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HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.373 of 2013

Decided on : 24th September, 2013

MR LALIT KUMAR MODI THROUGH HIS CONSTITUTED
ATTORNEY SHRI MEHMOOD M ABDI Appellant

Through: Mr.A.M.Singhvi and Parag
P. Tripathi, Sr.Advs. with Mr.Ravi
Sikri, Mr.S.S.Hora, Mr.Abhishek
Singh, Mr.Roor Ray, Ms.Neha
Bhatnagar and Mr.Gaurav Goyal,
Advocates.

versus

THE BOARD OF CONTROL FOR CRICKET IN INDIA & ORS.

..... Respondents

Through: Mr.C.A.Sundaram, Sr.Adv. with
Mr.P.R.Raman, Mrs.Akhila
Premkumar, Ms.Rohini Musa,
Ms.S.P.Arthi, Mr.Zafar Inayat and
Mr.Govind Singh, Advs for R-1.

WITH

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CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. These are two cross appeals against ex parte order dated 21.9.2013 passed by Ms. Ruby Alka Gupta, the learned ADJ, Patiala House Courts, New Delhi in Suit No.567/2013 titled Lalit Kumar Modi vs. The Board of Control for Cricket in India & Ors. The first appeal FAO 370/2013 has been filed by the Board of Control for Cricket in India while as the second appeal FAO 373/2013 has been filed by Lalit Kumar Modi & Ors.
2. Briefly stated the facts leading to the filing of the present appeals are that Lalit Kumar Modi filed a suit for declaration and permanent injunction against BCCI making Mr. Arun Jaitley, Mr. Chirayu Ameen, Mr. Jyotiraditya Scindia, members of the Disciplinary Committee, Mr. Jagmohan Dalmiya, Mr. Sanjay Patel and Mr. N. Srinivasan as defendants. The case which was setup in the plaint was that Lalit Kr.

Modi is an administrator of BCCI and he sought a declaration that the decision of the Working Committee of the BCCI dated 2.6.2013 and 10.6.2013 appointing Mr. Jagmohan Dalmiya to look after the day to day affairs of the BCCI is illegal and contrary to BCCI Rules and Regulations. Similar declaration was sought with regard to the appointment of Mr. Sanjay Patel as the Honorary Secretary of the BCCI. It was further prayed that the notice dated 2.9.2013 issued by Mr. Sanjay Patel is illegal, nonest and contrary to the BCCI rules and regulations and accordingly a permanent injunction against the said notice was sought. It was also prayed that a permanent injunction order be passed restraining Mr. Jagmohan Dalmiya, Mr. Sanjay Patel and Mr. N. Srinivasan from discharging the function as president and secretary of the BCCI. The suit was filed on 19.9.2013 before the court of learned District Judge and it was marked to learned ADJ on 21.9.2013. Along with suit an application under Order 39 Rule 1 and 2 CPC was also filed wherein an ex parte ad interim injunction from restraining the BCCI from holding the Special General Body Meeting (in short 'SGM') on 25.9.2013 was sought and similarly, an ex parte ad interim injunction restraining defendant Nos.5 to 7 in the suit, that is, Mr. Jagmohan Dalmiya, Mr. Sanjay Patel

and Mr. N. Srinivasan from discharging their function as president and secretary of the BCCI was also prayed for.

3. The aforesaid suit and application are purported to have been filed by Lalit Kumar Modi through one Mr. Mehmood M. Abdi, a lawyer who is stated to be the Constituted Attorney of the plaintiff. He has not only signed and verified the pleadings but also filed supportive affidavit to the pleadings.

4. The learned ADJ after noticing the submissions of the learned counsel for Mr. Modi passed a cryptic order holding as under :-

“The plaintiff has prima facie shown the notice of the SGM has been issued without appropriate authority. He has also shown that he shall suffer irreparable loss which cannot be compensated in terms of money by the report of the Disciplinary Committee being considered in an unauthorized meeting. The balance of convenience thus lies in the favour of the plaintiff. The defendants are thus hereby restrained from holding the SGM scheduled for 25.9.2013.”

5. So far as prayer (b) with regard to restraining by way of ad interim injunction, the three defendants to the suit, namely, Mr. Jagmohan Dalmiya, Mr. Sanjay Patel and Mr. N. Srinivasan is concerned, it was observed that no immediate injury is likely to be suffered by the plaintiff

and accordingly, no ex parte injunction was passed and the matter was adjourned to 30.9.2013 with a direction to the plaintiff to comply with the provision of Order 39 Rule 3 CPC by 23.9.2013.

6. The two cross appeals, one by BCCI raising an objection to the very grant of ex parte ad interim injunction on the ground that by passing the aforesaid ex parte ad interim injunction, the very holding of the meeting, i.e. SGM by the BCCI has been brought to a grinding halt. Similarly, the cross appeal has been filed by Lalit Kr. Modi on account of having been denied the ex parte ad interim injunction of not restraining Mr. Jagmohan Dalmiya, Mr. Sanjay Patel and Mr. N. Srinivasan from functioning as president and the secretary of the BCCI.

7. I have heard Mr. Sunderam, the learned senior counsel for BCCI and Dr. A.M. Singhvi and Mr. Prag P. Tripathi, the learned senior counsel for Lalit Kr. Modi.

8. The rival contentions will be dealt with while considering the points which have been raised herein under :-

MAINTAINABILITY OF THE APPEAL

9. Dr. Singhvi and Mr. Tripathi, the learned senior counsel appearing for Lalit Kr. Modi though have contended that their appeal against the

rejection of the part of their interim order sought by them is appealable under Order 43 Rule 1 CPC but there is no provision by virtue of which the appeal of the BCCI against the ex parte ad interim injunction order can be said to be maintainable because such an appeal would be maintainable only after the trial court has failed to decide the application of the BCCI under Order 39 Rule 4 CPC or the application filed by Lalit Kr. Modi under Order 39 Rule 1 & 2 CPC within the statutory period of 30 days. In support of his contention Dr. Singhvi has placed reliance on the judgment of the Apex Court in *A. Venkatasubbiah Naidu vs. S. Chellappan & Ors.*; (2000) 7 SCC 695 wherein it has been observed in para 21 as under :-

“It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the **normal circumstances** the aggrieved party can prefer an appeal only against an order passed under Rules 1,2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances, the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party,

shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3-A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry for his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be final order passed on the application for temporary injunction, on an date of expiry of thirty days mentioned in the Rule.”

(emphasis added)

10. Per contra, Mr. Sundaram, the learned senior counsel appearing for BCCI has also sought to place reliance on the same paragraph which has been relied upon by Dr. Singhvi and it has been contended that it is correct that in normal circumstances and aggrieved party can prefer an appeal only against an order which is passed by the trial court under Rule 1, 2, 2A, 4 or 10 or Order 39 but that is the normal course. In the instant case, the situation is not normal on account of the fact that there was a previous background to the litigation between the BCCI and Lalit Kr. Modi. It was contended that a suit for Declaration and Permanent

Injunction was already filed by Mr. Modi which was pending before this very court in which the objection was taken by the BCCI with regard to the maintainability of the suit on the ground of territorial jurisdiction and an application under Order 7 Rule 11 CPC was filed on which arguments were heard and simultaneously another application under Order 6 Rule 17 CPC was also filed by Mr. Modi for amending the plaint, on which also, arguments were heard and order reserved. The court granted an *ex parte* ad interim injunction staying the holding of the SGM on 25.9.2013 without adverting to the said suit or even considering it necessary to issue notice before granting any stay. It has been stated that the *ex parte* order has been passed on 21.9.2013, the service in response to the said order has to be effected by 23.9.2013 while as no notice has been served on them till date and the date for appearance has been given as 30.9.2013 thereby meaning that the whole process of holding the SGM is scuttled. It has been contended that the *ex parte* ad interim order is not sustainable under such a circumstance.

11. I have carefully considered the rival contentions. At the outset, I may observe that the plea taken by Dr.Singhvi that there is no appeal maintainable against the *ex parte* ad interim order does not convince me.

If such a proposition is accepted then it will do more harm than good. There is no dispute that the Division Bench of this court in the case of *Magotteaus Industries Pvt. Ltd. vs. AIA Engineering Ltd.*; 155 (2008) DLT 73 has entertained an appeal against an ex parte ad interim order holding it to be maintainable against the order passed by the learned single judge sitting on the Original Side. Reference to *Shah Babu Lal Khaimji's* case; 1981 SC 1786 has also been made therein. The parties here also relied on a judgment of the Supreme Court wherefrom it can be interpreted that in extraordinary circumstances, an appeal against an ex parte ad interim order can be maintained. What these extraordinary circumstances can be, is not possible to visualize but the facts of the present case are such where such an appeal would be permissible because the stay is granted on 21.9.2013 against SGM on 25.9.2013 without giving any reasons. It may be pertinent here to mention that the order runs into four pages and on the first three pages the submission of the learned counsel for Lalit Kr. Modi has been recorded and thereafter it has been observed as under :-

“The plaintiff has prima facie shown the notice of the SGM has been issued without appropriate authority. He has also shown that he shall suffer irreparable loss

which cannot be compensated in terms of money by the report of the Disciplinary Committee being considered in an unauthorized meeting. The balance of convenience thus lies in the favour of the plaintiff. The defendants are thus hereby restrained from holding the SGM scheduled for 25.9.2013.”

12. The court while passing an ex parte ad interim injunction should keep in mind that the party against whom an injunction order is issued, has a right to know the reasons for the same and similarly as to how the party is going to suffer irreparable loss which cannot be compensated in terms of the money has not been explained. In the instant case simply by saying that a party is shown to have a prima facie case or that it shall suffer an irreparable loss which cannot be compensated in terms of the money without any reasons, is not sufficient in my view to warrant passing of an ex parte ad interim injunction. The non-giving of reasons shows complete lack of application of mind on the part of the learned ADJ. Therefore, in such a circumstance, the appeal, in my view, would be permissible.

13. Further, the factual matrix of the case is such that an ex parte ad interim injunction order ought not to have been issued in the circumstances knowing full well that the SGM was slated to be held on

25.9.2013, the injunction order is being passed on 21.9.2013 and two days are given for the purpose of service out of which 22.9.2013 happens to be the Sunday and thereby the issuance of process by the court and the service of notice to the opposite party which admittedly, has a registered office at Mumbai would not be possible. The meeting is to take place at Chennai with the result that they would be able to know about the ex parte injunction order having been passed only just before the meeting and thereby creating a chaotic situation. In such a circumstance the very grant of ad interim injunction order in my view prima facie shows total non application of mind.

PROPRIETY IN PASSING INTERIM ORDER

14. The next point is a question of propriety on the part of the learned ADJ. As has been submitted before this court, the learned ADJ was already seized of a matter between the same parties pertaining to a similar subject matter in which an order was reserved on an application under Order 7 Rule 11 CPC for rejection of the plaint by BCCI on account of lack of territorial jurisdiction and an application of Mr. Modi under Order 6 Rule 17 CPC for amendment of the plaint and yet not pronouncing that order but granting an ex parte ad interim order in a freshly instituted suit

without issuing notice to the opposite party that one party was trying to steal a march over the other. Therefore, I feel that the BCCI was well within its rights to file and maintain the present appeal and it cannot be said that the appeal filed by them deserves to be dismissed in limine as not maintainable.

VALIDITY OF THE SGM

15. Dr. Singhvi, learned senior counsel appearing for Mr. Modi has contended that the meeting which is to take place on 25.9.2013 is not a meeting called by a duly authorized person. In this regard, he has drawn the attention of the court to the constitution of BCCI and referred to Rule 17 (1) (a) and host of other rules, which cannot be referred to in detail for paucity of time to contend that an SGM may be convened by the Secretary on a directive of the President. It was contended that the notice of the meeting dated 2.9.2013 was issued under the signatures of Mr. Sanjay Patel who was not validly appointed by the President. It was contended by Dr. Singhvi that so far as Mr. N. Srinivasan who was the elected president is concerned, BCCI had issued an official press statement that he is dissociating himself from the functioning of the office of the President and the day-to-day functioning of the BCCI was to be

looked after by Mr. Jagmohan Dalmiya and therefore it is not clear as to who has authorized Mr. Sanjay Patel to have convened the meeting on 25.9.2013. The learned counsel in this regard has also raised an objection that Mr. Sanjay Patel was appointed as the honorary Secretary of the BCCI in the minutes of the meeting which had taken place on 10.06.2013 at New Delhi while there is a letter dated 6.6.2013 which shows the minutes of 10.06.2013 recorded as under:

“The members approved the names proposed by Mr. Jagmohan Dalmiya. It is hereby resolved that Mr. Sanjay Patel and Mr. Ravi Savant be appointed as the Hon. Secretary and Hon. Treasurer respectively to fill up the vacancies caused by the resignation of Mr. Sanjay Jagdale and Mr. Ajay Shirke respectively. It is further resolved that Mr.N.Srinivasan in exercise of his rights as per the Memorandum and Rules and Regulations of BCCI will issue the appointment letters to Mr.Sanjay Patel and Mr.Ravi Savant as Hon.Secretary and Hon.Treasurer respectively.”

16. It was contended that this decision was taken on 10.06.2013 while as Mr.Sanjay Patel was already issued a letter on 06.06.2013 by Mr.N.Srinivasan, the so-called President, appointing him as the Honorary Secretary. It was contended that this clearly shows fabrication of the records authorizing Sanjay Patel to discharge the functioning of the Honorary Secretary to convene the meeting. It was contended that all

these facts clearly show that Mr.Sanjay Patel was neither appointed by Mr.Jagmohan Dalmiya who was entrusted with the day to day functioning of the BCCI nor could he have been appointed by Mr.N.Srinivasan as the Honorary Secretary as is sought to be urged by BCCI but because Mr.Srinivasan had voluntarily of his own stated that he was not functioning as the President till the time the enquiry against his son-in-law is concluded. Therefore, it was contended that the letter sent on 02.09.2013 convening the SGM was totally illegal and void ab initio and could not be acted upon to convene a validly constituted meeting. This contention of Dr.Singhvi was refuted by Mr. Sundaram. He contended that there is no dispute about the fact that Mr.N.Srinivasan was the President of the BCCI and it is Mr.N.Srinivasan who had voluntarily agreed to dissociate himself with the day to day functioning. The stress was placed on the day to day functioning and not with regard to the abdication of the power which was vested in the President by virtue of the constitution of BCCI. It was accordingly contended that Mr.Srinivasan alone was competent enough to appoint Mr.Sanjay Patel as the honorary Secretary of the BCCI. It was in this regard that he had issued a letter dated 06.06.2013 to Mr.Sanjay Patel appointing him as the Secretary of

the BCCI pursuant to the resignation of Mr.Sanjay Jagdale, the previous Secretary on 31.05.2013. It was contended that in order to obviate any ambiguity with regard to the appointment of Mr.Sanjay Patel this appointment was got ratified by the working committee of the BCCI in its meeting on 10.06.2013 and it is in this context that the working committee also resolved to appoint Mr.Sanjay Patel as the Secretary and there was no inconsistency between the letter dated 06.06.2013 and the minutes of the meeting dated 10.06.2013 with regard to the appointment of Mr.Sanjay Patel.

17. I have carefully considered the submissions advanced and gone through the record including the various rules and regulations referred to by both the sides. I feel that the explanation furnished by Mr.Sundaram seems to be quite convincing and reasonable that Mr.N.Srinivasan admittedly is the President of the BCCI and there is no vacancy of the office of the President inasmuch as either Mr.Srinivasan has not resigned nor has he been adjudged to be not serving as the President of the BCCI. Therefore, for all practical purposes, he continues to be holding the office of the President in the eyes of law. It is only voluntary action on the part of the President i.e. Mr.N.Srinivasan that on account of certain

intervening circumstances because of which he volunteered not to function as the President or not to associate himself with the day to day functioning of the BCCI in order to obviate any criticism or the allegation of bias so far as the holding of some enquiry purported to be against the son in law was concerned. But that would not mean that he had abdicated his office of Presidency of the BCCI. Therefore, he was competent enough to appoint the honorary Secretary because under Rule 13 sub-Rule (2) it is laid down that in the event of any vacancy occurring in the office bearers or the office of Vice President, the Chairman and the Standing Committee or other committees by reason of death etc., the President has the power to fill up such a vacancy and certainly the honorary Secretary will fall within the definition of office bearer inasmuch as Mr.Sanjay Jagdale had ceased to be the Honorary Secretary on 31.05.2013. Therefore, I feel that this argument of Dr.Singhvi that Mr.Sanjay Patel was not a voluntarily appointed Secretary of the BCCI does not hold any force prima facie. Once this is held that Mr.Sanjay Patel was a duly constituted honorary secretary, Mr.Sanjay Patel in that capacity, on the instructions of the President, which obviously has a reference to Mr. N.Srinivasan has convened the SDM on 25.09.2013 and

no fault can be found with the same as there was a clear notice of 21 days required to be given in pursuance to the constitution of the BCCI. I am accordingly of the view that the SDM was validly convened by the honorary Secretary of the BCCI.

18. Next question which arises for consideration is the consideration of the agenda of the SGM meeting and the anticipation of Mr.Modi being expelled from the membership of BCCI for all times to come and the balance of convenience being in favour of Mr.Modi. This is only a conjecture or surmise on the part of Mr.Modi. It is only a show cause notice to attend in person the SGM to explain his conduct in the light of the disciplinary report.

19. Dr.Singhvi next urged that so far as the notice dated 02.09.2013 is concerned, that did not inform about the agenda. This fact was disputed by Mr.Sundaram who stated that a proper show cause notice was issued to Mr.Modi who can explain his conduct with regard to the report of the disciplinary committee submitted for consideration of the BCCI and, therefore, it could not be said that either the SGM is going to take precipitative action or that he is not being given the right to hear by the committee. In this regard, the contention of Dr.Singhvi that in case the

SGM is not restrained from consideration of the report of the disciplinary committee, then practically the administrator will be expelled and the suit will itself become infructuous.

20. In this regard, the learned senior counsel has sought to place reliance on the judgment of the Supreme Court in *T.P.Daver v. Lodge Victoria No.363 S.C.Belgaum and Ors.*; (1964) 1 SCR 1 wherein it has been held that the source of the power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members and thus power to expel by the domestic tribunal is bound to be construed strictly. It was contended that the power to expel in the instant case cannot be liberally exercised by the SGM so as to make the suit of the appellant itself redundant. This point was also countered by the learned senior counsel who drew attention of the court to the language of the show cause notice which clearly referred that Mr.Modi was required to be personally present for the purpose of hearing in person and explain his conduct in the light of the report of the disciplinary committee. It was stated that this itself would clearly show that the principles of natural justice were being fully complied with but it also showed that the SGM was taking place with an open mind and there was

no perceived notion against Mr.Modi. I feel that having regard to the language of the notice sent to Mr.Modi, the fear of Mr.Modi is baseless that he is going to be expelled as it is based on conjecture without any evidence prima facie.

GRANT OF EX PARTE STAY

21. I am tempted to refer to a few judgments of the Supreme Court with regard to the exercise of power of the court for grant of an ex parte stay.

22. The Supreme Court has cautioned the courts to be slow in granting ex parte orders in a number of matters including educational authorities as well as holding of elections or even cases where domestic inquiries are being held. It has been observed by the Apex Court that unless and until the court is satisfied petitioner has a cast iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible, such an order ought not to be passed. The feelings of the Supreme Court with regard to the grant of an ex parte order can be gauged from the observations of the Supreme Court in DDA vs. Skipper Construction Company (P) Ltd. and Anr.; AIR 1996 SC 205.

“On this occasion, we must refer to the mechanical manner in which some of the courts have been granting interim orders – injunctions and stay orders without realizing the harm such mechanical orders cause to the other side and in some cases to public interest. It is no answer to say that ‘let us make the order and if the other side is aggrieved, let it come and apply for vacating it’. With respect, this is not a correct attitude. Before making the order, the Court must be satisfied that it is a case which calls for such an order. This obligation cannot be jettisoned and the onus played upon the respondents/defendants to apply for vacating it.”

23. In the light of the aforesaid discussion, I am of the considered view that the following points emerge for allowing the appeal of the BCCI:

(i) The learned Additional District Judge was seized of the previous litigation between the same parties and, therefore, it was improper on the part of the learned Additional District Judge to have decided to grant an ex parte ad interim injunction on 21.9.2013 against holding of a meeting on 25.9.2013 and directing the service of ex parte order on the BCCI within two days out of which 22.9.2013 happened to be a Sunday, when admittedly the office of BCCI was at Mumbai and the meeting was to be held at Chennai on 25.9.2013. The grant of ex parte stay has the potential to cause more irreparable loss than the non-grant of injunction.

(ii) The learned Additional District Judge has not given any reason for grant of ex parte stay order while as the party against whom the stay is given has a right to know the reasons. This shows non-application of mind.

(iii) The plea that the notice dated 2.9.2013 issued by Mr. Sanjay Patel was not a valid notice as it did not clarify as to under whose authority (as to whether it was issued under the authority of Mr. Srinivasan or Mr. Jagmohan Dalmiya was not clear) was rejected by the court. The court has taken the view that Mr. Srinivasan continued to be the President of the BCCI and Jagmohan Dalmiya was only appointed as a person to look after the day to day functioning of the BCCI.

(iv) The discrepancy which was pointed out by Dr. Singhvi in the Minutes of 10.6.2013 with regard to the appointment of Mr. Sanjay Patel as the Honorary Secretary in the light of the fact that a letter of appointment of Mr. Sanjay Patel is purported to have been issued by the President on 6.6.2013 cannot be found fault with. This is on account of the fact that Mr. Srinivasan continued to be vested with the powers of the President and it was he who was under the constitution of the BCCI

authorized to fill up the vacancy of office bearer. The statement of the BCCI that Mr. Srinivasan will dissociate himself with the day to day functioning of the BCCI on account of certain reasons in order to impart impartiality to the functioning of the inquiry commission does not mean that he had abdicated his post of President of BCCI.

(v) The question of non-maintainability of the appeal of the BCCI has not been accepted on account of the fact that the judgment which has been relied upon by both the learned senior counsel clearly lays down that in normal circumstances an appeal would be permissible against an order passed by the court disposing of application under Order 39 Rule 1, 2, 2A, 4 or 10 CPC. This clearly implies that under extraordinary circumstances, an appeal would be permissible. In the instant case, the facts were such that these laid down extraordinary circumstances which warrant that the appeal ought to be entertained by this court. The extraordinary circumstances were non-giving of reasons, democratic functioning of the society being brought to a grinding halt and the previous litigation between the same parties in the same court being ignored.

24. Accordingly, so far as F.A.O. No.370/2013 is concerned, the same is allowed for the simple reason that the relief which is claimed by the appellant therein against Mr.Jagmohan Dalmiya, Mr.Sanjay Patel and Mr.N.Srinivasan from discharging their duties as the President and the Honorary Secretary are concerned, that is the main relief and in case the ad interim relief is granted, that would tantamount to decreeing the suit.

25. So far as the second appeal being F.A.O. No.373/2013 filed by Mr.Modi is concerned, the same is accordingly dismissed.

26. The parties to appear before trial court on 30.9.2013.

27. Any expression of opinion in these matters shall not be deemed to be an expression on the merits of the case.

28. Copy of this order be given *dasti* to the parties under the signatures of the Court Master.

V.K. SHALI, J.

SEPTEMBER 24, 2013

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