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Sunil Dev and Others Vs. Delhi and District Cricket Association and Others

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Court : Delhi

Decided On : Apr-06-1990

Reported in : [1994]80CompCas174(Delhi)

Judge : Santosh Duggal, J.

Appeal No. : I.A. No. 9487 of 1989 in Suit No. 3470 of 1989

Appellant : Sunil Dev and Others

Respondent : Delhi and District Cricket Association and Others

Advocate for Def. : Mr. P. P. Malhotra, Mr. Suman Kapur

Advocate for Pet/Ap. : Mr. Pankaj Kalra

Judgement :

Mrs. Santosh Duggal, J.

1. The plaintiffs in this suit for declaration, permanent and mandatory injunction are members of the executive committee and some of them are office-bearers of the Delhi and District Cricket Association ('the DDCA' for short), inasmuch as plaintiff No. 1, Mr. Sunil Dev, is the sport secretary and plaintiffs Nos. 2 to 4, members of the executive committee, were as plaintiffs Nos. 5 and 6 are its ordinary members. The persons arrayed as defendants besides DDCA are also office-bearers and members of this body, which is stated to be a company

incorporated under section 25 of the Indian Companies Act (for short 'the Act').

2. This suit has been brought with a challenge to the validity of the notice issued on December 8, 1989, by the president of the DDCA (defendant No. 2) for holding the annual general meeting of December 29, 1989. The challenge is based primarily on three contentions, namely, that immediately after the elections for the last year, which concluded on December 29, 1988, defendant No. 2, the president embarked upon to induct a large number of persons as members without compliance with the requirements, as laid down in the articles of the association of the DDCA as also the relevant provisions of the Act which were applicable to this body by virtue of the provisions of section 25(2) read with section 9 of the Act and also without placing the matter before the executive committee, and that it was learnt by the plaintiffs that a large number of persons have been thus taken as members although it was decided in the meeting of the executive committee held on January 18, 1989, that the membership be increased by 500 and that apart from the fact that persons beyond this number have been reportedly taken as members, otherwise also no procedure as contemplated by the memorandum and articles of association has been adopted and in fact no steps were taken to streamline any such procedure. The allegation is that defendant No. 2 has taken persons as members, the majority of whom are his own henchmen with the ulterior motive of having a majority for voting at the time of fresh elections, which were scheduled to be held in the annual general meeting on December 29, 1989.

3. Another challenge to the legality of the annual general meeting summoned for December 29, 1989, is that there no prior approval of the agenda for this meeting by the executive committee which was a mandatory requirement and further that the accounts as well as annual report had not been got approved by the executive committee, and that the annual accounts were not being placed before the annual general meeting as was the mandatory requirement as per sections 116 to 210, 217 and 220 of the Act inasmuch as no annual general meeting can be held without laying of annual accounts. Asserting that defendant No. 1, the DDCA, was a public body established with the objective of advancing the cause of cricket and it was incumbent on the president for the closing year, namely, defendant No. 2, to act in a fair and reasonable manner and avoid all actions which were detrimental

to the interest of the company or detracted from the aims and objectives thereof; various acts of omissions and commissions are alleged against the president and the other defendants described as his group, as being contrary to the provisions of the Act as well as the memorandum and articles of association, such as

(1) non-auditing of annual accounts,

(2) non-approval of the annual report by the executive committee,

(3) non-approval of the accounts by the executive committee,

(4) summoning of the annual general meeting without placement of annual accounts,

(5) summoning of the annual general meeting without approval of the agenda by the executive committee,

(6) enrolment of new members contrary to the articles of association,

(7) change of election officer contrary to the decision of the executives committee, and

(8) continuation of the fixed deposit receipt in Grindlays Bank. All these allegations are tabulated in paragraph 3-F of the plaint.

4. The provocation for this suit, as already noted, was the notice calling the annual general meeting of the association on December 29, 1989, to transact the following business, as mentioned in the notice :

1. To consider and adopt the report of the president for the year ending March 31, 1989.

2. To elect office-bearers and members of the executive committee for the year 1989-90.

3. To appoint auditors for the year 1989-90 and to fix their remunerations.

5. It is contended on the basis of the notified agenda that it is apparent that the accounts for the financial year under consideration are not being placed before the annual general meeting which is violative of the provisions of section 166 of the Act, which enjoins upon every company that the annual accounts and balance-sheet along with profit and loss account be laid at every annual general meeting as per the requirement of section 210, so much so that contravention of the provisions makes the company and its directors liable to prosecution and that this requirement of placing the annual accounts of the company in the annual general meeting every year cannot be waived in any circumstances and that it was the requirement of law that these annual accounts have to be placed before the annual general meeting and not before any other meeting with the result that the agenda, as indicated by the notice, calling the annual general meeting would render convening of the annual general meeting violative of the mandatory provisions of the company law. It is further alleged that as per the requirement of section 217 of the Act, the balance-sheet should also be accompanied by the report of the board of directors (members of the executive committee in the case of this company) with respect of the state of the company's affairs including finances and thus any annual report that has to be placed before the annual general meeting must be approved by the executive committee and this has not been done in the present case. The plaintiffs have summed up their allegations by asserting that neither the annual report of defendant No. 1 nor the agenda of the annual general meeting was approved by the executive committee in any of its meetings and they thus allege that the annual general meeting convened for December 29, 1989, on the basis of notice dated December 8, 1989, and the agenda therein is not only contrary to sections 166, 210 and 220 of the Act but also contravened the provisions of section 217 of the Act which mandates that the annual report of the board of directors should be annexed to the annual accounts to be submitted.

6. It is, therefore, contended that such a meeting cannot be permitted and that the president's report as well as the agenda were to be treated as non est as not being in compliance with the mandatory requirement, and that it is apprehended that in case this annual general meeting is allowed to be held without the annual accounts being presented, then these would never come up before the annual

general meeting and that the law cannot be allowed to be bypassed in this manner.

7. There is also an allegation that some of the members have not even received notice of the annual general meeting, while to some it has been sent at the wrong address, the motive being to deprive members of their right to cast votes at the annual general meeting and also to contest the elections.

8. The action of defendant No. 2 in convening the annual general meeting is also described as mala fide for the reason of enrolment of members amounting to 645 in number which matter, as per the plaintiff's allegations, never came up before the executive committee as required by clauses 11 and 12 of the articles of association and the enrolment is thus impugned as unconstitutional.

9. Yet another allegation is that in the meeting held on December 4, 1989, a decision was taken to appoint an election officer for carrying out the election process for the annual general meeting of December 29, 1989, and Mr. M. S. Jaspal was thus appointed election officer with four persons to assist him whereas it was learned subsequently that another persons had been appointed as election officer without any meeting of the executive committee having been convened or any resolution by circulation having been passed and thus this appointment of the election officer is contrary to the rules.

10. It is, therefore, contended that all the three items, as agenda for the annual general meeting, involve violation of the statutory provisions inasmuch as the report of the president is contrary to the provisions of section 217 of the Act which envisages that the annual report can only be the report of the board of directors (executive committee in the instant case) and that should be annexed to the annual accounts, and, secondly, a number of persons have been enrolled as new members with right to contest elections, as well as exercise voting rights, which act is also contrary to the provisions of the mandate of the law and, lastly, the question relating to appointment of auditors also is not free from suspicious circumstances inasmuch as steps could have been taken to make the auditors audit the accounts and that recourse to the provisions of section 224 to 234 could have been taken and the Central Government asked to appoint an auditor in case

any such eventuality had arisen whereas in this case neither the president nor the treasurer nor any other member concerned with the day to day administration has informed the Central Government that the audit work was suffering and that such a lapse was also indicative of the mala fide intention or irregular work of the previous committee.

11. Some of the plaintiffs, namely, plaintiffs Nos. 1 to 3 pleaded to have asked for the accounts on receiving notice of the meeting and also that of the minute books but these requests were not attended to and thus obliged the plaintiffs to approach the court seeking a declaration that the notice dated December 8, 1989, agenda and annual report as mentioned therein were contrary to law and the memorandum and articles of association and hence null and void, and the plaintiffs were thus entitled to seek further decree of permanent injunction restraining the defendants from holding the annual general meeting in pursuance of the notice dated December 8, 1989, and on the basis of agenda therein and further a mandatory injunction calling upon the defendants to hold the annual general meeting strictly in accordance with law after preparation and auditing of the accounts.

12. Along with the suit, the plaintiffs have moved the present application under Order 39, rules 1 and 2 read with section 151 of the Civil Procedure Code, seeking an interlocutory order almost on the same terms as prayer in the suit confining specifically to the annual general meeting that had been convened on December 29, 1989, pursuant to notice dated December 8, 1989, and from transacting any business in terms of the agenda mentioned in the said notice.

13. The case appears to have been instituted some time on December 23, 1989, and it came up along with Interim Application No. 9487 of 1989 before the vacation judge of this court on December 26, 1989, when Mr. K. K. Mehra, defendant No. 2, who is president of the DDCA appeared and gave an undertaking that the annual general meeting scheduled for December 29, 1989, would be held but it would be adjourned without transacting any business till the disposal of the interim application.

14. Thereafter, when the case was received in this court, Mr. Suman Kapur, advocate, appeared separately for defendant No. 3, Mr. Akash Lal, who is the vice-president of the DDCA, and sought time to file a separate written statement. It would be expedient to first take up the pleas taken up in this written statement singly by defendant No. 3.

15. A perusal of the said written statement reveals that defendant No. 3 is confining his challenge primarily to the enrolment of members purported to have been finalised in the meeting held on November 29, 1989, the allegation being that no business was transacted in the said meeting of the executive committee for the reason that one of the members, Mr. S. C. Ladi, had raised an objection that he had not received a copy of the agenda and that this matter was then adjourned to December 4, 1989, and in this adjourned meeting, no decision regarding enrolment of members was taken. This defendant, therefore, alleges that the entire process of enrolment of 645 members was vocation of the decision of the executive committee who had initially resolved to enrol 500 new members, 100 life and 400 ordinary, and that not only members far in excess of this number have been enrolled, there was no indication as to how many were life members, and how many ordinary members, what qualification had been taken in view, how many applications in all had been received, how many had been rejected, and, if rejected, on what grounds, and that the executive committee had been completely bypassed in the entire process and that the enrolment was illegal with the result that the new members cannot be accorded any right of contesting the election to the executive committee or even exercising voting rights.

16. This defendant has generally endorsed the averments made and contentions raised in the plaint on other issues, such as the validity of the annual general meeting called by notice dated December 8, 1989, for the reason that there was no approval of the president's report and the agenda and also on account of the fact that no audited accounts were placed before the executive committee for approval and none were scheduled to be placed before the annual general meeting and that in the absence of audited accounts, no annual general meeting can be validly held.

17. The other defendants including the DDCA through its president have filed a common written statement controverting the allegations set out in the plaint. On each count by giving detailed reference to the meetings held, decisions taken and resolutions passed in those meetings, pleading that the plaintiffs particularly the four of them who were office-bearers and members of the executive committee of the DDCA had participated in the entire decision-making process and that they unreservedly participated in the election process initiated by notice dated December 8, 1989, by filing their nomination papers, submitted to scrutiny and that the present suit brought a short time before the scheduled date of the annual general meeting is manifestly for mala fide and ulterior motive, which is obvious from the fact that although the notice for the annual general meeting was received by the plaintiffs on December 10/11, 1989, they deliberately waited for two weeks to file this suit, adding that two more suits were filed in the District Court which were imputed with the mala fide intention stalling the election process.

18. On the issue of enrolment of new members also, there is emphatic denial of all the allegations made in the plaint and it is asserted that the applications were invited for enrolment as new members pursuant to a decision of the executive committee taken on January 8, 1989, and duly processed by the scrutiny committee that had been constituted by the executive committee on January 3, 1989, and that besides the fact that majority of the new members taken were relations or friends of one plaintiff or the other, with full particulars narrated in the written statement; plaintiff No. 1 Mr. Sunil Dev, was a member of the scrutiny committee, and every application along with other three members of the scrutiny committee bears his signature by way of approval and that the imputation now being made against defendant No. 2 in this respect is wholly unfounded. The allegations made in the written statement of defendant No. 3 in this respect are also repudiated in the same manner by adding that the said defendant was himself the proposed or seconded for a number of applicants for membership including his own son and that earlier also in the years 1982 and 1984, when this defendant was an office-bearer, a number of new members were enrolled by the same process, namely, on the recommendation of the scrutiny committee. It is further added that the entire list of the applicants for membership was duly approved by the executive committee meeting held on November 29, 1989, where defendant

No. 3 was also present besides plaintiffs Nos. 1, 2, and 4.

19. In the same way, the allegation about the annual general meeting having been convened without complying with the mandatory provisions of law is controverted, by pleading that the decision was duly taken to hold the annual general meeting including the elections in the meeting held on December 4, 1989, when the defendant No. 3 as well as plaintiffs Nos. 1 to 3 were also present and that the president's report along with the agenda were duly approved with a decision that a note shall be put up in respect of the accounts for the current year for the reason that the auditors appointed for the said year had not been able to carry out the audits, because the auditors for the erstwhile period had declined to hand over the audit to these auditors by reason of some technical objections, for which a reference had already been made to the Institute of Chartered Accountants. The challenge to the validity or legality of the annual general meeting is thus wholly repudiated.

20. The application for an interlocutory order, on the same lines as prayer in the suit (I.A. No. 9487 of 1989), has been heard at length. I propose to deal with the averments Serialtim as outlined by Mr. Pankaj Kalra appearing for the plaintiffs.

21. The first and foremost issue which the plaintiffs have raised and which also agitates defendant No. 3 relates to the question of enrolment of new members. The contention is, firstly, that there has been no decision of the executive committee to approve these persons who have been enrolled as members, their number being 645; secondly, the whole process smacks of some oblique motive on the part of defendant No. 2 to have his own persons as members so as to retain his hold on DDCA, otherwise there was no reason as to why the decision should have been postponed till a few days before the annual general meeting and why the applications were not earlier put up when as far back as by resolution on January 18, 1989, the executive committee had decided to have new members enrolled, and lastly the members now enrolled are far in excess of the number (500) originally approved, for which there is no Explanationn and no sanction.

22. The answer of the defendants to this allegations is total controversion by asserting that the applications were received during the course of the year to the

full knowledge of the plaintiffs and, in fact, through them and in any case plaintiff No. 1, Sunil Dev being a member of the scrutiny committee was throughout associated with the processing of these applications and there was no question of their being put up during the course of the year before the executive committee because the applications were being received from time to time and it was in the fitness of things that they were kept together to be put up before the executive committee towards the end of the year.

23. I have given my earnest thought to this controversy about the enrolment of new members and I am of the considered view that the fault being now found by the plaintiffs as well as defendant No. 3 is without any basis and that they themselves have been associated with the majority of persons whose applications for membership had been received and who were approved for being enrolled as members. The defendant have gone on record by specifically alleging, firstly, that the practice in the DDCA had always been to process the applications for new membership by the scrutiny committee appointed by the executive committee, and that plaintiff No. 1 and defendant No. 3 had at least been associated in the past also as office-holders for the enrolment of new members in this manner, and, secondly, this year also a number of persons were recommended by plaintiff No. 1 and other plaintiffs, being the proposers or seconders, and in the same way defendant No. 3 in the past as well as this year proposed or seconded names of certain persons on their applications, and that in any case plaintiff No. 1 was a member of the scrutiny committee and has signed applications by way of approval which is tantamount to recommendation of the scrutiny committee for enrolment of a particular person as member.

24. The contesting defendants have even given particulars of some of the persons who were closely related or associated with the persons who are now questioning the enrolment of new members, such as the application of the son of defendant No. 3, named Arsh Lal being there and proposed by plaintiff No. 1 and seconded by this defendant himself and also other persons closely associated with the plaintiffs such as wives of plaintiffs Nos. 2 and 4 or other close relations as well superiors such as principal of DAV College where plaintiff No. 5 was working as lecturer and that it cannot lie in the mouth of these persons now to contend that

defendant No. 2 had brought in his own people.

25. The defendants have also placed on record photo copies of a number of applications which bear them out on facts, namely, that all the applications bear signatures of plaintiff No. 1 and three other members of the scrutiny committee by way of approval, the application of Arsh Lal, son of defendant No. 3, being one of them.

26. During the course of hearing, defendant No. 2 has also produced the entire bulk of applications in original and it was pointed out by Mr. P. P. Malhotra, appearing for the defendants, that all the applications contained signatures of Sunil Dev, plaintiff No. 1, as member of the scrutiny committee. The defendants have also furnished information in writing, pursuant to the court query, as to the break-up of the applications received so that the allegation of the plaintiffs and defendant No. 3 could be appreciated in the proper perspective. It is revealed as per information referred to above that the applications were received in the following order :

January, 1989 172

February, 1989 147

March, 1989 190

April, 1989 135

May, 1989 2

July, 1989 1

27. making a total of 647 out of which two were rejected as invalid and 645 applicants remained to be considered as having validly applied for membership and all of which applications passed through the hands of the members of the scrutiny committee, including plaintiff No. 1. There is also a resolution of the executive committee passed on November 29, 1989, which is to the following effect :

'List of 645 members duly scrutinised by the scrutiny committee and recommended for enrolment as members was placed before the executive committee. It was also brought to the notice of the executive committee that, by an earlier resolution, it had been decided to enrol 500 members. However, if the recommendation of the scrutiny committee was to be accepted, the members of the association would be 3,500, which is the maximum allowed under the memorandum and articles of association. The executive committee decided to enrol 645 members as recommended by the scrutiny committee.'

28. During the course of hearing information was also furnished, to which there was no rebuttal from the plaintiffs' side, that in the year 1984 also, 500 new members were enrolled, also in the same manner, namely, on the recommendation of the scrutiny committee and it was further asserted, which fact was again not controverted, though plaintiff No. 1 was present in court, that at that time only two members of the scrutiny committee, of which plaintiff No. 1 was one, had processed these applications and the executive committee endorsed their recommendations and there was never been a challenge to the enrolment of the members during that year. The whole lot of original applications in the year 1984 in separate file covers was produced for perusal of the court along with applications for this year. The number of applications were shown at random the plaintiff No. 1 and he admitted his signature almost on each one of them, barring one or two, but there again there was no categorical denial. The plea of the defendants is therefore prima facie acceptable : (1) that the applications had been duly received through all the members and the majority of them through the plaintiffs and defendant No. 3, (2) plaintiff No. 1 was associated with the processing and scrutiny of these applications, and (3) the recommendation of the scrutiny committee was placed before the executive committee in the meeting held on November 29, 1989, and duly endorsed with a decision to take all the 645 applicants as members as per list prepared by the scrutiny committee.

29. As can be noticed from the break-up tabulated above, the bulk of the applications were received by April, 1989, barring two applications in May, 1989, and one July, 1989. It will be thus not possible on the face of it to subscribe to the allegation of the plaintiffs or defendant No. 3 that persons have been taken as

members with some ulterior motive, shortly before the annual general meeting. I say so because there is no suggestion even that persons other than those whose applications on forms duly issued by the DDCA had been taken as members. The authenticity of the applications is prima facie acceptable because of the signatures of plaintiff No. 1 being there as member of the scrutiny committee.

30. The caveat added by plaintiff No. 1 that the seal, namely, 'approved' which appears on each of these applications was not there when he signed, is of no consequence because when he signed the applications as members of the scrutiny committee, without saying anything further, such as 'to be rejected', the implication is that he approved the particular person for membership, besides the added fact that the other plaintiffs or defendant No. 3 were either proposers or seconders for a number of applicants. To say that their applications should have been placed before the executive committee does not sound to be a reasonable assertion for the reason that sub-committees like scrutiny committee in this case performed functions as delegate of the plenary committee, which is permissible under clause 12 of the articles.

31. The plea that this item for enrolment of membership was taken on November 29, 1989, without any agenda also does not detract from the fact that a resolution was passed as a matter of fact in the said meeting. This is reflected in the minutes of this meeting recorded in the minutes book. I have gone through the original minutes book as well as the record of proceedings produced in the court in original. They have been found to be, on face of it, duly maintained in the regular course of business. Defendant No. 2 also volunteered information, which was not repudiated, that all minutes are recorded in the hand of Mr. M. S. Jaspal, the paid secretary of the DDCA. It has to be noted that this is the officer who enjoys the confidence of the plaintiffs as well as defendant No. 3 inasmuch as it is he who was appointed as election officer in the meeting held on December 4, 1989, and defendant No. 3 had gone to the extent of saying that his credibility is beyond impeachment and thus it can be safely presumed that the minutes were correctly recorded by Mr. Jaspal including the proceedings of the meeting of November 29, 1989. The original minutes book also shows that this meeting was attended by plaintiff Nos. 1, 2 and 4 as well as defendant No. 3 whose signatures appear

against the attendance. The presumption of correctness of these minutes also arises in view of the provisions of section 195 of the Act. The contention raised by Mr. Kalra that this presumption will be available only if the minutes are duly recorded, as required by section 193, is without exception but on the facts as shown on record, this presumption can safely be raised for the reason that attendance of plaintiffs Nos. 1, 2 and 4 as well as defendant No. 3 is duly proved by their own signatures and the minutes having been recorded by a trusted officer, as per their own showing, and there being the signature of the president as required by law, on the minutes book, in respect of this meeting which defendant No. 2 explained in court to have put after these were approved in the meeting held on December 4, 1989.

32. The enrolment of members beyond the number originally decided would also be prima facie of no consequence because the final decision is also of the executive committee, and there can be no gain saying the fact that the committee was within its rights to take any decision in supersession or modification of the earlier decision, so long as the maximum limit was not exceeded, and there is no suggestion that it was so.

33. The challenge to this resolution on the ground that this item was not in the regular agenda is also not prima facie tenable, as it has been taken up under the heading 'any other business' which was within the purview of the executive committee. I find on a reference to the minutes book that even a decision to constitute the sub-committee was also taken under the heading 'Any other business' in the meeting held on January 3, 1989.

34. This mode of conducting business is duly recognised by judicial decisions, one of which being the judgment of a Division Bench of this court in Smt. Abnash Kaur v. Lord Krishna Sugar Mills Ltd. [1974] 44 Comp Cas 390, where it was held that the business of a company can be transacted even without a formal agenda. The same view was endorsed by the Division Bench of the Punjab and Haryana High Court in the case of Suresh Chandra Marwaha v. Lauls P. Ltd. [1978] 48 Comp Cas 110, where it was specifically laid down that it is a well-known fact that every agenda of a meeting of a company has a residuary clause, 'to consider any other

matter with the permission of the chairman', and that there is no provision for issuance of an agenda in the meeting of the board of directors, which would be the executive committee in the present case. It has also been held in a case of the Calcutta High Court reported as *Joginder Singh Palta v. Time Travels P. Ltd.* [1983] Tax LR 2487; [1984] 56 Comp Cas 103, that even if there are certain irregularities committed, it would not be a proper exercise of discretion in the application under Order 39, rules 1 and 2 of the Civil Procedure Code, to restrain a company to take action based on a resolution, on the ground that there was irregularity in convening the meeting or conduct thereof because the company is at liberty to remove or cure the irregularities, if any, at the company's meeting. This view was expressed on the basis of the principle laid down in *Bentley-Stevens v. Jones* [1974] 2 All ER 633 (Ch D). On the same analogy it can be said that even if there was some irregularity, that was an irregularity committed by the executive committee, and not by any particular member or office-bearer, that the decision has to be left to the company to rectify it in the subsequent meeting, if considered necessary or if any of the members raises or presses an objection and that it was not such a matter where the court should interfere.

35. There is also abundant authority for the view that courts should not generally interfere in the internal affairs or management of a company acting within their powers. This principle finds support in a judgment of the Bombay High Court in *Satyavart Sidhantalankar v. Arya Samaj* AIR 1946 Bom 516; [1947] 17 Comp Cas 21.

36. The same view was endorsed in the judgment of the Madras High Court in *S. Krishnaswamy v. South India Film Chamber of Commerce* : AIR1969 Mad42 , where it was observed as under (at page 47) :

'In the case of clubs and societies registered under the Societies Registration Act, the general principles governing the right of suit of an individual shareholder or a member of the company would apply and ordinarily the court will not interfere with the internal management of the society at the instance of one or some only of the members of the society ...'

37. unless of course the impugned act was ultra virus the society or constituted fraud or the action was otherwise illegal. None of such elements prima facie exists in the present case as the foregoing discussion would reveal.

38. There is also a very significant observation in the judgment of the Madras High Court in the case of S. Krishnaswamy : AIR1969 Mad42 , that where the conduct of the parties reveals that there has been some practice in vogue for several years which was accepted by every one concerned without any challenge or question, then that practice in the course of long years in itself becomes an indication that the rules or articles of association which are framed by way of internal management of a company were understood in that sense. In this view of the matter also, in view of the uncontroverter facts at this stage that in the year 1984 also, 500 members were taken on record only on the recommendation of the scrutiny committee when the applications passed through the hands only of two members of the scrutiny committee as against four in the current lot, and plaintiff No. 1 being a party to such endorsements on the applications during that year also, and there being no suggestion to a challenge having been made to that mode of enrolment, I do not think that the contention of the plaintiffs can, at this stage, be conceded while considering the application for an interlocutory order, which is disposed of on the basis of facts pleaded or submissions made at the Bar or during the course of hearing.

39. The contention raised by Mr. Suman Kapur, appearing for defendant No. 3, that the resolution passed on January 3, 1989, constituting the scrutiny committee does not contain any indication that it was meant for enrolment of new members is very specious, on the face of it, for the reason that the resolution under reference records the decision that 'all the application forms will be addressed to the honorary general secretary'. This clearly shows on the face of the records that the purpose of the scrutiny committee constituted was enrolment of new members. The subsequent conduct of all concerned including plaintiff No. 1 and defendant No. 3 as well as other plaintiffs also makes this inference inescapable.

40. It is also pertinent to note that the plaintiffs do not say even in the plaint as to at what particular point of time or date they acquired knowledge of the enrolment

of new members. The inference that inevitably arises in view of this is that they were very much party to the resolution passed on November 29, 1989, and the allegation that no such resolution was passed, cannot prima facie be entertained because they should have averred while filling the suit only 5/6 days before the scheduled meeting of the annual general meeting, setting forth this major challenge, that they had gained knowledge of this fact on a given date so that their plea could assume some credibility. The inference can safely be raised further that copy of the minutes of this meeting must have been circulated to the plaintiffs as also to other members of the executive committee before December 4, 1989, the next date of the meeting and the fact that the plaintiffs participated in the entire process initiated by notice dated December 8, 1989, is on the face of it, indicative of the fact that they were party to this resolution and the decision to enrol new members was the decision of the executive committee.

41. I may also refer in passing to the assertion made by learned counsel for the plaintiffs, Mr. Kalra, that this body, DDCA, exists for the benefit of the cricket loving public and there should have been some criterion fixed for persons to be enrolled as members thereof. This argument besides being based on hollow pretensions of the plaintiffs, cannot otherwise be sustained for the short reason that the articles of association do not prescribe any qualifications for persons desiring to be enrolled as members of the DDCA, and there is no suggestion that there has been any such consideration in the past. The contention based on the Supreme Court judgment, namely, in the case of National Textile Workers' Union v. P. R. Ramakrishnan : (1983)ILLJ45SC , to the effect that a company cannot be considered as a proprietary body of the shareholders, though laying down very laudable principle, does not seem to be with all respect, having much relevance qua the present case for the reason that those observations were made on the facts of that case when the company happened to be a profit making company and it was then held that it existed not only for the benefit of the shareholders but also the workers, consumers and other members of the community.

42. I am, therefore, of the considered view that on this question of enrolment of new members the prayer of the plaintiffs for issuance of injunction order in respect of the annual general meeting cannot be entertained because their contention

prima facie is not acceptable that the enrolment has been without the approval of the executive committee or in contravention of the provisions of clause 12 of the articles of association of the DDCA. The defendants have also explained prima facie the receipt of subscription with the membership fee by pleading that this was the normal practice and that like call money for shares this amount is always received with the application subject to acceptance of the application for enrolment, otherwise it was liable to be refunded. Even if it is felt, as defendant No. 3 agitated by writing letters to defendant No. 2 in April, 1989, that this was in irregularity, then appropriate course can be laid down in a future meeting of the executive committee and it does not involve prima facie any question of non-compliance with any of the rules or articles of association, which may justify interference by the court.

43. The next contention assailing the validity of the annual general meeting that was called on December 29, 1989, is to the effect that the meeting had been convened without complying with the provisions of section 166 read with section 210 of the Act as also section 173 thereof for the reason that the notice of the meeting issued on December 8, 1989, is not accompanied by any statement of accounts much less audited accounts and also that the agenda for the annual general meeting as well as the president's report had never been placed for approval before the executive committee. In so far as the allegation of the agenda or the president's report having not been approved by the executive committee is concerned, this is prima facie an unfounded allegation because the minutes of the meeting passed on December 4, 1989, reveal that, vide item No. 5(a), a complete decision had been taken to hold the elections, the schedule for which was also laid down and there is also approval of the agenda, guidelines and the president's report as also note about the accounts. The sweeping denial on the part of the plaintiffs and defendant No. 3 about any such resolution having been passed cannot prima facie be accepted for the reason that a part of this resolution in item, vide 5(b) reveals that Lt. Col. M. S. Jaspal (Retd.), administrative in charge of DDCA, had been appointed election officer to be assisted by certain other officials. This part of the resolution the plaintiffs as well as defendant No. 3 are accepting without any qualification and in fact the insistence is that there should have been no change in respect of this part of the resolution. There are number of other items

considered and passed. The plaintiffs cannot be heard to disown a part of the resolution and swear by the other part; besides the fact, as already noticed, about the minutes book having been kept and maintained in the regular course, and there being no prima facie indication of the minutes being not genuinely recorded. I, therefore, find this allegation to be baseless, as it has been shown by the defendants that the requisite resolution approving the agenda for the annual general meeting as well as the President's report with the explanatory note about the accounts and guidelines was duly approved, and thus there has been no contravention of any of the provisions of the Act.

44. A perusal of the notice dated December 8, 1989, also reveals that the agenda was very clearly notified and a note about the accounts being not presented has been appended containing the Explanation that on account of a technical objection having been raised against the auditors, M/s. V. P. Batra, appointed for the current year in the last annual general meeting by the outgoing auditors, M/s. R. C. Dass Mathur and Co., the accounts could not be audited. It is also pleaded by the defendants that this matter had been brought to the notice of the Institute of Chartered Accountants and it is also now on record that the matter had been taken up with the Company Law Board.

45. There is thus a prima facie satisfactory reason for the accounts being not placed before this annual general meeting. This is a matter for which the annual general meeting cannot be withheld because it is to be statutorily convened within the calendar year, and in any case within 15 months of the last meeting and the defendants are with in pleading that steps were taken accordingly to convene the annual general meeting so that other business including the holding of the annual elections can be transacted and the position as to the accounts not being ready was fully explained.

46. Mr. P. P. Malhotra appearing for the defendants rightly contended that not laying the accounts before the annual general meeting within the statutory period would not invalidate the meeting and, placing reliance on a Division bench judgment of the Calcutta High Court in *M. D. Mundhra v. Assistant Registrar of Companies* [1980] 50 Comp Cas 346, pleaded that in case the accounts are not

ready to be laid before the annual general meeting, then the meeting could be adjourned for this purpose. Mr. Malhotra further added that even the Company Law Board circulars, copies of which the plaintiffs have placed on the file, provides for such a contingency. The same view was expressed in an earlier judgment of the Calcutta High Court also of a Division Bench, in *Sudhir Kumar Seal v. Assistant Registrar of Companies* .

47. The judgment cited by Mr. Pankaj Kalra, namely *Sheth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.* : (1964)0GLR804 , to the effect that the provisions of section 173 of the Act were mandatory, does not help in the present case because under the provisions of section 170 of the Act, section 173 along with a bunch of other sections does not apply to a company, as contemplated by section 25 of the Act. For the same reason the challenge made to the validity of the annual general meeting for the reason that individual members were not served with notice containing information as to the candidates contesting elections for various offices or for membership of the executive committee is not prima facie tenable because by virtue of the exemption notification appended to section 25 of the Act, the provisions of section 257 are not applicable to such a company. Mr. Kalra's contention that that notification covers only companies where election is by ballot is not prima facie sustainable for the reason that the relevant expression used is not 'by ballot alone' but only as 'by ballot' and it thus cannot be argued at this stage that this notification is confined only to companies where polling is by ballot and would not cover companies where both the modes, namely, show of hands and ballot, are provided.

48. Another challenge made by the plaintiffs is in respect of the change of election officer brought about, as per defendants, by resolution based on circular of December 5, 1989, whereby Lt. Col. M. S. Jaspal (Retd.) and others were replaced by Mr. M. S. Joshi, a retired judge of this court, to be assisted by Mr. R. D. Verma, Deputy Registrar of this court. The only contention in this respect is that the resolution purported to be by circulation was not in fact so, and thus in contravention of the provisions of section 289 of the Act inasmuch as it was never sent to the plaintiffs. The defendants have pleaded, on the other hand, that this resolution was passed by a majority of the members and was duly circulated.

49. Before discussion further, I would first like to dispose of the contention of Mr. Kalra that there is no specific pleas of the impugned resolution having been circulated to all the members particularly the plaintiffs because this plea is very much there is paragraph 12 of the written statement filed to the plaint. It is also to be noted that defendant No. 3 also admits to have sent this resolution and so do the two patrons, Shri Subhash Chopra and K. C. Khanna, in their affidavits which the plaintiffs have filed. It does not therefore seem possible to accept the allegation of the plaintiffs that only they were excluded particularly when there is a definite assertion in the written statement that this resolution had been circulated to all concerned. That being so, I take it prima facie that the resolution was validly passed. It is also evident that the plaintiffs did not seem to have any grouse till the suit was filed on December 23, 1989, and before that they had, pursuant to notice dated December 8, 1989, participated in the entire electoral process by filing their nomination papers before the same election officer for scrutiny and withdrawal of nominations and plaintiff No. 1 as well as defendant No. 3 are still candidates as per the final list prepared.

50. There is not even an attempt at Explanationn as to have they came to appear before Mr. M. S. Joshi as election officer, which conduct virtually amounts to their acceptance of him. The only inference possible that they were aware of this resolution and it was passed after circulation to every member of the executive committee. In the face of this prima facie finding, the contention of Mr. Kalra that there could be no estoppel against statute does not retain any force because the question here is not of any estoppel or of consideration of acquiescence, but evidence by conduct. I, therefore, do not find on the face of it any contravention of the provisions of section 289 of the Act and it has thus to be taken that the change in election officer and his assistant was by means of a resolution legally passed.

51. I would like to dispose in passing of the contention raised by Mr. Kalra that the plaintiffs have filed their affidavits and of certain other persons who swear by the fact that the resolution had not been circulated to them, and express my reservation about taking into consideration these affidavits. As observed by the Supreme Court in the case of Needle Industries (India) Ltd. v. Needle Industries

Newey (India) Holdings Ltd. [1981] 51 Comp Cas 743; : [1981]3SCR698 , it is generally unsatisfactory to record a finding involving grave consequences to a person on the basis of affidavits and documents without asking that person to submit to cross examination and a total reliance on the written word involves the risk that the person accused of wrongful conduct is denied an opportunity to controvert the inference said to arise from the documents or affidavits.

52. I may also passingly deal with the contention in relation to the proxies. Apart from the fact that there is no such challenge in the plaint, otherwise also I have found from the report of the election officer, Mr. Justice M. S. Joshi that the proxies were received by him on the given date and because of the suit having been filed and an interim order issued by this court, these were kept by him in safe custody with Mr. R. D. Verma, Deputy Registrar of this court after sealing the same. The fact therefore that forms of proxies may have been issued before the election officer came into the picture does not retain any significance because it is the proxies which had been received and which are to be used during the election which matter and these, as per report dated December 28, 1989, referred to above have been duly received by the election officer and complete particulars of the invalidated and/or rejected proxies are annexed as also the proxies which have been found valid and it is specifically recorded that these had been 'sealed by me' that is, by Mr. M. S. Joshi himself. Consequently, prima facie, no suspicion can be entertained in respect of their proper use at the time of election.

53. In this context, the judgment cited by Mr. Kalra is A. C. Jose ` Sivan Pillai : [1984]3SCR74 , does not seem to have any bearing on the issue because it was not a case where the election officer has taken any steps as not warranted by law, and his report shows that he proceeded entirely in accordance with the provisions of the Act and the articles of association.

54. In view of the foregoing discussion, I do not find any case made out for interference of the court in the matter of holding of the annual general meeting and conducting of its business as per notice dated December 8, 1989. The election officer appointed by means of resolution dated December 5, 1989, can also act as superior for the purpose of the annual general meeting and transacting its

business in accordance with the agendas, including holding of elections as per schedule already fixed. It has been held even in the case cited by Mr. Kalra, namely, *Nanalal Zaver v. Bombay Life Assurance Co. Ltd.* : [1950]1SCR391 , that it is not within the province of the court to interfere with matters concerning the affairs of the company, unless of course there was some mala fide action. In view of the fact that no such mala fides are discernible, in the present case, and whatever decisions are there, these have been found to be prima facie those of the executive committee itself of which the plaintiffs and defendant No. 3 were members and both the relevant meetings, namely, of November 29, 1989, and December 4, 1989, were attended by three of the plaintiffs and defendant No. 3, and the resolution dated December 5, 1989, had also been passed as a fact after being duly circulated to all concerned.

55. The application is, therefore, dismissed. No orders are required to be passed on the other applications, namely I. As. Nos. 9488-89 of 1989, seeking preparation of the inventory of the records of the DDCA and also seeking production of these in court because, as already noted, these have already been produced and pursued by the court. All the application are, therefore, dismissed. The annual general meeting shall be now convened in furtherance of the process already initiated, pursuant to notice dated December 8, 1989, under the supervision and directions of Mr. M. S. Joshi, assisted by Mr. R. D. Verma as per the resolution dated December 5, 1989. The Election Officer-cum-Supervisor shall take all requisite steps, in accordance with provisions of the Act and the articles of association of the DDCA.

56. All the applications are disposed of in the above terms.

57. The main matter be listed for further proceedings on May 21, 1990.