

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**

**Jagmohan Dalmiya Vs. the Board of Control for Cricket in India and ors.**

**Jagmohan Dalmiya Vs. the Board of Control for Cricket in India and ors.**

**SooperKanoon Citation : [sooperkanoon.com/887009](http://sooperkanoon.com/887009)**

**Court : Kolkata**

**Decided On : Jul-20-2007**

**Reported in : AIR2008Cal227**

**Judge : Indira Banerjee, J.**

**Acts :** [Societies Registration Act, 1860](#); ;Tamil Nadu Societies Registration (Amendment) Act, 1975 - Sections 2, 3, 4, 9, 12(2), 12(3), 12(4), 27, 36(9), 46, 49, 53 and 55; ;[Foreign Exchange Regulation Act, 1973](#); ;Companies Act; ;[Transfer of Property Act, 1882](#); ;Right to Information Act (RTI); ;Stamp Act - Sections 24 and 25; ;[Prevention of Food Adulteration Act, 1954](#); ;[Consumer Protection Act, 1986](#) - Sections 13(2) and 34 to 37; ;[Constitution of India](#) - Articles 12, 24, 32 and 226; ;Board of Control for Cricket in India Rules - Rule 38; ;Tamil Nadu Societies Registration Rules, 1978 - Rules 6, 9, 14, 26, 48 and 49; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 1 - Order 39, Rules 1 and 2; ;Code of Civil Procedure (CPC) (Amendment) Act, 2002; ;Hong Kong Companies Ordinance, 1966

**Appeal No. :** G.A. No. 1545 of 2007

**Appellant :** Jagmohan Dalmiya

**Respondent :** The Board of Control for Cricket in India and ors.

**Advocate for Def. :** S.K. Kapur and ;Debal Banerji, Sr. Advs. and ;Ranjan Bacchawat Barat-Law, ;Anil Gupta and ;Ravi Kapur, Advs.

**Advocate for Pet/Ap.** : S.B. Mookerjee, ;P.C. Sen, ;Pratap Chatterjee, ;Abhijit Chatterjee, Sr. Advs. and ;U.N. Banerjee and ;Amitesh Banerjee, Advs.

**Judgement :**

ORDER

**Indira Banerjee, J.**

1. In this interlocutory application, the petitioner, a former President of the Board of Control for Cricket in India, hereinafter referred to as Respondent BCCI, has prayed for inter alia an order of injunction restraining Respondent BCCI from giving effect to the resolution taken at the special general meeting of Respondent BCCI held on 16th December, 2006 whereby the petitioner has inter alia forfeited all his rights and privileges as an administrator of Respondent BCCI, ceased to hold any position or office in any member or associate member of Respondent BCCI and been debarred from holding any position or post in any member or associate member of the petitioner in future.

2. Respondent BCCI is a Society registered under the [Societies Registration Act, 1860](#) and deemed to be registered under the Tamil Nadu Societies Registration Act, 1975, hereinafter referred to as the 1975 Act by virtue of Section 53 of the said 1975 Act.

3. Respondent BCCI, as its name suggests controls the game of cricket in India and exercises wide powers which include amongst others the power to frame rules of cricket in India and the power to select players to represent India in cricket matches and/or tournaments. Respondent BCCI arranges, regulates and even finances cricketing tours of Indian teams to foreign countries and arranges, regulates and controls cricket matches in this country between India and members of the International Cricket Council (ICC) as well as Indian teams inter se at the national level. Apart from test matches Respondent BCCI is responsible for organizing other important tournaments of national interest such as the Ranji Trophy and the Duleep Trophy.

4. The petitioner is a well-known personality in the realm of cricket who has been associated with different Cricket Associations and Cricket Clubs. The petitioner has been office bearer of Respondent BCCI in the capacity of President, Honorary Secretary and Treasurer. The petitioner was Honorary Treasurer of Respondent BCCI in 1983-84 and 1984-85, Honorary Secretary in 1990-91 and again from 1993 till July, 1997 when the petitioner took over as the President of the International Cricket Council. The petitioner claims to be the first Asian to have been elected to the coveted post of the President of the International Cricket Council. The petitioner was the President of Respondent BCCI from September, 2001 till January 2005. The petitioner has also been Chairman of the Asian Cricket Council and the President of the Cricket Association of Bengal and the National Cricket Club.

5. According to the petitioner, when the petitioner was elected Honorary Secretary of respondent BCCI in September, 1993 the accounts of Respondent BCCI reflected deficit of Rs. 85 lakhs. When the petitioner laid down office as President of respondent BCCI, respondent BCCI had over Rs. 100 crores in its coffer.

According to the petitioner, the petitioner was instrumental in securing allotment of World Cup 1996 to the Indian subcontinent comprising Pakistan, India and Sri Lanka.

6. After World Cup 1996 was allotted to the sub-continent, the members of the Board of Cricket Control of Pakistan, India and Sri Lanka formed a committee which was known as PILCOM. The Chairman and the Treasurer of PILCOM were from Pakistan and the President and the Convenor Secretary were from India.

7. The petitioner became the Convenor Secretary of PILCOM. An Asian bank account was opened at Citibank, London, U.K. in the name of PILCOM and the Asian signatories were the Convenor Secretary from India, that is, the petitioner and the Treasurer from Pakistan.

8. According to the petitioner the account is still maintained and about 3.7 million U.S. Dollars equivalent to Rs. 18 crores is lying in the account. According to the petitioner, save and except the aforesaid account at Citibank, London, U.K., there

is no other account in the name of PILCOM anywhere in India or abroad.

9. For conducting the World Cup matches in India, Respondent BCCI constituted an Organizing Committee named INDCOM on 24th February, 1997. The petitioner was nominated as the Convenor Secretary of INDCOM.

10. On 9th December, 1995 Indian Overseas Bank was appointed the official banker of World Cup 1996. At the meeting of INDCOM held on 20th December, 1995, it was resolved that a Foreign Exchange Account and an Indian Account be opened with the Indian Overseas bank at Calcutta and the said Account be operated by any one amongst the Chairman INDCOM, the Convenor Secretary and the Treasurer. The said bank deposited Rs. 50 lakhs as part of its sponsorship money in an account of INDCOM at its Bhawanipore Branch, Kolkata being Account No. 1223. The said account was operated by the petitioner.

11. The account of INDCOM was, according to the petitioner, regularly scrutinized and checked and audited by M/s. S.B. Billimoria and Co. the auditors of Respondent BCCI and merged in the Final Accounts of Respondent BCCI.

The accounts were approved by the finance sub-committee of INDCOM and later by the Finance Committee of Respondent BCCI on 17th August, 1996.

12. It is pleaded that the Working Committee of the Respondent BCCI had approved the accounts in the Annual General Meeting of Respondent BCCI held on 25th and 26th September, 1996.

The accounts were approved, adopted and closed and INDCOM along with its sub-committees dissolved.

13. It is stated that in 1996 Income Tax Department initiated proceedings against INDCOM demanding tax to the tune of Rs. 88.71 crores, later scaled down to Rs. 4.82 crores by initiation of legal proceedings, some of which are still pending.

14. In July, 1997, the petitioner became President of ICC and resigned from the office of Secretary of Respondent BCCI. An application was made for transfer of pending Income Tax cases to Mumbai, as the Headquarters of Respondent BCCI

was at Mumbai. The request was, however, turned down by the Income Tax Authorities.

15. It is submitted that since the petitioner had to deal with the proceedings in Kolkata, it was unanimously decided that the account with Indian Overseas Bank should be continued to be maintained and the same operated by the petitioner as Convenor Secretary. In support of the submission the petitioner has referred to the minutes of the meeting of the Finance Committee of Respondent BCCI, a copy of which has been annexed to the petition as Annexure 'C'. According to the petitioner since INDCOM had been dissolved on 25th and 26th September, 1996 the Indian Overseas Bank account was operated by the petitioner in his capacity as Convenor Secretary of World Cup 1996. The account No. 1223 with Indian Overseas Bank was, according to the petitioner, regularly scrutinized and audited by the Auditors of Respondent BCCI every year. The Annual Reports of Respondent BCCI for the years 1995-1996 onwards were produced in Court.

16. According to the petitioner, the Respondent No. 3 Mr. Niranjn Shah, Honorary Secretary of the Respondent BCCI signed the annual accounts for the year 2001-2002 as Honorary Secretary. The said Niranjn Shah has attended all Annual General Meetings of Respondent BCCI for 10 years.

17. Following complaints of alleged misappropriation from INDCOM account by the petitioner, enquiries and investigations were initiated by Reserve Bank of India, the Income Tax Department and the Revenue Intelligence Department. It is asserted that both Reserve Bank of India and Revenue Intelligence Department issued written certificates certifying that the accounts were in order.

18. The petitioner has annexed to the petition, a letter dated 17th October, 1997 addressed to him by the Enforcement Directorate, relevant portions whereof are extracted hereinbelow:..Our letter No. T-I/Misc/53/Cal/96/8598 dated 19.9.97, addressed to the Reserve Bank of India was confidential and hence, there cannot be any question of releasing its contents to the media from this office and that letter was to get verification of the genuineness of the suspected information;

We have in effect received a reply from R.B.I. on 13.10.97 wherein they have clarified that scrutinisation of the statement of accounts by them, did not reveal diversion from PILCOM's account to the personal account of Shri Jagmohan Dalmiya;

Hence from the above it is clear that we have till date not detected any violation of the provisions of the [Foreign Exchange Regulation Act, 1973](#) against PILCOM or against yourself.

19. According to the petitioner, the decision taken by the petitioner in the larger interest of Respondent BCCI, to cancel the tender process for awarding televising rights, gave rise to a series of vexatious proceedings against the petitioner.

20. On 29th September, 2004 the 75th Annual General Meeting of Respondent BCCI was held. The Respondent No. 2 and his group were defeated in the elections. There being a tie in votes (15 : 15) the petitioner as President exercised his casting vote in favour of Mr. Ranbir Singh Mahindra who defeated the Respondent No. 2 and became President. The petitioner has not contested for any post in Respondent BCCI since 2004.

21. The petitioner has alleged that by casting his vote in favour of Ranbir Singh Mahindra, the petitioner annoyed the Respondent No. 2, who, along with the Respondent Nos. 3, 4, 5, 6 and a few others embarked upon an agenda of victimizing and maligning the petitioner.

22. The petitioner has asserted that the account No. 1223 at Indian Overseas Bank was closed on or about 4th February, 2006 and immediately thereafter on 14th February, 2006 the petitioner handed over all papers, documents and records relating to INDCOM to the representative of Respondent BCCI at Eden Gardens, Kolkata.

23. Even though the closing balance in the said Account No. 1223 was Rs. 17,67,365/- the petitioner remitted to Respondent BCCI, through the Cricket Association of Bengal a sum of Rs. 39,41,981/- by adding Rs. 21,94,616/- allegedly withdrawn to meet expenses. This according to the petitioner was done

since the Accounts from April 2005 had not been scrutinized and audited and on the understanding that Cricket Association of Bengal would claim reimbursement of the expenses.

It appears that on or about 16th February, 2006 the respondent raised disputes with regard to expenses incurred by the petitioner towards inter alia telephone charges, travelling and hotel charges.

24. According to the petitioner, as Honorary Secretary and later as President of Respondent BCCI, the petitioner was entitled to reimbursement of expenses including expenses towards travel, hotel accommodation and even entertainment.

25. According to the petitioner, the Working Committee of Respondent BCCI had at its meeting held on 27th April, 1997 unanimously decided that the petitioner as President of ICC would be provided with office space, staff members and telecommunication facilities at the cost of Respondent BCCI. A copy of the minutes is annexed to the petition. The petitioner was thus entitled to reimbursement of office expenses and telephone expenses as per actuals.

26. The petitioner remained President of ICC till June, 2000. In September, 2001 the petitioner was elected President of Respondent BCCI. The petitioner held the office of President of Respondent BCCI till 27th January, 2005. The petitioner in the meanwhile also became President of the Asian Cricket Council. On becoming the President of Asian Cricket Council, the petitioner was extended all the facilities that the petitioner enjoyed as ICC President as would appear from the minutes of the meeting of the Working Committee of Respondent BCCI, a copy of which is annexed to the petition as Annexure 'G'.

27. Allegations have been made by the petitioner of the respondents circulating malicious allegations against the petitioner through the media. Copies of news reports have been annexed. The news reports are, however, not relevant for the purpose of this application for interim relief.

28. On 12th February, 2006, the petitioner was served with a show-cause notice inter alia alleging that the petitioner had, by closing the bank account in Kolkata,

committed fraud. The petitioner was charged with misappropriation of around Rs. 21,94,616/-. The respondents proceeded on the reasoning that when the balance in the bank account of INDCOM was only Rs. 17,67,375/-, there could be no reason to pay Rs. 39,41,981/- and assumed that this was done to make up for the shortfall in the account by reason of misappropriation.

The petitioner appears to have filed a suit in the City Civil Court being Title Suit No. 292 of 2006 challenging inter alia the legality and/or validity of the said show cause notice dated 27th February, 2006. The learned City Civil Court stayed the operation of the said show cause notice.

29. Respondent BCCI preferred an appeal whereupon a Division Bench of this Court extended the time granted to the petitioner to submit his reply till 23rd March, 2006. The petitioner thereafter submitted his reply to the show-cause notice.

In the reply the petitioner pointed out that there were two separate bank accounts, one of PILCOM with Citibank. London which was jointly operated by the petitioner along with the PILCOM Treasurer from Pakistan and the other the World Cup 1996 Account (Account No. 1223) with Indian Overseas Bank, Kolkata. After the decision of the Working Committee of Respondent BCCI on 23rd January, 2006 the petitioner never operated the PILCOM account. The letter dated 24th January, 2006 issued to the petitioner, was silent with regard to the World Cup 1996 Account.

30. Following the dissolution of INDCOM on 25th September, 1996, the name of the INDCOM Account was changed to the World Cup 1996 Account. However, as the petitioner remained Convenor Secretary of World Cup 1996, the petitioner had to deal with a series of Income Tax proceedings involving a liability of Rs. 88.71 crores and other legal and cricketing matters.

The Finance Committee of Respondent BCCI had, therefore, at its meeting held on 31st July, 1997, authorized the petitioner to operate the said account with Indian Overseas Bank in his capacity as Convenor Secretary of the World Cup 1996. Every year expenses incurred in Account No. 1223 were audited by the

statutory Auditors of Respondent BCCI and merged with the general account of Respondent BCCI.

31. Since expenses from account No. 1223 were mainly in connection with the Income Tax cases and other genuine expenses the petitioner was asked to handover all files and documents relating to these cases to the Respondent No. 6, Mr. S. Srinivasan, who was appointed Convenor Secretary on 23rd January, 2006.

The petitioner has contended that it is the convention in the Respondent BCCI, for an office bearer laying down office to close the account operated by him and remit the balance in the account to his successor in office. The petitioner claims to have acted in accordance with the said convention of Respondent BCCI.

32. The petitioner has contended that There was never any instruction on the petitioner to stop operating the INDCOM/World Cup 1996 Account at any point of time. Even in the letter dated 24th January, 2006, there was no reference to the said Account.

33. In connection with the allegation of Cricket Association of Bengal having remitted to Respondent BCCI, Rs. 21.74 lakhs more than the closing balance of Rs. 17.32 lakhs in the World Cup 1996 Account, the petitioner submitted that the handing over had to be done in a hurry. The expenses incurred from April, 2005 to January, 2006 had not been audited. As there was no time for scrutiny, Rs. 21.74 lakhs paid from the account to meet expenses was also paid by Cricket Association of Bengal to Respondent BCCI on the understanding that Cricket Association of Bengal would claim reimbursement of the same from Respondent BCCI, at a later stage, after scrutiny.

According to the petitioner without even waiting for the reply of the petitioner, the Respondent No. 3 lodged a First Information Report with Mumbai Police on 15th March, 2006 against the petitioner and three other former office bearers alleging misappropriation of Rs. 21 lakhs odd by the petitioner. The charges were, according to the petitioner, false and vindictive.

34. The petitioner was constrained to file an application for anticipatory bail in the Hon'ble High Court at Bombay. On 9th April, 2006, one day before the final hearing of the application for anticipatory bail, the Respondent No. 2, as President, suspended the petitioner from taking part in the affairs of Respondent BCCI. On the same day, that is, 9th April, 2006 the Respondent No. 3 informed the petitioner that the petitioner's reply to the show-cause notice dated 27th February, 2006 had been found unsatisfactory and accordingly the said show cause notice had been referred to the Disciplinary Committee of the Respondent No. 1.

The letter dated 9th April, 2006 is apparently a cryptic communication of just two sentences unsupported by any reasons. According to the petitioner the reply of the petitioner dated 23rd March, 2006 was not considered at all.

35. On 10th April, 2006 notwithstanding vehement objection from the State of Maharashtra and Respondent BCCI the Hon'ble Bombay High Court granted anticipatory bail to the petitioner, after detailed hearing, inter alia holding that the complaint did not appear to have been filed bona fide. The High Court observed that the complaint had been filed with undue haste, after delay of 10 years.

The State of Maharashtra and Respondent BCCI filed Special Leave Petitions before the Hon'ble Supreme Court challenging the order granting anticipatory bail. The petitioner submitted that the Supreme Court also observed that the actions on the part of the respondents and the police appeared ex facie to be vindictive.

36. Another notice dated 15th April, 2006 was served on the petitioner making allegations of misappropriation of funds. In the said notice dated 15th April, 2006, it was alleged that (i) there were irregularities in the bank account of INDCOM in as much as the said Bank Account should have been operated by the petitioner jointly with the Chairman and Treasurer of the INDCOM and not by the petitioner alone; (ii) since the petitioner had ceased to be Honorary Secretary of the Respondent BCCI after taking over as President of ICC with effect from 15th July, 1997 by which time INDCOM account had merged with the accounts of Respondent BCCI, the said account was required to be operated only by the Honorary Secretary and the Honorary Treasurer of Respondent BCCI and the petitioner had no authority to operate the account; (iii) funds had been transferred

from the account on written instructions given on the letterhead of the Convenor Secretary by Mr. K.M. Chowdhury even though Respondent BCCI had not authorised Mr. Chowdhury to operate the said account. The petitioner thus allowed the account to be operated by an unauthorized person; (iv) the petitioner unauthorizedly utilized funds for payment and/or unauthorizedly withdrew funds from the World Cup 1996 Account under the heads (a) Telephone Bills, (b) Trade Wings Ltd., (c) Taj Palace Hotel, (d) Voyage (e) Cash Withdrawals, (f) Cricket Association of Bengal (g) U.N. Banerjee, Advocate (h) S.G. Traders.

It is alleged that the petitioner was not given inspection of the documents referred to in the said notice dated 15th April, 2006 till 5th May, 2006. On 5th May, 2006 the petitioner was offered inspection. The authorized representative of the petitioner was, however, provided with copies of only 273 vouchers, most of them illegible, out of 1800 to 2000 vouchers relied upon by the Respondents.

37. According to the petitioner, the authorized representative of Respondent BCCI admitted in writing that the notice dated 15th April, 2006 was issued on the basis of random inspection of vouchers and documents. No document was referred to in the purported notice dated 15th April, 2006, and in any case not those 273 vouchers of which inspection had been given. The petitioner was assured that if and when any other documents were obtained inspection thereof would be given to the petitioner.

38. According to the petitioner, without giving the petitioner inspection of the rest of the documents, the case was referred to the Disciplinary Committee under cover of a letter dated 29th June, 2006 of the Respondent No. 3. It was wrongly alleged that the petitioner had been given inspection of all documents on 5th May, 2006 and that the petitioner had failed to reply to the notice dated 15th April, 2006.

By a communication dated 17th July, 2006 the Respondent No. 3 called upon the petitioner to appear before the Disciplinary Committee on 26th July, 2006.

39. The petitioner instituted yet another suit being Title Suit No. 921 of 2006 in the City Civil Court at Calcutta. The Respondents, on being notified of the suit and the interlocutory application for injunction, postponed the hearing fixed on 26th July,

2006.

40. The Court fixed 22nd August, 2006 for final hearing of the interlocutory application. Immediately thereafter the respondents fixed 22nd August, 2006 for hearing. The Court restrained Respondent BCCI from proceeding with the hearing.

41. On 22nd August, 2006, the Court directed the Respondent BCCI to supply copies of documents to the petitioner. It was thereafter on 26th August, 2006 that volumes of loose papers including copies of 273 bank day vouchers were handed over to the petitioner, many pages of which were illegible, not clear and/or meaningless. According to the petitioner it became impossible to co-relate the documents handed over to the petitioner. In the premises the petitioner approached the City Civil Court for relief. The City Civil Court did not, however, grant any relief whereupon the petitioner moved this Court.

Counsel appearing on behalf of the Respondent BCCI in this Court expressly undertook that only legible portions of 273 bank vouchers that had been supplied to the petitioner would be relied upon and no further or other document would be taken into consideration.

42. In view of the aforesaid undertaking this Court on 1st September, 2006 granted leave to the petitioner to file his explanation to the notice dated 15th April, 2006, based on legible vouchers. The Court further granted leave to the Disciplinary Committee to direct the petitioner to appear 7 days after submission of his reply.

43. On 3rd October, 2006 the petitioner submitted his detailed reply to the notice dated 15th April, 2006 with supporting documents. The reply was restricted to 273 legible day vouchers supplied to the petitioner. According to the petitioner, the petitioner explained all his actions.

44. In his reply the petitioner inter alia pointed out that the allegation that a sum of Rs. 1.26 crores had been misappropriated by the petitioner towards alleged telephone charges not related to Respondent BCCI was made suppressing that of the aforesaid amount Rs. 1.26 crores, Rs. 82,56,735/- was paid to the Income Tax

Department, expenditure of Rs. 18,35,443/- was incurred before August, 1997, that is, during the World Cup period, and only Rs. 35,89,964/- during the next nine years, inclusive of payment of telephone bills of late Madhav Rao Scindhia, former President of INDCOM and Respondent BCCI.

45. The petitioner in his reply took the stand that it has been the practice of officials of the Respondent BCCI to claim reimbursement towards telephone charges in respect of telephones standing in the name of companies if the telephones were used in connection with the activities of Respondent BCCI. Examples have been cited amongst others of Mr. I.S. Bindra being reimbursed telephone charges in respect of telephones standing in the name of Punjab State Handloom Textile Corporation Ltd. and Mr. Muthaiya being reimbursed for nine phones in the name of his company. It was pointed out that even the Respondent No. 3 had been reimbursed telephone charges for telephones in the name of Saurashtra Cricket Association.

46. With regard to the allegation of unauthorized payments to the extent of Rs. 2,72,00,000/- to M/s. Trade Wings the petitioner submitted that perusal of the 273 day vouchers indicated that the amount was Rs. 2,94,58,186/-, out of which 2,88,99,050/- was paid during the World Cup towards travel inter alia of 14 participating teams, umpires, match referees, officials of Respondent BCCI, officials of Pakistan, Sri Lanka and ICC. A sum of Rs. 5,59,171 was paid in 9 years towards\* trips of the petitioner, late Madhav Rao Scindhia, I.S. Bindra, D.C. Agasha, Amrit Mathur, Raj Singh Dungarpur and Dr. A.C. Muthaiya.

47. With regard to Rs. 90,75,000/- alleged to have unauthorizedly been paid to Taj Palace Hotel, the petitioner submitted that the vouchers disclosed showed that the amount was Rs. 87,58,019/- of which Rs. 74,11,569/- had been paid prior to and during World Cup 1996 towards hotel accommodation of 14 participating teams, umpires, match referees, officials of Respondent BCCI, officials of Pakistan, Srilanka, ICC and others. During the subsequent 9 years, Rs. 13,46,440/- was paid towards accommodation and that too mainly in connection with arbitration proceedings that arose in connection with World Cup 1996.

The petitioner's answer to and/or explanation for each and every charge of defalcation levelled against him is given in the various sub-paragraphs of paragraph 33 of the petition. The reply of the petitioner to the show cause notice has also been annexed to the petition.

48. According to the petitioner, the reply of the petitioner dealing with each and every allegation levelled against him was not considered. The petitioner was, however, directed to appear before the Disciplinary Committee on 29th October, 2006. According to the petitioner no disciplinary proceedings could have been conducted in view of Rule 38(VII) of the Rules of the Respondent BCCI extracted hereinbelow:

#### Rule 38 (VII)

Pending inquiry and proceeding into complaints or charges or misconduct or any act of indiscipline or violation of any Rules & Regulation, the concerned Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selectors (including the privileges and benefits such as subsidies to the Member or Associate Member) may be suspended by the President from participating in any of the affairs of the Board until final adjudication. However, the adjudication should be completed within six months.

Allegations of bias have been made against the Disciplinary Committee having regard to its composition. However, this Court does not deem it necessary to examine the allegations at this interlocutory stage.

49. According to the petitioner the Disciplinary Committee did not address the preliminary issue raised by the petitioner of the Disciplinary Committee having become functus officio. On the other hand, the Disciplinary Committee proceeded ex parte on 29th October, 2006 and submitted a report on 4th November, 2006. The petitioner has alleged that the report was motivated, predetermined and biased. This Court, however, finds that this preliminary issue has been addressed by the Disciplinary Committee.

A special general meeting was convened on 25th November, 2006. The petitioner was served with a copy of the report of 4th November, 2006 and informed that he might appear before the Special General Meeting on 16th December, 2006.

50. It is alleged that on 16th December, 2006, the petitioner was asked to leave the hall, after which, a decision was taken by raising of hands as stated in paragraph 59. This has not been denied in the Affidavit-in-Opposition. A resolution dated 16th December, 2006 was taken holding the petitioner guilty of misconduct. The resolution is extracted hereinbelow for convenience:

It is hereby resolved that the report submitted by the Disciplinary Committee is accepted in toto. The House finds Mr. Jagmohan Dalmiya guilty of gross misconduct. The acts of Mr. Jagmohan Dalmiya are detrimental to the interests of the Board of Control for Cricket in India (hereinafter referred to as the Board). Mr. Jagmohan Dalmiya has acted in total breach of the provisions of Memorandum, Rules and Regulations of the Board. The House is convinced that Mr. Jagmohan Dalmiya with dishonest intentions produced forged and fabricated documents before the Indian Overseas Bank and has misappropriated the funds and properties of the Board. The House looking to the gravity of the charges hereby expels Mr. Jagmohan Dalmiya. Mr. Jagmohan Dalmiya forfeits all his rights and privileges as an Administrator. The House further decides as per Sub-clause (V) of Clause 38 of the Memorandum and Rules and Regulations of the Board that Mr. Jagmohan Dalmiya will cease to hold any position or office of any Member or Associate member of the Board. Mr. Jagmohan Dalmiya shall not in future be entitled to hold any position or office or be admitted in any committee of any Member or Associate member of the Board. This decision will come into force with immediate effect.

51. The above suit has been filed for inter alia a declaration that the resolution adopted at the Special General Meeting of Respondent BCCI held on 16th December, 2006 as communicated to the petitioner by the letter dated 17th December, 2006 was illegal, null and void and of no effect. The petitioner has also sought a declaration of illegality and unenforceability of Rules 38(III), 38(IV) and 38(V) of the Rules Regulations of the Respondent as amended and a declaration

of nullity of the report of the Disciplinary Committee dated 4th November, 2006.

52. After filing the suit the petitioner filed this interlocutory application for an interim order of injunction restraining the respondents and each of them from giving effect and/or further effect to the resolution of the Special General Meeting of Respondent BCCI dated 16th December, 2006.

53. By an order dated 9th February, 2007 this Court directed the respondents to file their Affidavit-in-Opposition within two weeks. The petitioner was directed to file his Affidavit-in-Reply within one week thereafter and the application was fixed on 5th March, 2007. The application was heard on diverse dates between 2nd May, 2007 and 2nd July, 2007 when hearing was concluded. The petitioner as also the respondents argued at length and filed their respective written submissions.

54. In spite of directions of this Court no Affidavit-in-Opposition was filed on behalf of the respondents. A copy of an un-affirmed Affidavit-in-Opposition was, however served on the petitioner. It was submitted on behalf of the respondents that the Advocate-on-Record of the respondent had misplaced the original Affidavit-in-Opposition which had duly been affirmed. For the ends of justice this Court gave opportunity to the respondents to affirm the Affidavit-in-Opposition afresh and file the same even though hearing had commenced.

The Affidavit-in-Opposition was ultimately filed on 10th May, 2007. On the face of the pleadings the complaint with regard to the PILCOM/INDCOM account was lodged for the first time in February, 2006.

55. The respondents have objected to interference by the Civil Court, with the internal affairs of a sports association, of disciplinary action against an administrator. The petitioner is alleged to have unauthorizedly operated a bank account, incurred unauthorized expenditure and defalcated and/or misappropriated large sums of money for personal gain.

56. The thrust of the case of the respondents is that the petitioner controlled Respondent BCCI from 1993 till December 2005 either by himself or his nominees and/or associates. It is alluded that the petitioner took advantage of his dominant

position, acted in a manner detrimental to Respondent BCCI, incurred unauthorized expenses, secreted funds and made personal gains at the cost of Respondent BCCI. Insinuations have been made of manipulation of accounts. It is emphatically alleged that the petitioner withheld accounts of PILCOM/INDCOM for several years.

57. However, on the admission of the respondents as made in paragraph 8 of their Affidavit-in-Opposition, the petitioner was Honorary Treasurer for two years from 1983 to 1984-85, Honorary Secretary from 1990 to 1991 and again from 1993-94 to 1996-97 (up to 1st July, 1997) and President from 2001-2002 to 2003-2004. In September, 2001, the petitioner became President after defeating Dr. Muthiya, the previous President. No question was raised with regard to the Accounts between July, 1997 and September, 2001 when the petitioner was not an office bearer of Respondent BCCI.

Mr. S.B. Mookerjee appearing on behalf of the petitioner submitted that the allegations levelled against the petitioner were totally vindictive, motivated and incorrect. Since 1996 and till 1st April, 2005 the accounts were audited by the statutory auditors of respondent BCCI and approved by the Finance Committees, Working Committees and finally the general body year after year. It is the case of the petitioner that the Respondent No. 2, upon assuming power, embarked upon a one point agenda of victimization of the petitioner.

58. Mr. Mookerjee submitted that on 23rd January, 2006 the petitioner was removed from the post of Convenor Secretary of PILCOM and a fact finding committee was appointed. The said fact finding committee included Respondent No. 4, who also acted as member of the Disciplinary Committee. A show cause notice dated 21st February, 2006 was issued. However, without waiting for the time for reply to the show cause notice to expire, the respondents filed an FIR in Mumbai.

59. It was argued that by exertion of political power, various proceedings were initiated against the petitioner. The petitioner had to apply for anticipatory bail in the Hon'ble Bombay High Court. Having failed to secure dismissal of the applications of the petitioner for anticipatory bail, further charges were levelled

against the petitioner.

60. Mr. Mookerjee referred to the findings and/or observations of the Bombay High Court in the application of the petitioner for anticipatory bail, some of which are extracted hereinbelow: A resolution was passed in the BCCI in which it was resolved that such an Account would be opened and will be operated either by the Treasurer or by the Secretary or by the Chairman. The Account was opened and Shri Dalmiya was the authorized signatory of the Account. It is an admitted position that no objection was raised regarding the operation of the Account solely by Shri Dalmiya over a period of 10 years, though the accounts were audited from year to year and the accounts were placed before the Working Committee, Finance Committee and the General Body..

At this juncture, it is also necessary to refer to the fact that in 1996 Shri Bindra was the President. However, after he stepped down as a President, he made certain allegations of misappropriation against the present petitioner Dalmiya. The show-cause notices were issued by FERA Authorities and an inquiry was also made by the Reserve Bank of India which was to the knowledge of the complainant in the year 1997-98 during which time, after a thorough investigation, the Enforcement Directorate issued a letter to the petitioner Shri Dalmiya exonerating him from all the allegations which were made against him. The Reserve Bank of India also wrote a letter to the Enforcement Directorate, stating therein that after thorough investigation, the allegations which were made against the petitioner Dalmiya were found to be incorrect and false. In the background of these facts, it has to be seen what steps were taken by the complainant since the opening of the Account till the Account was closed by the petitioner. During all this period, neither the complainant or any of the other members filed any complaint regarding the misappropriation of any amount nor any query was raised by the complainant who was a member of the BCCI during the period of last 10 years in any of the meetings of the Working Committee, Finance Committee or General Body regarding the operation of the Account by Shri Dalmiya..

If the chronology of events and the facts and material which is placed on record is taken into consideration, prima facie, in my view, it is established that the

allegations made in the complaint and the material which is placed on record does not establish the allegation of misappropriation of amounts. It also does not establish that the account was opened without the knowledge of the complainant. Further, it does not indicate that the amounts have been used for the personal benefit of the petitioner Shri Dalmiya.

61. Mr. Mookerjee submitted that having failed to secure dismissal of the application for anticipatory bail, a show cause notice dated 15th April, 2006 was issued making a new set of allegations. The petitioner was denied proper and effective inspection of documents. The reply to the show cause notice was not considered impartially with an open mind. The Disciplinary Committee acted in flagrant disregard of the principles of natural justice and/or fair play in proceeding ex parte against the petitioner, without first deciding the preliminary objection taken by the petitioner to continuance of proceeding against the petitioner on the ground of the Disciplinary Committee having become functus officio.

62. Mr. Mookerjee argued that the Respondents acted in violation of natural justice by not informing the petitioner of the documents proposed to be relied upon in the Enquiry or of the names of the witnesses, if any, proposed to be examined.

63. Mr. Mookerjee submitted that the issues against the petitioner had been prejudged. This, Mr. Mookerjee pointed out, would be evident from the fact that even before the impugned resolution was taken, the name of the petitioner was removed from the Telephone Directory of 2007' printed in Germany, even though he continued to remain the President of the Cricket Association of Bengal and the National Cricket Club.

64. Mr. Mookerjee finally submitted that the petitioner was asked to leave the Special General Meeting convened on 16th December, 2006 within a few minutes. The petitioner had no opportunity to address the meeting. The request of the petitioner for circulation of his reply to the show cause notice amongst the members was declined, and the members of the Disciplinary Committee remained present at the meeting chaired by the Respondent No. 2, while voting took place by show of hands.

Mr. Mookerjee argued that the entire action against the petitioner culminating in the impugned resolution was in any event without jurisdiction, unauthorized, invalid, void and of no effect.

65. Mr. Mookerjee submitted that a resolution was adopted on 29th September, 2000 for amendment of the Bye laws of Respondent BCCI. It was this amendment, which introduced for the first time, the definition of 'Administrator'. Administrator has been defined to mean and include present and former Presidents, Vice-Presidents, Honorary Secretaries, Honorary Treasurers and Honorary Joint Secretaries of Respondent BCCI, past and present Presidents and Secretaries of members affiliated to Respondent BCCI and any person nominated in any sub committee appointed by Respondent BCCI.

66. Rule 38 was sought to be amended to provide for disciplinary proceedings and penal action against administrators. The Rules as they stood prior to September, 2000 did not contemplate any kind of action against past office bearers.

67. Relying on Section 12(2) and (3) of the 1975 Act Mr. Mookerjee argued that a 'registered society' might by special resolution amend its bye laws. The amendment is to be registered, and upon registration the amendment would take effect from the date of the special resolution.

68. Mr. Mookerjee submitted that there could be no special resolution unless at least 3/4th of the members passed the same at a general meeting of which notice of not less than the prescribed period was given specifying the intention to propose the resolution as a special resolution. Under Section 27 of the 1975 Act read with Rule 26 of the Tamil Nadu Societies Registration Rules, 1978, hereinafter referred to as the Rules, a special resolution is required to be filed with the Registrar within 3 months. The Registrar might, if sufficient cause is shown, condone the delay for a further period of time not exceeding three months, in view of Section 49 of the 1975 Act read with Rule 48 of the Rules.

Mr. Mookerjee submitted the amendments were of no effect, the same not having been passed by special resolution in terms of Section 2(j) of the 1975 Act and the same not having been registered.

69. Mr. Mookerjee submitted that an amendment cannot be registered unless filed with the registrar within three months or if allowed by the Registrar, a further period not exceeding three months. There could be no registration of amendments filed with the Registrar after six months. Mr. Mookerjee submitted that even if the amendments were subsequently registered such registration would be illegal and of no effect.

70. Mr. Mookerjee cited the judgment of the Supreme Court in the case of T.P. Daver v. Lodge Victoria reported in : [1964]1SCR2 where the Supreme Court held that the Civil Court could not obviously sit as a Court of Appeal from decisions of clubs and associations but the Civil Court could set aside the order of such a body, if the body acted without jurisdiction or did not act in good faith or acted in violation of the principles of natural justice.

Mr. Mookerjee next cited the judgment of this Court in the case of Chiranjani Jadayji Padia v. Bhupesh Chandra Dutta and Ors. reported in : AIR1979 Cal289 where Sabyasachi Mukharji, J. following the judgment of the Supreme Court in T.P. Daver's case (supra) interfered with the decision of a Brokers' Association refusing to permit its member to induct a partner. This Court found that it had jurisdiction to examine any decision of a committee which involved a question of law including one of interpretation of the rules. Mukharji, J. observed 'The jurisprudence of today has shifted from fine spun technicalities and abstract rules to practical justice. It must aspire to remove injustice and the reliefs that the Court might grant must be effective as well as just.'

71. Mr. Mookerjee next cited the judgment of this Court in the case of Kalyan Kr. Dutta Gupta v. V.M. Verma reported in : AIR1995 Cal140 where a Division Bench of this Court held that a question of interpretation of the rules of a club could not be brushed aside at the interlocutory stage. The Court might grant an injunction restraining a club from giving effect to an order of expulsion of a member of the club, if prima facie the club had acted without Jurisdiction.

72. In support of his argument that Respondent BCCI is a 'Registered Society' within the meaning of the Tamil Nadu Societies Registration Act, 1975. bound by the provisions of the said Act. Mr. Mookerjee relied on the judgments of the

Supreme Court in the cases of Zee Telefilms Ltd. v. Union of India reported in : AIR 2005 SC2677 , the Board of Control for Cricket in India and Anr. v. Netaji Cricket Club and Ors. reported in : AIR 2005 SC592 and I. Nelson and Anr. v. Kollayam Pastorate and Ors. reported in : AIR 2007 SC1337 .

73. Mr. Mookerjee next cited the judgment of the Madras High Court in the case of Music Academy represented by its Executive Trustees v. Inspector General of Registration and Ors. reported in 2005 (4) Law Weekly 67 (Madras) where the Madras High Court held the amendments of the bye-laws of a society registered under the Tamil Nadu Societies Registration Act, 1975 could not be effective unless the same were registered.

74. Mr. Mookerjee cited the judgment in the case of Mohan Bagan Atheletic Club v. Deba Prasad Mukherjee reported in AIR 2003 Cal. 298 where a Division Bench of this Court, after discussing several judgments, held that the Trial Court had power to grant mandatory injunction in an application under Order 39, Rules 1 and 2 of the Civil Procedure Code, where a club had acted illegally and/or without jurisdiction.

75. Mr. Mookerjee submitted that the disciplinary proceedings in the instant case had been conducted behind the back of the petitioner. The petitioner was not furnished with the names of the witnesses nor supplied with all the documents relied upon in the enquiry. In support of his contention that a person against whom misconduct was alleged had a right to cross-examine witnesses and to inspection of documents relied upon in support of the charge, Mr. Mookerjee cited the judgment of this Court in the case of Export Inspection Council of India v. K.K. Mitra reported in 1987 (2) CLJ 344.

76. There can be no doubt that in disciplinary proceedings, the person proceeded against has a right of inspection of documents relied upon in the proceedings as well as cross-examination of witnesses. In this case apparently no witnesses were at all examined. Inspection was given of some documents. Whether inspection of any relevant documents relied upon in the proceedings has been denied, is an issue that requires examination in the suit.

77. Mr. Mookerjee relied on the judgment of the Supreme Court in the case of Narender Mohan Arya v. United India Assurance Company Ltd. and Ors. reported in : (2006)IILLJ806SC where the Supreme Court held the Civil Court could interfere with the report of an Enquiry Officer that was based on no evidence. The Court was required to apply its mind as to whether there was sufficient materials to sustain the findings.

78. Mr. Mookerjee also cited the judgment of a Division Bench of this Court in the case of Jayanta Kr. Sikdar v. State of West Bengal and Ors. reported in 2006 (1) CHN 288 where a Division Bench of this Court held that examination of witnesses without intimation to the charged employee amounted to denial of justice. In this case there was apparently no examination of witness.

79. Mr. Mookerjee finally cited the judgment of the Supreme Court in the case of Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) H.S. School and Ors. reported in : (1993)IILLJ549SC , where the Supreme Court held that reasonable likelihood of bias would vitiate an action.

80. Mr. S.K. Kapoor appearing on behalf of the respondent submitted that respondent BCCI was essentially a body which was concerned with sports and mostly related with cricket. It was neither a Government organization not created by statute.

Mr. Kapoor submitted that the affairs of Respondent BCCI are not regulated by any statute, Respondent BCCI is really a private club. The membership consists of various cricket associations.

81. Relying on the judgment of the Supreme Court in the case of Zee Telefilms : AIR 2005 SC2677 (supra) Mr. Kapoor submitted that respondent BCCI was not state within the meaning of Article 12 of the [Constitution of India](#) and, therefore, not amenable to the fundamental rights guaranteed under the Constitution.

Mr. Kapoor argued that Respondent BCCI was registered under the provisions of the [Societies Registration Act, 1860](#) long before enactment of the Tamil Nadu Societies Registration Act, 1975.

82. Mr. Kapoor submitted that it was not mandatory to have the Respondent BCCI registered under the 1975 Act. The BCCI was only deemed to be registered under the 1975 Act.

Mr. Kapoor argued that there is no provision in the 1975 Act which regulates, in any way, the conduct of the affairs of Respondent BCCI. Respondent BCCI has the option to have itself deregistered and cease to be subject to the said Act if it so desires.

83. Mr. Kapoor submitted that fundamentally Respondent BCCI was like any other club in the country and its members were not governed by any limits in exercise of disciplinary powers.

Mr. Kapoor next relied on the judgment in the case of *Maclean v. The Workers' Union* reported in 1929 Chancery Division 602. The Chancery Division held that Courts had limited jurisdiction over Tribunals and could not give redress to members of associations on whom hardship was worked by decisions given in good faith and honestly under the Rules of the Association, even though the Rules might be unjust. In this case, however, a question of jurisdiction has been raised. There are serious issues of bias, want of bona fides and/or good faith, violation of principles of natural justice raised, which require examination upon trial.

84. Mr. Kapoor next submitted that the reliefs claimed in this interlocutory application are identical to the reliefs sought in the plaint and the grant of interim relief would in effect amount to the grant of final reliefs claimed in the suit.

Mr. Kapoor further submitted that over six months having elapsed since the date of the impugned resolution, which has already been given effect, this Court should refrain from passing interim orders at this stage.

85. In dealing with the submission of Mr. Mookerjee that no special resolution was passed while amending Rule 38 of the Rules Mr. Kapoor submitted that the amendments were passed by all the members of respondent BCCI unanimously at a meeting held on 29th September, 2000. No member had objected to taking a resolution for amendment in the meeting not even the petitioner, who was

personally present in the meeting, actively participated and voted, as would be evident from the minutes of the meeting.

Mr. Kapoor pointed out that notice of the meeting as also agenda for the meeting which included the proposal to amend Rule 38 was duly circulated amongst all the members of BCCI.

86. Mr. Kapoor relied on the decision in the case of *Cane v. Jones* reported in 1981 (1) All E.R. 533 where the Court held that it was open to shareholders of a company to waive the formalities under the Companies Act as to notice of intention.' In the aforesaid case it was held that an ordinary resolution taken unanimously was valid as an extraordinary resolution and not open to challenge with regard to its validity.

87. In the case of *Cane v. Jones and Ors.* (supra) cited by Mr. Kapoor the Chancery Division held that it was a basic principle of corporate law that all the incorporators of a company acting together could do anything that was intra vires the company. The shareholders acting together could waive the formality of notice. In the aforesaid case, contravention of statutory requirements with regard to registration of amendments and/or filing of Special Resolutions with the Registrar was not in issue.

Mr. Kapoor next argued that the (amendment had been passed in September, 2000. The petitioner had with full notice and knowledge of the amendments taken no steps to have the amended rules registered. On the other hand, the amended rules were time and again applied in case of others. Examples have been cited of Md. Azharuddin, Abhijit Kale, I.S. Bindra, Ajay Jadeja, Bombay Cricket Association and others.

88. Mr. Kapoor submitted that if members attended a meeting without protest, stood by without protest while their fellow members passed a resolution and formulated all proceedings concerned to act for years on the basis that the resolution was duly passed, the members cannot contend that they are not bound by the resolution.

In the case of *Ho Tung v. Man of Insurance Co. Ltd.* reported in (1902) Appeal Cases 232 cited by Mr. Kapoor the question raised was whether the regulation of Man on Insurance Company Ltd. were those contained in its articles of association as registered in Hong Kong or were those contained in Table A in the 1st Schedule to the Companies Ordinance (Hong Kong) No. 1 of 1966.

89. The Memorandum of Association duly signed was accompanied by a booklet containing the Articles of Association which had not been signed. The Registrar, however, registered the Articles with the Memorandum and thereupon gave the Certificate of Incorporation of the Company. The Privy Council held that even though the Articles had not been signed by the shareholders, the Articles having been registered, acted upon, amended and added to by the shareholders and the business of the company having been carried as per the regulations contained therein for nineteen years without any objection, it could be inferred that the shareholders had accepted and adopted the Articles as the valid and operative Articles of the Company.

90. Mr. Kapoor submitted that even though statute might provide for a special resolution the entire body might take a decision by following a different procedure.

91. Mr. Kapoor next relied on Section 55 of the 1975 Act which provides that no act of a registered society or any committee or of any officer of the society shall be deemed to be invalid merely on the ground of any defect or irregularity in the act not affecting the merits of the case.

92. Mr. Kapoor relied on the judgment of the Supreme Court in the case of *Bangalore Woolen Cotton and Silk Mills Co. Ltd. v. The Corporation of the City of Bangalore* reported in : [1961]3SCR707 , where the Supreme Court upheld the imposition of a tax, holding that the decision could not be assailed on procedural grounds, if the decision could not be assailed on merits. The judgment is clearly distinguishable on facts.

93. In the case of *Municipal Board, Sitapur v. Prayag Narain Saigal and Firm Moosaran Bhagwan Das* reported in : [1969]3SCR387 cited by Mr. Kapoor, the Supreme Court held that procedural defects cannot be regarded as fundamental

or as invalidating the imposition of a tax if no substantial prejudice is caused thereby.

94. Mr. Kapoor next submitted that the amendments having been approved by the members of the BCCI unanimously, there had been substantial compliance of the requirement, if any, of a special resolution.

95. According to Mr. Kapoor, notice of the resolution for amendment of Rule 38 had duly been given to all the members and the agenda circulated. Mr. Kapoor next submitted that the amendment was passed in September, 2000. The petitioner had notice and knowledge of the amendment for years. The petitioner had been President of the association for about 4 years during which time as Chief Executive of Respondent BCCI he took no steps whatsoever to have the amended rules registered.

96. Mr. Kapoor next relied on the judgment of the Supreme Court in the case of *B.K. Srinivasan v. State of Karnataka* : [1987]1SCR1054 where the Supreme Court held that procedural defects not affecting merits would not invalidate an act. In the aforesaid case, however, the Supreme Court found on facts that the provisions of the statute with regard to publication had duly been complied with.

97. With regard to registration of the amended rules, it is submitted that on 22nd May, 2007 a Supplementary Affidavit was filed on behalf of the respondent BCCI by Professor Ratnakar Shetty. In the Supplementary Affidavit there is a categorical assertion of the rules having been registered on 22nd February, 2007. The petitioners chose not to file any affidavit-in-opposition. Thus the averments in the Supplementary Affidavit stood uncontroverted.

Mr. Kapoor next argued that in view of Section 12(3) of the 1975 Act, upon registration, the amendments would date back to the date of passing of the resolution. The proceedings cannot, therefore, be questioned.

98. The judgment of this Court in the case of *Stephen Court Ltd. v. The Official Trustees of West Bengal* reported in (2000) 2 Calcutta Law Times 1 cited by Mr. Kapoor, was, however, rendered in the context of the provisions of the [Transfer of](#)

[Property Act, 1882.](#)

99. Mr. Kapoor next argued that the certified copy of the amendments was conclusive evidence that the amendments had duly been registered. Mr. Kapoor referred to the meaning of the word 'duly' as given in Black's Law Dictionary (6th Edition). The word duly has been defined as follows: 'any due or proper form or manner according to legal requirements; regularly; properly; suitably upon a proper foundation as distinguished from mere form according to law in both form and substance.'

100. Mr. Kapoor submitted that Section 12(4) specifically provided that registration by the Registrar was conclusive evidence that the amendments had duly been registered. In support of his submission that registration of amendments to the rules of a society would operate as conclusive proof of evidence Mr. Kapoor cited the following decisions:

i) Chandranath Mukherjee v. Tusharika Debi and Ors. reported in : [1959]1SCR226 ;

ii) Smt. Somawanti Devi and Ors. v. State of Punjab reported in : [1963]2SCR774

iii) Cheeranhoodika Mariakutty Amma reported in : [2000]1SCR725

iv) Calcutta Municipal Corporation v. Pawan Saraf and Ors. reported in : 1999 CriLJ1125

v) Maharashtra State Finance Corporation v. Masvi & Co. Pvt. Ltd. and Anr. reported in 76 Companies Cases 168 (Bom)

101. Mr. Kapoor argued that where an enactment provided that any evidence would be treated as a conclusive proof of a certain factual position or legal hypothesis, the law forbids any other evidence to be adduced for the purpose of challenging the aforesaid conclusiveness.

102. Mr. Kapoor argued that in the light of the certification of the amendments by the Registrar, there can be no possible challenge to the fact of registration of the amendments. The registration of the amendments of the rules by the Registrar

cannot now be challenged on the ground that the application was belated. Mr. Kapoor also submitted that there was a presumption that official acts were duly performed.

103. Mr. Kapoor submitted that the argument that amendments could not be permitted to be registered beyond the period of limitation was fallacious and erroneous. Mr. Kapoor submitted that a perusal of Sections 27, 46 and 49 relied upon by Mr. Mukherjee would demonstrate that there was no limitation for registration of an amendment.

Mr. Kapoor submitted that the period of limitation for registration of a special resolution is a different matter altogether. The period prescribed for filing of special resolutions is directory and not mandatory.

104. Mr. Kapoor argued that there was no provision which provided for the nullification of an act upon failure to comply with the prescribed requirement. Mr. Kapoor argued that the act of filing of the special resolution was procedural in nature and cannot by any stretch of interpretation be interpreted to be mandatory.

Mr. Kapoor submitted that the argument that the amendment of the BCCI rules was void for non-registration is without basis. The statutory presumption of conclusive proof cannot be disturbed by a mere correspondence obtained under some other act including the Right to Information Act.

105. Mr. Kapoor submitted that the allegations levelled by the petitioner against the respondents of bias, vindictiveness and mala fides was unsubstantiated and incorrect.

Lastly, Mr. Kapoor submitted that this application was liable to be dismissed on the ground of multiplicity of proceedings and abuse of process.

106. There can be no dispute with the proposition of law laid down in the case of *Noida Enterprises v. Noida* reported in : AIR 2007 SC1161 cited by Mr. Kapoor that criminal proceedings and disciplinary proceedings being different matters, there could be no question of dropping disciplinary proceedings on the ground of initiation of criminal proceedings. In this case the disciplinary proceedings have

been challenged, on the ground of lack of jurisdiction and illegality and not merely on the ground of initiation of parallel proceedings disciplinary and criminal.

107. Mr. Kapoor submitted that it was a cardinal principle for grant of injunction that he should stand equated must come with clean hands. The petitioner had not come to this Court with clean hands.

108. In reply to the submissions of Mr. Kapoor Mr. Pratap Chatterjee, appearing on behalf of the petitioner submitted that the amendments were passed at the Annual General Meeting of Respondent BCCI on 29th September, 2000 when Dr. A.C. Muthiah was the President. At the material time when the amendment was passed the petitioner was not even an office bearer of Respondent BCCI. The submission of Mr. Chatterjee is borne out from the Annual Reports of the Respondent BCCI of the relevant years produced in Court.

109. Mr. Chatterjee submitted that Dr. A.C. Muthiah remained the President for about one year from 29th September, 2000. The amendments were required to be registered within three months, that is, within 29th December, 2000. The Registrar could at best have condoned the delay in applying for registration by a further time of three months, that is, 29th March, 2001. During the aforesaid period the petitioner was not an office bearer.

110. Mr. Chatterjee submitted and perhaps rightly, that the petitioner could not be held responsible for non-registration of the amendments to the rules within the stipulated time. Mr. Chatterjee submitted that recourse to the amended rules was taken against I.S. Bindra who was suspended for a period of 2 years on and from 23rd February, 2001 during the Presidentship of Dr. A.C. Muthiah.

111. With regard to proceedings against Md. Azaruddin, Ajay Jadeja, Ajoy Sharma, Mr. Chatterjee argued that they were during the tenure of Presidentship of Dr. Muthiah and in any case, there was power to take disciplinary action against players even before the purported amendment of the Rules.

112. Mr. Chatterjee drew the attention of this Court to a printed rule book published and circulated in 2000 which incorporated amendments. The rule book

was published during the tenure of Dr. Muthiah when the petitioner was not even an office bearer.

113. Mr. Chatterjee submitted that having regard to the publication of the Rules incorporating amendments passed on 29th September, 2000 all concerned including t

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**