

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

% Judgment delivered on: 04th January, 2018

+ FAO 90/2017

DELHI GYMKHANA CLUB LIMITED Appellant

versus

ALOK MEHNDIRATTA & ORS. Respondents

Advocates who appeared in this case:

For the Appellants: Mr P.V.Kapur, Senior Advocate with Mr Saket Sikri, Mr Amir Pasrich, Mr Vimal Nagrath, Mr Sidhant Kapur, Ms Pratibha Sridhar, Ms Kaveri Gupta, Mr Vikalp Mudgal and Mr Junaid Nahvi.

For the Respondents : Mr Pravin Bahadur, Mr Amit Agarwal, Mr Vishnu Kant, Mr Kishan Rawat for R-1 & 2.

+ FAO 103/2017

JAYA MANN & ORS. Appellants

versus

DELHI GYMKHANA CLUB LIMITED & ORS. Respondents

Advocates who appeared in this case:

For the Appellants: Mr Sandeep Sethi, Senior Advocate with Mr Apoorv P.Tripathi

For the Respondents : Mr P.V.Kapur, Senior Advocate and Mr Arvind Nigam, Senior Advocate with Mr Saket Sikri, Mr Amir Pasrich, Mr Vimal Nagrath, Mr Sidhant Kapur, Ms Pratibha Sridhar, Ms Kaveri Gupta, Mr Vikalp Mudgal and Mr Junaid Nahvi for Delhi Gymkhana.

Mr Pravin Bahadur, Mr Amit Agarwal, Mr Vishnu Kant, Mr Kishan Rawat for R- 2.

+ CM(M) 603/2017

DELHI GYMKHANA CLUB LIMITED Petitioner

versus

ALOK MEHNDIRATTA & ORS. Respondents

Advocates who appeared in this case:

For the Appellants: Mr P.V.Kapur, Senior Advocate with Mr Saket Sikri, Mr Amir Pasrich, Mr Vimal Nagrath, Mr Sidhant Kapur, Ms Pratibha Sridhar, Ms Kaveri Gupta, Mr Vikalp Mudgal and Mr Junaid Nahvi.

For the Respondents : Mr Pravin Bahadur, Mr Amit Agarwal, Mr Vishnu Kant, Mr Kishan Rawat for R-1 & 2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

FAO 90/2017 & CM Nos.7097/2017 (stay), 7099/2017 (additional documents), 8246/2017 (additional document), 13314/2017 (additional document)

FAO 103/2017 & CM Nos.8143/2017 (leave to appeal), 8144/2017 (stay) and

CM(M) 603/2017

1. These two Appeals (FAO 90/207 & FAO 103/2017) and the Petition under Article 227 of the Constitution of India (CM(M) 603/2017), impugn order dated 30.11.2016 of the Court of the Additional District Judge, whereby the learned Judge has rejected the application, under Order VII rule 11 of the Code of Civil Procedure (CPC) filed by the Delhi Gymkhana Club Limited (Appellant in FAO No. 90/2017), (hereinafter referred to as 'the Club') and petitioner in CM (M) No.603/2017 and has allowed the application under Order XXXIX Rules 1 & 2 CPC filed by the respondents - Alok Mehndiratta & Others (Plaintiffs in the subject Suit), (hereinafter referred to as 'the Plaintiffs'). FAO 103/2017 has been filed by some members of the

Club who, though not parties to the Suit, are aggrieved by the directions issued, by the impugned order, on the application under Order XXXIX Rules 1 & 2 CPC.

2. The Plaintiffs – Alok Mehndiratta & Others had filed the subject Suit against the Club seeking the following reliefs: -

“(a) Pass a decree of declaration, declaring the grant of permanent memberships of those UCPs/Green Card Holders who were granted permanent memberships in precedence to prior regular applicants in NG category as contrary to the AOA and, therefore, void;

(b) Pass a decree of mandatory injunction, directing the Defendant Club to terminate the membership of those UCPs/Green Card Holders who were granted permanent memberships in precedence to prior regular applicants in NG category as contrary to the AOA;

(c) Pass a decree of declaration, declaring the Plaintiffs to be entitled to permanent membership as per the original waiting list and the terms of the AOA;

(d) Pass a decree of mandatory injunction, directing the Defendant Club to rectify its record of membership and record the date of grant of membership to the Plaintiffs to the date on which they would have been granted memberships, if they had not been illegally superseded by the UCPs/Green Card Holders;

(e) Pass a decree of declaration, declaring that the children of the Plaintiffs were entitled to be treated as Green Card Holders/UCPs and other consequential benefits/privileges on the basis of their age as on the date of the ratified record of membership of the Plaintiffs;

(f) Pass a decree of mandatory injunction, directing

the Defendant Club to confer UCP/Green Card Holder status or Membership on the children of the Plaintiffs, based on their eligibility in terms of prayer 'e'.

(g) Pass a decree of permanent injunction restraining the Defendant Club from granting permanent memberships to UCPs/Green Card Holders before prior regular Applicants in the NG category.

(h) Pass a decree of mandatory injunction, directing the Defendant Club to grant permanent memberships strictly in accordance with the AOA;

(i) Award the costs of the Suit in favour of the Plaintiffs and against the Defendant.

(j) Grant such other and further relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The Plaintiffs are permanent members of the Club, having been accorded permanent membership under the Non-Governmental category (hereinafter referred to as the NG Category).

4. The Club is a Limited Company incorporated under the provisions of the Indian Companies Act, 1956 having its registered office in Delhi. The Club was allotted a perpetual lease of a plot of land in the year 1928. As per the Articles of Association of the Club (hereinafter referred to as AOA), 50% of the membership has to be issued to the Government employees while remaining 50% of the membership has to be given to persons, who are not in Government

service, referred to as the 'NG Category' As per the Articles of Association, the total membership is 5600 to be divided in 50 : 50 ratio.

5. Since the Club enjoys a very good reputation and is one of the elite Clubs of the city, the membership is much sought after. It is contended by the Plaintiffs that the waiting period for membership in the NG category is now several decades. As per the Plaintiffs, they became aware in the year 2012 that in violation of the Articles of Association, the Management of the Club was granting permanent membership to the children of the existing Members, who were granted 'User of Club Premises Pending Election' Status (hereinafter referred to as the UCP Status) and had applied for membership much after the date of the application by an applicant in the NG category. It is contended that the children of the existing Members were given priority in accord of permanent membership over the pending applications in the Non-Governmental category.

6. It is contended that the Plaintiffs became aware of the out of turn preference being given to the children of the existing Members, who had the UCP status in the beginning of the year 2012. It is contended that until the year 1971 – 72, the waiting time for a person in the NG category for permanent membership was about 10 to 12 years, which subsequently increased to 10 to 15 years and has kept on increasing. It is contended that the Plaintiffs were accorded permanent membership after a waiting period of about 25 to 35 years

and in some cases, the applicants in the NG Category, who had applied way back in the year 1978, are still awaiting grant of permanent membership.

7. It is contended that as per Article 2 of the Articles of Association, the permanent members of the Club can be up to 5600. Article 6 requires an application to be made by any person, who desires to become permanent Member of the Club, which is to be entered in a Candidate's Book. The application is then to be placed before the General Committee and the election of Member is through ballot. Article 8 provides for two categories of permanent members; 50% from Government category and 50% from non-Government category. Under Article 13(3a), a right is given to the children of the permanent members of the Club to use the facilities between the ages of 13 to 21 as dependent members. Article 13(3b) gives a right to a son of a permanent member to apply for permanent membership once he reaches the age of 21. Article 13(3c) entitles the daughter of a member to continue to use the facilities. The children of permanent members, who are permitted to use the facilities of the Club under Articles 13(3b) & 13(3c), are referred to as the Green Card Holders/UCPs (User of Club Premises pending election). The dependent members, who use the facilities of the Club after attaining age of 21 under Articles 13(3a) & 13(3b) and have submitted their applications for permanent memberships on attaining the age of 21, are commonly referred to as the Green Card Holders/UCPs. The

Green Card Holders/UCPs are not afforded any special status, privilege or credence with regard to conversion of their status to permanent membership except to the use of the Club facility.

8. It is contended that under Clause 7 of the Articles of Association, each application for membership has to be entered in the Candidate's Book and since the dependent children of the Members have to also apply for membership, their names are also required to be entered in the Candidate's Book as on the date of their application. It is contended that there is no clause in the Articles of Association providing for a separate Candidate's Book for the dependent children of permanent members or for giving out of turn preference to the applications of the dependent children over and above the applications of the General applicants in the NG Category. However, in practice, contrary to the Articles of Association, the Management has been giving precedence to the Green Card Holders/UCPs and granting them permanent membership in the NG category over and above the General applicants in the NG category entered in the Candidate's Book. The consequence of which is that the General applicants in the NG category are illegally superseded for membership. As an example, it is contended that a General applicant in the NG category entered in the Candidate's Book, as far back as in 1977, has been superseded by a Green Card Holder/UCP, who applied much later in the year 1992.

9. It is submitted that in September 2005, as many as 49 UCPs

superseded the General applicants in the NG category and in August 2012, 5 UCPs were also inducted out of turn. It is contended the said preference being given to the UCPs is contrary to the Articles of Association and is illegal.

10. It is submitted that the dependent child of a Member, who has availed the facilities of the Club as a dependent child between the ages of 13 and 21, is granted the status of Green Card Holders/UCPs if that child applies for membership on attaining the age of 21. It is further submitted that the children of the General applicants in the NG category are denied this opportunity as their application is kept pending for over 30 years, which implies that no child of a General applicant in the NG category can ever enjoy the status of a dependent member or apply to become a Green Card Holders/UCPs as all children of such General applicants would have crossed the age of 21 years by the time permanent membership is granted to their parent i.e. the General applicant.

11. It is contended that several representations/communications have been addressed to the Club to remedy the situation, however, to no avail. It is, in these circumstances, that the subject Suit was filed.

12. The Plaintiffs along with this Suit also filed an application under Order XXXIX Rules 1 & 2 CPC seeking the following prayers:-

“(a) Pass an ex-parte/ad interim order restraining the Defendant Club from conferring permanent membership status on any UCP/Green Card Holder, till pendency of

the Suit;

(b) Pass an ex-parte/ad interim/interim order that till the disposal of the present Suit, the Defendant Club should accord UCP/Green Card status on the children of the Plaintiffs.”

13. The Club filed its written statement contending that there is no cause of action for the Plaintiffs to file the present Suit. It is contended that since the Club is a Company incorporated under the Companies Act, 1956, the Plaintiffs should have moved a Special Resolution, as per the provisions of the Companies Act against the alleged illegality. It is contended that the Plaintiffs are already Members of the Club and as such, have no cause of action to file the Suit. Further, it is contended that the Suit of the Plaintiffs is barred by limitation, as Plaintiffs became permanent members of the Club in different years commencing from the year 2001 onwards and the Suit has been filed in the year 2014, beyond the prescribed period of limitation.

14. It is contended that the Plaintiffs were aware that the Green Card Holders/UCPs were being admitted as permanent members of the Club in accordance with the Byelaws approved by the General Committee on 04.01.1964 and ratified by the subsequent General Committees. All decisions and information are duly circulated to all Members and also displayed on the Notice Board of the Club in a very transparent manner.

15. It is contended that Club is governed by the Memorandum and Articles of Association and the Byelaws, as made by the General Committee from time to time. Further, it is submitted that grant of membership is an internal affair of any private Club and is governed by its Rules and Byelaws. It is submitted that the General Committee, in its Meetings held on 22.05.1984 and 04.06.1984, took a decision to grant membership to sons and daughters-in-laws of members under the non-Government category in the ratio of 20% of vacancies, which was further increased to 25% by the General Committee by a decision taken in its Meeting held on 14.11.2005 and the said decision has been duly implemented.

16. It is submitted that grant of permanent membership to UCPs is in accordance with the decision taken by the General Committee and the defendant, being a private Club of its Member, is well within its right to regulate and manage its affairs in the interest of its existing members. It is contended that the names and particulars of the UCPs are entered into a Candidate's Book separately maintained for this category in terms of the decisions taken by the General Committee on 22.05.1984 and 04.06.1984. It is denied that any General applicant in the non-Government category has been illegally superseded for membership by Green Card Holders/UCPs. In terms of the Resolutions, the UCPs constitute 25% of the General Category and are given membership against that 25% and are given membership strictly in accordance with the Resolution passed by the General

Committee in its Meetings held on 04.06.1984 and 14.11.2005.

17. Along with the written statement, the Club also filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaint on the ground that the plaint does not disclose any cause of action and that the Suit is *ex facie* barred by limitation having been filed much after the statutory period of three years from the date the Plaintiffs became members and became aware of the grant of membership to UCPs/Green Card Holders in the NG Category as well as on the ground of non-joinder of necessary parties, i.e. Green Card Holders/UCPs, whose membership is under challenge in the subject Suit.

18. By the impugned order dated 30.11.2016, the application under Order VII Rule 11 CPC has been rejected. The learned Judge held that the system of converting the UCPs to permanent membership was started in the year 1984 when the Plaintiffs had already applied for membership between the years 1971 to 1976. By the impugned order, the learned Judge held that from the averments in the plaint, taken as a whole, there are several facts, which give rise to the cause of action for preferring the subject Suit. The Plaintiffs have asserted about illegalities committed by the Club, which came to the knowledge of the Plaintiffs in the year 2012 and the right accrues when the right is infringed and the cause of action depends upon the entirety of facts mentioned in the plaint. The learned Judge held that the question of limitation is a mixed question of law and fact and from the reading of

the plaint in entirety, serious dispute is raised in the plaint with regard to cause of action and such dispute could only be resolved after trial. The learned Judge accordingly rejected the application under Order VII Rule 11 CPC.

19. For the purposes of determining whether a Plaintiff discloses a cause of action or not. The plaint alone has to be considered. The defence taken in the Written Statement is not to be considered. What is to be seen is as to whether the plaint read as a whole, discloses such facts as are necessary to establish that cause of action accrues in favour of the Plaintiff. Neither is the veracity of the averments in the Plaintiff to be examined nor is the strength of the case of the Plaintiff to be tested at the time of consideration of the application under Order 7 rule 11. The Plaintiff has to be read with a demurrer.

20. The objections taken by the Club are that the Suit is ex-facie barred by limitation, does not disclose any cause of action and bad for non-joinder of necessary parties.

21. As noticed above, the Plaintiff inter alia seeks a declaration thereby declaring the grant of permanent memberships of those UCPs/Green Card Holders who were granted permanent memberships in precedence to prior general applicants in NG category as contrary to the AOA and therefore, void and further seeks consequential termination of their membership and a permanent injunction restraining the Defendant Club from granting permanent memberships

to UCPs/Green Card Holders before prior general Applicants in the NG category and a further direction to the Club to grant permanent memberships strictly in accordance with the AOA.

22. In the Complaint, it is averred as under:

“*****

5. Sometime in the beginning of year 2012, some of the Plaintiffs came to know from Certain members / ex-members of the Management Committee that the management of the Defendant Club was acting in. blatant violation of the Articles of Association in granting permanent memberships. This illegality was coming at the cost of the rights of the NG applicants in the Candidate's Book. The Children of existing members, who were granted UCP status much after the date of application of an NG applicant were being granted permanent memberships in the NG category, prior to the earlier applicants in the NG category. On investigating further on this information, the Plaintiffs obtained enough material to establish the illegality, Accordingly, the present Suit is being instituted as the management of the Defendant Club has been consistently acting in complete violation of its Articles of Association ("AOA"), especially in grant of permanent membership in the NG category.

8. At this stage, it is important to note that in terms of the AOA, other than continued use of the Club facilities, Green Card Holders /UCPs have been conferred no special status, privilege or precedence with regard to conversion of their status to permanent membership. Under Clause 7 of the AOA, each application for membership has to be copied into the Candidate's Book.

There is no other procedure for application for membership, Therefore, the members' dependent children also have to formally apply for membership and as per article 6 their names are also required to be entered into the Candidate Book as on the date of their application, This being the position, there can be no situation wherein an application made by son, of a permanent member on a particular date can take precedence over applications for permanent membership so pending on that date.

9. *In practice, however, over the last many years, the management of the Defendant; Club has been acting mala fide in complete contravention of the AOA, In as far as the NG category is concerned. The management has been illegally Inducting Green Card holders/UCPs as permanent members in the NG category by giving them wrongful preference over the general applicants in the NG category entered into the Candidate Book, The consequence being that, for example, a general applicant in the NG category entered into the Candidate Book in 1977 has been illegally superseded for membership by Green Card Holders / UCPs who have applied for permanent membership much later in the year 1992. A few instances of the aforesaid illegal practices of the management of the Defendant Club are enlisted below:*

12. *The general applicants in the NG category suffer double jeopardy. On one hand they are being granted membership, if at all, only after awaiting period of 35 to 40 years leaving hardly any time for them to enjoy the facilities of the Club, and on the other hand their children, who would by that time have already crossed the age of 21, lose the opportunity to continue to use the facilities of the Club as dependent members/Green Card Holders / UCPs, pending confirmation of their*

membership. Such prejudice and discrimination towards the general applicants in the NG category is not permitted, justified or warranted.

16. On 17.10.2013, in the meeting of the Membership and Disciplinary Sub Committee of the Defendant club, it has been recorded in the Minutes of the said meeting that practice of maintaining separate Candidate Books is illegal and against the express provisions of the AOA, On 13.11.2013, in the next meeting of the Membership and Disciplinary Sub Committee, the Minutes clearly record that the son/daughter of a member of the Defendant, Club is only entitled to the use of the facilities, should they apply for membership, but they are not entitled to any preferential treatment in grant of permanent membership. Accordingly, it was recommended in the said meeting, dated 13.11.2013, that henceforth, applicants registered for membership be called strictly in order of seniority. Despite admitting that various illegal practices have been going on in grant of permanent memberships, especially against the general applicants of NG category, the Defendant Club took no steps to remedy the wrong caused, to the members of the NG category, including the Plaintiffs.

19. The aforesaid illegal practices of the management of the Defendant Club have already caused and are continuing to cause grave prejudice and irreparable loss to the Plaintiffs, their children, as well as to many general applicants of the NG category and their children. The said illegal practices, apart from being illegal are completely unethical, and give a bad name to the Defendant Club, of which the Plaintiffs are members.

22. *The Plaintiffs are permanent; members of the Defendant Club, which is a limited company bound to act in terms of its AOA. As members of the Defendant Club, the Plaintiffs have an absolute right in law to ensure that the Defendant Club acts in terms of its AOA. In this regard, therefore, the cause of action has arisen on all dates when the management of the Defendant Club has acted in brazen violation of the AOA, especially in regard to the grant of permanent memberships in the NG category. The cause of action arose in the beginning of year 2012; when for the first time the Plaintiffs became aware of the illegal Practices of the Defendant Club. Besides various other dates, the cause of action in this regard has arisen on 3.8.2012 when- 5 UCPs were granted permanent membership in precedence to' prior regular applicants in the NG category. The cause of action has also arisen on all dates when, through Emails, Green Card Holder letters and representations, the Plaintiffs called upon the management of the Defendant Club to desist from its illegal violation of the AOA in regard to the grant of permanent memberships in the NG category. In this regard, besides other dates, the cause of action arose on 6.8.2012, 1.12.2012, 6.1.2012, 28.6.2012, 2.7.2012, 24.7.2012, 29.7.2012, 7.8.2012, 25.8.2012, 2.9.2012 and ,13.9.2012, The cause of action further arose on 4.4.2013 when the Plaintiffs sent a legal notice through their advocates to the. Defendant Club, raising all the issues stated in the present Plaint,' and on 18.5.2013, when the Defendant Club issued an evasive response, to the above legal notice, failing to address the issues raised in the legal notice. The cause of action also arose on 17.10.2013 and finally the cause of action arose on 27.12.2013, when the Plaintiffs sent their Final Legal Notice based on the two meetings dated-17.10.2013 and 13.11.2013 of the Membership and Disciplinary Sub*

Committee, wherein the Committee acknowledged the various illegal practices being carried out in grant of permanent membership, Finally, the cause of action arose on 27.12,2013, when the Plaintiffs sent their Final Legal Notice, Moreover, in the present case the cause of action is a continuing cause of action, as the affairs of the Defendant Club continue to be managed at the-whims and fancies of the management, contrary to the provisions of the AOA.”

23. Reading of the above averments in the plaint, clearly show that the Plaint does disclose a cause of action. The contention of the defendants to the contrary is not sustainable.

24. The plea with regard to the plaint being ex-facie barred by limitation is also not sustainable. The Plaintiffs have averred that they became aware only in year 2012 that out of turn membership was being granted. They have also referred to the minutes of meetings dated 17.10.2013 and 13.11.2013 which prima facie shows that the issue is still open and debatable. Whether the averments are correct or not or whether the Plaintiffs were aware, much earlier, of the out of turn membership being granted, is not to be gone into at this stage. The averments of the Plaint have to be considered without a demur. Further, the issue of limitation, is a mixed question of fact and law, requiring parties to lead evidence. The Defendant may at the stage of trial be able to show that the averments are incorrect, however for consideration of the application under order VII rule 11, they have to be assumed to be correct. Assuming the averments to be correct, it

cannot be held that the plaint is ex-facie barred by limitation.

25. With regard to the contention that the plaint is liable to be rejected for non-joinder of necessary parties, i.e. UCPs/Green Card Holders who were granted permanent memberships in supersession to prior general applicants in NG category, allegedly, contrary to the AOA, it may be seen that non-joinder of necessary parties is not one of the ground on which a plaint can be rejected under order VII rule 11 CPC. Whether the said persons are necessary parties or not, would be examined by the court, if so called upon, at the appropriate stage. If held to be necessary parties, then the question would arise as to whether any order passed in their absence would affect their rights, further, the consequences of their non-impleadment would follow. For the purposes of consideration of the subject application, the same is not germane. Accordingly, I find no infirmity in the impugned order, rejecting the application under Order VII rule 11 CPC.

26. With regard to the application under Order XXXIX Rules 1 & 2, the learned Judge after adverting to various clauses of the Articles of Association, restrained the Club from granting out of turn permanent membership to the Green Card Holders/UCPs and directed that the permanent membership granted after institution of the Suit would be subject to the outcome of the Suit. With regard to the prayer of the Plaintiffs that their children be granted the status of the UCPs/Green Card Holders, the learned Judge rejected the same.

27. For resolving the said controversy, it may, at this juncture, be expedient to refer the relevant Articles of Association as well as the Minutes of the Meetings, referred to by the parties. It may be noticed that none of the clauses of the Articles of Association are impugned by the Plaintiffs.

28. Article 4 enumerates the Classes of Members as:-

- (a) Permanent members
- (b) Garrison members
- (c) Temporary members
- (d) Casual members
- (e) Special Category Members (EGM dated 04.05.1996).

29. Article 7 reads as under:

“Every such application shall be copied into a Candidate’s Book to be kept by the Secretary which shall at all reasonable time be open to inspection by members of the Club.”

30. Article 8 stipulates the procedure for election of membership as under:

Procedure for election of membership

8. (1) Every application for Permanent, Temporary, Garrison, or Special Category membership shall be placed before the General Committee at the next monthly meeting after the application has been entered in the Candidates Book.

(2) As soon as, may be practicable thereafter, and subject to article 8(7), the General Committee shall at a monthly meeting direct the Secretary to put up the Candidate's name for election by the members of the Committee by ballot.

(7) With a view to maintaining the distinctive character of the Club, the General Committee shall regulate the balloting of Candidate for membership of the Club in such a manner that the proportion of members who are officers of the Armed Forces of India or Civil officers of Government continues to be about half the total active membership, and also in order to facilitate the, early admission of members of the Diplomatic Corps.

31. Article 12 provides for granting use of facilities to certain applicants in the following terms:-

“User of Premises Pending Election

12. A Candidate, whose name is up for election as a permanent, garrison or temporary member, may, provided that his proposer and seconder be responsible for the liabilities incurred by him, be invited by the General Committee to use the premises of the Club pending the result of the election.”

32. Article 13 *inter alia* reads as under:-

“13.....

(3a) Members, whose sons and daughters, between the age of 13 and 21 are permitted to use the Club as dependents, shall pay an additional monthly subscription of Rs.40/- p.m. for each child using the Club. However, for absentee dependent children, a member shall pay Rs.20/- p.m. for each child.

(Extraordinary General Meeting dated 22nd July, 2000)

(3b) On reaching the age of 21, the son of a member having previously used the Club under Article 13 (3a) must apply to become a full member, should he wish to continue to use the Club.

(3c) On reaching the age of 21, the unmarried daughter of a member may use the Club under Article 13 (3a) during such time as she lives with her parents.....”

33. Article 16 reads as under:-

“No member other than a permanent member shall have the right of attending meetings of the Club, or of voting on any matter affecting the interests or management of the Club.”

34. Minutes of the Meeting of the General Committee dated 31.03.1978 *inter alia* read as under:-

“6. Special Meeting of the General Committee :

Minutes of the Special Meeting of the General Committee held on 15th March, 1978, were confirmed, subject to the following:-

Item-2 MEMBERS’ SONS – AUTOMATIC USER OF THE CLUB- As regards Members’ sons being extended automatic use of the Club, the following decisions were taken:-

(a) The automatic use of the Club will be given to an applicant (Member’s son), who after attaining the age of 21 makes an application for this purpose and meets the condition of his having been a dependent member. The application must be sponsored by the parent member.

(b) Thereafter, his name will be held on the Members’ Sons’ waiting list and he will be invited for the ‘At Home’ in his turn depending upon the date of receipt of his application. When elected, he will be given the use of the Club Pending Election, and also given permanent

membership in his turn according to the category to which he belongs viz; Government or Non-Government without having to attend a second 'At Home' on a later date.....”

35. Minutes of the Special Meeting of the General Committee held on 15th November, 1983 at 5.30 P.M. inter alia read as under:-

“(j) Members, sons, daughters and son-in-law category – UCP

SONS

i. A son of a member, on reaching the age of 13 or from the date his father/mother joined the Club, if by then he is between the ages of 13 and 21, shall be made a dependent member. His parents shall be responsible for the payment of their dependent's subscription. On attaining the age of 21, he must apply for permanent membership within 1 year.

ii. On reaching the age of 21 years, full subscription will be charged from him. He will be allowed all the privileges normally extended to members admitted in the UCP category but he will be called to an At Home, in his turn from the separate list of members' sons/sons-in-law only on attaining the age of 25 years or after doing his normal waiting period, whichever is earlier. He would then be formally admitted under the UCP category. He will become a permanent member in due course from the date when his name came up on the list applicable to his category of membership.

iii. **DAUGHTERS**: On reaching the age of 21, unmarried daughter of a member, not dependent on her father/mother may apply for Lady Subscribership. On application, the same rules as are applicable to the son

would apply. Members' daughters can continue to use the Club as dependent members so long as they remain unmarried and dependent on their father/mother. Applications of members' daughters shall be registered along with member's sons/sons-in-law. As in the case of son, they will be invited to an At Home on reaching the age of 25 or after their normal waiting period, whichever is earlier.

iv. SONS-IN-LAW On a member's daughter getting married, the son-in-law will be given UCP in case by that time the daughter has not become a Lady Subscriber in her own right. He would, however, have to apply within one year of his marriage and on applying his seniority will reckon from the date his wife applied for lady subscribership.

Note: In the case of a member's son, daughter and son-in-law while they will be put in the separate list being maintained for this category, their name will also be put in the category to which they belong and they will be called up for membership in their turn, whichever comes earlier."

36. Circular dated 22.05.1984 reads as under:-

"NOTICE

SUBJECT : Accelerated Conversion of sons/son-in-law UCPs as Permanent Members

1. The General Committee has decided to liberalise the existing procedure to accelerate, in a phased manner the conversion of present UCP Sons and Sons-in-law in the Non-Government category as Permanent Members of the Club.

2. Starting with the February, 1984 "At Home", 20%

of the new Permanent Members elected at every “At Home will be determined as the number of existing UCPs Sons/Sons-in-law to be converted as Permanent Members.

3. The Club Office has already started updating the bio-data of the UCPs, who are now becoming eligible, in the order of their seniority for Permanent Membership. The liberalised formula will substantially increase the number of Non-Government category UCPs who will now acquire Permanent Membership.”

37. Minutes of Membership And Disciplinary Sub-Committee Meeting held on 17th October, 2013 reads as under:-

“.....(c) The Sub-Committee requested the Secretary to start maintaining only one Candidate’s Book for all categories of waitlisted applicants including Green Card/UCPs with effect from 01st November, 2013 as provided for in the Articles of Association. Presently, separate Candidates Books are being maintained for various categories of waitlisted applicants.”

38. Minutes of Membership And Disciplinary Sub-Committee Meeting held on 13.11.2013 reads as under:-

“.....The Sub-Committee thereafter deliberated on the anomalies brought out by Ms Chitra Gouri Lal and recommends as under:-

*“ ******

The issue of dependent/Green Card membership to the children of UCPs should be stopped forthwith.

Since the status of Green Card Holders and UCPs is nothing more than that of the dependents, these categories are recommended to continue. However, the facilities extended to these categories are without the force of the articles and therefore need to be re-examined.....”

39. For the consideration of this application, one has to see whether the Plaintiffs have made out a *prima facie* case for grant of an *ad interim* injunction and whether the balance of convenience is in favour of grant of injunction to restraint the Club from granting permanent membership to the UCPs/Green Card Holders.

40. The case of the Plaintiff *inter alia* is that, contrary to the Articles of Association, the Club is granting permanent membership in the NG category to the UCPs/Green Card Holders out of turn by considering their applications on a priority basis and not on the basis of the date of application in the NG category at par with the general applicants in the NG category. The stand of the Club *inter alia* is that NG category comprises of 50% of the permanent membership and out of this 50% half (i.e. 25% of the entire permanent membership) has been reserved for the UCPs/Green Card Holders and the UCPs/Green Card Holders are considered for this 25% membership on the basis of date of their application.

41. Article 4, lists out the five classes of members, one of which is Permanent members, with which the parties are concerned. Article 7 requires every application for membership to be entered in a

Candidate's Book. As per the Club, initially there was only one Candidates Book. Subsequently a separate Candidate's Book was maintained for general applicants in NG category and the UCPs/Green Card Holder applicants. On an objection by some members, once again, a common Candidate's Book is being maintained but a different colour ink is used for entering the details of a general applicant and the UCPs/Green Card Holders (reference drawn to Minutes of meeting dated 17.10.2013).

42. Article 8 (7) stipulates that the General Committee shall maintain the distinctive character of the Club and regulate the balloting in a manner that the proportion of the members in the Government Category continues to be about half.

43. Articles 12 and 13 provide for permitting *inter alia* Candidates whose names are up for election, dependents of members and son of a member who has applied for permanent membership, the use of facilities of the Club.

44. Article 16 restricts the right of voting, on any matter affecting the interests or management of the Club, to only permanent members. In terms of the Articles of Association, UCPs/Green Card Holders virtually have all rights and enjoy nearly all facilities of the Club except voting rights.

45. Articles of Association do not provide for any separate class of members or reservation for UCPs/Green Card Holders. The Club

contends that such a reservation has been accorded by the General Committee through its various meetings.

46. In the meeting held on 15.03.1978, automatic UCP status was granted to an applicant (member's son) who on attaining the age of 21 made an application, provided he satisfied the conditions of a dependent member. Minutes of meeting dated 15.11.1983 stipulated that for grant of UCP status, an application for permanent membership would be required to be made. However, he would be granted permanent membership in due course. A circular is stated to have been issued on 22.05.1984, reserving 20% permanent membership for UCPs, which was subsequently increased to 25%.

47. It may be noticed that the issue of grant of membership to UCPs/Green Card Holders was deliberated in the Membership and Disciplinary Sub-Committee Meeting held on 13.11.2013.

48. The learned Trial Court, in the impugned order after noticing the Articles of Association has *prima facie* held *that the concept of grant of membership out of turn to Green Card Holders / UCPs has been evolved only through, decisions / bye-laws made in General Committee Meeting. By creating a category of members under Green Card Holder / UCPs meant for dependents of members, another elitist class has been created which have got membership by way of fastest method only because they happen to be the legal heirs of a member. This provision has acted against the interests of the*

members of waiting lists who themselves are eligible for membership by virtue of their individual eligibility. These bye-laws and decisions in General Committee meetings which bestows "special status" to the dependents of existing members in conflict with eligible category of a person of waiting list cannot be prima facie held to be in accordance with the spirit of AOA which do not recognize the categories of Green Card Holder / UCPs. Further, grant of permanent membership on priority basis to Green Card Holder/ UCPs has its own cascading effect because these members would attain permanency at a very young age, therefore, their off-springs would also in-turn get similar benefits. This kind of bye-law/rule will one day turn AOA otiose and are against the interest of public at large as well as Plaintiffs.....

49. I do not find any infirmity in the prima facie view taken by the learned judge and in the exercise of discretion in passing an ad-interim order injunction order. Admittedly, the Articles do not create a separate class of members or accord priority to any special class of individuals in getting membership, the same has been done only through various meetings.

50. Further, as noticed above, the Green Card Holders / UCPs enjoy virtually all facilities of the Club, except voting rights on any matter affecting the interests or management of the Club. No irreparable loss and injury would be caused to the Green Card Holders / UCPs in case their permanent membership is deferred pending disposal of the Suit. On the other hand, if permanent membership is

granted to Green Card Holders / UCPs out of turn then irreparable loss is likely to be caused to the general applicants in the NG category. Balance of convenience is also in favour of the Plaintiffs and in favour of grant of ad-interim injunction.

51. Accordingly, I find no infirmity, in the impugned order dated 30.11.2016, in so far as it relates to the application under Order XXXIX rules 1 & 2, and restrains the Club from granting out of turn permanent membership to Green Card Holders / UCPs and directs that the permanent membership already granted to any Green Card Holders / UCPs, after the institution of Suit, would be subject to the outcome of this Suit. However, as the case of the Club is that 25% reservation has been lawfully carved out for Green Card Holders / UCPs, it would be expedient to direct that pending disposal of the Suit, the Club shall not consider the applications of General applicants in the NG category, for grant of permanent membership, in excess of 25% of the total permanent membership.

52. In view of the above, the Appeals (i.e. FAO 90/2017 and FAO 103/2017) and the Petition under Article 227 (i.e. CM (M) 603/2017) are disposed of upholding the impugned order dated 30.11.2016 dismissing the application of the Club under Order VII rule 11 and allowing the application of the Plaintiffs, under Order XXXIX rules 1 & 2, restraining the Club from granting out of turn permanent membership to Green Card Holders / UCPs and directing that the permanent membership already granted to any Green Card Holders /

UCPs, after the institution of Suit, would be subject to the outcome of the subject Suit. The interim order is, however, modified directing that pending disposal of the Suit, the Club shall not consider the applications of General applicants in the NG category, for grant of permanent membership in excess of 25% of the total permanent membership. There shall be no orders as to costs.

53. It is clarified that the observations in the impugned order dated 30.11.2016 and the present order are prima facie and nothing stated therein shall come in the way of the consideration, by the Trial Court, of the merits of the respective contentions after trial.

54. In view of the facts and circumstances of the case, the learned Court is requested to expedite the trial of the Suit and endeavour to dispose of the Suit within a period of nine months from today.

55. *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

JANUARY 04, 2018

'Sp'