

IN THE HIGH COURT OF DELHI

W.P.(C) 7868/2005

Date of decision: 2nd March, 2009

Mr. Narinder Batra ... Petitioner
through: Mr. Arun Jaitley, Sr. Adv with Mr. Maninder
Singh, Mr. Kirtiman Singh and Mr. Girish
Mishra, Advs.

VERSUS

Union of India ... Respondents
through: Mr. P.P. Malhotra, Addl. Solicitor General
with Standing Counsel and Mr. Tanuj
Khurana, Adv. for the respondent no. 1
Dr. A.M. Singhvi, Sr. Adv. With Mr. D.S.
Narula, Ms. Manmeet Arora, Ms. Vandana
Miglani and Mr. M.P. Choudhary, Advs. for
the respondent no. 2
Mr. Arun Bhardwaj, Sr. Adv. with Mr. Aman
Vachher and Mr. Ashutosh Dubey, Advs. for
the respondent no. 3
Mr. Lovkesh Sawhney, Adv. for the
respondent no. 4
Mr. V.P. Singh, Sr. Adv. with Mr. Pradeep
Dewan and Mr. Rajiv Samiyar, Advs. for the
IOA.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J

1. This writ petition primarily seeks enforcement of guidelines framed by the respondent no. 1 for dispensation of financial assistance as well as recognition of National level Sports Federations ('NSFs' hereafter) contending that they are applicable and binding.

A grievance is made that the respondent no. 2 herein - the Indian Hockey Federation ('IHF' hereafter) has been recognised and granted financial assistance under such guidelines and is bound to comply with the same and that it has failed to abide by the same.

2. The writ petitioner has claimed that he is a member of the Jammu & Kashmir Hockey Association and was authorised to represent the Association at the respondent no. 2. On 29th January, 2002, the petitioner was elected as the Senior Vice President of the respondent no. 2 for the first time and his term of four years was expiring on 28th January, 2006. The petitioner has claimed that he was vitally interested and concerned with the manner in which the affairs of the Indian Hockey Federation were conducted.

3. Sh. K.P.S. Gill – respondent no. 3 was elected President of the respondent no. 2 in 1994 and he has continued to hold the post of President in all elections ever since and as such he was a President of the respondent no. 2 – Indian Hockey Federation for a period of more than 11 years.

Mr. K. Jothikumaran, Honorary Secretary General – respondent no. 4 is also stated to be holding the post for three consecutive terms since 1994.

4. The petitioner made allegations of mismanagement and violation of the terms of the Government guidelines and filed the writ petition for the reason that the respondent no. 1 had failed to take any action thereon. A further grievance was made that the

respondents were not abiding by the terms of the constitution of the respondent no. 2 and were perpetuating to convene an Annual General Meeting for the year 2003-04 on 30th January, 2005 without circulating the relevant documents. A complaint dated 21st January, 2005 had been lodged in this behalf. Dissatisfied with the communications received, the petitioner protested by a letter dated 29th January, 2005 and again on 30th January, 2005 complaining the meeting of the violations of the constitution of the respondent no. 2. As his grievances were still not addressed, the petitioner made a complaint on 17th February, 2005.

Further grievances with regard to the manner in which minutes have been recorded were not addressed by the respondents.

5. The petition is necessitated as the petitioner is aggrieved by the failure of the respondent no. 1 to take action on the representations dated 21st January, 17th February and 4th March, 2005 of the petitioner pointing out alleged irregularities in the affairs of respondent no. 2 on the part of respondent nos. 2 to 4 which inter alia include the following :-

“(a) Telephone expenses paid for by IHF for various telephones used by President and Hony. General Secretary, month wise details for 2003/2004.

(b) Domestic travelling/Hotel/and other expenses paid for by IHF for President and Hony. General Secretary, month wise details for 2003/2004.

(c) Foreign travelling/hotel/and other expenses paid for by IHF for President and Hony. General Secretary, month wise details for

2003/2004

(d) Money actually received from Ministry of Sports/Sports Authority of India to be spent on playes, per player per day in dollar terms. Each tour wise details be provided for 2003/2004.

(e) Money spent as Miscellaneous expenses/taxi expenses without receipt/transport expenses without receipt, during foreign tours in 2003/2004. Details be given for each tour along with names of persons who were handling all these expenses during the tours.

(f) Money received from the sponsors in 2003/2004 and its utilisation and also commission paid to leisure sports on this money received in 2003/2004, in amount and in percentage terms. Same information be also provided for PHL, money received and to be received and its utilisation and commission to leisure sports.

(g) The petitioner was given to understand that there are people who have not made their due payments for over 3 years and on the other side there are people who are done payment immediatly. If it is so, then the petitioner would like to have an age wise list of parties who have to take payment from IHF till 31.3.2004."

These grievances have been noticed here only for the purpose of elucidating the nature of violations which were being complained of and inquiry sought by the petitioner.

6. In addition to the above, the petitioner has asserted that clause 3.5 in the Guidelines for Assistance to National Sports Federations prohibits the office bearer from participating in an election after more than two continuous terms and that the respondent nos. 3 and 4 are blatantly violating the same. The writ petitioner has, therefore, prayed for the following reliefs :-

“(a) Issue a writ of certiorari or any other writ

of direction in nature thereof calling the records of the respondent no. 1 pertaining to the grant of financial assistance to respondent no. 2 for last ten years for ascertaining the manner in which the funds granted by the Union of India have been utilised by the respondent no. 2.

(b) Issue a writ of mandamus or any other direction in the nature thereof against the Union of India directing that in the event of any unsatisfactory explanation by respondent nos. 2-4 with regard to the utilisation of the funds provided by the Government of India, to take appropriate steps towards securing financial discipline and for initiation of the process of de-recognition of respondent no. 2 as the National Sport Federation for the sport of hockey.

(c) Issue a writ of certiorari, quo warranto or any other writ or direction in the nature thereof calling for the records of respondent no. 2 and thereafter quashing the election of respondent no. 3 and 4 as the President and Hony. Secretary General respectively being contrary to the rules dated 14.08.2001 framed by the Government of India.

(d) Issue a writ of certiorari or any other writ or direction in the nature thereof holding clause 8 of the constitution of respondent no. 2 to be ultra vires, illegal in the event it is contended by respondents 2-4 that any person can continue for perpetuity as the President or Hony. Secretary General of respondent no. 2 and that clause 8 of the Constitution of respondent no. 2 is not subject to the prohibition imposed by the Government of India rules dated 14.08.2001 prohibiting continuation as such for a period of more than 8 years.

(e) Issue an appropriate writ of prohibition or direction in the nature thereof restraining the respondent no. 3 and 4 from either continuing as the President and Hony. Secretary General of respondent no. 2 or from contesting the elections for the post of President and Honorary Secretary General respectively for the fourth consecutive term in contravention to the Revised Guidelines for Assistance to National Sports Federation dated 14.08.2001.

(f) Issue a writ of prohibition or any other direction in the nature thereof restraining respondents no. 2-4 to conduct the elections to the post of Senior Vice President before 28.01.2006.

(g) Issue an appropriate order writ or directions to

the respondents to furnish the information that has been sought for by the petitioner from time to time through various communications including the last communication dated 21.01.2005 and 17.02.2005.

(h) Pass any other orders which this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

7. The respondents appeared and have opposed the writ petition on all material facts relating to the merits of the complaints. There is vehement denial of all allegations of mismanagement and financial irregularities by the respondent nos. 2 to 4. In view of the discussion in the later part of the judgment, I am not dwelling at the point wise response of the respondents at this stage. The various legal objections to the maintainability of the writ petition by respondent nos. 2 to 4 assailing the very existence of the clause in the guidelines; legislative competence of the Union Government to legislate with regard to the subject of sports and hence power to issue executive instructions; bindingness of the guidelines; competence of this court to issue a writ of mandamus to enforce non-statutory guidelines and entitlement to any relief of the petitioner have been challenged.

The respondent no. 1 has not joined issue with the objections raised by the respondents.

8. Alongwith the writ petition, the petitioner has filed CM No. 5616/2005 praying for an interim direction to the respondents to hold any future Annual General Meeting in accordance with the applicable rules and regulations. A further prohibition was sought

restraining the respondent nos. 3 and 4 from participating in the election process of the respondent no. 2 otherwise than in accordance with the guidelines dated 14th August, 2001 and inter alia, a prayer was made not to hold any election to the post of Senior Vice President till 28th January, 2006. As the hearing in the matter was protracted and could not be completed by the parties, by an order passed on 20th May, 2005, it was directed that the respondent nos. 2 to 4 may proceed with the Annual General Meeting which was proposed to be held on 23rd May, 2005. However, in case elections were not held, the result thereof shall not be declared and be kept in sealed cover.

9. Each objection taken by the respondents is of tremendous importance so far as the issue of sports is concerned. For this reason, the same are dealt with hereafter in the seriatum in which the factual context would require them to be considered.

10. Sports has traditionally been considered an integral and inseparable part of education. Measures in respect thereof fell to the jurisdiction of the Department of Education under the Ministry of Education & Social Welfare of the Government of India under the Allocation of Business Rules framed by the Legislature in exercise of powers under the Constitution of India. From as far back as in 1975, the Government was deeply concerned with the growing criticism in Parliament, Press and otherwise of the low standard of sports and games and had so stated in the circular no. F.11-4/74-SPI dated the 20th September, 1975. It was also noted that the primary

responsibility for the development and management of sports and games in the country especially as the necessary base for competence in competitions overseas, rests with the Indian Olympic Association/National/Sports Federations/Associations. As the efforts of these organisations had fallen short of the country's expectations, leading to widespread public concern, issues of necessary remedial action were raised. The Government was concerned with the inability to raise standards to international levels. It was also aware that the various national organisations dealing with sports and games had autonomous functioning. In this circular the Government had clearly expressed that it had no desire to interfere either with the internal working or the autonomy of these organisations. However consistent with its obligations, it was felt that the Government had to lay down certain norms with reference to which the Government's assistance and its instrumentality should, on occasions, be made available to the Indian Olympic Association/the National Sports Federations/National Sports Associations.

In this background, the Government of India had considered the matter carefully in consultation with the All India Council of Sport and therefore decided that in the interest of promotion of sports and games, the government's financial and other assistance shall be extended only to those national organisations dealing with sports and games which fulfilled certain conditions laid down in its guidelines.

11. It is noteworthy that these guidelines were finalised on a

careful and prolonged consideration in inter-ministerial consultation and with all those concerned and were titled as "Improvement of Standard of Sports and Games in the country – Conditions For Financial and Other Assistance to National Sports Federation/Associations etc.".

12. The Indian Olympic Association had participated in the consideration and even requested for time to bring the constitution of the Indian Olympic Association and concerned National Sports Federations in line with the guidelines framed by the Government. The same is apparent from a reading of clause 4, 5 and 6 of the communication dated 20th September, 1975 of the Government of India which read thus :-

"4. The guidelines, as enumerated above, have been finalised after careful consideration of the points raised by the Indian Olympic Association, National Sports Federation/Associations, consequent on issue of this Ministry's earlier letter No. F.11-4/74-YSS 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 organisations 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, finalise 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.”

13. The guidelines and conditions were circulated by the Ministry of Education & Social Welfare on 20th September, 1975 to all Presidents/Secretaries of the Indian Olympic Association; and the President's/Secretary's of all national sports federations and associations. These guidelines inter alia stipulated that in order to be eligible for financial and other assistance, the national organisation was required to fulfil 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:”

The expression 'office bearer' was defined in explanation 1 as the President; Secretary; the Secretary General or any other corresponding office and the treasurer. Clause (i) of explanation 2 declared that no person who had already held these offices in the National Federation/Association consecutively for two terms or 8 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.

The clause with regard to the tenure restriction of the named office bearer was in operation right from 1975 when the Government made the guidelines applicable for the purposes of recognition and

assistance from it were concerned.

14. With the passage of time, several national sports federations came into existence for the development of specific games/sports disciplines. In achieving their objectives, the Government of India actively supported these federations. The existing guidelines for assisting such national sports federations had been reviewed and revised based on the experience for preparation of the Asian Games, 1994; Olympic Games, 1996. Recommendations of the committees set up for promotion of sports were also taken into consideration. It appears that some revision of the guidelines was given effect to from 10th July, 1997.

15. These revised guidelines were circulated as an order of the Government of India with the letter dated 14th August, 2001 which records that the revision was further to the revised guidelines circulated by the Ministry with its letter dated 16th July, 1997. It was pointed out that the guidelines stood amended upon consideration of suggestions received from the Indian Olympic Association and the National Sports Federations with the approval of the Ministry of Finance, Department of Expenditure. The Government order clearly stated that the amended provisions would come into force with immediate effect. So far as the term of the office bearer was concerned, there was no amendment to the prescription made in the guidelines circulated with the approval of the Department of Expenditure, Ministry of Finance. The Government order clearly

stated that the amended provisions would come into force with immediate effect.

16. The petitioner has urged that the revised guidelines satisfied all requirements of the manner in which a Government order is to be made and circulated as prescribed in Article 166 of the Constitution of India and became binding and applicable. It has been submitted that the disbursement of grants and assistance was effected in terms of these guidelines to the various National Sports Federations including the respondent no. 2.

17. Though the respondents have tried to urge that the guidelines originally were formulated during the period of emergency in the year 1975, but from perusal of the guidelines issued on 20th September, 1975, it is evident that they were under contemplation and consideration from 1974. The period which was taken before the issuance of the guidelines in September, 1975 was occupied in consideration of the suggestions from the various agencies and the fact that a state of emergency had been declared in June, 1975 would not influence adjudication on the bindingness of the guidelines.

18. The Government recognised sports and games as an essential ingredient of the human resource development. The amendments were made keeping in view the discussions held by the Government with the Indian Olympic Association and National Sports Federations, which marked an important departure from the

approach followed in the past. Amongst others, the revision provided for an emphasis on professionalising and upgrading administrative and financial management of federations; detailed guidelines for preparation of long term development plans; tripartite agreements between the National Sports Federations, the department and the Sports Authority of India; defined criterion for priority categorisation for Government assistance; a discipline specific project approach for processing cases for financial assistance; development of systems to handle players' grievances inter alia were provided for.

The amendments were necessary to streamline the procedure for effective coordination amongst various agencies involved in promotion of sports and to extend required infrastructure, training and other facilities to the sports persons for achieving excellence in the international events in the coming years.

19. It is noteworthy that these guidelines incorporated innovation also as 'the flow of funds to federations would also include a substantial portion of the events of other major schemes of the department apart from grants to National Federations'. The perspective of the guidelines was stated in clause 1.4 which was to help federations achieve financial self sufficiency over a period of time thereby reducing their dependence on Government.

20. In view of the long submissions addressed by the respondents contending that these guidelines are beyond the legislative competence of the Parliament and are violative of the rights of the

citizens under Article 19 of the Constitution and are an unreasonable restriction on their development, it is necessary to examine the objective as well as the role and responsibility of the Ministry of Youth & Sports as clearly delineated in the guidelines and the relevant portions whereof read thus :-

"II. OBJECTIVE OF THE GUIDELINES

2.1 The objective of these Guidelines is three fold :

Firstly to define the areas of responsibility of the various agencies involved in the promotion and development of sports.

Secondly, to identify National Sports Federations eligible for coverage under these guidelines, to set priorities, and to detail the procedures to be followed by the Federations, to avail of Government sponsorship and assistance.

Thirdly, to state the conditions for eligibility which the Government will insist upon while releasing grants to Sports Federations.

III ROLE AND RESPONSIBILITY OF THE MYAS, NATIONAL SPORTS FEDERATIONS AND THE SAF

3.1 The role and responsibility of the agencies involved in implementation of the guidelines will be as follows :

(a) THE MINISTRY OF YOUTH AFFAIRS AND SPORTS

(i) will determine the eligibility conditions for recognition of NSFs,

(ii) will establish categories to determine quantum and scale of assistance which may be provided to NSFs will have to fulfil if they wish to avail of Government support.

(iii) will lay down conditionalities which NSFs will have to fulfil if they wish to avail of Government support.

(iv) will provide assistance to NSF against agreed long term development programme."

21. In clause IV, the respondent no. 1 had indicated that it would prioritise sports disciplines for special focus and work out differential patterns of assistance based on their status and

performance. The priority category included such sports which are included in the Olympic, Commonwealth and Asian Games or such other sports for which internationally recognised tournaments are held in which at least 20 countries participated subject to fulfilment of certain conditions.

So far as hockey is concerned, both men and women hockey is included at serial no. 8 and 9 of the priority sports discipline.

22. With a view to codify the requirements for granting recognition at the discretion of the Government to the national level federations the Government has included Guidelines for Recognition of National Sports Federations' and Annexure II to the Guidelines. Clause 2.2 thereto states that recognition shall mean recognition of the leadership of the federation in the development of a particular sport in the country.

23. The amended guidelines also contain a tenure clause for office bearers which reads as follows :-

“3.5. Tenure of the Office-bearers:- The tenure of office-bearers shall be in accordance with the Government Orders issued under letter No. 11-4/74-SP.I dated 20th September, 1975 (copy placed at Annexure-XI). As per above Orders, Office-bearers of NSI's may hold office for one term of four years and may be eligible for re-election for a like term or period provided the office bearers have secured not less than 2/3 votes of the members. However, no such office-bearers shall hold office consecutively for more than two terms or eight years.”

Clause 3.10 states that 'at the national level, there will be only one recognised federation for each discipline of sport'. This clause

creates a monopolistic status for the national sports federation which is recognised under the guidelines. Only the duly recognised national sports federation would be entitled to financial grants as admissible under the guidelines.

Clause 3.17 mandates that the federation must be autonomous and resist all pressures of any kind whatsoever, whether of a political, religious, racial or economic nature.

24. While laying down these conditions, the Government clearly declared the reasons for the same and stated as follows :-

“ 5.1 xxxx. The intention is further to ensure that NSFs maintain certain basic standards, norms and procedures with regard to their internal functioning, which conform to the high principles and objectives laid down by the concerned International Federation, and which are also in complete consonance with the principles laid down in the Olympic Charter or in the constitution of the Indian Olympic Association.”

25. While laying down the manner in which the federation seeking recognition would have to apply, the respondent no. 1 had stated thus:-

“5.2 II While considering the proposals for recognition, the Ministry will be guided by the following:

The current legal status of the Organisation
Recognition by the International and Asian
Federation.

Recognition by the IOA

Its undisputed status as an Apex Body in India

Its all India spread

The role and contribution of the organisation in promoting and developing Sports in India

Its internal financial and management practices and standards.

Its electoral practices.

Its protection and promotion of players' interests and welfare.”

26. In clause 5.3, the Ministry reserved the right to suspend or withdraw the recognition of the National Sports Federation in the event of a serious irregularities being detected in their internal functioning. The procedure and consequences of suspension and de-recognition were also indicated as an annexure 3 to the guidelines.

27. Clause 5.1 states that recognition of a federation shall not be a matter of right and shall be purely at the discretion of the Government of India which may grant recognition subject to such terms and conditions as it deems fit. The Government has retained the power to withdraw recognition which would disentitle the federation from consideration of any proposal till the cause of the suspension or withdrawal of the recognition is settled to the satisfaction of the Government of India.

28. Condition IV in clause 6.1 prescribes that in order to be eligible for financial assistance and sponsorship, the organisation must maintain their recognised status with the department. Clause 6.2 stated that the National Sports Federation would be eligible for assistance under these guidelines immediately after recognition. The

funds to the National Sports Federation would flow as grants or from other schemes of the department for the purposes of the training requirements; purchase of equipment; participation in tournaments abroad hosting and holding tournaments in India including international tournaments and for administrative support. Priority category sports were entitled to financial assistance for coaches as well as sports personnel; travelling expenses of players, residence, board, lodging, training etc; assistance for purchase of sports equipments; full assistance for participation in international events as the Olympic, World, Asian, Commonwealth, SAF and Afro Asian Championships/Games or mandatorily required international pre-qualifying tournaments for these championships. Allowances for board and lodging etc were also provided as additional assistance detailed in the guidelines for other events including national level championships, their organisation etc is also prescribed under these guidelines.

29. Other aspects of the guidelines are provided in clause IX and include clubbing and dove trailing of schemes of the Sports Authority of India and the Ministry which have a direct bearing on the promotion and development of sports in the country for which tripartite agreements may be signed between the Sports Federations, the Ministry and the Sports Authority of India.

The guidelines in para 10 also provided the selection of sports persons for participation in major international events.

30. In Clause 10.1 of the Guidelines, it is stated that the National Sports Federations are primarily responsible for judicious selection of the sports persons for participation in major international events based on merit and with the objective of enhancing national prestige and bringing glory to the country. It is observed that the best sports persons/team has to be chosen for representing the country. The Government has recognised that its intervention be minimised but in recognition of the need to be associated+, instead of nominees of the Government or Sports Authority of India, the guidelines now stipulated that the Selection Committee would be constituted by the Federation comprising of the President, National Coach and eminent sports persons. The Government intervention was restricted to appointing an observer for each discipline who would be associated with all activities of the National Federation. The national coach under clause 10.5 is required to be selected by a committee with the president of the concerned NSF as its chairman; the Director General, Sports Authority of India; executive director (Teams); one international (preferably an Arjun Awardee or an international medal winner) to be nominated by a Government nominee of the Indian Olympic Association as its members. The coach would be shortlisted from a panel prepared by the Sports Authority of India. The national coach would be appointed by the Sports Authority of India after a careful consideration of the name recommended by the Selection Committee.

The Indian Hockey Federation/respondent no. 2 is stated to be

a society registered under the Societies Registration enactment.

31. **A preliminary objection has been raised that the petition under Article 226 of the Constitution of India seeking issuance of a writ against the respondent no. 2/Indian Hockey Federation is not maintainable on the ground that it is a society registered under the Societies Registration Act.**

32. The very issue urged in the present writ petition arose before the Division Bench of this court in the pronouncement reported at ***114 (2004) DLT 323 Rahul Mehra & Anr. vs. UOI & Ors.*** An objection to the maintainability of the petition against the Board of Control for Cricket of India (a society registered under the Tamil Nadu Societies Registration Act) was taken. The court observed that the Government having entered into fields of commerce, industry and business and private bodies taking up public functions and duties, the distinction between public law and private law based on the public or private character of the institution as a result of the overlap, is no longer clearcut or water tight and law is necessarily required to remain alive to these dynamics and has to be moulded keeping in view the changes and developments in society.

33. Placing reliance on important judicial precedents of the Apex Court wherein a similar question had been raised, the Division Bench has culled down the applicable principles with utmost clarity which deserve to be considered in extenso and read thus :

“9. In *Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R.*

Rudani: (1989) 2 SCC 691, the Supreme Court succinctly put this issue beyond the pale of controversy in the following words :-

"20. The term "authority" used in Article [226](#), in the context, must receive a liberal meaning unlike the term in Article [12](#). Article [12](#) is relevant only for the purpose of enforcement of fundamental rights under Article [32](#). Article [226](#) confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article [226](#) are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation with by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."

(underlining added)

The decision in Anadi Mukta (supra) was further explained in Vst Industries Ltd. v. Vst Industries Workers' Union: (2001) 1 SCC 298 where the Supreme Court observed as follows [at page 306] :-

"In Anadi Mukta case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article [226](#) of the Constitution can be invoked."

And, then in G. Bassi Reddy v. International Crops Research Institute:(2003) 4 SCC 225 the Supreme Court held:-

"28. A writ under Article [226](#) can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty (Praga Tools Corpn. v. C.A. Imanual, Shri Anadi Mukta Sadguru Trust v. V.R. Rudani SCC at p. 6 and 8 and VST Industries Ltd. v. Workers' Union)..... Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity."

Ultimately, in Federal Bank Ltd. v. Sagar Thomas: (2003) 10 SCC 733:

"From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

(underlining added)"

34. On a consideration of these binding principles, the Division Bench laid down the applicable test thus :-

"8. Governments have ventured into the private arena and private bodies, likewise, have undertaken public duties or public functions. There is a degree of overlap and the distinction is no longer clear-cut or watertight. The law must be alive to these dynamics. Accordingly, the question of maintainability of a writ petition must not be addressed from the standpoint of amenability. Everybody is amenable to the jurisdiction of the High Courts under article 226. However, Courts have exercised restraint and they exercise these powers only in cases which involve public law. therefore, the "litmus" test for invoking the writ jurisdiction is whether the act complained of is in the discharge of a public duty or a public function. It matters little as to who discharges the public duty or performs the public function. And so too, the source of the power to discharge or perform such duty or function. Whether the person is empowered by statute or some governmental order or whether such person arrogates to himself the power to perform a public function or discharge a public duty, is of no consequence. What is to be seen is whether there is an infraction in the discharge of such duty or function. If there is, the High Court has power to correct it by issuing an order, direction or writ to any person. Funding is also not an issue. A privately funded

private organisation but discharging a public duty would still be within the "net" of article 226."

(Emphasis supplied)

It is these principles which would guide adjudication of the issue before this court.

35. The wider ambit of the jurisdiction of the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India as compared to the scope of a writ petition before the Supreme Court under Article 32 needs no elaboration.

36. A question arose before the Apex Court in the judgment reported at *JT 2005 (2) SC 8 Zee Telefilms Ltd. & Anr. vs. UOI & Ors.* as to whether the Board of Control for cricket of India ('Board' hereafter) was not a 'state' within the meaning of article 12 of the Constitution of India.

In para 30 of the pronouncement, the majority view was expressed that it cannot be denied that the BCCI 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 which activities can be said to be akin to 'public duties' or 'state functions'. The position that the BCCI was exercising public functions and was performing a public duty was accepted. It was, however, held that the BCCI was in the nature of a private body exercising public functions and performing public duties and that by itself did not suffice to make such a body a state for the purposes of article 12 of the Constitution of India and for this reason, a writ petition under article 32 of the Constitution would not lie to the

Supreme Court. However, if there was any violation of any constitutional or statutory obligation or rights of other citizen, an aggrieved party can seek remedy under the ordinary course of law or by way of a writ petition under article 226 of the Constitution before the high courts.

37. The petitioners have urged at length that in any case no writ could be issued against the Indian Hockey Federation for the reason that it is not performing any statutory functions.

38. Both the majority and minority views in Zee Telefilms concluded that judicial review against action of the BCCI would lie. The divergence came in the remedy. There was no divergence on the view that judicial review over the action of the national level sports body could be exercised by the high courts under Article 226 of the Constitution of India. While the minority held that a writ petition under Article 32 before the Apex Court would also be maintainable, the majority judgment that an aggrieved party may not have relief by way of a petition under article 32 before the Supreme Court but can always seek remedy under the ordinary course of law and also under the Constitution by way of a writ petition under Article 226.

39. The evolution of jurisprudence on the issue in several international pronouncements would guide consideration of this objection. These have been relied upon in the minority judgment in Zee Telefilms. It has been considered that when a public function is delegated by a state to a board (Ref : Brentford Academy vs.

Tennessee Secondary School Athletic Association. 531 US 288; Pennsylvania vs. Board of Directors of City Trust of Philadelphia 353 US 230, 331; 1 L Ed 2d 792; 77 S Ct 806 (1957); or when such function is in terms of Governmental policies, or when the Government is entwined in the management or control of such board; a nominally private entity has been treated as a state actor (Ref : Wests vs. Atkins at 56, 101 L Ed 2d 40; Edmonson vs. Leeseville Concrete Co 500 US 614, 627 & 628). It was further held that the character of a legal entity is determined neither by its expressly private characterisation in statutory law nor by the failure of the law to acknowledge the entities in separability from recognised government officials or agencies.

40. The powers of the High Court under Article 226 are plenary and it is constitutionally empowered to issue directions, orders or writs to 'any person' for the enforcement of a fundamental right and 'for any other purpose'. However, as a rule of prudence and convenience, the courts have avoided interference in matters involving disputed questions of law or where alternate remedies for dispute resolution are available. The courts have also restrained their hands where the dispute raised is of a purely private nature without any 'public law' element. However just as state activity has not remained confined to the narrow issues of governance; private enterprises are also not confined to areas of private activity and there is a tremendous interplay between private players and activity of public nature, with or without direct Government intervention or

involvement.

41. Increasingly courts are giving an expanded definition to the rights of citizens. In the judgment reported at ***MANU/SC/0246/1995 Secretary, Ministry of Information & Broadcasting, Government of India & Ors. vs. Cricket Association of Bengal & Ors.***, the Apex Court was concerned with an issue as to the rights under Art. 19(1)(a) in the context of the right to telecast a sporting event and held that when a telecaster desires to telecast a sporting event, it was held that it would be incorrect to say that the free speech element is absent from this right. Sports is a form of expressive conduct. The right to freedom of speech and expression under article 19 (1) (a) also includes the right to educate, to inform, to entertain and also the right to be educated, informed and entertained.

42. There are, however, limitations on the extent of judicial review and the parameters in respect thereof were also laid down by the Division Bench of this court in ***Rahul Mehra & Anr. vs. UOI & Ors.*** The delineation of the applicable principles of law laid down by the Bench applies on all fours to the issues raised before this court which reads as follows:-

“15. The petitioner reiterated the following observations of the learned single Judge in Ajay Jadeja (supra), adopting the same as his submissions:-

"When the Government stands by and lets a body like BCCI assume the prerogative of being a sole representative of India for cricket by permitting BCCI to choose the team for India for appearance in events like the World Cup, then it necessarily imbues BCCI with the public functions at least in or far as the

selection of the team to represent India and India's representation in International Cricket fora and regulation of Cricket in India is concerned. Thus the monopoly status of the respondent No. 2 is evident. It is also clear that such monopoly status is indisputably state recognized as evident from the letter of Ministry of Culture, Youth Affairs and Sports dated 22nd December 2000 and indeed by acquiescence of the Government, can be considered state conferred. Similarly the plea of the BCCI that it does not own or lease the stadia is of no consequence as the stadia are owned and leased by its members and it is not disputed that all international matches are played in such stadia. Similarly membership of BCCI of the International Cricket Conference (ICC) cannot ipso facto imply that it is not amenable to writ jurisdiction. In fact BCCI represented India on this own showing and depending upon the nature of the action impugned, would be amenable to writ jurisdiction."

We agree. BCCI, like everyone else, is amenable to writ jurisdiction. However, not every action of BCCI would be subject to the scrutiny of judicial review. Only those actions which fall within the ambit of public law would call for any direction, order or writ under article [226](#). Disputes or acts in the sphere of pure private law having no traces of public law would not be the subject matter of writs, directions or order to be issued under article [226](#).

17. At the cost of repetition, we may state that the whole "amenability" issue is misplaced. A body, public or private, cannot be categorised as "amenable" or "not amenable" to writ jurisdiction. The "function" test is the correct one to test maintainability. If a public duty or public function is involved, any body, public or private, qua that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of article [226](#). The BCCI which is the smile repository of everything cricket in India has attained this "giant" stature through its organisation, skill, the craze for the game in India and last but not the least by the tacit approval of the Government. Its objects are the functions and duties it has arrogated to itself. Many of these are in the nature of public duties and functions. Others may be in the field of private law such as private contracts, internal rules not affecting the public at large etc.,. therefore, BCCI cannot be said to be beyond the sweep of article [226](#) in all eventualities

for all times to come. That is the certificate that BCCI wants from this court. We are afraid, we cannot grant that. Consequently, this petition cannot be thrown out on the maintainability issue.

This does not necessarily mean that the petitioners would be entitled to the orders, directions or writs that they seek. That will have to be examined on merits.”

43. There is no dispute that the Indian Hockey Federation represents the nation at the international bodies in matters relating to hockey. In 483 US 522 : 1997 L.Ed. 2d 427 San Francisco Arts & Athletics, Inc. vs. United States Olympic Committee and International Olympic Committee, it was stated by Brennan, J that the United States Olympic Committee performs a distinctive traditional government function representing the nation to the International Olympic Committee.

The same can be said of the Indian Hockey Federation and its office bearers who represent the country and the board at international forums.

44. As per the bye laws and constitution of Indian Hockey Federation placed on record. Its address is the 'National Stadium, New Delhi'. Clause 2 governing the jurisdiction states that the jurisdiction of the Federation shall extend over the whole of the Indian union. Under clause 3 of the Memorandum as well as Rules & Regulations of IHF – the respondent no. 2, its objects are inter alia 'to promote, encourage and develop the game of hockey in the Indian union; to maintain general control of the game of hockey in the Indian union and to keep it on the highest level of amateurism in

sports; to coordinate inter member activities in all possible ways involving holding of inter member tournaments and national championships tournaments; to encourage the formation of state, regional and other associations for the control of the game in such territory as may be assigned to them; to select teams to represent India; to promote, control and finance visits of such teams abroad; to control and regulate the terms and visits of any hockey team for the Union of India going abroad; to promote control, if necessary, to finance the visits to India of foreign teams' amongst other functions.'

In the definition clause, a 'member' is defined as any state or regional body or a unit of a National character affiliated as a member of the federation. Its membership under clause 3 is confined to the controlling body for hockey in any state within the Indian union and anybody or a unit of a national character to which the federation in its discretion may grant affiliation'.

As per the Memorandum placed on record by the petitioner, it had thirty three member associations which includes state associations, Railway & Services Sports Control Boards.

45. So far as the BCCI was concerned, it was found that it received no financial assistance from the State and that the Government does not exercise any control over BCCI and non-statutory body. It had also not received recognition under the guidelines from the Government. For this reason, an argument was raised before the court that it is a non-statutory body and no public duties were imposed upon it by statute but that it was a society in the nature of a

'private club'.

In *Rahul Mehra* (supra) the Division Bench rejected this argument as untenable holding that attention to the source of power is misplaced and that “the error arose in viewing the classical prerogative writs of, inter alia, certiorari, mandamus and prohibition in the traditional sense as being used only against the government or public authorities.”

46. The Division Bench compared the extensive powers conferred on the High Courts under Article 226 of the Constitution of India, vis a vis the traditional limited scope of judicial review under English Law and held thus :-

“13. The BCCI has a monopoly over organized cricket in India. Every youngster, maybe an aspiring Rahul Dravid or an Irfan Pathan, who dreams to play cricket for his State or zone or India cannot do so without the permission and approval of the BCCI. We must not forget that cricket, is no longer what it used to be. It is not just a sport which people dressed in white flannels and rolled up shirt-sleeves enjoyed on lazy summer's afternoons in England between sips of tea and munches of scones. It is no longer the reserve of the nawabs, the maharajas, the brown sahibs and the rich who had the time and the inclination. It now permeates all levels of society. To many it presents itself as an opportunity to a better livelihood. Cases abound in India, where cricket has brought financial succour to persons and their families who were otherwise doomed to lead lives enslaved in poverty. Cricket is regarded as a profession, an avocation. Many in India, play cricket not just for the love of the game but for to heir own survival. The BCCI performs the vital public duty and function of providing this opportunity. It has an elaborate network and is a massive organisation controlling every aspect of cricket in India. Dr Singhvi, the learned senior counsel who appealed on behalf of BCCI, submitted that no part of the capital of BCCI is held by the Government; no financial assistance of the State is enjoyed by it;

the Government does not exercise any control over it; BCCI is a non-statutory body; no public duty is imposed upon it by statute; it is a society, nothing but a "private club" and as such issuance of a writ against it would be completely beyond the scope of article 226 of the Constitution of India. This argument is untenable in the light of the discussion above. Attention to the source of the power is misplaced. Perhaps, the error arises in viewing the classical prerogative writs of, inter alia, certiorari, mandamus and prohibition in the traditional sense as being used only against the government or public authorities. English law is struggling to break out of this tradition and the scope of judicial review, while it is expanding is doing so ever so slowly and lags behind even Scots law¹⁸. In India, we have no such difficulty as the framers of our Constitution have unshackled us from the traditional fetters and have given us Article 226 which is much wider because it contemplates the issuance of "directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose" to "any person or authority, including in appropriate cases, any Government". The fact that the Government has no financial stake in or control over BCCI is, therefore, not relevant. We are not examining the issue as to whether BCCI falls within the meaning of "State" as defined in article 12. And, we need not, because the word "State" does not appear in article 226 at all! We are examining the question of issuance of orders, directions or writs to "any person". Assuming that the BCCI is merely a "private club", even then a writ could be issued to it provided, of course, it was for remedying an infraction of a public duty or Public function."

47. Just as the BCCI controlling the game of cricket in India, it is not disputed that the Indian Hockey Federation controls the game of hockey in the country at all levels whether it be the sub-junior, junior, senior level players or the state, zonal, national or international tournaments. Its members are the state hockey

associations and boards of government departments as railways and services also controlling the game in their services all over the country etc. The Indian Hockey Federation has been recognised as a national sports federation. Akin to the control of the BCCI over cricket players, the Indian Hockey Federation exercises complete control over team selection and appointment of referees and umpires organisations of the several hockey events. The Indian Hockey Federation also imparts coaching and is required to be concerned with the welfare of the hockey players. It has access to the national sports coaches as well as sports facilities generated, developed and maintained by the Government of India. At international forums and sports events, the team selected by the Indian Hockey Federation is known as the Indian team, wears the Indian colours and carries the National Flag. The team selected by it as representing India is so recognised by not only this country but against the international opponents.

48. The Indian Hockey Federation regulates the sport of hockey for the entire country. The Federation represents India in international bodies, agencies, associations and forums; appoints India's representative thereto and maintains control and regulation over coaches, umpires, players and managers etc. There can be no denial that the respondent no. 2 is performing public functions.

49. The submission on behalf of the respondents also fails to consider the wide powers conferred under article 226 of the Constitution of India noted hereinabove. Furthermore, this objection

to the maintainability of the writ petition on the ground that the Indian Hockey Federation was a private registered body is contrary to the well settled legal principles and is held to be legally untenable.

Legislative competence of the Union of India for framing laws for regulating sports at the Inter-state, National and International level.

50. Placing reliance on entry 33 of list II of the 7th Schedule of the Constitution of India, the respondents including the Union of India have submitted that the parliament has no power to make laws on the subject of sports. It has further been urged that in view of the mandate of article 73, the executive power of the union extends to the subject matter on which the parliament alone is competent to make law. It is consequently urged that the parliament does not have the legislative competence to frame any law on the subject matter of sports as the same is covered as Entry 33 under the List II which is within the legislative competence of the state and further that the Union of India has also no power to issue any executive instructions or guidelines which would regulate or control sports in view of article 73 of the Constitution. The respondents rely on the pronouncement of the Apex Court reported at **(1996) 3 SCC 709 State of A.P. & Ors. vs Mcdowell & Co. & Ors.** in support of this submission. It is contended that the doctrine of occupied fields/repugnancy has to be applied only to the entries in the list III of the Seventh Schedule.

51. It has been submitted at length by Mr. V.P. Singh, learned

senior counsel for the Indian Olympic Association and by Dr. A.M. Singhvi, learned senior counsel representing respondent nos. 2 to 4 that the respondent no. 2 as well as other national sports federations are registered under the Societies Registration Act or under various state legislations on the subject which alone would have the jurisdiction to regulate such sports activities which are regulated by these federations and associations.

52. The basic framework for distribution of legislative power between the Union and the States and the foundation for a federal set up for the nation was set out in the Government of India Act, 1915 and 1935. Even though this distribution has not been adopted verbatim in the Constitution but the basic scheme remains the same.

53. The rules of constitutional interpretation have been laid down thus by the learned H.M. Seervai in the Constitutional Law of India in para 2.12 of the Fourth Edition thus :-

“2.12 The golden rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude. But this rider is subject to certain exceptions. Thus a restricted meaning may be given to words in order to prevent a conflict between two exclusive jurisdictions.....A restricted meaning may have to be given by considering the language of the conflicting provisions together and, if necessary, by modifying the language of the one in the light of the other. In some cases such light might be thrown by the legislative history of one, or both, the powers.”

The principles of *contemporanea expositio* ('contemporaneous exposition') have also been applied as a tool for interpretation of

statutes to construction of earlier statutes.

54. In the instant case, a question as to distribution of legislative powers between the Union and the States has been raised. Apart from the objection by respondent nos. 2 to 4, interestingly it is the stand of the Central Government as well that it does not have legislative competence on the subject of sports.

55. The extent of legislative powers and its distribution between the Union of India and the legislature of a state is provided under article 245 of the Constitution of India which mandates that the parliament may make laws for the whole or any part of the territory of India and the legislature of a state may make laws for the whole or any part of the state.

56. The distribution of the subject matter of laws between those made by the parliament and those by the legislature of state is provided by article 246 of the Constitution of India. The parliament has thereby the exclusive power to make laws with respect to any of the matters enumerated in list I in the 7th Schedule which is referred to as the Union List. So far as the matters enumerated in the list referred to as the Concurrent List III in the 7th Schedule of the Constitution is concerned, the parliament, and, subject to clause (1), the legislature of any state has the power to make laws with respect to any of the matters enumerated in this List. The legislature of any state has the exclusive power to make laws for such state or any part thereof with respect to any of the matters enumerated in list II of the 7th Schedule of the Constitution.

By virtue of clause 4 of article 246, the parliament is further empowered to make laws with respect to any matter for any part of the territory of India not included in a state notwithstanding that such matter is a matter enumerated in the state list.

57. The power of the parliament under article 246 (1) is supreme whereas the power of the State legislature in respect of laws under list II is subject to power exercised by parliament in respect of laws under list I. However, it has been repeatedly held that while interpreting central laws and state laws, a harmonious construction is to be adopted and repugnancy should be avoided.

58. An issue as to the rule of construction in respect of items in the Federal and Provincial legislative lists had arisen before the Federal Court in the judgment reported at ***AIR 1941 Federal Court 47 A.L.S.P.L. Subrahmanyam Chettiar vs. Muttuswami Goundan and the Advocate General Madras*** (intervenor). The question which was raised was as to whether the Madras Agriculturists Relief Act (4 of 1938) was a legislation with respect to matters in List I or List II in Schedule 7 of the Government of India Act, 1935 and it was challenged that the same was ultravires of the provincial legislature as it encroached upon the subject matter of the entries in list I. The court was called upon to construe the principles which would govern interpretation of the conferment of legislative power by the lists. The court observed that it was impossible to deny that the State Act encroached upon the field covered by instruments which were the subject matter of List I and that it was open to the provincial

legislature expressly to exclude such instruments from the operation of the Act under consideration but that had not been done. For this reason, it was held that there was an apparent overlapping and no clearcut demarcation was discernible with regard to the extent of the trespass on the Federal legislative field. So as to avoid the obvious conflict, Gwyer C.J. had referred to different principles of interpretation. Advancing the principles of 'restricted interpretation', it was observed that the principle of interpretation which was applied in 1939 F C R 18 at pp 74, 75 and 87 was that it should certainly be the earnest endeavour of the court to avoid a conflict between two apparently competing entries, as too liberal an interpretation given to both of them might create a clash. "As far as possible, an undefined term should not be given such a wide scope as to include a particular provision." If a subject comes within a special and specific provision, and can only by defining and enlarging the meaning of the words be brought within the scope of the general, then the special provision should be considered to be exclusive of the other. But, of course, where such a restricted interpretation is not possible, overlapping may be inevitable.

Furthermore, the learned Judge adverted to the principle of exception which have been relied upon by other judges in other pronouncements with which he did not agree in view of the provisions of the Government of India Act. Gwyer C.J. while considering the reliance of the Advocate General of India on the residual power of the Federal Government under section 104 of the

Government of India Act had held that resort to that residuary power should be the very last refuge. It was further stated that it is only when all the categories in the three lists are absolutely exhausted that one can think of falling back upon a non-descript.

59. A similar issue relating to the legislative competence of the Federal legislature and Provincial legislature under the two lists in the Government of India Act, 1935 fell for consideration before the Federal Court in the judgment at ***AIR 1939 FC 1 titled "In the matter of the Central Provinces & Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938.***

On the aspect of principles guiding interpretation of legislative powers of the Federal & Provincial legislatures, Jayakar, J. referred to cases of conflict between the jurisdiction and legislative competence of the Parliament of the Dominion and the provinces jurisdiction. After a detailed consideration of the Privy Council on this issue, the learned Judge set out earlier valuable principles for interpretation. Those which guide the questions raised before this court deserve to be considered in extenso and read thus :-

“(1) That the provisions of an Act like [the Government of India Act, 1935, should not be cut down by a narrow and technical construction, but, considering the magnitude of the subjects with which it purports to deal in very few words, should be given a large and liberal interpretation, so that the Central Government, to a great extent, Attorney-General for Canada v. Attorney-General for Ontario (1937) 24 A I R P C 89 but within certain fixed limits, may be mistress in her own house, as the Provinces, to a great extent, but again within certain fixed limits, are mistresses in theirs: see (1930) A.C. 12436 at pp. 136 and 137.

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(3) Where there is an absolute jurisdiction vested in a Legislature, the laws promulgated by it must take effect according to the proper construction of the language in which they are expressed. But where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine, with some strictness, the substance of the legislation, for the purpose of determining what it is that the Legislature is really doing: Attorney-General for Ontario v. Reciprocal Insurers (1924) A.C. 328 at p. 337.

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(5) In the interpretation of a completely self governing constitution founded upon a written organic instrument (such as the Government of India Act of 1935) if the text is explicit, the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act: Att.-Gen. for Ontario v. Att.-Gen. for Canada (1912) A.C. 571, at page 583.”

60. The principles of interpretation of the items in the Lists laid down by the Federal Court were relied upon by the Apex Court in **(2002) 4 SCC 275 UOI vs. Delhi High Court Bar Association & Ors.** The court stated the law in the following terms :-

".. As pointed out by Gwyer C.J. in The United Provinces v. Atiqa Begum [1940] F.C.R. 110 at page 134 none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear-and it is acknowledged by Chief Justice Chagla-that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. The cardinal rule of interpretation, however, is that words

should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

(Emphasis added)

It needs no further elaboration that legislative heads of power should be read and understood in their widest amplitude and sense. The same appearing elsewhere in the constitution may be required to be construed as limited by the context and in the light of the words preceding and following that phrase. However so far as the expression appears as a legislative head of power in the lists, the same cannot be given a restricted meaning (Ref : AIR 1965 Madras 11 In Re. N.V. Natarajan & Anr.)

61. A question requiring determination as to whether a particular law is relating to a particular subject mentioned in one list or another, requires the court to take recourse to the doctrine of pith and substance which requires ascertaining the true character of the legislation. The enactment as a whole is required to be examined as well as its main objects and regard has to be added to the scope and effect of its provisions. The inquiry is to ascertain as to whether the enactment in question is genuinely referable to the field of legislation allotted to the state under the constitutional scheme (Ref : **(2005) 1 SCC 394 E.V. Chenniah vs. State of A.P. & Ors.**)

62. The principles on which this doctrine evolved and the manner of its application are best stated by the Privy Council in its

pronouncement reported as *AIR 1947 PC 60 Prafulla vs. Bank of Commerce* wherein the court stated that :-

“33. Similarly, any item in the Concurrent List if dealt with by the Federal Legislature is outside the power of the Provinces and it is only the matters specifically mentioned in list II over which the province has complete jurisdiction, although so long as any item in the Concurrent list has not been dealt with by the Federal Legislature the provincial legislature is binding.

33. In their lordship' opinion this argument should not prevail. To take such a view is to simplify unduly the task of distinguishing between the powers of divided jurisdictions. It is not possible to make so clean a cut between the powers of the various legislatures: they are bound to overlap from time to time.

34. Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap. As Sir Maurice Gwyer C.J. Said in 1940.FC.R.188'(supra) at P.201:

“It must inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment maybe so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that.”

35. Their Lordships agree that this passage correctly describes the grounds upon which the rule is founded, and that it applies to Indian as well as to Dominion legislation. No doubt experience of past difficulties has made the provisions of th Indian Act more exact in some particulars and the existence of the concurrent

list has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdictions.

36. Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be shifted at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.
37. (3) Thirdly, the extent of the invasion by the provinces into subjects enumerated in the Federal list has to be considered. No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with Provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content.
38. This view places the precedence accorded to the three lists in its proper perspective. No doubt where they come in conflict, List I has priority over Lists III and II and List III has priority over List II, but, the question still remains, priority in what respect? Does the priority of the Federal Legislature prevent the Provincial Legislature from dealing with any matter which may incidentally affect any item in its list or in each case has one to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character? In their Lordships' opinion the latter is the true view."

(emphasis supplied)

63. Mr. P.P. Malhotra, learned ASG relied upon para 35 of the

pronouncement reported at ***Hindustan Lever & Anr. Vs State of Maharashtra & Anr. (2004) 9 SCC 438*** wherein the court placing reliance on earlier pronouncements held thus :-

“35. If the matter is within the exclusive competence of State Legislature, i.e., List II then the Union Legislature is prohibited to make any law with regard to the same. Similarly, if any matter is within the exclusive competence of the Union, it becomes a prohibited field for the State Legislatures. The concept of occupied field is relevant in the case of laws made with reference to entries in List III. The doctrine of covered field has to be applied only to the Entries in List III. This proposition of law is well settled in a number of decisions of this Court including ***State of A.P. and Ors. v. Mcdowell & Co. and Ors.*** [MANU/SC/0427/1996](#); ***State of Rajasthan and Ors. v. Vatan Medical & General Store and Ors.***, [MANU/SC/0198/2001](#) and ***Shri Krishna Gyanoday Sugar Ltd. and Anr. v. State of Bihar***, 2003 (2) Scale 226.”

64. In ***AIR 1975 Andhra Pradesh 50 (51) Lachmandas Balachand, Paradise Lottery Centre, 124, Park Lane Secunderabad & Ors. v. The State of Andhra Pradesh & Ors.***, it was held that since the power of the state legislature to legislate with respect to matters in list II is made subject to the power of the parliament to legislate with respect to matters in list I, it follows that if entries in list I and list II appear to overlap, i.e., if they appear partly to cover the same field, the field of legislation covered by the entry in list I must be considered to be taken out of the scope of the entry in list II and deserves to be especially dealt with by parliament. In other words, to that extent, the power of the state legislature must be considered to be curtailed.

65. The supremacy of the parliament has been provided for by the

non-obstante clause under article 246 (1) 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. (Ref : AIR 2007 SC 1584 Greater Bombay Co-op. Bank Ltd. v. United Yarn Tex. Pvt. Ltd. & Ors. : 2007 AIR SCW 2325 Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex. Pvt. Ltd.)

66. In view of the above discussion, it needs no elaboration that the state legislatures have no legislative competence to legislate with regard to any subject outside the territorial boundary of the State.

67. The relevant constitutional scheme and entries have to be tested on these binding principles.

68. The respondents place reliance on Entry 33 of List II which reads :-

“33. Theaters and dramatic performances; cinemas subject to the provisions of Entry 60 of List I, sports, entertainments and amusements.”

In terms of entry 33 of list II, the encouragement of sports is a state function. Entries in the list are to be given their ordinary and natural meaning. The power to make laws with respect to sports as per Entry 33 in List II of the State legislature is to be construed as a power to legislate and regulate sports restricted to the precincts of the state and ending at its boundaries. It is amply clear that the State Government by reason of legislative action, cannot confer on itself any extra territorial jurisdiction even in relation to sports or the subjects which form part of entry 33.

69. It cannot be contended or held that a state government can control or 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.

70. 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 be anybody's case that without such recognition, the association can select a national team.

71. Sports at the state level is really a minuscule part of the enormous activities which it takes under its ambit. In its larger multi-faceted, inter state, national and international facets is undeniably beyond the legislative competence of the State Government.

Sports at these levels has to be held to be an exception to the general power to legislate conferred on the state legislature by the Constitution.

72. 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. Hence the same would be clearly beyond the executive competence of the State as well.

73. The important question which is required to be answered is as

to the manner in which a subject which for some purposes falls under the competence of one legislature, and for others beyond it, is to be treated for legislative purposes.

74. Sports is not exclusively and explicitly mentioned as a subject in List I or III.

75. Mr. P.P. Malhotra, learned ASG has submitted at length that there is no constitutional provision which enables any authority to legislate or exercise executive control over national level and international level sports.

76. The submission on behalf of the respondents fails to consider the admitted position that the state government does not have the legislative competence to legislate nor the executive power to issue executive instructions or guidelines with regard to the regulation and control sports at the national level. Admittedly other than three states there is no legislation by either the Parliament or the State Government to control or regulate sports. There is no legislation at all on any respect of sports at the national level. Furthermore no state government has issued any executive instructions or passed any administrative orders on this aspect, which is rightly so.

77. Sports at the macro level has gone beyond not only the boundary of the State but much beyond the 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 aspects.

78. In addition to the above, Mr. Arun Jaitley, learned senior

counsel appearing for the petitioners has placed reliance on several other entries in List I and List III. Reliance is placed on Entry 25 in List III which reads 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.”

79. It is noteworthy that by the Constitution (Eighty Sixth) amendment, Article 21A conferring the right to education has been incorporated in Chapter 3 of the Constitution of India.

The role and responsibility of the State so far as education is concerned has to be given an expanded meaning which would take within its fold the requirement of encouragement of sports and provision of all facilities at the national level.

80. It has been pointed out that sports has always been considered as an integral part of education and human resources development and for this reason it was a complete department under the Ministry of Human Resource Development.

81. Any educational programme would be incomplete without sports being an essential part of the same. Participation of the Indian team puts at stake the national reputation. At the same time, in order to be able to contribute to matters of rules, regulations and sporting policies, it is essential that national level bodies or their personnel are involved in international level decision making.

82. In exercise of executive functions under Article 77 of the Constitution of India, the President of India has notified the

Government of India (Allocation of Business) Rules, 1961. Having regard to the importance given to the aspect of sports, a separate ministry known as 'the Ministry of Youth Affairs and Sports' has been constituted. So far as in Rule 3 setting out the allocation of business and distribution of subjects is concerned, the same is specified in the 2nd Schedule to the rules and includes all attached and subordinate offices or other organisations including public sector undertakings concerned with the subjects. I find that in the 2nd Schedule so far as the Ministry of Youth Affairs & Sports is concerned, the following subjects are allocated to it :-

- “1.Sports Policy
- 2.Sports and Games
3. National Welfare Fund for Sportsmen
4. Netaji Subhas Natinal Institute of Sports
5. Sports Authority of India
6. Matters relating to the indian Olympic Association and National Sports Federations.
7. participation of Indian Sports teams in tournaments abroad and participation of foreign sports teams in international tournaments in India.
8. National Sports Awards, including Arjuna Awards.
9. Sports Scholarships
10. Exchange of Sports persons, youth delegation, experts and teams with foreign countries.
11. Sports infrastructure, including financial assistance for creation and development of such infrastructure.
12. Financial assistance for coaching, tournaments, equipment etc.
13. Sports matters relating to Union Territories.”

83. From the above, there can be no manner of doubt that sports has been considered an integral part of the earlier the Ministry of Human Resource Development and now Ministry of Youth Affairs and Sports an independent ministry.

84. National Sports Federations as recognised by the Government

may be established as private bodies. However in order to become a representative body as a national federation representing the country, it is essential that they be so recognised by the Government. They would have no authority to enforce any degree of regulation or control over the various state bodies but for the authority which is vested on them only by virtue of the recognition granted by the Government.

85. It may be desirable that sports federations have autonomy in areas of the actual conduct of sports. However to represent India as a nation at international sports meets as well as international fora, it is an essential part of Government function that scrutiny is effected by the sporting event or the forum in which participation is proposed. The source of the legislative competence of the Government to do so is derived from entry 10 and 13 of List I which read thus :-

“10. Foreign affairs, all matters which bring the Union into relation with any foreign country.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

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.

87. It was pointed out on behalf of the petitioners that entertainment tax is a state subject which is leviable on sporting events when considered as part of entertainment. However when such an event is proposed, an issue as to whether visas or permission have to be given or denied to sports persons of a particular country would squarely fall for consideration before the Ministry of Foreign Affairs of the Central Government. On issues of security, the matter may require clearance of the Ministry of the Finance or Ministry of Home Affairs as well. Issues of foreign exchange to meet expenses of teams and personnel travelling abroad may involve interaction with the Ministry of Finance as well.

88. The Union Government is involved with dispensation of financial assistance.

If applied in reverse, certainly no state would have the legal competence to manage, control or regulate the national level body or the game or discipline.

89. From the above discussion, it is apparent that sports, when construed from the aspect of Entry 33 in List II has to be confined to sports at the state level alone.

90. In **(1981) 4 SCC 391 Southern Pharmaceuticals & Chemicals Trichur & Ors. vs. State of Kerala & Ors.**, in

determining whether the enactment is a legislation 'with respect to' a given power, "what is relevant is not the consequences of the enactment on the subject matter or whether it affects it, but whether, in its pith and substance, it is a law upon the subject matter in question. The Central and the State Legislations operate on two different and distinct fields. The Central Rules, to some extent, trench upon the field reserved to the State Legislature, but that is merely incidental to the main purpose, that is, to levy duties of excise on medicinal and toilet preparations containing alcohol. Similarly, some of the impugned provisions may be almost similar to some of the provisions of the Central Rules, but that that does not imply that the State Legislature had no competence to enact the provisions."

91. The petitioners have placed reliance on a pronouncement of the Apex Court reported at **(2006) 3 SCC 1 BSNL vs. UOI**. Placing reliance on an earlier pronouncement reported at **(1989) 3 SCC 634 Federation of Hotel & Restaurant Association of India vs. UOI**, the Apex Court held that subjects which in one aspect and for one purpose fall within the power of a particular legislature, may in another aspect and for another purpose fall within another legislative power. There might be overlapping; but the overlapping must be in law. For instance, the same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects.

92. The most apt enunciation of the principles which would guide

adjudication in the instant case is provided in the pronouncement of the Apex Court reported at **(2002) 8 SCC 228 UOI & Ors. Vs. Shah Goverdhan L. Kabra Teacher's College** wherein the court held thus:-

“It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of the Parliament as well as the State legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to over-ride another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the Court that there is apparent overlapping between the two entries the doctrine of “pith and substance” has to be applied to find out the true nature of a legislation and the entry with which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of “pith and substance”. The doctrine of “pith and substance” means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra-vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object and scope and effect is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of “pith and substance” has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made.”

93. The Ministry of Youth Affairs & Sports is assigned a budget

allocation and the dispensation of financial assistance to the sports federations is part of such allocation whereby tax payers money is utilised towards assistance to sports.

94. The states have not enacted any laws except the State of Uttar Pradesh which has enacted Uttar Pradesh Sports (Registration, Recognition and Regulation of Associations) Act, 2005; the State of Himachal Pradesh which has enacted The Himachal Pradesh Sports (Registration, Recognition and Regulation of Associations) Act, 2005 and the state of Rajasthan which has enacted The Rajasthan Sports (Registration, Recognition and Regulation of Associations) Act, 2005. These statutes are restricted to the respective states for their application.

95. None of the other state governments have enacted any legislation under article 33 of list II.

96. My attention is drawn to the pronouncement of the Apex Court reported at *JT 2005 (2) SC 165 Professor Yashpal & Anr. vs. State of Chattisgarh & Ors.* In this case, the Apex Court was concerned with the validity of *The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002* which provided for establishment of self financed private universities for higher education in the state of Chattisgarh. The legislative provisions permitted such universities to affiliate any college or other institution or to set up more than one campus, with the prior approval of the State Government, 'off campus centres' which means a centre of the university established by it outside the main campus

'within or outside the state' as well as 'off shore campus' which meant a campus of the university established by it outside the main campus (within or outside the 'state') operated and maintained as its constituent unit. It was held by the Apex Court that in view of article 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a state may make laws for the whole or any part of the state. The impugned Act which specifically made a provision for the enabling university to have an off-campus centres outside the State was clearly beyond the legislative competence of the Chhattisgarh legislature.

97. Sports with all its hues and colours is one such subject which, for different purposes would be covered under different entries in different Lists in the 7th Schedule to the Constitution of India.

98. It is undisputed that the resources which are put in the hands Ministry of Youth Affairs & Sports form a considerable part of the budgetary allocation. There is extensive real estate in the form of stadias, sports fields and facilities etc which is also under its jurisdiction which is put to the utilisation of the encouragement and development of sports. More material is the fact that sports persons from the country in any state are involved in participating in national level events as well as international events for which no state government would have territorial jurisdiction.

99. In the instant case there is substantial funding for the functioning of the respondent no. 2 by the government apart from

other assistance rendered which includes the selection of the national coach; availability of facilities developed by the Sports Authority of India and the Ministry of Youth Affairs and Sports; financial assistance for acquisition of sports goods and materials; organisation of programmes etc. There is no dispute before this court that the State Government does not have the legislative competence to legislate with regard to any subject at the national and international level aspects and matters. 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 the boundaries of the 'state'. Such empowerment certainly cannot prohibit or denude the parliament from its legislative competence to regulate sports at the national and international level.

100. In **(1974) 2 SCC 531 G.V. Ramanaiah vs. The Superintendent of Central Jail Rajahmundry & Ors.**, relied upon by the respondents the Apex Court reiterated the principle that under the Constitution, the distribution of executive powers follow, in substance, the distribution of legislative powers. Subject to the limitations mentioned in Article 73 and 162, the executive power of the Union or the State is co-extensive and co-terminus with its respective legislative powers.

101. The Union of India has also not enacted any legislation in exercise of any of the powers conferred on it. All the decision making responsibility for national level sports has been consolidated in the hands of the National Sports Federations.

102. There is yet another important aspect to this issue.

103. In view of the submissions being advanced, learned senior counsel appearing for the respondents were asked as to which authority, according to them would have the jurisdiction to govern national and international level sports and relations. The unanimous answer rings a death knell for Indian sports as the unanimous submission was that no one would have the jurisdiction and the only option available in the matter is for the Parliament to effect a constitutional amendment to make provision and to confer legislative and executive competence on the government to legislate or to pass executive orders in respect of this issue.

104. In the light of the above discussion, it is evident that well settled principles for constitutional interpretation have not been taken into consideration.

105. The submissions made by learned counsel for the respondents also attempts to undermine the farsightedness of the Constitution makers who drafted the various entries in Schedule 7 with great care. They anticipated the developments in society, science and technology and also foresaw that it was humanly impossible to provide for every conceivable subject which could arise.

106. While conferring primacy on the Union, the Constitutional provisions have clearly deleniated the legislative jurisdiction of the State. The residuary power to legislate, however, with regard to subjects which are not enumerated in the concurrent list or the state list has been conferred on the Parliament by virtue of article 248.

Entry 97 of List I gives effect to the power conferred on the Union under Article 248 which reads as follows :-

“248. Residuary powers of legislation.

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.”

“Entry 97. Any other matter not enumerated in List II or list III including any tax not mentioned in either of those lists.”

Recourse to this power, however, is restricted.

107. The Constitution of India has been referred to as an organic and a living document. It was to avoid any kind of vacuum of legislation and executive powers that the Constitution makers have vested the residuary powers in the Parliament.

108. It has been emphasised by constitutional interpretation that the entries in the list have to be given the widest possible constructions. It is only after the entries in the lists have been given broader liberal interpretation that resort can be taken to the residual power are absolutely exhausted. If two constructions on the entry in the list are possible, the one which will avoid resort to the residuary power is directed to be preferred. (Ref : AIR 1979 SC 1972 (para 6) *Shetkhari Sehkari Sakhar vs. Collector Sangli* and AIR 1966 SC 416 *Jaora Sugar Mills Pvt. Ltd. vs. State of H.P.*).

109. It has been held that by virtue of this residuary power, it was competent for the Parliament to make a law under its own legislative power, validating an incompetent state law and to give it

retrospective effect.

110. Recourse has been taken to the residuary power of the parliament in proceedings relating to the provisions of the Income Tax Act (Ref : AIR 1966 SC 619 Hari Krishna Bhargava vs UOI); the Wealth Tax Act of 1952 (Ref : UOI vs. H.S. Dhillon; AIR 1972 SC 1061 and AIR 1970 SC 999 Second Gift Tax Officer vs. D.H. Nazarat); Commissions of Inquiry Act (Ref : AIR 1958 SC 682 C.f. Mithan Lal vs. State of Delhi; Himachal Pradesh Assembly (Constitution & Proceedings) Validation Act, 1958. The pronouncement lays down the parameters within which reliance to Article 97 would be placed.

111. It has been held in ***UOI vs. H.S. Dhillon MANU/SC/0060/1971; S.P. Mittal vs. UOI MANU/SC/0039/82*** and ***Kartar Singh vs. State of Punjab MANU/SC/1581/1994*** that while examining the legislative competence of the parliament to make a law, what is required to be seen is as to whether the subject matter falls in the State List which the Parliament cannot enter. If the law does not fall in the State list, Parliament would have the legislative competence to pass the law by virtue of the residuary powers under Article 248 read with Entry 97 of the Union List and it would not be necessary to go into the question as to whether it falls under any entry in the Union List or the Concurrent List.

It was observed by the Chief Justice that “if a Central Act is challenged, as being beyond the legislative competence of the Parliament, it is enough to enquire if it is a law with respect to

matters or taxes enumerated in List II. If it is not, no further question arises.”

112. So far as the pronouncement of the Apex Court reported at **(1996) 3 SCC 709 State of A.P. vs. Mcdowell & Ors.** is concerned, there can certainly be no dispute with the well settled principles that the concept of occupied field is relevant in the case of laws made with reference to entries in the Concurrent List and that, whenever a piece of legislation is said to be beyond the legislative competence of a state legislature, what must be done is to find out, by applying the rule of pith and substance, what would be the true nature of the legislation and whether it falls within any of the entries in list II.

113. There can also be no dispute with the principles laid down by the Apex court in **(1994) 3 SCC 1 S.R. Bommai & Ors. vs UOI & Ors.** and **1981 Supp. SCC 87 S.P. Gupta vs. President of India & Ors.** relied upon by the respondents. It was held that it is not permissible for application of the doctrine of *cassus, omissus* where the language of a statute is clear and unambiguous as the words used by the Constitution or the statutes speak for themselves and it is not the function of the court to add words or expression merely to suit what the court thinks of the intent of the legislature. However, in the light of the discussion in the foregoing paragraphs, it is evident that the instant case is not one of *cassus omissus* by the draftsman or the legislation and that there are ample constitutional provisions laying down the constitutional mandate and empowering

the Parliament to legislate.

114. When the sports becomes part of the national or international level as at the level of selection of sportspersons for representation of the country; sports activity and exchanges at the national and international level; the Central Government alone would have the power and competence to regulate the same.

115. The powers are clear and distinct. The entries in the Lists when meaningfully and harmoniously construed, display no conflict of jurisdiction or overlap.

116. The minority view in Zee Telefilms has considered the law/rule making power of the National level sports body. It was noticed that a national level sports federation would be 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 recognised in the human.

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 as the Arjuna Award which are accepted by the Government.

117. This is the position not only with an item like sports. Wealth

tax and other taxation issues; drugs and pharmaceuticals etc also raise similar issues. In the instant case, there is no conflict of jurisdiction created by different entries nor an overlap. One subject for different aspects and purposes falls under different entries which are not in the same list.

I find neither a conflict of jurisdiction nor any overlap with regard to the jurisdictions of the Parliament and the State Government to legislate.

118. In this background, so far as the Constitutional vacuum, urged by the respondents is concerned, the submission is misplaced also having regard to the vision and farsightedness of the Constitution makers who empowered the Parliament to legislate in respect of any subject or matter not enumerated in any of the lists when they vested and included the residuary power under Entry 97 in List I of the Seventh Schedule.

119. The department of sports was earlier forming a part of the Ministry of Human Resource Development till its segregation in terms of item 6 of the second schedule of the Rules for Allocation of Business framed in exercise of powers under article 77. The national sports federations is a specific item at item 6 of the 2nd Schedule of the Rules for Allocation of Business which falls within the jurisdiction of the Ministry of Youth Affairs & Sports. It is vested with the power to recognise 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.

120. The submission on behalf of the respondent, therefore, that sports necessarily is to be confined to a consideration by the State Government alone under Entry 33 of list II is devoid of legal merit.

121. In view of the above discussion, the objection raised by the respondent with regard to the legislative competence of the Parliament to make laws on the subject of sports is hereby is rejected.

122. As noticed hereinabove, the executive power of the Union extends to the matters with respect to which the Parliament has the power to make laws. It is held that the Union having the legislative competence would certainly be empowered to issue executive powers with regard to the sports at the national and international representation levels.

Bindingness of a minority view in a pronouncement of the Apex Court

123. So far as the functions of the sports body, the role of the Central Government and various other entries in the Lists in the Seventh Schedule of the Constitution of India are concerned, the same have been considered at length in the minority judgment in the case reported at *JT 2005 (2) SC 8 Zee Telefilms Ltd. & Anr. vs. UOI & Ors.*

124. For the view that I have taken on the various issues it may not be necessary to say anything more. However, a very important larger question as to the bindingness of the minority view in a

pronouncement of the Apex Court has been argued at great length. A writ petition titled *Zee Telefilms vs UOI & Ors.* was filed in the Supreme Court of India which was decided by a pronouncement reported at ***2005 (2) SC 8 Zee Telefilms Ltd. vs UOI & Ors.*** An objection that the Board of Cricket Control of India (impleaded as a respondent) was not covered within the definition of 'State' under Article 12 of the Constitution of India and hence a writ petition under Article 32 of the Constitution of India against it was not maintainable was taken. By a three Judge majority the objection was sustained while the two judge minority ruled against the petitioners. The minority judgment commented on several aspects which are not mentioned in the majority judgment.

125. So far as maintainability of writ proceedings against the cricket board was concerned, the minority view observed that sports has travelled way beyond a pursuit of a mere hobby or interest. With sponsorships of players and sporting events and the absorption with sports, today it is pursued as a vocation and a profession. In the context of the factual matrix that the several players pursue the game as their profession, it was argued before the Apex Court in ***JT 2005 (2) SC 8 Zee Telefilms Ltd. & Anr. vs. UOI & Ors.*** and also observed in para 143 that the right of the Indian players is comparable to their constitutional rights contained in article 19 (1) (g) of the Constitution of India which would include a right to work and a right to pursue one's occupation.

126. So far as the nature of functions performed by the Board was

concerned, the minority view in para 144 observed that the action of the sports board may disable a person from pursuing his vocation and in that process subject a citizen to hostile discrimination or impose an embargo which would make or mar a player's career.

On the issue of availability of judicial review against a Board's action, it was held that 'If the action of the body/authority impinges upon the fundamental or other constitutional rights of a citizen or if the same is ultravires or by reasons thereof, an injury or material prejudice is caused to its member or a person connected with cricket, judicial review would lie. Such functions on the part of the board being public function, any violation or departure or deviation from abiding by the rules and regulations framed by it would be subject to judicial review'. This would be so even though the body may be self regulating.

127. So far as legislative powers are concerned it would be appropriate and useful to consider the observations on this specific issue in paras 60, 61 and 63 of the report which read as follows :-

"60. Although we will advert to various rival contentions raised at the Bar at some details a little later but suffice it to notice at this stage that encouragement of games and sports is State function in terms of Entry 33 of List II of the Seventh Schedule of the Constitution of India which reads thus:

"33. Theaters and dramatic performances; cinemas subject to the provisions of entry 60 of List 1; spoils, entertainments and amusements."

61. The State by reason of a legislative action cannot confer on it extra territorial jurisdiction in relation to sports, entertainment etc. Education, however, is in Concurrent List being Item No. 25 of List III. Sport is considered to be a part of Education (within its

expanded meaning). Sport has been included in the Human Resource Development as a larger part of education. The Ministry of Youth Affairs and Sports was earlier a department of the Ministry of Human Resource Development. Now a separate Ministry of Youth Affairs and Sports has come into being, in terms of the Allocation of Business Rules.

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63. 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.”

128. The respondents would contend that in view of the majority judgment, the minority view stands overruled and cannot be relied upon for any purpose. On the other hand it has been pointed out on behalf of the petitioner that the law laid down by the Apex Court would be the enunciation of the law by the minority judgment as well which binds this court.

129. There is no dispute that the majority view did not rule on the issue with regard to the legislative competence of the parliament with regard to legislation relating to the subject of sports and only the minority wrote its opinion thereon.

130. An issue as to the bindingness of the minority judgment had

arisen for consideration before the Bombay High Court in ***AIR 1964 Bombay 170 Mahendra Bhawanji Thakar vs. S.P. Pande & Anr.***

The relevant portion of this judgment in paras 21, 22 and 23 on this issue reads as follows :-

“21. No doubt, two of the Judges, of the Full Bench namely, Mr. Justice Hidayatullah and Mr. Justice Raghubar Dayal specifically found that the provisions of the second proviso to Section 34(3) did not infringe Article 14, but in view of the majority decision, they concurred in the final order passed in the appeal and allowed the appeal. This decision of the Supreme Court of India, therefore, clearly rules out any possibility of the second proviso to Section 34(3) being invoked in the present case because that decision is absolutely binding upon this Court.

22. Nevertheless Mr. Natu, appearing on behalf of the Department, has contested that position. He has referred to the provisions of Article 145(5) read with Article 141 of the Constitution. He has pointed out that even though three Judges of the Supreme Court held that Article 14 would be attracted and would make the second proviso to Section 34(3) unconstitutional, they were not the three learned Judges on whose decision the appeal was ultimately allowed. On the other hand, the appeal was allowed upon the decisions of Mr. Justice A. K. Sarkar, Mr. Justice Hidayatullah and Mr. Justice Raghubar Dayal. Of these three learned Judges Mr. Justice Sarkar alone had given it as his opinion that the second proviso was unconstitutional. But Mr. Justice Hidayatullah and Mr. Justice Raghubar Dayal agreed to allow the appeal of the Department because they held that Sub-section (4) of Section 34, would save the notice in that case. On these facts, therefore, Mr. Natu urged that so far as the question of the applicability of Article 14 is concerned, of the three Judges who agreed that the appeal should be allowed, only one was of the view that the proviso was unconstitutional, whereas two were of the view that the proviso was not unconstitutional. Therefore, in that decision so far as the question of the applicability of Article 14 was concerned, the majority who allowed the appeal did not hold the proviso unconstitutional.

23. We do not think that we can accede to the contention of Mr. Natu having regard to the provisions of Article 145(5) read with Article 141 of the Constitution. Article 141 says that "The law declared by the Supreme Court shall be bind-

ing on all courts within the territory of India." It is the law declared by the Supreme Court that binds this Court and not the judgments. This is made clearer when we consider Article [145\(5\)](#). In Article [145\(5\)](#) the words used are,

"No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion."

It is clear from Article [145\(5\)](#) that a judgment delivered by the Supreme Court is the one delivered by a majority of the Judges where there is a difference of opinion, but in that case the Judge who does not concur also delivers a judgment albeit a dissenting judgment. Article [145\(5\)](#) therefore uses the word 'judgment' both with regard to the final pronouncement of the Court itself as well as for the dissenting pronouncement of an individual Judge who does not concur. There does not appear to be any warrant for reading the provision of Article [145\(5\)](#) into the provisions of Article [141](#), and we do not think that the "law declared" can be approximated to the judgment delivered by the Supreme Court. On the other hand, having regard to the provisions of Article [145\(5\)](#) that a Judge who does not concur may also deliver a judgment, it is clear that the law declared may as well be in a dissenting judgment as in a majority judgment. The argument, therefore, that the three Judges whose decision resulted in the allowing of the appeal in Purshottam's case did not form a majority of those holding that Article [14](#) applied to the second proviso to Section 34(3) does not make that the law declared. On the other hand, as we have already shown three Judges out of the five who decided Civil Appeal No. 705 of 57: [MANU/SC/0203/1962](#) had clearly agreed that Article [14](#) applied and the proviso was ultra vires and we think that for the purposes of this Court that was "the law declared by the Supreme Court". We hold that "the law declared" referred to in Article [141](#) is the law to be gathered from any judgment in a case decided by the Supreme Court, whether it is the judgment of a Judge forming the majority or of a Judge in a minority and dissenting. The contention must, therefore, be negated. In that view, therefore, it is clear that the Department cannot rely upon the provisions of the second proviso to section 34(3) as that proviso has been by law declared void as infringing Article [14](#) of the Constitution."

(Emphasis supplied)

131. Valuable light is thrown also on this aspect in the pronouncement of the Kerala High Court reported at **AIR 1963 Kerala 155 V. Padmanabha Ravi Varma Raju & Ors. vs. The Dy. Tehsildar Chittur & Ors.** The court held as follows:-

“168. I may also state that there was a contention raised on behalf of the petitioners that the Act, though it purports to levy a tax on land, is really a law relating to forests in the possession of the petitioners and would not come within the purview of Entry 18 read by itself or in conjunction with Entry 45 of list II; and that it is really 3 law relating to Forests under Entry 19.

169. No doubt, this contention has been noted by his Lordship the Chief justice of the Supreme Court in the earlier decision, but the majority have not expressed any view on this aspect and they have assumed that the State Legislature had the necessary competence to enact the Land Tax Act, 1955.

170. But Mr. Justice Sarkar, in his dissenting judgment, has referred to this aspect and has ultimately held that under Entry 49 taxation of land on which a forest stands is permissible and legal. Inasmuch as there has been no adjudication by the majority on this aspect, I am bound by the decision of Mr. Justice Sarkar on this aspect and I have to hold that the contention Of the petitioners regarding the competency of the legislature to enact the measure in question, if the Act' is otherwise valid, has to be rejected.”

(Emphasis supplied)

132. Mr. Arun Jaitley, learned senior counsel for the petitioners has also drawn my attention to the pronouncement of the Apex Court reported at **(2005) 1 SCC 149 Virendra Kumar Srivastava v. U.P. Rajya Karmachari Kalyan Nigam & Anr.** wherein a question had arisen before the Apex Court as to whether the U.P. Rajya Karamchari Kalyan Nigam was covered by the definition of 'state' under article 12 of the Constitution and was amenable to the writ

jurisdiction of the High Court under article 226 of the Constitution of India. The Apex Court in paras 4, 5 and 6 referred to the judgment of the Apex Court reported at **(2002) 5 SCC 111 Pradeep Kumar Biswas vs Indian Institute of Chemical Institute** and the views taken by both the majority and the minority judgments wherein tests were laid for answering such a question. In para 27, the court observed that the 'multiple tests indicated to be applied both by the majority and minority view in Pradeep Kumar Biswas are fully satisfied in the present case for recording a conclusion that the said corporation is covered as an agency and instrumentality of the state in the definition of state under article 12 of the Constitution.

133. A similar situation where the majority view of the Supreme Court holding that the suit in question was not maintainable but the minority holding that the suit was maintainable and also answering other issues arose in the judgment reported at **MANU/SC/0006/1951 : AIR 1951 SC 253 State of Seraikella vs. UOI**. The minority view held that the suit was not maintainable in view of the absence of the requisite notice to the defendant under section 80 of the Civil Procedure Code. This minority view was relied upon as the law laid down by the Supreme Court by a Division Bench in **AIR 1951 Sau 16 Ishmal Haji v. Gondal Rly.; MANU/PH/0065/1962 UOI v. Landra Engineering & Foundry Works; MANU/PH/0126/1959 Ram Sundri v. Collector, Ludhiana** as well as the High Court of Allahabad in the judgment reported at **AIR 1977 All 482 Prem Prakash Gupta v. UOI & Anr.**

on the same principles.

134. Mr. P.P. Malhotra, learned Additional Solicitor General has placed reliance on the pronouncement reported at ***AIR 1981 Guj 15 Prof. Manubhai D. Shah vs. LIC*** to urge that a dissenting minority judgment cannot be relied upon. Reliance was placed on para 12 of the pronouncement. I find that the learned Judges have not considered the principles laid down in the judicial precedents noticed herein above which contain a detailed consideration as to what would constitute law laid down by the Apex Court. In *Manubhai D. Shah (supra)*, the court merely observed that it is risky and imprudent for the High Court to rely upon observations made in a dissenting and minority judgment and consequently they refrained from making any reference to them less the court was unwittingly influenced by them.

In the light of the legal principles laid down in the aforementioned judgments. I find myself unable to take this view.

135. Dr. A.M. Singhvi, learned senior counsel appearing for the respondent nos. 2 to 4 has urged at length and reliance is placed on para 25.99 of the Constitutional law of India by the noted jurist Mr. H.M. Seervai on pages 2669-2675 where the learned author has quoted Lord Denning thus :-

“We can only accept a line of reasoning which supports the actual decision of the House of Lords. By no possibility can we accept any reasoning which would show the decision itself to be wrong. The second proposition is that if we can discover the reasoning on which the majority based their decision, then we should accept that as binding upon us. The third proposition is that, if we can discover

the reasoning on which the minority bases their decision, we should reject it. It must be wrong because it led them to the wrong result.....”

136. A valuable principle has been enunciated above by the learned jurist. However the issue before this court is substantially different. The majority view has confined itself to a consideration as to whether the BCCI would be covered under the definition of 'state' without at all referring to the issue of legislative competence of the Union of India on the subject of sports and hence amenable to the writ jurisdiction of the Supreme Court under Article 32 of the Constitution. The views expressed in the minority judgment on this aspect are not the reasoning on which it has arrived on the conclusion contrary to the majority view and held that the writ petition was maintainable.

137. Mr. Arun Jaitley, learned senior counsel for the petitioners has urged that a comment by a jurist on a proposition in law cannot supersede the Constitutional scheme, statutory provisions or judicial precedents.

138. The general observations in the above quoted extract of H.M. Seervai's Constitutional Law of India did not deal with the specific question as has arisen before this court. The general observations do not advance the case of the petitioner inasmuch as the learned author did not have a situation where it was an admitted position that the State Government did not have the legislative competence to deal with the subject at the national level. Furthermore, the majority opinion in Zee Telefilms does not consider the issue of legislative

competence or any of the other issue raised on merits.

139. It has been urged at length that the ratio decidendi of the decision of the minority led to a wrong result and therefore cannot bind this court. This submission is wholly fallacious and legally incorrect. A reading of the judgments in Zee Telefilms would show that both judgments have considered the nature of functions and duties of the BCCI and by detailed reasons arrived at a similar conclusion to the effect that the BCCI is performing functions which are akin to public functions and public duties. The only area of disagreement is the issue as to whether the definition of 'state' under article 12 has to take the expanded definition or the narrower view requires to be adopted.

140. The majority view has laid down that the BCCI being a private body exercising public functions, it would not be covered under the definition of state under Article 12 and hence a writ petition under article 32 of the Constitution against it would not lie. It was however held by the majority that the remedy to an aggrieved person would lie under the ordinary law as well as by way of a writ petition under article 226 of the Constitution of India.

141. In view of the principles laid down by the Bombay High Court in the abovenoticed three judicial pronouncement at ***Mahendra Bhawanji Thakar vs. S.P. Pande & Anr.***, Kerala High Court in ***Padmanabha Ravi Varma Raju & Ors. vs. The Dy. Tehsildar Chittur & Ors.***, Punjab & Haryana High Court in ***UOI v. Landra Engineering & Foundry Works; Ram Sundri v. Collector,***

Ludhiana and Allahabad High Court in **Prem Prakash Gupta v. UOI & Anr.** under Article 141, the law laid down by the Supreme Court is any judgment in a case decided by the Supreme Court whether it is the judgment of a judge forming the majority or of a judge in minority and dissenting. This principle would bind adjudication, in my view this quotation in the renounced text on constitutional law cannot in any manner would not enable this court to take any different view.

142. In any case, even if the respondents contention was to be accepted that the minority pronouncement would not form a binding precedent, the majority view has not addressed the issue relating to the legislative competence of the parliament to legislate on the subject of sports and has confined itself, to holding that the petition under Article 32 was not maintainable. In this background, it cannot be held the minority view on this issue stands overruled.

143. The contention raised by learned senior counsel for the respondents can be examined from yet another angle. The majority ruled that a writ petition before the Supreme Court under Article 32 would not be competent. Therefore the court would not have jurisdiction to decide the questions which arose in the case.

144. So far as suits are concerned, it has been held that if the court has no jurisdiction to try the lis, its orders and judgment would be a nullity and cannot operate as res-judicata in subsequent proceedings.

Such question arose before the Apex Court in **AIR 1979 SC 1911 Avtar Singh & Ors. vs. Jagjit Singh & Anr.** wherein the

Apex Court has held that if a defendant appears in a case and an issue as to jurisdiction is raised and the court decides to return the plaint on grounds of lack of jurisdiction, such decision on the question of jurisdiction will operate as res judicata in a subsequent suit although the reasons for its decision may not be so.

145. In ***AIR 1940 Privy Council 222 Upendra Nath Bose vs. Lall & Ors.***, it was held by the court that a court which declines jurisdiction cannot bind the parties by its reasons for declining jurisdiction : such reasons are not decisions, and are certainly not decisions by a Court of competent jurisdiction. It would indeed be strange if on a dispute as to the jurisdiction of a Court to try an issue, that Court by its reasons for holding that it had no jurisdiction, could, upon the principle of res judicata, decide and bind the parties upon the very issue which it was incompetent to try.

146. When examined from this aspect as well, it cannot be held that the view of the minority has been overruled and consequently, if not bind, cannot even guide adjudication. I see no reason or legal basis whereby this court would stand precluded from taking the same view as that in the minority judgment in Zee Telefilms (supra).

Whether guidelines dated 14th August, 2001 were merely draft guidelines or had been kept in abeyance

147. Before this court, efforts have been made by the respondents to urge that these guidelines have not been accepted by the Government and cannot be enforced. The respondent no. 1 on the one side and the respondent nos. 2 to 4 supported by the Indian

Olympic Association on the other have placed a conflicting factual matrix and diametrically opposite grounds which are mutually destructive on this submission.

148. The respondents are however unanimous in their submission that there was resentment to the guidelines. The respondent nos. 2 to 4 have stated that the Government of India had set up a committee under the chairmanship of Sh. A.K. Pandya, DG, Sports Authority of India to review the position. The Pandya Committee submitted a report in 1992 unanimously recommending the scrapping altogether of the provisions limiting the tenure of the office bearers.

However, after hearing the views of the Government, Indian Olympic Association and the National Sports Federations, the Committee submitted its report in 1995 refraining from expressing any views. The Government admittedly did not take any decision to scrap any part of the guidelines was taken. It is evident thereby that the tenure prescription as was contained in the original guidelines continued to bind recognition and grant of financial assistance.

149. The respondents have submitted that a four member committee of the Indian Olympic Association also gave formal comments on 16th July, 1997 expressing the view that the tenure stipulation in the guidelines should be removed. The recommendations by this committee have also not found favour with the Government of India

which has issued the revised guidelines dated 14th August, 2001 continuing the restriction.

150. The respondent no. 4 has filed a counter affidavit stating that the Indian Olympic Association called for a meeting of its executive committee on 31st August, 2001 to which it invited Ms. Uma Bharti, the then Minister of Youth Affairs & Sports. It is stated that in her address the Minister took note of the opposition by the Indian Olympic Association and stated that the views of the Federations must be duly considered and that she had advised the secretary in the ministry to inform the Indian Olympic Association and the sports federations that the guidelines issued were only 'draft guidelines' and the minister would later correspond with the Indian Olympic Association and the Sports Federations.

151. Based on such a statement attributed to the minister during the course of an address in a closed door meeting of the executive committee of the Indian Olympic Association, the respondents have advanced prolonged submissions that the guidelines dated 14th August, 2001 were merely 'draft guidelines' which cannot be relied upon. A copy of the minutes of such meeting has been placed before this court in support of this submission.

152. This document has been put forward by and is only available with the Indian Olympic Association. It is an admitted position that there is no official record of any such minutes with the government. It bears no official signatures or acknowledgment. There is nothing

to support even the so called direction to the Secretary of the Ministry noticed hereinabove. The statements attributed to the Minister in the minutes of the alleged meeting on 31st August, 2001 are also not supported in any affidavit of the Government of India on record.

153. The communication dated 14th August, 2001 issued under the authority of the Government of India reflects consideration and concurrence of the other ministry i.e. the Ministry of Finance which was involved in the dispensation stood taken.

154. There is no answer to the query that if these guidelines were merely in the nature of a draft which was pending consideration, what guided the government's decisions for recognition of national sports federations or financial assistance between 2001 till the date of filing of the writ petition.

155. It is evident that if the guidelines on 14th August, 2001 were a draft, then the guidelines dated 14th September, 1975 as revised in 1997 would bind the respondents for grant of recognition and dispensation of financial assistance. There is no dispute that these guidelines contained the very tenure clause complained against before me and therefore, in order to be entitled to recognition and assistance from the Government, the National Sports Federation/Association had to fulfil these requirements.

156. The Government filed a counter affidavit to the writ petition on 16th May, 2005 sworn by Sh. S.K. Sharma, Under Secretary in the

ministry. A categorical stand with regard to bindingness of the guidelines in the affidavit dated 16th May, 2005 filed by it to the following effect :-

- “(1) That Indian Hockey Federation (IHF) is an autonomous society registered under the Societies Registration Act, 1860 and has got recognition of Ministry of Youth Affairs & Sports as apex national level sports federation engaged in promotion of the game of Men's Hockey in the country.
- (2) That the Ministry of Youth Affairs & Sports is providing financial assistance to IHF for its various activities to supplement its effort for the promotion of the game under its scheme/guidelines namely 'Assistance to Natinal Sports Federations'(NSFs.)
- (3) that the 'Sports' figures out in the 'State List' of the Constitution of India as item no. 33, the Union Government has no jurisdiction to frame any law or legislative provision on any matter relating to sports. These guidelines are only the administrative guidelines issued by the Ministry lacking legislative backing, required for the strict enforcement of these guidelines.
- (4) That there are number of National Sports Federations (NSFs) existing at present which are not strictly adhering to the instructions given in the guidelines concerning tenure of office bearers of the NSFs.”

(Emphasis supplied)

In para 11 of this affidavit, it has been deposed as under:-

“The Government supplements the efforts of the NSFs includng IHF by providing financial asistance for their various activities. For this purpose there exist “Guidelines for Assistance to national Sports Federations” containing the provisions for recognition of the NSFs, suspension/withdrawal of recognition and tenure of office bearers of the NSFs etc Since 'Sports' figures out in the “State List” of the Constitution of India as Item No. 33, the union government does not have the mandate to frame rules/legislate on any matter

related to sports. These guidelines, which have been issued by the Government of India, are only the administrative guidelines issued by the Ministry lacking legislative backing, required for the strict enforcement of these guidelines. The only action that the Government of India can take against these defaulting National Sports Federations (NSFs) under the prevailing circumstances is to stop giving financial assistance being provided to them as per the guidelines. But the Government, in general, refrains from taking such a harsh action, as it would adversely affect the interest of Indian sports persons having a lot of potential to excel in their respective sport.”

(Emphasis supplied)

157. In the course of hearing on 17th May, 2005, Mr. P.P. Malhotra, learned Additional Solicitor General orally submitted that on perusal of the Government files relating to the matter in issue, it had been brought to his notice that the clause relating to the tenure of the office bearers of two terms of four years each, as mentioned in the 1975 guidelines were ordered to be kept in abeyance by an order dated 24th August, 2002 passed by Km. Uma Bharti, the then Minister of Youth Affairs and Sports and practically it is in abeyance right from the inception and has never been implemented for any sports association/federation.

158. As such stand had not been taken in the counter affidavit dated 12th May, 2005 filed by the Government, a direction was issued to the Government to file an additional affidavit in this regard.

159. The respondent no.1 has filed an additional affidavit of Sh. S.K. Sharma, Under Secretary in the Ministry of Youth Affairs and Sports dated 18th May, 2005 now submitting that a meeting of the Indian

Olympic Association and various national sports federations was taken by the concerned minister on 11th October, 2001. Suggestion 25 of the various bodies was that the issue of tenure of the office bearer may be kept in abeyance, till the working group submitted its report to the Ministry of Youth Affairs & Sports. The Government has stated that on this suggestion, on the 24th of August, 2002, the Minister had directed that the 'issue of tenure will be kept in abeyance and will be considered alongwith the report of the working group.'

160. The respondent no.1 has further stated that the working group constituted under the chairmanship of Sh. Suresh Kalmadi, President of the Indian Olympic Association submitted its report on 14th June, 2002 recommending scrapping of the guidelines pertaining to the tenure of office bearers. It is submitted that on this report, the Minister of Youth Affairs & Sports had recorded as follows :-

“(i) From our experience, the clause limiting the tenure of office bearers two terms for four years each as mentioned in the 1975 guidelines appears to be impractical and it should be scrapped.

(ii) Conformity to the code of conduct should be made a condition for giving financial assistance to the N.S.Fs and IOA.”

Based on these submissions, it has been urged that the clause was first kept in abeyance and then it was directed to be scrapped.

161. It is equally well settled that every noting contained in a Government file is not a binding and enforceable order of the

competent authority. In the judgment reported at ***AIR 1963 SC 395 Bachhittar Singh v. The State of Punjab***, the Apex Court had occasion to consider the essential ingredients of an order of the State Government, the court observed that the business of a state is a complicated one and has necessarily to be conducted through the tendency of a large number of officials and authorities. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Art. [166](#) and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

162. In ***AIR 1987 SC 1554 State of Bihar etc. vs. Kripalu Shankar etc.***, the court observed that a Government functions by taking decision on the strength of views and suggestions expressed by various officers at different levels, ultimately getting finality at the hands of the minister concerned, the court had observed that Article 166(1) required that all executive action of the State Government shall be expressed to be taken in the name of the Governor. Undoubtedly, this clause relates to cases where executive action has to be expressed in the shape of a formal order or

notification and it prescribes the mode in which an executive action has to be expressed. It was held that notings by an official in the department file would not come within the ambit of the Article nor even notings of a minister. Every executive decision need not be as laid down under Article 166 (1) but when it takes the form of an order, it has to comply with Article 166 (1). Clause 2 of Article 166 states that orders and other instruments made and executed under article 166(1) shall be authenticated in the prescribed manner. The Apex Court observed that a study of the article, therefore, makes it clear that the notings in a file culminated into an order effecting rights of parties only when it reaches the head of the department and is expressed in the name of the governor, authenticated in the manner provided in article 166 (2).

163. Learned senior counsel for the petitioner has also placed reliance on the pronouncement of the Apex Court reported at ***AIR 1988 SC 782 Doypack Systems Pvt. Ltd. vs. UOI & Ors.*** which is also to the same effect. It was held that notings made in various departments at various levels by the officers is not the view of the cabinet. The ultimate decision is taken by the cabinet so far the notings are not the guides as to what decision the cabinet took.

164. Learned standing counsel for the respondent no. 1 has placed reliance on the pronouncement of the Apex Court reported at ***AIR 2004 SC 949 M/s Tafcon projects India Ltd. vs. UOI & ors.*** In this case, an issue has been raised as to whether the minister's signatures without anything more amounted to approval of the

previous notings. It was on a consideration of the conspectus of facts including the several steps in the matter and earlier notings thereon that the court held that the necessary approval or the decision stood taken in the matter. The position in the instant case is different as discussed hereinabove.

165. I have noticed in some detail the affidavit filed by the Indian Olympic Association wherein it has been urged at length that on 31st August, 2001, the Minister had stated that the Guidelines dated 14th August, 2001 were merely in the nature of a draft and had directed the Secretary of the Ministry to so intimate all concerned. This position has been reiterated by respondent nos. 2, 3 and 4 on separate affidavits before this court. If the Guidelines dated 14th August, 2001 as a whole were merely a draft which were directed by the Minister not to be implemented, it is evident that there is no question of the same Minister directing that a tenure clause contained therein be 'kept in abeyance' or 'be scrapped'. There is neither occasion nor requirement for so ordering on draft Guidelines.

166. So far as tenure was concerned, clause 3.5 has been in existence since 1975. An issue was raised at the instance of the sports federations that the same was unreasonable.

167. I find that the Government has placed before this court a meeting notice and the agenda note for the same. The details of the proposed amendment which were to be considered by the meeting have been set out as agenda item no. 1. It is noteworthy that the

agenda items do not include any discussion relating to the tenure clause in the guidelines. This was evidently for the reason that no amendment was being proposed to the said clause.

168. In fact, in the meeting held on 11th October, 2001, it was directed that the revised guidelines would be implemented with immediate effect. According to the Government, the Minister had concluded that 'issue of tenure' would be kept in abeyance and would be considered with the report of the working group. This by itself shows that a report of the working group was being awaited before taking any kind of decision, interim or final with regard to the objection to the tenure clause.

169. The noting of the minister has to be read strictly and it would not be permissible to derive any inference therefrom or conclusions or directions. If the intention was to scrap the tenure clause, it would have been recorded that the same 'shall stand scrapped' or other words to this effect. It would not have been noted that it 'should be scrapped' or other words to this effect.

On the 11th of October, 2001, therefore, it was the issue as to whether the tenure restriction is required to be removed or not which was kept in abeyance and not the applicability of clause 3.5. The same is supported by the manner in which the noting dated 24th August, 2002 is recorded.

170. This position is also manifested from the further consideration on the file. This noting is stated to have been placed before the new

minister on 31st October, 2002 who had clearly noted that he had scrutinized the previous noting and that piecemeal decisions were not required to be taken. On 31st October, 2002, the minister had directed the Secretary of the Ministry to examine all the issues in totality and put up the matter on relevant files in a period of one month.

171. At this stage, it becomes necessary to notice some curious facts. During the pendency of the case, the petitioner has filed CM No. 6578/2005 enclosing three pages appearing to be an extract from a Government file stating that on 19th May, 2001, these pages were left at 5 p.m. in the office of the counsel for the petitioner and contending that if the same were part of the government record, they authoritatively establish that there was no order altering or modifying the guidelines dated 14th August, 2001 or keeping the same in abeyance and that they remained applicable in every manner.

172. The respondent no. 1 has responded to this application, again by way of an affidavit of its Under Secretary unequivocally admitting that the noting forms part of Government record. The only reservation is that the internal file noting of the Minister of Youth Affairs & Sports filed by the petitioner was without any file number and that the note annexed by the petitioner "relates to another section, which does not deal with the policy issue of amendment of guidelines for assistance to national sports federations (NSFs)." The

respondents do not dispute the existence but explain inability to produce this file for the reason that it is not traceable and that the answering respondent is making sincere efforts to locate the said note.

173. It is noteworthy that the respondent no. 1 relies on the notings produced by the petitioner with C.M. No. 6578/2005 and have reproduced a part thereof in the body of the affidavit on its behalf to show that the note dated 30th October, 2001 was actually prepared only to provide assistance in the revised/annexed scales to all NSFs as well as federations who had become eligible for assistance after the issue of the revised guidelines on 14th August, 2001. The affidavit further states that the purpose of this note was for seeking orders to process cases for grant of assistance to N.S.Fs on revised scale and freshly eligible federations as the office had withheld processing of files in view of order dated 31.8.2001, 21.9.2001 and 11.10.2001 and that the decision of the then Hon'ble Minister that the issue of tenure will be kept in abeyance and will be considered alongwith the report of the working group (as indicated in the minutes of the meeting held on 11.10.2001 filed before the Hon'ble High Court on 19.5.2005) as well as to set up a Working Group to suggest amendments to the Guidelines for Assistance to N.S.Fs, among other issues relating to sports were not reversed. A working group was thus set up vide order dated 03.12.2001 to suggest amendments to the said guidelines.

174. The note sheets contain approval of a noting dated 30th October, 2001 by the concerned Minister as well as the Secretary of the Ministry. The noting dated 30th October, 2001 records the sequence of events including the circumstances in which the meeting dated 11th October, 2001 had been called. Para 8 of this noting summing up the position and setting out the proposal deserves to be considered in extenso and reads thus :-

“8. It may kindly be observed from above deliberations that the guidelines were issued to all the National Sports Federations and all other concerned and made effective from 14.8.2001 and it was only an internal view that the guidelines may be discussed with federations, for which Hon. Minister was apprised on file that these guidelines have been prepared after due consultation with IOA and Federations. No formal order for keeping the operation of the revised guidelines in abeyance was issued as such the guidelines may considered to be effective and operative in all manners w.e.f. 14.8.2001 – the date of issue of guidelines.”

(emphasis supplied)

175. It is noteworthy that the noting records that the earlier revision in the guidelines had been approved by the concerned minister as well as the finance minister. The Deputy Secretary (R) endorsed the noting and wrote on the file that approval of the minister for application of the provisions of the scheme with effect from the date of approval of the Ministry of Finance be sought. This noting was endorsed by all seniors and bears the signatures of the Minister as well. It certainly negates the respondents' case.

176. Learned senior counsel for the petitioner has placed reliance on

the pronouncement of the Apex Court reported at **(2001) 8 SCC 606** (paras 25-28) **Centre for Public Interest Litigation vs. UOI** in support of its submission that the respondent no. 1 has deliberately and malafide withheld relevant material from this court and has filed false affidavits. Perusal of this judgment would show that a similar stand taken by the Central Bureau of Investigation that record which was required to be produced before the court was not traceable was deprecated by the court and it was observed that the allegation of the petitioner, if true, reflected very poorly on the integrity of the organisation.

177. It has not been contended before this court that the note sheets relied upon by the petitioner do not have a bearing or are not relevant for the purposes of consideration of the pleas raised by the parties before this court. It needs no elaboration that a party in possession of the best evidence and material is bound to place the same before the court irrespective of the onus or burden of proof. In the instant case, the respondent no. 1 cannot adopt a partisan stand inasmuch as the petitioner is seeking enforcement of guidelines framed by it and what is at stake is recognition of a national level sports body and dispensation of enormous sums of public funds in the form of financial assistance and utilisation of public resources. The duty cast on the respondent no. 1 is even more onerous and it was bound to have placed the complete facts and official records before this court, leaving it to the court to draw its own conclusions therefrom. Instead, two contradictory stands have been taken

during the course of hearing.

178. The petitioner has urged that it has been the consistent stand of the Government of India itself before various courts in various affidavits whereby it has placed the guidelines in totality before the courts placing reliance on the same in support of submissions relating to recognition and grant of financial assistance. It has been stated by the petitioner that the respondent no. 1 has never stated that the guidelines so far as the tenure clause was concerned were not applicable or not implemented.

179. Before the Constitution Bench hearing *Zee Telefilms & Anr. vs. UOI*, an issue was raised as to whether the Union of India had granted de facto recognition to the BCCI under the very guidelines which are placed before this court. In paras 203 to 208 at pages 73 and 74 of the report, the court has dealt at length with these guidelines and the provisions thereunder.

180. So far as the Government stand was concerned, the same is found to be referred to in paras 211 and 212 of the report which makes a reference to an affidavit filed by the Government of India where placing reliance on its power under the very guidelines, the court has held thus :-

“211. In the affidavit dated 8th October, 2004 affirmed by a Deputy Secretary to the Government of India, Ministry of Youth Affairs and Sports, it is stated:

"1. I am informed that this Hon'ble Court required to be apprised as to whether it was mandatory for all sporting bodies including private entities or clubs to seek permission and to obtain the same for playing in

tournaments abroad.

2. In response to the issue raised before this Hon'ble Court, it is respectfully submitted that only the recognized. National Sports Federations are required to apply in the prescribed format for seeking permission to go abroad to play as a Team representing India. There have been instances where club teams; organizations engaged in sports activities etc. have applied for such permission but the Ministry has considered their request only when they were received through the National Sports Federation - BCCI in this case."

212. It is not disputed that the Union of India has not recognized, any other national sports body for regulating the game of cricket in India. It is the categorical stand of the Union of India that only by such recognition granted by the Union of India the team selected by the Board is the Indian cricket team which it could not do in absence thereof."

181. It was never stated that these were draft guidelines or that any portion thereof was in abeyance. The Union of India had pleaded that the BCCI and its officials are the recipients of State largesse and recognition under the Government guidelines.

182. The submissions made on behalf of the respondents can be tested from yet another aspect. If it were to be held that the guidelines dated 14th August, 2001 are not binding, it may result in a chaotic state of affairs. More than one state level federation/association may claim that it is the national level federation/association. These guidelines have been in force since the year 1975.

183. The stand in the later affidavit is clearly an after thought and contradicted by the copy of the notings produced by the petitioner

and the affidavits of respondent nos. 2 to 4.

184. It is noteworthy that the note sheet produced by the petitioner also shows that the revision in the guidelines has the approval of not only the Ministry of Youth Affairs & Sports but also has the concurrence of the Ministry of Finance and that the circulation of the order on 14th August, 2001 was not in the nature of circulation of a draft guideline.

185. The guidelines including the tenure clause was in existence since 1975. It was retained and reaffirmed in 1997 and 201. Recognition to national level sports federation as well as dispensation of the state largesse was being effected on compliance of the conditions laid down in these guidelines. The said guidelines were definitely not draft guidelines. They are also the only regulatory guidelines which guide and govern recognition of national sports bodies. The said guidelines also provide the procedure including the manner in which applications for aid and assistance and the dispensation thereof is to be made by the respondent no. 1. There is also nothing to indicate that the same were kept in abeyance by any competent authority or binding order.

186. The fact that the Guidelines were admittedly issued in the form of a formal order on behalf of the Government of India on the 11th of August, 1981 and duly circulated does not support the stand of the Government of India. The guidelines were evidently not considered in the nature of 'a draft' by the Government and were actually binding. The respondents do not rely on any other guidelines which

lay down the eligibility or procedure for dispensation of the largesse or recognition as a national sports federation. The respondent no. 2 has applied under these guidelines, has been recognised as a National Sports Federation and has received grants and other assistance from the Government under the guidelines. So have the other NSFs. This manifests both that the guidelines were not merely a draft and that they were implemented.

The stand taken before this court by the respondent no. 1 in the additional affidavit is an after thought and not supported by any decision or material.

187. The Government files have not been produced for perusal. The contention that the guidelines were kept in abeyance is concerned, is also not supported by any authentic or complete record before this court.

It is, therefore, held that the guidelines were neither draft guidelines nor kept in abeyance. These guidelines bind the manner in which recognition is to be granted to National Sports Federations and financial assistance is to be dispensed.

No writ of mandamus can issue to enforce non-statutory guidelines

188. It has been urged on behalf of the respondents that the guidelines being administrative in nature would not be enforceable by issuance of a writ in the nature of a mandamus. The submission is that administrative rules, regulations, instructions, which do not flow

from statutes have been held to have no force of law. Guidelines issued by way of executive instructions also cannot override statutory provisions. Any order passed in violation of such guidelines cannot be held to be illegal, void or inoperative.

189. It has been urged by Dr. A.M. Singhvi, Senior Advocate as well as Mr. V.P. Singh, learned Senior Advocate representing the respondent nos. 2 to 4 on the one hand and the Indian Olympic Association that no writ in the nature of a mandamus can be issued to enforce purely administrative instructions and a member of a private association cannot approach the court for enforcement of such administrative instructions which do not have the force of law and cannot bind the associations. In this behalf, reliance has been placed by learned senior counsels on the pronouncements of the Apex Court reported at ***AIR 1965 SC 1196 State of Assam vs. Ajit Kumar Sharma*** (Head note, para 12); ***(1972) 4 SCC 188 Kumari Regina vs. St. Aloysius Higher Elementary School and Anr.*** and ***(1988) 4 SCC 364 J.R. Raghupati vs. State of Andhra Pradesh & Ors.*** (para 17 and 31).

190. By virtue of Article 73, the executive power of the Union of India is co-extensive with the legislative power of the parliament. Article 73 does not define what would constitute an executive function nor does it mention the subject matters over which the executive power is exercised. The executive power of the Union is also not circumscribed by any existing legislation on the relevant subject. In the absence of any legislative provision, regulating or

controlling sports activity at the national level, it has been held that it is open to the Government of India to issue executive instructions and orders to guide the same. It is trite that such administrative instructions issued in exercise of executive power, can be changed or amended by the executive.

191. An identical issue had arisen for consideration before the Apex Court in the pronouncement reported at **(1973) 1 SCC 194 : MANU/SC/0610/1972 entitled UOI vs. K.P. Joseph & Ors.** The Apex Court placed reliance on an earlier pronouncement reported at **AIR 1967 SC 1910 : (1966) 1 SCR 111 Sant Ram Sharma vs. State of Rajasthan & Anr.** wherein it had been held that the Government cannot supersede statutory rules by administrative instructions. Yet if the rules framed under article 309 of the Constitution of India are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and that these instructions would govern the condition of service.

192. The Apex court also reiterated the principles laid down by it in the earlier decision reported at **AIR 1968 SC 718 : (1968) 2 SCR 366, 377 UOI & Ors. vs. M/s Indo Afghan Agencies Ltd.** wherein the question which was raised before the Apex Court was as to whether the import trade policy was legislative in character. It was held by the court that the trade policy was executive in nature. Yet it had been held that courts have the power in appropriate cases to compel performance of the obligation imposed by the schemes upon

the departmental authorities.

193. In this background, in *UOI vs. K.P. Joseph* (supra), the Apex Court held that 'to say that an administrative order can never confer any right would be too wide a proposition and that the general rule that an administrative order confers no justiciable right was subject to exceptions. There are administrative order which confer rights and impose duties which would be enforceable. The principles laid down by the Apex Court in this behalf in this pronouncement read as follows :-

“10. xxx

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that we have imported the principle of natural justice of audi alteram partem into this area. A very perceptive writer has written :

Let us take one of Mr. Harrison's instances, a regulation from the British War Office that no recruit shall be enlisted who is not five feet six inches high. Suppose a recruiting officer musters in a man who is five feet five inches only in height, and pays him the King's shilling; afterwards the officer is sued by the Government for being short in his accounts; among other items he claims to be allowed the shilling paid to the undersized recruit. The Court has to consider and apply this regulation and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last wills must have two witnesses. (John Chipman Gray on "The Nature and Sources of the Law").

11. We should not be understood as laying down any general proposition on this question. But we think that the Order in question conferred upon the first respondent the right to have his pay fixed in the manner specified in the Order and that was part of the conditions of his service. We see no reason why the Court should not enforce that right.”

194. This very issue arose before this court in the pronouncement reported at ***AIR 1976 Delhi 310 Jiwat Bai & Sons vs. G.C. Batra*** and the applicable principles were put down with great clarity in the judgment pronounced by H.L. Anand, J. The contention raised and the principle laid down by the court were stated so :-

“(8) Shri Dhebar. however, contends that assuming that the policy confers a right and that the right was denied to the petitioners in contravention of the policy, the petition for a writ of mandamus would, nevertheless be not maintainable and the petitioners would not be entitled to any relief because the policy was not statutory in nature and a mere breach of non-statutory policy or instructions would not afford a cause of action for such a relief. Shri Dhebar further contends that a claim for a writ of mandamus must be founded on a legal right and that breach of a mere non-statutory instructions neither confers a right nor gives rise to any statutory obligation which alone could be enforced by a writ of mandamus. It is further contended that an administrative direction like the present policy could not confer any justiciable right upon a citizen which could be enforced in a Court by a writ or order in the nature of mandamus and that the foundation for the issue of a writ or order in the nature of mandamus being the existence of a legal right, and administrative order being incapable of conferring any justiciable right, no writ could be issued. It is true that the policy is not statutory in nature and is, at best, in the nature of executive instructions issued with a view to regulate the renewal of vending licenses, and may, in that sense, be likened to a Government scheme. It is equally true that when an executive authority commits breach of these instructions, it could not be said that a statutory obligation had been violated. It is also undisputed that ordinarily a claim for mandamus must be based on a legal right and such a writ is granted to compel the performance of a statutory duty. There are, however, well recognised exceptions to this general rule. It has been recognised that there are administrative orders which confer right and impose duties and that Courts have a power in appropriate cases to compel performance of the obligation imposed by the non-statutory scheme or administrative instructions upon the executive authorities

U.O.I. Vs. K.P. Joseph (1973) 2 SCR 752 : AIR 1973 SC 303, U.O.I. Vs Indo Afghan Co. Air 1963. S.C. 718. At one time it was no doubt that the executive instructions did not bind the authorities, could not confer any right or obligation and could not, therefore, be enforced, in a Court of law. Recent legal thinking has, however, recognised that where there is no statutory provision, executive instructions fill in the gap Sant Ram Vs State of Rajasthan AIR 1967 SC 1910 and are not only capable of conferring rights on the citizen and imposing obligations on the authorities, which are charged with the duty of carrying out the policy, but that in appropriate cases. Court may even compel the performance of such a duty.”

195. A similar issue relating to enforceability of non-statutory guidelines arose before the Supreme Court in the pronouncement reported at **1990 Supp. SCC 440 Narendra Kumar Maheshwari vs. UOI & Ors.** The court was of the view that though the guidelines were not judicially enforceable, however judicial review of the matter could be made where there was arbitrariness and malafide or where the deviations from the guidelines involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve. In para 106 and 107 of the judgment, the court held thus:-

“106. It may, however, be stated that being non statutory in character, these guidelines are not enforceable. See the observations of this. Court in Fernandez v. State of Mysore air 1967 SC 1753 (Also see R. Abdullah Rowther v. State of Transport, etc. AIR 19 9 SC 896 ; by. Asst. Iron & Steel Controller v. Manekchand Proprietor (1972) 3 SCC 324 ; Andhra Industrial Work v. CCV&E 1971 SCR 321; K.M. Shanmugham v. S.R.V.S. Pvt. Ltd. AIR 1963 SC 1626. A policy is not law. A statement of policy is not a prescription of binding criterion. In this connection, reference may be made to the observations of Sagnata Investments Ltd. v. Norwich Corporation 1971 2 QB 614 and p. 626 Also the

observations in *British Oxygen Co. v. Board of Trade* 1971 AC 610. See also Foulkes' *Administrative Law*, 6th Ed. at page 181-184. In *Ex P. Khan* (1981 1 All. E.R. page), the Court held that a circular or self made rule can become enforceable of the application of persons if it was shown that it had created legitimate expectation in their minds that the authority would abide by such a policy/guideline. However, the doctrine of legitimate expectation applies only when a person had been given reason to believe that the State will abide by the certain policy or guideline on the basis of which such applicant might have been led to take certain actions. This doctrine is akin to the doctrine of promissory estoppel. See also the observations of Lord Wilberforce in *IRC v. National Federation* 1982 AC 617. However, it has to be borne in mind that the guidelines on which the petitioners have relied are not statutory in character. These guidelines are not judicially enforceable. The competent authority might depart from these guidelines where the proper exercise of his discretion so warrants. In the present case, the statute provided that rules can be made by the Central Government only. Furthermore, according to Section 6(2) of the Act, the competent authority has the power and jurisdiction to condone any deviation from even the statutory requirements prescribed under Sections 3 and 4 of the Act. In *Regina v. Preston* Supplementary 197 I WLR p. 624 at p. 631, it had been held that the Act should be administered with as little technicality as possible. Judicial review of these matters, though can always be made where there was arbitrariness and malafide and where the purpose of an authority in exercising its statutory power and that of legislature in conferring the powers are demonstrably at variance, should be exercised cautiously and soberly.

107. We would also like refer to one more aspect of the enforceability of the guidelines by persons in the position of the petitioners in these cases. Guidelines are issued by Governments and statutory authorities in various types of situations. Where such guidelines are intended to clarify or implement the conditions and requirements precedent to the exercise of certain rights conferred in favour of citizens or persons and a deviation therefrom directly affects the rights so vested the persons whose rights are affected have a clear right to approach the court for relief. Sometimes guidelines control the choice of persons competing with one another for the grant of benefits largesses or favours and, if the guidelines are departed from without rhyme or reason, an arbitrary discrimination may result which may call for judicial review. In some other instances (as in the *Ramanna Shetty* case), the guidelines may prescribe certain standards

or norms for the grant of certain benefits and a relaxation of, or departure from, the norms may affect persons, not directly but indirectly, in the sense that though they did not seek the benefit or privilege as they were not eligible for it on the basis of the announced norms, they might also have entered, the fray had the relaxed guidelines been made known. In other word they would have been potential competitors in case any relaxations or departure were to be made. In a case of the present type, however, the guidelines operate in a totally different field. The guidelines do not affect or regulate the right of any person other than the company applying for consent. The manner of application of these guidelines, whether strict or lax, does not either directly or indirectly, affect the rights or potential rights of any others or deprive them, directly or indirectly, of any advantages or benefits to which they were or would have been entitled In this context, there is only a very limited scope for judicial review on the ground that the guidelines have not been followed or have been deviated from. Any member of the public can perhaps claim that such of the guidelines as impose controls intended to safeguard the interests of members of the public investing in such public issues should be strictly enforced and not departed from as departure therefrom will take away the protections provided to them. The scope for such challenge will necessarily be very narrow and restricted and will depend to a considerable extent on the nature and extent of the deviation. For instance, if debentures were issued which provide no security at all or if the debt-equity ratio is 6000 : 1 (as alleged) as against the permissible 2:1 (or thereabouts) a Court may be persuaded to interfere.”

196. In a judgment reported at **1991 (39) BLJR 1266 : MANU/BH/0132/1991 Mrs. Vineeta Prasad & Ors. vs. The Vice-Chancellor, Patna University & Ors.**, the court placed reliance on several judicial precedents prior thereto and succinctly summed up the principles holding that :-

“It is now well established that where there is a defined procedure, even without statutory force, it must be scrupulously observed' and non-observance . results in rendering the act void 'being violative of Article-14 of the constitution. In the case of (sic) v.

Seaton (1959) 359 US 535, Justice Frankfurter in his classic statement has said that, "he that takes the procedural sword, shall perish with that award." This doctrine is, of late, known as doctrine, of "Procedural sword" and has been accepted as one of the principle of natural justice. The Supreme Court has referred the aforesaid case with approval in the case Sukhdev Singh v. Bhagat Ram [MANU/SC/0735/1971](#). In the ease of B.S. Mishra v. Indian Statistical Institute and Ors. [MANU/SC/0235/1983](#), it has been said that: If the bye-laws as have been framed for the conduct of its affairs to avoid arbitrariness, Respondent No. 1 cannot, therefore, escape the liability for not following procedure prescribed by bye-law 2.

Again in the case of Sadhu Singh and Ors. v. State of Punjab (1984) 2 SCC 310, is has been held that:

...Any existing executive instructions could be substituted by issuing fresh executive instructions for processing the cases of lifers for premature release but once issued, these must be uniformity and invariably applied to' all cases of lifers so as to avoid the charge of discrimination under Article [14](#).

Again in the case of A.I. Kalra v. The Project and Equipment Corporation of India Ltd. (1984) 3 SCC 316, it has been held that:

An administrative authority who purports to act by its regulation must be held bound by the regulation. Even if these regulations have no force of law the employment under these corporations is public employment and; therefore, an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulation."

197. It is trite that the administrative orders or executive instructions may be changed, rescinded or altered by administrative orders or executive instructions issued at any time. In **(1974) 2 SCC 348 M/s Andhra Industrial Works vs. Chief controller of Imports & Ors.**, the Import Control Policy Statement was held to be

only a policy statement and not a statutory document. For this reason, it was held that no person can, merely on the basis of such a statement, claim a right to the grant of an import license, enforceable at law.

198. Administrative or executive instructions can supplement statutory rules. There is a material and obvious distinction between the impact of an executive instruction which runs contrary to statutory provision and whittles down their effect which was the subject matter of consideration before the Apex Court in **1992 Supp.1 SCC 150 State of M.P. vs. G.S. Dall & Flour Mills**, which has been relied upon by the respondent. In this case, by virtue of a notification issued under the M.P. General Sales Tax Act and M.P. Deferment of Payment of Tax Rules, 1983, the petitioner became entitled to certain exemptions. By virtue of certain guidelines, certain additional requirements were imposed in order to be entitled to the exemption. In this background, the court reiterated the well settled principles that executive instructions can supplement a statute or cover areas to which the statute does not extend but they cannot run contrary to statutory provisions or whittle down their effect. For this reason, instructions which denied exemption to a person who qualified under the statutory notification were liable to be struck down on the ground of impermissible delegation of legislative power to the executive.

There can be no dispute with this well settled legal principle. However as noticed above, there is no statutory provision which

governs the subject matter of financial assistance or grant of recognition to a sports association as a national body representative of the sport and for this reason the principles laid down by the judgment do not come into play.

199. The nature of an eligibility condition and the very authority of the respondents to impose the same was assailed before the apex court in ***(1979) 3 SCC 489 Ramana Dayaram Shetty vs International Airport Authority of India & Ors.*** The court considered the expanding activities of the Government in a welfare state and also noticed that the state dispenses large number of benefits as well as special services which include financial assistance, jobs, contracts, licenses etc and the manner in which this dispensation ought to be effected. In this behalf, the observations of the Apex Court in paras 10, 11 and 12 succinctly laid down the principles which would govern the consideration of the very issues raised before this court as well. It would be useful to set down these principles which reads thus:-

“10. xxx

It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe these standards on pain of invalidation of an act in violation of them. Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens

come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set-forth by Harry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in "Democracy, Equality and Freedom," "substantial agreement is in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes not difference whether the exercise of the power involves affection of some right or denial of some privilege.

11. To-day the Government, is a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises

are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." "The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. We agree with the observations of Mathew, J., in *V. Punnath Thomas v. State of Kerala* AIR 1969 Ker 81 that : "The Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic

Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal". The same point was made by this Court in *Erusian Equipment and Chemicals Ltd. v. State of West Bengali* (1975) 1 SCC 70 where the question was whether black-listing of a person without giving him an opportunity to be heard was bad? Ray, C.J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing of a person not only affects his reputation which is in Poundian terms an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot, therefore, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largesse and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or

norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.”

200. So far as the jurisdiction to lay down conditions and enforce the guidelines for grant of financial assistance and recognition is concerned, an issue with regard to permissibility of University/State providing for a condition for granting recognition/affiliation was raised before the Apex Court in the judgment reported at ***AIR 2003 SC 3724 Islamic Academy of Education vs. State of Karnataka***. The Apex Court in para 17 of the judgment held that such provisions/conditions prescribing merit base selection can be made at the time of granting recognition or affiliation as well as subsequently after the grant of such recognition or affiliation.

201. It is, therefore, trite that though it may not be possible to assert a right based on administrative/executive instructions and non-statutory guidelines, however, a challenge may be available to a person to assail an action by the authority concerned on grounds of arbitrariness, malafide for breach thereof. The prayers made by the petitioner have to be tested in this background.

202. The respondent no. 1 has stated that the Indian Hockey Federation is the national level federation recognised by the Government for the game of hockey. It is further stated by the Government on affidavit that the Indian Hockey Federation is one of the national sports federations getting financial assistance exceeding

Rs.1 crore in a year through the Comptroller General of India as per the provisions of 'guidelines for assistance to National Sports Federation' and that has been issued necessary instructions for audit of its accounts. A statement showing grants released by the Ministry of Youth Affairs & Sports to the Indian Hockey Federation between 1995 to the year 2005 shows that in the year 1995 an amount of Rs.80,54,831/- was released which in the year 1999, went up to Rs.1,09,12,796/- and in 2004-2005 has further increased to Rs.1,94,21,032/-.

203. The respondent no. 2 though has not given the details of the amounts advanced by the respondent no. 1, however it accepts that respondent no. 1 is giving financial assistance have identified activities of the players. It is also stated that apart from the grants made by the Government of India, the respondent federation is receiving funds through sponsorship and royalties from sale of broadcasting rights of matches.

204. From a perusal of the various documents placed before the court, it would appear that holding of an office in the National Sports Federation enables the membership in international sports bodies. Office bearers of the national sports federation are also entitled to be office bearers in international sports bodies and forums. It enables absolute control over the national and international level activities of the sports federation and grants an absolute control to the person concerned over the sport in question. It enables the official to manage, control, organise sporting conferences, events competition,

nationally as well as internationally. Undoubtedly, the person concerned gets enormous power over the amounts of finances which are available to the national sports federations both from Government and from the private persons; absolute control over the game of hockey in India and the fate of hockey players in India.

205. The submission and objection on behalf of the respondents also fails to take into consideration the pronouncement of the Apex Court in *Zee Telefilms vs. UOI & Ors.* wherein the Apex Court has categorically held that the impact thereon is not on the association or federation alone. The impact of the guidelines and the object and purpose for which they have been enforced certainly cannot be ignored and even though the guidelines be non-statutory or issued in exercise of executive powers by the Government.

206. In the case reported at ***State of Assam vs. Ajit Kumar Sharma*** (supra), Mr. Ajit Kumar Sharma was a teacher in the Hindu Girls College at Gauhati which received a grant from the State of Assam. Certain conditions had been imposed by the State Government of Assam while giving such a grant to private colleges to enable them to give higher scales of pay etc. to their teachers in accordance with the recommendations of the University Grants Commission. The petitioner was seeking enforcement of these rules as binding on the college and seeking a mandamus based thereon as an entitlement to the benefits under the rules.

In the judgment reported at ***AIR 1965 SC 1196 State of Assam vs. Ajit Kumar Sharma***, the Apex Court clearly held that

there was no law to prevent the state from prescribing the conditions of the grants made by it by mere executive instructions which do not have the force of statutory rules. Such conditions of grant in aid laid down by executive instructions were open to the private college to accept or not to accept them. If it decides not to accept the instructions, it would naturally not get the grant and aid which was contingent on it accepting the conditions contained in the instructions.

It was held that the state could prescribe instructions laying down condition of grant. However it was not open to a teacher to insist that the governing body should carry out the instructions as they conferred no right of any kind on teachers and consequently they could not apply to the High Court for a mandamus seeking the enforcement or non-enforcement of the rules, even if indirectly there may be some effect on them because of the grant and aid being withheld in whole or in part.

207. The pronouncement of the Apex Court reported at **(1988) 4 SCC 364 J.R. Raghupati vs. State of Andhra Pradesh & Ors.** was concerned with a challenge to a pronouncement of the Andhra Pradesh High Court involving a question of principle relating to location of mandal headquarters in the state of Andhra Pradesh under section 3(5) of the Andhra Pradesh Districts (Formation) Act, 1974. The issue raised before the court was whether location of the Mandal Headquarters was a purely governmental function and therefore not amenable to the writ jurisdiction of the High Court

under article 226 of the Constitution. The High Court quashed the Government notification issued after consideration of objections and a detailed consideration by the authorities on the ground that the government acted in breach of guidelines. In this case the court was of the view that mandamus could not be issued to enforce the guidelines which were in the nature of administrative instructions not having a statutory force and not giving any legal right in favour of the writ petitioners.

In this case, the Apex Court set aside the interference by the High Court in cases where it had directed relocation of the Mandal Headquarters inter alia for the reason that the location of the Mandal Headquarters by the Government was on a consideration by the Cabinet Sub-committee of proposals submitted by collectors concerned and objections and suggestions received from local authorities like the Gram Panchayat and the general public keeping in view the relevant factors. The court was of the view that even if breach of the guidelines laid down by the Government was justiciable, the utmost that the high Court could have done was to quashed the impugned notification in a particular case and direct the Government to reconsider the question. It was further observed by the court that there was nothing on record to show that the decision of the State Government in any of the cases was arbitrary or capricious or was one not urged in good faith or actuated with improper consideration or influenced by extraneous considerations. The issues raised before the Supreme Court in this case do not arise

for consideration in the present case.

208. Again in ***Kumari Regina vs. Saint Aloysius Higher Elementary School and Anr.*** reported at **(1972) 4 SCC 188** the Supreme Court held that if the terms of the appointment letter issued by the school were different from the conditions of the affiliation to be fulfilled by a school as imposed by the State Government, a teacher aggrieved thereby may not be entitled to seek a relief in his favour on the basis of the conditions of affiliation. At the same time, the Apex Court held that, the state administration was fully empowered to enforce the fulfilment of the conditions towards affiliation against the school. It is noteworthy that in para 24 of the pronouncement, the Apex Court has clearly stated that the Government has the power to admit schools to recognition and grants in aid; and it cannot be gainsaid that de hors the statutory enactment, the Government can lay out conditions under which it would grant recognition and aid. It is further held by the Supreme Court that “to achieve uniformity and certainty to the exercise of such executive power and to avoid discrimination, the Government would have to frame rules which, however, would be in the form of administrative instructions to its officers dealing with the matters of recognition and aid. If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be a condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either denial or withdrawal of recognition and aid. The management of a

school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce those rules upon the management.

209. It is noteworthy that the conclusions of the Apex Court in the case were based on the well settled principles that non-statutory administrative/executive conditions and instructions would confer no right on the teachers of private college and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced to assert a right in his favour based thereon. However, the Apex Court reiterated its earlier view that the Government is entitled to insist on compliance with such conditions for affiliation, recognition and aid; that breach or non-compliance would vest the consequence of denial or withdrawal thereof.

210. A closer look at the guidelines dated 14th August, 2001 would show that they have been framed with the objective of defining the areas of responsibility of the various agencies involved in promotion and development of sports in India; to identify national sports federations/associations eligible for recognition and coverage under the guideline; set out priority in sport; to detail procedures to be followed by the national federations/associations to avail financial assistance sponsorship and all other assistance which the Government advances; to state clearly the conditions for eligibility which the Government would insist upon for recognition of the sports

federations/associations as well as those which it would insist upon for releasing grants to sports federations/associations. The sports authorities and bodies which are involved include the Sports Authority of India; Indian Olympic Association etc.

211. It is well settled that a judgment or a judicial precedent is law for the facts in which it was rendered. In the instant case, the petitioner is not asserting entitlement to any individual rights in his favour. Detailed submissions have been made on acts and omissions of the respondent no. 2 and complaints have been made by the petitioner that there is violation of the guidelines dated 14th August, 2001. The petitioner has made a prayer for initiation of necessary action in accordance with the guidelines for withdrawal of the recognition conferred on the respondent no. 2 as a national level sports federation as well as a prayer for withdrawal of the financial assistance rendered by the Central Government.

212. Malfunctioning on the part of a recognised national level sports federation or association causes irreparable damage to the progress of the sport in the country. There can be no comparison of the private interest of an individual teacher seeking the benefit of a particular level of salary or entitlement to a notice provided under administrative instructions against his employer against the damage which would result to the sport of hockey and national interest. Effective and efficient working of the national sports federation impacts the status, standing and reputation of the entire nation in the arena of sports.

213. Mr. Pradeep Dewan, learned counsel appearing for the Indian Olympic Association has placed reliance on the pronouncement of the Apex Court reported at **MANU/SC/1070/2003 UOI & Ors. vs. C. Krishna Reddy** wherein the respondent had sought issuance of a writ of mandamus to the petitioners to release an amount by way of a reward for having given information to concerned officers of the Department of Customs and Central Excise leading to certain recoveries. The respondent was placing reliance on certain guidelines issued by the Government of India on 30th March, 1985 regarding the policy, procedure and orders in respect of the grant of rewards to informers and government servants in case of seizure made and evasion of tax duty detected under the provisions of the Customs Act; Central Excise and Salt Act, 1962; Gold Control Act and Foreign Exchange Regulation Act.

It is noteworthy that the guidelines clearly stated that the reward was purely an ex gratia payment. This being so, it was held by the court that no right accrued to the same till it is determined and awarded. In writ jurisdiction the high court cannot examine or weigh the various factors which are required to be taken into consideration while deciding a claim regarding grant of the reward which are matters exclusively within the domain of the authorities of the department which alone can weigh and examine the usefulness or otherwise of the information given by the informer. In this background, reward cannot be claimed as a matter of right.

No such issue arises in the instant case.

214. Before this court, it is an admitted position that the Indian Hockey Federation derives substantial financial assistance from the Government of India. The Indian Hockey Federation stands formally recognised as a national sports federation also by the Government of India. The respondent no. 2 effectively controls the functioning of its members.

215. The guidelines framed by the Government enable the National Sports Federations recognised thereunder to derive substantial financial assistance and other facilities from the Government. Apart from purchase of valuable equipment, this assistance includes training/coaching camps; assistance for organisation and participation in national and international competitions and training abroad; appointment, availability and expenditure on foreign coaches for training of sports person, assistance of the Sports Authority of India as well as facilities at the state owned sports set ups. To enable meaningful utilisation of its assistance, the Government has framed guidelines for recognition of national sports federations.

216. As part of its initiative, the Ministry of Youth Affairs and Sports operates a number of independent schemes alongwith the Sports Authority of India which are apart from the financial grants to the national federations. These schemes have a direct bearing on the promotion and development of sports in the country and include (i) Exchange of Physical Education Teachers etc(CEPs); (ii) Rural Sports programme, (iii) National Championships for Women, (iv) Grants for Creation of Sports infrastructure, (v) Grants to Universities and

Colleges, (vi) Assistance for synthetic surfaces and (vii) Scholarships for training abroad. The Government has recognised that the National Sports Federations are primarily responsible for judicious selection of sports persons for participation in major international events based on merit and with the objective of enhancing national prestige and bringing glory to the world. Such federation is also required to be concerned with the development and encouragement of the sport in the country.

217. The Apex Court has not prohibited the High Court in exercise of its jurisdiction under article 226 from issuing a mandamus requiring the Government from ensuring compliance with the guidelines or conditions which it has fixed for grant of recognition and affiliation.

The absolute prohibition urged by the respondents to the maintainability of the writ petition seeking directions on a complaint of breach of statutory guidelines certainly is not legally tenable is hereby rejected.

218. The Government of India is dispensing not only financial assistance but also providing other facilities in terms of the guidelines; has recognised national level federations; framed priorities in sports and has effected dispensation of state largesse based thereon.

219. In view of the principles laid down by the Apex Court in the aforementioned judicial pronouncements, there can be no dispute that the Government is entitled to frame the guidelines for dispensation of its largesse which will take the nature of financial assistance;

assistance in the nature of expert coaches, national level facilities etc. Certainly, the Government is entitled to notify and evolve a procedure for dispensation of the financing assistance which runs into crores of rupees as well as guidelines for recognition of the national sports federation and cannot permit the same to be disbursed arbitrarily without any clear directives in this behalf. The guidelines issued by the Government and modified from time to time have been therefore validly issued and are binding for the purpose for which they have been issued.

In view of the above discussion, it has to be held that a National Sports Federation regulating the game of hockey in the country can be compelled by the Government in discharge of its executive powers and functions to abide by the rule of law as well as executive guidelines framed for such recognition and dispensation.

No writ of mandamus can be issued to the Government to legislate

220. Placing reliance on the pronouncement reported at **(2003) 8 SCC 250 Common Cause vs. UOI & Ors; (2004) 11 SCC 360 In Re. Networking of Rivers and 1992 Supp.(1) SCC 548 State of J & K vs. A.R. Zakki & Ors**, it is also urged by learned senior counsels for the respondents that no mandamus can be issued to the Government to legislate.

221. In **Common Cause vs. UOI** (supra) the Apex Court was concerned with an amendment to the Delhi Rent Control Act. The

petitioner's contention was that the amendment bill having received the Presidential assent under Article 111, stood lawfully enacted and stood converted into an Act. It was further urged that the same having been placed on the statute book by a public notification in terms of Section 366 (19), the Act was out of the legislative area. It was argued that since the Parliament had not permitted appointment of different dates for different provisions of the Act, Section 5 of the General Clauses Act was attracted and the Act came into force as soon as the the President gave his assent to the bill.

The court held that it could not be said that the Government was not alive to the problem or was desirous of ignoring the will of the Parliament. The legislature itself had invested the power in the Central Government to notify the date from which the Act would come into force and the Central Government is entitled to take into consideration various facts while considering whether the Act should be brought into force or not. Keeping in view these facts, it was held that no mandamus could be issued to the Central Government to issue the notification contemplated under section 1(3) of the Act to bring the Act into force.

222. In **(2004) 11 SCC 360 Re Networking of Rivers**, the court was concerned with the project for linking of rivers. Certain aspects of the matter required consideration by the Government and an examination as to whether any further pieces of legislation were necessary to bring about the interlinking. In this context, the court had observed that it was not open to it to issue any direction to the

Parliament to legislate.

223. Similarly, in the pronouncement reported at **1992 Supp.(1) SCC 548 State of J & K vs. A.R. Zakki & Ors.**, the court had observed that a writ of mandamus could not be issued to the legislature to enact a particular legislation.

224. There certainly cannot be any dispute with this well settled principle of law. However, in the instant case, no prayer is made for issuance of a mandamus to the government to legislate. No question is raised or prayer made by the petitioner that the legislature be called upon to make a law on any subject. A simple case for enforcement of and a grievance with regard to violation of non-statutory guidelines, which regulate dispensation of state largesse, is urged. This objection in the present case is wholly misplaced.

225. It has been argued by Mr. V.P. Singh, learned senior counsel that the role of the Government is confined to grant of recognition which is in the nature of a contract. This submission fails to take into consideration the impact of the recognition and the tremendous power which is created in an organisation which is recognised as a National Sports Federation.

Even otherwise, it is well settled that a writ would issue even in matters relating to contract.

Restriction in clause 3.5 of the guidelines restricting the term of the office bearer to a maximum of two years of four years each is invalid, illegal, unconstitutional and unenforceable.

226. The respondents have urged that even if it were to be held that

the guidelines are valid, enforceable, legal and binding, the stipulation in clause 3.5 restricting the tenure of the office bearers to two terms of four years each impacts the constitutional rights of the citizens guaranteed under article 19 of the Constitution of India and is therefore unconstitutional and unenforceable.

227. In support of the objection, the respondents have relied on the pronouncement of the Apex Court reported in **(1986) 3 SCC 615 *Bijoe Emmanuel vs. State of Kerala*** and ***Amreli Distt. Coop. Sale & Purchase Union Ltd., Amreli & Ors. vs. State of Gujarat*** reported at ***Vol. 20 Coop. Law Journal, October 1984, Page 195.***

228. I find that in ***K. Suryanaryana vs. Distt. Election Officer AIR 1976 AP 340*** (para 26 & 34) a similar prohibition statutorily contained in Section 21C in the Andhra Pradesh (Andhra Area) Cooperative Societies Act (7 of 1961) which stipulated that a person who holds or has held office as a member of the committee of the society for two consecutive terms shall not be eligible for being chosen as a member of the committee for a third term in continuation. This statutory provision was challenged by the petitioner inter alia on the ground that the bar to holding office as a member of the committee for a third time in succession is ultravires article 19(1)(c) of the Constitution of India. It was observed by the court that the statement of objects and reasons for the introduction of the Bill furnished the court with reliable extrinsic evidence as regards the purpose or object or reason for an Act. The state had been utilising the device and framework of cooperative societies for

ushering in some of the welfare functions. Even without the assistance of 'objects and reasons', it could be said that the function of the legislature in this mandatory legislative underlying section 21(c) of the Act is only to curb the growth of vested interest in cooperative societies. The Andhra Pradesh High Court has with utmost clarity placed the distinction between, 'whether there is fundamental right to form an association/society'; 'whether there is a fundamental right to get the society registered and 'whether there is a fundamental right to be a member of the Executive Committee/Governing Body.' Challenge was laid to a statutory restriction on the tenure in the executive body.

Just as the present case, there was no prohibition on the membership of the association. The grounds of challenge were the same as those laid before this court. It would be useful to consider the observations and findings of the court in extenso which reads thus :-

“26. Apart from the Committee being a committee of the co-operative society registered under the Act, we do not think the restriction in question imposed on becoming a member of the Committee for more than two consecutive terms violates the fundamental right to form Association guaranteed under Article 19 (1) (c) of the Constitution. It is not the case of the petitioners that they are restricted from forming a co-operative society under the Act, or there was any compulsion on them to form a society under the Act or to become members of a society registered under the Act. Simply for the reason that some restrictions are imposed in connection with the working of the Society, that does not amount to curtailing the freedom of forming a society unless the restriction goes to the very root of the matter, which amounts to taking away the freedom to form an Association. In the present case the

restriction is only to become a member of the Committee for a consecutive third term. That means one cannot become a member of the Committee for more than two terms continuously. There is no restriction on becoming member of the Committee once again there after for two more terms. With an interval of one term in between one can become a member of the Committee consecutively for two terms any number of times. This restriction the Legislature in their wisdom thought to be necessary in order to prevent vested rights being established in the Societies which is not very healthy for proper working of the Societies. Therefore, this is not a matter which touches the very right to form a society. We are unable to agree with the argument of Sri P.A. Chowdary that if such restriction is imposed that would be abridging or taking away the right to form a society or an Association. In this connection Sri Chowdary placed strong reliance on two decisions of the Supreme Court. Smt. Damyanti Naranga v. Union of India AIR 1971 SC 966 and O.K.Ghosh v. E.X. Joseph AIR 1963 SC 812. In the first decision referred to above, the validity of the Hindi Sahiya Samelan Act (1962) was in question. Under Section 4 (4) of the Act apart from persons who are members of the Society, some more members have been added without any option being available to the existing members of the Society to elect or refuse to elect them as members which was the right they possessed under construction of the Society itself. The Supreme Court said that 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. The result of this change in the 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 alternation 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 implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who

have voluntarily joined it, will be a law violating the right to form an Association. Therefore, the Supreme Court said on the fact of that case, that the provision of law by which committee members have been added to the Society without any opinion being available to the existing members of the Society to elect or refuse to elect them as members is violative of Art. 19 (1) (c) of the Constitution. Thus, the facts of that case are clearly distinguishable from the facts before us. In the present case, the only restriction imposed under Section 21-C of the Act is to be a member of the Committee continuously for a third term. This is not a provision which restricts the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association. In this case, the Supreme Court referred to their earlier case, which is the second case mentioned above.

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34. Therefore, so long as there is no impediment to form an Association or to become a member or having become a member to continue or not as a member of Association, no provision of law can be said to infringe the fundamental rights guaranteed under Article 19 (1) (c) of the Constitution merely because such a provision seeks to regulate the functioning and administration of the Association in the day to day working and in the process imposes some restrictions, more so when they are conceived in the best interests of the Association. It is only in cases where a provision of law actually amounts to curtailing the right to form an association in the sense mentioned above, that can be said to be violative of the fundamental rights guaranteed under Article 19 (1) (c) of the Constitution. As we have already discussed above, the restriction imposed under Section 21-C on any person from becoming a member of the Committee of the Society for more than two consecutive terms cannot be said to amount to curtailing the right or freedom of a person to form an Association. As mentioned above, the Legislature in their wisdom thought that such a restriction is necessary in order to prevent any person from acquiring any vested interest in the Society, which is not a healthy sign for proper and efficient working of the society in the best interests of all its members. Therefore, Section 21-C of the Act is not violative of the fundamental right guaranteed under Article 19 (1) (c) of the Constitution not only for the reason that the right to form a Co-operative Society under a Co-operative Societies Act is not a fundamental right and it is only a

right given under the Act subject to its provisions and the Rules framed thereunder, but also on the ground that the restriction like the one imposed under Section 21-C prohibiting a person from becoming a member of a Managing Committee of a Society consecutively for more than two terms cannot be said to be the one which either in reality or in substance amounts to restricting the right to form an Association guaranteed under it.”

(Underlying supplied)

229. A condition similar to that incorporated in clause 3.5 of the guidelines under consideration with regard to tenure of the office bearers was contained in sub-section 5 of section 73A of the Maharashtra Cooperative Societies Act (24 of 1961) and a challenge to its vires was laid on the ground inter alia that it violated article 19(1)(c) of the Constitution of India. This challenge was also rejected by the Division Bench of the High Court of Bombay in the judgment reported at ***AIR 1984 Bombay 47 Manohar vs. State of Maharashtra*** holding that the registration of a society was not compulsory, but, a voluntary act. So far as the tenure restriction statutorily contained in section 73A of the Act was concerned, the Bombay High Court held as follows:-

“14. Now coming to the impugned provision of Section 73-A(5) of the Act, all that it does is to restrict the enjoyment of office by the designated officer, if he has held the office for a continuous period of six years and such officer is not eligible to be re-elected or re-appointed for a period of three years after the expiry of the period of six years. Such a provision could have been made in the byelaws of the society at the time of registration. Such provision could have been made in the byelaws of the society at the time of registration. Such a provision could also be made in the byelaws at the instance of the Registrar at any time during the continuance of the society or could be made by a provision of the Act itself as is done in the present case.

The restrictions whether contained in the byelaws or the rules or the provisions of the Act comes into operation by reason of the registration of the society under the Act which is the result of a purely voluntary act of its members and as such it is difficult to see how the petitioner can complain of any infringement of Article 19(1)(c) merely because the period of office of the designated officer is restricted by the impugned provision.

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17. As far as the impugned provision of sub-section (5) of Section 73-A of the Act is concerned, it is not a provision which restricts the right to continue the association or composition that is voluntarily agreed upon by the persons forming an Association. All that it restricts is the continuance in office of the designated officer if he has been continuously in the office for a period of six years and the bar continues to apply only for a period of three years and thereafter he is free to be elected as one of the designated officers as per the bye laws of the society. In our opinion, Damayanti's case AIR 1971 SC 966 is clearly distinguishable in that the incorporation of the Sammelan under the Central Act was the result of legislative compulsion and did not depend upon making voluntary application by the existing members of Corporation as in the case of a society registered under the Act on an application for that purpose made voluntarily by its members,. As we have noticed from the provisions of the Act above, the members of the society are under no compulsion to make an application for registration of the society under the Act, but by making an application for registration under the Act, they voluntary application by the existing members of Corporation as in the case of a society registered under the Act on an application for that purpose made voluntarily by its members. As we have noticed from the provisions of the Act above, the members of the society are under no compulsion to make an application for registration on the society under the Act, but by making an application for registration under the Act, they voluntarily submit to the acceptance of the provisions of the Act, as binding on them. In other words, by voluntarily agreeing to be a society registered under the Act, they also voluntarily agree to the Provisions of the Act including the provisions such as the framing of bye laws consistent with the object of the provisions such as the framing of bye laws consistent with the object of the provisions of the Act and even agreeing to bye laws that may be

directed to be made by the Registrar. It is under the bye laws that the designated officer continues to remain in the office for a particular period. The period could be restricted even at the instance of the Registrar by amending the bye laws as a result of the statutory provision like sub-section (5) of Sec. [73-A](#) . we do not see how the provisions of this nature, in any manner, impinge upon the right of the members to form an association guaranteed under Article [19\(1\)\(c\)](#) of the constitution. In our opinion, it is equally difficult to appreciate the argument that a provision of this nature takes away the rights of the members to continue the association with its composition as voluntarily agreed upon by them when there is no obligation or compulsion to get the society registered. Provision can be said to be one regulating the affairs of the society without in any manner encroaching upon the right to continue the association with its composition agreed upon by them.

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21. Having regard to the above discussion, we are of the view that the contention that sub-section (5) of S. [73-A](#) encroaches upon the rights guaranteed under Article [19\(1\)\(c\)](#) is without any merit and in this view of the matter, it would not be necessary to justify the provision in clause (4) of Article [19](#) of the Constitution.

22. Even assuming that the impugned provisions can be said to encroach upon Art. [19\(1\)\(c\)](#), we are also of the opinion that the provision can be justified under clause (4) of Art. [19](#) as it imposes reasonable restriction in the interest of morality. While, dealing with this aspect, it would be useful to refer to passages from different books relating to principles of co-operation extracted in *Brinjgoopal Denga v. State of M. P.* AIR 1979 [Madh Pra. 173](#), where the provisions of S. 19-c(2) of the Madhya Pradesh Co-operative Societies Act conferring power on the Registrar " to expel a member when it is necessary or desirable in the interests of the society" were challenged as being violative of Art. [19\(1\)](#) . It was held by the court having regard to the scheme of the Act and the fact that there is no compulsion to apply for registration of the society under the Act, there is no question of affecting the right under Art. . The Court also held that the provision was also justified under Art. [19\(4\)](#) as it imposes reasonable restriction in the interest of society. The passage from the judgment runs thus (para 8)

"The basic principle of cooperation is that the members

join as human persons and not as capitalists. Cooperation is a form of organisation wherein persons associate together as human beings on the basis of equality for the promotion of the economic interest of themselves. Cooperation is a method of doing business with an ethical base. "Each for all, and all for each" is the motto of cooperation. Cooperation not only develops the latent business capacity of its members; it produces leaders; it encourages the growth of social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gain for himself. Cooperation being a business - cum-moral movement, the success of the enterprise depends upon the reality with which each one of the members works for the achievement of the object of the organisation; (See law and principles of cooperation by H. Calvart, pp. 18, 19, 22, and 45). The committee on cooperation in India emphasised the moral aspect of cooperation. To quote their words; "the theory of cooperative is very briefly that an isolated and power less individual can by association with others and by moral development and mutual support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the union of forces, material advancement is secured and by united action self-reliance is fostered and it is from the inter-action of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better farming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism. Cooperation in actual practice must often fall far short of the standards aimed at and details inconsistent with cooperative ideals have often to be re-accepted in the hope that they may lead to better things. We wish clearly to express our opinion that it is to true cooperation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo-cooperative edifice, however, imposing, which is built in ignorance of cooperative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets" honesty and a sense of

moral obligation and keeps in view the moral than the material sanction " (pp . 5 and 6 of the Theory and practice of Cooperation in India and Abroad by Kulkarni, vol. 1) Cooperation as a mode of doing business. Is at present applied as the solution of many economic problems. Cooperation is harnessed to almost all forms of economic activity. Though cooperation was introduced in this country as as remedy for rural indebtedness, it has been applied successfully in wide range of activities such as production, distribution, banking , supply marketing, housing and insurance: (See Theory and Practice of Cooperation in India and Abroad by Kulkarni, Vol. I, P.2) As observed by a Division Bench of this court in Kamta Prasad v. Registrar, Co-operative Societies, AIR 1967 Madh. Pra. 211, "The cooperative movement is both a theory of life and a system of business. It is as form of voluntary association where indivisible unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged. In the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets. Honestly and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great movement."

230. In ***Bijoe Emmanuel vs. State of Kerala (supra)*** relied upon by the respondents, the court had held that in order to regulate or curtail fundamental rights guaranteed by the sub-clauses of Article 19 (1), the state has to make a law imposing reasonable restrictions in the circumstances provided in the constitutional provision.

There can be no dispute with the legal principles laid down.

231. So far as the pronouncement reported at ***Amreli Distt. Coop. Sale & Purchase Union Ltd., Amreli (supra)*** also placed by the respondents is concerned, the same also deals with a statutory prohibition in the tenure of an office bearer. With due respect to the

principles laid down in this judgment, I find that the submission that registration of an association as a society is not mandatory but purely a voluntary act was not placed before the court and therefore not considered in the pronouncements. Furthermore, the court was not concerned with a guideline framed by the Government for regulating dispensation of its state largesse and recognition. This judgment would therefore have no application to the instant case.

232. Yet another aspect to this issue requires to be considered. There is no statutory compulsion for registration of a society to carry on the activities for which it is constituted. This would be evident from the enabling provision which is to be found in the Societies' Registration enactment of 1960 as well as the state enactments which use the expression 'may' register. Registration of course can be obtained only on the basis that the society was willing to abide by the bye-laws of the society which are required to be approved by the designated authority under the concerned statute in accordance with the prescriptions therein and the rules framed thereunder.

233. The submission made by learned senior counsels for the respondents requires to be examined from yet another angle. It is noteworthy that in para 18 of the pronouncement in ***Manohar vs. State of Maharashtra*** (supra), the court noticed that it was a uniform pattern in cooperative law all over the country to restrict tenure of certain officers and provision similar to those contained in Section 73A were made in all relevant state enactments pertaining to cooperative societies in other parts of the country.

234. So far as the Delhi Cooperative Societies Act, 1970 was concerned, a similar disqualification clause based on tenures was provided by way of section 31(5). The tenure restriction in the Punjab Cooperative Societies Act was found to be quite analogous to the one contained in section 73A of the Bombay statute. The court observed that the decision of the Division Bench of the Bombay High Court at Nagpur in W.P.(C) No. 1418/1981 (reported at 1983 Maharashtra L.J. 719) showed that an All India conference of the Chief Ministers and all State Ministers for cooperation was held at Madras on 18th June, 1968. An important measure suggested by the said conference with regard to curbing of vested interest in cooperative societies included a restriction on holding offices in the cooperative societies for more than the prescribed number of terms inter alia and that in keeping with the national policy of removing vested interest from cooperative institutions for attaining the object of the cooperative movement which is to work as an institution for uplifting of weaker and poorer sections of the society and with a view to make the cooperative societies broad based democratic institutions rather than allow them to be monopolised by few persons and for the purposes of orderly development of the cooperative movement and further in accordance with the relevant directive principles of state policy enumerated in the Constitution of India, the tenure restriction provision in section 73A was inserted by statutory amendment.

235. In the instant case, this court is concerned with the

incorporation of a tenure clause as an eligibility condition for a body seeking recognition and/or financial assistance from the Government of India. The principles underlying restriction of the tenures of office bearers in societies concerned with sports are similar to those on which other cooperative societies are registered. The pronouncements afore considered would apply on all fours to the instant case.

236. I find that there is no prohibition to an unregistered association or society of persons, either under the Constitution of India or under any statute, to carry on its activities freely without any restriction. There is no such restriction even under the Societies Registration Act, 1860. The guidelines framed by the respondent no. 1 which are the subject matter of the present consideration also do not restrict formation of an association or society.

237. Though not placed before this court, but in view of the submission that the respondent no. 2 is registered under the Tamilnadu Societies Registration Act, 1975, I find that section 5 of that statute, specifically mentions that any society which has for its object, promotion of religion, athletics or sports may at its option may be registered under this Act. There is therefore no binding that, in order to carry out its object and activities a society has to be compulsorily registered even under this enactment.

238. For this reason, the submission on behalf of the respondent that the guidelines have the impact of supplanting or that they provide a new condition concerning the working of the societies under the

Societies Registration Act is also wholly misconceived. There is no requirement of complying with the guidelines for registration of the sports federation or association or a society under the Societies Registration Act and it is open to get a society registered without complying with the conditions of the guidelines and it would be open to such a society to formulate its own bye-laws and rules without the guidelines interdicting the same in any manner.

239. By the guidelines, the Government has not prohibited formation of an association, society or federation with regard to any sport. It has only mandated that in order to be entitled to financial assistance or recognition as a national level body by the union government, it would require to be a society or an association or federation which enforces democracy by fixing the tenure of the office bearers. There is no comparison between the election as an office bearer of a national level sports body with the member of the parliament who represents his constituency in the parliament. For the foregoing reasons, the conditions and criteria for recognition and grant of assistance is neither arbitrary nor whimsical.

240. It is noteworthy that the national level federations enjoy a monopoly position and are directly concerned with selection of teams to represent the country. Though it should not, but there is every possibility that vested regional biases and interests may influence decision making especially in selection of teams. Thus office bearers from a particular region, religion, political affiliation or having other clout may be able to control selection and other matters relating to

the national sports federations influencing the development of the sport in the country.

241. If such a tenure clause was not enforced, the office bearers could be repeatedly elected from a particular region and continue to dominate the affairs of the association/federation after having created a monopoly over the sport. Tremendous damage could result to the sport itself inasmuch as vesting of the control in authorities from a particular region may result in diversion of funds, selection of players from and development of a sport from only a particular region. The national sports federation would then not remain representative of the hope and aspirations of the sports persons of the entire nation.

242. A limited office tenure, certainly would have the impact of minimising, if not eliminating, allegations, criticism and elements of nepotism, favouritism and bias of any kind. In a country having the federal structure of the nature that India possesses, the office bearers being in circulation and there being change in the representation on the executive of a national level body would go a long way in promoting the diversity and expertise in the sport. There must be states who have never been represented on the national teams. It would contribute to mainstreaming sport persons who are marginalised on account of lack of regional representation at the higher managerial echelons of the sports bodies or are otherwise not visible. Hundreds of sports persons without means, resources or sources from every corner could hope for recognition of their skills

and representation on regional and national teams.

243. Certainly the prescription by the Government of the office bearers to two tenures which brings a length of the total office held by them to 8 years as a condition for eligibility for recognition as a national sports federation or for entitlement of financial assistance from the Government, cannot by any measure be considered insufficient for any office bearer to impart his best to the organisation or the development of the sport or to make a difference. Such a restriction would ensure new office bearers with fresh ideas, enthusiasm and the wealth of their experience making a valuable addition to the organisation. It would also ensure circulation and removal of such who are corrupt or undesirable in the organisation who perhaps by virtue of exercise of political might or other resources, are able to get repeatedly re-elected which would really sounds a death knell for the sport and talented players.

This is not to say that regional representation alone is the benchmark for selection of a national team. Merit alone can guide selection. However inability of a state to ever produce player(s) who reach national trials or the national team would certainly reflect on the failure of a national sports federation to develop the sport nationally which is its prime mandate.

244. The petitioner has pointed out and has placed the constitution of the respondent no. 2 as was prevailing between 1977 till the year 1992. The constitution of the IHF incorporated a tenure clause restricting the term of persons holding the positions of President,

Honorary Secretary General and the Treasurer to a maximum of two terms of four years each who could, therefore, hold these posts for a maximum of eight continuous years only.

There is no prohibition to standing for election again after the break of one term.

245. The respondent no. 2 places reliance on amendments to the Constitution carried out in the annual general meeting held on 8th February, 2004 and have placed the amended Constitution on record which is stated to be governing the functioning of the federation. This constitution has amended the tenure clause to read that all the office bearers shall be eligible for re-election for second and subsequent terms of four years each on obtaining a simple majority votes of the members present and voting in the election.

246. It is important to note that none of the respondents have till date assailed any of the guidelines by way of an appropriate legal proceedings or writ petition or otherwise. On the contrary they have accepted their validity and acted thereupon. Both recognition, aid and financial facilities have been sought thereunder, granted by the Government and enjoyed by respondent nos. 2 to 4. The current stand that the same are beyond the executive power as the Parliament does not have the legislative competence has been raised only when a grievance is made by the petitioner that the respondent no. 1 is not adhering to the rules. In these circumstances, the petitioner relies on the pronouncement of this court reported at **1996 (28) DRJ 358** (para 8, 11 and 12) **Veterinary Council of**

India vs. India Council of Agricultural Research to urge that, as a result, the respondent stands estopped from raising such a challenge.

247. The petitioner has placed reliance on the pronouncements reported at ***AIR 1988 SC 1247*** (para 5) ***Asstt. Commissioner Commercial Taxes vs. Dharmendra Trading Co.*** in support of the submission that the Union of India is estopped from contending that its own guidelines are ultravires and without jurisdiction.

248. There is every reason why the office bearers of an organisation would oppose a tenure clause. Having been elected to an office position, none likes to relinquish charge or demit a position. This is manifested by the amendment to the constitution of respondent no. 2 in 2004 whereby the tenure restriction was removed.

249. In the case in hand, clause 3.5 in the guidelines does not impact any right or prohibit any person from becoming a member of the society. On the contrary it has the impact of ensuring diversity in the managerial affairs of the association. This is also in keeping with the spirit, intendment and purpose of the statute under which the respondent no. 2 is registered.

250. The Full Bench of the Andhra Pradesh High Court and the Bombay High Court have squarely rejected similar contentions and challenges to statutory provision. The reasoning in these judicial pronouncements throws valuable light on the challenge to the executive guideline before this court on identical grounds.

251. Before this court, a submission was also made that the

international Olympic Charter prohibited any intervention by the Government in the affairs of a society. Firstly, I see no interference by the stipulation of the tenure condition as a condition for grant of recognition and assistance by the Government. Secondly, the same does not enable the Government to have any say of any kind in the affairs of running of the sports body. Thirdly, I find that the respondent no. 2 has placed an extract of the rules and regulations of various international bodies including the ICC; Federation Internationale de Football Association and the International Olympic Committee. It is disclosed that the International Olympic Committee is the supreme authority of the Olympic movement. Its executive board was founded in 1921 and consists of the president, four vice presidents and ten other members. All the members of the executive board are elected for a four year term by the session in a secret ballot by a majority of votes cast.

252. Perusal of the document placed before this court shows that a tenure prohibition is to be found even in the rules governing the duration of some of the office members of the International Olympic Committee. It is prescribed in rule 19.2.2 that the duration of the terms of office of the Vice-Presidents and of the ten other members of the IOC Executive Board is four years. A member may serve for a maximum of two successive terms on the IOC Executive Board, regardless of the capacity in which he has been elected.

In case of a member having completed two successive terms of office pursuant to rule 19.2.2 above, he may be elected again as a

member of the International Olympic Committee executive board after a minimum period of two years.

253. This stipulation in the international Charter shows the enforcement of democratic values and the reaffirmation of the principle that the governing sports body has to be representative and cannot be controlled by any particular person or set of persons and is very similar to the stipulation contained in the tenure clause 3.5.

254. Therefore it has to be held that there is no legal prohibition to the restriction of the tenure of an office bearer as a condition for grant of recognition or financial assistance by the authority or person awarding or dispensing the same. Such condition does not adversely impact any fundamental right guaranteed under the Constitution of India. The objection to this effect raised by the respondent has no legal basis and is opposed to the spirit, intendment and the purpose of the Societies Registration Act; the interests of national sports and hence, national as well as public interest.

255. To dispel any impression of mal-functioning on the part of the respondent no. 2, written submissions have been placed on record stating that the respondent no. 2 has made tremendous efforts to revive Indian hockey. It is stated in these submissions that the efforts made by it under the current office bearers have borne fruit which according to the respondent no. 2 are manifested from the following

Achievements of Indian Hockey Federation since 1994 :-

<u>“Medals/Position</u>	<u>Place</u>	<u>Year</u>
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1. ASIAN GAMES :-
 - a) 12th Asian Games Hiroshima 1994 Silver Medal
 - b) 13th Asian Games Bangkok 1998 Gold Medal
 - c) 14th Asian Games Busan 2002 Silver Medal

2. ASIA CUP :-
 - a) 4th Asia Cup Hiroshima 1994 Silver Medal
 - b) 5th Asia Cup Kulalampur 1999 Bronze Medal
 - c) 6th Asia Cup Kulalampur 2003 Gold Medal
 - d) 7th Asia Cup Chennai 2007 Gold Medal

- 3) JR. ASIA CUP:-
 - a) 3rd Jr. Asia Cup Singapore 1996 Silver Medal
 - b) 4th Jr. Asia Cup Kulalampur 2000 Silver Medal
 - c) 5th Jr. Asia Cup Karachi, Pakistan 2004 Gold Medal

- 4) SUB-JR.ASIA CUP:-
 - a) 1st Sub Jr.-Asia Cup Singapore 2000 Gold Medal
 - b) 2nd Sub Jr.-Asia Cup Bangladesh, Dhaka 2003 Gold Medal

5. JR.WORLD CUP :-
 - a) 6th Jr. World Cup Milton Keynes, U.K. 1997 Silver Medal
 - b) 7th Jr. World Cup Hobart, Australia 2001 Gold Medal
 - c) 8th Jr. World Cup Rotterdam, Netharland 2006 IVth Position

6. SULTAN AZLAN SHAH CUP :-
 - a) 15th Sultan Azlan Malaysia 2006 3rd Position
 - b) 16th Sultan Azlan Malaysia 2007 3rd Position

7. SAF GAMES :-
 - a) Saf Games Colombo 2006 Silver Medal”

256. The tabulation placed by the respondent no. 2 before this court unfortunately conceals the real position which is the abysmal fall from the glory that Indian hockey has displayed. It fails to even state that the Indian hockey team won a record six gold medals in a row at six Olympics in the year 1928, 1932, 1936, 1948, 1952 and 1956 which example has not been replicated by any other country. It won a silver medal in 1960 and a gold again in 1964 as well as 1980. The Indian hockey team won the bronze medal at the 1968 and 1972

Olympics. So far as the World Cup was concerned, the Indian hockey team won a bronze in 1971, a silver in 1973 and the gold at the 1975 World Cup. These facts are general knowledge and known to every sports enthusiast.

257. Absorption of the country with this game prior to its status till the beginning of the 1980s, was perhaps as much, if not more, than even cricket. The talent and skill of Indian hockey players of yore as late Shri Dhyanchand are till date labelled as legendary and internationally unmatched. No country in the world can boast of eight Olympic gold medals in a row. The prestige and standing of Indian hockey in the past remains unparalleled.

258. Hockey is the National Game of India. For the first time in more than eighty years at the Beijing Olympics, the Indian Hockey team could not even qualify to play the Olympics. Experience shows that there is no dearth of sports talent in this great country. In view of the protracted hiatus certainly blame cannot be apportioned upon the players. There are most serious causes which remain totally unexamined. As per the medal tally displayed by the respondent no. 2, the Indian team is now restricted to struggling for medals at the regional level.

Lesser teams have grown in stature while India languishes at the bottom.

259. A very telling statement of Abhinav Bindra, the only Indian to ever win an individual gold medal in 2009 Olympics, merits a mention. A question was put to him as to whether India could hope

to win medals not because of the systems but in spite of it. His answer to this question was reported by the Indian Express on the 4th January, 2009. This so very talented Indian sport person commenting on the Indian performance in the 2009 Olympics is reported to have answered that "Some really talented athletes will succeed but it will dry up if there is no vision. For a country of 1.25 billion people, three medals in an Olympics is pretty poor. I was happy to win the gold but I was also embarrassed that it took our country so long to win one."

260. In this background, the allegations made by the petitioner in the representations dated 10th January, 2005; 21st January, 2005 and 29th January, 2005 making allegations of grave mismanagement, financial irregularities, lack of transparency, no system of approval of annual accounts, indiscipline in the organisation, no distribution or assignment of responsibility assume grave importance and require to be addressed at the earliest. The petitioner has also pointed out the objections raised by the auditor. The petitioner has stated that he has raised issues and sought clarification even by his letter of 17th February, 2005 which remains un-addressed. Allegations of fabrication of the minutes of the Annual General Meeting held on 30th January, 2005 have been made which were objected by the petitioner's letter dated 25th February, 2005. An allegation has been made that the auditor for the respondent no. 2 was appointed in the meeting on 8th February, 2004 till 2006. Without any authority, it is alleged that the respondent no. 3 has appointed another auditor as

per the fabricated minutes dated 30th January, 2005.

Apart from the irregularities pointed out by the petitioner, it has also been urged that the auditor's report for the year 2003-04 had also pointed out glaring financial irregularities and mismanagement in the affairs of the respondent federation.

261. The petitioner's requests to the respondent no. 1 for investigation into the complaints of breach of the guidelines dated 14th August, 2001 have fallen on deaf ears.

262. A very important aspect which may be the root cause for the malaise which seems to have infested sports management in this country deserves to be noticed at this stage.

263. Despite the clear guidelines notified and circulated as back as on 20th September, 1975, revised on two occasions first in 1997 and then as circulated on 14th August, 2001, each of which contains the office bearer tenure stipulation, the Government of India has filed an affidavit before this court stating that while releasing assistance to National Sports Federations, the stipulation contained in the Government order dated 20th September, 1975 limiting the tenure of office bearers to two terms of four years each is not being insisted upon by the Government. This affidavit states that the same has not been done 'in the interest of sports person'.

What is the interest of the sports person is neither detailed nor spelt out, either in the affidavit or in any document which has been placed on record. There is not a single decision which is contrary to the mandate and stipulation contained in the guidelines dated 20th

September, 1975.

264. It is an admitted position that the guidelines were framed and circulated in 1975, amended in 1997 and in 2001 with the approval of the Ministry of Finance, Department of Expenditure. State revenue was involved. It was incumbent on all those working the guidelines to ensure that the guidelines were strictly complied with. Certainly, there cannot be dispensation of state largesse which include large amounts of funding and other technical assistance, without compliance of the guidelines laid down for such dispensation.

265. The consequence of such failure to abide by the guidelines is that dispensation of state largesse admittedly running into several crores of rupees has been effected in violation of the guidelines framed by the Government of India for the same.

266. This matter assumes significance and importance in the light of nature and extent of assistance rendered by the Central Government in matters of sports relating to the various disciplines.

267. A submission was made by learned standing counsel for the Union of India that the approval of the Finance Ministry was confined to the provisions in the guidelines governing finance alone. This view certainly undermines the importance and nature of the approval of the Ministry of Finance and is also not borne out by the communication dated 14th August, 2001 or the guidelines. The Ministry of Finance would be concerned certainly with not only the

nature and manner of expenditure but also with the nature of the body to whom the dispensation was being effected. It is required to take a holistic view in the matter and is certainly expected to take into its consideration all provisions in the guidelines.

268. The facts placed before this court and the representations of the petitioner to the Central Government also display complete disinterest with the fate of the sport persons or the glory of the sport. Complete autonomy and arbitrariness in the functioning of NSFs is being permitted by the Government. Players and coaches remain almost unrepresented on the sports body or in forums where their voice and representation may ensure not only the interest of the sports persons but also that the national interest and glory of the sport is restored.

269. It takes a sportsman to understand the finest nuances of the game; the psychology involved in mentally blocking out rowdy spectators supporting a home team; the herculean effort entailed in focussing on the game against extreme provocations of the opponents. Only someone who has played or been involved in the game can understand why some days are good, others not at all; the positive support needed when "off form" and how insensitive criticism can demolish the confidence of an able player. The essentiality of a good diet and rest regime, a clean environment and adequate facilities can be also best ensured by those who have been involved. Sports persons also, understand the importance of 'rest' and 'retirements'.

270. The success of a sports board needs no further evidence than the performance story of the team it endorses. It is also not the credentials or laurels of those who constitute the Board on which its capability is to be evaluated but again the success of the game, nationally and internationally. Such success may not be evaluated by medals won but can equally be measured by the spread of the game in the country, availability of modern facilities in its remote corners, creation of a body of fit and able coaches and players and, of course, the increase in popularity of the game amongst the masses.

271. Alongwith the counter affidavit of respondent no. 4 in support of the credentials of the respondent no. 3, his CV has been placed on record. The respondent no. 3 has declared his field of specialisation as the maintenance of law and order and is a renowned officer of the Indian police service. Undoubtedly, there can be no doubt with regard to his ability as an expert on law and order issues specially relating to terrorism. He has several publications in these areas to his credit for his services so rendered. The respondent no. 3 has been repeatedly decorated with police medals in 1989 and stands awarded the Padamshri in 1989. The respondent no. 3 has stated that he has received a large number honours from public and voluntary organisations for restoring normalcy in Punjab after over a decade of terrorism. His areas of interest include English and Urdu poetry and sports. It is stated that he holds the elected post of the president of the Indian Hockey Federation, is the vice-president of the Asian Hockey Federation; is the Chairman, Task Force, Indian

Olympic Association and is a council member of the Federation International DE Hockey. These positions in international bodies are obviously on account of the office of President of the IHF which is held by him since 1974.

272. Undoubtedly the respondent no. 3 would have brought the discipline of the police to the Federation, which is one essential component of the personality of a sport person. But certainly it is not the only facet and experience has shown that there is much more than just a sterling qualities of a highly decorated police officer which would be required to restore the glory to India's national game hockey for which India was known.

Similar is the position of respondent no. 4.

273. The facts placed by the respondents and the curtain attempted to be drawn over what Indian hockey was before this court is a chilling certification of the negative performance or failure of a board. The angst of those who labour and toil on the sports fields, no acknowledgment of the talent of players, the complete lack of visibility of the spread or encouragement of the sport in the country and its fall in spectator popularity underline the malaise and no management or board can refuse responsibility. The very fact that this situation is persisting for not merely the last couple of years, but after the 1980s, as manifested from the Olympic results, only underlines the crying need for critical measures. But that can come only if managerial bickering's were put on the back burner and concerns of the sport permitted to come to the fore.

274. The parties have placed the details of the boards of International Olympic Committee, International Rugby Board, Federation International de Football Association, Association of Tennis Professionals, International Cricket Council, Hockey, Major League Baseball, USA Basketball and list of sources before this court. Each one of them has celebrated sports personalities in important positions. Today sports is no more something that can be dealt with in a meeting over a five star meal. It requires technical knowledge of both the game, the equipment and the training. Every aspect from the aerodynamics in equipment, even of the clothes worn by an athlete to shoes of a hockey/football/basket player; hair cut of the swimmer to 'weight and material of the equipment used is governed by scientific details and principles. In times of expertise, sports management experts are as important to a good sports programme just as experienced competent players or ex-players in decision and policy making areas who would ensure that the sports persons got the same, if not better residential/hotel and other facilities as the office bearers at national and international competition venues; who understood how important good treatment is for the self esteem and confidence of the teams and sports persons, especially when their opponents get the best; where real expenditure is incurred on and energy is devoted to sports persons rather than on maintenance of the office bearers or squabbles over elections.

Only then could it be said that the sporting credentials or the

tenure of the controlling board is immaterial for the interest of the sport.

275. In this background, the representations of the petitioner deserved a serious examination by the respondent no. 1 and it is imperative that the respondent no. 1 be directed to examine the complaints made by the petitioner in accordance with the guidelines governing recognition and dispensation of the largesse by the respondent no. 1 out of the public exchequer and facilities developed by it. Undoubtedly, the action as per the guidelines has to follow such investigation.

276. An argument was raised by learned senior counsels appearing for respondent nos. 2 to 4 that permitting Government control into the affairs of the Indian Hockey Federation, a dynamic body would result in chaos which cannot be visualised and that the same would impact the international sporting activities of the federation as well. Such a submission was also made in respect of the BCCI and has been considered and rejected by the Division Bench of this court in ***114 (2004) DLT 323 Rahul Mehra vs. UOI & BCCI*** in the following terms :-

“14. Dr Singhvi then contended that if it were held that BCCI was amenable to writ jurisdiction "startling and legally untenable consequences would follow". For example, it may be conceivable to hold that the selection of a cricket team is discriminatory for arbitrary. There are several answers, none startling and all legally tenable. Firstly, not every action of the BCCI would fall under the scope of judicial review under article [226](#). It must not be forgotten that "the High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under

Article [226](#)". It will not interfere in matters which do not have any element of public law. Secondly, "catching the bull by its horns", as it were, suppose the selection procedure of the BCCI prescribed that players from a particular region, or a state or belonging to a particular community were not to be selected for the Indian team. Would it be so preposterous if the High Court stepped in under article [226](#) and quashed such a prescription? Let us take another example. Suppose the Selection Committee of the BCCI were to alter its rules and select a team to represent India not on merit but on the basis of bids. Meaning, the highest bidders got to play for India. Would the High Court then be justified in throwing out a petition of aspiring, meritorious but poor players on the ground that a writ cannot be issued to the BCCI because, as they contend, it has a *carte blanche* to do as it pleases? We think not. Thirdly, even in cases of judicial review, the High Court exercises self-imposed restraints. It does not substitute its views in place of those under review. Although it has become a hackneyed cliché, it bears repetition that in exercise of powers under article [226](#), the High Court is not so much concerned with the decision itself in the sense as to whether an action is "right or wrong", but with the decision making process signifying as to whether the action is "lawful or unlawful". So, if the selection of the team is lawfully made, the Court would not be concerned with the composition of the team.

16. Another fear of the BCCI must be allayed. It was submitted and, with some anxiety, that if the court were to hold that BCCI was within the scope of Article [226](#) then the splendid institution that has been so assiduously built-up would lose its independence and would fall prey to Governmental intervention and ultimately spell its doom. Without making any value judgment on quality of Governmental intervention, we may straight away say that amenability to judicial review is in no way connected with Governmental interference in the affairs of the BCCI which is a self-regulated body and will continue to be one. The only difference being, that its discharge of public duties and public functions (as distinct from private duties and functions) would be open to judicial review under article [226](#) of the Constitution. This does not, ipso facto, translate into governmental intervention in the internal affairs of BCCI which would remain a private body."

It could not be put better and unhesitatingly would apply to the Indian Hockey Federation.

277. Other than the objection to the stipulation with regard to the re-election and a tenure of the office bearers, the respondents have no objection to any intervention by the Government in these guidelines in its activities which includes selection of national coaches, prescription of priority sports etc.

278. It is noteworthy that the revised guidelines have guided dispensation of the largesse of the Government which partook the nature of grants, financial assistance and other infrastructure and logistic support to the National Sports Federations. Neither the Indian Olympic Committee nor any of the Sports Federations including the Indian Hockey Federations/respondent no. 2 herein have ever assailed the action of the Government or any stipulation in the guidelines. It would therefore be apparent that the respondents have accepted the authority and competence of the government to lay down conditions and guidelines for eligibility and the manner in which recognition of a federation or an association as a national level body as well as the manner in which dispensation of the funds and state largesse would be effected.

279. In this regard, it would be useful to also refer to the pronouncement of the Supreme Court in ***AIR 2005 SC 592 : JT 2005 1 SC 235 : 2005 5 SCC 741 : MANU/SC/0019/2005 Board of Control for Cricket, India & Anr. vs. Netaji Cricket Club &***

Ors. wherein also an identical issue has been raised in respect of the BCCI. It was held by the court that in view of the fact that the BCCI as a member of the ICC, it also represents the country in international foras. It exercises enormous authority and is responsible for selecting 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 deep pervasive and complete.

280. So far as the nature of powers of the sports Board is concerned and the extent of judicial intervention in the functioning of the BCCI is concerned, the following parameters were laid down by the Supreme Court :-

“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.

82. An association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative. Necessarily, the office bearers in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner, keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body incharge of controlling the sport of cricket should involve in litigations completely losing sight of the objectives of

the society. It is furthermore unfortunate that a room for suspicion has been created that all its dealings are not fair. The Board has been accused of shady dealings and double standards.” _

These principles would guide consideration to the acts and omissions on the part of the respondent no. 1 as well.

281. The petitioner has complained not only violation of the guidelines framed by the respondent no. 1 but has made serious allegations with regard to failing to maintain financial discipline by the respondent nos. 2 to 4. The petitioner has prayed for quashing of the elections of respondent nos. 3 and 4 as the President and Honorary Secretary General of the respondent no. 2 as being contrary to rules dated 14th August, 2001 and sought a prohibition against the respondent nos. 3 and 4 from continuing as the President and Honorary Secretary General of respondent no. 2 or from contesting the elections to these posts for the fourth consecutive term.

Information sought from the respondents by various representations including those lastly dated 21st January, 2005 and 17th February, 2005 has not been made available.

282. In view of the principles noticed hereinabove, it has been held that non-statutory guidelines and executive instructions would not create enforceable right in favour of an individual.

In ***State of Assam vs. Ajit Kumar Sharma and Kumari Regina vs. St. Aloysius Higher Elementary School and***

Anr.(supra), it was held that breach or non-compliance of conditions of recognition and aid or affiliation would entail withdrawal of recognition, aid or affiliation. In **J.R. Raghupati vs. State of Andhra Pradesh & Ors.** (supra), it was held that breach of guidelines laid down by the Government was justiciable and it is further trite that the Government is bound by guidelines where framed and cannot act arbitrarily or capriciously.

283. In para 10 of **R.D. Shetty vs. IAAI** (supra), the Apex Court has reiterated the settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe these standards on pain of invalidation of an act in violation of them.

284. With regard to a popular sport like cricket, the Apex Court has needed to say in para 85 of **BCCI & Anr. vs. Netaji Cricket Club & Ors. (supra)** that the events leading to these appeals raises a abysmal picture and a sordid state of affairs.

285. It has been held hereinabove that these guidelines are valid and binding. The judicial precedents noticed hereinabove have stated that breach of even non-statutory guidelines which have been framed for the purposes of regulation of dispensation of largesse results in the action being voided. (Ref : **(1979) 3 SCC 489 Ramana Dayaram Shetty vs International Airport Authority of India & Ors.; (1972) 4 SCC 188 Kumari Regina vs. St. Aloysius Higher Elementary School and Anr.; (1988) 4 SCC 364 J.R. Raghupati**

vs. State of Andhra Pradesh & Ors.; AIR 1984 Bombay 47

Manohar vs. State of Maharashtra)

286. The Government stand before this court in the affidavit dated 16th May, 2005 itself states what the Government is required to do if its guidelines have breached. The deposition on behalf of the Government on this aspect reads thus :-

“(9) That the only action that the Government of India can take against these defaulting Natinal Sports Federations (NSFs) under the prevailing circumstances is to stop giving financial assistance it is providing to them as per the policy/guidelines. But the Government, in general, refrains from taking such a harsh action, as it would adversely affect the interest of an Indian sports person having a lot of potential to excel in their respective sport.”

287. Before this court, it is a stand of the respondent no. 1 that it has not enforced the guidelines. I have held otherwise. It follows as a result of the above discussion that breach or violation of the guidelines by the respondent nos. 2 to 4 would vest upon the respondent no.2, the consequences provided in the guidelines which include withdrawal of recognition as well as financial assistance.

288. The petitioner has made complaints to the respondent no. 1 setting out in detail allegations with regard to breaches by the respondent nos. 2 to 4. Having regard to the principles laid down by the Apex Court, so far as complaints of breach of the guidelines notified by the Government are concerned, it is the respondent no. 1 which is legally competent and best placed to examine the same and pass appropriate orders thereon. It is trite the scope of judicial

review by this court is restricted. Needless to say the appropriate orders in this behalf would required to be made strictly in terms of the guidelines dated 14th August, 2001. It is not open to any official to waive compliance with any provision contained in the guidelines.

(i) It is now necessary to examine the prayers made by the petitioner. Prayer (a) in the writ petition seeks a direction to the respondent no. 1 to produce the record relating to grant of financial assistance to the respondent no. 2.

In the light of the above discussion, it is not necessary for this court to call for such a record.

(ii) So far as prayer (b) is concerned, the respondent no.1 is directed to examine all complaints made by the petitioner with regard to breach of the subject guidelines as well as the terms for grant of financial and other assistance to the respondent no. 2 as well as utilisation of the funds provided by the Government. It shall be open for the respondent no. 1 to make such investigation and enquiry in this behalf as is deemed necessary; to call for a response of the respondent no. 2 and any clarifications from the petitioner in this behalf. The complaints shall be disposed of by speaking orders within a period of eight weeks from today. The copy of the order(s) which may be passed thereon be made available to the petitioner and the respondent no. 2 who shall be at liberty if aggrieved thereby to assail the same in accordance with law.

In view of the above, so far as the merits of the allegations of

financial impropriety and indiscipline relating to the assistance dispensed by the respondent no. 1 to the respondent no. 2 as well as allegations of mismanagement of the affairs of respondent no. 2 against the other respondents and breach of the guidelines dated 14th August, 2001 are concerned, it is made clear that nothing herein contained is an adjudication on the merits of the allegations levelled against the respondents by the petitioner.

(iii) So far as the prayer (c) is concerned, the respondents have pointed out that the Constitution and bye-laws of the respondent no. 2 were amended in 2004 and they contained no prescription/prohibition of a tenure clause. The consequence of the breach of the conditions in the guidelines dated 14th August, 2001 is provided therein and would follow on a consideration of the complaints made by the petitioner in terms of the directions contained in para (ii) above. No further directions are required to be given at this stage.

(iv) So far as the prayer (d) is concerned, no such prescription by any constitutional or statutory provisions is stated. It is also not pointed out as to how clause 8 of the constitution of respondent no. 2 is ultravires or illegal. In view of the guidelines dated 14th August, 2001, if the respondent no. 2 seeks recognition and affiliation, it would require to abide by clause 3.5 therein. The violations complained by the petitioner have been directed to be examined by the respondent no. 1 and the consequences shall flow therefrom.

(v) The prayers made in clauses (e) and (g) relate directly to elections to the executive body of the respondent no. 2 and failure of the respondent nos. 2 to 4 to furnish information relating to the affairs of the respondent no. 2.

In view of discussion hereinabove, such a grievance is required to be made and appropriate relief sought before the competent authority under the Societies Registration enactments. It shall be open to the petitioner to make such a grievance before such authority which shall consider the same in accordance with law.

(vi) Prayer (f) seeking a restraint of the conduct of elections to the post of Senior Vice President prior to 28th of January, 2006 is rendered infructuous.

This writ petition is disposed of in the above terms.

(GITA MITTAL)

JUDGE

March 2, 2009

kr/aa