

A.C. MUTHIAH

v.

BOARD OF CONTROL FOR CRICKET IN INDIA AND
ANR.

(Civil Appeal No. 3753 of 2011)

APRIL 28, 2011

[J.M. PANCHAL AND GYAN SUDHA MISRA, JJ.]*

Memorandum and Rules and Regulations of BCCI, 2008: Clauses 1(n), 6.2.4 – Complaints filed by appellant-past president of BCCI before the BCCI President alleging that second respondent being the office bearer of BCCI and also the Chairman and M.D. of India Cements Limited was disqualified to participate in the auction held for owning Indian Premier League (IPL) in which he was declared successful bidder and thus came to own Chennai Super King – No response to the complaint – Suit filed by appellant – Just a few days after filing of the said suit, the BCCI on 27.9.2008 introduced an amendment to Clause 6.2.4 carving out an Exception – After the amendment, the said clause read “No Administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI excluding IPL, Champions League and Twenty 20.” – The amendment to Clause 6.2.4 was challenged by the appellant by filing a second suit wherein the appellant also filed two applications seeking temporary injunction restraining the BCCI from permitting the second respondent to participate in the General Body Meeting and injunction against the amendment introduced by pleading to put it under suspension – High Court dismissed the applications on the ground that appellant had no locus standi to question the Regulations and the court

*. There being difference of opinion, the matter has been referred to larger bench and the dissenting opinion of Hon'ble Mrs. Justice Gyan Sudha Misra is reported herein.

- A also cannot interfere with the internal management of the society – On appeal, Held: **Per Gyan Sudha Misra, J.** - Past President of BCCI is also an Administrator and has locus standi to file suit challenging amendment to the Memorandum – Plea that the past President has to be nominated on any of
- B the sub-committees of BCCI to be treated as an Administrator is not tenable – In order to decide whether the plaintiff has a right to file a civil suit or not, locus standi or competence of the plaintiff alone is to be established and not the question whether the BCCI is a State within the meaning of Article 12
- C of the Constitution which is a condition to be fulfilled for invoking the jurisdiction u/Articles 226 and/or 227 of the Constitution as also Article 32 of the Constitution but surely not for filing a civil suit or injunction application – Once, it is held that the plaintiff/appellant was also an Administrator of the BCCI in view of the definition of Administrator, his
- D competence to challenge the amendment introduced in the regulation of BCCI cannot be held as not maintainable on the ground that BCCI is not a 'State' within the meaning of Article 12 of the Constitution – Conflict of interest does not require actual proof of any actual pecuniary gain or pecuniary loss –
- E Second respondent necessarily was privy to highly sensitive information about the bidding process, the design of the tender, the rules of the game, the future plans of BCCI in respect of IPL and, therefore, it was inconceivable that such insider information to which any major office bearer of BCCI
- F would necessarily be privy, would not have used and misused both potential and actual materials in the capacity of a bidder – Appellant fully succeeded in making out a prima facie case that this amendment smacked of arbitrariness and bias in favour of the second respondent and hence it was a fit case
- G for grant of injunction keeping the impugned amendment under suspension or abeyance – However, since second respondent has already participated and succeeded in the bid and is also owning Chennai Super King, it is left open to him to exercise his option whether he wishes to continue as an
- H office bearer of the BCCI or own IPL Chennai Super King –

High Court was not justified in not granting the temporary injunction claimed by appellant – Per Panchal, J: High Court was justified in not granting the temporary injunction claimed by appellant – In view of difference of opinion, matter referred to larger bench – Reference to larger bench – Constitution of India, 1950 – Articles 12, 32, 226, 227.

The first respondent, the Board of Control for Cricket in India (BCCI) is a society registered under the Societies Registration Act which has its own Memorandum of Association, Rules and Regulations. The Regulations of the BCCI incorporated rules for Players, Team Officials, Managers, Umpires and Administrators. In the Regulation, Clause 6.2.4 stated "No Administrator shall have directly or indirectly any commercial interest in any events of the BCCI." The Regulation further stated that an office bearer of BCCI is an Administrator.

The appellant who was the past President of the BCCI filed two complaints before the President of the BCCI in his capacity as past President alleging disqualification suffered by the second respondent on the ground that he being the office bearer of BCCI and also the Chairman and M.D. of India Cements Limited should not have been allowed to participate in the auction held for owning Indian Premier League (IPL) in which he was declared a successful bidder and thus owned Chennai Super King. The appellant's complaints did not receive any response which prompted him to file a suit before the High Court. The appellant sought to enforce Clause 6.2.4 against the second respondent. Just after a few days of filing of the said suit, the BCCI on 27.9.2008 introduced an amendment to Clause 6.2.4 carving out an Exception. After the amendment, the said clause read "No Administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI excluding IPL, Champions League and Twenty 20." The

- A said amendment was challenged by the appellant by filing a second suit wherein the appellant also filed two applications for injunction. In the first application, he sought a temporary injunction restraining the BCCI from permitting the second respondent to participate in the General Body Meeting but in the second application, he sought injunction against the amendment introduced by pleading to put it under suspension.

- C The Single Judge of the High Court dismissed the interim applications on the ground that no outsider can question the regulations of the society and the courts also cannot interfere in the internal management of the society. The Single Judge, however, did not consider the main issue and the amendment introduced in Clause 6.2.4. The Division Bench upheld the order of the Single Judge.

- E The question which arose for consideration in the instant appeal was whether the appellant had locus standi to file a civil suit challenging the amendment introduced by the BCCI in Clause 6.2.4 of the Regulations as he is merely the past president of the BCCI and whether the same can confer any right on him as an Administrator so as to challenge the amendment introduced by the BCCI diluting the bar of commercial interest of the Administrator in the activities of the BCCI thus generating 'conflict of interest', and in case the answers were in the affirmative, then whether the amendment introduced by the BCCI in Clause 6.2.4 was fit to be enjoined by keeping the same in abeyance/suspension as it clearly gave rise to conflict of interest between the BCCI and the second respondent since he indulged in promoting his commercial interest while functioning as an office bearer/Administrator of the BCCI who participated and succeeded in the auction for owning IPL Chennai Super King.

Referring the matter to larger bench (in view of difference of opinion), the Court A

Per J.M. Panchal, J: [Judgment made non-reportable]

Per Gyan Sudha Misra, J (Dissenting) B

HELD: 1.1. Clause 1(n) of the Memorandum and Rules & Regulations of BCCI, 2008 defines the term 'Administrator' to mean and include present and former Presidents, Vice Presidents, Hony. Secretaries, Hony. Treasurers, Hony. Jt. Secretaries of the Board of Control for Cricket in India (BCCI), past and present Presidents and Secretaries of Members affiliated to BCCI and any person nominated in any of the sub committee appointed by the BCCI as defined in the Memorandum and Rules and Regulations of the BCCI. The appellant was admittedly a past President of the BCCI and, therefore, in view of the unambiguous definition of the 'Administrator' which includes past and present Presidents and Secretaries and Members affiliated to the BCCI, it is difficult to accept the position that the appellant had no locus standi to file a civil suit challenging the amendment introduced by the BCCI. [Para 12] [468-H; 469-A-B] C D E

1.2. The view taken by Justice Panchal that only if a past President is nominated on any of the sub-committees of the BCCI, he would be deemed to be an 'Administrator' and not otherwise is not approved. This view is clearly contrary to the express definition of an 'Administrator' given out in the Regulations of the BCCI 2008. Clause 32 of the Regulation, no doubt, deals with misconduct and procedure required to deal with complaint received from any quarter or based on any report published or circulated or on its own motion in the subject matter of indiscipline or misconduct. Clause 32(v) of the Regulation also deals with a provision regarding F G H

- A expulsion of any Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selector, as the case may be, and in case any of them is found guilty and expelled by the BCCI, he shall not in future be entitled to hold any position or office or be
- B admitted in any Committee or any Member or Associate Member of the Board. Clause 32 thus clearly deals with the misconduct and procedure to deal with office bearers including all its constituents of the BCCI and for this purpose it also lays down as to who will be the competent
- C persons as member of the sub committee to deal with misconduct. But to hold that in spite of the definition of an 'Administrator' given out in Clause 1 (n) of the Regulation which specifically includes President and past President of the BCCI, the same would not include an
- D Administrator unless he is a member of the sub committee of the disciplinary committee which is constituted for dealing with the misconduct of any office bearer including all its constituents as envisaged under Clause 32, would be a far fetched interpretation. The appellant
- E in the capacity of past president of the BCCI was, therefore, an Administrator within the meaning of the said definition enumerated in Clause 1(n) of the Regulation and as such, he was competent to institute a suit in his individual capacity. Clause 1(n) of the Regulation cannot
- F be allowed to result into a provision rendering it nugatory by overlooking the express provision of the definition of Administrator which unambiguously includes past President, by extracting or attributing interpretation to it with the aid of Clause 32 of the Regulation, which is not even remotely connected with the definition and meaning
- G of the expression 'past President' but is a separate and specific provision to deal with merely the consequence of misconduct and its procedure to deal with the cases of alleged misconduct which does not envisage dealing with cases wherein the legality and efficacy of any
- H

amendment to the Regulation of the BCCI is under A
challenge. [Paras 12, 13] [469-A-G; 470-B-E]

1.3. In the instant matter while dealing with the
question of 'locus standi' as to whether the appellant was
legally entitled to institute a suit for challenging the B
amendment or not, Clause 1(n) of the Regulation which
includes 'past President' within the definition of
'Administrator' is the only relevant provision and to dilute
its effect, reliance cannot be placed on Clause 32 of the
Regulation. When Clause 1(n) clearly and explicitly C
defines the term "Administrator" and declares expressly
that an 'Administrator' shall mean and include present
and former Presidents, Vice Presidents, Hony.
Secretaries, Hony. Treasurers, Hony. Jt. Secretaries of the
BCCI, and includes even past and present Presidents and
Secretaries of Members affiliated to BCCI so much so that D
even a representative of Member or an Associate Member
of Affiliated Member of the BCCI and any person
connected with any of the sub committee appointed by
the Board defined in the Regulation of the BCCI has been
included within the definition of Administrator, it would E
be difficult to hold that such Administrator also has to be
a member of a sub committee which is constituted for
dealing with misconduct in order to challenge the
amendment introduced in the Regulation completely
missing that the power to challenge amendment of BCCI F
is altogether different from dealing with cases of
misconduct against players, umpires or administrator. A
plain and literal interpretation of the Rule clearly indicates
that the past presidents also have been unequivocally
included within the meaning of 'Administrator' and while G
an Administrator can also be included as a member of
the sub-committee for the Disciplinary Committee, it
cannot be interpreted so as to infer that former president
stands excluded from the definition of Administrator until
and unless he is a member of the Sub-Committee for H

A disciplinary proceedings. It is difficult to accept that this would be so in order to give it a purposive interpretation as no purpose can possibly be inferred from his, on the contrary, the purpose is writ large that it amounts to grant exemption to the second respondent from getting trapped into the bar imposed by Clause 6.2.4 of the Regulation of the BCCI. It is explicitly clear and not even remotely ambiguous that the object and purpose of Clause 32 is merely to lay down the procedure for dealing with misconduct of any player, umpire, administrator etc. and it is not even vaguely connected with the procedure, object or efficacy of the amendment in the Regulation nor the mode and manner of introducing amendment in the Regulation so as to infer that unless an Administrator whether past or present is member of the disciplinary committee or sub-committee, he cannot be held competent to initiate action against any illegality of the BCCI introduced by way of amendment into the Regulation or otherwise, is clearly an argument which is out of context and has absolutely no relevance to the question of *locus standi* of an administrator to challenge an amendment introduced in the Regulation. [Paras 14-16] [470-E-H; 471-A-F; 472-B-D]

1.4. The instant matter is not even remotely connected with any disciplinary action to be taken against any member, as the specific issue in the suit is whether the amendment could have been introduced by the BCCI in Clause 6.2.4 ignoring and overlooking the fact that the existing office bearer of the BCCI cannot be allowed to participate in the auction for owning IPL or Twenty 20 matches as it would clash and conflict with the interest of the BCCI. It is well-settled principle of interpretation that when the language in a statute is plain and admits of one meaning, the task of interpretation can hardly be said to arise, as in the instant matter, where the definition of 'Administrator' has been clearly given out in the

Regulation of the BCCI. But in order to oust the past President and his competence to challenge the action of BCCI from questioning the speedy and hurried amendment introduced by the BCCI in order to assist the second respondent from participating in the bidding process for owning Chennai Super King and then to interpret the definition of 'Administrator' so as to hold that he was not competent to file a suit, can hardly be held to be giving effect to a purposive and meaningful interpretation to the expression 'Administrator' as the purpose or object to serve some just cause is totally missing. The safer and more correct course of dealing with a question of construction is to take the words themselves and again if possible at their meaning without any first instance reference to cases. Literal construction of a provision cannot be allowed to assume a restrictive construction without considering its effect or consequence which would result from it for they often point out the real meaning of the words. It is no doubt true that if the application of the words literally would defeat the obvious intention of the legislation and produced a wholly unreasonable result, some violence may be done to achieve that obvious intention and produce a rational construction. But the question of inconvenience and unreasonableness must be looked at in the light of specific events. It would also be difficult to overlook the well settled position that if a particular construction does not give rise to anomalies and the words used are plain, arguments regarding inconvenience is of little weight. It is also equally well settled rule of construction of statutes that in the first instance the grammatical sense of the words is to be adhered to and the words of statute must prima facie be given their ordinary meaning. Where the grammatical construction of a statute is clear and manifest, that construction ought to prevail unless there is strong and obvious reason to the contrary but when there is no ambiguity in the words, there is no room for

A
B
C
D
E
F
G
H

A construction. If the language of a statute is clear and unambiguous, the court must give effect to it and it has no right to extend its operation in order to carry out the real or supposed intention of the Legislature/Law maker. When the language is not only plain but admits of just one meaning, the task of interpretation can hardly be said to arise. What is not included by the Legislature (law maker), the same cannot be undone by the court by principle of purposive interpretation. Taking into consideration the said salutary principles of interpretation, the definition of the term 'Administrator' does not exclude the past president from the meaning of Administrator so as to hold that the action taken by the Administrator by filing a civil suit and questioning the amendment introduced by the BCCI in Clause 6.2.4 was not fit to be entertained on the ground that the appellant had no *locus standi* to challenge the amendment on the ground of his competence or *locus standi*. [Paras 18-22] [472-G-H; 473-A-D; F-H; 474-A-B-C-G; 475-A-C]

Dental Council of India and Anr. v. Hari Parkash and Ors.
E (2001) 8SCC 61; 2001 (2) Suppl. SCR 310 – referred to.

The Attorney General v. The Mutual Tontine Westminster Chambers Association, Limited (1876) 1 Ex.D. 469; *Charles Bradlaugh v. Henry Lewis Clarke*, (1883) VIII A.C. 354; *Attorney General v. Prince Ernest Augustus of Hanover* (1957) A.C. 436 – referred to.

1.5. As the BCCI discharges important public functions such as the selection of Indian Team and the control on the players and has to discharge important public function, it cannot be expected to act arbitrarily whimsically and capriciously so as to hold that the two suits are not maintainable at the instance of the appellant who although, admittedly, is the past president of the BCCI and hence an Administrator, had no *locus standi* to file even a civil suit and seek order of injunction for

suspending the effect of amendment on the plea that as he was not a member of the sub-committee, he was not competent to challenge the amendment introduced in the BCCI Regulation. [Paras 22, 23] [475-D-F] A

M/s. Zee Tele Films Ltd. and Anr. v. Union of India and Ors. (2005) 1 SCR 913 – held inapplicable B

2.1. The appellant had not moved the High Court under its writ jurisdiction under Article 226 or Article 32 of the Constitution before this Court so as to offer a plank to the respondents to contend that as the BCCI is not a 'State' within the meaning of Article 12, an Administrator under the Regulation cannot file even a civil suit in the capacity as former past President and hence as an 'Administrator' so as to challenge an unconstitutional amendment in the Regulation of the BCCI. This is an appeal under Article 136 of the Constitution arising out of an order passed in a civil suit refusing to grant injunction which was filed in two regular civil suits. Therefore, it is difficult to accept the contention for the respondents and as accepted by Justice Panchal that merely because the BCCI cannot be regarded as an instrumentality of the State, it will have to be held that the two suits filed by the appellant are not maintainable. In order to decide whether the plaintiff has a right to file a civil suit or not, *locus standi* or competence of the plaintiff alone is to be established and not the question whether the BCCI is a State within the meaning of Article 12 of the Constitution which is a condition to be fulfilled for invoking the jurisdiction under Article 226 and/or 227 of the Constitution as also Article 32 of the Constitution but surely not for filing a civil suit or injunction application. [Paras 24, 25] [476-A-C-F-H; 477-A-B] C D E F G

2.2. When a civil suit is filed, the question as to whether a party comes under the purview of instrumentality of a State does not arise at all and the H

- A whole and sole consideration would be as to whether the plaintiff had a cause of action to file a civil suit, whether he is competent to file a suit and whether the suit is maintainable at his instance. If the civil suit is maintainable on the basis of existence of a cause of action, there is no room for assailing it by raising a constitutional issue that the suit is not maintainable since the BCCI is not an instrumentality of the State, as the said question is not relevant for adjudication of a civil suit under the provisions of the Code of Civil Procedure nor the civil courts are the Constitutional Courts to enter into that question. Once, it is held that the plaintiff/appellant is also an Administrator of the BCCI in view of the definition of Administrator, his competence to challenge the amendment introduced in the regulation of BCCI cannot be held as not maintainable on the ground that BCCI is not a 'State' within the meaning of Article 12 of the Constitution as civil suits can surely be filed and can be held maintainable if the plaintiff is able to make out a case that cause of action has arisen for filing a suit and if he is able to sustain the cause of action and he also is able to establish that he is the proper party to the suit, the same will have to be tried by the Court and cannot be dismissed on the ground of its maintainability. In fact, when a civil suit is filed for seeking civil remedy, the question whether the contesting party satisfies the condition that it is an instrumentality of the State is of no relevance as the civil courts do not have to discharge constitutional function so as to enter into this question. If it does, it would be traversing beyond the boundaries of its jurisdiction. Hence, this question is clearly irrelevant for the purpose of the controversy raised in this petition. [Paras 25, 27] [477-D-G; 479-A-D]

T.C. Mathew vs. K. Balaji Iyengar and Ors. SLP(Crl.) No.10107 of 2010 – referred to.

- H 3.1. Conflict of interest does not require actual proof

of any actual pecuniary gain or pecuniary loss as the principle of 'conflict of interest' is a much wider, equitable, legal and moral principle which seeks to prevent even the coming into existence of a future and/or potential situation which would inhibit benefit or promise through any commercial interest in which the principal actors are involved. The entire purpose of 'conflict of interest' rule is to prevent and not merely to cure situations where the fair and valid discharge of one's duty can be affected by commercial interests which do not allow the fair and fearless discharge of such duties. On this aspect, it has been substantiated that the second respondent necessarily was privy to highly sensitive information about the bidding process, the design of the tender, the rules of the game, the future plans of BCCI in respect of IPL and so on and so forth. It is inconceivable that such insider information to which any major office bearer of BCCI would necessarily be privy, would not have used and misused both potential and actual materials by the second respondent in the capacity of a bidder through his company India Cements Ltd. Thus, no artificial Chinese walls can be assumed to exist between the multiple personalities and activities of respondent No.2 both as tender issuer and as a bidder. It is for this reason that courts have levied and lined the principle of 'conflict of interest' both with the fiduciary character of a person who should not put himself in a conflict situation and with the principles of a trustee dealing with a *cestui que trust*. [Para 28.1] [480-C-H; 481-A]

Pierce Leslie Peter & Co. Ltd. v. Violet Ouchterlony Napshare & Ors. (1969) 3 SCR 203 – referred to.

3.2. Although anyone might not have indulged in reating actual loss to the BCCI by any of his actions, the act would remain that by virtue of his position as a chairman of a company who participated in the bid to wn IPL tournament and at the same time holding the

- A position of an office bearer of the BCCI, is clearly bound to result into conflict of interest of the BCCI. The fact remains that the second respondent by virtue of his position as Vice-Chairman and Managing Director of India Cements Ltd. and ex-officio Member of the Governing Council of IPL clearly came in his way to participate in the auction held by the BCCI for IPL matches and it is for this very purpose that the amendment was hurriedly introduced so that the second respondent may not be held disqualified from owning IPL Chennai Super King.
- B In fact, the concept of 'conflict of interest management' has increasingly drawn the attention of governments and citizens alike in all advanced countries including United States of America over the last several years as has been the case in much of the rest of the world. [Para 28.2] [481-C-D-E-H]
- C
- D

Bray v. Bradford (1896) A.C. 44 – referred to.

- 3.3. It is an inflexible rule of a court of equity that a person in a fiduciary position is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. The BCCI itself took care to ensure this principle by incorporating clause 6.2.4. But thereafter, the BCCI without any deliberation and discussion introduced an amendment into this clause by making Twenty -20 IPL or Champions League Matches an exception to this rule for which the respondent could not come out with any plausible explanation. Thus the appellant clearly came out with a strong prima facie case that the amendment was introduced with an oblique motive to benefit the second respondent so that he could not be held disqualified from participating in the auction and own Chennai Super King while continuing as Treasurer and thereafter as Secretary of the BCCI and hence an Administrator and thus the appellant succeeded in establishing his plea that the amendment introduced by
- E
- F
- G
- H

the BCCI in Clause 6.2.4 was an abuse of the amending power exercised by the BCCI in so far as the power of amendment was introduced not to promote the game of cricket but to promote the interest of the second respondent as it is more than clear that without the amendment, he would not have been entitled to participate in the bid as he was a Treasurer of the BCCI and hence without the amendment he was not eligible even to participate in the bid and enjoy dual status of that of an office bearer of the BCCI as Treasurer and also own Chennai Super King. [Paras 28, 29] [482-C-D-E-H; 483-A-C]

3.4. The appellant and the perception based on consideration of the concept of conflict of interest and its implication surely succeeded in making out a *prima facie* case that this resulted in serving commercial interest of the second respondent which gave rise to conflict of interest with the activities of the BCCI since he as Administrator/office bearer was able to influence the decision of the BCCI by being a treasurer and simultaneously also participated in the IPL auction, clearly giving rise to commercial interest which is barred if the amendment had not been introduced. If the Administrator is clearly barred as per Regulation from having any commercial interest in the events of BCCI, it is beyond comprehension as to how only one class of matches which was IPL, Twenty-20 and Champions League could be treated an exception by allowing an office bearer to participate in the bid but preventing him from other matches including Test Matches. The appellant thus, fully succeeded in making out a *prima facie* case that this amendment smacks of arbitrariness and bias in favour of the second Respondent and hence it was a fit case for grant of injunction keeping the impugned amendment introduced in Clause 6.2.4 of the BCCI Regulation under suspension or abeyance. However,

- A since the second Respondent has already participated and succeeded in the bid and is also owning the Chennai Super King, it may be appropriate to leave it open to him to exercise his option whether he wishes to continue as an office bearer of the BCCI or own IPL Chennai Super
- B King. The appellant succeeded in making out his case to the extent that the amendment was fit to be kept under suspension by granting an injunction against the amendment at least until the suit was finally decided. The courts below while considering the application for
- C injunction was fully competent to mould the relief in a given circumstance or situation which they have miserably failed to do. Hence, the impugned amendment dated 27.9.2008 was fit to be suspended by granting injunction against the same. This is clearly so as it would be difficult to overlook that multiple loyalties can create
- D commercial interest with the activities of BCCI thus resulting in conflict of interest since the financial or personal interest of the Board would clearly be inconsistent with the commercial and personal interest of the Administrator of the Board. In addition, the rule of
- E equity and fairness provides that no one who stands in a position of trust towards another can in matters affected by that position, advance his own interests for example, by trading and making a profit at that other's expense as the rule of legal prudence mandates that
- F once a fiduciary is shown to be in breach of his duty of loyalty, he must disgorge any benefit gained even though he might have acted honestly and in his principal's best interest. In the instant matter, when the BCCI held auction for owning IPL Team and an Administrator the
- G second respondent participated in the bid, variety of real and/or perceived conflict of interest cannot be ruled out. These included access to insider information, possible undue influence on the decision makers who held the auction and the like. The injunction is granted by
- H directing suspension of operation of the impugned

amendment dated 27.9.2008 introduced in Regulation 6.2.4 of the BCCI. In case, the second Respondent opts to continue owning and operating IPL Chennai Super King, he shall be at liberty to do so but in that event he shall be restrained from holding any office in the BCCI in any capacity. [Paras 30-32] [483-D-F-G-H; 484-A-B-D-E; 485-A-F]

Case Law Reference:

Per Gyan Sudha Misra, J

(1876) 1 Ex.D. 469	referred to	Para 20	C
(1883) VIII A.C. 354	referred to	Para 20	
(1957) A.C. 436	referred to	Para 20	
2001 (2) Suppl. SCR 310	referred to	Para 21	D
(2005) 1 SCR 913	held inapplicable	Para 24	
(1969) 3 SCR 203	referred to	Para 28.1	
(1896) A.C. 44	referred to	Para 28.2	E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3753 of 2011.

From the Judgment & Order dated 24.03.2010 of the High Court of Judicature at Madras in OSA Nos. 227 to 229 of 2009.

WITH

C.A. No. 3754-3756 of 2011.

Dr. Abhishek Manu Singhvi, Nalini Chidambaram, Rohit Bhat, Vikas Mehta, Amit Bhandari, Narhari Singh for the Appellant.

G.E. Vahanvati, AG, R.F. Nariman, P.R. Raman, Radha Rangaswamy, Akhila Kaushik, A. Poorv Kurup, Amit Sibal, Mihir Chatterjee, Hari Shankar K., K. Harishankar, Vikas Singh Jangra for the Respondents.

A The Judgment of the Court was delivered by
 GYAN SUDHA MISRA, J. 1. Leave granted.

B When the world at large is endeavouring to eradicate
 conflict of interest in public life as also in private venture and
 the respondent - Board of Control for Cricket in India (shortly
 referred to as the 'BCCI'), which enjoys monopoly status as
 regards regulation of the sport of Cricket in India, and is
 perceived to follow the doctrine of "fairness" and "good faith"
 in all its activities, has itself recognized its value and importance
 C by incorporating in its Regulation that

"No administrator shall have directly or indirectly any
 commercial interest in any events of the BCCI,"

D then whether any exception diluting its effect could be carved
 out of that without any just cause by introducing an amendment
 into the same, is the question which essentially falls for
 consideration in these appeals. Consequently, the question
 also arises whether the amendment was fit to be kept under
 suspension by grant of an order of injunction against the same
 E as a result of which the respondent No. 2 would be restrained
 from functioning as an office bearer of the BCCI in any capacity
 as his commercial interest comes in conflict with the activities
 of the BCCI. In this context the question of locus standi and
 legal competence of an 'Administrator' of the BCCI to file a suit
 F for assailing the amendment introduced in the BCCI Regulation,
 also arose for determination in the event of which only, the
 challenge could be sustained at his instance. While the suits
 are still pending in the High Court of Madras, the applications
 for injunction have been rejected against which these appeals
 G arise wherein extensive arguments have been advanced by
 learned counsel for the contesting parties in support of their
 respective pleas.

2. Having deliberated and meticulously considered the

H

same in the light of the background, facts and circumstances giving rise to these appeals as also having the benefit of the views expressed in the judgment and order of my learned Brother Panchal, J., I find it hard to subscribe to the view expressed therein and hence record reasons respectfully dissenting from the view on the issues raised in these appeals. For this purpose as also to test the relative strength and weaknesses of the arguments advanced and to have an overall view of the controversy involved, I deem it essential to relate the genesis and background of the matter under which these appeals arise.

3. The 1st respondent in these appeals which is the Board of Control for Cricket in India (for short 'BCCI') is a society registered under the Societies Registration Act which has its own Memorandum of Association, Rules and Regulations. Apart from these, BCCI also has regulations for Players, Team Officials, Managers, Umpires and Administrators which controls the game of Cricket in India and discharges public functions which enjoys monopoly status as regards regulation of the sport of Cricket. It thus earns huge revenues and is perceived to follow the doctrine of "fairness" and "good faith" in all its activities. Fortunately, the Regulations of the BCCI which incorporates rules for Players, Team Officials, Managers, Umpires and Administrators itself has incorporated a clause which is Clause 6.2.4 stating that

"No Administrator shall have directly or indirectly any commercial interest in any events of the BCCI",

thus prohibiting conflict of interest of an Administrator with that of the BCCI. The Regulation further incorporates the definition which states that an office bearer of BCCI is an administrator and Regulation of the BCCI also elaborately defines as to who is an 'Administrator'.

4. However, putting laws and regulations on paper, does not mark the end of fight against 'conflict of interest' in public

- A service and more so in private venture. More appropriately, this step has to be viewed as a beginning. Effective implementation and execution is absolutely crucial if these laws and regulations are to be meaningful. Managing 'conflict of interest' is a relatively young system, but these young systems require maturing in the form of sincerity, will and dedication and they must be effective in all spheres if they are to survive and become engrained in the institutional structures of governance by public as well as private bodies. In absence of this, even better established programmes for conflict of interest management could wither quickly, if ignored.

5. Bearing the aforesaid principle in mind, it may be relevant to record the essential details and background of the matter which indicate that the appellant herein - Sri Muthiah who is the past president of the BCCI initially filed two complaints on 5.9.2008 and 19.9.2008 before the President of the BCCI in his capacity as past President and hence an Administrator alleging disqualification suffered by the second respondent Sri N. Srinivasan who being the Chairman and M.D. of India Cements Limited should not have been allowed to participate in the auction held for owning Indian Premier League ('IPL' for short - a separate sub-committee unit of BCCI) in which he was declared a successful bidder and thus owned Chennai Super King. The Complainant/Appellant therefore sought action against him as he brought to the notice of the BCCI-President that the second respondent - Sri N. Srinivasan being an office bearer of the BCCI who is also heading a company named 'India Cements' had commercial interest giving rise to a "conflict of interest" with the Indian Premier League (for short 'IPL') Tournament for which an auction was conducted by the BCCI, in so far as he was in substantial control of the India Cements Ltd. which became the successful franchisee of the Chennai Super King and at the same time is also in the governing council of the IPL Tournament which disqualified him to participate in the bid for owning Chennai Super King.

6. The appellant's complaint did not meet with any

response whatsoever from the BCCI which prompted him to file a suit in the Madras High Court on 24.9.2008 bearing C.S.No.No.930/2008 wherein the plaintiff-appellant herein sought to enforce Clause 6.2.4 against the second respondent - Sri N. Srinivasan as in the year 2008, respondent No.2 - Sri N. Srinivasan who is the Managing Director of India Cements Ltd. became the successful bidder for the Chennai Super King in the IPL auction held by the BCCI and also held the office of the Vice Chairman and Managing Director of India Cements Ltd. which derived commercial interest in the events of the BCCI. Hence, the Plaintiff/Appellant herein raised an issue in the suit that the respondent No.2 - Sri. N. Srinivasan being the Vice-Chairman and Managing Director of India Cements Ltd. and also being Office Bearer in BCCI, violated the Regulation 6.2.4 which specifically lays down that no 'Administrator' shall have direct or indirect commercial interest in any of the events of the BCCI.

7. Just after a few days of filing of the suit by the Plaintiff/Appellant herein - Sri Muthiah, wherein he sought to enforce the policy in Clause 6.2.4 against the second respondent - Sri N. Srinivasan, the BCCI met on 27.9.2008 and introduced an amendment to Clause 6.2.4 carving out an exception therein which reads as follows:

"No Administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI excluding IPL, Champions League and Twenty 20."

Thus, by one stroke of an amendment, which was introduced with racing speed, without any deliberation by the BCCI, and without notice of 21 days to the members on this agenda which was required under the Regulation, the most commercial event of BCCI namely IPL, Champions League and Twenty 20 matches were excluded from Clause 6.2.4 diluting the entire effect of Clause 6.2.4, reducing this salutary clause into a dead letter.

A 8. The amendment introduced by the BCCI to Clause 6.2.4
was, therefore, challenged by the appellant by filing a second
suit bearing C.S.No. 1167/2008 wherein the appellant also filed
an interim application seeking an order of injunction in both the
B suits for restraining the BCCI from giving effect to the new
amendment by keeping the same under suspension which
according to the appellant, had been introduced surreptitiously
merely to benefit respondent No.2 - Sri N. Srinivasan who had
participated in the auction in pursuance to the tender issued
by the BCCI for persons and corporates to own and operate a
C team for IPL matches wherein respondent No.2 - Sri N.
Srinivasan who is the Vice-Chairman and Managing Director
of a company known as India Cements Ltd., became the
successful bidder for the Chennai Super King in the IPL auction
which according to the case of appellant, could not have been
D permitted in view of Clause 6.2.4 as it stood prior to the
amendment. But in order to obviate the bar imposed by Clause
6.2.4 which came in the way of Respondent No. 2 from
participating in the auction for IPL, an amendment was hurriedly
and most expeditiously introduced in Clause 6.2.4 in order to
E permit second respondent-Sri N. Srinivasan to participate in
the bid in which he was a successful bidder and consequently
owned Chennai Super King in spite of the bar of clause 6.2.4
which was operating against him prior to its amendment and
was introduced subsequent to the auction which was held for
owning Chennai Super King, in absence of which he would
F have been ineligible to participate in the bid and hence
disqualified. The appellant, therefore, filed two applications for
injunction and in the first application bearing No. 1041/2008 he
had sought a temporary injunction restraining the BCCI from
G permitting Respondent No.2 - Sri N. Srinivasan to participate
in the General Body Meeting but in the second application he
sought injunction against the amendment introduced by
pleading to put it under suspension.

H 9. However, the main thrust of the argument of learned
counsel for the plaintiff/appellant all through in the suit and in

the appeal before the High Court as also in the injunction application was to the effect that the amendment introduced by the BCCI in Clause 6.2.4 was an abuse of the amending power exercised by the BCCI, in so far as the power of amendment had been used not to promote Cricket, but to promote the interest of the second respondent. But the learned single Judge before whom the applications for injunction were filed in the suit was pleased to dismiss the interim applications for injunction as the single Judge compared the BCCI to private clubs and held that no outsider can question the regulations of the society and the courts also cannot interfere in the internal management of the society. The learned single Judge, however, did not consider the main issue in the two suits in the context of the amended Clause 6.2.4 and the amendment introduced in Clause 6.2.4 due to which the plaintiff-petitioner filed an appeal before the Division Bench against the rejection of the applications seeking injunction. But even on appeal, the Division Bench dismissed the appeals against which these appeals by special leave have been filed and were heard at length.

10. The first and foremost question that requires consideration in this appeal by special leave is whether the plaintiff/appellant herein can be held to be having any locus standi to file a civil suit challenging the amendment introduced by the BCCI in Clause 6.2.4 of the Regulations as he is merely the past president of the BCCI and whether the same can confer any right on him as an Administrator so as to challenge the amendment introduced by the BCCI diluting the bar of commercial interest of the Administrator in the activities of the BCCI thus generating 'conflict of interest', and in case the answers were to be held in the affirmative, then whether the amendment introduced by the BCCI in Clause 6.2.4 was fit to be enjoined by keeping the same in abeyance/suspension as it clearly gave rise to conflict of interest between the BCCI and respondent No.2 since he indulged in promoting his commercial interest while functioning as an office bearer/Administrator of

- A the BCCI who participated and succeeded in the auction for owning IPL Chennai Super King. To clarify it further, it may be reiterated that if the petitioner/appellant can be held to be having the competence or locus to file a suit against the BCCI, then whether the suit can be held to be maintainable at his
- B instance so as to enter into further question whether the alleged amendment introduced in Clause 6.2.4 can be held to be having any conflict of interest with the interest of BCCI as in that event it would permit respondent No. 2 to hold the field by functioning as office bearer of the BCCI and thus participate in all its policy
- C decisions as well as deliberations, while continuing also as Vice Chairman/ Managing Director of his firm India Cements Ltd. and simultaneously also own Chennai Super King as successful bidder in the IPL auction.

- D 11. The preliminary question on which the entire edifice of the case rests which will have the effect of making the entire case stand or crumble down, is the question as to whether the plaintiff/appellant has the locus standi to file a civil suit in the High Court of Madras so as to challenge the amendment introduced by the BCCI under Clause 6.2.4. In this context, it
- E is extremely relevant to record the definition of the term 'Administrator' in the BCCI Regulations. Clause 1(n) defines the term 'Administrator' as under:-

- F "Administrator: An Administrator shall mean and include present and former Presidents, Vice Presidents, Hony. Secretaries, Hony. Treasurers, Hony. Jt. Secretaries of the Board of Control for Cricket in India ("the Board"), *past and present Presidents and Secretaries of Members affiliated to BCCI and any person nominated in any of the sub*
- G *committee* appointed by the Board as defined in the Memorandum and Rules and Regulations of the Board."

- H 12. The plaintiff/appellant is admittedly a past President of the BCCI and hence in view of the unambiguous definition of the 'Administrator' which include past and present Presidents and Secretaries and Members affiliated to BCCI, it is difficult

to accept the position that the petitioner/appellant had no locus standi to file a civil suit challenging the amendment introduced by the BCCI. I find it hard to approve of the view taken by learned Brother Panchal, J. that only if a past President is nominated on any of the sub-committees of the BCCI, he would be deemed to be an 'Administrator' and not otherwise as it is clearly contrary to the express definition of an 'Administrator' given out in the Regulations of the BCCI 2008. Clause 32 of the Regulation no doubt deals with misconduct and procedure required to deal with complaint received from any quarter or based on any report published or circulated or on its own motion in the subject matter of indiscipline or misconduct. Clause 32 (v) of the Regulation also deals with a provision regarding expulsion of any Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selector, as the case may be, and in case any of them is found guilty and expelled by the Board, he shall not in future be entitled to hold any position or office or be admitted in any Committee or any Member or Associate Member of the Board. Clause 32 thus clearly deals with the misconduct and procedure to deal with office bearers including all its constituents referred to hereinbefore of the BCCI and for this purpose it also lays down as to who will be the competent persons as member of the sub committee to deal with misconduct. But to hold that in spite of the definition of an 'Administrator' given out in Clause 1 (n) of the Regulation which specifically includes President and past President of the BCCI, the same would not include an Administrator unless he is a member of the sub committee of the disciplinary committee which is constituted for dealing with the misconduct of any office bearer including all its constituents as envisaged under Clause 32, would be a far fetched interpretation so as to hold that unless an Administrator is appointed on a sub committee for the purpose of constituting a disciplinary committee under Clause 32 of the Regulation, he cannot be treated as an 'Administrator' within the meaning of Clause 1(n) of the Regulation and that it would not clothe him with any legal right to maintain an action in law against the BCCI

A
B
C
D
E
F
G
H

A even for challenging the arbitrary amendment, is difficult to agree and accept.

13. On the contrary, I find sufficient force and substance in the contention of the counsel for the appellant that the suits were filed by the appellant in the capacity of past president of the BCCI since he was an Administrator within the meaning of the said definition enumerated in Clause 1(n) of the Regulation. As such, he was competent to institute a suit in his individual capacity since Clause 1(n) of the Regulation cannot be allowed to result into a provision rendering it nugatory by overlooking the express provision of the definition of Administrator which unambiguously includes past President, by extracting or attributing interpretation to it with the aid of Clause 32 of the Regulation, which is not even remotely connected with the definition and meaning of the expression 'past President' but is a separate and specific provision to deal with merely the consequence of misconduct and its procedure to deal with the cases of alleged misconduct which does not envisage dealing with cases wherein the legality and efficacy of any amendment to the Regulation of the BCCI is under challenge.

14. In the instant matter while dealing with the question of 'locus standi' as to whether the petitioner/appellant was legally entitled to institute a suit for challenging the amendment or not, Clause 1(n) of the Regulation which includes 'past President' within the definition of 'Administrator' is the only relevant provision in my view and to dilute its effect, reliance cannot be placed on Clause 32 of the Regulation as it deals exclusively with the procedure for dealing with the cases of misconduct of the office bearers of the BCCI and its other constituents like Player, Umpire etc. In my view, this interpretation on the ground that the same would lead to a purposive interpretation of the expression 'Administrator' is neither literal nor purposive. When Clause 1(n) clearly and explicitly defines the term 'Administrator' and declares expressly that an 'Administrator' shall mean and include present and former Presidents, Vice

Presidents, Hony. Secretaries, Hony. Treasurers, Hony. Jt. A
Secretaries of the Board, and includes even past and present
Presidents and Secretaries of Members affiliated to BCCI so
much so that even a representative of Member or an
Associate Member of Affiliated Member of the Board and any
person connected with any of the sub committee appointed B
by the Board as defined in the Regulation of the BCCI has
been included within the definition of Administrator, it would
be difficult to hold that such Administrator also has to be a
member of a sub committee which is constituted for dealing
with misconduct in order to challenge the amendment C
introduced in the Regulation completely missing that the power
to challenge amendment of BCCI is altogether different from
dealing with cases of misconduct against players, umpires or
administrator.

15. A plain and literal interpretation of the Rule clearly D
indicates that the past presidents also have been unequivocally
included within the meaning of 'Administrator' and while an
Administrator can also be included as a Member of the Sub-
Committee for the Disciplinary Committee, it cannot be E
interpreted so as to infer that former president stands excluded
from the definition of Administrator until and unless he is a
member of the Sub-Committee for disciplinary proceedings. It
is difficult to accept that this would be so in order to give it a
purposive interpretation as no purpose in my opinion can
possibly be inferred from this, on the contrary, the purpose is F
writ large that it amounts to grant exemption to Respondent No.2
from getting trapped into the bar imposed by Clause 6.2.4 of
the Regulation of the BCCI which laid down that "Administrator
shall have no direct or indirect commercial interest in any event
of the BCCI." With utmost respect, to hold it to be a purposive G
interpretation would amount to overlooking the express
provision of the definition of Administrator given out in Clause
1(n) of the Regulation which lays down that the Administrator
will include not only existing presidents of the BCCI but also
past president, so much so that even a representative of H

A member or an associate member have been included within the definition of Administrator.

16. It is explicitly clear and not even remotely ambiguous that the object and purpose of Clause 32 is merely to lay down the procedure for dealing with misconduct of any player, umpire, administrator etc. and it is not even vaguely connected with the procedure, object or efficacy of the amendment in the Regulation nor the mode and manner of introducing amendment in the Regulation so as to infer that unless an Administrator whether past or present is member of the disciplinary committee or sub-committee, he cannot be held competent to initiate action against any illegality of the BCCI introduced by way of amendment into the Regulation or otherwise, is clearly an argument which is out of context and has absolutely no relevance to the question of locus standi of an administrator to challenge an amendment introduced in the Regulation.

17. To say that past president would mean to infer only those past president who are members of the sub committee of a disciplinary proceeding, in my view, amounts to deviating from the express meaning and intention of the Rule so as to oust the past president from the affairs of the BCCI, contrary to the express provision of the Regulation which cannot be held to be a correct or purposive interpretation of the Rule as this does not give effect to any purpose or laudable object which can be held to be serving the cause of justice, fair play and interest of the BCCI. On the contrary, it results into a restraint or hindrance to guarding the interest of the BCCI from indulging in any malpractice obstructing the course of justice and fair play.

18. We have also to bear in mind at this stage that the instant matter is not even remotely connected with any disciplinary action to be taken against any member, as the specific issue in the suit is whether the amendment could have been introduced by the BCCI in Clause 6.2.4 ignoring and overlooking the fact that the existing office bearer of the BCCI cannot be allowed to participate in the auction for owning IPL

or Twenty 20 matches as it would clash and conflict with the interest of the BCCI. A

19. We have to remind ourselves the well-settled principle of interpretation that when the language in a statute is plain and admits of one meaning, the task of interpretation can hardly be said to arise, as in the instant matter, where the definition of 'Administrator' has been clearly given out in the Regulation of the BCCI. But in order to oust the past President and his competence to challenge the action of BCCI from questioning the speedy and hurried amendment introduced by the BCCI in order to assist respondent No.2 from participating in the bidding process for owning Chennai Super King and then to interpret the definition of 'Administrator' so as to hold that he was not competent to file a suit, can hardly be held to be giving effect to a purposive and meaningful interpretation to the expression 'Administrator' as the purpose or object to serve some just cause is totally missing. B
C
D

20. If we were to dig at the labyrinth of the archives of judicial precedents, we may take note of the case of *The Attorney General vs. The Mutual Tontine West Minster Chambers Association, Limited* (1876) 1 Ex.D. 469 as also *Charles Bradlaugh vs. Henry Lewis Clarke*, (1883) VIII A.C. 354, wherein it was held that "if there is nothing to modify, alter or clarify the language which the statute contains, it must be construed in the ordinary, natural meaning of the words and sentences". The safer and more correct course of dealing with a question of construction is to take the words themselves and again if possible at their meaning without any first instance reference to cases. Literal construction of a provision cannot be allowed to assume a restrictive construction without considering its effect or consequence which would result from it for they often point out the real meaning of the words. It is no doubt true that if the application of the words literally would defeat the obvious intention of the legislation and produced a wholly unreasonable result, we must "do some violence" and E
F
G
H

- A so achieve that obvious intention and produce a rational construction. But the question of inconvenience and unreasonableness must be looked at in the light of specific events as was held in the case of *Attorney General vs. Prince Ernest Augustus of Hanover*, (1957) A.C. 436, wherein the
- B question was whether the words used in the statute were capable of a more limited construction. If not, the well settled rules of interpretation lays down that we must apply them as they stand, however unreasonable or unjust the consequence and however strongly we may suspect that this was not the real
- C intention of the law maker.

21. It would also be difficult to overlook the well settled position that if a particular construction does not give rise to anomalies and the words used are plain, arguments regarding inconvenience is of little weight. It is also equally well settled
- D rule of construction of statutes that in the first instance the grammatical sense of the words is to be adhered to and the words of statute must prima facie be given their ordinary meaning. Where the grammatical construction of a statute is clear and manifest, that construction ought to prevail unless
- E there be strong and obvious reason to the contrary but when there is no ambiguity in the words, there is no room for construction. If the language of a statute is clear and unambiguous, the court must give effect to it and it has no right to extend its operation in order to carry out the real or supposed
- F intention of the Legislature/Law maker. When the language is not only plain but admits of just one meaning, the task of interpretation can hardly be said to arise. What is not included by the Legislature (law maker), the same cannot be undone by the court by principle of purposive interpretation. This was the
- G view expressed by this Court also in the matter of *Dental Council of India and Anr. Vs. Hari Parkash and Ors.*, (2001) 8 SCC 61 wherein it was held that *it cannot ignore the obvious (provision) and object and the intention of the Legislature apparent from the context and so interpret and construe it, so*
- H *as to enlarge the scope of its application by imparting into it,*

meaning by implication, which do not necessarily arise. A

22. Taking into consideration the aforesaid salutary principles of interpretation, I am clearly of the view that the definition of the term 'Administrator' does not exclude the past president from the meaning of Administrator so as to hold that the action taken by the Administrator by filing a civil suit and questioning the amendment introduced by the BCCI in Clause 6.2.4 was not fit to be entertained on the ground that the appellant had no locus standi to challenge the amendment on the ground of his competence or locus standi. I, therefore, find it hard to subscribe and agree with the view that only if a past President is nominated on any of the sub-committees of disciplinary committee of the BCCI, he would be deemed to be an Administrator and not otherwise, is a difficult proposition to accept. B C

23. I also find sufficient force and substance in the contention of learned counsel for the appellant that as the BCCI discharges important public functions such as the selection of Indian Team and the control on the players and has to discharge important public function, it cannot be expected to act arbitrarily whimsically and capriciously so as to hold that the two suits are not maintainable at the instance of the appellant who although admittedly is the past president of the BCCI and hence an Administrator, had no locus standi to file even a civil suit and seek order of injunction for suspending the effect of amendment on the plea that as he was not a member of the sub-committee, he was not competent to challenge the amendment introduced in the BCCI Regulation. D E F

24. However, extensive arguments have been advanced by learned counsel for the respondents that assuming there is violation of any fundamental right by the Board, that will not make the Board a 'State' for the purpose of Article 12 of the Constitution. This submission although may be correct in view of the ratio of the judgment delivered in the matter of *M/s. Zee Tele Films Ltd. And Anr. Vs. Union of India And Ors.* (2005) G H

- A 1 SCR 913, what is missed by the counsel for the respondents is that the appellant herein has not moved the High Court under its writ jurisdiction under Article 226 or Article 32 of the Constitution before this Court so as to offer a plank to the respondents to contend that as the Board is not a 'State' within the meaning of Article 12, an Administrator under the Regulation cannot file even a civil suit in the capacity as former past President and hence an 'Administrator' so as to challenge an unconstitutional amendment in the Regulation of the BCCI. The counsel for the respondents has ignored while dealing with this question that the appellant had not moved the High Court for enforcement of his fundamental right under Articles 226 and 227 of the Constitution nor a writ petition in this Court under Article 32 of the Constitution has been filed alleging infringement of his fundamental right, but has moved the High Court by taking recourse to the civil remedy of filing civil suits in the capacity as former president of the BCCI merely to ensure suspension of the amendment by way of seeking injunction which was introduced as the same was not in the interest of the BCCI, since it gave rise to direct or indirect commercial interest of respondent No.2 with the events of BCCI and is barred under Regulation 6.2.4 which is sought to be diluted by introducing the amendment in the same.

25. It may be reiterated that this appeal by special leave is not a petition under Article 32 of the Constitution but is an appeal under Article 136 of the Constitution arising out of an order passed in a civil suit refusing to grant injunction which was filed in two regular civil suits. I, therefore, find it difficult to accept the contention of the counsel for the respondents and accepted by brother Panchal, J. that merely because the BCCI cannot be regarded as an instrumentality of the State, it will have to be held that the two suits filed by the appellant are not maintainable. In order to decide whether the plaintiff has a right to file a civil suit or not, locus standi or competence of the plaintiff alone is to be established and not the question whether the Board is a State within the meaning of Article 12 of the

Constitution which is a condition to be fulfilled for invoking the jurisdiction under Article 226 and/or 227 of the Constitution as also Article 32 of the Constitution but surely not for filing a civil suit or injunction application. It is perhaps in view of the Constitution Bench judgment delivered in the matter of *Zee Tele Films* (supra) due to which the appellant herein had to file a civil suit in the capacity as an Administrator that he has neither filed a writ petition under Article 226 and 227 of the Constitution before the High Court nor any writ petition under Article 32 of the Constitution before this Court so as to hold that he had no locus standi to file even a civil suit although he comes clearly within the meaning of definition of an 'Administrator'. Hence, the ratio of the decision in *Zee Tele Films* (supra) is wholly inapplicable and irrelevant to the issue involved in this appeal which arises out of civil suits and injunctions and the question of locus standi as to who can file a suit or whether the suit filed by the appellant could be held maintainable is the only relevant issue for the purpose of maintainability of the suit and the injunction applications. When a civil suit is filed, the question as to whether a party comes under the purview of instrumentality of a State does not arise at all and the whole and sole consideration would be as to whether the plaintiff had a cause of action to file a civil suit, whether he is competent to file a suit and whether the suit is maintainable at his instance. If the civil suit is maintainable on the basis of existence of a cause of action, there is no room for assailing it by raising a constitutional issue that the suit is not maintainable since the BCCI is not an instrumentality of the State, as the said question is not relevant for adjudication of a civil suit under the provisions of the Code of Civil Procedure nor the civil courts are the Constitutional Courts to enter into that question.

26. In fact, it may be relevant by way of assistance to mention regarding one latest order dated 31.1.2011 of the Supreme Court passed in Special Leave Petition (Crl.) No. 10107 of 2010 wherein a coordinate Bench of this Court upheld the judgment and order of the Kerala High Court whereby it was

- A held that the elected honorary office bearers of the Kerala Cricket Association and others like players, coaches, managers, members of various committees etc. are public servants within the meaning of Section 2 (C) of the Prevention of Corruption Act 1988 and the High Court of Kerala had
- B reversed the judgment of the Special Court at Kerala which had held that they are not public servants. To elaborate it slightly, it may be stated that Special Leave Petition (Crl.) No. 10107/2010 titled *T.C. Mathew vs. K.Balaji Iyengar and Ors.* was filed challenging the judgment of the Kerala High Court wherein the
- C substantial question of law which was raised before the Supreme Court in the aforesaid special leave petition was whether the elected office bearers of Kerala Cricket Association could be prosecuted under the Prevention of Corruption Act alleging offences under Section 13(1) (c) and
- D (d) read with Section 13(2) of the Prevention of Corruption Act and whether Section 409, 420, 468, 471, 427 (a) and 201 of the Indian Penal Code was rightly initiated against elected honorary office bearers of the Kerala Cricket Association viz. honorary members of various committees, players, coaches, manager, boys team members etc. A Bench of this Court was
- E pleased to dismiss the special leave petition in limine by order dated 31.01.2011 and thus upheld the judgment and order of the Kerala High Court which had held that the aforesaid elected officer bearers of the Kerala Cricket Association could be prosecuted under the Prevention of Corruption Act and hence
- F the prosecution had rightly been launched. This judgment although is not on the point as to whether the past President is an Administrator or he has locus standi to challenge any illegal action of the Kerala Cricket Association, it surely has a persuasive impact on the larger issue that the action of the
- G BCCI and its state units are open to challenge even under the Prevention of Corruption Act at the instance of anyone who is concerned with its activities, more so an office-bearer/ Administrator who is a past President in view of the definition of Administrator incorporated in the BCCI Regulation.

H

27. Thus once, it is held that the Plaintiff/Appellant is also an Administrator of the BCCI in view of the definition of Administrator, his competence to challenge the amendment introduced in the regulation of BCCI cannot be held as not maintainable on the ground that BCCI is not a 'State' within the meaning of Article 12 of the Constitution as civil suits can surely be filed and can be held maintainable if the plaintiff is able to make out a case that cause of action has arisen for filing a suit and if he is able to sustain the cause of action and he also is able to establish that he is the proper party to the suit, the same will have to be tried by the Court and cannot be dismissed on the ground of its maintainability. In fact, when a civil suit is filed for seeking civil remedy, the question whether the contesting party satisfies the condition that it is an instrumentality of the State is of no relevance as the civil courts do not have to discharge constitutional function so as to enter into this question. If it does, it would be traversing beyond the boundaries of its jurisdiction. Hence, in my opinion, this question is clearly irrelevant for the purpose of the controversy raised in this petition.

28. The next question that needs to be addressed in this appeal is whether the High Court was justified in rejecting the application for injunction at least to the extent of keeping the amendment introduced in Clause 6.2.4 of the Regulation of the BCCI in abeyance specially when the appellant succeeded in making out a prima facie case to the effect that participation of respondent No.2 in the bid held for IPL matches and thus own Chennai Super King directly or indirectly came in conflict with the interest of BCCI as respondent No.2 during and after bidding process for the IPL Team admittedly held positions in four capacities which are as follows:-

- (i) Treasurer of BCCI;
- (ii) Vice-Chairman and Managing Director of India Cements Ltd.

A (e) Chairman, Managing Committee, Chennai Super King; and

(f) Ex-officio Member of the Governing Council of IPL.

3 Additionally, with effect from September 2008, respondent No.2 became the Secretary of BCCI and, therefore, the Ex-officio Chief Executive of BCCI and also Convener of the Meetings of the Committees of BCCI including IPL and Champions League. In this context, I find substance in the plea of learned counsel appearing for the appellant that conflict of interest does not require actual proof of any actual pecuniary gain or pecuniary loss as the principle of 'conflict of interest' is a much wider, equitable, legal and moral principle which seeks to prevent even the coming into existence of a future and/or potential situation which would inhibit benefit or promise through any commercial interest in which the principal actors are involved. I also equally find substance in the contention that the entire purpose of 'conflict of interest' rule is to prevent and not merely to cure situations where the fair and valid discharge of one's duty can be affected by commercial interests which do not allow the fair and fearless discharge of such duties. On this aspect, it has been substantiated that respondent No.2 necessarily was privy to highly sensitive information about the bidding process, the design of the tender, the rules of the game, the future plans of BCCI in respect of IPL and so on and so forth. It is contended that it is inconceivable that such insider information to which any major office bearer of BCCI would necessarily be privy, would not have used and misused both potential and actual materials by respondent No.2 in the capacity of a bidder through his company India Cements Ltd. Thus, I find it is correct to submit that no artificial Chinese walls can be assumed to exist between the multiple personalities and activities of respondent No.2 both as tender issuer and as a bidder. It is for this reason that courts have levied and lined the principle of 'conflict of interest' both with the fiduciary character of a person who should not put himself in a conflict situation and with the principles of a trustee dealing with a cestui que

trust. In support of this submission, learned counsel has relied A
on *Pierce Leslie Peter & Co. Ltd. vs. Violet Ouchterlony*
Wapshare & Ors. (1969) 3 SCR 203 paras 3 and 4. In this
context, the reasoning to the effect that there was no clear case
of 'conflict of interest' which could be cited by the appellant with B
adequate proof has no force in view of Clause 6.2.4 as it clearly
incorporates that no Administrator shall have any direct or
indirect commercial interest in the events of the BCCI and
amendment was introduced in this clause making IPL
Champions League and Twenty -20 the international matches
an exception to the same. Thus although anyone might not have C
indulged in creating actual loss to the BCCI by any of his
actions, the fact remains that by virtue of his position as a
Chairman of a company which participated in the bid to own
IPL tournament and at the same time holding the position of
an office bearer of the BCCI, is clearly bound to result into D
conflict of interest of the BCCI. It is altogether a different matter
that the appellant has also tried to cite example that the
respondent No.2 as franchise holder for Chennai Super King
was compensated approximately for Rs.47 crores by
respondent No.2 on account of cancellation of a match. E
However, this is not the stage to rely on this part of the allegation
even if it is by way of an example as the suit is still pending
before the High Court, but the fact remains that the respondent
No.2 by virtue of his position as Vice-Chairman and Managing
Director of India Cements Ltd. and ex-officio Member of the
Governing Council of IPL clearly came in his way to participate F
in the auction held by the BCCI for IPL matches and it is for
this very purpose that the amendment was hurriedly introduced
so that the respondent No.2 may not be held disqualified from
owning IPL Chennai Super King. G

28. In fact, the concept of 'conflict of interest management'
has increasingly drawn the attention of governments and
citizens alike in all advanced countries including United States
of America over the last several years as has been the case
in much of the rest of the world. Even a century ago in the case H

A of *Bray vs. Bradford* (1896) A.C. 44, it was held that the directors as fiduciaries must not place themselves in a position in which there is conflict of interest between the duties to the company and their personal interests or duties to others. The courts have adopted a severe method of ensuring that the trust and confidence reposed in a fiduciary such as a director are not abused and the fundamental principle was stated by Lord Herschell in the aforesaid case (*supra*) when it was held as follows:-

C "it is an inflexible rule of a court of equity that a person in a fiduciary position...is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principle of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus, prejudicing those whom he was bound to protect. It was therefore deemed expedient to lay down this positive rule".

F In fact, the BCCI itself took care to ensure this principle by incorporating clause 6.2.4 wherein it laid down that "no administrator shall have directly or indirectly any commercial interest in any of the events of the BCCI". But thereafter, the BCCI without any deliberation and discussion introduced an amendment into this clause by making Twenty -20 IPL or Champions League Matches an exception to this rule for which the respondent could not come out with any plausible explanation.

G 29. Thus in my view, the appellant clearly came out with a strong prima facie case that the amendment was introduced with an oblique motive to benefit respondent No.2 so that he could not be held disqualified from participating in the auction and own Chennai Super King while continuing as Treasurer and

thereafter as Secretary of the BCCI and hence an Administrator and thus the appellant in my considered opinion, succeeded in establishing his plea that the amendment introduced by the BCCI in Clause 6.2.4 was an abuse of the amending power exercised by the BCCI in so far as the power of amendment was introduced not to promote the game of cricket but to promote the interest of the 2nd respondent as it is more than clear that without the amendment, Respondent No. 2 would not have been entitled to participate in the bid as he was a Treasurer of the BCCI and hence without the amendment he was not eligible even to participate in the bid and enjoy dual status of that of an office bearer of the BCCI as Treasurer and also own Chennai Super King.

30. The plaintiff/appellant in my view and perception based on consideration of the concept of conflict of interest and its implication surely succeeded in making out a prima facie case that this resulted in serving commercial interest of respondent No. 2 which gave rise to conflict of interest with the activities of the BCCI since Respondent No.2 as Administrator/office bearer was able to influence the decision of the BCCI by being a treasurer and simultaneously also participated in the IPL auction, clearly giving rise to commercial interest which is barred if the amendment had not been introduced. Even at the risk of repetition, it is essential to highlight that the BCCI regulation itself acknowledges this position when it lays down in clause 6.2.4 that "no Administrator shall have direct or indirect commercial interest in any events of the BCCI", but dilutes its effect by amending it and making IPL, Champions League and Twenty-20 matches as an exception which is the most lucrative and revenue generating event. If the Administrator is clearly barred as per Regulation from having any commercial interest in the events of BCCI, it is beyond my comprehension as to how only one class of matches which was IPL, Twenty-20 and Champions League could be treated an exception by allowing an office bearer to participate in the bid but preventing him from other matches including Test Matches. The plaintiff/appellant,

- A in my opinion thus, fully succeeded in making out a prima facie case that this amendment smacks of arbitrariness and bias in favour of the Respondent No.2 and hence it was a fit case for grant of injunction keeping the impugned amendment introduced in Clause 6.2.4 of the BCCI Regulation under suspension or abeyance.

31. However, since the Respondent No.2 has already participated and succeeded in the bid and is also owning the Chennai Super King, it may be appropriate to leave it open to him to exercise his option whether he wishes to continue as an office bearer of the BCCI or own IPL Chennai Super King since in view of Regulation 6.2.4, bereft of amendment, he was not eligible even to participate in the IPL auction as it clearly generated commercial interest of an office bearer/Administrator in the events of BCCI, directly or indirectly. In my considered view, the plaintiff/appellant succeed in making out his case to the extent that the amendment was fit to be kept under suspension by granting an injunction against the amendment at least until the suit was finally decided. The Courts below while considering the application for injunction was fully competent to mould the relief in a given circumstance or situation which it has miserably failed to do. But as the event of bidding has already taken place even before the amendment was introduced in the BCCI Regulation and the amendment was fit to be suspended, the respondent No. 2, in my opinion, will have to exercise his option whether he wishes to continue owning IPL and operate Chennai Super King or is more interested in managing the affairs of BCCI as an Administrator with fairness, probity and rectitude by divesting himself from commercial interest which directly or indirectly results in conflict of interest with the activities of the BCCI which was clearly barred under Regulation 6.2.4 but has been diluted by introducing an amendment after the IPL auction had already been held when Respondent No.2 was ineligible even to participate in the auction. Hence, the impugned amendment dated 27.9.2008 was fit to be suspended by granting injunction

H

against the same. This is clearly so as it would be difficult to overlook that multiple loyalties can create commercial interest with the activities of BCCI thus resulting in conflict of interest since the financial or personal interest of the Board would clearly be inconsistent with the commercial and personal interest of the Administrator of the Board. In addition, the rule of equity and fairness provides that no one who stands in a position of trust towards another can in matters affected by that position, advance his own interests for example, by trading and making a profit at that other's expense as the rule of legal prudence mandates that once a fiduciary is shown to be in breach of his duty of loyalty, he must disgorge any benefit gained even though he might have acted honestly and in his principal's best interest. In the instant matter, when the BCCI held auction for owning IPL Team and an Administrator - the respondent No.2 participated in the bid, variety of real and/or perceived conflict of interest cannot be ruled out. These included access to insider information, possible undue influence on the decision makers who held the auction and the like.

32. Hence, I deem it appropriate to allow these appeals and grant injunction by directing suspension of operation of the impugned amendment dated 27.9.2008 introduced in Regulation 6.2.4 of the BCCI. In case, the Respondent No. 2 - Sri. N. Srinivasan opts to continue owning and operating IPL Chennai Super King, he shall be at liberty to do so but in that event he shall be restrained from holding any office in the BCCI in any capacity whatsoever in view of the reasons assigned hereinabove.

ORDER

Since there is difference of opinion, let the papers of these matters be placed before the Hon'ble the Chief Justice of India for being assigned to appropriate Bench.

D.G. Matter referred to larger Bench.