

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

% Judgment Reserved on: March 21, 2013
Judgment Pronounced on: April 26, 2013

+ **O.M.P. No.163/2013**

ASHOK KUMAR & ANR Petitioners
Through Mr.V.K.Rao, Sr.Adv. with Mr.Saket
Sikri, Ms.Ekta Sikri and Mr.Sudeep
Dey, Advs.

versus

SBI OFFICERS ASSOCIATION (DELHI CIRCLE) & ANR
..... Respondents
Through Mr.Sandeep Sethi, Sr. Adv. with
Ms.Tara V.Ganju, Ms.Preeti Gupta
and Ms.Etti Sharma, Advs.

AND

+ **O.M.P. No.500/2012**

ASHOK KUMAR & ANR Petitioners
Through Mr.V.K.Rao, Sr.Adv. with Mr.Saket
Sikri, Ms.Ekta Sikri and Mr.Sudeep
Dey, Advs.

versus

SBI OFFICERS ASSOCIATION (DELHI CIRCLE) THR
GENERAL SECRETARY & ANR Respondents
Through Mr.Sandeep Sethi, Sr. Adv. with
Ms.Tara V.Ganju, Ms.Preeti Gupta
and Ms.Etti Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order, I shall dispose of OMP No.500/2012 and OMP No.163/2013 filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeking interim measures as contained in the prayer clauses of the respective petitions. Brief factual matrix of the matter leading up to filing of the present petitions can be enunciated as under:

- a) The petitioner No. 1 is stated to be a Vice president of the State Bank of India Officers Association (Delhi Circle)/respondent association. It is stated in the petition that the petitioner is the regular member of the association and has been office bearer since the year 2000. It has been stated in the petition that the petitioner No. 1 was elected to the post of Vice President of the Module committee being commercial network known as Mid Corporate Group. It is stated in the petition that in the last election in the year 2009, the petitioner No. 1 secured 5074 votes in his favour. Likewise, it has been stated in the petition that the petitioner No. 2 is currently the Deputy General Secretary of the Respondent Association and has been involved in the association since the year 2003.
- b) The petitioners in OMP No.500/2012 have narrated several instances, from where it could be said as per them that the respondent association is not functioning democratically. It has been stated in the petition that the respondents attempt to launch a disciplinary action against the petitioners is motivated one in as much as the respondent No. 2, who is the General Secretary of the respondent No. 1

association is using his closeness to the executive committee in order to fulfil his vested interests and also arbitrarily trying to throw the petitioners out from the association by launching the disciplinary proceedings against them in response to the petitioners protest against the mismanagements and misdeeds of the respondent No. 2. It has been stated in the petition that when the petitioners raised their voice over the anti democratic activities of the respondent No. 2 at various occasions, they were served with the show cause notices dated 11th May, 2012.

- c) It is further stated in the petition that executed committee meeting which was scheduled on 25.5.2012 with an agenda to launch a disciplinary action against the petitioners should not to be allowed to be proceeded by this court by issuing interim orders of this court. It has been urged in the petition that the executive committee comprises of merely co-opted members who are nominated by the respondent No. 2. It is contended in the petition if the meeting dated 25.5.2012 would be allowed to proceed further, the petitioners verily believe that they would be expelled. Therefore, the petitioners have filed present petition under Section 9 of the Act seeking the interim stay of the meeting dated 25.5.2012 and actions thereupon against the petitioners pending the invocation of the arbitration clause.
- d) In order to demonstrate the activities of mismanagement, the petitioners have mentioned that the respondent No. 2 is engaged into several malpractices and misappropriation of the funds of the respondent No. 1 association. It is stated that CBI, Anti corruption Branch, Delhi has lodged a case of disproportionate assets against the

respondent No. 2. It is further stated that CVC has also found ample material against the respondent No. 2 and requested to the concerned person to further request the management for the transfer of the respondent No.2.

- e) In addition to the mismanagement, it has been contended by the petitioners that the respondent No. 2 has misused the Bye laws of the respondent No. 1 especially Bye law 67 in order to serve his personal goals. It is stated that the respondent No. 2 has used Bye law 67 in order to modify the composition of the executive committee. By doing this, the petitioners contend that the respondent No. 2 is depriving the elected members of the respondent No. 1 association to become part of the executive committee which renders the executive as body comprising of persons favouring the respondent No. 2 which ultimately affects the functioning of the respondent No.1 as a democratic body. The petitioners have given several instances including the one of Mr. D.K. Dhingra who has been appointed in the election committee as Vice Chairman against the wills of the elected members.
- f) The petitioners have further explained as to how the respondent No. 2 has created several posts in the executive by misuse of Bye law 67 of the respondent No. 1 association and have shown instances to the said effect. Thereafter, the petitioners have narrated the backdrop of the show cause notice dated 11.5.2012 by stating that the illegal acts of the respondent No. 2 had increased manifold closer to the retirement which was scheduled for 30th June, 2012. It is further contended that the petitioner No. 2 wrote a letter on 21st November, 2011 to the

respondent No. 2 raising several issues regarding the manner of the functioning of the respondent No. 1 association which was not replied by the respondent No. 2 to the satisfaction of the petitioner.

- g) It is mentioned in the petition that there was a executive committee meeting which was scheduled on 28th November, 2011, wherein several elected members have raised their concern over the functioning of the executive committee of the respondent No. 1 association. Despite the protests, the said executive committee meeting was proceeded by the respondent No.2 in which several co-options and nominations were made which changed the character of the respondent No. 1 drastically. The said changes were noted by the petitioners when the revised booklet of the respondent No. 1 was published in February 2012. It is contended in the petition that the petitioners objected to the said co-options made in the meeting where agenda of the meeting did not provide for the same.
- h) Thereafter, the petitioners have contented that the pursuant to the meeting held on 28th November, 2011, the petitioners have got a hint that the respondent No. 2 intended to remove the petitioners from the Delhi circle of the respondent association so that he could not be questioned by the elected members about his illegal actions and therefore the petitioners got a hint that they were in the process of getting transferred to outside Delhi. The petitioners also protested against the said illegal and vindictive transfers.
- i) It is further informed by the petitioners that there was a meeting of working committee scheduled for 7th May, 2012 for which notice has been issued on 4th May, 2012. As per the petitioners, the said meeting

was totally in the contravention of the Bye laws 32, 33 and 34 of the respondent No. 1 association and therefore the petitioners protested against the said meeting. The petitioners have pointed out several infirmities in the process of convening the meeting and contravention of the Bye laws made by the executive of the respondent No. 1 Association.

- j) As per the petitioners, the protests against the illegal actions in the meetings, contraventions by the respondent No. 2, protests against the illegal transfer and the meeting last held on 7th May, 2012 became the reason for the vindictive show cause notices dated 11.5.2012 and the meeting of executive committee which was scheduled for 25th May, 2012 in a pre-meditated approach to expel the petitioners herein from a association.
- k) The case set up by the petitioners is that they are in the process of invoking the arbitration clause as contained in Bye law no. 27 and the said process as per the petitioners may take some time. It is contended that the actions of the respondents are obviously malafide in nature and if they are permitted to be proceeded further, the petitioners would be precluded from invoking the arbitration clause which would thus vitiate the process of the arbitration. The petitioners approached this court with the aforesaid averments seeking the prayers to restrain the respondents from holding the meeting of the executive committee dated 25th May, 2012 or in the alternative delete the Agenda item No. 4 of the notice dated 12th May, 2012 and also of 16th May, 2012 for executive committee meeting dated 12th May, 2012.

2. The said OMP No. 500/ 2012 was first listed before this court on 24th May, 2012, when this court passed the order that the minutes of the meeting with respect to agenda No. 4 shall be kept in abeyance till the next date of hearing. In effect, the agenda of meeting for consideration of the disciplinary action against the petitioners was kept in abeyance.

3. Pursuant to the service, the respondents appeared and filed the detailed reply disputing the contentions of the petitioners point wise in the following manner:

a) The respondents have stated in the reply that the present application under Section 9 of the Act is not maintainable in as much as the petitioners have no intention to commence the arbitration proceedings. It is contended that 5 months have passed since the orders were passed by this Court, no notice to commence the arbitration proceedings has been served on the respondent No. 1 association. It is the contention of the respondent that this court should recall the orders passed on 24th May, 2012 as the petitioners have no intention to initiate the arbitral proceedings. It is contended that the petitioners have not informed as to how and when they propose to commence the arbitral proceedings.

The respondents relied upon the case of *Ashok Traders and Anr v. Gurmukh Das Saluja*, AIR 2004 SC 1433 in order to substantiate the argument that the court can recall the orders passed in contemplation of the arbitration proceedings if the arbitration proceedings are not commenced within a reasonable time.

b) The respondents have contended that the petitioners have wrongfully invoked the arbitration clause as the matter does not relate to any

dispute or grievance involving a member, office bearers, executive committee or the association under Bye law 27 but the matter is relating to suspension or removal from the Respondent No. 1 Association under Bye laws 61 and 62. Therefore, the present petition under Section 9 of the Act is not maintainable as there exists no arbitrable dispute.

- c) Both the petitioner Nos. 1 and 2 have ceased to be members of the respondent no.1 Association. The petitioner No. 1's services were terminated by the respondent in the year 2012 itself. On the other hand, the petitioner No.2 shall be deemed to have vacated his office by way of Bye law 64 of the Respondent No. 1
- d) The respondents have informed that the Respondent No. 2 Mr. T.N. Goel since the filing of the petition has been superannuated and all the allegations against him which form the basis of the petitioners petition are all irrelevant for the purposes of deciding the present petition.
- e) The respondents have submitted that the petitioners have wrongfully invoked the jurisdiction of this court as they have failed to follow the agreed mechanism of dispute resolution as contained in Bye law 61 of the Respondent No. 1. It is submitted that the petitioners ought to have followed the mechanism provided by the Bye laws by approaching Executive committee and then to file appeal before General Council. The petitioners are themselves under the breach of Bye law 61 of the Bye laws.
- f) The petitioners have no respect for the respondent no. 1 association as their conduct has always been disrespectful towards the respondent No. 1. It is submitted that the present petition has been filed out of

personal vendetta of the petitioners towards the respondent No. 2. The petition has been preferred by the petitioners in order to prevent the respondent Nos. 1 and 2 to take disciplinary action against the petitioners which they had indulged into acts which were detrimental to that of the association and for the same are entitled to face the action as per Bye laws.

- g) The respondents have also narrated the events wherein the petitioners have indulged into misbehaviour by stalling the proceedings of the meeting held in November 2011, shouting slogans etc. The respondents have also stated that petitioners have also obstructed the proceedings of the meeting of the Working Committee on 7th May, 2012. The respondents have pointed out that in May 2012, the conduct of the petitioners was outrageous and was abusive towards the association. The respondents have shown the report of the working committee which records the minutes of the incident happened in May, 2012 to demonstrate the indiscipline caused by the petitioners and how their acts virtually compelled the respondents to take strict action against the petitioners.
- h) The respondents submitted that the petitioners are misusing the courts process and still continuing with their misconduct and bringing disrepute to the respondent No. 1 without any consequence due to the interim orders of this Court. The respondents have narrated that on 2nd July, 2012, both the petitioners along with other unsocial elements barged into the chamber of Mr. Rakesh Aggarwal, the present General Secretary and resorted to unprovoked and malicious slogan against the association members. Their conduct was threatening and

menacing towards the members and office bearers. On 3rd, July, 2012, the petitioners stormed into Association office at Parliament Street from the rear gate and have disrupted the functioning of the office by shouting slogans and threatening the office bearers of respondent No. 1. Therefore, as per the respondents, the petitioners are unworthy of any protection from this court and the respondent No. 1 association should be allowed to take action which the Bye laws permit them to do so.

- i) The petitioners have just misused the orders of this Court as 5 months have been elapsed, no reply to the show cause notice has been given by the petitioners. The only aim of the petitioners is to stall the functioning of the respondents and continue with their misconduct without allowing the laws of the respondent No. 1 Association to take its own course.

4. By raising the aforementioned pleas in response, the respondents submitted that the petition filed by the petitioners under section 9 should be dismissed.

5. The petitioners have filed the rejoinder to the said reply by refuting all the pleas raised by the respondents in the reply. After the completion of the pleadings the matter was set down for hearing.

6. Thereafter, the petitioners have preferred another petition under Section 9 of the Arbitration and Conciliation Act, 1996 which was registered as OMP No. 163/2013. In the said petition, the petitioners are the same and the respondent No. 1 is also the same. However, the respondent No. 2 in the present petition is Mr. Rakesh Aggarwal, General Secretary of the

respondent No. 1 association. The said petition mainly contains the following grounds for seeking interim stay:

- The petitioners have urged that the respondent No. 2 and the earlier General Secretary T.N. Goel have made several co-options in the executive committee which has changed the nature and character of the respondent No. 1 Association. It has been stated that the respondent No. 2 has made co-options in complete violation of the Bye law 67 of the Bye laws of the Respondent No. 1.
- The petitioners have submitted that the respondent No. 1 and the executive committee is functioning completely in an undemocratic manner. The executive committee virtually comprises of the co-opted members. The current General Secretary has not merely co-opted the members for the purposes as defined under Bye law 67 which is vacancy arising due to certain reasons but has excessively exercised the powers of co-option to create new posts which the Bye laws do not provide for. The petitioners have prepared a chart showing number of co-options done by the respondent No. 2 and previous Secretary General.

7. In light of the aforementioned submissions and other events which are common to OMP No. 500/2012, the petitioners have stated that the executive committee of the respondent association proposed a meeting on 24th February, 2013 to consider the agendas mentioned therein including an agenda to appoint election committee to hold organizational elections for the next triennial. It is submitted that the aforesaid meeting cannot be held by the entire executive committee comprising of the co-opted members and not

the democratically elected ones. It is submitted that petitioners are invoking an arbitration clause by raising a dispute as to the functioning of the respondent No. 1 association and pending the same, the meeting which have been proposed on 24th February, 2013 should be stayed by this court.

8. The aforesaid OMP No. 163/2013 came up for hearing on 22nd February, 2013 before this court, when this court has directed that till the next date of hearing, any decision on item No. 2 of the Agenda in the meeting to be held on 24th February, 2013 should not be given effect to.

9. Pursuant to the service, the respondent appeared and filed the interim reply and also placed the reliance on the reply to the earlier petition. The respondents response to the present petition in additions to the grounds which are already raised in the earlier response can be summarized in the following manner:

- There exists no arbitrable dispute as is contemplated under the Bye laws and the rules and regulations of Respondent No. 1 Association.
- It is submitted that the Courts ordinarily do not interfere with the internal management of the association or the society at the instance of the few members unless there is manifest illegality which goes to the root of the matter in the functioning in such association. It has been stated in the reply that the petitioners have made merely vague allegations of illegalities or violations and have failed to make out a case of the any violation of the Bye laws. Therefore this court should not interfere with the internal management of the respondent No. 1 association.
- It is submitted that the all the allegations of the petitioners are totally frivolous. There are no such complaints about the functioning of the

respondent No. 1 association. If there were such serious complaints about the functioning of the respondent No. 1's association, then the same could not have been made by merely 2 people when there are more than 8000 members in the respondent's Association.

- The respondents submit that the Bye laws of the respondent No. 1 including Bye law 67 clearly permit the mode of appointment by co-option in the event of the vacancy. As per Rule 29, the executive committee is required to meet twice a year. Therefore in terms of Bye law 67 of the respondent No. 1, vacancies that arise in the intervening period in the working/ executive/ module committee can be filled in by the nomination made by the General Secretary in consultation with the president. However, each such nomination is to be ratified in the next meeting of the executive committee. The said process of nomination is known as co-options. It is mentioned that for the last three years of the tenure of the executive committee, the members have either been retired, passed away or removed or been transferred from the State Bank of India branches. This number accounts for more than 40 % of the entire executive committee. Due to such large number of changes in the positions from time to time, the composition of the executive committee as elected in 2010 is modified.
- The procedure of co-options as has been set forth in Bye law 67 has been followed by the respondent no. 1 association has been followed by the respondent No. 1 association for the last several executive committees from time to time. The petitioner No. 1 himself was one of the members co-opted into the then executive committee of the respondent No. 1 in the year 2007. It has been further submitted by

the respondents that the said very co-options which are now being protested against has been approved by the petitioners in the past on 28th October, 2010.

- The respondents submit that the interim stay which has been sought for by the petitioners seeking restraint orders against the holding of the executive committee meeting has been aimed at the stalling the election process of the respondent No. 1 which was otherwise scheduled to commence shortly. As per Bye law 45, the respondent No. 1 association has to conduct election within 3 years and the tenure of the office bearers of the registered trade union shall not be more than 3 years. The last election of the respondent No. 1 was held in January, 2010 and the results were declared on 5th May, 2010, Therefore, it is interest of the association if the meeting is allowed to be held between the executive to consider the future course of action in relation to elections to be held this year.

10. By raising the aforementioned points to resist the interim stay, the respondents prayed that the petition under Section 9 may be dismissed. The petitioners have filed the rejoinder thereto the reply. The matter was also set down for hearing

11. Both OMP No.500/2012 and OMP No.163/2013 came up for hearing when Mr. V.K. Rao, learned Senior counsel appeared on behalf of the petitioners has made his submissions which can be outlined in the following manner:

- Firstly, Mr. Rao has read over the bye law 67 of the respondent No.1 association and argued that the nomination of the members in the

executive committee is permissible by way of co-option only under the limited circumstances as contained in the said Bye laws. In the instant case, the respondent No. 2 and the previous General Secretary has gone to the extent of creating new posts by way of exercise of the said power which is impermissible in Bye laws. The said fact has also not been denied explicitly in the reply that the respondents have not created the said posts. Mr. Rao has also read over the chart containing the names of the nominated members to support his contention that the elected members are in minority and the executive committee mainly comprises of the co-opted members. Therefore, as per Mr. Rao, the functioning of the respondent No.1 is clearly in violation of Bye laws of the Respondent No.1.

- Secondly, Mr. Rao submitted that once it is realized that the executive committee consists mainly of the co-opted members, the immediate conclusion of the same would be that the said committee should not be allowed to take decisions relating to elections of the respondent No.1. This is due to the reason that the co-options have made by the respondent No.2 and the previous General Secretary to serve their own personal goals and if the said co-opted members will decide about election, the same shall again lead to situation wherein there shall not be free and fair elections. All this became the reason for filing of OMP No. 163/2013 before this court.
- Thirdly, Mr. Rao argued in relation to OMP No.500/2012 that the disciplinary action which has been sought to be launched against the petitioners is yet another move by the respondent no. 2 and the earlier General Secretary to sideline the elected members and prevent them

from raising their voice against the respondents. Therefore, if the said disciplinary action is allowed to be taken by the present executive committee, the same shall result into the expulsion as the executive committee has bias against the elected members including the petitioners. The petitioners are raising the dispute in view of the arbitration clause and that is why filed the OMP No.500/2012 before this Court to safe guard his right to continue to be member of the respondent pending the arbitration proceedings.

- Fourthly, Mr. Rao argued that the petitioners have demonstrated that the functioning of the respondent No.1 association is completely undemocratic. The petitioners have also shown that there is a violation of the Bye laws by the respondent No.1 while making co-options of the members in the executive committee. It has been argued that the petitioners have also prima facie established as to how the decisions of the executive committee shall not be in the interest of the respondent association. Therefore, this court should confirm the interim stay in both the petitions.

12. Per Contra, Mr. Sandeep Sethi, learned Senior counsel for the respondents has made his submissions which can be outlined in the following manner:

- Firstly, Mr. Sethi has argued that there exists no arbitrable dispute as the grievance of the petitioners is not covered within the ambit of Bye law 27 of the Bye laws but is covered by Bye laws 61 and 62. Therefore, the petitioners have wrongfully invoked the jurisdiction of this court and both the petitions are liable to be dismissed in view of the same.

- Secondly, Mr. Sethi has further argued that the petitioners have not followed the mechanism provided under the Bye laws 61 and 62 prior to approaching this court. It has been argued that the petitioners are not interested in any arbitration but the present petitions are actuated by malafide aims of the petitioners to stall the functioning of the Respondent No.1 Association. The present petition is therefore liable to be dismissed on the basis of inequitable conduct of the petitioners.
- Thirdly, Mr. Sethi has further argued that there is no illegality in the mode of nominations by way of co-options as stated by the petitioners. Mr. Sethi, learned senior counsel has read over Bye law 67 and argued that the practice prevalent in the respondent association would clearly reveal that the acts of the respondents and the executive committee are in consonance with the Bye laws. There is no illegality which can be ascribed to the acts of the respondent.

Mr. Sethi relied upon the judgment passed in the case of *N. Suresh Nathan and Another v. Union of India*, 1992 Supp (1) SCC 584 wherein the Supreme Court has held that the construction of the rules which is prevalent in the practice for a long period of time should not be lightly interfered unless there are compelling reasons to the contrary.

Mr. Sethi by placing reliance on the aforesaid judgment has argued that the petitioners are themselves party to such co-options being made and rather they are beneficiary as a nominee by way of co-option. Accordingly, this court should not upset the construction of the rules which has been consistently accepted in the respondent association.

- Fourthly, Mr. Sethi submitted while drawing aid from his previous submission, the principle of law is that the courts should not interfere in the matters involving the expulsion of the members in the society or association or clubs as the same are merely a matter of internal management of the society or association.

Mr. Sethi in order to fortify his argument relied upon the judgment passed by the Apex Court in the case of ***T.P. Daver v. Lodge Victoria no. 363, Belgaum***, AIR 1963 SC 1144 wherein the Supreme Court has held that the interference of the courts in the case involving the expulsion of a member from club is extremely limited and the courts enquiry is only to find out whether the decision making is within the four corners of the rules. The courts cannot sit as an appeal to the decisions of the societies/clubs.

Further, Mr. Sethi relied upon the judgments of this court which take the view that the scope of interference of the courts in the matter relating to expulsion and involving the bye laws of the societies is extremely limited.

- Fifthly, Mr. Sethi has argued that the petitioners have alleged the element of bias and malice in general sense against the entire executive body without making any specific allegation of the kinds of the bias which are directed towards the particular members or office bearers. The allegations of the misdeeds of Mr. T.N. Goel are completely irrelevant as the said person has superannuated. As per Mr. Sethi, this Court should not believe the allegation of the institutional bias as it is inconceivable as to how the entire association can be biased towards the few set of people.

In this context, Mr. Sethi relied upon the judgment passed in the case of ***Lalit Kumar Modi v. Board of Control For Cricket in India and Others***, (2011) 10 SCC 106 wherein the Supreme Court has also observed on the similar lines.

- Lastly it is also submitted by Mr.Sethi that the show cause notice cannot be stayed by a Court in a petition under Section 9 of the Arbitration Act. He referred to the following decisions:

- (i) ***R.P.S. Educational Society (Regd.) v. Delhi Development Authority***, 2009 (4) Arb. LR 39 (Delhi). Relevant paras 2 and 6 are produced as under:

“2. A show cause notice was served by DDA after receiving complaints from the residents for violation of different clauses of the licence deed namely Clauses 4, 6, 12, 19, 20, 23, 28, 29 and 39. After this show cause notice was served, the petitioner approached the court under Section 9 of the Arbitration and Conciliation Act, 1996 since the licence deed provided for arbitration as a dispute resolution mechanism. Prayer has been made in the petition that the court should stay the operation of show cause notice and restrain respondent from taking any coercive action for dispossessing the petitioner from the community hall and pass an interim order in this case.

6. Even otherwise, it is settled law that show cause notice cannot be stayed by a court. Giving show cause notice amounts to giving an opportunity to the party to explain the breaches. Serving show cause notice is a right of the party and the court cannot interfere in serving show cause notice and cannot say that the department should not ask the contacting party to explain its action....”

- (ii) ***Progressive Constructions Ltd. V. Chairman, National Highways Authority of India & Ors.***, 157 (2009) DLT 537.

Relevant paras 1, 5 and 6 are produced as under:

“1. The applicant/petitioner has approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996 with a prayer that the Court should issue an interim injunction restraining the respondents from terminating the contract awarded to the applicant/petitioner....

5. Respondent issued a show-cause notice dated 19.1.2009 to the applicant/petitioner as to why action should not be taken under the terms of supplementary agreement read with the original contract and why the contract be not terminated. Under these circumstances, the petitioner approached this Court.

6. This Court under Section 9 of the Arbitration and Conciliation Act cannot give direction to a party of not terminating the contract or to continue with the contract. If the contract is terminated, the applicant/petitioner shall have rights as available to him under law. It is the right of a party not to continue with a contract and the Court cannot force a contract on somebody under Section 9 of Arbitration and Conciliation Act.”

13. By making the aforementioned submissions, Mr. Sethi prayed that there is no prima facie case of illegality in the acts of the respondents which has been established by the petitioners. The aim of the petitioners is nothing but to stall the smooth functioning of the respondent association. If the petitioners are themselves belief in democracy, then the petitioners should not take the steps which should prevent the elections in the manner done by the petitioners. Therefore, both the petitions are liable to be dismissed.

14. I have gone through the petitions, replies, rejoinders and the documents filed by the parties. I have also given my careful consideration to the submissions advanced by the learned counsel for the parties at the bar.

Now, I shall proceed to discuss the various aspects which fall for consideration in the facts of the present case and shall answer the same point wise.

15. I think that the first question which is required to be examined in the instant case is whether the matters relating to expulsion and election fall within the ambit of the arbitration clause as contained in Bye law 27 of the Respondent No.1.

16. It is well settled principle of law that the court seized of an application under Section 9 of the Act can form a prima facie opinion on the preliminary aspects relating to arbitrability of the dispute prior to granting or refusing the interim measures under the said section. This is due to the reason that the court would proceed to consider the grant or non grant of the interim measures only upon the satisfaction that there exists a valid arbitration clause covering the dispute raised before the court. The said preliminary enquiry relating to arbitrability of the dispute is the jurisdictional fact which enables the court to assume jurisdiction on the application and proceed to consider the same on merit. If on the other hand, the dispute itself does not fall within realm of the arbitration, then the court may straightaway proceed to reject the application as the court may not be able exercise its powers under Section 9 of the Act.

17. The position in law has been aptly described by the Supreme Court in the case of ***SBP & Co. v. Patel Engineering Ltd. & Anr.*** [(2005) 8 SCC 618] wherein the Apex Court has considered the powers of the court or judicial authority at great length when faced with a question as to whether the power to appoint the arbitrator is a judicial power or administrative function. While answering the said question, the Supreme Court also

proceeded to observe that the court seized of the application under Section 9 has the power to examine the validity of the arbitration agreement and also to arrive at the finding whether the dispute is covered by the arbitration clause or not. Upon satisfaction of the preliminary jurisdictional facts, the court can proceed to assume jurisdiction over the subject matter. In the words of the Supreme Court speaking through Hon'ble Balasubramaniam for Majority (as his lordship then was), it was observed thus:

“Similarly, Section 9 enables a Court, obviously, as defined in the Act, when approached by a party before the commencement of an arbitral proceeding, to grant interim relief as contemplated by the Section. When a party seeks an interim relief asserting that there was a dispute liable to be arbitrated upon in terms of the Act, and the opposite party disputes the existence of an arbitration agreement as defined in the Act or raises a plea that the dispute involved was not covered by the arbitration clause, or that the Court which was approached had no jurisdiction to pass any order in terms of Section 9 of the Act, that Court has necessarily to decide whether it has jurisdiction, whether there is an arbitration agreement which is valid in law and whether the dispute sought to be raised is covered by that agreement. There is no indication in the Act that the powers of the Court are curtailed on these aspects. On the other hand, Section 9 insists that once approached in that behalf, "the Court shall have the same power for making orders as it has for the purpose of and in relation to any proceeding before it". Surely, when a matter is entrusted to a Civil Court in the ordinary hierarchy of Courts without anything more, the procedure of that Court would govern the adjudication.”
(Emphasis Supplied)

18. From the mere reading of the observations of the Supreme Court in SBP case (supra), it is amply clear that whenever a party approaches the court by seeking interim protection prior to the commencement of the

arbitration proceedings and the other side raises the plea that there exists no arbitration clause or for that matter the dispute is not covered by the arbitration clause, the court is within its power to examine the preliminary aspects relating to arbitrability and thereafter can proceed to decide whether it has jurisdiction to entertain such application or not.

19. The aforementioned observations of Supreme Court in *SBP* in the context of the section 9 has also been considered by the learned Single Judge of Bombay High Court in the case of *Jeweltouch (India) Pvt. Ltd. vs. Naheed Hafeez Quraishi*, 2008 (2) ARBLR 321, wherein Hon'ble Chandrachud, J. proceeded to examine the validity of the arbitration agreement in the case of Section 9 petition after considering the position in law post *SBP* (supra). In the words of Learned Single Judge, it was observed thus:

“Now in view of the judgment of the Supreme Court in *SBP and Co. v. Patel Engineering Ltd.* it is a settled principle of law that where in the course of the hearing of a Petition under Section 9 of the Arbitration and Conciliation Act, 1996, the **existence of an arbitration agreement is disputed by a party against whom relief has been claimed or where such a party contends that the dispute is not arbitrable, the Court has the jurisdiction to decide whether there exists a valid arbitration agreement or whether the dispute is arbitrable in terms of the agreement.** The principle which has been formulated by the Supreme Court is as follows :

Section 9 enables a Court, obviously, as defined in the Act, when approached by a party before the commencement of an arbitral proceeding, to grant interim relief as contemplated by the Section. When a party seeks an interim relief asserting that there was a dispute liable to be arbitrated upon in terms of the Act, and the opposite party disputes the existence of an arbitration agreement as defined in the Act or raises a plea that

the dispute involved was not covered by the arbitration clause, or that the Court which was approached had no jurisdiction to pass any order in terms of Section 9 of the Act, that Court has necessarily to decide whether it has jurisdiction, whether there is an arbitration agreement which is valid in law and whether the dispute sought to be raised is covered by that agreement. There is no indication in the Act that the powers of the Court are curtailed on these aspects. On the other hand, Section 9 insists that once approached in that behalf, "the Court shall have the same power for making orders as it has for the purpose of and in relation to any proceeding before it". Surely, when a matter is entrusted to a Civil Court in the ordinary hierarchy of Courts without anything more, the procedure of that Court would govern the adjudication.

In view of the provisions of Section 9, as interpreted in the judgment delivered by a Bench consisting of seven Judges of the Supreme Court, the basic postulate for the purpose of the present case is that since the existence of an arbitration agreement has been disputed it is for this Court to determine whether there exists a valid arbitration agreement to refer disputes to arbitration. (Emphasis Supplied)”

20. In view of the settled position of law, let me first examine the question whether the disputes on the basis of which the interim protection has been sought for by the petitioner would fall within the purview of the arbitration clause as contained in the Bye law 27 of the Bye laws of the respondent No. 1.

21. For considering the said question, one has to give the meaningful reading of the Bye laws as they provide for the provisions for different kinds of events and happenings within the association. Basing upon the said different kinds of events and happenings in the Respondent No. 1, the disputes and redressal mechanism for the same is provided for. Therefore,

not merely Bye law 27 is required to be read in isolation but the Bye law 57, 61, 62 and 63 are required to be read together in order to form an opinion that as to whether the dispute raised is covered within the arbitration clause or not. The said relevant Bye laws are reproduced hereinafter:

“[27] [a] If any dispute arises in regard to the interpretation of these bye-laws, it shall be referred to the Executive Committee in writing at the next meeting which after hearing all the disputants shall decide the matter.

[b] If serious differences arise on the decision of the Executive Committee on a matter of substantial importance or the disputants are not satisfied with the decision of Executive Committee, the dispute shall be referred to Voluntary arbitrator, mutually agreed between the parties. In any case, no member shall resort to litigation against the Association, Office Bearers and/or Executive Committee Members.

[c] All disputes/grievances involving the members, Office Bearer, Executive Committee or the Association will necessarily be referred to a voluntary arbitrator first even if the Bank or any other outsider is/are also party to the dispute. No member will approach a court without first exhausting this remedy.

[d] Any member who commits violation of these Bye-laws and involves the Association and its members in litigation shall automatically cease to be member of the Association.

57. [i] No member shall in any manners stall the election process or institute legal proceedings against the Election Committee during the course of the elections.

[ii] The disputes in regard to the Election process by any member of the Association will have to be raised before an ‘Election Tribunal’ after completion of election process and declaration of results.

[iii] The independent Election Tribunal consisting of three members, other than the members of Election Committee, shall be constituted by the Executive Committee simultaneously with the appointment of Election Committee or after declaration of results to hear dispute, if any.

[iv] The Election Tribunal will dispose of the complaints/petitions within 90 days from the receipt thereof.

[v] Any member of the Association approaching the court before exhausting the remedy available in the bye-laws shall be liable for disciplinary action including expulsion from the membership of the Association.

[61] [i] The Executive Committee shall have the power to suspend/remove from the membership of the Association any member whose conduct in the opinion of the Committee is contrary and/or detrimental to the interests of the Association and who has or is likely to bring the Association into contempt or disrepute. For the purpose a show cause notice will be served upon him by the General Secretary, which together with the reply of the concerned member will be placed in the Executive Committee.

[ii] Such action shall also lie against any members who approaches court in violation of bye-law 27 and/or bye-law 57 without first exhausting the internal remedies provided under the said bye-laws.

[62] Any member against whom action under the above rule is contemplated shall be given a fair opportunity to explain his position before a decision is taken by the Executive Committee.

[63] A member who is suspended/removed from his position pursuant to the above bye-law shall have the right to appeal to the General Council.”

[67] All vacancies caused between the two elections, due to disqualification/transfer/resignation/death or on account of retirement/removal/dismissal of a member of the Working/Executive/Module Committee from the Bank shall be filled up by co-option by the Executive Committee. In the intervening period, General Secretary may, in consultation with the President, nominate any member to work in the vacant position so that work of the Association does not suffer. This arrangement will be of temporary nature up to the next meeting of the Executive Committee.

22. From the collective reading of the aforementioned Bye laws of the

Respondent No.1, the following position can be discerned in relation to dispute resolution mechanism:

- a) Bye law 27 (a) and (b) provide that any dispute in relation to interpretation of the Bye law shall be referred to the executive committee. Thereafter, if there exist a difference of opinion between the member and the executive committee on the matter of the substantial importance, the dispute shall be referred to the voluntary sole arbitrator.
- b) Bye law 27 (c) provides that all the disputes between the members, association and executive committee shall be referred to the voluntary arbitrator. The resort to the court shall be avoided unless the remedy relating to arbitration is exhausted. The said Bye law is couched in the widest terms as it use the expression “all disputes”. It does not limit its applicability to any sort of disputes which shall be referred to arbitration. In that way, Bye law 27 (c) provide in general terms that all the disputes the members, Office Bearer, Executive Committee or the Association shall be referred to arbitration.
- c) There is a separate head namely “Election Dispute/ Grievances Redressal Machinery” where under Bye law 57 is mentioned. The reading of the heading of the chapter itself makes it evident that the Bye laws contained under the said head are relating to election disputes and its grievance redressal. Bye laws relating to election clearly provide that no member is entitled to stall the election process. There is a complete bar contained in the Bye laws which prevents the election process from being stalled at the behest of few members of the association. Bye law 57(ii) and (iii) provide that any election

dispute shall be referred to the independent election tribunal comprising the independent members besides the members of the executive committee.

The reading of the said Bye law 57 would clearly reveal that the election tribunal consists of independent members and therefore it also takes care of the apprehension of the petitioners that there exists in malice in the executive committee and they may deprive the elected members to become a representative in the election process etc. The said election dispute is thus independently and specifically provided under the head “Election Dispute/ Grievances Redressal Machinery” and is subjected to separate and distinct dispute settlement mechanism which is appointment of the election tribunal and determination of the dispute by the said tribunal post the election. This also evident when the head itself use the wordings “Grievances Redressal Machinery”.

- d) Likewise, the Bye laws after 61, 62, 63 provide for the disciplinary action against the member and the expulsion of the members. The said Bye laws also provide that the person against whom the disciplinary action is proposed shall be given an opportunity of being heard to explain his position. The Bye law 63 further contains a provision of appeal to General Council in the event any member is dissatisfied with the decision of the Executive committee. Thus, Bye laws 61 to 63 envisage a distinct dispute resolution mechanism for the dispute relating to expulsion and also provide the provision for an appeal to the general council.

- 23. After realising the import of the bye laws of the respondent No. 1,

now let me evaluate in which of the provisions of the Bye laws, the disputes concerning the OMP No.500/2012 and OMP No.163/2013 shall be covered.

24. In both the OMPs, the petitioners have raised several allegations regarding the illegal functioning of the executive committee, the violation of the Bye laws by the members of the executive committee, appointments by way of the co-options. It has been contended in the petition that the petitioner is in the process of the raising the dispute by invocation of the arbitration clause and pending the commencement of the arbitration, the reliefs contained in the petitions should be granted.

25. The reading of the disputes which have been stated in the petition for the purposes of invocation of the arbitration clause along side the Bye law 27 (c) would show that the disputes raised by the petitioners are the disputes involving the members, association and executive committee shall fall within the ambit of Bye law 27 (c) which is the general provision as contained in Bye laws. Therefore, the disputes so far as relating to the illegal functioning of the respondent No. 1 association, wrongful functioning of executive committee are all ones which are covered within the ambit of clause 27.

26. However, one must realize that the petitioners have raised number of the disputes. It is not as if that the petitioners have a raised a single grievance which shall be covered within one Bye law. The petitioners have raised several disputes and the nature of the each dispute raised shall determine in which of the Bye law, the said dispute shall fall and remedies provided for the respective dispute. It cannot be said in generality that all the

disputes be of whatsoever character can straightforwardly fall within the purview of Bye law 27 (c). This can be seen one reads the Bye laws in depth. For instance, the petitioners have raised a dispute that the executive committee of the respondent No. 1 is not within its power to make a fresh appointments under Bye law 67 by way of co-option. This would invite the interpretation of Bye law 67 and would thus be covered by the clause 27 (a) which deals with the dispute relating to interpretation of the Bye law and thereafter if the said matter is considered to be of substantial importance shall be referred to an arbitrator. There is a procedure which has been prescribed for dispute settlement mechanism as a matter of internal adjudicatory mechanism in the Bye laws depending upon the nature of the dispute.

27. Further, the reliefs prayed for in the petitions should also be consistent with the disputes raised in the petition. For example, for the disputes like illegal functioning of the respondent no. 1 society, the relief cannot be said to be stay of disciplinary action against the petitioners, this is due to the reason that the challenge or dispute as to disciplinary action has been separately provided under the bye law 61 to 63. Thus, the disputes raised and reliefs prayed for in the petitions should also be consistent with each other.

28. The petitioners have made out a case in the petition that they are in process of raising the disputes relating to illegal functioning of the executive committee before the arbitrator and the petitioners are slammed with the show cause notice dated 11th May, 2012 relating to proposed disciplinary action in response to their raising the voice against the respondent no. 1 and therefore, the petitioners are required to be protected against the said

disciplinary action pending the arbitration of the disputes at the time of commencement of the arbitration.

29. On the contrary, the respondents have replied in the petition that the said disciplinary action is necessitated as the petitioners have not raised the disputes as per the Bye laws but have also indulged into coercive measures, abused the members of the executive, created unnecessary obstructions in the smooth functioning by running into chambers of officials, put the respondent No. 1 into dispute etc. Therefore, the respondents were compelled to launch such disciplinary action against the petitioner by way of show cause notice dated 11th May, 2012.

30. By reading the narration of facts and the documents including letter dated 11.5.2012, it is clear that the said disciplinary action has been initiated by the respondent no. 1 and its executive committee on account of the coercive measures and other obstructions made by the petitioners. The said disciplinary action is permissible under the Bye laws 61 to 63 of the respondent.

31. The petitioners however dispute the said action of the respondent on the basis of the vendetta and malafides of the executive committee. The dispute resisting the disciplinary action and show cause notice dated 11th May, 2012 is somehow distinct from the dispute which the petitioners are contemplating towards the mismanagement of the respondent No. 1. The treatment of the said dispute relating to the disciplinary action and remedies thereto of the same are distinctly prescribed under Bye laws 61 and 62.

32. It is true that in any form of association or society, ordinarily it happens that whenever the voice is raised by the minority against the majority members, the disciplinary actions are taken in response to the same.

However, any society or association is equally not precluded from dealing with its internal affairs and management by way of prescribing the internal dispute resolution or remedies under the Bye laws. Some societies may prescribe singular way of dealing with the disputes. On the otherhand, some societies or associations provide different remedies for different nature of disputes as it is seen in the present case.

33. In the instant case, after reading the Bye laws, it is clear that the dispute relating to disciplinary action and its remedies are separately provided under the Bye laws than the other disputes between the members and executive committee. Likewise, the disputes relating to election process by any member of the association will have to be raised before the election tribunal and not by invoking the arbitration clause.

34. The petitioners in the present case have raised several disputes in the petition by urging that they are in the process of invoking the arbitration clause as per Bye law 27. The said petitioners however have sought the reliefs from the court by way of interim measures which in effect prevents the respondent No. 1 from taking the disciplinary action against the petitioners as well as holding the elections. Thus, in effect, the petitioners are calling upon this court to pass the interim measures which may call upon the respondent association to violate its own Bye laws by not following them as per the mechanism provided therein. The reliefs as prayed for in both the petitions OMP No.500/2012 and OMP No.163/2013 are thus relating to dispute which may be incidentally connected with the disputes which the petitioners are raising the in the petition, but the prayers like staying the disciplinary action or election process are distinct disputes in themselves under the Bye laws and are subject to separate remedies

provided therein. The disputes relating to election and expulsion of members prima facie do not fall within the ambit of the Bye 27 directly when there are specific rules or Bye laws in the form of Bye laws 57, 61, 62, 63 prescribing the remedy for the said disputes.

35. It is well settled principle of construction of statute or rules that whenever there are general provisions and particular or specific provision in the same statute/ rules and the later provision covers the subject in most comprehensive terms, then the specific provision shall prevail over the general provision and the general provision should apply to the rest of the matters contained in the statute or rules wherever the same is applicable. The same is the rule of the harmonious construction so that both the provisions should operate in the respective fields.

36. This rule has been laid down in the case of *Pretty v. Solly*, (1) (1859) 26 Beav. 606, 610.(quoted in Craies on Statute Law at p. 205, 5th Edition) Romilly, M.R. mentioned the rule thus: "The rule is, **that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply**". The rule has been applied as between different provisions of the same statute.

37. The said principle has also been approved by Hon'ble Supreme Court of India in the case of *The J. K. Cotton Spinning & Weaving ... vs The State Of Uttar Pradesh*, AIR 1961 SC 1170 wherein the Hon'ble Court observed thus:

"Applying this rule of construction that in cases of conflict

between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that cl. 5(a) has no application in a case where the special provisions of cl. 23 are applicable.” (Emphasis Supplied)

38. Applying the said principle of law to the instant case, prima facie the reliefs as prayed for in the OMP No.500/2012 and OMP No.163/2013 relates to disputes of election and expulsion which are separately prescribed under the Bye laws and as such cannot be included in the general terms of Bye law 27.

39. Alternatively, this question can be seen from another angle too. Even it is assumed for the sake of discussion that the disputes raised in the petition and reliefs prayed for are consistent with the arbitration clause and are covered in the said Bye law 27, Still it is incumbent upon the petitioners to follow the agreed procedure as per the Bye laws.

40. The principle of law that the Bye laws of the society or the association are in the nature of the covenant with its members inter se and with that of association needs no reiteration. If that is so, the petitioners are bound by the said Bye laws by becoming the members of the respondent association. Consequently, the agreed procedure and the remedies provided therein should be exhausted prior to invoking a general provision contained in clause 27 (b).

41. A fair reading of the Bye laws would reveal that even if the argument of the petitioners that the language of Bye law 27 (c) is all encompassing to cover all kinds of dispute is believed, still the said resort to arbitration shall lie after exhausting the remedies prescribed under Bye law 57 and 62 and

63. (This court however is of the view that the said construction is not correct but has assumed the same for the sake of argument as the petitioners intend this court to believe that all kinds of disputes are covered within provision of Bye law 27.).

42. This court has already approved the view that a member who is under the breach of the rules of the society cannot insist for the breach of the same very rules on the basis of inequitable conduct by applicability of the principle a person who seeks equity must do equity in the case of *Parmod Dhawan vs Mes Builders Association Of India*, in I.A. No.8708/2012 in CS(OS) No.1310/2012 decided on August 13, 2012 wherein it has been observed thus:

“35. It is now well settled law that the Articles are in the nature of covenant between the members of the society inter se and with the society as organization. **There is an another aspect which requires consideration in the light of the said emerging principle of law which is the applicability of the governing rule of equity that a person who seeks equity must do equity and the corresponding principle that a person who is under breach of the covenant cannot insist the breach of the said covenant. (Emphasis Supplied)**

36. In the present case, there is an Article 6 which provides for the resolution of disputes before the committee which is to be formed by the executive committee of the society namely Dispute Redressal and Reconciliation committee. No doubt that the said Article seems to be giving an option to the aggrieved member to approach the Redressal Forum prior to the approaching of the court and the court's jurisdiction to entertain the suit is not divested but one must not forget that the Articles of the society is in the nature of contract between the society and its members and a person who insists for remedying the

breach of the contract by the other members of the society must not himself be in breach of the same. **In the present case by not approaching the Redressal Forum, the plaintiff challenging the decision making of the society is himself in breach of the Articles of association prior to approaching this court and therefore, the plaintiff on that count too is not entitled to equitable relief of injunction as the court's discretion to interfere does not tilt in favour of the person who is himself at breach.” (Emphasis Supplied)**

43. Therefore, even if the said dispute raised by the petitioners and reliefs contained in prayers are assumed to be covered within Bye law 27, still by not following the agreed procedure or internal remedies provided under the Bye laws, the petitioners are themselves under the breach of the Bye laws of the respondent which disentitles them from claiming interim relief. By the said reason, the application under Section 9 of the Act by the petitioners also becomes premature.

44. Although this Court has prima facie arrived at the finding that the disputes relating to election as well as expulsion are separately provided along with their remedies under the Bye laws of the respondent No. 1 and as such are not covered within the ambit of Bye law 27 which by itself sufficient ground to reject the interim measures in the instant case, still this court is proceeding to decide this application on other aspects raised by the parties as detailed submissions have been advanced by the learned counsel for the petitioners.

45. Now, it is time to discuss the scope of interference of this court in the matters of expulsion of the members from association or club which is extremely limited unless there exists manifest illegality which goes into the root of the matter. It is well settled principle of law that the Bye laws or

articles of the association are made for the internal management of the association and should not be lightly interfered with by the courts on the basis of the violation of Bye law.

46. Thus, the court's interference in such matters is an exception to the general rule that the internal management of the Society must be preserved, the societies are not allowed to be run by the courts direction and the decision taken by the society should be respected. This view is prevalent in the field and it is also said that the normal rule of suits between private individuals must be distinguished from the suits between the social club, societies and its members. In the case of clubs and societies, the general principle governing the right of the individual shareholder or member of the company would apply. Hence, it is clear that not every violation of Articles or rules or Bye-laws of the society may give cause of action to the individual member to insist the compliance of the rules and quashment of decision making of the society.

47. This has been held in AIR 1969 Mad 42, ***S. Krishnaswamy And Ors. Vs. South India Film Chamber of Commerce and Others***, wherein the learned Single Judge has observed thus:-

“14. On the question of the balance of convenience and the threatened mischief or injury irreparable or otherwise, regard must be had to the nature of the suit and the particular right asserted like suits against Government, Public Corporations, Municipal Corporations, Statutory bodies. Social clubs and its members. Societies registered under the Societies Registration Act and its members distinguished from litigation between private individuals. In the case of clubs and Societies registered under the Societies Registration Act, the general principles governing the right of suit of an individual share holder or a member of the Company would apply and ordinarily the Court

will not interfere with the internal management of the Society at the instance of one or some only of the members of the Society subject to well recognized exceptions (1) where the impugned act is ultra vires of the Society, (2) the act complained of constitutes fraud or (3) whether the impugned action is illegal. **The Rules are made by the Society itself for the convenience of its members for regulating their own conduct as members and for regulating the affairs of the Society as an entity. A breach of any Rule made by the Society would not give rise to a cause of action for any member to rush to Court, it must be a case of manifest illegality or where the act of omission or commission is something which goes to the root of the matter. All the members would be bound by the decision taken by the general body though there may be some violation of some Rules provided it is something which could well be condoned and ignored by the general body** (Vide Shridhar Misra v. Jaichandra.); Satyavart Sidhantalankar v. Arya Samaj, Bombay. AIR 1946 Bom 516 and Nagappa V. Madras Race Club.” (Emphasis Supplied)

27. The said observations are holding the field till date and has been recently reiterated in the case of ***Dr.A.C. Muthiah vs The Board Of Control for Cricket*** decided on 13th July, 2009:

“39.This Court in its decision in S.Krishnaswamy and others vs. South India Film Chamber of Commerce and others reported in AIR 1969 MADRAS 42 dealt with the scope of the power vested on a civil Court for the grant of injunction under Order 39 Rule 1 and had set out parameters. It also analysed as to what constitutes a prima facie case and as to when a balance of convenience can set to arise. Useful reference may be made to paragraphs 13 and 14 of the said judgment:- “..... 14. On the question of the balance of convenience and the threatened mischief or injury irreparable or otherwise, regard must be had to the nature of the suit and the particular right asserted like suits against Government,

Public Corporations, Municipal Corporation, Statutory bodies, Social clubs and its members, Societies registered under the Societies Registration Act and its members distinguished from litigation between private individuals. In the case of clubs and Societies registered under the Societies Registration Act, the general principles governing the right of suit of an individual share holder or a member of the Company would apply and ordinarily the Court will not interfere with the internal management of the Society at the instance of one or some only of the members of the Society subject to well recognized exceptions (1)where the impugned act is ultra vires of the Society, (2)the act complained of constitutes fraud or (3) whether the impugned action is illegal. The Rules are made by the Society itself for the convenience of its members for regulating their own conduct as members and for regulating the affairs of the Society as an entity. A breach of any Rule made by the Society would not give rise to a cause of action for any member to rush to Court, it must be a case of manifest illegality or where the act of omission or commission is something which goes to the root of the matter. All the members would be bound by the decision taken by the general body though there may be some violation of some Rules provided it is something which could well be condoned and ignored by the general body (Vide Shridhar Misra v. Jaihandra, AIR 1959 All 598; Satyavart Sidhantalankar v. Arya Samaj, Bombay, AIR 1946 Bom 516 and Nagappa v. Madras Race Club, ILR (1949) Mad 808 at pp. 821 to 823 = (AIR 1951 Mad 831 (2) at pp. 835-836).”

48. I also had an occasion to apply the said principle of law while adjudicating another claim relating to expulsion of the member from Delhi

Public school society in 166 (2010) DLT 153, *Salman Khurshid vs. Delhi Public School Society &Anr.* while deciding I.A No. 10680/2008 in CS (OS) No. 1844/2008, I have approved the decision of *Dr. A.C. Muthiah* (supra) decided by the Madras High Court and proceeded to base the judgment on the applicability of the same very principle.”

49. Applying the said principle of law to the instant case, prima facie, it can be said that the co-option of the members is clearly permissible under the Bye law 67 of the Bye laws of the Respondent no.1 association. It has been pointed out by the learned counsel for the respondent that one of the petitioner is himself the beneficiary of the position of co-option and has approved such practice. Under these circumstances, it is highly doubtful to say that there exists any such violation of Bye law and if at all there is then, it would be unwise to bring the functioning of the respondent association to standstill by preventing the respondents from holding election and from pursuing disciplinary action which are the permissible acts under the Bye laws. In the opinion of this court, this court should not interfere with the functioning of the respondent no. 1 association at this stage when the vital decisions relating to elections are going to be taken. Doing the same would lead to this court allowing further violation of the Bye laws of the respondent.

50. It is also noteworthy to mention that the petitioners’ prayer in OMP No.163/2013 relating to staying the decision of the election to be held in the respondent no. 1 association cannot be allowed as the same is also contrary to the case of the petitioners which is that the respondent No. 1 should operate in a democratic manner. The petitioners concern is that the elected

members should be allowed to participate in the executive committee of the respondents rather than co-opted members. It is difficult to conceive as to how this aim of the petitioners of having elected members in the executive can be achieved if the petitioners themselves would seek restraint orders against the election process of the respondent No. 1 association. If this court would allow the prayers in OMP and stay the election process for further period, it would certainly affect the respondent No. 1 position as a democratic body prejudicially. Thus, the prayers in the OMP No. 163/ 2013 as such cannot be allowed.

51. The elections are the essential part of any democratic system be it in any country, state, association, society or in any form of organization. The courts in India have always taken the view that the election process in the association or society should not be allowed to stall at the behest of challenges laid down by the fewer members in order to serve their limited interests. The same is the position with the Bye laws of the respondent No. 1 wherein Bye law 57 provides that the election process in the association should not be stalled by any member of the association by instituting the legal proceedings. It is thus neither in the interest of the respondent No. 1 association nor would it be in consonance with the Bye laws of the respondent no. 1, if this court allows the election process to be stalled at the behest of the petitioners, which is by itself also separate violation prescribed under the Bye laws.

52. In view of the said discussion, it can be said that the election process of the respondent no. 1 and the decisions which are required to be taken by the executive committee cannot be stayed by the interim measures when the Bye laws speak to the contrary.

53. The argument of the petitioners that the respondent's executive committee comprises of all co-opted members by Mr.Goel or the present secretary and thus the decision in the hands of such people would affect the fairness of the election process cannot be accepted. This is due to the reason that the co-option of the members is clearly permissible under the Bye law 67 and if the petitioners are aggrieved by the interpretation of the Bye law, the petitioners have to follow the agreed procedure as laid down in Bye law 27 (a) of the respondent No.1. The petitioners have not raised any specific allegations as to malice in fact or in law against the each member of the executive. It cannot be said in generality that all the members of the executive would invariably decide against the institution or undemocratically when they are the members of the respondent no. 1 association. Such allegation of malice cannot be accepted in generality unless they are specific person wise. To that extent, I agree with the argument canvassed by learned Senior counsel Mr. Sandeep Sethi that the institutional bias cannot be readily inferred by the Court.

54. So far as the argument of the petitioners that the executive committee of the respondent no.1 is likely to decide against the petitioner in the case of disciplinary action is concerned, the same is again an allegation founded on the general allegation of the malice. It is seen that the situation from the date of filing of OMP No.500/2012 has undergone a change since then. The petitioners were deeply aggrieved by the Mr. T.N. Goel, the then secretary who could have influenced the decision making of the executive. However, the said person has superannuated from the post of General Secretary as of today. The rest of the allegations are general ones which cannot be accepted. Therefore, there is no reason to further defer the decision making in the

proposed disciplinary action against the petitioner.

55. As seen above, the respondents have justifiable reasons for proposing the disciplinary action against the petitioners on the basis of coercive measures adopted by the petitioners and their misbehaviour leading putting the respondent no. 1 association to disrepute. The Bye laws of the respondent clearly permit such disciplinary action which can be initiated by respondent in the cases where the members lowers the association reputé or his acts are detrimental to the interests of the association. The petitioners have also not challenged the vires of the Bye law enabling the executive body to pass such show cause notice dated 11th May, 2012. It is also not the case of the petitioners that the executive committee was beyond its powers to pass such show cause notice dated 11th May 2012. It is only the case of the petitioners that there exists biasness in the said committee and the said action is actuated by malice, for which this court has already answered the same by rejecting the contention. Prima facie, there is no illegality which can be found in the said proposed disciplinary action.

56. The petitioners being the members of the respondent No.1 have subjected themselves to the Bye laws of the respondent. The mechanism under the Bye laws 61 to 63 clearly permit the petitioners to file their response to the show cause notice, according of right to hearing and further challenge the decision to the General Council. The petitioners should follow the mechanism provided under the Bye law and the same cannot be allowed to be bypassed by passing interim order in the different mechanism when the dispute relating to disciplinary action is per se prima facie not covered with in the ambit of the arbitration clause. Thus, the prayers contained in OMP No. 500/ 2012 cannot also be granted.

57. There is another reason which persuades me to reject which is the limited scope of Section 9 of the Act. The mere reading of Section 9 of the Act would reveal that the power of the court under Section 9 can be exercised prior to or during the pendency of the arbitral proceeding or even after passing the award but before enforcement to protect or preserve or sale of any good, amount, or property or thing or any other interim measure as may appear to court just and convenient. The said orders of interim measures under Section 9 are aimed at safeguarding the rights of a party to the arbitration agreement pending the arbitration or its enforcement so that no prejudice can be caused to the said party on account of pendency of the proceedings. However, the said orders of interim protection are not passed on the mere asking when there exists no possibility of safeguarding any private right of the party.

58. It is true that this court has power to pass interim order of interim protection if it appears to the court as “just and convenient”. The wordings just and convenient provide wide discretion to the court to mould the interim relief for safeguarding the rights of the parties. But the said discretion has to be exercised judiciously and not capriciously or in an arbitrary manner. I agree with Mr.Sandeep Sethi, learned Senior counsel appearing on behalf of the respondents, that the show cause notice issued by the respondents is not liable to be stayed under the scheme of Section 9 of the Act as the petitioners instead of giving the explanation in the meeting or following the prescribed procedure have approached the Court.

59. It is well settled that whenever the court is invested with the discretion to do certain act as mandated by the statute, the same has to be exercised judiciously and not in an arbitrary manner and capricious manner. The

Supreme Court in the case of Ramji Dayawala & Sons (P) Ltd. vs. Invest Import - 1981 (1) SCC 80, reiterated the classic definition of 'discretion' by Lord Mansfield in *R. vs. Wilkes* - 1770 (98) ER 327, **that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'**. (Emphasis Supplied)

60. Applying the said principle of law to section 9, it can be said that the courts discretion to pass the interim protection order as just and convenient can be exercised when the court arrives at the finding that the rights of the party are going to be affected pending the arbitration or prior to enforcement which needs protection in the interim which makes it just and convenient to pass the order.

61. If the said principle is applied to the instant case, it can be seen that there exists no right of the petitioners which is required to be protected making it just and convenient to pass any interim order of protection in favour of the petitioner.

62. It is well settled principle of law that whenever a person joins the society or forms an association, he enters into contract with the Bye laws. His rights are merged into the rights of the association as a whole and he is subjected to Bye laws of the association. His right to remain in the society or association or continue to be part of it is governed by the Bye laws of the said society or association. Beyond the same, there exists no independent legal right to remain or continue to remain in the society nor is there any right to get himself necessarily elected. Even the right to form association as envisaged under Article 19 (1) (c) of the Constitution is confined merely to a

right to form association and does not carry with it a concomitant rights to remain in the association or get himself necessarily elected in the association.

63. In the instant case, this court has prima facie arrived at the finding that the Bye laws of the respondent No. 1 provide different mechanisms for handling election disputes and disciplinary action. It is doubtful as to how the matter would be covered within ambit of the arbitration clause as contained in the Bye law 27 when there are specific Bye laws prescribing separate mode of dispute adjudication. Under these circumstances, it cannot be said that there exist any other right in the petitioners to seek interim protection against the launching of disciplinary action and also restraining the respondents to hold election when the Bye laws of the respondent clearly permit so. Therefore, the court cannot exercise the powers under section 9 of the Act in facts of the instant case.

64. In the result, the reliefs prayed in OMP No.500/2012 and OMP No.163/2013 cannot be granted. Both the petitions are dismissed. All interim orders stand vacated.

(MANMOHAN SINGH)
JUDGE

APRIL 26, 2013