

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

Writ Appeal Nos.544 and 545 of 2018

Between:

Writ Appeal Nos.544 of 2018:

Mr. Mohammed Azharuddin

.... Appellant

and

Dr. G. Vivekanand and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.06.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

+ Writ Appeal Nos.544 and 545 of 2018

% Dated:12.06.2018

Between:

Writ Appeal Nos.544 of 2018:

Mr. Mohammed Azharuddin

.... Appellant

and

\$ Dr. G. Vivekanand and others.

.... Respondents

! Counsel for Appellant: Sri S. Satyanarayana Prasad, Learned Senior Counsel, and Sri M. Govind Reddy and Sri K. Ramakanth Reddy, Learned Counsel.

^ Counsel for respondents: Sri P. Sri Raghuram and Sri P. Gangaiah Naidu, Learned Senior Counsel, Sri Mir Mazood Khan, Learned Counsel, Sri D.V. Sitharama Murthy

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? Citations:

- 1) (2015) 3 SCC 251
- 2) (2016) 8 SCC 535
- 3) (2006) 5 SCC 266
- 4) AIR 1963 AP 9
- 5) 1996(1) ALD 510 (DB) = 1995 LawSuit (AP) 571
- 6) AIR 1982 AP 443
- 7) AIR 2004 AP 310 = 2004 (3) ALD 228
- 8) (1981) 4 SCC 8
- 9) 2002 (1) ALD 280
- 10) 2002 (5) ALD 1
- 11) (2001) 2 SCC 588
- 12) (1970) 2 SCC 405 = AIR 1971 2337
- 13) AIR 1964 SC 1419
- 14) (2005) 6 SCC 138
- 15) (2000) 2 SCC 617
- 16) AIR 1987 SC 2235
- 17) AIR 1989 SC 1972
- 18) (1942) A. C. 130
- 19) AIR 1960 SC 1156
- 20) (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285

- 21) 1990 Supp (1) SCC 727
- 22) (2008) 14 SCC 171
- 23) AIR 1964 SC 477
- 24) (1961) 3 SCR 220 : AIR 1961 SC 970 : (1961) 1 LLJ 1
- 25) (1952) 1 KB 338
- 26) AIR 1958 SC 398 = (1958) SCR 1240
- 27) (1964) 5 SCR 1030: AIR 1965 SC 111 : (1964) 1 LLJ 47
- 28) (1972) 4 SCC 257
- 29) AIR 1955 SC 233 : (1955) 1 SCR 1104
- 30) AIR 1953 Bom 133 : ILR 1953 Bom 91
- 31) (2010) 13 SCC 336
- 32) (1999) 7 SCC 1
- 33) (1978) AC 30
- 34) (1981) 1 SCC 405
- 35) AIR 1954 SC 440 : (1955) 1 SCR 250
- 36) (2008) 2 SCC 417
- 37) AIR 1986 SC 302
- 38) (2006) 5 SCC 173
- 39) (1985) 1 SCC 345
- 40) (2004) 6 SCC 186
- 41) 1951 AC 737
- 42) (1970) 2 ALL.E.R 294
- 43) 1971 (1) WLR 1062
- 44) 1972 (2) WLR 537
- 45) (2004) 8 SCC 579
- 46) Full Bench Judgment in TRC Nos.274 of 2001 and batch dated 25.11.2011
- 47) AIR 1968 SC 647
- 48) 1901 AC 495
- 49) (2003) 6 SCC 545
- 50) AIR 1970 SC 645
- 51) AIR 1993 SC 2412
- 52) (2011) 2 SCC 741
- 53) AIR 1992 SC 671
- 54) JT 2004(8) SC 264
- 55) 1952 SCR 28 : AIR 1952 SC 12
- 56) AIR 1983 SC 1272
- 57) 2017 (1) ALD 380 = 2016 (6) ALT 460
- 58) AIR 1984 SC 653
- 59) (1985) 1 SCC 260
- 60) (185) 3 SCC 217
- 61) (1995) 3 SCC 257
- 62) (2009) 14 SCC 48
- 63) (2009) 5 SCC 452
- 64) (2004)11 SCC 168
- 65) (1994) 5 SCC 380
- 66) (2006) 10 SCC 261
- 67) (2011) 14 SCC 227 : (2012) 4 SCC (Civ) 935 : (2012) 2 SCC (L&S) 890
- 68) (2002) 9 SCC 514
- 69) (1928) 1 K.B. 291
- 70) 1942 (1) K.B. 281
- 71) 1958 SCR 595 : AIR 1958 SC 86
- 72) AIR 1947 Bom.46
- 73) AIR 1952 Cal 656



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal Nos.544 and 545 of 2018

COMMON JUDGMENT: (per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

W.A.Nos.544 and 545 of 2018 are filed, under Clause 15 of the Letters Patent, by respondents 8 and 4 in W.P.No.8433 of 2018 respectively aggrieved by the order passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.8433 of 2018 dated 15.03.2018.

The 1st respondent in W.A.No.544 of 2018, and the 4th respondent in W.A.No.545 of 2018, filed W.P.No.8433 of 2018 seeking a writ of certiorari to call for the records leading upto and inclusive of the proceedings of the Hyderabad Cricket Association (the "HCA" for short), represented by its Chief Executive Officer Sri Panduranga Murthy, dated 09.03.2018 and Case Nos.3, 4, 6, 7 8 of 2018 and Case No.5 of 2017, to the extent the order the Learned Ombudsman-cum- Ethics Officer, Hyderabad Cricket Association (3rd respondent in W.A. No.544 of 2018 and the 2nd respondent in W.A.No.545 of 2018) dated 08.03.2018 concerned the Petitioner, and to quash the same holding it to be without jurisdiction, illegal and arbitrary; and to consequently enable the petitioner to continue as the President of the Hyderabad Cricket Association. By way of interim relief, the respondent-writ petitioner sought suspension of the operation of the proceedings of the Hyderabad Cricket Association dated 09.03.2018, and the order of the Ombudsman-cum-Ethics Officer of the Hyderabad Cricket Association dated 08.03.2018, in Case No.3,4,6,7,8 of 2018 and Case No.5 of 2017, to the extent of the petitioner, and to enable the

petitioner to continue as the President of the HCA pending disposal of the writ petition. It is convenient to refer to the parties in this appeal as they were arrayed in the W.P. No. 8433 of 2018.

Elections to the HCA were held on 17.01.2017, and the result of the elections were declared on 31.03.2017. The respondent-writ petitioner, who was elected as the President, assumed office on the same day i.e., 31.03.2017. Thereafter, on 28.07.2017, the petitioner himself addressed a letter to the Learned Ombudsman-cum-Ethics Officer stating that he had some interest, and sought clarification in his holding office as the President of HCA. The appellant in W.A.No.545 of 2018 submitted his complaint before the Learned Ombudsman on 20.11.2017 requesting that the respondent – writ petitioner should be declared to have ceased to hold office as the President of the HCA as there was a conflict of interest. The appellant in W.A.No.545 of 2018 thereafter submitted two complaints to the Learned Ombudsman. All these complaints were that the respondent-writ petitioner was not entitled to continue to hold office of the President of the HCA because of conflict of interest, and as he was appointed as an Advisor to the Telangana State Government and was granted Cabinet status. The Learned Ombudsman passed an order on 08.03.2018 holding that, on both the grounds, the appellant was disqualified from holding office of the President of the HCA. This order was communicated to the respondent-writ petitioner by the proceedings of the Chief Executive Officer of the HCA dated 08.03.2018. Aggrieved thereby, the Writ Petition was filed on 13.03.2018, and the interim order under appeal was passed on

15.03.2018. Questioning the said interim order, some of the respondents in the Writ Petition have preferred this appeal.

As the order of the Learned Ombudsman-cum-Ethics Officer of the HCA, holding that the respondent – writ petitioner could not continue as the President of the HCA as there was a conflict of interest and on the ground that he held an office which had cabinet status, was under challenge in the writ petition, it is necessary to refer, *albeit* in brief, to the recommendations of the Justice R.M. Lodha Committee in this regard, and the amended bye-laws and Rules of the HCA which relate thereto.

By its order dated 22.01.2015, (in **Board of Control for Cricket in India v. Cricket Association of Bihar**¹), the Supreme Court appointed a Committee, among others, to examine and make suitable recommendations on the amendments to the memorandum of association, and rules and regulations considered necessary to provide a mechanism for resolving conflict of interest, should such a conflict arise, with particular reference to persons, who, by virtue of their proficiency in the game of cricket, were to necessarily play some role as coaches, managers, commentators, etc; any other recommendation, with or without suitable amendment of the relevant rules and regulations, which the Committee may consider necessary to make with a view to preventing sporting frauds, conflict of interests, streamlining the working of BCCI to make it more responsive to the expectations of the public at large, and to bring transparency in practices and procedures followed by the BCCI.

¹ (2015) 3 SCC 251

The three member Committee comprised of (i) Hon'ble Mr Justice R.M. Lodha, former Chief Justice of India — Chairman; (ii) Hon'ble Mr Justice Ashok Bhan, former Judge, Supreme Court of India — Member; and (iii) Hon'ble Mr Justice R.V. Raveendran, former Judge, Supreme Court of India — Member. The three-member Committee was requested to examine and make suitable recommendations to the BCCI for such reforms in its practices and procedures, and such amendments in the memorandum of association, rules and regulations as may be considered necessary and proper on matters set out in the order.

The Supreme Court Committee on reforms in Cricket, (widely recognised as the "Justice R.M.Lodha Committee"), submitted its report dated 18.12.2015 to the Supreme Court recommending reforms in the practices and procedures of the BCCI, and suggesting suitable amendments in the Memorandum of Association and Rules and Regulations. Chapter VI of the report deals with conflict of interest. Chapter VII deals with the Ombudsman, the Ethics and Electoral Officers. In Chapter VI of its report, the Justice R.M. Lodha Committee emphasised on the requirement that individuals, in positions of trust, adjudication and governance, must conduct themselves in a manner not remotely suggestive of compromise; the Committee came to know of several instances of obvious conflicts where contracts had been entered into by the BCCI, where the contractor or vendor included family members of an Office Bearer; the seriousness of conflict of interest, affecting the sport, could not be underestimated; the occupation of a particular post should not allow reasonable presumptions or inferences to be drawn about the compromise

which could ensue that would result in lowering the dignity of the game; every office bearer, player, councillor, employee, administrator, team official, umpire or other person connected to the BCCI, its members, or the IPL and its franchisees, was mandated to avoid any act or omission or as perceived to be, or as likely to bring the interest of the individual in conflict with the interest of the game of cricket; in order to provide clarity, the conflicts had been broadly classified as tractable and intractable with separate solutions or sanctions as the case may be; and an Ethics Officer be appointed to administer the policy for the BCCI.

Para 7.2 of the Justice R.M. Lodha Committee report stipulates monitoring of the principles of conflict of interest along with a Code of Behaviour of the BCCI, and any other such rules as may be laid down by the Ethics Officer; his powers should include laying down of additional guidelines or bye-laws on ethics, initiation of investigation or adjudicatory proceedings and the award of warnings, fines, reprimands, suspensions or other action as may be recommended to the BCCI; and, as far as all non-IPL ethics issues are concerned, the same shall be administered and adjudicated by the Ethics Officer who shall be a former Justice of a High Court to be appointed by the Board.

Annexure-A, of the report of the Justice R.M. Lodha Committee, relates to the Memorandum of Association. Rule 1(A)(g) of the Rules and Regulations defines “*conflict of interest*” to refer to situations where an individual, associated with the BCCI in any capacity, acts or omits to act in a manner that brings, or is perceived to bring the interest of the individual in conflict with the interest of the game of cricket, and that may give rise to

apprehensions of or actual favoritism, lack of objectivity, bias, benefits (monetary or otherwise) or linkages, as set out in Rule 38. Rule 1A(h) defines “*councilors*” to mean the members of the Apex Council. Clause (l) of Rule 1-A defines “*ethics officer*” to be the person appointed to administer the conflict of interest principles as set out in Rule 39, and Clause (w) defines “*ombudsman*” as an independent grievance redressal authority set up under Rule 40. Rule 6 relates to election and term of office bearers, and Rule 6(5)(d) stipulates that a person shall be disqualified from being an Office Bearer if he or she is a Minister or a Government Servant.

Chapter Four of the Rules and Regulations relates to Governance, and Rule 14 thereunder relates to the Apex Council. Rule 14(1) stipulates that there shall be an Apex council for the BCCI which shall be primarily responsible for the governance of the affairs of the Board. Rule 14(3)(d) stipulates that a person shall be disqualified from being a Councilor if he or she is a Minister or a government servant (except for the nominee under Rule 14(2)(c)).

Rule 38 of the Rules and Regulations deals with conflict of interest and, under Rule 38(1), a conflict of interest may take any of the following forms as far as any individual associated with the BCCI is concerned (i) direct or indirect interest; (ii) roles compromised; (iii) commercial conflicts; (iv) prior relationship; and (v) position of influence. Rule 38(2) stipulates that, within a period of 15 days of taking any office under the BCCI, every individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a conflict of interest, and the same shall be uploaded on the website of the BCCI. Failure to issue a complete disclosure, or any partial or total

suppression thereof, would render the individual open to disciplinary action which may include termination and removal without benefits. It was clarified that a declaration does not lead to a presumption that, in fact, a questionable situation exists, but is merely for information and transparency.

Rule 38(3) of the Rules and Regulations stipulated that a conflict of interest may be either tractable or intractable. Clause (a) thereunder defined "*Tractable conflicts*" as those that are resolvable or permissible or excusable through recusal of the individual concerned and/or with full disclosure of the interest involved. Clause (b) defined "*Intractable conflicts*" as those that could not be resolved through disclosure and recusal, and would necessitate the removal of the individual from a post or position occupied so that the conflict can cease to exist. Rule 38(6) stipulated that, as far as incumbents were concerned, every disclosure, mandated under Sub-Rule (3), may be made within 90 days of the Effective Date.

Rule 39(1) of the Rules and Regulations required the Board to appoint an Ethics Officer at the Annual General Meeting for the purpose of guidance and resolution in instances of conflict of interest. The Ethics Officer should be a retired Judge of a High Court so appointed by a Board after obtaining his/her consent, and on terms as determined by the BCCI in keeping with the dignity and stature of the office. The term of an Ethics Officer shall be one year, subject to a maximum of 3 terms in office. Rule 39(2) stipulated that any instances of conflict of interest may be taken cognizance of by the Ethics Officer (a) suo motu; (b) by way of a compliant in writing to the official postal or email address; or

(c) on a reference by the Apex Council. Rule 39(3) stipulated that, after considering the relevant factors, and following the principles of natural justice, the Ethics Officer may do any of the following (a) declare the conflict as tractable and direct that (i) the person declare the conflict of interest as per Sub-Rule (3); or (ii) the interest that causes the conflict be relinquished; or (iii) the person recuse from discharging the obligation or duty so vested in him or her. Rule 39(3) (b) enabled the Ethics Officer to declare the conflict as intractable and direct that (i) the person be suspended or removed from his or her post; (ii) any suitable monetary or other penalty be imposed; and (iii) the person be barred for a specified period or for life from involvement with the game of cricket.

Chapter Nine of the Rules and Regulations, annexed to the report of the Supreme Court Committee, related to the Ombudsman, and under Rule 40(1) the Board was required to appoint an Ombudsman at the Annual General Meeting for the purpose of providing an independent dispute resolution mechanism. The Ombudsman was to be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court so appointed by the Board, after obtaining his/her consent and on terms as determined by the BCCI in keeping with the dignity and stature of the office. The term of the Ombudsman was to be one year subject to a maximum of 3 terms in office. Rule 40(2) stipulated that the Board should, in consultation with the CEO, frame Regulations regarding the discipline and conduct of the players, match officials, team officials, administrators, committee members and others associated with the BCCI.

The recommendations, in the report of the Justice R.M. Lodha Committee, were accepted by the Supreme Court which, in **Board of Control for Cricket v. Cricket Assn. of Bihar**², observed:-

“.....In the result, we accept the Report submitted by the Committee and the recommendations made therein with such modifications and clarifications as have been set out by us in the body of this judgment. Having said that we must hasten to add that the implementation of the recommendations is equally important and ought to be achieved within a reasonable period. **The transition from the old to the new system recommended by the Committee shall have to be under the watchful supervision of this Court.** Constraints of time and the multiple dimensions of the recommendations made, however, make it difficult for us to take that supervisory role upon ourselves. **The supervision of the transition can, in our opinion, be left to be undertaken by the Committee not only because it has a complete understanding of and insight into the nature of the problems sought to be remedied but also the ability to draw timelines for taking of steps necessary for the implementation of the proposed reforms. We are conscious of fact that the process may be time-consuming but we hope that the same should be completed within a period of four months or at best six months from today.** We, therefore, request the Committee headed by Justice Lodha to draw appropriate timelines for implementation of the recommendations and supervise the implementation thereof.....” (emphasis supplied).

Pursuant to the aforesaid order of the Supreme Court, the BCCI and the State Units (including the HCA) substantially amended their bye-laws, Rules and Regulations to bring them in conformity with most of the Justice R.M. Lodha Committee recommendations, as approved by the Supreme Court. The HCA informed the Registrar of Societies, Telangana, vide its letter dated 10.01.2018, that they were submitting a copy of the byelaws of the HCA as amended in accordance with the Justice R.M. Lodha Committee Recommendations, which were passed in its Special General Meeting held on 07.01.2018. The Registrar was requested to incorporate these amendments.

The amended rules and regulations of the HCA requires all disputes to be referred to the Ombudsman as set out in Chapter XII. Rule 5 relates to disqualification and, under sub-rule (i)(d)

² (2016) 8 SCC 535

thereof, a personal shall be disqualified from being a member of the Apex Council if he or she is a Minister or a Government Servant (except for the nominee under rule 4(ii) – (b) & (c)). Chapter XI of the Memorandum, Rules and Regulations of the HCA, as amended, relates to transparency and conflict of interest. Rule (2) thereunder relates to conflict of interest. Under sub-rule(1) thereof, a conflict of interest may take any of the following forms as far as any individual associated with the Association is concerned i.e. (a) direct or indirect interest, (b) roles compromised, (c) commercial conflicts, (d) prior relationship, and (e) position of influence. All the aforesaid terms of conflict of interest are explained with illustrations. Clause (ii) of Rule 2 requires that, within a period of 15 days of taking any office under the Association, every individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a conflict of interest, and the same may be uploaded on the website of the Association. Failure to issue a complete disclosure or any partial or total suppression thereof would render the individual open to disciplinary action which may include termination and removal without benefits. Clause (iii) stipulates that conflict of interest may be either tractable or intractable. Sub-clause (a) thereof defines “tractable conflicts” as those resolvable or permissible or excusable through recusal of the individual concerned, and/or with full disclosure of the interest involved; and (b) intractable conflicts as those that cannot be resolved through disclosure and recusal, and would necessitate removal of the individual from a post or position occupied so that the conflict can cease to exist.

Rule 3 relates to the Ethics Officer. Under Clause (ii) thereof, any instance of conflict of interest may be taken cognisance of by the Ethics Officer (a) suo motu; (b) by way of a complaint in writing to the official postal or email address; or (c) on a reference by the Apex Council. Rule 3 (iii) enables the Ethics Officer, after considering the relevant factors and following principles of natural justice, to do any of the following: (a) declare the conflict as tractable and issue directions as stipulated thereunder; (b) declare the conflict as intractable and direct that a person may be suspended or removed from his or her post; any suitable monetary or other penalty be imposed; and the person be barred for a specified period or for life from involvement with the game of cricket.

By his letter dated 28.07.2017, the respondent – writ petitioner gave a notice of conflict of interest, and informed the learned Ombudsman cum Ethics Officer of the HCA that he was the promoter director of Visaka Industries Limited, a public listed company, and had worked in various capacities including as the Managing Director of the Company till October, 2009; currently, he was the Vice-Chairman (Non-Executive Director) and, along with his spouse and children, held 41% shares in the company; and his spouse was working as the Managing Director of the Company. The said letter, thereafter, details the arrangement which Visaka Industries had with HCA, to the cases filed by Visaka Industries Limited against HCA which were pending, the award passed in favour of Visaka Industries and against HCA, and the petition filed under Section 34 of the Arbitration and Conciliation Act by HCA aggrieved by the award passed by the learned Arbitrators in favour

of Visaka Industries Limited. The letter dated 28.07.2017 concludes stating that, in view of the aforesaid facts, there could be comments that there was a conflict of interest; and, in the larger interest of HCA, he would like to recuse from the discussions and decisions on this issue. The respondent – writ petitioner requested the learned Ombudsman-cum-Ethics Officer to look into the subject and advice accordingly.

Thereafter, several complaints were filed before the learned Ombudsman-cum-Ethics Officer against the respondent – writ petitioner, including by the appellants herein, contending that, since the respondent – writ petitioner was disqualified from holding office of the President of HCA, he should not be allowed to attend or participate in any meeting conducted by the BCCI or any of the affiliated state associations; and he should not be allowed to discharge any administrative functions, involving the HCA, with immediate effect.

In his order dated 08.03.2018, the Learned Ombudsman-cum-Ethics Officer held that the question which arose for consideration, in the batch of cases filed before him, was whether there existed any conflict of interest vis-à-vis certain office-bearers of the Hyderabad Cricket Association; the President of the HCA (i.e the petitioner) had himself sought the views of the Ombudsman-cum-Ethics Officer as to whether, in view of the facts stated by him, there existed any conflict of interest, as defined under the Rules and Regulations framed by the Supreme Court Committee on Reforms in Cricket and adopted by the HCA, read with the directions issued by the Supreme Court in **BCCI**²; in other cases, the respective applicants had sought a declaration that there

existed a clear conflict of interest vis-à-vis the President of the HCA, and he was not entitled to hold or continue in that office; the petitioner was elected as the President in the elections held on 17.01.2017; he was the Managing Director of M/s. Visakha Industries, a Limited Company which had entered into an agreement with the HCA, in the year 2004, to extend financial aid for construction of a stadium; Visakha Industries had advanced a sum of Rs.42 crores; at a later stage, disputes arose between the parties to the contract, and arbitration proceedings ensued; during the pendency of arbitration proceedings, an O.P. was filed under Section 9 of the Arbitration and Conciliation Act, 1996 for interim measures, and certain orders were passed; ultimately an award for Rs.25 crores was passed in favour of M/s. Visakha Industries, and against the HCA; O.P. No.1255 of 2016 filed by HCA against M/s. Visakha Industries, challenging the award, was still pending adjudication; the petitioner was appointed as an Advisor to the Government of Telangana, vide G.O.Ms. No.2601 dated 30.11.2016, conferring upon him the status of a Cabinet Minister; in his application, the petitioner had stated that the agreement between HCA and M/s. Visakha Industries was cancelled; when he was not the President of the HCA, the Managing Committee (Apex Council) had offered to settle the matter, in its entirety, by offering Rs.17.5 crores; and, in that view of the matter, it could not be said that there existed any conflict of interest. As regards appointment of the petitioner as an Advisor to the Government of Telangana, the Learned Ombudsman noted the submission of the petitioner that he did not receive any remuneration; and though the status of Cabinet Minister was

conferred on him, no oath of secrecy was administered, and thereby he could not be said to have held any office of profit.

The learned Ombudsman-cum-Ethics Officer, thereafter, observed that the following questions arose for consideration: (i) Whether the contract that was entered into between M/s. Visakha Industries and Hyderabad Cricket Association, and the proceedings that ensued in relation thereto, brought about any conflict of interest vis-à-vis Sri G. Vivekanand, the President of the HCA, and (b) Whether G.O.Ms. No.2601 dated 30.11.2016 appointing Sri G. Vivekanand as Advisor to the Government of Telangana, as amended, attracted Rule 6(5)(b) of the Rules.

After examining the agreement between Visakha Industries (of which the petitioner was then a Director), and the HCA, the Learned Ombudsman-cum-Ethics Officer observed that the agreement provided for extension of certain benefits, such as naming the stadium as Visakha International Cricket Stadium, allotment of some stands or cubicles to the Company, and the like; the agreement was ultimately terminated through letter dated 16.07.2011; that led to initiation of arbitration, and an award being passed on 15.03.2016 for Rs.25.92 crores; an O.P. was filed challenging the said award; M/s. Visakha Industries had earlier filed an O.P under Section 9 of the Arbitration and Conciliation Act, and had obtained orders of injunction, and thereafter orders of attachment, which were subsisting even as on date; Clauses (I) to (V) of Rule 38(1) of the Rules conferred power on the Ombudsman to take note of the facts brought to his notice, and to decide the matter after issuing notice to both the parties; appointment of an Ombudsman was provided for under Rule 40, and grievance

redressal was dealt with under Rule 41; appointment of an Ethics Officer was provided for under Rule 39; in most of the cases, the role of the Ethics Officer and Ombudsman overlapped; for that reason, the same person was appointed to these positions; the Company, in which the petitioner had a substantial interest, had a commercial contract with the HCA; when examined in the context of Rule 38, conflict of interest clearly emerged; facts, such as the cancellation of the contract leading to the filing of cases, getting the property of the stadium attached, would, any way, aggravate the conflict; the contention, that a conflict ceases on account of these developments, could not be accepted; if mere existence of a contract could lead to conflict of interest, it was understandable as to how a serious dispute, and a hot contest between the parties, would change the situation in his favour; though it was pleaded that the previous management had come forward with a compromise, the record disclosed that M/s. Visakha Industries had flatly denied the very existence of such compromise; and nothing was placed before him to show that there existed an enforceable compromise, much less any tangible steps having been taken pursuant thereto.

On the question whether the conflict was tractable in nature, in the sense that the conflict could be removed by certain acts or gestures of the parties, the Learned Ombudsman observed that the conflict, they were dealing with, was not of such a category; once a commercial contract existed, one could not wish it away; the only way in which the consequences thereof could be mitigated was if the party, to the contract with the HCA, declared that he was totally giving up his claim, and nothing remained to be recovered

by him from HCA; no such statement was coming forth; the inescapable conclusion was that the contract between M/s. Visakha Industries and HCA, which, in turn, led to arbitration and subsequent litigation, brought about a clear conflict vis-à-vis the petitioner, who had substantial interest in Visakha Industries; and the plea that, though the petitioner was a Director of Visakha Industries, he did not participate in the business activity was of no avail.

After referring to G.O.Ms. No.2601 dated 30.11.2016, and the judgment of the Supreme Court in **Jaya Bachchan v. Union of India**³, the Learned Ombudsman observed that the same situation obtained in the instant case also; though an attempt was made to distinguish a Cabinet Minister who was administered oath, and conferment of the same status, that was not necessary in the present context; and it was sufficient if the person was conferred with the position in the Government, to bring about the disqualification provided for under Rule 6.

In conclusion, the Learned Ombudsman held that a clear conflict of interest existed vis-à-vis the President of the HCA on account of the commercial contract between M/s. Visakha Industries, of which he was a Director, and the Hyderabad Cricket Association; he also stood disqualified from holding office of the President of the Hyderabad Cricket Association on account of his appointment as an Advisor to the Government vide G.O.Ms. No.2601 dated 30.11.2016; the petitioner ceased to hold office from the date of the order; HCA should take steps to hold elections for the office of the President in accordance with the relevant

³ (2006) 5 SCC 266

provisions of law; and, till such time, the Vice-President shall hold office but shall not take any policy decisions, except through a proper resolution of the General body.

While referring to the order of the Ombudsman-cum-Ethics Officer dated 08.03.2018, the Chief Executive Officer of the Hyderabad Cricket Association informed the respondent-writ petitioner, by his letter dated 09.03.2018, that he was disqualified from holding the post of President. A copy of the order of the Ombudsman-cum-Ethics Officer was enclosed for the petitioner's reference and record.

In the order under appeal the Learned Single Judge noted having heard Sri P.Sri Raghuram, Learned Senior Counsel, appearing on behalf of the petitioner; Sri D.V. Sitharama Murthy, Learned Senior Counsel, appearing on behalf of the Hyderabad Cricket Association; Sri T. Surya Satish, Learned Counsel for the 3rd respondent; Sri M. Govind Reddy, Learned Counsel for the 4th respondent; Sri B. Vijaysen Reddy, Learned Counsel for the 5th respondent; Sri V. Ramachander Goud, Learned Counsel for the 6th respondent and Sri K. Ramakanth Reddy, Learned Counsel appearing on behalf of the appellant in W.A.No.544 of 2018 (8th respondent in the Writ Petition).

The Learned Single Judge, thereafter, observed that, in the elections of HCA that took place, the petitioner was elected as its President on 31.01.2017; the order under challenge in the Writ Petition was the order of the Learned Ombudsman dated 08.03.2018 disqualifying the 1st respondent-writ petitioner as the President of the Hyderabad Cricket Association on grounds of conflict of interest, and because he suffered disqualification on

account of his holding the post of Advisor which had the status of Cabinet rank in the State Government; on the ground that he suffered disqualification to hold the said post, in view of the aforesaid reasons, respondents 3 to 8 had filed applications before the Ombudsman; and the Ombudsman had, by the impugned order, held that the petitioner suffered disqualification to hold the post of President in view of the aforesaid reasons.

The Learned Single Judge, thereafter, noted the submissions of Sri P. Sri Raghuram, Learned Senior Counsel appearing on behalf of the petitioner, that there was no conflict of interest as stipulated under Rule 4(g) of the Justice R.M. Lodha Committee Rules, and Regulation 38; the petitioner did not fall under the said clauses, as he had no conflict of interest with the HCA; the alleged conflict should necessarily and directly affect the game of cricket; such interest should relate to the game of cricket in the form of performance i.e, selection of players, transparency of selection, performance of players etc which were related to the game; such conflict, with the game of cricket, was non-existent in the petitioner's case; as the petitioner was neither a Minister nor a government servant, as provided under Rule 6(5)(1)(d) of the Rules, his case did not attract disqualification on the ground that he held the post of Advisor which was a cabinet rank post; the petitioner herein was neither a Minister as stipulated under Rule 6, nor was he a government servant; the word 'Minister', mentioned in the Rule, was attracted only when he was appointed under Article 104 of the Constitution of India, which required oath of secrecy to be administered; neither was the oath of secrecy administered, nor was the petitioner a member of the Council of Ministers; as such

Rule 6 was not attracted; the contract stood terminated as long back as in the year 2011; and the judgment in **Jaya Bachchan**³ had no relevance in view of the specific rules in the instant case.

The Learned Single Judge also took note of the submissions put forth by the Learned Counsel, appearing on behalf of respondents 3 to 7, that there was neither illegality nor procedural infirmity in the impugned order; a Writ, in the nature of certiorari, does not lie to the Court under Article 226 of the Constitution of India in the absence of any jurisdictional error; in view of the pending litigation, between the HCA and the petitioner, it could not be said that there was no conflict of interest; and since the petitioner was holding an office of profit under the State Government, he was not entitled to continue as the President of the HCA in view of the judgment of the Supreme Court in **Jaya Bachchan**³.

Thereafter, the Learned Single Judge observed as under:

“.... Admittedly, the petitioner herein has been functioning as President of the Association since 31.03.2017 and all the above aspects raised by the learned counsel for petitioner and the learned Advocates for Respondents need to be examined in detail after filing counter-affidavits. In the considered opinion of this Court, balance of convenience is in favour of the petitioner.

In view of the same, there shall be interim suspension as prayed for.”

Elaborate submissions were put forth on behalf of the appellants by Sri S. Satyanarayana Prasad, Learned Senior Counsel, and Sri M. Govind Reddy and Sri K. Ramakanth Reddy, Learned Counsel. Sri Mir Mazood Khan, Learned Counsel for the 8th respondent, put forth his submissions in support of the order of the Learned Ombudsman. Sri P. Sri Raghuram and Sri P. Gangaiah Naidu, Learned Senior Counsel, made detailed submissions on behalf of the respondent - writ petitioner, and

Sri D.V. Sitharama Murthy, Learned Senior Counsel appearing on behalf of HCA, contended that the present appeals were not maintainable under Clause 15 of the Letters Patent. It is convenient to examine the submissions made by Learned Senior Counsel, and the Learned Counsel on either side, under different heads.

I. IS THE PRESENT APPEAL MAINTAINABLE UNDER CLAUSE 15 OF THE LETTERS PATENT?

It is contended, on behalf of the respondent-writ petitioner, that this appeal, preferred against a discretionary interlocutory order which has not attained finality, is not maintainable under Clause 15 of the Letters Patent; the appellants ought, instead, to have filed their counter-affidavits, and contested the matter after the entire pleadings are before the Court; the distinction between an interim order passed in the public law realm vis-à-vis an interim order passed in common law jurisdictions must be borne in mind; the appellate court would only examine whether exercise of discretion by the Learned Single Judge was whimsical, or it was preceded by application of mind; if it is satisfied that it was, such an order cannot be interfered with in proceedings under Clause 15 of the Letters Patent; there is no justifiable reason for the appellants not to file a petition to vacate stay, instead of preferring this appeal; since the order under appeal is an ad-interim order, the assertions in the Writ affidavit must be accepted as true; such allegations can only be denied by the appellants, and the other respondents, by way of a counter-affidavit in the Writ Petition; in the present case, several factual aspects are involved which necessitate counter-affidavits to be filed; in the facts of the present

case, an appeal would not lie; and the Writ Appeals, as filed, are not maintainable.

While the appellants, and the other respondents in the writ petition, can file their respective counter-affidavits and seek vacation of the ad-interim order under appeal, the question which necessitates examination is whether that, by itself, would justify refusal to entertain an appeal, preferred against such an order, under Clause 15 of the Letters Patent, for it is only if the order under appeal is held not to be a “*judgment*”, under Clause 15 of the Letters Patent, would this Court be obligated to reject the appeal preferred by the appellants herein.

It is useful, in this context, to take note of the judgments cited, on behalf of the HCA and the respondent-writ petitioners, in support of their submission that an appeal under Clause 15 of the Letters Patent is not maintainable against such an order. In **Kuppa Viswapathi v. Kuppa Venkata Krishna Sastry**⁴, it was contended that an order of remand could not be invested with the character of a 'judgment' as it had not put an end to the litigation. This Court held that this contention could not be acceded to; and any adjudication which puts an end to a suit or proceeding, so far as the Court before 'which the suit or proceeding is pending is concerned, or the order which affects the merits of the controversy between the parties, is a 'judgment'.

In **Peddapudi Seshagiri Rao v. Andhra University rep by its Registrar**⁵, a Division Bench of this Court held that the right of appeal, under Clause 15 of the Letters Patent, is available against such interlocutory orders which are orders of moment, and where

⁴ AIR 1963 AP 9

⁵ 1996(1) ALD 510 (DB) = 1995 LawSuit (AP) 571

there is likely to be irreparable injury if there is no interference by the Court in the exercise of its appellate power.

In **Kunala Subbarao v. P. Nagaratnayamma**⁶, this Court observed that the word 'judgment', in Clause 15 of the Letters Patent, meant adjudication of the issues between the parties, may be even ex-parte; merely by ordering notice, the Court does not trench upon the merits, and makes no adjudication on issues between the parties; even where it might cause prejudice, it cannot be described as a “judgment”; it is merely a step in aid; and such a step in aid is not a “judgment” within the meaning of Clause 15 of the Letters Patent.

In **Innovative Pharma Surgicals v. Pigeon Medical Devices (P) Ltd.**⁷, a Division Bench of this Court held that an appeal against an ad interim injunction order, passed under Order 39 Rule 1 C.P.C, is maintainable; and though an appeal is maintainable, such an appeal should be filed only in an extraordinary circumstance under which the party is able to explain as to why he prefers an appeal in the High Court instead of choosing to file a petition to vacate the ad-interim injunction.

Clause 15 of the Letters Patent provides for an appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction. An appeal does not lie to the Division bench of the same High Court against every order passed by a Single Judge of the High Court. It is only against a “*judgment*” would an intra-Court Appeal lie. (**Shah Babulal Khimji v. Jayaben D. Kania**⁸; **H. Kondal Reddy v. Central Bank of India, Hyderabad**⁹; **B.F.**

⁶ AIR 1982 AP 443

⁷ AIR 2004 AP 310 = 2004 (3) ALD 228

⁸ (1981) 4 SCC 8

⁹ 2002 (1) ALD 280

Pushpaleela Devi v. State of A.P¹⁰). The word '*judgment*', in Clause 15 of the Letters Patent, should receive a much wider and more liberal interpretation than the word '*judgment*' used in the Code of Civil Procedure. At the same time all orders passed by the Single Judge would not amount to a judgment, otherwise there would be no end to the number of orders which would be appealable under the Letters Patent. The word '*judgment*' has, undoubtedly, a concept of finality in a broader and not a narrower sense. (**Shah Babulal Khimji**⁸; **Central Mine Planning and Design Institute Ltd. v. Union of India**¹¹).

The word 'judgment' has not been defined in the Letters Patent, but whatever test may be applied, the order appealed against must have the traits and trappings of finality and there can be no doubt that the appealable orders, indicated in various clauses of order 43 Rule I, are matters of moment deciding valuable rights of the parties, and in the nature of final orders so as to fall within the definition of 'judgment'. (**Shah Babulal Khimji**⁸).

While any order, which has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof, or which affects the Court's jurisdiction or decides the question of limitation, will normally constitute a 'judgment' within the meaning of Clause 15 of the Letters Patent, that does not mean that any other kind of order would not be a "judgment" within the meaning of Clause 15 of the Letters Patent. (**Shah Babulal Khimji**⁸). What kind of an order will constitute a 'judgment' within the meaning of Clause 15 of the Letters Patent, and will be

¹⁰ 2002 (5) ALD 1

¹¹ (2001) 2 SCC 588

appealable as such, must necessarily depend on the facts and circumstances of each case, and on the nature and character of the order passed. (**Shah Babulal Khimji**⁸). In finding out whether the order is a 'judgment' within the meaning of Clause 15 of the Letters Patent, it should be ascertained whether the order affects the merits of the action between the parties by determining some right or liability. (**Shah Babulal Khimji**⁸; **Radhey Shyam v. Shyam Behari Singh**¹²).

An order which may adversely affect a valuable right of the party, or decide an important aspect of the trial in an ancillary proceeding, would constitute a “judgment” within the meaning of clause 15 of the Letters Patent (**Shah Babulal Khimji**¹; **Central Mine Planning and Design Institute Ltd.**²). The order passed in a proceeding, which deprives a person of the rights accrued to him, would also constitute a “Judgment”. (**Shah Babulal Khimji**⁸; **Radhey Shyam**¹²). Those interlocutory orders would be a “judgment” which decide matters of moment or affect vital and valuable rights of the parties, and which work serious injustice to the party concerned. (**Shah Babulal Khimji**⁸; **Central Mine Planning and Design Institute Ltd.**¹¹).

In W.P.No.8433 of 2018, filed before the Learned Single Judge, the respondent-writ petitioner has sought a Writ of Certiorari to quash the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018. While the impugned order passed by the Learned Ombudsman-cum-Ethics Officer is not final, and can be interdicted by this Court in the exercise of its certiorari jurisdiction under Article 226 of the Constitution of India,

¹² (1970) 2 SCC 405 = AIR 1971 2337

interference, if any, can only be within the confines of judicial review in certiorari proceedings. As no reasons were assigned, by the Learned Single Judge, to show that the impugned order, prima-facie, suffered from any legal infirmity, we may not be justified, for reasons stated hereinafter, in refusing to examine the appellants' claim that the order under appeal works serious injustice to their rights, besides causing irreparable injury to larger public interest, notwithstanding the fact that they can seek vacation of the interim order by way of a petition filed before the Learned Single Judge.

As noted hereinabove the order, impugned before the Learned Single Judge, was passed by the learned Ombudsman-cum-Ethics Officer of the HCA disqualifying the respondent-writ petitioner on grounds that he was not entitled to continue in office, as the President of the HCA, because of conflict of interest, and as he was appointed as the Advisor to the Government of Telangana; and the Bye-laws, Rules and Regulations of the HCA were amended, in the Special General Meeting of the HCA held on 07.01.2018, to bring them in conformity with the recommendations of the Justice R.M. Lodha Committee constituted by the Supreme Court to suggest suitable amendments to the Rules and Regulations of the BCCI and the State Units (such as HCA) to prevent, among others, conflict of interest, and to make these cricket associations responsive to the expectations of the public at large, and to bring transparency in the practices and procedures followed by them.

The importance placed by the Supreme Court, on the need to prevent conflict of interest in the administration of the BCCI and

the state units affiliated thereto, (including the HCA), is evident from its observations, in **BCCI**¹, that a conflict of interest situation may arise even when the rules or the norms do not specifically authorise acts or transactions that may lead to such a conflict; the scheme of the rules may itself suggest that a conflict of interest is not welcome, and yet, such a conflict may at times arise, in which event, the rules can provide for a mechanism to resolve the conflict; it is one thing to say that conflict may arise even when rules do not specifically permit such a conflict situation, and a totally different thing to permit acts which will per se bring about such a conflict; BCCI (or the HCA) is a very important institution that discharges important public functions; demands of institutional integrity are, therefore, heavy and need to be met suitably in larger public interest; individuals are birds of passage while institutions are forever; the expectations of millions of cricket lovers in particular, and the public at large in general, have lowered considerably the threshold of tolerance for any mischief, wrongdoing or corrupt practices which ought to be weeded out of the system; conflict of interest is one area which appears to have led to the current confusion, and serious misgivings in the public mind, as to the manner in which BCCI (or the HCA) is managing its affairs; and a conflict of interest situation is a complete antithesis to everything recognised by BCCI (or the HCA) as constituting fundamental imperatives of the game, and is hence unsustainable and impermissible in law.

The order under appeal, whereby the order of the Learned Ombudsman-cum-Ethics Officer of the HCA holding that the respondent-writ petitioner ceased to hold office as the President of

the HCA, among others, on the ground of conflict of interest was suspended, is undoubtedly a matter of moment. Further, the appellants herein, who are all members of the HCA, are vitally interested in ensuring that the law declared by the Supreme Court, in **BCCI**², accepting the recommendations in the report of the Justice R.M.Lodha Committee, is implemented; and the Rules and Regulations of the HCA, in this regard, are adhered to.

Unlike exercise of jurisdiction in the common law realm, the paramount consideration, in the exercise of jurisdiction in the public law domain, is that the exercise of discretion of Superior Courts should be guided by public interest. As the extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, is discretionary, it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes**¹³), and not as a matter of course. The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not. (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd**¹⁴; **Air India Ltd v. Cochin International Air Port Ltd**¹⁵; **Rashpal Malhotra v. Mrs. Saya Rajput**¹⁶; **Council of Scientific and**

¹³ AIR 1964 SC 1419

¹⁴ (2005) 6 SCC 138

¹⁵ (2000) 2 SCC 617

¹⁶ AIR 1987 SC 2235

Industrial Research v. K.G.S. Bhatt¹⁷). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra**¹⁶; **K.G.S. Bhatt**¹⁷). It is only if interference, with the order impugned in the Writ proceedings, is necessary in larger public interest, should the Court intervene. As noted hereinabove the Learned Ombudsman-cum-Ethics Officer has, in his order dated 08.03.2018, held that the respondent-writ petitioner was disqualified from holding office as the President of the HCA in view of the conflict of interest between Visakha Industries, (in which he, along with his family members, had a substantial stake), and the Hyderabad Cricket Association.

In this context, it is necessary to note what is in public good and public interest cannot be opposed to public policy and vice versa. Fundamental Policy of Law would also constitute a facet of public policy. This would imply that all those principles of law that ensure justice, fair play and bring transparency and objectivity and promote probity in the discharge of public functions would also constitute public policy. Conversely any deviation, abrogation, frustration or negation of the salutary principles of justice, fairness, good conscience, equity and objectivity will be opposed to public policy. It follows that any rule, contract or arrangement that actually defeats or tends to defeat the high ideals of fairness and objectivity in the discharge of public functions, no matter by a private non-governmental body (such as the BCCI or the HCA), will be opposed to public policy. Any rule which permits, protects and

¹⁷ AIR 1989 SC 1972

even perpetuates situations where the administrators can have commercial interests in breach or conflict with the duty they owe to the BCCI (or for that matter, the “HCA”) or to the people at large must be held to be against public policy, and is hence illegal. (**BCCI**¹⁸). It is evident, therefore, that it is in larger public interest that any contract, which results in conflict of interest in an office bearer of the HCA, should require the office bearer, in case such a conflict is intractable, to cease to hold any office in the HCA.

It is no doubt true that a Division bench would, ordinarily, not interfere with the exercise of discretion by the Learned Single Judge in granting interim relief. The law as to the reversal by a Court of Appeal of an order made by a Single Judge in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case. (**Osenton (Charles) & Co. v. Johnston**¹⁸; **Printers (Mysore) (P) Ltd. v. Pothan Joseph**¹⁹; **Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan**²⁰; **Wander Ltd. v. Antox India (P) Ltd.**²¹).

Where the appeals before the Division Bench are preferred against the exercise of discretion by the Single Judge, the appellate court will not interfere with such exercise of discretion by the court of first instance, and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored settled principles of law regulating grant or refusal of interlocutory orders. An appeal against exercise of discretion is said to be an appeal on

¹⁸ (1942) A. C. 130

¹⁹ AIR 1960 SC 1156

²⁰ (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285

²¹ 1990 Supp (1) SCC 727

principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would, normally, not be justified in interfering with the exercise of discretion under appeal solely on the ground that, if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the learned Single Judge reasonably, and in a judicious manner, the fact that the appellate court would have taken a different view may not justify interference with the learned Single Judge's exercise of discretion. The appellate court would not interfere with the exercise of discretion by the learned Single Judge unless such exercise is found to be palpably incorrect or untenable or if the view taken by the Learned Single Judge is not a possible view. (**Wander Ltd. v. Antox India (P) Ltd.**²¹; **Mohd. Mehtab Khan**²⁰). No reasons have been assigned by the Learned Single Judge, in the order under appeal, in justification of the exercise of discretion to suspend the order of the Tribunal. It is only if reasons are assigned would an appellate Court be in a position to judge whether or not the order under appeal suffers from non-application of mind.

It is true that, at the stage of admission of the Writ Petition, the Court must accept the assertions in the Writ affidavit as true, in determining whether or not a prima-facie case is made out for admission and grant of interim relief. These assertions must, however, be examined in the light of the order impugned in the Writ Petition. As what was sought by the respondent-writ petitioner was a writ of certiorari, it is only if the assertions in the

Writ affidavit disclosed that the order of the Learned Ombudsman-cum-Ethics Officer suffered from lack of jurisdiction or from an error of law apparent on the face of the record would interference have been justified. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior tribunals. A writ can similarly be issued where, in exercise of the jurisdiction conferred on it, the tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

(CIT v. Saurashtra Kutch Stock Exchange Ltd.,²²; Syed Yakoob v. K.S. Radhakrishnan²³).

A writ of certiorari can be issued in the case of illegal exercise of jurisdiction, and also to correct errors of law apparent on the face of the record, even though they do not go to jurisdiction. It is only errors of law apparent on the face of the record, and not errors of fact though they may be apparent on the face of the record, which can be corrected, **(Shri Ambica Mills Co. Ltd. v. S.B. Bhatt²⁴; Rex v. Northumberland Compensation Appeal Tribunal²⁵; and Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam²⁶),** and not every error either of law or fact which can be corrected by a Court of appeal or revision. **(T. Prem Sagar v. Standard Vacuum Oil Co.,²⁷; Bachan Singh v. Gauri Shankar Agarwal²⁸; Nagendra Nath Bora²⁶).**

²² (2008) 14 SCC 171

²³ AIR 1964 SC 477

²⁴ (1961) 3 SCR 220 : AIR 1961 SC 970 : (1961) 1 LLJ 1

²⁵ (1952) 1 KB 338

²⁶ AIR 1958 SC 398 = (1958) SCR 1240

²⁷ (1964) 5 SCR 1030: AIR 1965 SC 111 : (1964) 1 LLJ 47

²⁸ (1972) 4 SCC 257

Further an error of law, which can be corrected by a writ of certiorari, must be self-evident. It should not need an elaborate examination of the record (**Shri Ambica Mills Co. Ltd.**²⁴), or require an examination or argument to establish it (**Saurashtra Kutch Stock Exchange Ltd.**,²²; **Hari Vishnu Kamath v. Ahmad Ishaque**²⁹; **Batuk K. Vyas v. Surat Borough Municipality**³⁰). An error cannot be said to be apparent if one has to travel beyond the record to see whether the judgment is correct or not. It is an error which strikes on mere looking, and does not need a long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such an error would not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. (**Saurashtra Kutch Stock Exchange Ltd.**,²²; **Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd.**,³¹). The order under appeal does not disclose the satisfaction of the Learned Single Judge that the assertions or the grounds raised in the Writ Petition show that the order impugned in the Writ Petition suffers from any such legal infirmity.

The effect of the interim order under appeal is to grant the main relief sought for in the Writ Petition. The order under appeal, whereby the order of the learned Ombudsman-cum-Ethics Officer dated 08.03.2018 was suspended without disclosing reasons, albeit prima facie, as to how the order suffered from any legal infirmity, has decided matters of moment. If the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018 is held

²⁹ AIR 1955 SC 233 : (1955) 1 SCR 1104

³⁰ AIR 1953 Bom 133 : ILR 1953 Bom 91

³¹ (2010) 13 SCC 336

to be valid, the appellants may well be justified in their claim that the order under appeal has worked serious injustice to, and has affected, their rights as members of the HCA, besides causing irreparable injury to larger public interest.

We are satisfied, therefore, that the appellants herein are entitled to invoke our jurisdiction against the said order, and the appeals in W.A.Nos.544 and 545 of 2018, preferred against the ad-interim order passed in I.A.No.1 of 2018 in W.P.No.8433 of 2018 dated 15.03.2018, are maintainable under Clause 15 of the Letters Patent.

II. WOULD FAILURE OF THE LEARNED SINGLE JUDGE, TO RECORD HIS PRIMA-FACIE OPINION, AND TO ASSIGN REASONS FOR SUSPENDING THE ORDER DATED 08.03.2018, REQUIRE THE AD-INTERIM ORDER UNDER APPEAL TO BE SET ASIDE?

It is submitted, on behalf of the appellants and others, that, even without examining whether a prima-facie case had been made out and without recording, even prima-facie, that the Learned Ombudsman had exceeded his jurisdiction, or had committed a patent error in the exercise of his jurisdiction, the interim order under appeal was passed solely on the ground that the first respondent-writ petitioner has been holding office, as the President of the HCA, ever since i.e 31.03.2017; the Learned Single Judge had deferred examination, of the contentions urged on behalf of the appellants, to a future date without assigning any reasons why the order passed by the Learned Ombudsman necessitated interference; the ad-interim order of suspension was granted even without examining whether or not a *prima facie* case was made out; the present case is not one where the Learned Single Judge has even indicated his mind; the Learned Single Judge did not

record any finding, even *prima facie*, that the order of the Learned Ombudsman suffered from an error apparent on the face of the record; no allegations of malice are made either against the appellants or the unofficial respondents in the Writ Petition; no malafides have been attributed against the Learned Ombudsman also; as the application, for grant of interim relief, was contested by the appellants, and some of the other respondents, the Learned Single Judge ought to have recorded a finding, atleast *prima facie*, whether or not the order of the Learned Ombudsman suffered from any legal infirmity; the main prayer in the Writ Petition, and the interim prayer in the interlocutory application, are more or less identical; as no finding was recorded, that the order of the Learned Ombudsman suffered from any legal error or infirmity, no interim relief, more so one which has the effect of granting the main relief sought for in the Writ Petition, could have been granted; the Learned Single Judge did not even take note of the issues which arose for consideration in the Writ Petition; an interim order, which amounts to granting the main relief sought for in the Writ Petition and in reinstating the person who had ceased to hold office, necessitated reasons being assigned; and since no reasons have been assigned by the Learned Single Judge, in passing the interim order under appeal, the said order necessitates being set aside.

On the other hand, it is submitted, on behalf of the respondent-writ petitioner, that neither the appellants herein, nor the other respondents in the Writ Petition, had filed their respective counter-affidavits though they were heard at the stage of admission; the Learned Single Judge had heard Learned Counsel

for the parties only on the question of admission, and grant of interim relief; a Writ Petition is admitted only if the Court grants leave to do so; the very fact that the Writ Petition was admitted itself shows that the Learned Single Judge was satisfied that a prima-facie case, of the impugned order suffering from an error apparent on the face of the record, was made out; in the order under appeal, the Learned Single Judge had observed that the matter required examination after counter-affidavits are filed; this observation of the Learned Single Judge shows that he was satisfied that a prima-facie case was made out; both questions, of a prima-facie case and the balance of convenience, were considered by the Learned Single Judge; Courts should not, normally, express any opinion on merits at the stage of admission; in the alternative, failure of the Learned Single Judge to express any opinion cannot be faulted as no obligation was cast on him to do so; as the rival contentions, urged by Learned Counsel on either side, were recorded by the Learned Single Judge in the order under appeal, it reflects consideration of the issues; in such circumstances, the Learned Single Judge was justified in not expressing any opinion, on merits, regarding the validity of the impugned order; the observations of the Learned Single Judge, that the balance of convenience was in favour of the 1st respondent-writ petitioner, reflects his satisfaction that the ingredients, which determine the balance of convenience, were attracted; it is only in November, 2017, when the Secretary of the HCA was suspended, that these complaints emanated; all the complainants are adversaries who supported the Secretary, except Sri Babu Rao; the balance of convenience, therefore, lies in

continuing the petitioner who has been holding the office, of the President of the HCA, ever since 31.03.2017; the present case is more in common with election matters, than with disciplinary proceedings, as it relates to disqualification to an elected office; and, by observing that the respondent-writ petitioner was continuing in office since 31.03.2017, the Learned Single Judge had also dealt with the requirement of irreparable injury.

It is evident, from the order under appeal, that the appellants herein were represented by Counsel during the hearing of the Writ Petition for admission and for grant of interim relief. While the contentions, urged on behalf of the respondent-writ petitioner, the appellants and other respondents, were noted in the order under appeal, the Learned Single Judge has not recorded his, prima-facie, opinion on any of the contentions urged by the Learned Senior Counsel and Learned Counsel on either side. While considerations which should weigh while passing an ex-parte ad-interim order may be different, the Learned Single Judge, in a case where the certiorari jurisdiction of this Court was invoked and where Counsel for the respondents in the Writ Petition (including the appellants herein) had put forth elaborate submissions, ought to have assigned reasons and recorded his, prima-facie, satisfaction as to the infirmities, which the impugned order suffered from, necessitating his interference in certiorari proceedings under Article 226 of the Constitution of India.

Where the certiorari jurisdiction of the High Court is invoked, it is the validity of the order of the tribunal (i.e the Learned Ombudsman-cum-Ethics Officer) which is primarily under examination on the legal grounds urged in the Writ Petition. It was

necessary for the Learned Single Judge, therefore, to state, at least in brief, why he was *prima-facie* satisfied that the impugned order dated 08.03.2018 necessitated being suspended. The satisfaction of the Learned Single Judge in this regard should have been made known by way of reasons reflected in the order, and cannot be inferred from the fact that the Writ Petition was admitted. Even in the grant of interim relief, considerations of a *prima-facie* case having been made out and the petitioner suffering irreparable injury if the interim order is not granted, should weight with the Court, besides the question of balance of convenience. The ad-interim order under appeal does not reflect the Learned Single Judge's satisfaction in this regard.

Even on the question of balance of convenience, the Learned Single Judge has merely held that the petitioner has been functioning as the President of the HCA since 31.03.2017. The fact that the respondent-writ petitioner was holding office, as the President of HCA ever since 31.03.2017, was wholly irrelevant as the disqualification from holding office in the HCA, on grounds of conflict of interest, applies only to persons holding any office in the HCA. It is only because the respondent-writ petitioner was holding office as the President of the HCA, did the Learned Ombudsman-cum-Ethics Officer hold that he ceased to hold office in view of his disqualification on grounds of conflict of interest, and as he was appointed as the Advisor to the Government of Telangana. The only reason, reflected in the order under appeal in justification for suspending the order of the Learned Ombudsman-cum-Ethics Officer, was wholly irrelevant in granting the interim relief sought for by the respondent-writ petitioner.

It is *ex-facie* evident, from a reading of the order under appeal (referred to in the earlier part of the order), that no reasons have been assigned by the Learned Single Judge, even *prima facie*, as to why the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018 necessitated suspension. As reliance is placed, on behalf of respondent – writ petitioner, on **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.**,³², to contend that, in granting an *ad interim* order at the stage of admission of the writ petition, the learned Single Judge should not express, or atleast was justified in not expressing, any opinion on merits, it is necessary to examine the law declared by the Supreme Court therein.

In **Colgate Palmolive (India) Ltd.**³², two appeals were filed under Section 55 of the Monopolies and Restrictive Trade Practices Act (hereinafter referred to as “the MRTP Act”) against the order passed by the Monopolies and Trade Practices Commission under Section 12-A of the MRTP Act. The MRTP Act, as originally framed, did not confer any power on the Commission to grant temporary injunction during the course of enquiry. However, Section 12-A was inserted, by the MRTP Amendment Act, 1984, conferring such a power on the Commission. M/s Hindustan Lever Limited preferred one of the two appeals aggrieved by the order of refusal of the Commission to put a total ban on Colgate Toothpaste, a product of Colgate Palmolive India Limited. The other appeal was filed by Colgate Palmolive India Limited against the order of the Commission restraining display of the ring around the family as

³² (1999) 7 SCC 1

“Suraksha chakra” in Colgate Palmolive’s hoardings and print advertisements.

It is in this context that the Supreme Court observed that the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff, and its alleged violation, are both contested and uncertain, and remain uncertain till they are established at the trial on evidence; and among the specific considerations, in the matter of grant of interlocutory injunction, the basic is the non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned.

It must be borne in mind that, unlike a Court or Tribunal which exercises ordinary original civil jurisdiction before which applications, for grant of *ad interim* injunction, are heard when the existence of the legal right asserted by the petitioner, and its alleged violation, are both uncertain and, consequently, the basic consideration is non-expression of opinion on merits by the said Court/Tribunal, the certiorari jurisdiction exercised under Article 226 of the Constitution of India is supervisory. The control which is exercised through a writ of ‘certiorari’, over judicial or quasi-judicial tribunals or bodies, is in a supervisory, and not even in an appellate, capacity. In granting a writ of ‘certiorari’ the Superior Court demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding is put out of the way as one which should not be used

to the detriment of any person (**Radhey Shyam**¹²; **Walsall Overseers v. London and North Western Railway Co.**³³).

As the jurisdiction to issue a writ of certiorari is supervisory, and the court exercising it is not entitled to act as an appellate court, (**Saurashtra Kutch Stock Exchange Ltd.**,²²; **Syed Yakoob**²³), such a writ will not issue as a cloak of an appeal in disguise, and would not lie to bring up an order or decision for rehearing. (**P. Kasilingam v. P.S.G. College of Technology**³⁴; **T.C. Basappa v. T. Nagappa**³⁵). A writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals. (**Radhey Shyam**¹²).

As the jurisdiction of the Superior Court, in issuing a writ of certiorari, is limited, inter alia, to the question of jurisdiction, it is obligatory on the part of the petitioner to show that a jurisdictional error has been committed by the Tribunal, (**Sarabjit Rick Singh v. Union of India**³⁶) or there has been a breach of the principles of natural justice. (**Sant Lal Gupta**³¹; **Harbans Lal v. Jagmohan Saran**³⁷; **Municipal Council, Sujjanpur v. Surinder Kumar**³⁸; **Sarabjit Rick Singh**³⁶ and **CIT v. Saurashtra Kutch Stock Exchange Ltd.**,²²), or the impugned order suffers from an error of law apparent on the face of the record.

Unlike in a Suit or an original proceeding where the Court or Tribunal, hearing an application for grant of ad-interim injunction, is uncertain of the existence of the legal rights of the petitioner, this Court, while exercising its certiorari jurisdiction, has the

³³ (1978) AC 30

³⁴ (1981) 1 SCC 405

³⁵ AIR 1954 SC 440 : (1955) 1 SCR 250

³⁶ (2008) 2 SCC 417

³⁷ AIR 1986 SC 302

³⁸ (2006) 5 SCC 173

benefit of the order of the Tribunal, (in the present case, the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018), wherein reasons are already assigned for its conclusions. As exercise of the certiorari jurisdiction is supervisory, it is only if the learned Single Judge was, *prima facie*, satisfied that the impugned order of the Tribunal (the learned Ombudsman-cum-Ethics Officer) suffered from such an infirmity as to warrant his interference i.e., the impugned order suffered from lack of jurisdiction or from an error of law apparent on the face of record or the like, can he be said to be justified in suspending the order of the Tribunal.

It is well settled that judgments of Superior Courts should only be read in its context. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a Statute, and that too taken out of their context. (**Amar Nath Om Prakash v. State of Punjab**³⁹; **CCE v. Alnoori Tobacco Products**⁴⁰; **London Graving Dock Co. Ltd. v. Horton**⁴¹; **Home Office v. Dorset Yacht Co.**⁴²; **Shepherd Homes Ltd. v. Sandham (No.2)**⁴³; **British Railways Board v. Herrington**⁴⁴). The observations must be read in the context in which they appear to have been stated. Judges interpret the words of statutes. Their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact, may make a world of difference between conclusions in two cases. (**Bharat Petroleum Corporation Ltd v. N.R. Vairamani**⁴⁵; **The State of A.P. v. M/s Seven Hills**

³⁹ (1985) 1 SCC 345

⁴⁰ (2004) 6 SCC 186

⁴¹ 1951 AC 737

⁴² (1970) 2 ALL.E.R 294

⁴³ 1971 (1) WLR 1062

⁴⁴ 1972 (2) WLR 537

⁴⁵ (2004) 8 SCC 579

Constructions⁴⁶). The decision of a Court is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in it. (**State of Orissa v. Sudhansu Sekhar Mistra Hegde**⁴⁷; **Quinn v. Leathem**⁴⁸). This Court would, therefore, not be justified in equating an *ad interim* order of injunction, granted in a Suit before a civil court or in a original proceeding before a competent Tribunal, with an *ad-interim* order of suspension passed by this Court in the exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. Reliance placed, on behalf of respondent – writ petitioner, on **Colgate Palmolive (India) Ltd.**³², is therefore misplaced.

Even otherwise, in **Colgate Palmolive (India) Ltd.**³², the Supreme Court held that the following principles guide the grant of interlocutory injunction (1) the plaintiff must first satisfy the court that there is a serious issue to decide, and if the defendants were not restrained and the plaintiff won the action, damages at common law would be inadequate compensation for the plaintiff's loss; (2) the Court, once satisfied of these matters, will then consider whether the balance of convenience lies in favour of granting injunction or not, ie whether justice would be best served by an order of injunction; and (3) the Court does not and cannot judge the merits of the parties' respective cases, and any decision will be taken in a state of uncertainty about the parties' rights; and if there is uncertainty, the court should be doubly reluctant to

⁴⁶ Full Bench Judgment in TRC Nos.274 of 2001 and batch dated 25.11.2011

⁴⁷ AIR 1968 SC 647

⁴⁸ 1901 AC 495

issue an injunction, the effect of which is to settle the parties' rights once for all.

The Supreme Court further observed that the grant of an interlocutory injunction, during the pendency of legal proceedings, is a matter requiring the exercise of discretion of the Court; while exercising the discretion, the Court applies the following tests — (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed; relief, by way of interlocutory injunction, is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved; the object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; the need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated; the court must weigh one need against another, and determine where the 'balance of convenience' lies; and in order to protect the defendant, while granting an interlocutory injunction in the plaintiff's favour, the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

As held by the Supreme Court, in **Colgate Palmolive (India) Ltd**³², if there is uncertainty about the party's rights, the Court

should be doubly reluctant to issue an injunction, the effect of which is to settle the parties rights once and for all. The effect of the interim order under appeal is to unconditionally permit the respondent-writ petitioner to continue in office as the President of the HCA, despite the order of the Learned Ombudsman-cum-Ethics Officer holding that he was disqualified from holding the said office because of conflict of interest, and on account of his appointment as an Advisor to the Government of Telangana. It is only if the learned Single Judge, while exercising his discretionary jurisdiction, was satisfied, for just and valid reasons, that a *prima facie* case has been made out by the petitioner, the balance of convenience lay in his favour, and he would suffer irreparable injury if his prayer for interim suspension was rejected, can he be said to be justified in passing an *ad interim* order granting the interim relief sought for by the respondent – writ petitioner.

Even if all these parameters are satisfied, a Writ Court is still not bound to interfere. A writ of certiorari is a discretionary remedy. The High Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court may refuse to extend the benefit of a discretionary relief to the applicant. Such a relief can be denied, *inter alia*, when it is opposed to public policy. (**Chandra Singh v. State of Rajasthan**⁴⁹; **Champalal Binani v. CIT**⁵⁰) A writ of certiorari, under Article 226 of the Constitution, can be issued only when there is failure of justice. It cannot be issued merely because it may be legally permissible to do so. (**Sant Lal Gupta**³¹). The

⁴⁹ (2003) 6 SCC 545

⁵⁰ AIR 1970 SC 645

Learned Single Judge was also required to consider whether failure to exercise discretion, to suspend the order of the Tribunal, would result in failure of justice or affect larger public interest.

If, as is contended on behalf of the appellants, the Learned Ombudsman-cum-Ethics Officer has rightly come to the conclusion that the respondent-writ petitioner was disqualified from holding office as the President of the HCA, because of conflict of interest, the respondent-writ petitioner cannot be said to have suffered irreparable injury merely because he has been holding the said office ever since 31.03.2017. It is only if the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018 is held to suffer from lack of jurisdiction, or an error of law apparent on the fact of the record, or a like infirmity, would the said order necessitate being quashed. It is only if the said order is, prima-facie, held to suffer from any such infirmity can the Learned Single Judge be said to be justified in suspending the order dated 08.03.2018, pending further orders in the Writ Petition. It matters little whether or not the present case has more in common with election matters, than with disciplinary proceedings, as the ad-interim order of suspension could not have been passed without reasons, reflecting that the order suffers from any of the aforesaid infirmities, being assigned by the Learned Single Judge.

While the main relief sought for in the Writ Petition is to quash the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018, the interim relief sought for is to suspend the said order. What the respondent-writ petitioner would have been entitled to, as a consequence of the main relief being granted, (i.e

to be put back in office of the President of the HCA), has been granted by way of the ad-interim order under appeal.

In **Guru Nanak Dev University v. Parminder Kr. Bansal**⁵¹, on which reliance is placed on behalf of the appellants, the Supreme Court held that administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone; loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence; and decisions on matters, relevant to be taken into account at the interlocutory stage, cannot be deferred or decided later when serious complications might ensue from the interim order itself.

In **Raja Khan v. U.P. Sunni Central Waqf Board**⁵², on which also reliance is placed on behalf of the appellants, the Supreme Court held that, generally, the interlocutory remedy by way of a grant of an order of injunction is intended to preserve and maintain, in status quo, the rights of the parties and to protect the plaintiff, being the initiator of the action, against incursion of his rights and for which there is no appropriate compensation being quantified in terms of damages; the basic principle of the grant of an order of injunction is to assess the right and need of the plaintiff as against that of the defendant; and it is a duty incumbent on the law courts to determine as to where the balance lies.

It is well settled that by an interim order the final relief should not be granted. (**U.P. Junior Doctors Action Committee**

⁵¹ AIR 1993 SC 2412

⁵² (2011) 2 SCC 741

v. Dr. B. Sheetal Nandwani⁵³; State of U.P. v. Ram Sukhi Devi⁵⁴; Raja Khan⁵². An interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on a final determination of his rights. (**State of Orissa v. Madan Gopal Rungta⁵⁵; Cotton Corporation of India v. United Industrial Bank Ltd⁵⁶; The State of A.P. v. M/s.Maheswari Minerals⁵⁷**). The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation, only in order that no irreparable injury is occasioned. The Court has to strike a delicate balance, after considering the pros and cons of the matter, to ensure that larger public interest is not jeopardized thereby. (**Siliguri Municipality v. Amalendu Das⁵⁸**). Interim orders, which practically give the principal relief sought for in the writ petition, without considering the *prima-facie* case, the balance of convenience, the public interest and other considerations, should not be passed. (**Asstt. CCE v. Dunlop India Ltd.⁵⁹; State of Rajasthan v. Swaika Properties⁶⁰; Bank of Maharashtra v. Race Shipping & Transport Co. (P) Ltd.,⁶¹; Maheswari Minerals⁵⁷**).

Interim relief is granted during the pendency of proceeding so that, while granting the final relief, the court is not faced with a situation of the relief having become infructuous or that, during the pendency of the proceeding, an unfair advantage has been taken by the party in default or against whom interim relief is

⁵³ AIR 1992 SC 671

⁵⁴ JT 2004(8) SC 264

⁵⁵ 1952 SCR 28 : AIR 1952 SC 12

⁵⁶ AIR 1983 SC 1272

⁵⁷ 2017 (1) ALD 380 = 2016 (6) ALT 460

⁵⁸ AIR 1984 SC 653

⁵⁹ (1985) 1 SCC 260

⁶⁰ (185) 3 SCC 217

⁶¹ (1995) 3 SCC 257

sought. (**Cotton Corporation of India**⁵⁶). The final relief should not be granted, by way of interim relief, till the matter is decided one way or the other, (**Mehul Mahendra Thakkar v. Meena Mehul Thakkar**⁶²; **All India Anna Dravida Munnetra Kazhagam v. Govt. of T.N.**,⁶³), as interlocutory orders are made in aid of final orders and not vice versa. (**Shipping Corporation of India Ltd. v. Machado Brothers**⁶⁴; **Kavita Trehan v. Balsara Hygiene Products Ltd**⁶⁵; and **Pitta Naveen Kumar v. Raja Narasaiah Zangiti**⁶⁶). An interim order should not be of such a nature as to result in the writ petition being finally allowed at an interim stage nor should relief be granted, at the interlocutory stage, by which the final relief, which is asked for and is available at the final disposal of the matter, is granted. (**UPSC v. S. Krishna Chaitanya**⁶⁷; **M/s. Maheswari Minerals**⁵⁷).

In any event, when interim orders are passed which, in effect, result in the writ petition itself being allowed, the High Court must give reasons in support thereof. (**State of U.P. v. Modern Transport Co.**,⁶⁸), more so in cases where the respondents have entered appearance through Counsel and have put forth their submissions opposing the grant of interim relief. As the ad-interim order under appeal is bereft of reasons, it necessitates interference in proceedings under Clause 15 of the Letters Patent.

⁶² (2009) 14 SCC 48

⁶³ (2009) 5 SCC 452

⁶⁴ (2004) 11 SCC 168

⁶⁵ (1994) 5 SCC 380

⁶⁶ (2006) 10 SCC 261

⁶⁷ (2011) 14 SCC 227 : (2012) 4 SCC (Civ) 935 : (2012) 2 SCC (L&S) 890

⁶⁸ (2002) 9 SCC 514

III. IS THE WRIT PETITION LIABLE TO BE DISMISSED AS THE RESPONDENT-WRIT PETITIONER HAS AN ALTERNATE STATUTORY REMEDY?

It is submitted, on behalf of the appellants and others, that the Learned Single Judge had failed to consider whether the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, could be invoked when the first respondent-writ petitioner had the remedy of questioning the order of the Learned Ombudsman before the competent Court under Section 23 of the Telangana Societies Act, 2001; and a writ of certiorari cannot be sought as the respondent-writ petitioner has an effective alternative remedy to question the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018.

With regards the contention, urged on behalf of the appellant that the respondent – writ petitioner should have been relegated to his remedy of approaching the competent Civil Court under the Telangana Societies Act, it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another adequate remedy may be taken into consideration by the Superior Court in arriving at a conclusion as to whether it should, in the exercise of its discretion, issue a writ of certiorari to quash the proceedings, and ordinarily the Superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule, requiring exhaustion of statutory remedies before the writ is granted, is a rule of policy, convenience and discretion rather than

a rule of law, and instances are numerous where a writ of certiorari has been issued inspite of the fact that the aggrieved party had other adequate legal remedies. (**King v. Postmaster General Ex prate Carmichael**⁶⁹; **Rex v. Wandsworth Justices Ex prate Read**⁷⁰; **Halsbury's Laws of England, 3rd Edn., Vol. 11, p.130**; **State of U.P. v. Mohd. Nooh**⁷¹; **Khurshed Modi v. Rent Controller, Bombay**⁷²; **Assistant Collector of Customs v. Soorajmull Nagarmul**⁷³).

We may not be understood to have held that, despite the existence of an alternate statutory remedy, this Court should invariably entertain a writ petition under Article 226 of the Constitution of India. All that we hold is that existence of an alternate statutory remedy is not a bar for a writ petition to be entertained under Article 226 of the Constitution of India, and it is for the learned Single Judge, in his discretion and for just and valid reasons, to decide whether or not a writ petition should be entertained under Article 226 of the Constitution of India despite the existence of an alternate statutory remedy. As the learned Single Judge has not, in the present case, examined this question, we see no reason to undertake any such examination, for the first time, in proceedings under Clause 15 of the Letters Patent. Suffice it to make it clear that this contention, along with others, shall be examined by the Learned Single Judge afresh and in accordance with law.

⁶⁹ (1928) 1 K.B. 291

⁷⁰ 1942 (1) K.B. 281

⁷¹ 1958 SCR 595 : AIR 1958 SC 86

⁷² AIR 1947 Bom.46

⁷³ AIR 1952 Cal 656

IV. WAS THE LEARNED OMBUDSMAN-CUM-ETHICS OFFICER JUSTIFIED IN HOLDING, IN HIS ORDER DATED 08.03.2018, THAT THE RESPONDENT-WRIT PETITIONER WAS DISQUALIFIED, FROM CONTINUING IN OFFICE OF THE PRESIDENT OF THE HCA, ON GROUNDS OF CONFLICT OF INTEREST?

While elaborate submissions were put forth, by Learned Senior Counsel on either side, on the question of conflict of interest and on the validity of the order of the Learned Ombudsman-cum-Ethics Officer dated 08.03.2018, we see no reason to undertake an examination of the rival submissions in this regard, in proceedings under Clause 15 of the Letters Patent, as the Learned Single Judge should, in the first instance, examine them and record his prima-facie opinion thereupon.

V. CONCLUSION:

For the reasons, aforementioned, the order of the Learned Single Judge, in I.A.No.1 of 2018 in W.P.No.8433 of 2018 dated 15.03.2018, is set aside, and I.A.No.1 of 2018 is restored to file. It is open to the Learned Counsel, appearing on behalf of the respondent-writ petitioner, to request the Learned Single Judge to take up I.A.No.1 of 2018 out of turn, and to consider grant of interim relief. We have no reason to doubt that, on such a request being made, the Learned Single Judge would give it its due consideration. We make it clear that we have not expressed any opinion on the validity or otherwise of the order dated 08.03.2018 passed by the Learned Ombudsman-cum-Ethics Officer, and all questions relating thereto shall be examined by the Learned Single Judge on its merits and in accordance with law.

Both W.A.Nos.544 and 545 of 2018 are allowed. However, in the circumstances, without costs. Miscellaneous Petitions, if any pending, shall stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 12-06-2018.

Note: L.R. Copy to be marked.
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