

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CS(OS)1195/2008

Date of Decision: 21st April, 2009

SHRI DEEPAK R. MEHTRA & ORS..... Plaintiff

Through: Mr. Paramjit Singh Patwalia, Senior Advocate, Mr. Saurabh Suman Sinha, Mr. B.B. Gupta, Mr. Aman Preet Singh Rahi , Advocates for the Plaintiff

Versus

**NATIONAL SPORTS CLUB OF INDIA Defendants
&ORS.**

Through:

Mr. V.P. Singh, Senior Advocate and Mrs. Anju Bhattacharya, Advocates for the Respondent No. 1
Mr. Vinay Bhasin and Mr. B.R. Handa, Senior Advocates and Ms Hiteshi Arora, Advocates for the Defendant No. 2
Mr. Mohan Batra, Advocate for the Defendant No. 31
Mr. D.K. Rastugi and Ms. Shawana Bari, Advocates for the Defendants No. 2, 21,32, 34, 35, 37, 40, 50 and 51
Mr. Amit Sharma, Advocate for the Defendants No. 7, 9, 29, 30, 33, 36, 39, 45, 46, 48 and 54
Ms Prerna Mehta, Advocate for the Defendants No. 55 to 59

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The suit entails interpretation of the rules & regulations of the defendant No.1 club, the power/jurisdiction of this court to do so and the reliefs if any flowing from such interpretation. The suit was accompanied with an application for interim relief being I.A.No.7420/2008. After the service of the defendants and during

the hearing on 26th September, 2008 it was agreed by the counsels for all the appearing parties that the question whether the President of the Club can be elected from amongst the members of the Central Council of the Club only or can be any other member of the Club depends on the interpretation of the rules of the Club and the parties do not need to lead any evidence for the said purposes and the decision on the said interpretation would govern the decision on the suit itself. The facts discussed hereinbelow shall thus be confined to this aspect only. The suit itself to the above extent is for disposal.

2. The five plaintiffs are the members of the Club and of which the plaintiffs No.1,2&3 are also the elected members of the Central Council of the Club. The constitution of the Club is as a society registered under the Societies Registration Act, 1860. The defendant No.2 is pleaded to have usurped the post of the President of the Central Council of the Club, in spite of not being a member of the Central Council. The defendants No.3 to 59 are the other members of the Central Council of the Club.

3. The Club has 20,000 members, of which 5,000 are in Delhi and approximately 15,000 in Mumbai; the defendant No.2 has been the President of the Central Council of the Club continuously for the last over 15 years; CS(OS) No.1243/2006 was instituted by some of the members of the Club inter-alia for directions as to the election to the Central Council of the Club; in the said suit vide order dated 25th April, 2007, Justice (Retd.) S.K. Agrawal was appointed to ensure the smooth conduct of elections and to settle any issues that any party may have with regard to the conduct of the elections, for a period of four years from 2007 to 2010; election to the 14 vacant posts of Central Council was held on 7th October, 2007 and 14th October, 2007 in Delhi & Mumbai respectively and in which the

defendant No.2 as well as the candidates stated to have been fielded by him lost the election to the Central Council; that a meeting of the AGM of the newly constituted Central Council was held on 24th October, 2007 in which objection was taken to the chairing of the same by the defendant No.2; that the said AGM was adjourned and stated to have not been held till the institution of the suit; that a meeting of the Central Council was held at Delhi on 8th December, 2007; CS(OS) No.2368/2007 was filed before this court seeking directions for conduct of the elections to the post of President and other post of Executive Committee of the Club, in this court; on 17th December, 2007 vide order in the said suit Justice (Retd.) S.K. Agrawal was appointed as an observer for the elections to the Executive Committee by the Central Council; that in the said meeting the defendant No.2 declared himself to be the President and sought to chair the meeting in such position; upon representation by certain members of the Central Council the observer appointed by this court decided that no non-member could be present at the time of elections to the Executive Committee by the Central Council and that the elections be held through secret ballot; applications in this regard were filed in CS(OS) No.2368/2007.

4. CS(OS) No.2368/2007 was disposed of by this court vide judgment dated 24th March, 2008 laying down directions for holding of the elections to the Executive Committee by the members of the Central Council. Another meeting of the Central Council was held on 17th May, 2008, in which the Secretary General of the Club produced a prepared list signed prior to the meeting by 32 members of the Central Council supporting the name of defendant No.2 as the President of the Central Council and in pursuance to which the

defendant No.2 occupied the office of the President of the Central Council.

5. This suit was filed seeking the reliefs of declaration that a non-member of the Central Council could not be an office bearer of the Central Council; declaration to the effect that the decision taken in meetings purportedly of the Central Council but in which others had participated were not the meetings of the Central Council and the decisions taken therein were not of the Central Council; for declaration of the election of the defendant No.2 as the President of the Club and the decisions taken by him as President of the Central Council, as illegal and a decree for permanent injunction debarring the defendant No.2 from attending the meetings of the Central Council or Executive Committee and Regional Committees of the Club. However, the hearing of the suit has been confined as aforesaid to the aspect of interpretation of the rules qua the President only. This judgment is thus confined to that aspect only.

6. The Club filed a written statement taking the following defences:-

- a. That under the rules & regulations of the Club there is nothing restricting the election of the President from amongst the members of the Central Council only.
- b. The role of the Central Council was like that of an electoral college which elects the office bearers and there was no restriction whatsoever on any member from contesting the elections.
- c. That in all the past years, the members of the Club have interpreted and applied the rules & regulations of the

Club as not limiting the office bearers to the members of the Central Council.

- d. All members of the Club have the right to hold, or contest the election for the post of office bearers of the Club unless specifically excluded by the rules & regulations. The rules & regulations do not provide any such exclusion.
- e. The rules & regulations do not confer any management power on the Central Council and save as an electoral college, all the powers are vested in different bodies and there are no residuary powers to be exercised by the Central Council.
- f. That the majority view is binding on all the members of the Club, the plaintiffs who are in minority are not entitled to approach this court to override the view of the majority.
- g. The present suit is in the nature of a challenge to the election and in an election the will of the majority prevails and cannot be overridden by the court.

The Club thus supported the defendant No.2

7. The defendants No.56 to 59 filed affidavits supporting the plaintiffs. The defendant No.2 filed a separate written statement taking inter-alia the same pleas as the Club. Defendants No.32,34,35,37,40,50,&51 also filed a written statement inter-alia supporting the Club and the defendant No.2. The plaintiffs filed the replications to the aforesaid contesting written statements. The

other defendants did not file any pleadings. The senior counsels for the plaintiffs, Club and the defendant No.2 have been heard.

8. In view of the aforesaid state of proceedings, though the stage for framing of issues did not arise but in my view the adjudication has to be on the following aspects and on which the hearing also was confined:-

- A. Whether this court ought to interpret the rules & regulations of the Club in spite of the majority of the members of the Central Council of the Club having interpreted them to mean that even a non-member to the Central Council can be the President of the Club or this court should refrain from doing so, being an interference with the internal management of the Club.
- B. If the court is to exercise the jurisdiction to interpret the rules & regulations, whether the rules & regulations permit a non-member of the Central Council to be the President thereof.
- C. If the said interpretation is to be found in favour of the plaintiffs, what consequential reliefs are to be granted to the plaintiffs in the suit.

9. As far as the objection to the jurisdiction of this court is concerned, undoubtedly the consistent view is that the courts should refrain from interfering with the internal management of a society or a Club. The said societies/Clubs are governed by their own Charter and the court is not to sit in appeal over the decisions taken by the management or the majority in the society. However, in my view, that principle is limited to the decisions taken in accordance with the said Charter or rules & regulations. Once it is found that the

decisions have been taken by the persons authorized to take such decisions under the said Charter/rules & regulations and/or in accordance therewith, the courts will not interfere with the same, even if challenged by the persons or members aggrieved by the said decision. However, such decisions are to be distinguished from cases where the challenge is not to the decision itself but to the authority under the Charter/Rules & Regulations of the person taking the decision and/or where the dispute is as to the interpretation of the Charter or the rules & regulations, as in the present case. Such disputes having arisen, if the courts are to refrain from exercising their jurisdiction, it would tantamount to the aggrieved persons being left with no remedy at all, in as much as the management of the society or the Club could then be hijacked by persons not authorized under its Charter/Rules/Regulations to do so.

10. In the present case, it is more so in view of the Observer appointed by this court having found on the interpretation of the rules & regulations of the Club that a non-member to the Central Council could not be the President of the Club and the judgment dated 24th March, 2008 in CS(OS) NO.2368/2007 also finding so; of course the senior counsels for the Club and the defendant No.2 have urged that that part of the judgment though final is obiter. It is significant that in spite of the finding of the observer and the judgment aforesaid, in the meeting of the Central Council of the Club held on 17th May, 2008, no regard whatsoever was shown to the same. In these circumstances, in my view, the suit by the members of the Club or of the Central Council, for declaration that a non-member to the Central Council cannot be the President thereof or of the Club, lies before this court and cannot be thrown out on the doctrine of indoor management. Here no aspect of indoor

management of Club is involved, but the interpretation of the rules & regulations of the Club is for consideration. I must record that though objection in this regard is taken in the written statements but neither arguments were addressed nor any case law cited in this regard.

11. The Apex Court in **T.P. Daver Vs Lodge Victoria** AIR 1963 SC 1144 held that jurisdiction of a civil court in such matters is rather limited; it cannot obviously sit as a court of appeal from decisions of such body; it can set aside the order of such a body, if the body acts without jurisdiction or does not act in good faith or acts in violation of principles of natural justice. The Apex Court again in **B.C.C.I. Vs Netaji Cricket Club** AIR 2005 SC 592, in para 82 of the judgment held that an association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative – Necessarily, the office bearer in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner. In **Kalyan Kumar Dutta Gupta Vs B.M. Verma** AIR 1995 Cal. 140 (DB), the civil court was held to have jurisdiction where allegation was that the club had followed a procedure not warranted by the Rules of the Club.

12. Rule 98 under the Chapter “President” in the rules & regulations of the Club relied upon by the senior counsel for the defendant No.1 is as under:-

“If any question arises regarding in interpretation of these rules or any bye-laws or regulations of the Club the same shall be referred to the President and in his absence to the Vice-President for his decision and his decision shall be final and conclusive.”

13. The interpretation in the present case is concerned with who can be the President. Such an interpretation in my view cannot be left to the President whose election or eligibility to be the President is under challenge. It is the basic principle of natural justice that none can be a judge in his own cause. If the interpretation of the Rules and Regulations as canvassed by the plaintiffs is found to be correct, there would be no President who can interpret the said rules & regulations. In this regard **Daly's Club Law**, 6th Edition cited with approval in **Chiranjani Jadavji Pandia Vs Bhupesh Chandra Dutt**, AIR 1979 Cal. 289 can be quoted.

“The Club cannot oust the jurisdiction of the courts by making the committee the final arbiter on questions of law; and the construction of the Rules is always a question of law.”

14. I thus hold that this court ought not to refrain from adjudicating the controversy as in this suit, on the defence of the principle/doctrine of indoor management.

15. The next point of controversy is regarding the interpretation of the rules & regulations qua the election of the President of the Club. The relevant rules & regulations of the Club in this regard are mentioned herein below:-

a) Rule 1(d) provides:-

The “Central Council” means the Council of the Club constituted of the members for the time being of the Central Council as provided in these rules.

b) Rule 1(e) is as under:-

The “Executive Committee” means the Committee of the office bearers of the Club constituted of the members for the time being and from time to time

of the Executive Committee as provided in these rules. "Regional Committee" means the Committee constituted by the Executive Committee to look after the affairs of the Region as provided under the rules

c) Rule 1(h) as provided under the rules:-

"President" and Vice-President" unless the context indicates otherwise, shall mean the President and Vice President of the Central Council and the Executive Committee under these rules.

d) Under the Chapter "General Meetings of the Club", the following Rules are relevant.

33. A General Meeting shall be held once at least in every year at such time, not being more than 15 months after the holding of the last preceding General Meeting and at such place as may be determined by the Executive Committee. Such General Meetings are to be called the "Ordinary General Meeting" and all other General Meetings are to be called "Extraordinary General Meeting".

Rules 40,43,45 &46 are as under:-

40. **Every Ordinary General Meeting shall be competent**, notice having been given for the purpose for which it is convened and of the business to be transacted there at, to receive and adopt the audited accounts and the Annual Report of the Executive Committee and of the Auditors, to receive the report of the Scrutiny Committee appointed under R.55(c) and **to announce the names of the members elected to the Central Council as a result of the Ballot**; to appoint the auditors for the ensuing year and to fix the remuneration of the auditors and to transact any other business which under these rules ought to be transacted at an Ordinary General Meeting and any other business of which special mention shall have been made in the Notice or Notices convening the meeting PROVIDED THAT the Executive Committee may for any adequate reason extend the period of the holding of such meeting.

43. The President of the Central Council and in his absence the Vice-President shall be entitled to take the chair at every General Meeting. If there be no President or if at any meeting the President is not present within 15 minutes after the time appointed for holding of such meeting or is unwilling to act, the Vice-President shall take the chair at a General Meeting. If there be no Vice-President or if at any meeting the Vice-President is not present within fifteen minutes after the time for holding of such meeting or is unwilling to act, the members present shall choose someone of their number to be the Chairman of that meeting.

45. Every questions submitted to a General Meeting shall be decided on a show of hands and in case of equality of votes, the Chairman shall have a casting vote. No member shall be entitled to vote by proxy of attorney. On a show of hands every member present in person and entitled to vote shall have one vote.

46. A declaration by the Chairman that a resolution has been carried or carried by a particular majority and lot, or not carried by a particular majority and an entry to that effect in the books of the proceedings of the Club shall be conclusive evidence of the fact of the number or proportion of the votes recorded in favour of or against that resolution. Any member present at the meeting may request for repoll.

e) Under the Chapter "Central Council", the following rules are relevant:-

47(a) The Central Council of the Club shall consist of 60 members. Thirty members to be elected from each Region from all members of the Club so as always to have equal parity between the Bombay members and the Delhi members in the Central Council.

(b) Election to Central Council of the Club shall be by members present and voting by Secret Ballot.

49. The Members of the first Central Council shall continue to hold office till the expiration of five years from the date of the Registration of the Club, and thereafter till their successor are appointed by the Club at the ensuing Ordinary General Meeting. In every subsequent year one fifth of the Members for the time being of the Central Council or if their number is not 5 or a multiple of 5 then the number nearest to the one fifth shall retire by rotation.

50. The Members to retire from the Central Council shall in every year be those who have been longest in office since their last election but as between persons who become members on the same day those to retire shall (unless they otherwise agree amongst themselves) be determined by lot. A retiring members shall retain office until the dissolution of meeting at which re-election is decided or his successor is elected at the meeting or an adjourned meeting. A retiring member shall be eligible for re-election.

51. The Club shall at any General Meeting at which any Member of the Council retires in manner aforesaid fill up the vacated office by electing a like number of persons to be members and may fill up any other vacancy.

53. The Club in General Body Meeting may subject to the provisions of these Rules from time to time reduce the number of Members of the Council, in such a manner that equal representation on the Central Council will be maintained from the each Regions.

58. The Central Council shall meet not less than once in every year for the transaction of the business.

60. Questions arising at any meeting shall be decided by a majority of votes and in case of equality of votes the President shall have a second or casting vote.

61. The President of the Central Council and in his absence the Vice-President shall preside as President of every meeting of the Central Council but if there be no President or if at any meeting the President is not present within 15 minutes of the time appointed for holding the meeting or is unwilling to act, the Vice-President shall take the Chair at a General Meeting. If there be no Vice-President or if at any meeting the Vice-President is not present within fifteen minutes after the time for holding of such meeting or is unwilling to act, the Members of the Central Council present shall choose someone of their number to be the President of the meeting.

f) Under the Chapter "Powers of the Central Council", the following rules are relevant:-

68. The Central Council may exercise all or any of the following powers:

(a) Suggest ways and means for carrying out the objects of the Club.

(b) **Elect President, Vice-President, Secretary or Honorary Secretary and a Treasurer or Honorary Treasurer of the Club in such manner as to assure as far as possible that the posts of President, Vice-President shall be shared between the Regions. The posts of Honorary Secretary, Honorary Treasurer shall be shared between the Regions alternately every two years unless otherwise mutually agreed to.**

(c). Appoint and remove members of the Executive Committee so as always to maintain equal parity between members from Delhi and members from Bombay and regulate its proceedings.

(d). Elect patrons-in-chief, patrons and vice-patrons of the Club.

(e). Exercise all such powers as are not by these Rules or by any resolution of the Club delegated or entrusted to the Executive Committee.

70. The Central Council shall appoint all the members of the Executive Committee in equal proportion from each Region and these appointments shall be made on the recommendation of the members of the respective Region. Similarly the vacancy or vacancies shall be filled in the same manner.

71. The Secretary or Honorary secretary, and the Treasurer or Honorary Treasurer of the Club shall be the Secretary or Honorary Secretary, Treasurer or Honorary Treasurer respectively of the Executive Committee.

72. The Central Council may frame rules and regulations for the conduct of business by the Executive Committee and may vary, alter and modify the same from time to time and subject to any such rules the meetings and proceedings of the Executive Committee, shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Central Council. The Executive Committee may frame any Rules for the conduct of its business not inconsistent with these Rules or any rules framed by the Central Council for the conduct of business by the Executive Committee.

74. Unless otherwise determined by the Central Council seven members of the Committee shall be the quorum of the Executive Committee.

78. The Central Council may fill up any vacancy in the Executive Committee.

g) Under the Chapter "Powers of the Executive Committee", the following rules are relevant:-

87. The Management and control of the Club shall be vested in the Executive Committee who shall be governing Body of the Club and who may exercise all such powers and do all such acts and things as the Club is authorized to exercise and do by the act or by the Memorandum of Association or by these

rules save and except those powers which are expressly vested in the Regional Committee by virtue of such Rules & Regulations as are hereinafter mentioned. And also are not by these rules or by the act directed or required to be exercised or done by the Club in the General Body Meeting but subject nevertheless as to such acts or things as are not regulated by the act or by these rules to such regulations and directions as may from time to time be determined upon or given in General Body Meeting provided that no such regulations or direction shall invalidate any prior act of the Executive Committee which would have been valid if the regulation or direction had not been made or given.

h) Under the Chapter "President" are the following rules:-

96(a). Subject to the powers conferred on the Central Council the Executive Committee and the Regional Committee the President and in his absence the Vice-President shall be the head of the Club with all powers to implement the resolutions of the Central Council, the Executive Committee and the Regional Committee from time to time and to carry on the activities of the Club and also such other activities as may be conducive to the fulfillment of the subjects of the Club or any of them and shall also be ex-officio President of the Executive Committee.

(b). The action taken from time to time by the President and in his absence the Vice-President shall be placed for confirmation before the next meeting of the Central Council or of the Executive Committee if it falls within its province.

97. The President and in his absence the Vice-President in an emergency shall have powers to take all measures necessary to safeguard the interests of the Club and to carry on its activities; but the action taken by the President and in his absence by the Vice-President shall be placed for confirmation within three months before the next meeting of the Central Council or before the next meeting of the Executive Committee if it falls within its province.

98. If any question arises regarding in interpretation of these rules of any bye-laws or regulations of the Club the same shall be referred to the President and in his absence to the Vice-President for his decision and his decision shall be final and conclusive.

i) Under the Chapter "Regional Committees", the following are the relevant rules:-

112 (a). The Executive Committee shall constitute Regional Committee for different regions and nominate its members from amongst the members belonging to the region as may be recommended by the Executive Committee members of the particular region.

(b). A Regional Committee shall consist of upto 20 members.

(c). The Executive Committee shall so nominate the members of a Regional Committee as to maintain the following ratio in its membership:

80% of the members shall be from the members of the Central Council/Executive Committee and the balance 20% from amongst the members of the particular region.

(d). Every Regional Committee shall have the following Office Bearers:

- (i) Chairman
- (ii) Vice-Chairman
- (iii) Hony. Regional Secretary
- (iv) Hony. Regional Treasurer.

(e). The Executive Committee shall elect the Office Bearers of the Regional Committee as may be recommended by the Executive Committee members of the particular Region. The Chairman of the Regional Committee may be elected from amongst the members of the Central Council/Executive Committee or any person of standing who may not be a member of the Club but

whose election in the opinion of the Executive Committee will be beneficial to the interest of the Club as may be recommended by the Executive Committee members of the particular Region. All other office bearers shall be elected from amongst the members of the Executive Committee by the Executive Committee members of the particular Region.

(f)

16. From Rule 1(h) it follows that there is only one President of the Club and who is President of the Central Council as well as the Executive Committee of the Club. The management structure of the Club, from a reading of the Rules thereof, is democratic. It may be relevant in this regard that the Club has procured at a very low price premium a prime piece of real estate in the heart of the city of Delhi. The same appears to be the position in Mumbai also. Such prime real estate at low price premium was given by the Government to the Club because it was felt that the Club is to and will perform the functions for the general benefit and betterment of the society and/or its members. It was not meant for the benefit of a individual or a group of individuals. Such allotments of land at prices much below the prevalent market price have since become common to schools, hospitals and even other clubs. A pre condition to the said allotment is that it can only be to a society. A society by its very nature has to comprise of unrelated individuals and under Section 4 of the Societies Registration Act is to annually intimate to the Registrar, the particulars of its governing body entrusted with the management of its affairs. Thus the purport of making such allotments in favour of the societies is to allow the management and constitution of the club to remain democratic and in the hands of all the members/constituents and not in the hands of a few. In recent times claim has been made for large societies performing public

functions to be treated as a 'State' within the meaning of Article 12 of the Constitution of India and such claims have found favour in minority view in the judgments. It has in any case been held that such bodies have a duty to conduct their affairs in a fair manner.

17. A registered society is a legal entity and has a legal status. The Societies Registration Act is meant for proper functioning of societies and provisions thereof have to be interpreted to ensure that benefit accrues to all members and for the subject for which it is enacted. Under Section 5 of the Societies Registration Act, the property thereof vests in the Governing Body of the society, for the time being.

18. All the members of the defendant No.1 Club in the present case are to participate in the election to the members of the Central Council of the Club which is the supreme continuous body of the Club with 1/5th of its members retiring every year. This process while remaining democratic, provides continuity in the Central Council. The members of the Central Council are to be directly elected by the members of the Club. Though the senior counsels for the defendants No. 1&2 are right to an extent in contending that Central Council is only an electoral college for the Executive Committee of the Club and that the entire management of the Club vests in the said Executive Committee with only the residuary power to be exercised by the Central Council but in my view, the same cannot undermine the Central Council being the supreme elected body of the Club and having the power to give the Club a direction/policy. Rule 68 (c) empowers the Central Council not only to elect/appoint members of the Executive Committee but also to remove them and to regulate the proceedings of the Executive

Committee. Thus, it cannot be said that the Central Council after electing the Executive Committee is a toothless body.

19. The core question, of course, is as to whether Rule 68 (b) while empowering the Central Council to “elect President”, the President has to be elected from amongst the members of Central Council only or can be any person, not necessarily a member of the Central Council. Though, the senior counsels for defendants No.1&2 have contended that any member of the Club who is not necessarily member of the Central Council can be elected as the President, in my view, once it is to be so held, it cannot be limited to the member of the Club only and has to be extended to any individual.

20. The contentions of the respective counsels may be noted at this stage. The senior counsel for the plaintiffs has contended that under the rules the Central Council has to be comprised of 60 members with Delhi & Mumbai having equal participation; if it is held that the President need not necessarily be the member of the Central Council, it will tantamount to increasing the members of the Central Council to 61, in violation of Rule 47(a); that wherever it was felt that an office bearer could be from outside the Central Council, it is so provided as in Rule 112(c) and(e); that a person who has not been elected to the Central Council by the members of the Club cannot be foisted by the Central Council as the President of the Club on the members of the Club and/or against their mandate. It was also urged that under Rule 53, the General Body of the Club was authorized only to reduce the numbers of the members of the Central Council but there was no provision authorizing the members of the Central Council to be increased beyond 60 and which would be so if it was held that the President of the Central Council could be a person not elected to the Central Council. Reliance was also placed on Rule 60

to contend that it showed that the President had a vote in the meetings of the Central Council; if the President was from outside the Central Council the members voting would be 61 and not 60; if the President was not to be a member of the Central Council there could be no question of his having a second vote. Reliance was also placed on the judgment dated 24th March, 2008 (Supra) though it was conceded that the matter was not directly in issue in that case. It was however contended that even an Obiter in a judgment between the same parties binds the parties and the concept of obiter is only confined to the use of the judgment as a precedent.

21. The senior counsel for the defendant No.1 contended that Rule 68 provides for election of the President of the Club and not of the Central Council; that the Central Council has not executive functions, all of which vested with the Executive Committee; under Rule 58 the Central Council was required to meet only once a year; that the interpretation of the plaintiffs if followed would tantamount to introducing the word "from amongst themselves" in Rule 68 (b) and which was not permissible; that the word President of the Club meant any member of the Club could be elected to any post mentioned in Rule 68 (b) and not necessarily from amongst the members of the Central Council; he also relied on Rule 112 (a) to (e) to contend that the words "from amongst the members of executive committee" were used therein and which were not introduced in Rule 68 (b). Reliance was placed on **Divisional Controller K.S.R.T.C. Vs Mahadeva Shetty** (2003) 7 SCC 197 and **U.O.I. Vs Indian Jute Mills Association** (2005) 10 SCC 69 to contend that what was not in issue is not a precedent. It was however contended that since prior to the hearing leading to the judgment dated 24th March, 2008, the matter of an outsider to the Central Council being

the President having been agitated and having not been pressed, the relief in this suit to that extent would be barred by Order 2 Rule 2 of the CPC. It was further urged that the principles of interpretation of legislation would apply and only where the words were unclear could the doctrine of purposive interpretation be applied and not where the words were clear as in this case. The bye-laws of NAFED and KRIBHCO were also cited to demonstrate that wherever it was so desired it was provided that office bearer will be elected from amongst the body as the Central Council in this case. Though reference was made to **Padma Sundara Rao Vs State of T.N.** (2002) 3 SCC 533 on courts being entitled to only interpret and not legislate by supplying legislative caussus omissus, but the senior counsel agreed that the principles applicable to interpretation of Rules and Regulations of Club, are as that of a contract and not as that of a statue.

22. The senior counsel for the defendant No.2 drew attention to Rule 1(g),3,4&5 which are as under:-

1(g).“Members” means a member of the Club in accordance with the Rules of the Club for the time being in force and Patron-in-Chief, Patron, Vice-Patron, Life Members, Corporation Member, Ordinary Member, Honorary Member, Service Member, Temporary Member and Gymkhana Member (for ladies only.)

3. There shall be the following classes of members:-

- | | |
|-----------------------|----------------------------------|
| (a) Patrons-in-Chief | (b) Patrons |
| (c) Vice-Patrons | (d) Corporation Members |
| (e) Life Members | (f) Ordinary Members |
| (g) Service Members | (h) Temporary Members |
| (i) Hony. Members and | (j)Gymkhana Members(Ladies Only) |

4. Such gentlemen as the Central Council may invite shall, on acceptance of the invitation, become the Patrons-in-Chief of the Club without payment of any

subscription or fees and for such period as the Central Council may deem proper.

5. The Central Council may invite any person as it may think fit to become Patron or Vice-Patron of the Club, provided that no person shall be invited to become a Patron unless he donates not less than Rs.25,000/- (Rupees Twenty Five Thousand) and no person shall be invited to become a Vice-President unless he donates not less than Rs.15,000/- (Rupees fifteen thousand) to the funds of the Club. Patrons or Vice-Patrons shall be entitled to all the rights and privileges of membership including right to attend General Body Meetings and vote subject to agreeing in writing to be bound by the Rules & Bye-Laws of the Club for the time being in force. Patrons or Vice-Patrons will, however, not be liable to pay any entrance fee or subscription whatsoever. The Central Council may vary the donation amount from time to time.

23. It was contended that though Patron-in-Chief was included in the definition of member but was so separately provided in Rule 3 as well. Attention was also invited to Rule 47 to contend that it was provided therein that the Central Council shall consist of 60 members i.e. only a member of the Club could be a member of the Central Council but the language in Section 68(b) was different and did not contend any such restriction that only a member of the Central Council could be the President; it was argued that even a non member of the Central Council could be the President of the Club. It was contended that such provision was not unknown in as much as there was no requirement even for the President of India to be a member of the Lok Sabha or the Rajya Sabha. It was further urged that though the word elect had been used in relation to President but it was more in the nature of an appointment and even in relation to the Patrons-in-Chief and Vice-Patrons-in-Chief the word elect was used though it was in fact an appointment and as borne out from Rule 4, such Patrons-in-Chief and Vice-Patrons-in-Chief need not necessarily be the members of the Club. Reliance in this regard

was also placed on Rule 70 to show that in fact it was an appointment and not election to the post of the President. It was further contended that Rule 75 (a) provided for the Lt. Governor of Delhi, the Chief of Army Staff and the Representative of the Finance Ministry of the Government of India who are not members of the Central Council to be also the members of the Executive Committee of the Club and further that the Executive Committee besides the said persons and the President was to consist of 12 other members; if the President was to be necessarily a part of the Central Council, there was no need for providing in Rule 75(a) that the Executive Committee shall comprise of 12 members in addition to the President and other persons as aforesaid. Reliance was placed on **Gurudev datta Vs State of Maharashtra** AIR 2001 SC 1980 & **Nelson Motis Vs UOI** AIR 1992 SC 1981 with respect to the argument on Rule 60. It was contended that if the President was a member of the Central Council, he would have a second vote and if he was not so, he would have a casting vote.

24. While the senior counsel for the plaintiffs contended that in the past there has been a practice of the President always being a member of the Central Council, it was disputed by the senior counsel for the defendant No.1. The parties having confined the hearing to the interpretation, I would, therefore, ignore the said aspect.

25. The argument of the defendants No.1&2 that the President under Rule 68 (b) is the President of the Club and not of the Central Council is not tenable. The rules contemplate only one President. It has also not been argued that the President of the Club and the President of the Central Council have been different at any time. Moreover, Rule 1(h) clarifies that the President shall mean the President of the Central Council and the Executive Committee only.

26. The argument of the senior counsel for defendant No.1 of the present suit being barred by Order 2 Rule 2 CPC is met by other argument emanating from same source, of the said matter being not in issue in the earlier proceedings. The judgment dated 24th March 2008 in earlier suit, does deal with the same rules. However, in view of controversy, I have examined the matter uninfluenced by the same. I have also examined, the meaning of the Rules without inserting in Rule 68(b) the words “from amongst themselves” and in my view, even otherwise, the meaning thereof is clear, as discussed hereinbelow.

27. The democratic structure of the Club is devised under the rules comprises of three levels i.e. of all the members electing 60 members of the Central Council, the 60 members of the Central Council electing/appointing the Executive Committee; the said Executive Committee is vested with literally the entire day to day functioning/running/management of the Club under Rule 87 and of which the President is to carry out the resolutions of the Central Council, Executive Committees, Regional Committees and the activities of the Club. The Executive Committee is further empowered to constitute Regional Committees of up to 20 members and with such Regional Committee having the office of Chairman, Vice-Chairman, Secretary and Treasurer.

28. I had during the hearing inquired as to whether there was any procedure prescribed for election of the President. The answer was in the negative.

29. In my view, the key to the question posed is to be found in Rule 1(h). The President has clearly been defined as the President of the Central Council. The President cannot be of the Central Council without being a member of the Central Council. Any other

interpretation would also tantamount to vesting the day to day functioning of the Club and implementation of the resolutions of the Central Council and the Executive Committee in the hands of a person who neither as a member of the Central Council nor as a member of the Club would be liable or accountable to the members of the Club and whose post would be purely an appointment post. Such interpretation/meaning cannot be given. The office of the President is not merely an executive office but is an office of the Central Council. Rule 72 provides for the President to preside at the meetings of the Central Council and of the Executive Committee. Certainly an outsider cannot be permitted to preside over the meetings of a house of which is not a member.

30. Further, significantly, if the President were to be a non member to the Central Council, the term of his appointment would have been provided. However, it is not so provided. Rules 76 & 77 throw light in this regard. They provide for the members of the Executive Committee which would include the President also retiring in accordance with the retirement of the members of the Central Council. Rule 68(b) provides that the post of Secretary and Treasurer shall be shared between the Delhi and the Mumbai regions alternatively every two years; for the post of the President, it merely provides, it shall be shared between the two regions. The sharing pattern finds mention in the election to the Central Council itself which provides for the Delhi and the Mumbai region to have equal representation in the Central Council. On the contrary, there is a vast difference in membership of the two regions. The membership of Mumbai has been informed to be three times that of Delhi. Thus the provision for sharing of the post of President again is indicative of the President being made from members of the Central Council

only and not being an outsider. Therefore, in my view, the absence of the word “from amongst themselves” in Rule 68(b) would make no difference whatsoever. Conversely, had the intent been that the president could be any person, the rule would have so provided.

31. There is also merit in the contention of the senior counsel for the plaintiffs that if the President were to be a non member of the Central Council, then the strength of the Central Council shall stand increased to more than 60. Further Rule 68 (b) does not make any difference between the President, Vice-President, Secretary or Treasurer. If it were to be held that the President need not be from the Central Council, so could it be held about the other office bearers of the executive committee. The same would lead to an anomalous situation that the management of the Club is vested in absolute strangers to the Central Council. Such interpretation has to be rejected and would be contrary to the democratic constitution of the Club. The property of the club cannot be permitted to be vested in a person who is not representative of the members of the club.

32. If the executive committee of the Club or the President of the Club is to be from outside the Central Council elected by members of the Club, it would not necessarily be representative of public opinion or opinion of members of the Club. It is more democratic to select the President and other members of executive committee from the members of the Central Council than from outside the Central Council. A reading of the Rules and Regulations of the Club shows the overall intent for management thereof in a democratic rather than autocratic fashion. The principle of non interference in internal management of such clubs has also evolved on the premise of such clubs being governed by the rule of majority. I do not find any reason why a man who has not been elected by the members of the

club and which means, that man was not liked by the members of the club to be their representative in the Central Council, why that man through the back door be appointed as the President of the Club. Democracy generally envisages representation of people/members, responsibility and accountability of the executive. The essence of this is to draw a direct line of authority from members through the Central Council, to the executive including the President. Elections are the barometer of democracy and the contestants the life line of the set up. The analogy of the President of India, drawn by the senior counsel for the defendants is not appropriate. More appropriate is the analogy to the Ministers. It is only by virtue of Article 164 of the Constitution of India that a privilege extending for six months only is given to sit in the House without being elected. No such privilege is found in the Rules and Regulations of the Club.

33. In my view the interpretation has to be guided by the rule of fair and effective representation. The Central Council represents the members of the Club. The management of the affairs of the Club by the executive body out of the Central Council elected directly by the members, appears to me to the scheme of the rules and regulations of the Club. Reading all the rules and regulations harmoniously, there is no escape from the conclusion aforesaid.

34. I thus hold that the President under the rules and regulations of the Club has to be necessarily a member of the Central Council of the Club. The admitted position in the present case being that the defendant No.2 is not the member of the Central Council, the following reliefs flow from the above finding:-

- a. A decree for declaration is passed to the effect that the President of the defendant No.1 Club can be from

amongst the members of the Central Council of the defendant No.1 only.

- b. A decree for declaration is passed to the effect that the defendant No.2 being not a member of the Central Council could not be and is not the President of the defendant No.1 Club.
- c. A decree for permanent injunction is passed injuncting and debarring the defendant No.2 from attending the meetings of the Central Council and the Executive Committee of the defendant No.1 Club.
- d. The hearing in the present suit having been confined to the aforesaid aspect, the Central Council of the defendant No.1 Club to hold a meeting within two months hereof to take decisions in accordance with this judgment and liberty is granted to the parties to sue for other reliefs which though claimed in this suit and/or could have been claimed, were not so claimed in view of what transpired in the hearing as aforesaid. Decree sheet be drawn up. However, in the facts of the case, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**April 21, 2009
PP**