

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

Date of Reserve : 30.11.2010

Pronounced on : 17.01.2011

+ **CS(OS) 1805/2010**

S JAGTARAN SINGH ANAND & ORS Plaintiff

Through: Mr. Harish Malhotra, Sr. Advocate with Mr. Rajiv Kumar Garg and
Mr. Ashish Garg, Advocates.

versus

CHELMSFORD CLUB LTD Defendant

Through: Mr. P.V. Kapur, Sr. Advocate with Ms. Vijay Lakshmi Menon, Mr. Pawan
Sharma, Ms. Ekta Sikri, Ms. Mehak Khanna and Mr. Madhumeet
Chauhan, Advocates.

+ **CS(OS) 1861/2010**

S.S. SYAL & ORS Plaintiffs

Through: Mr. Prabhjit Jauhar with Ms. Anupama, Advocates

versus

CHELMSFORD CLUB LTD Defendant

Through: Mr. P.V. Kapur, Sr. Advocate with Ms. Vijay Lakshmi Menon, Mr. Pawan
Sharma, Ms. Ekta Sikri, Ms. Mehak Khanna and Mr. Madhumeet
Chauhan, Advocates.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not? | Yes. |
| 3. | Whether the judgment should be
reported in the Digest? | Yes. |

MR. JUSTICE S. RAVINDRA BHAT

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1. This common judgment will dispose of two suits. The plaintiffs in CS (OS) 1805/2010

are referred to as “the plaintiffs in the First suit” and the plaintiffs in CS (OS) 1861/2010 are referred to as “the plaintiffs in the Second suit”. The defendant in both the proceedings is common, i.e. Chelmsford Club Ltd., (hereafter called “the Club”).

2. The relevant claims in the first suit are for declaration that the nomination forms submitted by the plaintiffs in the suit are valid and that they were entitled to participate in the elections held on 15.09.2010. Consequent mandatory injunction and permanent injunction, directing the Club, not to reject the nomination forms and also restrain it and its office bearers etc. from holding the election on 15.09.2010 is sought. In the second suit, a declaration that a Circular of 04.09.2010, issued by the Club and a letter dispatched on that date, on 06.09.2010, rejecting the plaintiffs’ nomination in the second suit as void, and a further declaration that the said plaintiffs are entitled to participate in the elections on 15.09.2010 with consequential mandatory and permanent injunction of the kind sought in the first suit are claimed.

3. The undisputed facts of both the cases, emerging from the pleadings, i.e. the plaint and the written statements are that the Club is registered as a Company in terms of Section 29 of the Companies Act (hereafter referred to as “the Act”). The plaintiffs in both the suits are members of the said Club, the affairs of which are to be managed by a Committee constituted under Article 42 of the Memorandum and Articles of Association (“the Memorandum”). The Committee is to comprise of 25 members whose election is to be conducted in accordance with Article 39.

4. Article 39 of the Memorandum governing the Club’s election reads as follows:

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39. Election of the members of the Managing Committee shall be conducted in the following manner:

(a) Along with the notice for holding the Annual General Meeting the Secretary shall cause a circular to be issued to all members of the club who are entitled to vote under these Articles, inviting them to state, not less than four teen clear days before the meeting, whether they are desirous of serving on the Managing Committee of the club for the year following. Any member may even propose any other member as a candidate in which case the proposal with the consent of the proposed candidate be delivered to the office of the club within the time above mentioned. Proposals received after the date shall not be valid.

(b) A member who is not a retiring member of the committee and who is desirous of serving on the committee or whose name has been proposed as a candidate as provided in the last foregoing paragraph must file his consent in writing in the following form, with the Registrar of companies, Delhi.

To, The Registrar, Companies, Delhi.

Consent to act as a member of the committee under Section 264 of the Act

I, the undersigned hereby testify my consent to act as a member of the Managing Committee of the Chelmsford Club Ltd..’ pursuant to Sec. 264 of the Companies Act, 1956.

Signature

Address

Description

Date this -----day of -----

(c) All replies received in the club office till the prescribed day and time as specified in the notice shall be arranged alphabetically and circulated to all Life, Permanent and corporate members of the club. This circular shall be termed as Ballot paper.

(d) Such ballot paper shall be serially numbered and signed by the Secretary and will be sent under postal certificate to all members. The duplicate shall only be issued on a written requisition from the member. Such ballot paper shall bear the same number as the original one.,

(e) The ballot paper will state the manner in which the votes are to be recorded and any ballot paper not in strict conformity with the instructions will be treated as invalid and will not be counted for.

(f) Simultaneously with the posting of the ballot papers, the Secretary shall cause a ballot box duly locked and sealed to be placed in the office of the club in which all ballot papers shall be deposited not later than 24 hours before the annual general meeting.

(g) Every member will file the ballot paper sent to him in strict conformity with the instructions and in the manner stated on the ballot paper.

(h) Any deviation therefrom shall invalidate the ballot paper.

(i) All ballot papers shall be deposited in the ballot box not later than 24 hours before the time the annual general meeting is to be held.

(j) At the said annual general meeting the names of every candidate whose name has been circulated on the ballot paper shall be individually proposed by the chairman unless any other member wishes to do so.

(k) After the proposals have been so made at the said general meeting, the chairman of the meeting shall on his own motion, unless already demanded by any other member order the poll to be taken simultaneously on various motions moved under (j) in the following manner:

(a) The Chairman shall appoint two scrutineers of his choice who shall always be the members of the club not being officers or employees of the club, present at the meeting.

(b) The chairman shall than hand over the ballot box to the scrutineers.

(c) Any member who for sufficient reason if and only if, he has not already deposited his ballot paper, may recorded his vote at the meeting itself by submitting his list of those whom he was voting for which list too shall be handed over to the scrutineers. Such voting too shall be regulated by the Chairman.

(d) All the ballot papers taken out of the ballot box and the votes if any recorded at the meeting as provided in © above shall by the Chairman be handed over to the scrutineers. The scrutineers after due scrutiny and counting shall submit their report to the chairman regarding the number of votes secured by each candidate. Candidates securing the largest number of vote shall be deemed to have been elected.

(e) The result of this poll as ascertained shall be deemed to be the decision of the meeting on various motions referred to in sub clause (j) above regarding the election of the members of the managing committee and in pursuance thereof the chairman shall announce which of the motions referred to in (j) above have been carried....

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5. The suits allege that the affairs of the Managing Committee of the Club have been, for the past two years, conducted in a manner prejudicial to the members and the Club generally. It is alleged that the Memorandum was not made available to the members with the motive of the incumbent Committee members continuing to enjoy their position and perpetuating their own rule. The suit mentions 11 such alleged committee members, who were responsible for such state of affairs; however, they are not impleaded. It is also alleged that such members of the committee perpetuated a self-rule by ensuring the election of their relatives, virtually in rotation. The suits further contend that pursuant to the proposed Annual General Meeting, a notice of 13.08.2010 was dispatched to the members, intimating that the election for the Club were to be held on

15.09.2010 with the Agenda of electing the President and 25 members. The said notice has been extracted in both the suits and is in the following terms:

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In conformity with Article 39(a) of Articles of Association of the Club, Members are requested to signify by notice in writing left at the office of the Club not less than 14 clear days from the date of meeting, whether they are desirous of serving on the Managing Committee of the Club for the year following. Any member may even propose any other member as a candidate in which case the proposal with the consent of the proposed candidate be delivered to the office of the Club within the time above mentioned along with the Security Deposit of Rs. 500/- (Rupees five hundred only). The amount of security shall be refunded if the member is elected, otherwise the security amount will be forfeited under S. 257 of the Companies Act, 1956. Proposals received after the said date shall not be valid.

A member who is not a retiring member of the Committee and who is desirous of serving on the Committee or whose name has been proposed as a candidate, as provided in the last foregoing paragraph, shall not be entitled to act as a member of the committee unless he has within 30 days of his appointment signed and filed with the Registrar of Companies, Delhi his consent in writing to act as such Member as provided under Section 264 of the Companies Act.

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6. It is alleged that the Club had *mala fide* intent, as is evident by inclusion of the following Clause:

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I hereby give consent to act/propose name of _____ as Member of the Managing Committee for Chelmsford Club Ltd., for the following year.

Signature.....

Name.....

Dated

Membership No.....

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7. The plaintiffs allege that the said notice was not circulated to all the members and that they came to know about it only very late. Consequently, the plaintiffs in the first suit went to the club on 01.09.2010 at 01.00 PM to submit the form to contest the election for members, along

with the requisite fee. It is alleged that the Club illegally refused to accept the forms. Initially the money was allegedly accepted but later the plaintiffs were informed that unless the Secretary instructed acceptance of the same, it could not be taken on the record. The plaintiffs in the second suit allege that they had approached the Club on 27.08.2010 and were told that a sample form, evidencing the intention of the proposed candidate to hold himself out as a nominee had to be furnished along with the payment of ₹ 500/-. They further allege that accordingly Demand Drafts were prepared along with the forms, evincing interest of the members contesting the election but that the Secretary of the Club refused to accept the forms and eventually on 31.08.2010, after persuasion, the Administrative Officer reluctantly agreed to accept the forms/proposal of candidates to contest the election, and agreed to accept the sum of ₹ 500/- tendered by each of them. It is contended that the furnishing of receipts is evidence that the forms were accepted within the time and the requisite amount had been deposited.

8. The grievance of the plaintiffs in the first suit is that rejection of their Nomination Form, on the pretext that it was belated and that was not accompanied by consent of the proposed candidate, is illegal; likewise, the grievance of the plaintiffs in the second suit is that the proposals or forms submitted by them for election, scheduled for 15.09.2010, rejected through the impugned letters/circulars of 04.09.2010 and 06.09.2010 on the ground that consent of the candidates had not accompanied the nomination forms and that the sum had to be deposited on or before 31.08.2010, with such consent, are illegal and unsustainable. The plaintiffs rely upon Section 257 of the Companies Act to say that rejection of the nomination forms is contrary to the said provision. It is further contended that the stipulation in Article 39A, requiring the consent of the proposed candidates and the further need for delivery of the said consent within the time mentioned is *ultra vires* Section 257. The plaintiffs submit that the law on the subject is that for an election to the post of Director in a company, a nomination by any member without the consent of the candidate can be filed and that such elected Director has to give his consent within 30 days after the election. The insistence by the defendants, of fulfillment of the condition, of having to furnish the consent of the proposed candidate prior to the election, it is stated, is contrary to provisions of the Companies Act, and, therefore, void. The plaintiffs have also argued that the Club is a company in terms of Section 25 of the Companies Act, and without grant of any license, which in turn implies that the provisions of the Companies Act apply in full force today.

9. The second important argument or contention urged and pleaded by the plaintiffs is that the requirement of having to give 14-days notice stood satisfied – in the case of the first suit when the forms were submitted on 01.09.2010. It is claimed that while recounting the 14-days period, the day on which the form is submitted, also has to be taken into account and not excluded.

10. The written statements in both suits are almost identical, excepting a few details. The club contends that Article 39(a) of the Memorandum provides that written consent of the proposed candidates should also be filed not less than fourteen clear days before the meeting. However, the Plaintiffs did not file their written consent within that period and therefore, their nominations were liable to be, and therefore were rejected. It is submitted that rejection of the Plaintiffs' nomination is in accordance with the provisions of Article 39(a) of the Articles of Association of the Defendant which is binding on the Plaintiffs and the Defendant under Section 36 of the Act. Permitting invalid nominations is prejudicial to the interests of the other candidates who have filed the valid nominations and if this is permitted they will object to such permission on the ground that the club has violated the Articles. It is therefore urged that the suit must necessarily fail, on this score.

11. The Club states, without prejudice to above, that a fair construction of provisions of Section 257 read with provisions of 264(1) of the Act also meant that the nominations were liable to be rejected, as the consent, required under Section 264(1), was not filed with the Defendant along with the nominations.

12. The Club next avers that the plaintiffs' claim for declaration that Article 39(a) is null and void on the ground that Section 257 of the Act does not require the consent of the proposed candidates, is misconceived, because Section 264(1) of the Act requires consent of the proposed candidate to be filed. Unless any provision of Articles is void under Section 9 of the Act, the same has to be complied with, by the members of the company and the company, and also, the same cannot be ignored/superseded by the Court. Therefore, Article 39(a) is binding and has to be enforced and cannot be superseded. It is stated therefore, that the nominations of the Plaintiffs were correctly rejected.

13. The Club avers that the requirement of written consent of the proposed candidate (to the Company) is not a mere formality, the non-compliance of which is not a mere irregularity, resulting in vacancy of the non-consenting member, which can be filled later on. In the case of companies like the Club, the Articles of which provide for election by ballot, not filing the consent with the company actually vitiates and jeopardizes the whole election process and does not result merely in a vacancy. It is stated that if a proposed candidate who does not file his consent is permitted to contest the elections his name would also be included in the ballot sent to the members for voting along with the names of other consenting candidates. The members unaware of his lack of consent, may vote (for him also), which vote they could cast in favor of the other contesting candidates. In that case there may be two possibilities, he may get elected or though he is not elected but may get some votes. If he gets elected and later he refuses to act a casual vacancy is created, which under the provisions of the Articles is to be filled by the remaining elected members of the managing committee. This, states the Club, takes away the right of its members to elect all the 25 members and instead the new member is co-opted by the managing committee.

14. It is urged, additionally, that this adversely affects the chances of the other consenting candidates who might lose the elections due to votes given to a non-consenting member, which would have been cast in their favor and they could have won the election. Similarly, the non-consenting candidate upon coming to know about his nomination may withdraw before the elections but after issue of ballot paper like in the present case some have so withdrawn. In that case even they may also get some votes, which could be given to the other consenting candidates. Therefore, in either case the whole election process will get vitiated or will result in deprivation of rights of the members to elect all the 25 members. There may be another eventuality also. For example, the non-consenting member may be a very busy person not able to devote his time for the Defendant's functioning or may be ill or otherwise not at all interested in participating in the managing committee or even he may be having any other disqualification for being elected, as a member of the managing committee under the provisions of Section 274 of the Act. If he gets elected, then even if he may not refuse to act, but he would not be able to devote his time to the Defendant, which will not be in the interest of the functioning of the Defendant. Therefore, the requirement is not a mere technicality or a formality but absence of

consent will have serious adverse repercussions on the whole election process, right of the members to elect all the 25 members and will be prejudicial to the interest of the Defendant.

15. The Club states that the plaintiffs, being its members, are presumed to have constructive notice, of the Articles of having read and understood its provisions and therefore, they cannot allege lack of awareness of the consent requirement, provided in the Articles. Further, the requirement of consent is also provided under Section 264(1) of the Act. In any event the said requirement was also mentioned in the Notice of AGM, which was sent to each member by UPC on 21.08.2010.

16. The Club also submits that any relaxation from the requirement of Articles and the Act in the present case will also set a bad precedent for future not only for consent and time line for nominations but also for other matters as well.

17. The Club alleges that the present suit was filed with *malafide* intent to jeopardize its smooth functioning and the plaintiffs, some of whom are club members for over 20 years, have leveled allegations for the first time. The plaintiffs have not approached the Court with clean hands as they have suppressed that at the time of becoming members they were given copies of the Memorandum and Articles of the Club and that elections of the Managing Committee of the Club are held each year. The Club disputes allegations in the suit regarding manipulation in the elections and averments pertaining to perpetuation of rule of a few committee members.

18. The Court, on 13th September, 2010, made the following order:

“Learned counsel for the parties submit that since the question which arise for determination are narrow and can be addressed and that the Court may appropriately consider them finally. It is also submitted by counsel for defendant company that it would be bound by the decision of the Court and any declaration of election results which are subject matter of these proceedings would be subject to the final judgment.”

On 20.10.2010, the Court made the following order, framing issues:

“1) Whether the proposal form submitted by a member in respect of candidature of another member, of the defendant club has to be accompanied by the candidate’s consent and whether the condition condition is valid, legal and enforceable;

2) The true meaning and interpretation of the expression “14 clear days” (notice) occurring in Article 39 (a) of the Articles of Association of the defendant company;

3) *Whether the managing committee possesses the power and authority to reject the nomination form of any of the plaintiffs;*

4) *Has the suit been valued correctly for purposes of court fees and the requisite court fee paid;*

In view of the above developments, and orders, parties, through their learned counsel, addressed arguments finally, in the suit, and orders were reserved thereafter.

Issue No. 1

19. The contentions in this regard involve an interpretation of Sections 9 and 29 of the Companies Act. The plaintiff argues that the overriding effect of Section 9 of the Act mandates that the Articles of Association of the defendant company could not contravene any part of the Act. Therefore, under Section 264, the club's Articles of Association would be void to the extent that they are repugnant to Section 264 in so far as the Articles of Association require consent of the nominated members to be submitted along with the nomination, not less than 14 days prior to the general meeting. Under Section 264, however, such consent may be submitted by the nominated member, within 30 days after appointment. The plaintiffs contend that the Club is subject to the provisions of Section 264 of the Act. The plaintiffs rely on the decision of this Court, in *Pramod Chopra v. Apparel Exports Promotion Council*, ILR 1984 Del 717 to say that provisions of Sections 257 and 264 are binding, as they prescribe non-derogable standards. They also rely on *L.C. Kapadia v. L.B. Desai*, AIR 1972 Bom 276 to explain the object of Section 264 to say that consent of the candidate is inessential, at the stage of lodging the application form, and can be furnished within 30 days after the election.

20. The Club argues that under Section 29 of the Act, its Articles of Association are merely required to conform to the form prescribed in Table C, D and E in Schedule 1 to the Act. Under this provision their contention is that the nature of Section 29 of the Act is merely directory as opposed to being an imperative condition and therefore, the degree of compliance necessitated by this provision is 'substantial compliance'. The statutory provision does not require undeviating conformity. According to the Club, its articles of association only consist of minor variations from Table C that are consistent with the model form prescribed by the Act.

21. The Club argues, on this issue, that Article 39(a) is categorical, in that a member proposing the candidature of another, mandatorily has to submit the consent *in advance, along*

*with the proposal form, and that non-compliance with this can entail a justifiable rejection of the proposal. It is submitted, in this respect that the club is a Section 29 company, and therefore, entitled to prescribe its rules, embodied in the Memorandum and Articles of Association. The further argument is that such Section 29 companies are not bound by provisions of Sections 257 and 264 of the Act; the logic being that the enactment merely requires compliance (of the Memorandum and Articles) with the contents of Forms in Table C of Schedule I, as the club has complied, in its Memoranda, etc., with such provisions, the spelling out of further mandatory requirements such as accompaniment of the consent form of the candidate is a binding condition, which each member of the Club has to follow, at the risk of rejection of his application to contest elections. Reliance is placed on the judgment of the Madras High Court, in *Madras Stock Exchange Limited v. S. S. R. Rajkumar*, 2003 (116) Comp. Cas 214; Karnataka High Court in *Bangalore Turf Club Ltd. v. N. Sundaraswamy*, 2005 (124) 373; of the Supreme Court in *Narendera Kumar Agrawal v. Smt. Saroj Maloo*, 1995 (6) SCC 114.*

22. It would be necessary to extract, at this stage, the relevant provisions of the Companies Act. They are as follows:

“9 ACT TO OVERRIDE MEMORANDUM, ARTICLES, ETC.

Save as otherwise expressly provided in the Act -

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

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29 FORM OF ARTICLES IN THE CASE OF OTHER COMPANIES.

The articles of association of any company, not being a company limited by shares, shall be in such one of the Forms in Tables C, D and E in Schedule I as may be applicable, or in a Form as near thereto as circumstances admit :

Provided that nothing in this section shall be deemed to prevent a company from including any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E, adopted by the company.

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257 RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP.

(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be, along with a deposit of five hundred rupees which shall be refunded to such person or, as the case may be, to such member, if the person succeeds in getting elected as a director.

(1A) The company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting :

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company is located, of which one is published in the English language and the other in the regional language of that place.

(2) Sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company.

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264 CONSENT OF CANDIDATE FOR DIRECTORSHIP TO BE FILED WITH THE COMPANY AND CONSENT TO ACT AS DIRECTOR TO BE FILED WITH THE REGISTRAR.

(1) Every person ([[566](#) other than a director retiring by rotation or otherwise or a person [566](#)] who has left at the office of the company a notice under section 257 signifying his candidature for the office of a director) proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.

[[567](#) (2) A person other than -

(a) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office, or

(b) an additional or alternate director, or a person filling a casual vacancy in the office of a director under section 262, appointed as a director or re-appointed as an additional or alternate director, immediately on the expiry of his term of office, or

(c) a person named as a director of the company under its articles as first registered,

shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with the Registrar his consent [568](#) in writing to act as such director. [567](#)]

(3) This section shall not apply to a private company unless it is a subsidiary of a public company.”

23. In *Narendra Kumar’s* case (supra), relied on by the Club, the Supreme Court had to deal with a provision relating to registration of transfer (of shares), in the backdrop of what had to be provided under the Memorandum and Articles of Association. The company was registered under Section 25. The Court observed that:

“It was contended on behalf of the appellant that the High Court did not consider all the relevant aspects before directing the MSEA to register the transfer. It was submitted that though other interest of a member in a company like shares is movable property and transferable the transfer can be made in the manner provided by the articles of association. Learned counsel appearing for the MSEA also submitted that if the High Court had carefully examined the articles of association of the MSEA then it would have noticed that it does contain restrictions with respect to transfer of membership.

Section 28 provides that the articles of association of a company limited by shares may adopt all or any of the regulations contained in Table A in Schedule I. It further provides that in the case of any such company which is registered after the commencement of the Act if the articles are not registered after the commencement of the Act if the articles are not registered or if the articles are registered insofar as the articles do not exclude or modify the regulations contained in Table A those regulations shall, insofar as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. In respect of other companies Section 29 provides that the articles of association of such company shall be in one of such forms in Tables C, D and E in Schedule I as may be applicable or in a form as near thereto as circumstances admit. It further provides that nothing contained in that section shall be deemed to prevent a company from including in that additional matters in its articles insofar as they are not inconsistent with the provisions contained in the form in any of the Tables C, D and E adopted by the company. In this case, it is not disputed that Table C will be applicable. If Tables A and C are compared it becomes apparent that

there are material differences between the two. These differences and their effects have not been considered by the High Court. The High Court has also not considered who can be a member of a company limited by guarantee and of the nature and type like the MSEA and whether that would make any difference in the matter of transfer of other interest of a member in such a company. It was submitted that for becoming a member of a company like the MSEA certain qualifications are necessary and that would, by necessary implication, even in the absence of articles of association, put restrictions on transfer of memberships by nomination.”

In the *Madras Stock Exchange* case (supra) the Court observed that:

As to whether the provisions contained in the articles of the exchange are inconsistent with the provisions of the Companies Act has to be considered in the light of the law governing the stock exchanges and the provisions of the Companies Act. The enactments being statutes framed by Parliament, neither can be so read or so interpreted as to nullify what has been mandated by other. Stock exchanges registered under the provisions of the Companies Act are not to be deprived of their power to discipline their erring member stock brokers, by expelling persons who have ceased to possess the qualification prescribed under the Securities Contracts (Regulation) Act and the Rules made thereunder. By reason of the provision of the Securities Contracts (Regulation) Act, stock exchanges are not to be regarded as being ineligible to function as companies under the provisions of the Companies Act.

Thus, what is permissible of inclusion in the articles of association would depend in part on the objects of the company and law which regulates that activity.

In the case of companies limited by guarantee a provision for expulsion in the articles would not per se be inconsistent with the requirements of the Companies Act. In a club registered under the Companies Act, the privileges that accompany membership being personal to the member, the collective welfare of the members would require that each one of them conform to a discipline which all of them agree to observe. Breaches of such discipline would require to be penalised, and if the conduct of the member is such as to make his continued presence wholly undesirable amidst other members, there is nothing in principle that would come in the way of such a member being expelled...”

24. In the *Bangalore Turf Club* case (supra), the question was whether “stand” members – who, under the Articles had no right to vote, -could claim or demand the privilege; the company was one under Section 29 of the Act. The Court held that:

“The proviso makes it clear that the company can include any additional matter in its articles. Article 1 at annexure A page 29 provides that the articles contained in Table C shall apply subject to modifications herein contained. The proviso to Section 29 also empowers a company to include any additional matters in the articles. The additional matter in the articles relates to stand members who are not members of the company at all. Therefore, the contention of the respondents is wholly unsustainable....”

As against the above decisions, the plaintiffs rely on *Pramod Chopra* case (supra). The relevant discussion, as to incompatibility of the Articles with provisions of the Companies Act, in the case of a company governed by Section 29, and whether it resulted in the Articles being rendered *ultra vires*, was discussed as follows:

“13. I will first consider this issue incorporating the challenge to the denial of voting rights. It is not necessary to repeat the rival contentions since I have mentioned them in detail above. A Company incorporated under the Act means a company formed and registered under the Act or an existing company as defined in Clause (ii) of Section 3. It may be a private company or public company. A private company must have articles of its own, containing the restrictions, limitations and prohibition required by Clause (iii) of sub-section (1) of Section 3. A public company means a company which is not a private company. A company may be a company limited by shares or a company limited by guarantee or an unlimited company. A company is limited by shares where the liability of each of its members is limited by the nominal amount of the share held by him. The use of the word limited indicates that the liability of the members for the debts and other liabilities of the company is limited to the amount contributed or undertaken by the members towards the share capital of the company. Unlimited companies are those where the liability of the members is not limited at all. Companies limited by guarantee where the companies have no share capital are those where each member undertakes to contribute in the event of the company being wound up such amount not exceeding the specified amount in the memorandum of association. Section 87 (1) of the Act confers voting rights on every member of a company limited by shares and holding any equity share capital therein, however, small it may be. There is a legislative mandate and thus a company cannot by its Articles of Association or otherwise deny voting rights to the holders of shares. Section 87 (2) confers on every member of a company limited by shares and holding any preference share capital wherein, a right to vote on the resolutions placed before the company which directly affects the right attached to his preference shares. There were excessive voting rights on share capital issued before the commencement of the Act. The disproportionately excessive voting rights have been terminated by Section 89 of the Act. Section 88 of the Act contains an absolute prohibition as regards the issue of the shares with disproportionate voting rights. The spirit behind these provisions is that the voting rights in respect of all equity shares bear the same proportion as to the amount of share capital paid-up. The Articles of Association cannot now confer disproportional voting rights on one class of share-holders. Mandatory provisions have been made in the Act itself about the right of voting in a company limited by shares. Section 28 of the Act requires that the Articles of Association of a company limited by shares may adopt all or any of the regulations contained in Table A in Schedule I. The model articles in Table A do not contain any provisions as to voting rights for the simple reason that the Act in its sections specifically provide so.

14. Section 9 of the Act provides that save as otherwise provided in the Act, (a) the provisions of the Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of association of a company or in any agreement executed by it, or in any resolution passed by the company in the general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Act and (b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of the Act, become or be void, as the case may be. The legislature has clearly laid down that the Act has the over-riding effect. Section 29 of the Act reads as under : —

“The articles of association of any company, not being a company limited by shares, shall be in such one of the Forms in Tables C, D and E in Schedule I as may be applicable, of in a Form as near thereto as circumstances admit :

Provided that nothing in this section shall be deemed to prevent a company from including any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E, adopted by the company.”

Table C which is applicable to the Council contains the form of Memorandum and Articles of Association of a company limited by guarantees and not having a share capital. Clause 14 says that “every member shall have one vote”.

15. The legislature in Section 29 of the Act says that the Articles of Association of a company not being limited by shares shall be in such one of the Forms in Tables C, D and E in Schedule I as may be applicable or in a Form as near thereto as circumstances admit. The Schedule is as much a part of the Statute, and is as much an enactment as any other part. Schedules are tables of details appended at the end of an Act. The intention of the legislature is clear that the articles of association should be in the Form prescribed by the Act. At the same time some flexibility in the frame of the Articles of Association is given but they have to be as near thereto as the circumstances of the case may admit. The statutory provision is not worded in such a way that an undeviating conformity to the Form is required. There could be variations in the articles consistent with the model Form. The articles could also be supplemented where there was need but compatible with the prescribed Form. The divergence could not be with disharmony with the Form prescribed in the Act. It would surely be in accordance with the prescribed Form if the articles are substantially in accordance with it and they do not depart from the prescribed Form in any material respect. But if the deviation is destructive of the provision contained in the prescribed Form, then that deviation is void being ultra vires of the statutory provision. The aim and object of the Act and Form in Table C giving every member a right of one vote would be defeated, if the direction of the legislature is not strictly observed. It is thus imperative to adopt the Form. Whether a requirement is directory or mandatory is to be decided not merely on the basis of any specific provision setting out the consequences of the omission to observe the requirement but also having regard to the purpose for which the requirement has been enacted. The provision was inserted with an object of participation in the management of the companies. That would be nullified and hence the provision would be mandatory. It is also clear from the proviso to Section 29, which was later added in the Act by Act 65 of 1960. I repeat it says that nothing in the section shall be deemed to prevent a company from including any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E adopted by the company. The articles may include other matters but only those which are consistent or compatible with those given in the Table. An article which negates the valuable right recognised in the prescribed Form in the Table is inconsistent with that provision. The legislature did not in the Section of the Act provide for the voting rights of members of company limited by guarantee as was done in the case of companies limited by shares but wanted to achieve the same purpose by prescribing the Forms in the Tables in Schedule I. A change in the wording of Section 28 and Section 29 implies a change in the contents of the two provisions. While in Section 28 the articles may adopt all or any of the regulations contained in Table A in Schedule I, but in Section 29 the articles of any company shall be in such Form or in a Form as near thereto as circumstances admit. The alteration in the language has been deliberately made for a stricter conformation to the prescribed Form.

16. The Articles of Association of the Council in Articles 3,38,40 (a) and 47 confer voting rights on Ordinary Members. The right to nominate members to the Executive Committee or to vote on all resolutions passed by the Council in the General Meeting is conferred only on Ordinary Members and not on other class of members. There is no material on the record within the Memorandum or Articles of Association or in the documents on the record that members other than the Ordinary Members are acting or would act to the detriment of the Council if aforesaid rights are conferred on them. The objects for which the Council is set up shows that the Ordinary Members as well as other classes of members are desirable

participants in the affairs of the Council. The Form contained in Table C of Schedule I lays down that every member shall have one vote. The Council on incorporation becomes a body corporate which functions through its members. The Council would act by the Executive Committee and its members who are its agents and representatives. There is no basis to restrict the fulfilling of the functions of the Council by one class of its members. The voting rights are valuable rights. This right inheres in a member by virtue of his being a member of the Council. These rights can only be exercised in the meetings of the Council. By exercise of the right to vote the members can act for the benefit of the Council and also at the same time control the conduct of the affairs of the Council by the Executive Committee. By the exercise of right the members can effectively guide the Executive Committee, in the administration and management of the Council. The existing Articles of Association of the Council has created a classification and placed different classes of members the Ordinary Members in the position of superiority and the other classes in a position of inferiority. Members other than Ordinary Members have not been given any voting rights. There are several provisions in the Act such as Sections 17, 21, 31, 81 (1-A), 224, 225, 228, 284 (4), 293, 294, 309, 314 and 384 which require that certain powers of the Company should be exercised only by the Company in general meeting. The members other than the Ordinary Members of the Council cannot participate or have their say. The General Meetings of the company are always understood and considered as the meeting of all the members of the company with a right of participation and vote. It cannot be construed as a meeting of only some privileged members of the company. I am fortified in this view by the opinion expressed by a Division Bench of Kerala High Court in “P. C. Aravindhan V. M. A. Kesavan and others”, 1973 Tax L. R. 1844 (1) wherein it was held that Section 29 of the Act is mandatory, and, therefore, it is not open to the members to deviate from the provisions contained in Table C and incorporate provisions which are inconsistent and contrary to those therein. It was observed —

“ Every member of a company is entitled to take part in its administration. This right can be exercised only in the meetings of the shareholders. Such a right cannot be restricted except by the provisions of the Companies Act. When a member is entitled to take part in the administration of the company he is entitled to be present in the meeting which is called for, for the purpose of discussing the affairs, of the company. His right to attend and take part in the meeting is inherent in his membership of the company. It need not be specifically conferred upon him. On the other hand, one should search for a provision in the Companies Act whereby that right is expressly and specifically taken away. We do not find any such provision in the Companies Act. On the other hand, Section 181 of the Companies Act implies that even a defaulted shareholder has got the right to attend and vote at the meeting and the said provision empowers the company to frame Articles of Association restricting the said right. The power to impose a restriction in those circumstances is specifically conferred on the company. We are, therefore, satisfied that Regulation 47 of Ext. P-1 is violative of the provisions in Table C of Schedule I and the provisions of the Companies Act. It is, therefore, void.”

17. A submission is made by Shri G. L. Rawal, the learned counsel for the defendants that the Memorandum and Articles of Association of the Council have been framed and approved by the Ministry of Commerce, Government of India and the certificate of incorporation has been granted by the Registrar of Companies. He urges that the management and conduct of the Council's affairs in accordance with the Articles of Association of the Council is an internal affair not liable to be interfered with by a Civil Court. It is stated to be rejected. The challenge under this issue is to the validity of the provisions contained in Articles 3, 38, 40 (a) and 47 on the ground that they are ultra vires of the statutory provisions. The approval of the Memorandum and Articles of Association by the Ministry of Commerce, Government of India or the issue of a certificate of incorporation does not validate any provisions of the Council's Memorandum or Articles of Association which are in conflict with the mandatory provisions of the Companies Act, 1956. In “Avra V. Skelsey's Adamant Cement Company Ltd.,” 21

Times Law Reports 464 (2) the question arose before the Court of Appeal as to the increase of capital by a special resolution. The Articles of Association provided for a majority holding not less than four-fifths of capital. The resolution was passed by the three-fourth majority mentioned in Section 51 of the Companies Act, 1862. It was held that clause in the Articles of Association was invalid and void because it affected to alter the majority required by the said Act for passing a resolution to increase the capital of the Company. The resolution passed in accordance with the said Act was upheld. In “*Welton V. Saffery*”, 1897 A.C. 315 (3) , it was held that an article which is ultra vires of the company clearly cannot be so enforced. In “*Re Greene*”, 1949 (1) All E.R. 167 (4) , was a case in which the Articles of Association of the Company provided a deeming transfer of shares to director’s widow on his death. It was held to be invalid as being in contravention of Companies Act, 1929 Section 63 of which provided that it should not be lawful for a company to register a transfer of shares unless proper instrument of transfer had been delivered to the company. In “*Pevaril (Gold) Mines Ltd.*”, 1898 (1) Chd. 122 (5) it was held that a right given by Section 82 of the Companies Act, 1862 to a contributory to petition for the winding up of the company cannot be excluded or limited by the Articles of Association of the company. In “*M/ & Mazda Theatres Pvt. Ltd. V. New Bank of India Ltd.*”, I.L.R. 1975 (1) Delhi 1 (6) , a Division Bench of this Court held that Article 50 of that company contravened Section 289 of the Companies Act inasmuch as it does not provide for the circulation of the draft resolution to all the directors present in India at their usual address for approval by a majority of them. According to Section 9, the provisions of the Act over-ride the provisions of the Memorandum and Articles of Association in so far as the later are repugnant to the former. Article 50 was held as void as being ultra vires of Section 289 read with Section 9 of the Act.

18. The form of Articles of Association of the Council registered under Section 25 of the Act, as a company limited by guarantee and not having a share capital need not be confined, according to the counsel for the defendants, to the Articles indicated in Table C and may include other Articles. Reliance is placed by the counsel on *Gaiman and others v. National Association of Mental Health*, 1971 Ch. D. 317 (7) wherein it was held that Table C read with Section 11 of the Companies Act, 1948 is merely directory to the effect. The ratio was merely quoted with approval in Suit No. 1154/84, “*Vinay Kumar Wohi V. Automobile Association*, decided by G. C. Jain, J. on August 20, 1982 (8) . These are clearly distinguishable. In *Gaiman’s* case (*supra*) the articles of a mental health association, a company limited by guarantee without a share capital, provided by Article 7 (B) that a member forthwith ceased to be such if requested by resolution of the Council to resign but that he could appeal against that resolution to the association in general meeting. The contention was that Article 7 (B) was void under Section 11 of the Companies Act, as conflicting with the former Table C in Schedule I to the Act. It was held that the Schedule forms, including Table C were intended as models which could be moulded to suit a company’s individual needs. Section 11 of the Companies Act, 1948 provides (leaving out unnecessary words) that the form of the Memorandum and Articles of Association of a Company limited by guarantee and not having a share capital shall be in accordance with the form set out in Table C in the First Schedule to the Act, or as near thereto as circumstances admit. It may be that the forms were intended to provide models and not strait jackets and could be moulded to the needs of the company as the promoters see at that time. Table C did not contain any article resembling Article 7 (B) in that case. In my opinion it is on these facts that it was observed that promoters of a company should be free to add, subtract or vary as the needs suggest. The Article gave power to the Board of Directors or Managing Committee to expel a member. It was not invalid as it was not inconsistent with Table C. It was not suggested or ruled that the promoters could include those articles which are inconsistent or incompatible with those given in Schedule ‘C’. An abrogation of the provisions of Table ‘C’ cannot be as near thereto as the circumstances admit. An absolute enactment must be obeyed or fulfilled exactly, but is sufficient if a directory enactment is obeyed or fulfilled substantially. Even if the provisions of the statute are construed as merely directory, even in

that case also there has not been a substantial compliance. The substantial compliance cannot be by giving a complete go by to the right of vote to a class of members of the Council. 19. For the above reasons, I hold issue No. 2 in favour of the plaintiffs and against the defendants. I hold that the Articles including Articles 3, 11, 33, 38, 40 (a) and 47 in so far as they restrict the right to Ordinary Members to nominate and/or second to the Executive Committee of the Council or to stand for the membership of the Executive Committee or to vote on all resolutions placed for consideration by the Council in the General Meetings are ultra vires."

25. The preceding discussion would reveal that the plaintiffs argue, by relying on Section 9 and Section 264, that any provision in the Memorandum of a company – and more particularly, Article 39 (a) in this case, which stipulates something that imposes a condition, which is not supported by the provision of the Act, and is contrary to its intent, is *ultra vires*. The specific condition here is the requirement to file consent, by a member whose candidature is held out, at the time of filing the nomination form. The further argument is that such condition is contrary to Section 264, which clarifies that consent can be furnished *after* the election, by the director. The Club's argument, on the other hand, is that being a company not limited by shares, its Memorandum has to conform to the form in Table C, with the further discretion to include other or additional matters. It is urged that the requirement to furnish consent of the candidate when his name is proposed by another member, at the stage of filing the nomination form, is an additional condition. Relying on the decisions cited, particularly *Madras Stock Exchange* and the *Bangalore Turf Club case*, the Club submits that such addition to the form, cannot be called contrary to the enactment, and that in any case, having accepted the condition, the plaintiffs cannot resile from, or attack it as illegal. It is also urged that the plaintiffs cannot rely on any averments about the Club's functioning, relating to so called perpetuation of some committee members' rule as they are unsubstantiated allegations. In any case, the previous elections of such members have never been called into question, nor was the alleged inter se relationship between them or any other member, put into issue in any case. Therefore, such unfounded allegations cannot be looked into by the Court.

26. At this stage, it would be useful to take a look at Section 264. It enacts that every person (other than a director retiring by rotation or otherwise or a person who has left at the office of the company a notice under section 257 signifying his candidature for the office of a director) proposed as a company's directorial candidate should give his consent in writing to act as a director, if appointed. Section 264 (2) enacts that persons other than a reappointed director (after

retirement by rotation, etc.) or an additional or alternate director, or someone filling a casual vacancy of director under Section 262, or a person named as a director of the company under its articles as first registered, “*shall not act as a director of the company unless he has within thirty days of his appointment signed and filed with the Registrar his consent in writing to act as such director.*” The combined effect of the provision is that even though Section 264 (1) requires a prospective candidate to the post of director of a company signify his consent, in writing to the company, Section 264 (2) states that such person has to sign and file with the Registrar his consent in writing to act as director. The history and effect of this provision was considered in *L.C. Kapadia* (supra) by the Bombay High Court, which held as follows:

“ Viewed in the light of these principles, the section, in my opinion, appears to be directory in so far as the person who desires to be a candidate for the office of a director would be required to file his consent. The object of the legislature is evident when one considers the various amendments made by the legislature before the section was enacted in the present form. Those who have once acted as directors were only seeking reappointment. It was considered throughout that the formal consent on their part was not necessary. It is very clear as to why such a condition was found necessary. It may be that a person who is appointed as a director may refuse to act on the ground that he had never consented to act as a director. When such a flaw is discovered later on and the appointment will have to be ignored as ineffective, the company will have to take again further steps for filling the post of such director. Ordinarily, a person appointed as a director is not likely to refuse to act. In a rare case, he may do so. It is only to avoid the attending inconvenience that the legislature has prescribed the condition. In the section as originally worded, somewhat strong language was used. It was enacted that a person shall not be capable of being appointed as a director unless he had filed earlier his consent in writing to act as such director. The deletion of these words in the subsequent amended form of the section is not without significance. Perhaps the legislature thought that the condition was given comparatively more importance when it was introduced in the section. If this is the only object which the legislature sought to achieve by prescribing a prior consent in writing then there is no reason why the absence of consent in all cases should invalidate the appointment. Even without a consent a person appointed may accept the appointment and prefer to act as a director. This is likely to happen in a majority of cases. Considering the section as a whole and bearing in mind the object of the legislature and magnitude of the mischief intended to be avoided, I hold that [section 264\(1\)](#) is clearly directory and no mandatory. I am only interpreting [section 264\(1\)](#) of the Act and it is not necessary to pronounce any opinion about [section 264\(2\)](#). Whether it is mandatory or directory will have to be decided in a suitable case. But, I cannot help expressing my opinion that the difference in the language has certainly assisted me in reaching my conclusion about the directory nature of [section 264\(1\)](#) of the Act. The consent under [section 264\(2\)](#) which is to be filed with the Registrar is a condition precedent for acting as a director. The sub-section provides that a person, who is being appointed for the first time as a director, shall not act as a director of the

company unless he has filed the consent within the prescribed time. No argument is necessary for saying that the sub-section is mandatory.”

27. It is apparent that in all companies, the requirement of having to furnish consent, at the stage of filing nomination for election (to the post of director) is not a compulsive one, but merely directory. However, such candidate has to, necessarily, indicate his consent in writing to the company, and file it with the Registrar within 30 days of his appointment; the latter provision is compelling. The question is whether the insistence of adherence to the condition of having to comply with the requirement before the election, contained in Article 39 (b) is binding, by virtue of Section 29, or is it *ultra vires* the substantive provision of the Act.

28. The crux of the issue here, is whether Section 29 of the Act is subject to the overriding effect of Section 9. The Club contends that it is not. If such a contention is accepted, then Section 29 along with Tables C, D and E would in a way form a code by themselves, that is not subject to the remaining provisions of the Companies Act. The Schedule of the Act is as much a part of the Statute, and as much an enactment, as any other part. The form prescribed in the Statute therefore cannot be beyond other provisions of the Act unless specifically exempted. A plain reading of Section 9 commences with the term “*Save as expressly provided in the Act...*”. It enacts that provisions of the Act have an overriding effect notwithstanding anything to the contrary contained in the memorandum or articles of a company. A textual reading of Section 29, in this respect does not enable companies conforming to the form prescribed in Table C to contravene other parts of the Act. Even though Section 29 permits ‘additional matters’ that are not to be repugnant to the provisions of the Form in Table C, such additional matters, cannot be inconsistent, with other express provisions of the Act. Merely because express compliance with other parts of the Act by a company under Section 29 is not prescribed, does not exclude such compliance. Section 9 in this respect is an umbrella provision governing all parts of the Act, including the Schedule and unless specifically exempted by the Statute, a form in conformity with Section 29 cannot be repugnant to any other part of the Statute to which it is otherwise subject to.

29. In specific instances where forms conformed to in the Schedule are exempt from the operation of other parts of the Act, this exemption has to be specifically mentioned in an exempting provision of the Act. For instance, Section 657 of the Companies Act contains a

saving provision that exempts certain tables under previous Companies' laws so far as they applied to companies that existed at the time of the commencement of the Constitution. Any exemption in favour of a table from the operability of Section 9 therefore must be expressly provided by means of a saving provision within the Act itself. No such exemption exists in favour of Table C on the First Schedule to the Act. Section 657 reads, in this context, as follows:

“657. SAVING OF CERTAIN TABLES UNDER PREVIOUS COMPANIES LAWS.

Nothing in this Act shall affect -

(a) Table B in the Schedule annexed to Act No. 19 of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act;

(b) Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or any part thereof, so far as the same applies to any company existing at the commencement of this Act;

(c) Table A in the First Schedule to the Indian Companies Act, 1913 (7 of 1913), either as originally contained in that Schedule or as altered in pursuance of section 151 of that Act, so far as the same applies to any company existing at the commencement of this Act.”

30. Besides the above, the decision of this Court in *Pramod Chopra (supra)* is an authority on the point that provisions of the parent enactment cannot be departed from; on that finding, the Court held that the Articles of Association of the company in question, to the extent it excluded the right of a class of voters, to participate in elections, was contrary to the Act, and declared the same to be *ultra vires*. That view is different from the *Bangalore Turf Club* decision. It (this Court's reasoning) proceeds on the footing that where substantive provisions of the Act enact something, which is departed from by the Articles, the latter have to yield, by virtue of Section 9, which contain a *non obstante* clause, and which yields only if there is an express intention, manifested in the other provisions, to the contrary. Section 29 does not manifest a contrary intention. As far as the ruling in *Narendra Kumar's case* is concerned, the Supreme Court did not have to deal with a situation where the company's Articles or provisions in the Memorandum were impeached, on the ground of a conflict with express provisions of the Act.

31. For the above reasons, the Court is of the opinion that the first issue has to be answered in favour of the plaintiffs, and against the Club. It is held that Article 39 (a) to the extent it requires furnishing of consent by a candidate holding himself out for election, at the stage of filing nomination form, is *ultra vires* provisions of the Act. The issue is answered accordingly.

Issue No.2:

32. This issue involves interpretation of Article 39(a), which stipulates that:

“.... (a) Along with the notice for holding the Annual General Meeting the Secretary shall cause a circular to be issued to all members of the club who are entitled to vote under these Articles, inviting them to state, not less than four teen clear days before the meeting, whether they are desirous of serving on the Managing Committee of the club for the year following.....”

33. It is a matter of record that the plaintiffs in the first suit approached the Club and lodged the Nomination/Proposal Forms on 01.08.2010 whereas the forms of the plaintiffs in the second suit were concededly received (by the club) on 31.08.2010. The plaintiffs in both the cases argue that reference to “14 fourteen clear days before the meeting” would include the day on which the Nomination Form is filed with the Club. Thus the forms furnished by the plaintiffs in both the suits were lodged within the time. The plaintiffs rely upon Sections 9 and 10 of the General Clauses Act, which reads as follows:

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9. Commencement and termination of time.- (1) In any, [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word ‘from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all (Central Acts) made after the third day of January, 186, and to all Regulations made on after the fourteenth day of January, 1887.

10. Computation of time.- (1) Where, by any (Central Act) or regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in

due time if it is done or taken on the next day afterwards on which the Court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the (Indian Limitation Act, 1877 (15 of 1877)), applies.

This section applies also to all (Central Acts) and Regulations made on or after the fourteenth day of January, 1887.

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34. Drawing analogy from the above, it is submitted that one of the terminal dates, (i.e. the date on which the event or period is supposed to have commenced, and the terminal date), it is sufficient if one of the dates is excluded. Thus, if the last day for submission of the form is to be excluded, in the present case, the forms were submitted within the time on 01.09.2010. Of course, the plaintiffs in the second suit clarify that they merely support the submission in this regard in the first suit, though in their case, the forms were submitted on 31.08.2010.

35. The Club contests the plaintiffs’ interpretation and relies upon the judgment reported as *N.V.R. Nagappa Chettiar and Anr. v. The Madras Race Club*, 1949 (19) Comp Cas 175. The Court there had the occasion to consider the effect of the expression “not less than 21 days” occurring in Section 81(2) of the Old Companies Act, 1913. The Court had *inter alia* held as follows:

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It was next argued that in any event we should count 21 days from the date of posting, and that if that was done, there was an interval of clear 21 days even if the date of the meeting was excluded. The argument, in our opinion, is opposed to the clear language of Article 112. The article states that unless the contrary is proved the notice must be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post, and this would be the 17th in the case of at least half the number of the members. This extraordinary contention is not supported by any decisions. Form No. VIII in which a special resolution has to be communicated to the Registrar of Joint Stock Companies was relied on. In the form one of the columns is “Date of dispatch of notice specifying the intention to propose the resolution as a special resolution or extraordinary resolution.” We do not think that it is permissible to rely on the language of the form to interpret the section and the article. The date of the meeting and the date of service of notice are therefore to be excluded, and in between the dates there should be an interval of 21 days. The notice issued to all the members therefore

was inadequate and did not comply with the statutory requirement and is therefore illegal. The meeting therefore was not legally convened.

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36. This Court is of the opinion that the intention of Article 39(a) is categorical in that the election machinery has to be given 14 “clear days” notice to screen and process the applications for election. The plaintiffs’ argument, if accepted, would result in an anomaly since there are no judicially manageable standards when such 14 clear days notice can be discerned. For instance, if the forms were to be lodged just five minutes before the close of business hours in the Club, that day would be practicably of no consequence and utility to the Election Officer or other person in-charge of conducting the process. That would in turn result in 14 days dwindling to 13 days. Therefore, a fair construction of Article 39(a) has to necessarily be one which advances its intention in ensuring such 14 clear days between the submission of the form and the actual date of election. This construction is also supported by the decision of the Madras High Court in *N.V.R. Nagappa Chettiar and Anr.* (supra). As far as the submission with regard to applicability of the principle underlying Section 9 of the General Clauses Act is concerned, this Court notices that the said enactment clarifies - in Section 3- that it enacts provisions pertaining to the interpretation of the Central Acts and Regulations made after its commencement. It is, therefore, not of aid to construe provisions in documents akin to contracts such as the Memoranda and Articles of Association that are to be construed in their terms and by applying the principles akin to those relatable to interpretation of contracts.

37. In view of the above, the findings in the second issue are to be in favor of the Club in the first suit. However, in view of the fact that the plaintiffs in the second suit had furnished the forms on 31.08.2010, they were within the time and had given 14 clear days’ notice to the Club. For these reasons, it is held that the plaintiffs in the first suit who had deposited the form on 01.09.2010 did not do so within the time spelt-out in Article 39(a).

Issue No. 3

38. This issue was framed at the behest of the plaintiffs, who were aggrieved by the

fact that the election results were declared before the date of elections, and published by the managing committee of the Club. The argument here, is that the procedure for holding elections has been stipulated in the Articles, and it does not contemplate any role for the Managing Committee, and an outgoing one at that. Reference is made here, to Article 39. The Club, on the other hand, submits that there is no irregularity or illegality in the election, and declaration of result by the Managing Committee, considering that there was no valid proposal.

39. Article 39, particularly clause (i), (j) and (k) provide the mechanism for holding elections. Clause (i) states that all ballot papers shall be deposited in the ballot box not later than 24 hours before the time the annual general meeting is to be held. Clause (j) says that in the “said” annual general meeting, i.e. the one scheduled for elections, each name circulated for election, shall be proposed by the Chairman of the meeting. Thereafter, under sub clause (k), a poll has to be taken to hold elections. The procedure prescribed is appointment of two scrutineers who would be handed over the ballot box; they shall thereafter consider all the ballots, and report the result of the voting. These provisions, particularly the elaborate mechanism under Article 39 (k), clearly show that elections are to be conducted in the General Meeting, to be called for that purpose, and ballots are to be opened and announced then. The counting of ballots has to be by the scrutineers appointed for that purpose, and the Chairman has the exclusive power to declare election results.

40. In this case, the circulars impugned proceeded to reject the plaintiff’s proposals, and the managing committee thereafter proceeded to declare the result. This procedure was plainly contrary to Article 39. Therefore, the issue is answered in favour of the plaintiffs, and against the club.

Issue No. 4

41. This issue was framed at the Club’s insistence. It was urged that the plaintiffs ought to have valued their reliefs separately, for the purposes of Court fees, and that this defect would go to the root of the matter, rendering the suit liable to be rejected, as barred by law. The plaintiffs, on the other hand, urge that instead of filing separate suits, it was open for them to join together as members, and file one suit, joining the causes of action, which is permissible.

42. The Court is of the considered opinion that since there is no dispute about the fact that several plaintiffs claiming to be aggrieved by the same cause of action, or incident, can join together and file a common suit, it is open to them to value the reliefs also in a common manner, as they have done. In these circumstances, the suit cannot be defeated. In any case, even if the action of one is held to be maintainable, and reliefs are granted, the declaration and injunctions issued by the Court, would be of such nature as to enure in favour of the entire membership of the Club.

43. In view of the findings rendered in respect of the issues framed, CS (OS) 1805/2010 is liable to fail, and is, therefore dismissed. However, CS (OS) 1861/2010 is entitled to succeed; it is decreed in terms of the reliefs claimed. The defendants are directed to comply with their statement dated 13.09.2010; they are issued a permanent injunction restraining the Club from giving effect to the results of elections held by it. The suits are decreed in the above terms.

January 17, 2011

(S.RAVINDRA BHAT)

JUDGE