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

+ **CONT.CAS(C) 716/2012 & CM APPL. 2275/2014**

NEERAJ GAUTAM & ANR

....Petitioners

Through: Mr. Tanuj Khurana, Mr. Gaurav
Malik & Mr. Sumit Verma,
Advocates

versus

S P BANSAL

....Respondent

Through: Mr. J.S. Bakshi & Mr. Amitesh Singh
Bakshi, Advocates

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

% **SUDERSHAN KUMAR MISRA (ORAL)**

1. The Delhi and District Cricket Association (DDCA) is a section 25 company as enunciated under the Companies Act, 1956 and has been incorporated under the same. The DDCA is a not for profit organisation that works for the promotion of the sport of cricket. As per the Articles of Association of the DDCA, the General Secretary is part of the Executive committee. As per clause 40 of the Articles of Association, the General Secretary can hold office till the conclusion of the Annual General Meeting held subsequent to the next succeeding Annual General Meeting. The eligible members are to elect the General Secretary at every alternate AGM. Furthermore, the General Secretary is also eligible for re-election, subject to the provisions of the Companies Act.

2. This contempt petition has been filed against Mr. S.P. Bansal, who is the General Secretary, Delhi and District Cricket Association (DDCA). It is being pressed by counsel for the petitioners under the following

circumstances:-

(a) On 18.12.2007, a common decision was rendered by this Court in CS No. 1288/2005 and CS No. 1550/2005. In paragraph 2 of that judgment, it was noted that the disputes inter se the parties, “can be set at rest by directing that the Annual General Meeting (AGM) be called forthwith”. It was also noted that since there has been a lot of acrimony on both sides, therefore, it is necessary that the election be conducted by an independent person; and therefore, the Court also appointed an Election Officer and a Secretary to the Election Officer to conduct the elections then due.

(b) In paragraph 7 of the aforesaid order, it was also stated as follows:

“7. It is made clear and the parties have understood it clearly that the letter and spirit of the Memorandum and Articles of Association of the DDCA shall be complied with in future and the AGMs will be held as per rules.”

The suits were finally disposed off on the aforesaid terms.

3. The grievance now is that even though the AGM for the year in question at the time when the judgment was rendered, as well as the succeeding AGMs, were duly held; however, the AGM for the year 2012-2013, which was to be held on or before 30.09.2012 in terms of Section 166 and 210 of the Companies Act, 1956, was only held much later, on 21.12.2012; and that this delay in holding that AGM amounts to contempt. In substance, counsel for the petitioners contends that the aforesaid expression of this Court, as reproduced above, constitutes a

binding direction to the Delhi and District Cricket Association for all times to come, to hold the AGM strictly within the time contemplated in Section 166 and 210 of the Companies Act, and any delay in holding it would automatically amount to contempt.

4. In this context, an application dated 03.09.2012, was also moved by the Company before the Registrar of Companies under Section 166 of that Act, seeking extension of one month, which was duly granted. Consequently, the AGM was then to be held on or before 30.10.2012. However, this was not done, and the AGM in question ultimately came to be held on 21.12.2012. Thereafter, the respondent is stated to have filed a compounding application before the Registrar of Companies for the late holding of the AGM. Admittedly, this compounding application was allowed by the Company Law Board by its order dated 07.01.2014, whereby the Board also imposed a fine of Rs. 85,000/-, which has been duly paid.

5. To my mind, ex facie, the interpretation sought to be placed on the aforesaid order of 18.12.2007 by counsel for the petitioner doesn't commend itself. What has been said is that, "... the letter and spirit of the Memorandum and Articles of Association of the DDCA shall be complied with in future..." and, then it is further stated that, "and the AGMs will be held as per rules."

6. This cannot be taken to be a mandate of the type being asserted by the petitioner. It's merely that in future, the Memorandum and Articles of Association shall be complied with; and all further AGMs will be held as per rules. This obviously means that the non-holding of AGM

shall invite appropriate sanctions as per relevant rules under the Companies Act, and nothing more. From the language of the order of 18.12.2007, it is clear that it is, at best, only a declaratory order, and not a mandatory one. This is because on 18.12.2007, the court was primarily concerned with the allegations raised by the parties against each other in two civil suits; and concluded that the disputes inter se the parties can be set at rest by directing that the AGM of the DDCA, which was then due, be called forthwith. The Court also appointed an Election Officer to conduct the required elections to be held after that AGM. It was in this context that the Court observed that in future also, “the AGM will be held as per rules”. Obviously all parties must be presumed to be aware of their obligations under the statute, in terms whereof it would be the duty of the extant office bearers to take all necessary steps, including, inter alia, to hold the required AGM as provided under the statute. When it could not even be predicted as to who will be the elected office bearers that are responsible for holding the AGMs for each succeeding year; and those individuals could never have been parties to this litigation in any case; such an order must be deemed to be only a declaratory order; and not a mandatory order binding all unknown, & indeed unknowable, office bearers, to the sanction of the law of contempt.

7. There is already a pre-existing statutory obligation, and a separate mandate from the Court to the same end is conceivable only under specific circumstances giving rise to a cause of action in that behalf. Thus, in the case of refusal to perform a statutory obligation within the prescribed time, a, “cause of action” can be said to arise for

bringing an action seeking a mandate to the person concerned. Whether the cause of action, that occasioned the action, was limited to a refusal or failure by the person concerned to carry out the dictates of a statute in one or more specific instances; or also included a refusal to perform in future, would depend on the facts and circumstances averred. Taken further, a, “wilful disobedience”, of an order, which may thereafter give rise to an action for contempt, can only occur where a party was directed by the Court, in that litigation, to do something, which he had either, “wilfully”, failed to do when required; or indicated his unwillingness to do so in future, even though the Court’s order had made it clear, that in future also, he will have to do so. There is nothing in the facts and circumstances surrounding the order of 18.12.2007 to warrant any such conclusions. At best the said observation is merely a reiteration of the obligation of the extant office bearers, at all times in the future, to comply with the statutory requirements regarding the holding of the AGM, and nothing more.

8. In this context, the aforesaid observation of the Court in paragraph 2 of the judgment dated 18.12.2007 to the effect that the disputes *inter se* parties, “can be set at rest by directing that the Annual General Meeting (AGM) be called forthwith”, assumes significance in that, the same is an obvious indication of the scope and nature of the disputes giving rise to the cause of action, as understood by the Court. By this, it is clear that whatever may have been the allegations amongst the parties, *inter se*, giving rise to the cause of action for instituting the proceedings; the calling of the AGM, “forthwith”, was considered sufficient relief, and it was directed accordingly. The elections, which

were to be held at the conclusion of the AGM in question, were directed to be conducted by the Court appointed Election Officer. Having set the controversy at rest in this manner; it is clear that the further expression by the Court that it expected the law regarding the convening of AGMs to be obeyed in future, had very little to do, either with the disputes raised, or the person or persons, who would be obliged to follow the law each succeeding year, forever, so long as the company endures.

9. I do not find anything, either in law or on facts, to uphold the proposition that the aforesaid orders constituted a mandate by this Court to all unknown, undetermined, and indeed undeterminable future office holders, to the effect that, in case they fail to conduct any AGM in future within the time contemplated under the statute, then, in addition to being visited by sanctions prescribed under the Companies Act and Rules; they would also be liable to be punished under the exercise of contempt jurisdiction of this Court.

10. For all the aforesaid reasons, to my mind, it could never have been the intention of the High Court while passing the aforesaid order on 18.12.2007, that henceforth, the respondent shall always be obliged to conform to a higher test, in that, even though the company and its office bearers are open to sanctions under the Companies Act and Rules with regard to the obligation to hold the AGM as prescribed; still, the then office bearers of the company would, in addition, also be opening themselves to contempt. Under the circumstances, all that can be said is that the respondent remains bound by the Companies Act and rules at par with similarly situated office bearers of companies such as the

DDCA.

11. Consequently, I do not consider it a fit case to exercise contempt jurisdiction.

12. The petition, along with the accompanying application, is therefore dismissed.

SUDERSHAN KUMAR MISRA, J.

FEBRUARY 04, 2014
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