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

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Judgment delivered on: 02.07.2019

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FAO 62/2019

DELHI AND DISTRICT CRICKET ASSOCIATION

..... Appellant

Versus

VINOD TIHARA & ORS

..... Respondents

Advocates appeared in this case:

For the Appellant:

Mr. Sandeep Sethi, Sr. Adv. with Mr. Saurabh Chadha, Mr. Kunal Vats and Mr. Sidharth, Advs.

For the Respondents:

Mr. Dayan Krishnan, Senior Advocate with Sanjeevi Seshadri, Mr. Gaurav Mitra with Mr. Khowaja Siddiqui, Mr. Arup Sinha, Mr. Ashwini Kumar and Ms. Palak Vasisth, Advs. for R-1.

Mr. Vikas Kumar Jha and Ms. Ritu Anand Vishwakarma, Adv. for R-2/BCCI

Mr. Kirti Uppal, Sr. Adv. with Mr. Saurabh Chadda, Mr. Aditya Awasthi and Mr. Rohit Bhagat, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

FAO 62/2019, CM APPLs. 7284/2019 and 7286/2019

FACTS:

1. This appeal impugns an order dated 02.02.2019 passed by the Learned Addl. District Judge, injuncting the appellant from suspending respondent no. 1 (plaintiff) from his post of Secretary of the appellant Association. By order dated 14.08.2018 the appellant Association had suspended respondent no.1

from the aforesaid position and had also restrained him from discharging his duties as Secretary, DDCA pending the adjudication before the learned Ombudsman in terms of Article 62 of the Articles of Association (AOA) of the DDCA, apropos his alleged indiscipline and misconduct.

2. The reference to the learned Ombudsman was made apropos certain allegations of misdemeanour by respondent no.1. In his decision dated 05.12.2018, the learned Ombudsman (a distinguished former Judge of this Court as well as former Chief Justice of Jammu & Kashmir High Court) held the said respondent guilty of indiscipline and misconduct which was detrimental to the interest of DDCA. He has observed as under:

“17. On going through the said circular, it is clear that Mr.Tihara has stated that the appointment of CEO, CFO, COO and GM was done without following transparent recruitment norms. According to him, the apprehensions were that:-

- (i) No information was shared with the Secretary, DDCA Office or the fellow Directors regarding the list of total applicants for the posts invited.*
- (ii) No panel disclosed or appointed to shortlist the applicants.*
- (iii) No interview Board appointment or disclosed.*
- (iv) No venue for interview disclosed.*
- (v) Eligibility criteria compromised.*

These statements/allegations were made by Mr.Vinod Tihara despite the fact that he- had approved the appointments-by signing the Resolution by Circulation dated 29.07.2018. Be that as it may, I am not going into the legality or validity of the said appointments. The issue here is whether Mr.Tihara could on his own purport to take action contrary to the decision of the Board and, particularly, when he himself was a party to the decisions. As per the learned counsel for the

Complainant/DDCA, all the appointments were made in a transparent manner and in view of specific authorization contained in the Board Resolution of 02.07.2018.

18. Direction No.1 given in the Circular of 12.08.2018 was that appointment of CEO, COO, CFO and GM be kept on hold till further orders and that no contract, appointment letter, salary etc., be issued or released to any new appointees, as the same, according to Mr.Tihara, would amount to contempt of Supreme Court directives. This was in clear contradiction to the Board Resolution by Curriculum dated 29.07.2018, which was also signed by Mr.Tihara. The Resolution Nos.2 and 7 of the Board Meeting of 02.07.2018 have already been referred to above and it is clear that those resolutions did not empower Mr.Tihara to issue a direction of the nature of Direction No.1 referred to above. I agree with the submission of the learned counsel for the Complainant that the Secretary by himself did not have the power or authority to issue such a direction. Furthermore, even if a wrong decision has been taken by the majority, a lone Director cannot take law in his hands and override the said decision. Such a decision can only be undone either by the DDCA/its Board or before the court/ Company Law Tribunal.

19. Insofar as Direction No.2 is concerned, it is evident that Mr.Tihara sought to scrap all the Cricket Committees, Selection Committees and sought to direct DDCA employees not to entertain or issue any contract, letter or correspondence in respect of the Cricket Committees/ Selection Committees. Once again, I find that no such authority or power can be traced to any Articles of Association of DDCA or to the Resolution Nos.2 and 7 of the Board Meeting of 02.07.2018. In fact, Article 47 of the Articles of Association of the DDCA specifically provides that the management -and control of the

Association shall be vested in the Executive Committee (which has also been referred to as the "Board of Directors"). Neither Article 47 nor Article 48, which also deals with certain specific powers of the Executive Committee (Board of Directors) confers any specific power on the Secretary, DDCA. All powers of the Secretary are therefore in terms of the Resolutions of the Executive Committee / Board of Directors. No powers to issue the directions of the nature contained in the Circular dated 12.08.2018 have been conferred by the Executive Committee /Board of Directors on the Secretary, DDCA.

20. On the other hand, it will be seen that Resolution No.3 of the Board Meeting held on 02.07.2018 specifically authorize /empower the President, DDCA, to form various Committees / sub-Committees for the proper functioning of the Association and also directed that he shall be ex-officio member of all the Committees so formed. According to the Complainant, the appointments reflected in the Resolution of 29.07.2018 were made pursuant to Committees constituted for the purpose by the President, DDCA and as such the appointment process cannot be faulted. However, as already pointed out above, I am not going into the issue of validity or legality of the said appointments, as that is not the nature of the complaint; which is essentially limited to the question of alleged indiscipline or misconduct on the part of Mr.Tihai in issuing the Circular dated 12.08.2018.

21. With regard to the Direction No.3 contained in the said Circular dated 12.08.2018, it is evident that the direction is prohibitive in the sense that all DDCA employees have been directed not to leave the DDCA premises. The employees have also been directed not to serve the office-bearers. Directors for their personal work or visit personal offices or business

locations. A direction has also been given that no DDCA employee shall take any order on SMS, email, verbal etc., from the personal employees of the office-bearers or Directors, DDCA employees were also directed to serve DDCA from the DDCA premises alone and all Board Meetings and Committee Meetings were to be held in DDCA premises and that no additional costs shall be incurred on TA, DA, hotel costs etc., by the DDCA. According to the learned counsel for the Complainant, Direction No.3, which is addressed to the employees of the DDCA, is designed to disrupt the functioning of the DDCA and the employees have been encouraged to question the orders/directions of the superiors. This would be completely disruptive to the functioning of the DDCA itself. Mr.Vinod Tihara has also directed that Board Meetings and Committee Meetings are to be held in the DDCA premises alone, when there is no such Prescription in the Articles of Association.

22. It may also be pointed out that each of the directions are also coupled with a threat to the effect that if there was any violation of the directions given, strict disciplinary action would be initiated against the concerned person and the services of the concerned employee can even be terminated for dereliction of orders.

23. Considering the said direction, it is first of all found that no such power or authority vested in the Secretary, DDCA, to issue the directions. Such a power cannot be traced either to the Articles or to any Board Resolution. Secondly the directions are contrary to the Board Resolution and what is even more striking is the fact that he himself was a party to the very resolution, which he seeks to annul by virtue of the directions given in the Circular dated 12.08.2018. Thirdly, alone member of the Board cannot take law in his own hands

and trying to bring the functioning of the company to a standstill. This would be completely against the principle of corporate democracy under which all companies function, where decisions are taken by majority, which cannot be annulled by a lone member or a minority of members. The only recourse would be by the Board itself altering its decision or the same being set aside or annulled by a court of law / Company Law Tribunal.

24. *Fourthly specific direction given by Mr.Tihara scrapping the Cricket Committees / Selection Committees was designed to cause disruption in the cricketing affairs of the DDCA. This would clearly be detrimental to the game of cricket. The fact that the circular sought the annulment of all the appointments of CEO etc., amounted to disruption of the Administration of the DDCA. The direction given to the employees of the DDCA would tend to create indiscipline amongst the employees and result in a state of anarchy.*

25. *In view of the foregoing, even though there is no specific regulation defining "misconduct", it is clear that the conduct of a person may yet amount to misconduct in the special facts of a case. In fact, in MS Dhantwal (Supra) it has been pointed out that even though a given conduct may not come within the specific terms of "misconduct" described in the standing order, it may still be misconduct in special facts of a case. This is so stated in para 23 of the said decision. In WM Avnani (Supra), it is provided that even in the absence of standing order, it would be open to the employer to consider reasonably as to what conduct can be treated as misconduct. Therefore, the ground taken by learned counsel for Mr.Tihara that there was no definition of the terms -"indiscipline" or "misconduct" and, therefore, Mr.Tihara's action of issuing the Circular dated 12.08.2018 cannot fall within the said terms, is not tenable.*

The facts and circumstances are of such a nature, which indicate that the conduct of Mr.Tihara in issuing the said circular, consequently, the directions contained therein, was in the nature of clear indiscipline and misconduct, which was not only detrimental to the interest of the DDCA, but also to the game of cricket.

26. *In view of the foregoing, I hold that the Circular dated 12.08.2018 was not in consonance with the Articles of Association, the Companies Act and law in general and in issuing the same, Mr.Tihara has exhibited indiscipline and misconduct, which is detrimental to the interest of the DDCA and the game of cricket.”*

3. The learned Senior Advocate for the appellant submits, that pursuant to the aforesaid findings, respondent no.1 was issued a Show Cause Notice on 20.12.2018, to show why he be not expelled from the membership of DDCA.

4. Aggrieved by the said Show Cause Notice, the respondent sought a restraint order. After hearing the parties, the learned Trial Court was, *prima facie*, of the view that, respondent no. 1 could be removed from the said position only by way of decision/ voting by the General Body and not by the Apex Council, which had issued the Show Cause Notice.

5. The appellant refers to Article 5(c) of the AOA of DDCA, which reads as under:

“5. TERMINATION OF MEMBERSHIP

(c) If any member refuses or neglects to comply with any provision of the Memorandum and Articles of Association or any by-law made there under or is guilty of conduct which the Apex Council may consider likely to endanger the harmony or effect the character or stability or interest of Association, such

member shall be liable to be expelled, subject to the provisions of Article 42, on the vote of two third of the members present at special meeting of the Apex Council summoned for the purpose, provided that at least one week before meeting, such member(s) shall have had notice thereof, and of the intended resolution for his expulsion and that he shall at such meeting and before the passing of such resolution have had an opportunity of giving orally or in writing any explanation he may think fit.”

6. The appellant contends that in view of the learned Ombudsman’s conclusion, that respondent no.1 was guilty of indiscipline and misconduct, which was detrimental to the interests of the DDCA, requisite measures have been initiated in terms of the Article 5(c) by the Apex Council, which is empowered to remove any Member from the appellant Association. Therefore, the restraint ordered by the impugned order is erroneous and needs to be set aside.

7. The appellant submits that (i) since it is an incorporated company, its Secretary, i.e. respondent no. 1 could be treated as a Director of the company, his removal from that post would, to a large extent, be covered by section 284 of the Companies Act, 1956; (ii) additionally, the appellant’s AOA provides a specific power to the Apex Council to remove members of the appellant Association (company), if such member is found guilty of misconduct, indiscipline or working contrary to the interests of cricket or to the interests of the appellant; and (iii) that in an identical circumstance, this Court had occasion to examine the issue, in **Ravi Prakash Singh vs. Sugar Limited & Ors.** in (CS(OS) No.1875/1993) decided on 12.07.2007, and observed, *inter alia* :-

“16. In my considered view, there can be no doubt that the provisions of Section 284 of the said Act have to be adhered to for purposes of removal of a Director in terms thereof. This is a mandate of the Act. This mandate would require an advance notice to be given and a shareholders meeting held where an ordinary resolution should be passed. In the present case the notice dated 11.06.1993 was for the Board Meeting to held on 29.06.1993 and thus there was an advance notice of fourteen days. However the notice was for a meeting of the Board of Directors and not for a shareholders meeting. The question thus arises as to whether a shareholders meeting was necessary to remove the plaintiff or could the Board of Directors have removed the plaintiff. The scope and effect of Section 284 of the said Act form part of the discussion in a Division Bench Judgment of the Allahabad High Court in A.K. Home Chaudhary v. National Textile Corporation U.P. Ltd 1948 (48) Indian Factories and Labour Reports The relevant portion at page 101 is extracted as under:

“Learned Counsel for the petitioner then urged that the petitioner being a Director of the Government company could be removed only in accordance with the procedure laid down by Section 284 of the Companies Act, 1956. The Board of Directors had no authority to remove the petitioner who was a Director of the company. Section 284 lays down that a company may, by ordinary resolution to remove a director. On receipt of the notice of resolution to remove a director, the company shall forthwith send a copy thereof to the director concerned, and if he makes representation to the company, the same may be placed before the committee of the company for

consideration. It was urged that the procedure prescribed by Section 284, no doubt, provides procedure for removal of a director of a company by ordinary resolution at a meeting of the shareholders of the company. But the selection is not exhaustive. A director may cease to hold office by retirement, dismissal, removal, or by vacating his office voluntarily. He may be removed, by the Board of Directors or share holders at a meeting of the company. Section 284 merely provides for removal of a director by share holders and prescribed procedure for the same, it does not prohibit removal of a director otherwise than in accordance with Section 284. Sub-section 7(b) of Section 284 lays down that nothing in the section shall be taken as derogating from any power to remove a director which may exist apart from this section. The section itself thereforee contemplates removal of a director in addition to the provisions contained in the Section. Thus where the Articles of Association confer powers on the Board of Directors to remove the Managing Director or other directors, such power is not affected by the provisions of Section 284.

Article 84 of the Memorandum and Articles of Association of National Textile Corporation (Uttar Pradesh) Limited provides for constitution of Directors. Article 85 makes provision for appointment of Chairman cum Managing Director and other directors. Article 85(d) provides that Chairman cum Managing Director and the Directors shall be entitled to be appointed whole time Directors. Article 86(c) provides that the

Chairman cum Managing Director and the Directors shall have the power to remove any whole time Director appointed in accordance with Article 85(d) at any time, in their absolute discretion. Thus, a Director appointed under the Articles of Association by the Board of Directors is liable to be removed at any time. The petitioner was appointed a whole time Director under Article 85(d) and his services have been terminated by the Board of Directors in exercise of their powers under Article 86(c). The Articles of Association do not place any fetter on the power of the Board of Directors to remove a Director from service. The powers of the Board of Directors with regard to removal of Director remains unaffected by Article 284 of the Companies Act. The impugned order of termination, therefore, is not violative of Section 284 of the Companies Act.

17. In view of the aforesaid, it is not in doubt that though there is a mandate contained under Section 284 of the said Act that is not the only methodology for removing a Director. It is noted in the judgment that there may be eventualities like retirement, dismissal, removal or vacation of office voluntarily. The present case is one of removal of the plaintiff. The judgment makes it clear that where Articles of Association confer power on the Board of Directors to remove a director, such power is not affected by the provisions of Section 284 of the said Act. I am in full agreement with this view. The Articles of Association are in the nature of an agreement between the shareholders who are the joint owners of the company. If some specific methodology is devised by consent, nothing precludes the members/shareholders from doing so. The question to be

considered is whether the present Articles of Association do provide for such a procedure.

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19. Article 112(a) of the Articles of Association provides for strength of the Board of Directors and who has to make the appointment of the Directors. It provides for six directors to be nominated by co promoters out of which the number of non rotational directors shall not exceed three. It is not in dispute that the plaintiff is a rotational director. Article 112(h) provides that both UPSIDC and co-promoters shall have the right to remove or withdraw their nominees from the Board of Directors and further have a right to provide substitutes thereof. It is in furtherance of this power that the co-promoters have exercised their rights in the present case and sought to withdraw the plaintiff as a director nominated by them. I am thus of the considered view that the co promoters were well within their rights to have issued the letter dated 11.06.1993 whereby they sought to withdraw the nomination of the plaintiff as director of the co promoters. Such nomination is not in the realm of nomination by the Central Government under Section 408 of the said Act but the exception to Section 284 of the said Act would also arise where articles provide to the contrary. The present case is one where there is such provision in the Articles. I am thus of the considered view that the discussion resulting in the decision taken on 29.06.1993 whereby the plaintiff was removed from Board of Directors cannot be faulted. The issue is answered against the plaintiff.”

8. The appellant contends, that likewise, all that is required to be examined in this case is whether the Apex Council, which is akin to the Board of

Directors of an incorporated company, had issued due notice and granted appropriate opportunity to the noticee, to present his case before the said Apex Council (Board of Directors). It is stated that this exercise of due opportunity and natural justice has been carefully undertaken. Therefore, there can be no challenge to the procedure adopted by the appellant, nor can there be any question as to the Apex Council's power to remove a Member or Secretary of the appellant Association, because the Council is akin to a Board of Directors. It is further contended that a similar view has been taken in *The Madras Stock Exchange Limited v. S.S.R. Rajakumar* 2003 SCC OnLine Mad 148 and in *K. Leela Kumar/M. Subbiah v. The Government of India, Ministry of Law Justice, Dept. of Company Affairs & Ors.* 1997 SCC OnLine Mad 308.

9. In *The Madras Stock Exchange Limited* (*supra*) it was held as under:

“46. In case of companies limited by guarantee a provision for expulsion in the articles would not per se be inconsistent with the requirements of the Companies Act. In a club registered under the Companies Act, the privileges that accompany membership being personal to the member, the collective welfare of the Members would require that each one of them conform to a discipline which all of them agree to observe. Breaches of such discipline would require to be penalised, and if the conduct of the Member is such as to make his continued presence wholly undesirable amidst other members, there is nothing in principle that would come in the way of such a member being expelled”

10. In *K. Leela Kumar/M. Subbiah* (*supra*) it was held, inter alia:

“19. Mr. A.S. Chandrasekaran, learned counsel for the 3rd respondent, made some submissions with reference to Circular No. 32 of 1975. They are:

“(a) The circular is merely recommendatory in nature and must be confined to the facts and circumstances under which the circular came to be issued and has no effect whatsoever unless legally implemented.

(b). The Circular is not a statutory direction, legally enforceable and no writ will lie for the enforcement of the said Circular.

(c) The Circular deals with only expulsion of a share-holder of a public limited company as the various provisions of the Companies Act mentioned in the circular indicate and it does not deal with a case of suspension for a short period.

(d) The Circular cannot at any rate be applicable to Clubs, Associations, etc., incorporated under Section 25 of the Companies Act.

He further contends that the suspension of a member of a social club on the ground that he has acted in a manner injurious to the prestige, interest and character of the Club, is not opposed to public policy and is also not opposed to law.”

20. The above submissions of Mr. A.S. Chandrasekaran merit acceptance. The provisions of the Memorandum and Articles of Association of the 3rd respondent Club are perfectly legal and they are not void ab initio, as contended by the learned counsel

for the appellants. In any event, the validity of the proceedings of the impugned meeting is not in issue in the writ petitions. It is a matter of record that the 3rd respondent sent a letter dated 3-1-1989 calling upon the appellants to show cause as to why appropriate actions should not be taken against them for their prejudicial conduct. Since the appellants did not give any explanation, the 3rd respondent, after due consideration of the facts and circumstances by letter dated 9-1-1989 suspended the appellants from the membership of the Club, the appellant K. Leela Kumar for a period of 45 days and the appellant M. Subbaiah for a period of thirty days, since, in the opinion of the Committee, the conduct of the appellants was injurious to the prestige, interest and character of the club. We are of the view that the action of the Committee is perfectly valid, legal and proper being also a matter pertaining purely to the internal administration of the Club. We have already seen that the amendment was approved by the Regional Director of the Company Law Board, Madras, by letter dated 8-5-1974 by virtue of the power conferred on him under Section 25 of the Act, which has been delegated on him by the Government of India in Notification No. GSR 71 dated 1-1-1966. The appellants having been aggrieved by the order of suspension, have filed the writ petitions challenging the validity of Article XXVIII of the Articles of Association which confers power on the 3rd respondent to suspend a member.

21. *It is the case of appellants that the said article cannot be enforced in view of the provisions of Section 9 of the Act and Circular No. 32 of 1975 issued by the 1st respondent. We are unable to appreciate the above contention for the following reasons. Necessary*

approval for amendment of Article XXVIII was given by the Regional Director, Company Law Board, Madras by his letter dated 8-5-1974, by virtue of powers delegated to him by the Government of India, whereas Circular No. 32 of 1975 was issued by the 1st respondent only on 1-11-1975. As rightly pointed out by the learned counsel for the 3rd respondent, Circular No. 32 of 1975 contains the mere opinion of the Department. It is not a statutory order issued pursuant to any statutory provision. The said Circular contains only certain administrative instructions and therefore it will not bind third parties like the 3rd respondent. Therefore, in our opinion, the writ petitions filed by the appellants to enforce those administrative instructions by filing a writ of mandamus invoking Article 226 of the Constitution of India, are not maintainable. Circular No. 32 of 1975 deals with only expulsion of a share-holder of a public limited company and it does not deal with a case of member for a short period. In any event, the said circular is not applicable to clubs, associations, etc., incorporated under Section 25 of the Act. It is settled by catena of decisions of this Court and also of the Supreme Court, that the petition for issue of a writ of mandamus will not lie to enforce administrative instructions. The Circular in question, which contains clarifications issued by the 1st respondent, which are administrative in character, cannot confer any enforceable rights on third parties like the appellants. As already mentioned, the Circular in question is not a statutory order passed in exercise of any statutory power and therefore, it has no legal effect or sanction.”

11. Mr. Sandeep Sethi, the learned Senior Advocate for the appellant refers to this Court's order dated 20.09.2018 passed in FAO No. 413/2018 wherein the earlier orders of the learned Trial Court dated 28th & 30th August, 2018 had been modified to the extent that the operation of suspension of respondent no.1 purportedly dated 14.08.2018 issued by the Apex Council of DDCA had been stayed till a decision on the interim applications under Order 39 Rule 1 & 2 CPC was made on merits and the DDCA was further restrained from obstructing respondent no.1 in discharging his duties and functions as Secretary, DDCA to the extent that he function in accordance with the AOA of the DDCA till adjudication of the application under Order 39 Rule 1 & 2 CPC before the learned Trial Court or till the adjudication by the learned Ombudsman in terms of Article 62 of the AOA of DDCA. He submits that now that the learned Ombudsman has given his decision indicting and holding respondent no.1 guilty of indiscipline and misconduct, both being detrimental to the interest of the Association as well as to the game of cricket, the only option available to, indeed it is the duty of the appellant to take appropriate corollary steps under Article 5(c) of the AOA. He submits that the aforesaid modification by this Court would effectively have to be reviewed i.e. the suspension of R-1 would become operational automatically. He submits that: i) this would be a logical sequitor because respondent no.1 has been found to have conducted himself contrary to the interest of the DDCA; ii) the appellant does not wish to suffer any further at the hands of respondent no.1; iii) the appellant argues that respondent no.1 has harmed the DDCA and has the potential of further damaging the interest of the institution as a whole and indeed the game of cricket itself; iv) therefore, the appellant would like to take a decision about whether the said person should be kept on its rolls as a

member or at all be retained in an administrative position. The appellant argues that in its SLP against the order of this Court's dated 20.09.2018 no substantive order has been passed and only notices have been issued. It is stated in the interim that the present impugned order has proceeded ahead and has disposed-off the plaintiff's application under Order 39 Rule 1 & 2 CPC. It is stated that it is open to the appellant to withdraw the SLP in view of the aforesaid altered circumstances, including the fact that the learned Ombudsman has given his decision to the reference.

12. The appellant states that in the SLP it has contended that for suspension of a member from the Association, it was not necessary to await the decision of the learned Ombudsman; that in any case in the interim the circumstances have changed and respondent no.1's actions have been found to be a case of clear indiscipline and misconduct, which is not only detrimental to the DDCA but also to the game of cricket. The appellant refers to various orders passed by this Court as well as by the Supreme Court, directing that the constitution of DDCA be brought in consonance with the structure of the BCCI, as proposed by the Justice Lodha Committee Report and approved by the Supreme Court. The amendments to the constitution of DDCA would be duly carried out both in terms of the orders of the Supreme Court as well as those suggested by the Committee of Administrators of the BCCI.

13. In the context of the above, the appellant contends that the administrative structure of DDCA as of today is legitimate. It comprises elected members and persons appointed by the three nominees of the Government of India (as mentioned in the appeal paper book at page 792).

14. Lastly, the appellant reiterates that insofar as Article 5(c) of the Constitution of the DDCA remains unaltered, the Apex Council has absolute

powers to remove any member of the DDCA, whom it finds working against the interests of the DDCA as well as the interests of the game of cricket. The appellant contends that the only issue at hand is: whether the suspension against R-1 should continue till the Apex Council takes a decision on the reply by R-1 to the Show Cause Notice issued on 20.12.2018.

15. The appellant states that the impugned order dated 02.02.2019 does not even refer to the finding of the learned Ombudsman, which concludes that the conduct of R-1 has been seriously wanting.

RESPONDENTS' ARGUMENTS

16. Refuting therefore, the said argument, Mr. Dayan Krishnan, learned Senior Advocate for respondent no.1 submits, that under Section 169 of Companies Act 2013, there is a subtle alteration of the statutory scheme for removal of directors of companies. Therefore, the aforesaid judgments passed in the context of Section 284 of the Companies Act, 1956 would not be applicable. Section 169 of the 2013 Act is essentially the same as section 284, except that the last word of sub-section 8 of section 169 has been changed to 'Act' from 'section'. Sub-section 8 of Section 169 reads as under :-

"169. Removal of directors

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(8) Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

(emphasis supplied)

17. Clause 7(b) of Section 284 of the Companies Act, 1956 read as under :-

“284. Removal of directors.

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(7) Nothing in this section shall be taken-

(a)

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(b) as derogating from any power to remove a director which may exist apart from this section.”

(emphasis supplied)

18. The learned Senior Advocate contends that in the earlier Act there was ample scope for devising an alternate scheme for removal of a Director, provided that such alternative scheme was not substantially removed from the statutory scheme provided under Act. However, under the 2013 Companies Act, alternate schemes are drastically curbed and circumscribed; the removal of a Director has only to be in terms of what is specified under the Act. It is argued that section 169(c) mentions that the Director can be removed only by the Company and not by the Board of Directors, which in turn is appointed by the company i.e. its shareholders.

19. He further contends that section 6(a) of the 2013 Act is of wide ambit. It, in effect, renders redundant all alternate schemes for removal of directors of a company whether by way of memorandum, or articles of a company or resolutions, which are not in consonance with the statutory scheme, irrespective of whether the said scheme was registered, executed or passed either prior to or after coming into effect the Act of 2013. It is contended that insofar as Article 5(c) of the DDCA is repugnant to the scheme of the Act, it

becomes void under Section 6(a) of the 2013 Act. It is argued that therefore, the impugned order does not suffer from any deficiency or error and this petition, being without merit, should be dismissed.

20. It is the respondent's case that the correct body for taking a decision on the suspension of respondent no. 1 from his post of Secretary of DDCA can be taken only by its General Body (shareholders).

21. In rebuttal, the appellant argues that the scheme of management of an incorporated company gives sufficient latitude under section 5(2) of the Act for the formation of an alternate scheme, so long as such scheme is not contrary to the scheme of the Act. It is argued that whenever the statute seeks to prohibit something, it stipulates so specifically and in unambiguous terms; such as in Section 164 and Section 175 which begin with the expression "no person shall" i.e. the prohibitory language is explicit. However, in contrast such a prohibitory expression is not to be found in section 5(2) of the Act read with section 169 thereof. The appellant contends that on the contrary, section 284 of the Companies Act, 1956 which is akin to Section 169 of the Companies Act, 2013, envisages the formation of an alternative additional scheme for removal of directors, insofar as it does not derogate from the statutory scheme. The appellant submits that its present scheme of governance and management has the imprimatur of the Supreme Court, insofar as its AOA have been amended in consonance with the structure of administration as proposed by Justice Lodha Committee Report and approved by the Supreme Court. Therefore, article 5(c) of its AOA stands duly approved as being in consonance with the statutory scheme, and the said provision empowers the appellants' Apex Council to remove any member from the Association (i.e. the appellant company).

22. The Court, however, is not persuaded by the aforesaid arguments of the appellant because very significantly amended provisions of the 2013 Act, permit for removal of directors. Under section 284(8)(b) of 1956 Act an alternate scheme for removal of directors was permitted as a stand-alone, specific provision, provided as said alternate scheme did not derogate from any power which existed under that section. In other words, the test of derogation, if any, was limited to section 284 only. However, under section 169 of the 2013 Act, the power for alternate scheme of removal of directors has been made subject to other provisions of the entire Act i.e. the alternate scheme would have to ensure that it does not derogate from any power to remove a director as specified under any other provision of the Act. That being the clear language of the statute, the only method in which a director could be removed is the one prescribed under section 169 of the 2013 Act, which stipulates that a director may be removed by ordinary resolution by a company. Section 6 (a) confers a paramount status to the provisions of the Act, overriding all other memorandum or articles, agreements or resolutions passed by the company. Section 169 (8) (b) ensures that the power to remove a director under other provisions of the Act are not affected by what is stipulated under the said section itself.

6. Act to override memorandum, articles, etc.— Save as otherwise expressly provided in this Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company¹ in general meeting or by its Board of Directors, whether the same be registered, executed or

¹ **company** means a company incorporated under this Act or under any previous company law;

passed, as the case may be, before or after the commencement of this Act; and

23. Section 169 requires that a director of a company be removed only by an ordinary resolution of the company (general body of shareholders) for the specific purpose. When a statute specifically mandates that the director shall be removed by the company, i.e. the shareholders/general body of the company, then the statutory scheme would have to be followed in letter and spirit. The Apex Council under Article 5(c) of the Articles of Association of the appellant, is akin to the Board of Directors of a company. It does not constitute or substitute for the General Body of the company, therefore, it cannot usurp any powers of the General Body of shareholders. Article 5(c) may well be applicable apropos an ordinary Member, but the Secretary (i.e. the Director) of the Association is in a different position, and he can be removed from that post only by the General Body which had appointed him. The underlying principle being that only the appointing authority can be the dismissing/removing authority and not the peers of the Apex Council, who are collectively chosen and entrusted with the administration of the DDCA by its General Body. Members of the Apex Council are equal to each other in terms of their appointment and cannot be removed by a peer. Although the position and functions of the members of the Apex Council are defined in terms of the AOA, nevertheless they being appointed by the General Body can only be removed by the latter, higher authority. Therefore, the reference to **Ravi Prakash Singh** (supra) is misplaced because it dealt with an alternate scheme of removal of directors under the scheme provided under section 284 of the 1956 Act. Whereas Article 5(c) of AOA is now being examined under the provisions of Section 169(8)(b) read with Section 6 (a) of the 2013 Act, which makes alternate schemes subject to the entire Act not only to a particular

section. There is no answer forthcoming to the query as to whether this issue was examined earlier apropos the exercise undertaken for the amendment of Articles of Association, so as to bring the structure and administration of the appellant in consonance with the administrative structure of BCCI, as proposed by the Justice Lodha Committee Report.

24. The decision of the learned Ombudsman may be non-justiciable in terms of the AOA, inasmuch as he has found that respondent no.1 has acted against the interests of the DDCA as well as against the interest of the game of cricket. However, the conduct of respondent is not under examination by this Court. Instead, what is to be determined is whether R-1, as Secretary of the DDCA (akin to Director of a Company) can be removed by the appellants' Apex Council (Board of Directors') or by the company itself i.e. by the General Body of the shareholders.

25. What clearly emanates from the above discussion is that only the company i.e. General Body can remove a director, because anything other than that would be in derogation of the statutory provisions. In view of the above, there is no reason to interfere with the impugned order. The petition is without merit and is, accordingly, dismissed.

26. Lest the administration of the DDCA fester in internal squabbles of the parties and ultimately affect the game of cricket in Delhi, it would be prudent that the matter be resolved at the earliest i.e. the issue be placed before the General Body of the Association to consider the position of the respondent's Membership/Secretaryship, in view of the decision of the learned Ombudsman. The appellant may take a decision in this regard in four weeks from the date of this order.

27. With the aforesaid observations, the appeal is dismissed.

NAJMI WAZIRI, J

JULY 2, 2019

