAR, J.)