

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 3713/2008 and C.M. Nos.7144, 13945/08, 2962/2009

INDIAN HOCKEY FEDERATION Petitioner
Through Ms. Manmeet Arora with
Ms. Fareha A. Khan, Advocate

versus

UNION OF INDIA & ANR. Respondents
Through Mr. Jatan Singh with
Mr. Sudep Sudan and
Mr. Ashok Singh, Advocate for UOI.
Mr. Harish Malhotra, Senior Advocate with
Mr. Lovkesh Sawhney and
Mr. Durgesh Kumar
Pandey, Advocate for IOA.

CORAM: JUSTICE S. MURALIDHAR

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|----|---|-----|
| 1. | Whether reporters of the local newspapers 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 |

JUDGMENT
21.05.2010

Introduction

1. This petition by the Indian Hockey Federation ('IHF'), a society registered under the Societies Registration Act 1860, challenges the Resolution dated 28th April 2008 passed by the Indian Olympic Association ('IOA'), Respondent No. 2 herein suspending the Governing Council of the IHF, and appointing an Ad-hoc Committee (earlier Respondent No. 3) for administering the affairs of the IHF. The IHF also challenges the decision dated 7th May 2008 of the Union of India through Ministry of Youth Affairs & Sports ('MYAS'), Respondent No.1, in

conveying its approval of the suspension of the IHF and appointment of the Ad hoc Committee by the IOA. The third challenge is to the order passed by the MYAS on 12th May 2008 suspending the recognition of the IHF in terms of Para I.2 of Annexure-III of the “Guidelines for Assistance to the National Sports Federations” (“Guidelines”). The fourth challenge is to the subsequent disaffiliation of the IHF by the IOA on 10th May 2009 and finally to the decision dated 10th/11th August 2009 of the MYAS withdrawing the recognition of the IHF.

Background Facts

2. The IHF was formed in 1925 for the purposes of controlling and regulating the game of hockey in India. It is stated in the petition that in the year 1927 it joined the International Hockey Federation (‘FIH’). The office bearers of IHF include the President, 8 Vice Presidents, a Secretary General, a Treasurer and three General Secretaries. The office bearers are elected at the Annual General Meeting (AGM) for a term of four years from amongst the representatives of members present and eligible to vote. In the petition it is stated that the IHF has 40 State Associations and other national level sports bodies of various government organizations as its members.

3. The IOA was formed in 1927. The membership of the IOA is open inter alia to any national sports federation (NSF)/association. The IHF is one such NSF.

4. On 14th August 2001 the MYAS circulated the Guidelines, which

according to the MYAS became necessary to be issued on the basis of “our experience of our preparation for Asian Games-1994 and Olympic Games-1996 as well as recommendations of the Committees set up for promotion of sports.” The 2001 Guidelines are said to be a departure from the past and to include major innovations and changes. Summarizing the changes, it was stated that:

“these guidelines propose to replace the present approach with annual sanctions against an agreed programme for the development and promotion of each sport according to its unique requirements. This, in turn, requires significant improvements in the internal management practices of Federations. An important perspective in this exercise is to help Federations attain financial self sufficiency over a period of time thereby reducing their dependence on the Government.”

5. The three changes introduced in the 2001 Guidelines were:

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

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

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

6. The Guidelines also delineate *inter alia* the specific role and responsibility of the MYAS, NSFs and Sports Authority of India (‘SAI’). As far as MYAS is concerned, it is to determine the eligibility conditions

for recognition of NSFs and lay down conditionalities which NSFs will have to fulfill if they wish to avail of government support. The NSFs are to be “fully responsible and accountable for the overall management, direction, control, regulation, promotion, development and sponsorship of the discipline for which they are recognized by the concerned International Federation.” An NSF is expected to discharge all responsibilities “in consonance with the principles laid down in the Olympic Charter or in the charter of the Indian Olympic Association or the relevant International Federation, as the case may be.” The SAI is to provide the necessary support to the NSF for the identification, training and coaching of sports persons, including provision of infrastructure, equipment and other such assistance.

7. The Guidelines give priority to certain kinds of sports. Hockey for men and hockey for women is listed under priority (A) category in Annexure I to the Guidelines as it is recognized as a sport where the current standard is close to international competitive levels, and where the teams or individuals are likely to win medals in future.

8. The 2001 Guidelines contain detailed provision for recognition of NSFs. It states that while considering the proposals for recognition, the MYAS would be guided by the following:

- “The current legal status of the organisation.
- Recognition by the International and Asian Federation.
- Recognition by the IOA.
- Its undisputed status as an Apex Body in India.

- Its all India spread.
- The role and contribution of the organisation in promoting and developing Sports in India.
- Its internal financial and management practices and standards.
- Its electoral practices.
- Its protection and promotion of players interests and welfare.”

9. Clause 5.3 of the 2001 Guidelines states: “The Ministry reserves the right to suspend or withdraw the recognition of NSF, in the event of serious irregularities being detected in their internal functioning. The procedure and consequences of suspension and de-recognition are indicated at Annexure III.” Annexure III to the 2001 Guidelines lists out the “Procedure for suspension/withdrawal of recognition and consequences thereof.” Para I lists out the kinds of irregularities which might lead to the suspension of the recognition of the NSF by the MYAS. Under Clause (2) suspension of recognition can result from “suspension by the IOA”. Clause (10) states that suspension can be “in the public interest in the event of any other serious irregularities being detected”. As regards withdrawal of recognition the grounds for the same are set out in Para II of Annexure III to the 2001 Guidelines. Withdrawal of recognition can happen *inter alia* on account of “an inquiry confirming serious irregularities regarding the functioning of the Federation”. Clause (v) thereof states:

“Recognition may be withdrawn in case of any of the following:

“(i) to (iv)....

(v) The concerned International or Asian Federation permanently derecognizes or disaffiliates a National Federation. Similarly, derecognition may take place in the event that the IOA permanently derecognizes or disaffiliates National Federation.”

10. However, it is clearly stated that “before withdrawal of recognition, the concerned NSF will, however, be given reasonable opportunity to present their defence.”

11. Para III of Annexure III of the 2001 Guidelines spells out the consequences of suspension/withdrawal of recognition which is that the “department will not consider any proposal” from the suspended/derecognized NSF.

12. The provisions concerning disaffiliation of an NSF by the IOA require to be considered next. The Memorandum of Association (MOA) of the IOA, a copy of which has been enclosed as Annexure P-3 to the petition, indicates that the membership of the IOA is open to all NSFs. Clause 8 of the MOA states that the elections should be held once in four years at the AGM of the General Assembly to elect an Executive Council from amongst the representatives of the members present. The President of the IOA has, *inter alia*, the power to deal with all disciplinary matters arising in the IOA or in the NSFs “as per rules on the subject”. However, such action “would be subject to ratification in the next Executive Council meeting of the IOA”. Among the functions, powers and duties of General Assembly of the IOA are to enforce rules and regulations of the

International Olympic Committee and “to take disciplinary action against any National Sports Federation/association for misbehavior or any other undesirable activity bringing discredit to the country”. Under the head “disciplinary sanction”, it is stated that the IOA member unit is liable for suspension for a specified period of time or expulsion from the IOA. However, in note 4 thereunder, it is stated that “the disciplinary sanction will not be given unless supported by 2/3rd General Assembly members present and voting.” As regards disaffiliation/de-recognition/suspension of NSFs, the procedure outlined is as under:

“a. The I.O.A. General Assembly, on the recommendation of the President IOA, either directly or through the I.O.A. Executive Council, based on his discretion, is entitled to consider disaffiliation/derecognition/suspension of the National Sports Federations/Associations/State Olympic Association on one or more of the undermentioned grounds, **after ensuring that a Show Cause notice has been served and an explanation has been obtained and considered from the organisation recommended for disaffiliation/de-recognition/suspension.**

- i. Non-observance of directives issued by the Indian Olympic Association from time to time.
- ii. Not holding elections after the completion of the normal tenure for which the office bearers are elected. Any extension of the tenure of the office-bearers will be subject to obtaining prior written permission from the I.O.A.
- iii. Not submitting annual audited statement of accounts, annual report and list of current office-bearers within the stipulated time period.

iv. Whatever the decision of the I.O.A. General Assembly, it must be supported by two-third majority votes of the Members present and voting.

v. If the IOA General Assembly takes a decision to disaffiliate a national Sports Federation/Association/State Olympic Association, the President, IOA will have the authority to constitute an ad-hoc body, preferably from amongst the Members of the IOA General Assembly, to look after the work done by the disaffiliated National Sports Federation/Association/State Olympic Association till such time that the President, IOA arranges for fresh elections to be held in the concerned National Sports Federation/ Association/State Olympic Association which would then start functioning in the normal manner.”
(emphasis supplied)

13. The Petitioner states that a Joint Meeting was held between the IHF and the Indian Women Hockey Federation (IWHF) on 4th November 2000 and at that meeting the Indian Hockey Confederation ('IHC') was formed as a unified national body. The respective General Bodies of IHF and IWHF passed resolutions in this regards. This became necessary on account of the conditionality laid down by the FIH. In 2001 itself the FIH at its Congress approved the IHC and its constitution. It is stated that since 2001 all matters concerning hockey in India were administered by the IHC which conducted international events with the approval of the FIH. However, both IHF and IWHF continued to be recognized by both the Respondent No. 1 as well as IOA. The FIH and the IHC entered into an MOU on 6th November 2007 for implementation of the project “Promoting Indian Hockey” and hosting the 2010 Men’s Hockey World Cup in India.

14. It is stated that the procedure followed by IHF for selecting teams for participation in international events and tournaments is to constitute a Selection Committee consistent with the 2001 Guidelines. In January 2008 FIH selected players to participate in the 8 Nation Tournaments to be held in Kuala Lumpur, Malaysia; the Test Series in Belgium, the Olympic Qualifier Tournament in Santiago, the 4 Nation Tournament in Australia and the Azlan Shah Hockey Tournament in Malaysia. A preparatory coaching camp was organized from 25th March to 17th April 2008 in the Campus of the SAI at Bangalore. The Camp Coordinator, by a letter dated 9th April 2008, submitted to the MYAS a list of players selected to represent India and to participate in the 4 Nation Hockey Tournament in Australia and in the Azlan Shah Hockey Tournament in Malaysia. The MYAS approved 18 players, and further directed that 6 to 8 players of the approved list would be replaced for the tournament in Malaysia from the team touring Australia and that they will directly go from India.

15. On 21st April 2008 several events occurred simultaneously. An Associate Editor of TV Today Network Ltd ('TV Today') sent an e-mail to media under the caption "Jothikumaran caught on camera accepting bribe for selecting a player for the Indian Hockey Team." TV Today claimed to have undertaken a "Sting Operation" in which the IHF's Secretary General Mr. K. Jothikumaran was shown receiving cash for getting a player included in the senior team. This was aired by *Aaj Tak News*.

16. On the same day, an e-mail was sent by the FIH to the IOA expressing "a deep concern that progress on the project and plans for the World Cup

have not met FIH expectations.” The e-mail attached a copy of the letter addressed from the President of the IHC which explained the current position. The letter pointed out that “the allocation of the World Cup to India is now seriously at risk. Please do all you can to assist and to ensure that the project and the World Cup stay on track.” The Secretary General, FIH addressed a separate letter to the President of the IOA about the allegations in the Indian press “concerning alleged improper conduct” by the Secretary General of the IHC which was “a cause for very great concern.”

17. A separate letter dated 21st April 2008 addressed by the Secretary General FIH to Mr. KPS Gill, President of the IHC highlighted the fact that the Indian Men’s team had failed to qualify for the Beijing Olympic Games. While asserting that the failure was not attributable to the FIH, the letter noted that there was great disappointment in leading articles in the Indian press, “quoting the coach and assistant coach, making all manner of criticism of technical officials, FIH and others to deflect attention from their own failings.” The letter proceeded to state as under:

“Dear Mr. Gill, it appears that there is a substantial breakdown in communications and understanding between yourself, the IHC, the IHF and the IWhA on the one side and FIH on the other. FIH came to Indian Hockey in good faith to offer assistance to help return Indian Hockey to its place at the top of the podium. FIH committed substantial funding to the Project, secured the services of both Bob Davidzon (in a totally honorary capacity) and Ric Charlesworth, one of the worlds’ pre-eminent coaches, and decided in principle to bring the 2010 Men’s World Cup to Delhi, without following the usual FIH

protocols with respect to allocation of tournaments. The motives behind these FIH initiatives were totally open and honorable. The primary benefit was for Indian Hockey. The secondary benefit was the promotion of the sport, worldwide. It is a mystery to me, the FIH President and my colleagues on the FIH Executive Board that these initiatives have not been welcomed with open arms by the Indian hockey family, indeed it would appear to the contrary.

While the focus of this letter is the Project, the World Cup is also very much in consideration. Apart from the construction of the stadium (for which the IHC has no responsibility), almost every other aspect of the organisation for which the IHC is responsibly is well behind schedule. This is of great concern and I ask that you take whatever steps are necessary as a matter of urgency to rectify this situation.”

18. The letter then proceeded to set a deadline for confirming that the IHC had complied with the requirements of FIH failing which the FIH will be entitled to terminate the MOU and consequentially the proposal to hold the 2010 Men’s World Cup in India. FIH demanded a letter from the IHC “by 5.00 pm Lausanne time on 29 April, 2008” indicating that “there is a positive attitude from the IHC to the success of the Project, and indicating that a further letter will be provided by the IHC within an additional 14 days” which was to be expired soon.

19. On 22nd April 2008 an emergent meeting of the IOA Executive Council was convened in the IOA’s office at New Delhi “to discuss the matters pertaining to the Indian Hockey Federation, in reference to the charges against the Secretary General, IHF, Sh. K. Jothikumaran.” Since much

turns on this letter, it is necessary to reproduce it in full:

“IOA/EC/Meeting

22nd April 2008

Sub: IOA Executive Council – Emergency meeting.

The President IOA has directed me to call an emergency meeting of the Executive Council of the Indian Olympic Association which will be held at 3:00 p.m. on 28th April 2008 in IOA office at Olympic Bhavan, B-29, Qutub Institutional Area, New Delhi to discuss the matters pertaining to the Indian Hockey Federation, in reference to the charges against the Secretary General, IHF, Shri K. Jothikumaran.

This meeting is convened at short notice due to the urgency of the matter.

Kindly make it convenient to attend the meeting.

Dr. Lalit K Bhanot
Joint Secretary”

20. A copy of the said notice of the meeting was sent to Shri KPS Gill who apparently attended the said meeting on 28th April 2008.

21. On 23rd April 2008 an order was passed by the MYAS appointing Shri Ajit Pal Singh and Shri Zafar Iqbal as the Government Observers in the discipline of Hockey (Men) whereas Smt. Roopa Saini, continued to be the Government Observer for Hockey (Women). On its part, the IHF constituted a three member committee on 25th April 2008 to inquire into the allegations against Mr. Jothikumaran. On 27th April 2008 Jothikumaran addressed a letter to the President of the IHF dissociating himself from the responsibilities entrusted to him and promising his cooperation in the inquiry.

22. By a resolution dated 28th April 2008, the Executive Council of the IOA suspended the IHF. The intimation regarding the said emergency meeting was sent by the Secretary General, IOA on 29th April 2008 to all the State Units of the IHF and the IHF itself. The communication stated that the IHF was suspended with immediate effect and that “the President, IOA is authorized to form an ad-hoc committee of 5 members to administer and manage the affairs of the Federation till all issues including governance of the Federation are finally resolved.” The Executive Council formed a 5-Member Selection Committee comprising of Mr. Aslam Sher Khan as the Chairman, Mr. Ajitpal Singh, Mr. Ashok Kumar, Mr. Jaffar Iqbal and Mr. Dhanraj Pillai, former Olympians as its members to select the teams for all forthcoming International events/championships. Mr. Ric Charlesworth was to be the Advisor to the Selection Committee. It requires to be noted at this juncture that the minutes of the emergency meeting of the Executive Council of the IOA held on 28th April 2008 have not been placed on record in these proceedings.

23. The above letter dated 29th April 2008 was received by the IHF on 5th May 2008. Mr. KPS Gill protested against the said decision of the IOA and wrote a letter to the MYAS pointing out that it was contrary to the Guidelines. The IHF kept writing to the IOA asking for the minutes of the Executive Council of the IOA. On 5th May 2008 Mr. Aslam Sher Khan describing himself as Chairman of the Selection Committee of the IHF appointed Shri Pargat Singh as Manager of the Indian Hockey team to participate in the Azlan Shah Cup Invitational Tournament to be held at Malaysia. This act of appointing Mr. Pargat Singh was approved by the

MYAS by a letter dated 7th May 2008 addressed by it to the Ad Hoc Committee appointed by the IOA.

24. At this stage, it must be noticed that the Secretary of the FIH prepared an advisory note on 7th May 2008 regarding “the status of Indian Hockey Confederation in the Indian Olympic Association.” This note acknowledged that neither the IHF nor the IWHF were members of the FIH but that “the IHC is a member of the FIH as the sole governing body for hockey, men and women in India” and that “the IHF and the IWHF are the members of the IHC.” Further, the consequences of the IHC ceasing to be a member of the FIH were spelt out as under:

- “Indian teams, men and women, could no longer participate in any tournaments organised by the FIH or the AHF or organised under their jurisdiction.
- FIH could not continue with the Project.
- FIH could not hold the 2010 Men’s World Cup in India.
- Indian hockey would not be entitled to participate in the affairs of the FIH or the AHF, for example they would not be entitled to attend the FIH Congress or meetings of the AHF not nominate members of Committees.
- No officials (judges umpires, etc.) from India could be appointed to any tournament conduct by or under the jurisdiction of the FIH or AHF.”

25. However, it was noted by the FIH that it was not the wish of the FIH that “the IHC should cease to be a member of the FIH, with all the consequences that would follow, but it is our obligation to ensure that the Statutes are observed not just in words but also in commitment and

action.” It was further pointed out as under:

“For the IHC to remain a member of the FIH, urgent steps are required to properly constitute it as the sole governing body for hockey, men and women, in India with proper governance principles and structure and a clear commitment from all parties involved in the Confederation to achieve this objective.”

26. On 13th May 2008 the present writ petition was filed. On 14th May 2008 notice was directed to be issued in the writ petition. It transpired later that although a decision was taken on 12th May 2008 by the MYAS suspending recognition of the IHF, this Court was not kept informed of the said decision. The said document was placed much later on the record of this court along with the rejoinder of the Petitioner. The said order dated 12th May 2008 reads as under:

**“No.F.32-23/2008-SP.III
Government of India
Ministry of Youth Affairs & Sports**

New Delhi, the 12th May, 2008

O R D E R

Pursuant to the suspension of Indian Hockey Federation by the Indian Olympic Association and formation of an ad-hoc Committee by the Indian Olympic Association to manage the affairs of Indian Hockey Federation in the interim, the recognition of the Indian Hockey Federation by the Ministry of Youth Affairs & Sports is hereby suspended, as per provisions contained in Para 1 (ii) of the Annexure III of the “Guidelines for Assistance to the National Sports Federations” till further orders.

This issues with the approval of the Competent authority.

Sd/-
(Deepika Kachhal)
Deputy Secretary to the Government of India”

27. The above order of suspension of recognition was received by the Petitioner on 23rd May 2008. On 29th August 2008 this Court directed Respondent No. 2 to file an affidavit indicating the time frame within which the elections of Office Bearers of the Council of the IHF were to be held. However, till date no such affidavit has been filed. On its part, the Petitioner filed CM No. 13945 of 2008 for a direction for the elections to be conducted under the aegis of a retired Judge. Although notice was issued in the said application on 3rd October 2008, till date none of the Respondents have filed a reply to the said application.

Constitution of the Nine Member Committee of IOA

28. On 10th October 2008, an AGM was held of the General Assembly of the IOA at Pune. A copy of the resolution passed at the said AGM has been placed on record. The relevant item concerning IHF reads as under:

“Item No.6 Decision of the Executive Council.

Secretary General apprised the House about the discussions and decisions taken in the Special Council Meeting held on 28th April, 2008 in connection with Hockey. He further explained that FIH wanted IOA to intervene and take appropriate decision in order to promote Hockey in the Country and to retain the 2010 Hockey World Cup which was allotted to Delhi, India. He further reiterated that FIH had mentioned in their letter that in case appropriate action was not taken, FIH was considering to withdraw the allotment of World Cup Hockey.

Secretary General further explained that FIH was also insisting to have one Governing body of Hockey in India to govern Hockey – Men and Women. Mr. Govindraj and Mr. S.M. Bali raised the issue as to how IOA could give affiliation to two Governing bodies in

Hockey which was against the Constitution of IOA as well as Charter of IOC?

Resolution:

“The House unanimously approved the decision taken by the Special Executive Council in its meeting held on 28th April, 2008 with regard to the Indian Hockey Federation and its suspension. The House also approved the decision of the Special Executive Council regarding the Constitution of the Ad Hoc Committee and the Constitution thereof.”

The House unanimously decided to constitute a nine member Committee to look after the specific issues with regard to the Administration and Management of Hockey in India in respect of both Men and Women Hockey Federation and to have one unified Body governing the affairs of Indian Hockey and ensure adherence of the mandate of FIH, IOA & Olympic charter. The 9 Member Committee consists of the following members:-

- | | | |
|------------------------|---|----------|
| 1. Shri Harish Sharma | - | Chairman |
| 2. Dr. Lalit K. Bhanot | - | Member |
| 3. Shri Avinash Kohli | - | Member |
| 4. Shri M.C. Chowhan | - | Member |
| 5. Smt. Vidya Stoke | - | Member |
| 6. Smt. Amrita Bose | - | Member |
| 7. Md. Aslam Khan | - | Member |
| 8. Shri Rajeev Mehta | - | Member |
| 9. Shri Rakesh Gupta | - | Member |

The House unanimously approved that a nine member Committee be vested with all powers of General Body and, empower it to take any decision which the General Body can take, as per rules and to ensure that there is complete adherence to the Constitution and the rules & regulations of IOA as well as the mandate of FIH and the IOC Charter.

The House further unanimously resolved that the decisions taken by the nine member Committee shall be binding on all concerned as the powers of the General Body stand delegated to the nine member Committee and based on their recommendations, President of IOA is authorised to take further decision to fulfill the aims and objects of the Constitution of IOA. The House unanimously resolved that the Nine Member Committee would apprise of the decisions taken to all the members who even otherwise are amongst the members of the IOA General Assembly.”

Meetings of the Nine Member Committee

29. On 21st November 2008 the first meeting of the above Nine Member Committee of the IOA was held. The Chairman of the Committee informed the members that a letter had been received from the FIH directing the IOA “to form a Unified Body in Hockey which should govern Men and Women Hockey in India.” It was then stated that the formalities to make “one Hockey Body in India” will be finalized at the next meeting.

30. At the AGM of the FIH held on 29th November 2008, three of the nine members of the above Committee were present. One of the items in the agenda for this meeting was: “Consideration of applications for new membership” in which was included “Hockey India–Transfer of Membership from IHC subject to finalization of their constitution.” This was apparently done without even taking a decision for disaffiliation of IHF and the IWHF.

31. The Nine Member Committee met again on 21st December 2008. There was no mention made of the AGM of the FIH held on 29th November

2008. It was mentioned in the meeting by the Chairman that it was imperative to first disaffiliate both IHF and the IWHF and thereafter grant affiliation to one body to manage affairs of hockey of men and women in India. It was also agreed to request State Olympic Associations to have one body at the state level. What is significant is that by that time one of the nine members had expired. One other member Mrs. Amrita Bose did not sign the minutes.

Disaffiliation of the IHF by the IOA

32. At the next meeting of the Nine Member Committee held on 12th January 2009, it was recorded that the members agreed to the proposal that the constitution of the IHF was *per se* illegal and further that the members had approved disaffiliation of both IHF and IWHF. At the said meeting, one of the members Dr. Lalit K. Bhanot apprised other members that a show cause notice was required to be given before a member is disaffiliated. Accordingly, the Committee decided that the show cause notice would be issued to both the IHF and IWHF. This is clear from the following extract of the minutes of the said meeting:

“The issue of Show Cause Notice to be given to IHF and IWHF was discussed and it was unanimously resolved to send Show Cause Notice to both the Hockey Federations to explain as to why their Federations should not be disaffiliated in the light of FIH directions, IOA Constitution and IOC Charter. It was further decided that after receiving their respective replies, the details will be worked out in the next meeting. It was also suggested that IHF be served also through the Ad-hoc Committee and more information about the state of Hockey in India be obtained.

It was decided that the Chairman of the nine members Committee should send a suitably drafted show cause notice to IWHF, IHF, the Ad-hoc Committee, IHF after receiving legal opinion on the subject.” (emphasis supplied)

33. Following the above meeting, separate notices dated 16th January 2009 were issued to the President of the IWHF and to Aslam Sher Khan, Convener, Ad hoc Committee, IHF. The notice was asked to show cause why the IHF “be not be disaffiliated/ de-recognised by the IOA to permit a single body for Hockey to look after both male and female Hockey activities in India.”

34. The above documents have been placed on record in these proceedings along with an additional affidavit dated 12th April 2010 of Mr. Randhir Singh, the Secretary General of IOA. *Inter alia* it is mentioned in this affidavit that on 10th May 2009 the IHF was disaffiliated by the IOA. The decision of the Nine Member Committee was communicated by a letter dated 16th March 2009 addressed by its Chairman to the President, IOA to the following effect:

- “a) Indian Hockey Federation (IHF) and Indian Women Hockey Federation (IWHF) to be disaffiliated with immediate effect.
- b) IOA to constitute a single body of Hockey namely “Hockey India” which will look after the affairs of Hockey in India for Men and Women.
- c) A single Unit be also formed at the State level with the help of State Olympic Associations.

- d) IOA to grant provisional affiliation to Hockey Association/Federation which will govern and administer Hockey in India for men and women and which will ensure one unit for all the states to govern the function of both Men and Women in the state with the help of State Olympic Association.
- e) After formation of State Unit, election of the National body be conducted within six months of its registration under supervision of observer from FIH.”

35. Following this, on 5th May 2009 the FIH wrote to the IOA urging it to create one body for both men’s and women’s hockey. On 10th May 2009, the President IOA wrote to Mr. Md.Asalam Khan, the Convener of the Ad Hoc Committee of the IHF that the IHF had been disaffiliated “with immediate effect and ceased to be a member of the IOA.” The said letter dated 10th May 2009 was placed on the record of these proceedings much later on 15th January 2010 with the affidavit of the IOA. The said letter reads as under:

“Subject: Disaffiliation of Indian Hockey Federation”

I wish to convey you the decision taken by the General Body of IOA in its meeting held on 10th October, 2008, regarding Constitution of 9 members Committee. As per the decision of the General Body, the said Committee was having all power of General Body with regard to the affairs of Hockey in India.

In the interest of Hockey in India, decision being taken to adhere to the decision given by 9 members Committee in the light of FIH Constitution and directive, Constitution of Indian Olympic Association and Olympic Charter. The 9 members Committee has decided for the disaffiliation of both Men and Women Hockey Federation of India and to provide affiliation to

One Body to control and administer the affairs of Hockey in India Men and Women both.

In light of the decision taken by the 9 Members Committee, the Indian Hockey Federation has been disaffiliated with immediate effect and seized to be the member of IOA.”

36. Further on 10th May 2009 itself the Ad hoc Committee appointed by the Executive Council of the IOA to manage the activities of the IHF was dissolved and disbanded by the IOA.

37. A new society named “Hockey India” was registered on 20th May 2009. By a letter dated 28th May 2009 the President, Hockey India was informed by the President of the IOA that in terms of the recommendation of the Nine Member Committee and in exercise of the powers vested in him the IOA had granted provisional affiliation to “Hockey India”.

38. At the hearing of this petition on 9th July 2009, this Court was informed of the disaffiliation which according to counsel for the IOA had rendered the petition infructuous. This court required the IOA to file an affidavit to bring on record the subsequent developments. Pursuant thereto a short affidavit was filed by the IOA on 4th September 2009. For the first time mention was made of the fact that Hockey India had been formed and that it had been granted affiliation by the FIH on 14th June 2009. The Petitioner then deleted the Ad Hoc Committee of the IHF which was impleaded as Respondent No.3 from the array of parties. At the hearing on 23rd October 2009 this Court directed that the order of disaffiliation be placed on record.

The MYAS was permitted to file an additional affidavit.

The stand of the MYAS and the IOA

39. At this juncture it is important to advert to the stand taken by the MYAS and the IOA from time to time. The counter affidavit filed by the MYAS on 28th August 2008 confirmed that it had suspended the recognition of the IHF pending the outcome of a full inquiry. Reference was made to the Guidelines. In para 3 it was stated as under:

“One of the grounds is suspension by the Respondent No.2 Association. It is, therefore, respectfully submitted that firstly the suspension is an interim measure, which is pending a complete and full enquiry, the ultimate consequence being de-recognition. **It is further submitted that before de-recognising a particular federation, an opportunity is given for presenting its defence. The suspension being an interim measure is followed on the grounds given in clause 1 of the said procedure. In the present case, the said clause 2 is squarely attracted as the Petitioner Association has been suspended.** The answering Respondent is well within its right **to suspend purely as an interim measure** to the Petitioner Association.” (emphasis supplied)

40. Therefore, according to the MYAS, the suspension of the recognition of the IHF was only on account of its suspension by IOA. The suspension of recognition was “purely as an interim measure.” The counter affidavit further only referred to the “Sting Operation” as one of the reasons for the suspension. However, it is not in dispute that the above suspension of recognition was not followed by any inquiry by the MYAS. There is no change in this position even as of date.

41. Respondent No. 2 IOA by way of an affidavit dated 15th January 2010 placed on record a copy of the disaffiliation order dated 10th May 2009. The above affidavit dated 15th January 2010 was filed purportedly in compliance with the order dated 23rd October 2009. However, since this Court did not find it strictly in compliance with that order, it passed the following order on 18th January 2010:

“1. Mr. Malhotra, learned Senior counsel appearing for the Indian Olympic Association (‘IOA’) states that the additional affidavit filed on 15th January 2010 is not strictly in compliance with the order dated 24th October 2009. Mr. Malhotra further states that he will place on record along with an affidavit, to be filed within two weeks, the resolution of the IOA as well as nine-member Committee with regard to the decision to disaffiliate the Petitioner-Indian Hockey Federation from the IOA. Mr. Malhotra, learned Senior counsel states that along with the affidavit placing the resolution on record, he will also explain the basis on which IOA seeks to exercise and control over the affairs of the Petitioner.

2. In para 8 of the statement supported by an affidavit dated 4th September 2009 filed on behalf of the IOA, it is stated that Hockey India (‘HI’) has already been registered as a Society under the Societies Registration Act 1860 on 20th May 2009 and has been granted affiliation by Federation International Hockey on 14th June 2009. It is further stated that the Government of India has also granted recognition to HI.

3. The Respondent No.1 Union of India shall file an affidavit within two weeks to confirm whether the above assertions are correct and if so, the decision taken by it in this regard shall be placed on record. It will also explain the basis on which such recognition was purportedly granted to HI.

4. Mr. Nigam, learned Senior counsel has expressed an apprehension that the Respondents will take further decisions and present the Court with a fait accompli. Needless to state that any action taken by the Respondents will be subject to further orders and the final result of the present writ petition.

5. List on 3rd February 2010. Order be given dasti to learned counsel for the parties.”

42. Following the above order an additional affidavit was filed only by

Respondent No. 2 on 1st February 2010. Along with this affidavit, a copy of the Resolution approved by the General Body of the IOA in its meeting held in Pune on 10th October 2008; a copy of the e-mail dated 5th May 2009; a copy of the decision of the Nine Member Committee and a Certificate of Incorporation of HI as well as the letter granting it provisional affiliation, were enclosed.

43. By another affidavit dated 2nd February 2010 the Respondent No. 2 IOA sought to replace paras 8 and 9 of its affidavit dated 1st February 2010 as under:

“8. That the Constitution of FIH used to list Indian Hockey Confederation as its member. The IHC was recognized by the IOA initially to meet the requirements of the FIH only whereas for the purposes of IOA and Govt. of India, the two bodies i.e. IHF and IWHF continued to be the members of the IOA. It was hoped by the IOA that these two bodies would merge but these two bodies did not merge for IOA purposes and their continued existence was contrary to the Constitution of IOA, IOC and FIH.

9. That it was misrepresented and falsely projected to FIH by both IHF and IWHF, in order to overcome the requirement of one Federation for Hockey that Indian Hockey Confederation is only one Federation of Hockey in India looking after both male and female hockey. However in reality and for IOA and Govt. of India as well, both IHF and IWHF were separate members. The grants were received by both IHF and IWHF from Govt. for participation abroad whereas participation was being shown to be in the name of IHC. It is submitted that IHC was a defunct body whose elections since formation have not been held.”

44. On 3rd February 2010 this Court passed the following order:

“1. Submissions of Mr. Arvind K. Nigam, learned Senior counsel appearing for the Petitioner have been heard at great length.

2. There are two principal issues that arise for consideration in this petition. One concerns the suspension of the recognition of the Petitioner Indian Hockey Federation (‘IHF’) by the Central Government in terms of its guidelines and the appointment by the Indian Olympic Association (‘IOA’) on 28th April 2008 of a nine-member Committee to manage the affairs of the Petitioner which decision appears to have been ratified at the Annual General Meeting of the IOA held on 10th August 2008. It is the case of the Petitioner that suspension of its recognition as well as the appointment of the Committee to manage its affairs were without giving it prior notice, therefore, the violative of the principles of natural justice.

3. The second issue that arises is subsequent disaffiliation of the Petitioner from the IOA. In this regard IOA has filed several affidavits. The affidavit dated 1st February 2010 encloses a copy of letter dated 16th March 2009 written by the Chairman of the nine-member Committee which inform the President, IOA that the said Committee had decided to disaffiliate both the Petitioner as well as Indian Women’s Hockey Federation with immediate effect. Although, the said letter enclosed the minutes of those meetings held on five occasions, they have not been placed on record in these proceedings by the IOA.

4. Mr. Harish Malhotra, learned Senior counsel appearing for the IOA states that he will, within a period of five weeks, place on record a copy of the minutes of all the meetings of the nine-member Committee.

5. From the letter dated 16th March 2009 of the Chairman of the

Committee, it appears that a show cause notice issued to the ad hoc Committee appointed by the IOA on 29th April 2008 to administer and manage the affairs of the Petitioner. The IOA will explain how the issuance of such show cause notice to the ad hoc committee satisfies the requirement of the principles of natural justice as regards its decision to disaffiliate the Petitioner.

6. It appears that under the guidelines issued by the Central Government the power vests in the Central Government to withdraw recognition after giving the Petitioner an adequate opportunity. Mr. Jatan Singh, learned Senior standing counsel appearing for the Union of India ('UOI') confirms that till date recognition of the Petitioner has not been withdrawn. He is also unable to inform the Court that whether any enquiry is contemplated preceding such action. The Government has suspended the recognition of the Petitioner with effect from 12th May 2008 only on the ground that the IOA had suspended the Petitioner's affiliation. The UOI will file an affidavit within a period of five weeks explaining its stand in the matter particularly with reference to the continuance of suspension of the recognition of the Petitioner and any further action that is contemplated.

7. Mr. Nigam has also produced before the Court a copy of letter dated 25th May 2009 written by one of the members of the nine-member Committee constituted by the IOA to manage the affairs of the Petitioner. The said letter is taken on record. Mr. Malhotra states that he will file, within five weeks, a proper affidavit to meet the anomalies pointed out in the said letter.

8. List on 15th April 2010.”

45. Pursuant to the above order an additional affidavit was filed by

Respondents 1 and 2 in which for the first time it was disclosed that IHF had in fact been de-recognised. On 15th April 2010, the following order was passed:-

“1. The Central Government has now filed an affidavit in which at para 8 it is stated that “the Government derecognized the IHF in accordance with its guidelines for recognition, a copy of which is filed at Annexure-I”. The order of derecognition is, however, not placed on record.

2. The records of the Central Government which should contain the order of derecognition be produced before the Court on the next date of hearing.

3. List on 17th May 2010.”

46. At the hearing of the case on 17th May 2010, the records of the MYAS were perused. It was found that it contained a copy of the following letter dated 10th/11th August 2009 written to the Secretary General, IHF by the MYAS:

“No. F.32-23/2008-SP-III
Government of India
Ministry of Youth Affairs and Sports

Dated : 10th/11th August, 2009

To,

The Secretary General,
Indian Hockey Federation,
8/40, South Patel Nagar,
New Delhi-110 008.

Sub Management of Hockey in India

Sir,

Consequent upon the disaffiliation of Indian Hockey Federation by Indian Olympic Association and confirmation of the same by Federation International de Hockey, the

international hockey federation, the recognition granted by Government of India to Indian Hockey Federation stands withdrawn with immediate effect.

Yours faithfully,

Sd/-

(Shankar Lal)

Under Secretary to the Government of India”

47. The court enquired of the official of the MYAS who had brought the records whether the above order was in fact communicated to the IHF. The official could not confirm this position. In response to a query whether any show cause notice was issued to the IHF prior to issuing the derecognition order, the official of the MYAS answered in the negative.

48. The submissions of Ms. Manmeet Arora, the learned counsel appearing for the Petitioner, Mr. Harish Malhotra, the learned Senior counsel and Mr. Lovkesh Sawhney, learned counsel appearing for Respondent No. 2 IOA and Mr. Jatan Singh, the learned Senior standing counsel appearing for Respondent No. 1 MYAS have been heard.

Disaffiliation of the IHF by the IOA

49. One of the issues that arises for consideration concerns the disaffiliation of the Petitioner by the IOA since, that is the sole reason for the de-recognition of the IHF by the MYAS. The relevant provisions of the MOA of the IOA have been referred to hereinbefore. They clearly envisage that any disaffiliation of an NSF has to be mandatorily preceded by a show cause notice to the NSF sought to be disaffiliated. Admittedly, no such show cause notice was ever issued to the IHF prior to its suspension by the

Executive Council on 28th April 2008.

50. An argument was advanced by Mr. Lovkesh Sawhney on behalf of the IOA that Mr. KPS Gill as President of the IHF was invited to the emergency meeting of the IOA on 28th April 2008 and there he was treated as the representative of the IHF and “orally” given a show cause notice; and that his “oral” responses thereto at the said meeting were found not to be satisfactory and therefore it was decided to suspend the IHF. This argument can only be characterized as one of sheer desperation because it has not even been stated in those words in any affidavit filed by IOA in these proceedings. Secondly, this Court finds the explanation to be unconvincing. The reason for the emergency meeting was the sting operation concerning Mr. Jothikumaran, the then Secretary General of the IHF. While there may be justification in insisting that IHF should take corrective action with regard to the allegations concerning the conduct of one of its office bearers, that cannot be the reason for placing the IHF itself under suspension as was done on 28th April 2008. Thirdly, the Rules incorporated as part of the MOA of the IOA state that it is the General Assembly of the IOA which has to ultimately consider the question of suspension of the IHF on the recommendation of the Executive Council of the IOA or directly by its President. It is not clear if the Executive Council of the IOA could straightaway place the IHF under suspension.

51. Two events prompted the extreme action of suspension of IHF’s affiliation. The first was the sting operation. The second was the deadline of 29th April 2008 set by the FIH for the IOA to demonstrate that it was

serious about conducting the Men's World Cup Hockey 2010 in India. Even if the action of placing IHF under suspension at that point in time can be stated to be a knee jerk reaction to the above events, clearly such suspension was only intended as an interim measure. In any event, the above events did not obviate the need to issue a show cause notice to the IHF even **after** placing it under suspension. That was, however, never done. Therefore, there can be no manner of doubt that the suspension of the IHF by the IOA by the order dated 28th April 2008 was, in the circumstances, illegal.

52. The suspension is illegal on other grounds as well. The MOA of the IOA states that an ad hoc body can be formed to look after the “disaffiliated” NSF “till such time the President arranges for fresh elections to be held.” This indicates that the question of formation of an ad hoc body arises after a decision is taken to disaffiliate an NSF and not before. Secondly, it is intended to be in place only till elections are held to elect the new office bearers of the NSF. On both counts, the continuance of the suspension of the IHF without any elections being held of its office bearers was illegal.

53. In terms of the Rules forming part of the MOA of the IOA, a decision to disaffiliate an NSF has to be taken by the IOA only after “ensuring that a show cause notice has been served and an explanation has been obtained and considered from the organization recommended for the disaffiliation.....” Despite the Nine Member Committee of the IOA deciding on 12th January 2009 that a show cause notice should be given not

only to the Ad hoc Body but to the IHF as well, admittedly the show cause notice dated 16th January 2009 was sent only to the Ad hoc Committee of the IHF of which Mr. Md. Aslam Khan was the Convener. Consequently the exercise of issuing a show cause notice to the body whose conduct was being enquired into was reduced to a farce. Obviously the Ad hoc Committee was not the one which could answer the charges against the suspended IHF. This renders the disaffiliation order dated 10th May 2009 unsustainable in law.

54. The justification advanced by the IOA was the pressure brought on it by the FIH to do something to form one united body for men's and women's hockey by the letter dated 5th May 2009 failing which India's participation in international events, and in particular its hosting the Men's World Cup Hockey 2010 was in jeopardy. This explanation is not acceptable to this Court for the simple reason that even the suspension of the IHF overnight was attributed to the pressure brought on the IOA by the FIH. It is seen that the FIH was not asking that the IFH itself be suspended. In fact, its note of 7th May 2008 acknowledges that IHC continues to be its affiliated body and that it was not really asking for IHC to cease to be its member. Be that as it may, the FIH was by no means suggesting that the IOA should give a complete go-by to its own rules and regulations and deny the IHF even an opportunity of explaining the charges against it. Even if the IOA had some explanation for suspending IHF overnight, the same explanation, viz., the pressure of the FIH, cannot be offered to justify disaffiliating the IHF without even issuing a show cause notice. One year's time was sufficient for the IOA to have got its act together and listed out

the detailed charges, if any, against the IHF, issue it a proper show cause notice on that basis, seek an explanation thereon from the IHF, give the IHF a hearing and then take a decision on such show cause notice. There can be no excuse for not complying with this basic requirement of natural justice.

55. On the other hand, it appears that the IOA used the fact of there being no stay granted by this court to present it with a *fait accompli*. Long before Hockey India was even registered as a society, the FIH was asked to grant it affiliation at the meeting of the FIH held on 23rd November 2008. Clearly the disaffiliation of IHF and IWHF was already a foregone conclusion awaiting only the ritual of passing a formal order. This perhaps explains why the IOA did not even bother to send the IHF a show cause notice before disaffiliating it. This was contrary to the resolution of the Nine Member Committee itself. The notice being given only to the Ad hoc Body was clearly making a mockery of complying with the requirement of natural justice.

56. None of the explanations offered by the IOA convinces the Court that there was justification in disaffiliating the IHF without issuing a show cause notice to it. Neither the decision dated 28th April 2008 of the Executive Council of the IOA placing the IHF under suspension nor the decision dated 10th May 2009 of the IOA disaffiliating the IHF can be sustained in law. They are accordingly set aside.

De-recognition of the IHF by the MYAS

57. The recognition of the IHF was suspended by the MYAS on 12th May
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2008 only on the ground that IOA had suspended the IHF and had appointed an ad-hoc Committee to manage the affairs of IHF. The counter affidavit first filed by the MYAS indicated that this suspension of recognition was to be a purely temporary measure. It was also asserted that before withdrawing recognition, the procedure outlines in the Guidelines would be followed.

58. Annexure III to its 2001 Guidelines sets out the procedure for suspension of recognition. It lists out one of the grounds as “suspension by the IOA”. The other ground is that such suspension is “in the public interest” and “in the event of any other serious irregularity being detected.” In the affidavit dated 28th August 2008 the MYAS took the stand that Para I.2 that was “squarely attracted” as the Petitioner Association had been suspended by the IOA. Clause 10 of Annexure-III concerning “public interest” was not invoked. Further, it was stated that the suspension was “only as an interim measure”. It is also asserted that “before derecognizing a particular federation, an opportunity is given for presenting its defence”. Unfortunately the MYAS chose not to adhere to its own Guidelines. Without any show cause notice being issued to the IHF, the MYAS withdrew its recognition on 10th/11th August 2009.

59. This Court was never informed till an affidavit was filed by the MYAS on 9th April 2010 that the recognition of the IHF had in fact been withdrawn. In fact, even with the said affidavit, a copy of the order withdrawing the IHF’s recognition was not enclosed. This was at complete variance with the statement made to the court at the hearing on 3rd

February 2010 where it was maintained that “till date recognition of the Petitioner Association has not been withdrawn”. It is only at the hearing on 17th May 2010 that Mr. Jatan Singh produced a copy of the order dated 10/11th August 2009 withdrawing the recognition granted by the MYAS to the IHF. Counsel for the Petitioner, however, denied that the IHF received such a letter. The least the Central Government could have done was to have informed the Court that it was proposing to take such an action. Further the only reason given for withdrawing the recognition was that the IHF has been disaffiliated by IOA. This Court has already held that the disaffiliation of the IHF by the IOA was illegal. Consequently, the order dated 10th/11th August 2009 of the MYAS derecognizing the IHF also deserves to be set aside as being unsustainable in law.

60. Secondly, although the 2001 Guidelines unambiguously mandate that “before withdrawal of recognition, the concerned NSF will, however, be given reasonable opportunity to present their defence” not even a show cause notice was issued by the MYAS to the IHF before derecognizing it. Even on this ground alone the order of derecognition is required to be declared illegal and set aside.

61. Mr. Jatan Singh, the learned counsel appearing for the MYAS submitted that earlier two writ petitions had been filed by one other office bearer of the IHF challenging the decisions of the IOA that have been challenged in this petition. Although they were dismissed as withdrawn, this fact ought to have been disclosed by the Petitioner in this petition. The above submission is untenable for the two reasons. In the first place, the

earlier writ petitions were filed by Mr. Hardayal Singh Kharbanda and not the IHF. Secondly, both petitions were dismissed as withdrawn and therefore, there was no decision on merits.

62. It was then submitted by Mr. Jatan Singh that under Clause 10 of Annexure III to the Guidelines it was in 'public interest' to derecognize IHF since its forming the IHC jointly with the IWHF was a serious irregularity that deserved derecognition. This argument is unacceptable for the simple reason that no such ground was ever communicated to the IHF and its explanation sought thereon. Secondly, even the order of derecognition does not cite this as a reason. In any event, the more serious the irregularity, the greater the need to afford the entity proceeded against an opportunity of defending itself. This only underscores the need for compliance with the principles of natural justice before a decision adverse to the Petitioner based on a serious charge is taken.

63. This Court finds that the MYAS has been largely indifferent to what has been happening with the IHF and has left the entire control to be taken over by the IOA. This is contrary to the spirit of the 2001 Guidelines which have been adverted to earlier. The MYAS has not been able to enforce or implement the Guidelines as far as IHF is concerned. Although this Court is not called upon to examine the validity of the formation of Hockey India, it must be pointed out that despite the order of this Court, the MYAS has not explained on what basis it granted recognition to Hockey India and whether it followed the 2001 Guidelines while doing so.

64. The IOA's actions in this case, and consequently those of the MYAS stemmed from a knee-jerk reaction to the pressure brought to bear upon the IOA by the FIH. That the FIH was left confused wondering whether the IHC represents Indian hockey at all is evident from its advisory note dated 7th May 2008 where it says "it is not our wish or intention that the IHC should cease to be a member of the FIH." Even if FIH was understandably in some panic, there was no need for the IOA to react likewise and place the IHF itself under suspension. It required some calm and collective thinking on what should be the most appropriate corrective action vis-à-vis the office bearer who was allegedly found accepting a bribe in the "Sting Operation". Incidentally this Court has been informed that the criminal case registered pursuant to that "Sting Operation" is still under investigation and no charge-sheet has been filed. This only shows that an action taken in haste can do irreversible damage if the status quo thereafter is allowed to continue indefinitely. Even now if the appropriate corrective action is taken, the apprehensions of the FIH can be suitably allayed.

65. For the above reasons this Court sets aside the order dated 10th/11th August 2009 passed by the MYAS derecognizing the IHF.

Fait Accompli and consequential directions

66. Mr. Harish Malhotra, the learned Senior counsel appearing for the IOA submitted that even if this Court were to set aside the order of the IOA disaffiliating the IHF and the order of the MYAS derecognizing the IHF, the suspension of the IHF should not be revoked. According to him, while maintaining the suspension of the IHF, this Court could direct both the

IOA and the MYAS to issue notices to the IHF to ask it to show cause why its affiliation and recognition respectively should not be withdrawn. He submitted that the IHF will be given a hearing and a reasoned decision will thereafter be given. He pleaded that the suspension of the IHF should be kept operational till such time a decision was not taken on such show cause notices by the IOA and MYAS respectively.

67. Mr. Malhotra buttressed the above submission by pointing out that the Commonwealth Games 2010 were only a few months away and if at this stage the IHF was revived, it would result in a chaotic situation since Hockey India had already been formed as a unified body for men's and women's hockey in India. Hockey India had been granted affiliation by the FIH. Its State bodies were also under formation. Selection of teams for international events/tournaments had to be done only by a unified body, i.e., the Hockey India. Consequently it is pleaded that no order should be passed lifting the suspension of the IHF.

68. Supplementing the above submissions, Mr. Lovekesh Sawhney placed reliance on certain observations in the decisions in *S.L. Kapoor v. Jagmohan (1980) 4 SCC 379* and *Keshav Mills Co. Ltd. v. Union of India (1973) 1 SCC 380*.

69. Countering the above submissions, it is pointed out by Ms. Manmeet Arora, learned counsel for the IHF that both the IOA and the MYAS were seeking to frustrate the proceedings by presenting the Court with a *fait accompli*. She points out that this had already been apprehended by the **WP(C) No.3713/2008**

Petitioners when they filed an application, CM No. 13945 of 2008 early on, seeking elections to be held under an Independent Observer. When this was again raised by the Petitioners before this Court on 18th January 2010, this Court had observed in its order that “any action taken by the Respondents will be subject to further orders and the final result of the present writ petition.”

70. In the first place, this Court would like to observe that neither decision cited by Mr. Sawhney helps the case of the IOA. In *Keshav Mills Co. Ltd.* the question was when the rules of natural justice had been complied with at the stage of investigation into the affairs of the company under Section 15 of the Industries (Development and Regulation) Act 1951, whether it was again required to be followed when action was to be taken under section 18A on the report of the Investigation Committee. Answering the question in the negative, the Supreme Court observed that “the concept of natural justice cannot be put into a strait-jacket” and that “everything will depend on the actual facts and circumstances of a case.” By no means was the Supreme Court suggesting in that case that the rules of natural justice could be totally dispensed with as has been done in the instant case. The said decision can therefore have no application in the facts of the present case.

71. In *S.L. Kapoor* the Supreme Court was examining the validity of the action of the government in superseding the New Delhi Municipal Committee without complying with the principles of natural justice.

Rejecting the argument that observance of natural justice would have made

no difference to the decision, and holding the action to be illegal the Supreme Court speaking through Chinnappa Reddy J., observed (SCC, p.394):

“In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.”

72. In *S.L. Kapoor* the ultimate relief was denied only because only a few days (less than two weeks) were left for the Committee's term to expire. It was in those circumstances observed that if the Committee was reinstated “it may lead to confusion and even chaos in the affairs of the municipality.” The situation here bears no comparison. It is not as if IHF's term is about to expire or that “chaos” would result with its revival. The Commonwealth Games are still a few months away. It will be for the MYAS to decide how best to go about the matter. This Court cannot be presented with a *fait accompli* when the IOA and the MYAS knew fully well that this petition involving the legality of their actions vis-à-vis the IHF was pending consideration.

73. Indeed whenever this Court considered passing an interim order, it was informed by the Respondents that some major international event is round the corner and therefore, this Court should refrain from passing orders till such time the event was not concluded. This was the reason why this

petition was not taken up for final hearing till such time the Men's Hockey World Cup 2010 was not concluded. However, that does not mean that every time there is some sporting event involving hockey in the offing, the present petition has to be adjourned. It would be unfair to the Petitioner, which has succeeded in showing that both the orders of disaffiliation and consequent de-recognition are wholly illegal, to be denied relief for over two years on the ground that such order might jeopardize India's participation in a sporting event.

74. There is merit in the apprehension expressed by learned counsel for the petitioner that if the suspension is not lifted and the parties are required to go through the motions of a show cause notice followed by a hearing, it might reduce the requirement of complying with the principles of natural justice to an empty formality. The very same reasons being put forth now might be used by the Respondents not to lift the suspension of the IHF. This Court is of the considered view that the *status quo ante* the impugned orders should be restored as far as the petitioner is concerned.

75. This Court is conscious that in ***Narinder Batra v. Union of India ILR (2009) IV DELHI 280*** a learned Single Judge of this Court had occasion to consider the binding effect of the Guidelines framed by the MYAS. A number of directions were issued including one requiring the MYAS to undertake a detailed enquiry into the working of the IHF. Although the said judgment in ***Narinder Batra*** is under appeal, no stay has been granted by the Division Bench. There was, therefore, an opportunity for the MYAS to have undertaken an enquiry into the working of the IHF and then issued,

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if necessary, a show cause notice listing out the irregularities, if any, detected during such enquiry and elicited the response of the IHF. That would have enabled the MYAS to avoid the charge of arbitrariness as is now being laid at its doorstep. Unfortunately, for over two years now the petitioner IHF has continued to remain under an illegal suspension, followed by an illegal disaffiliation and an illegal de-recognition. This situation calls for a restitutive correction.

76. This court believes that even now it is not too late for the MYAS to get its act together and set things in order with the cooperation of both the IHF and the IOA and any other body that may have been set up. Instead of again panicking about the revival of the IHF, it requires to be seen how the interests of hockey in India can be best served. Sports bodies have to have a degree of autonomy with the government playing the role of an effective regulator. They must be allowed to function in a democratic manner with persons really interested in developing the game participating in its affairs. The knee-jerk reaction to losses at international events, which are inevitable in competitive events, and looking for persons to blame, cannot be conducive to a healthy development of any national sport. For a proper enquiry into the problems besetting Indian hockey the cloud of 'suspension' over the IHF should be lifted. The past should be put behind and a new beginning made. The submission made by Mr. Harish Malhotra that IHF's suspension should continue is accordingly rejected.

77. For the aforementioned reasons the decision dated 28th April 2008 of the IOA placing the IHF under suspension and the decision dated 10th May

2009 of the IOA disaffiliating the IHF are hereby quashed. The decision dated 12th May 2008 passed by the MYAS temporarily withdrawing the recognition of the IHF and the subsequent order dated 10th/11th August 2009 passed by the MYAS derecognizing the IHF are also hereby quashed.

78. The writ petition is allowed with costs of Rs. 20,000/- of which Rs. 10,000/- each will be paid by Respondents 1 and 2 to the Petitioner within a period of four weeks from today. All the pending applications stand disposed of.

S. MURALIDHAR, J.

MAY 21, 2010

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