

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.396 OF 2019

1. SALCETE FOOTBALL
CLUB,
having office at GF-2,
Subhash Apartments, Murida
- Fatorda, Goa 403 602,
represented by Honorary
General Secretary Mr.
Agnelo L. Fernandes, major
of age, Indian National, r/o
House no. 234/A, Padribhat,
Sao Jose de Areal Salcete de
Goa 403 709.

... Petitioner

Versus

1. UNION OF INDIA
By the Secretary, Ministry of
Youth Affairs & Sports
(Department of Sports),
New Delhi.

2. STATE OF GOA
By the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.

3. ALL INDIA FOOTBALL
FEDERATION
By its General Secretary,
Mr. Kushal Das having his
office at Sector 19, Phase 1,
Dwarka, New Delhi 11075.

4. GOA FOOTBALL

ASSOCIATION

having office at 5th Floor,
Atmaram Commercial
Complex, Opp. Axis Bank,
Near Mahalaxmi Temple,
Panaji, Goa. 403 001 by its
Acting Secretary Mr. Jovito
Lopes, major aged abot 70
years, residing at a Rua de
Natal, Fontainhas, Panaji,
Goa.

5. MR. CHURCHILL

ALEMAO,
President, Goa Football
Association, 69 years of
age, married, Indian
National, r/o H. No. 150,
Novangally, Varca, Salcete,
Goa 403 721.

6. Mr. Patricio Xavier De
Souza,

57 years of age, Son of Luis
D'Souza, Resident of House
No. 431, Mudda Vaddo, near
St. Anne Church, Saligao,
North Goa -403 511.

7. Mr. Schubert Elvino Do
Rosario Furtado, 61 years if
age, Son of Jose Bento
Furtado, Resident of
Sinquerim, Navelim Goa.

... Respondents

**Mr. J.P. Mulgaonkar, Senior Advocate with Ms. Rupa
Banaulikar, Advocate for the Petitioner.**

Mr. D. J. Pangam, Advocate General with Mr. Prashil

Arolkar, Additional Government Advocate for Respondent No.2.

Mr. Parag Rao with Ms. S. Drago and Mr. Akhil Parrikar, Advocate for Respondent No.3.

Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Mr. Abhijeet A. Kamat, Mr. J.C. Kher Simoes, Ms. Saicha Desai and Ms. Neha Kholkar, Advocates for Respondent No.4.

Mr. C.A. Ferreira with Mr. Dhaval Zaveri, Mr. S. Kamulkar and Mr. N. Govekar, Advocates for Respondent No.5.

Mr. A.D. Bhobe with Ms. S. Shaikh and Ms. Anushka Kuvelkar, Advocates for Respondent Nos.6 & 7.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on : 7th SEPTEMBER 2022
Pronounced on: 8th SEPTEMBER 2022**

JUDGMENT : (Per M.S. Sonak, J.)

- 1.** Heard learned Counsel for the parties.
- 2.** From time to time, this matter was posted at the end of the admission Board for the final hearing. Finally, the parties completed their pleadings and accordingly, this matter was finally heard on 06.09.2022 and 07.09.2022. On conclusion of the arguments, this matter was reserved for orders.

3. Accordingly, we formally issue the Rule in this Petition and make the rule returnable forthwith at the request of and with the consent of the learned Counsel for the parties.

4. The Petitioner, a registered society affiliated with the Goa Football Association – respondent no.4 (GFA), by instituting this petition, challenges the amendments to its Statute allegedly agreed to in the special general body meeting held on 03.02.2019. Almost the only consequence of the impugned amendment is to delete clause 27(h) of the GFA statute, which had provided that an Executive Committee Member shall cease to be a member of the Committee if he or she has attained the age of 70 years.

5. The Petitioner alleges that this amendment is contrary to the directives of the All India Football Federation (AIFF), which are binding on the GFA, contrary to the National Sports Code. Furthermore, the impugned amendment was brought about in flagrant breach of the provisions in Article 51 of the GFA statute since such amendments were never agreed to by two-thirds of the members present and eligible to vote in the special general body meeting held on 03.02.2019.

6. Mr Mulgaonkar, learned Senior Advocate for the Petitioner, referred us to the GFA Statutes to point out how according to him, the AIFF directives bind the GFA. He pointed out that even the National Sports Code binds the GFA. He pointed out that the GFA accepting this position, based on the unanimous approval of all its constituent members, at the special EGM held on 29.07.2018, amended the GFA Statutes so that such Statute aligns with the AIFF directives and the National Sports Code. He pointed out that the AIFF directives and the Code explicitly provide that the office bearers of Football Associations throughout the country must cease to hold office upon attaining the age of 70 years. He submitted that such a provision was made in the public interest. He submitted that the impugned amendment was brought about illegally only to benefit respondent no.5, who wishes to cling to power indefinitely.

7. Mr Mulgaonkar submits that the note circulated by the acting Secretary before the Special EGM of 03.02.2019 incorrectly refers to the 2018 amendments not being registered or incorporated in the Constitution. Mr Mulgaonkar submits that all these were mere excuses to undo the effect of the 2018 amendments that were carried out with unanimous support so that the GFA statute is consistent with the directives of AIFF and the National Sports Code. Mr Mulgaonkar pointed out that none

of the 2018 amendments were disturbed except the deletion of Article 27(h), which had restricted the tenure of the office bearers until they attained the age of 70.

8. Mr Mulgaonkar points out that this Petition was instituted in April 2019, by which date respondent no.5 had not attained the age of 70 years. He, however, submitted that respondent no.5 attained the age of 70 years on 16.05.2019 and, accordingly, should have ceased to operate as the President of GFA. He, therefore, submits that necessary directions should be issued to ensure that respondent no.5 no longer functions as the President of the GFA.

9. Mr Mulgaonkar pointed out that though GFA might not be a State under Article 12 of the Constitution, it was a public body discharging public functions and, therefore, amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. He relied on *Board of Control for Cricket in India & Anr. V/s. Netaji Cricket Club & Ors.*¹ *Board of Control for Cricket in India V/s. Cricket Association of Bihar & Ors.*², *S. Nithya V/s. Secretary to the Union of India & Ors.*³, *Rajbir Surajbhan Singh V/s. Chairman, Institute of Banking*

1 (2005) 4 SCC 741

2 (2015) 3 SCC 251

3 2022 SCC OnLine Mad 318

*Personnel Selection, Mumbai*⁴, *Indian Olympic Association V/s. Union of India*⁵ and *Rahul Mehra V/s. Union of India & Ors.*⁶ in support of his contentions.

10. Mr Kantak learned Senior Advocate for GFA submitted that the issue raised in this Petition concerns the internal management of GFA, and consequently, there is no public element involved. Accordingly, he presents that this Court should not exercise its jurisdiction under Article 226 and entertain this Petition in such circumstances.

11. Mr Kantak submits that Article 48 of the statutes provides for resolving disputes between the members and the GFA by resorting to arbitration. He offers that the Statutes are a contract between the GFA and its members. If there is any dispute on the grounds of an alleged breach of such contract, parties would have to resort to the dispute resolution mechanism provided in the Statutes. He submits that since the Petitioner has an alternate and efficacious remedy, the present Petition should not be entertained. He relied on *Tirunelveli District Football Association V/s. The President & Anr.*⁷, *Sri Parashuram Maity V/s. The*

4 (2019) 14 SCC 189

5 CDJ 2014 DHC 1649

6 2022 SCC OnLine Del 2438

7 WP (MD) Nos.15015 & 15369/2015 decided on 08.10.2015

*Chairman, All India Football Federation & Ors.*⁸ in support of these contentions.

12. Mr Kantak, without prejudice to the above contentions, submits that AIFF directives are not binding on GFA. In any case, he presents that this is a matter between the GFA and AIFF. He points out that after the amendments were carried out on 03.02.2019, the necessary information was sent to AIFF. He points out that AIFF has neither approved nor disapproved the amendments. He submits that if the AIFF finds anything objectionable in the impugned amendments, it is for AIFF to initiate action against GFA, including withholding aid, etc. However, he submits that the Petitioner has no locus standi to raise or maintain a petition based on such ground. Finally, Mr Kantak placed on record a compilation of certain decisions rendered by the Delhi High Court and the Hon'ble Supreme Court of India concerning the status of AIFF constitutions and matters connected therewith.

13. Mr Kantak submitted that National Sports Code is not binding on GFA. He submitted that the State of Goa has not adopted this Code but has only invited suggestions and comments from all clubs. He, therefore, presents that the

⁸ 2013 SCC OnLine Cal 1466

impugned amendments cannot be said to be in breach of the National Sports Code as contended by the Petitioner.

14. Mr Kantak submits that the amendment was entirely consistent with the provision of Article 51 of the statutes. He submits that out of the 85 members present and eligible to vote at the special general body meeting on 03.02.2019, 48 voted favouring the amendment, and only two voted against it. He submitted that the remaining 35 members abstained from voting, and such abstaining members, cannot be counted for determining whether two third of the members present and eligible to vote had agreed to the amendment. He submits that out of the 50 members present and eligible to vote, 48 members agreed to the amendment, and this number is more than two-thirds. He relied on *Kirloskar Electric Company Ltd. In re (and other petitions)*⁹ to support his contentions.

15. Mr Kantak submits that this Petition may be dismissed for all the above reasons.

16. Mr Zaveri learned Counsel for respondent no.5 adopted the submissions made by Mr Kantak. He further pointed out that no malafides were involved, and the amendment was duly

⁹ (2003) 116 Comp Cas 413

adopted in Article 51 of the Statute. Finally, he submitted that some press notes could never be the basis for attributing malafides. For all these reasons, he urged that this Petition be dismissed.

17. Mr Parag Rao, learned Counsel for AIFF, pointed out that no reliefs have been claimed against AIFF. He pointed out the affidavit filed by Mr Kushal Das, General Secretary of AIFF. He also pointed out the communications dated 17.05.2018 and 18.06.2018, issuing directives to not only GFA but to football associations throughout the country to ensure their constitutions are brought at par with the current Constitution of AIFF. He pointed out that the existing Constitution of AIFF provided a cap on Executive Committee Members continuing beyond 70 years.

18. The rival contentions now fall for our determination.

19. In this case, we find that there are no significant factual disputes involved. The factual disputes, if any, concern the allegations of malafides made by the Petitioner against respondent no.5. However, since we are satisfied that this petition deserves to succeed on other grounds, we do not propose to go into the issue of malafides.

20. Even otherwise, we think that there are neither any proper pleadings in support of the allegations of malafides nor based upon the allegations made any *prima facie* case of malafides is made out against respondent no.5. Merely because respondent no.5 may have been the current beneficiary of the impugned amendment that by itself is not sufficient to conclude malafides or to strike out an amendment on the ground of malafides, assuming that such a ground is available in such matters.

21. The undisputed facts are that the GFA is affiliated with AIFF. Accordingly, the GFA is governed by its Statutes. Article 31 (4) of the Statute provides that GFA is a member of AIFF. Accordingly, it is self-obliged to respect the statutes, regulations, directives and decisions of FIFA, AFC and AIFF and to ensure that these are likewise respected by its members.

22. As was pointed out by Mr Rao, AIFF, by communications dated 17.05.2018 and 18.06.2018 (pages 164 to 166 of the paper book), directed all its Member Associations, including the GFA, to ensure that their Constitutions are brought at par with the current Constitution of AIFF.

23. The communication dated 17.05.2018, *inter alia*, states that as envisaged in the current Constitution of AIFF, all Member

Associations of the AIFF are mandatorily required to draft their own Constitutions keeping the provisions in line with those contained in the existing AIFF Constitution as per Article 14(1) (c) thereof.

24. The communication then points out how several Member Associations had failed to amend their Constitutions and send their amended constitutions to AIFF for scrutiny and approval despite several requests made earlier. Therefore, the communication called upon the Member Associations to amend their Constitutions to bring the contents thereof at par with the AIFF Constitution. Communication also advises the Member Associations to follow the Model Guidelines prescribed in the National Sports Code for their business conduct, forming their Executive Committees and holding elections. The Member Associations were directed to provide copies of their amended Constitution to the AIFF for inspection and approval as early as possible but not later than 25.06.2018.

25. Similarly, the communication dated 18.06.2018 reiterates the directives contained in the earlier communication dated 17.05.2018. This communication concludes by reiterating and clarifying that amendment of the Constitutions of Member Associations as per the directives of the May circular is a binding

responsibility placed by AIFF upon each of its Member Associations, and the same must be carried out expeditiously.

26. The GFA appreciating that the directives of AIFF were binding, called for a special general body meeting on 29.07.2018, to amend its statutes in line with the AIFF directives and National Sports Code. There is no serious dispute that the requisite majority of the special general body adopted the various amendments to its statutes. One of the amendments to Article 27 of the Statutes provides that an Executive Committee Member shall cease to be a member of the Committee if she or he has attained the age of 70 years.

27. Soon after that, the then President of the GFA addressed a communication to all its members, in which he referred to the amendments made on 22.10.2016, 24.02.2018 and finally on 29.07.2018. About the amendments adopted in the meeting dated 29.07.2018, the then President of GFA stated as follows:

"Finally, after receiving overwhelming support of member clubs, major changes to give effect to the National Sports Code were introduced on 29.07.2018 making GFA the first Association to introduce the Sports Code."

28. The Petitioner has also pleaded that the earlier President of the GFA, vide communication dated 26.10.2018, submitted the amended GFA Statutes to the Inspector General of Societies, Government of Goa. Finally, the Petitioner has also pleaded that the records of GFA show that all the amendments to the GFA statute were acted upon, given effect to, and consistently followed by the GFA.

29. In October 2018, pursuant to fresh elections, respondent no.5 took over as President of GFA. The Petitioner has pleaded, and there is no dispute that respondent no.5 was born on 16.05.1949. Thus, on the date of his election as the President, respondent no.5 was less than 70 years of age. Mr Mulgaonkar, therefore, submitted that in terms of Article 27(h) of the GFA statutes, as amended on 29.07.2018, respondent no.5 would cease to be the President with effect from 16.05.2019.

30. In January 2019, the new Executive Committee of the GFA presided over by respondent no.5, convened a special general body meeting on 03.02.2019. The Petitioner has pleaded about illegalities in the service of notice and furnish of proper agenda. However, we think there is no necessity to go into such issues in this Petition.

31. The acting Secretary of GFA circulated a note before the special general body meeting to explain why the Executive Committee was proposing amendments to the GFA statute. The note states that the Executive Committee, in its meeting on 08.01.2019, was apprised that the various amendments to the GFA statutes were never registered with the Registrar of Societies since 1977. The note then states that the amendments in the printed booklet would neither have legal sanctity nor be enforceable. Therefore, the Executive Committee resolved to take corrective measures to register all the amendments with the Registrar of Societies. The note also states that it was proposed to generally maintain amendments carried out by having necessary approval from the general body at the Extraordinary General Meeting/special general meeting convened on 03.02.2019. The draft amendments were also stated to be circulated along with the note. Pertinently, the note does not refer to any amendment to Article 27(h) concerning the cap on the tenure of the Executive Committee Members.

32. There is no dispute that 85 members attended the special general body meeting held on 03.02.2019. Out of these, 48 members agreed to the proposed amendments by show of hands. And two members disagreed. The balance of 35 members did not show/raise their hands either in support of the amendment or

against the amendment. This is reflected in the minutes and not disputed by either the Petitioner or the respondents.

33. Based on the above position, the Executive Committee claimed that the special general body approved the amendments. But, significantly, there is no significant difference between the amendments approved by the special general body in its meeting held on 29.07.2018 and the amendments that were the subject matter of the special general body meeting dated 03.02.2019. In fact, the only difference is the deletion of Article 27(h), which had provided a cap of 70 years on the tenure of the Executive Committee Members.

34. The above circumstance adds weight to Mr Mulgaonkar's contention that this entire exercise was undertaken by the new Executive Committee, only to remove the cap on their tenure. Mr Mulgaonkar submitted that other members of the Executive Committee might have had no difficulties due to the tenure clause. Still, respondent no.5 would have ceased to be the President of GFA under Article 27(h) from 16.05.2019. Therefore, he maintained that the entire exercise was to avoid this consequence somehow.

35. From the material placed before us, we think that the reason stated by the acting Secretary in his note explaining why amendments were proposed inspires no confidence whatsoever. Firstly, there were no serious issues about the so-called registration of the amendments with the office of the Registrar of Societies, assuming that there was any such requirement. Secondly, if this was the real reason, all that the Executive Committee was required to do was to get the amendments registered and not convene yet another special general body meeting to once again consider and adopt the very same amendments, except the amendment imposing a cap on the tenure of the Executive Committee Members. It does appear that the entire object of the exercise was to get rid of the 70 years cap on the tenure of the executive members.

36. However, the reasons for amending the Statute may not be highly relevant. Even if the reasons were not to inspire confidence, as long as the amendments had the support of the requisite majority as prescribed in the statutes, there would be no occasion for us to perhaps interfere with the amendments. However, in this case, we are satisfied that the proposal for amendments to the Statute was never adopted by two third of the members present and eligible to vote. Therefore, in terms of

Article 51(4), such an amendment could never have been adopted. The so-called adoption is, consequently, null and void.

37. Article 51 of the statutes are concerned with the amendment to the general body's statutes, regulations and standing orders. The same is transcribed below for the convenience of reference :

1. The General Body is responsible for amending the statutes, the Regulations and the standing Orders of General Body. Amendments to the Statutes can be done only at a Special Meeting of the Association.

2. Any proposals for an Amendment to the Statutes must be submitted in writing with a brief explanation to the General Secretariat by a member or by the Executive Committee. A proposal by a member is valid, provided it has been supported in writing by at least two other members.

3. Any proposal for an Amendment to the Regulation and Standing Orders of the General Body must be submitted in writing with a brief explanation to the General Secretariat by a member, or by the Committee.

4. A proposal for an Amendment to the Statutes shall be adopted only if two thirds of the members present and eligible to vote agree to it.

5. No Amendment to the Constitution shall be made which proves to be repugnant to the provisions of

sec.2 (15), 11, 12 and 13 and 80(G) of the Income Tax Act 1961, as amended from time to time. Further no amendments shall be carried out without the prior approval of the Commissioner of Income Tax.

6. A proposal for an Amendment to the Regulations and Standing Orders of the General Body shall be adopted only if a simple majority of the member present and eligible to vote agrees to it.

7. For a vote on an Amendment to the Statutes, Regulations and Standing Orders of The General Body to be valid, 50% + 1 of members eligible to vote must be present.

38. The most crucial sub-clause of Article 51 is sub-clause 4, which provides that a proposal for amendment to the statutes shall be adopted *only if two-thirds of the members present and eligible to vote agree to it.* There is no dispute that in the special meeting held on 03.02.2019 to consider the amendment of the statutes, a total of 85 members were present. Moreover, 48 members voted in favour of the amendment, that is, agreed to it. 2 members voted against it, that is, disagreed to it. The balance of 35 members did not show/raise their hands, either in support of the amendment or against the amendment. Mr Kantak states that these 35 members abstained from voting, though they were present and eligible to vote at the special meeting.

39. From the plain construction of the provisions in Article 51(4) of the GFA Statutes and applying such construction to the above-admitted facts, it is clear that only 48 members agreed to the proposal for amendment out of the 85 present and eligible to vote members. This number of "48" is much below the two-thirds mark, which would be 56 or 57 members. Article 51(4) unambiguously provides that the proposal for amendment to the Statutes "*shall be adopted **only if** two-thirds of the members present and eligible to vote **agree to it***". Thus, the so-called adoption is ultra vires Article 51 of the Statute that binds the GFA and its constituents.

40. The minutes of the special general body meeting held on 03.02.2019, placed on record by the GFA, record the following on the point of the voting on the proposal for amendment of the statutes:

"Finally, the proposal for approving the earlier amendments to the Constitution and amending clause 27 by deleting clause 27(h) was put to vote.

In the "show of hands," 48 members voted in favor of amendments and 2 members voted against other members abstained.

The Motion was passed.

The President proposed a vote if thanks.

The meeting ended at 12.15 p.m."

41. In the context of the explicit provisions in Article 51(4) of the GFA statutes, after only 48 members out of the 85 present and eligible to vote members voted in favor of the amendments, the Chair should have declared that the proposal for amendments of the statutes was defeated and, therefore, could not be adopted. The Article contemplates the positive support of at least two-thirds of the members present and eligible to vote. Accordingly, there was no question of proceeding any further.

42. *Kirloskar Electric Company Ltd.* (supra) was relied upon by Mr Kantak to contend that the 35 members who abstained from voting must be excluded for computation of "*two-thirds*" referred to in Article 51(4) of the GFA statutes. Accordingly, he submitted that only 50 members who voted for or against the amendment should be considered for computing the two-thirds requirement, but all 85 members must be considered to calculate the quorum requirement.

43. In *Kirloskar Electric Company Ltd.* (supra), learned Single Judge of the Karnataka High Court was concerned with the provisions of Section 391(2) of the Companies Act. However,

these provisions are neither similar nor comparable to Article 51(4) of the GFA statute.

44. Significantly, Section 391(2) of the Companies Act, 1956 does not contain the phrase "*shall be adopted **only if** two-thirds of the members present and eligible to vote **agree to it***". Section 391(2) only refers to the scheme of compromise or arrangement being approved '*by majority of creditors/members representing three-fourths in value of the creditors or class of creditors, or members or class of members, **present and voting** either in person or where proxies are allowed, by proxy*'. There is also a qualitative distinction between the expression '*present and voting*' and '*present and eligible to vote*'. Therefore, *Kirloskar Electric Company Ltd.* (supra) can be of no assistance to respondents nos.4 & 5 in this matter.

45. The decision of the learned Single Judge of the Karnataka High Court in *Kirloskar Electric Company Ltd.* (supra) appears to be in variance with the decision of the learned Single Judge of this Court in *re Tata Iron and Steel Co. Ltd.*¹⁰. In the said matter, this Court was considering a petition under Section 153 of the Companies Act, 1913, which corresponded to Section 391 of the Companies Act, 1956. Learned Single Judge held that the

10 AIR 1928 Bom 80

majority required to be considered is the numerical majority at the meeting of the second preference shareholders. The Chairman of the meeting had reported that the majority in favour of the scheme was 24. The majority, according to the requirements of Section 153, must be a majority of those present at the meeting either in person or by proxy. Therefore, the Court concluded that *"it follows that any person present and not voting counts as a vote against the scheme and if any individual vote of any such person is disallowed that too will count as a vote against the scheme"*. Thus, the contention that the vote of the abstainers must be excluded for computing the majority was rejected.

46. In *Adv. P.B. Saharsranaman V/s. The Kerala High Court, in Writ Petition (C) No.21661/2016 (r)*, by learned Single Judge of the Kerala High Court (Hon'ble Mr Justice Dama Seshadri Naidu), the issue about the exclusion of abstainers to reckon two third votes directly came up for consideration in the context of Rule 6 of the Rules framed under Section 16(2) of the Advocates Act. The Rule had provided that the proposal for designation of an advocate as a Senior Advocate would be considered as accepted *"only if not less than two third of the total number of Judges present at such meeting decide in favor of accepting the application by secret ballot"*.

47. The learned Single Judge of the Kerala High Court even after considering the decision in *Kirloskar Electric Company Ltd.* (supra), held that the Judges who were present but abstained from voting were also required to be counted for determining whether the proposal was accepted by not less than two third of the total number of Judges present at the meeting.

48. The expressions "*only if*" and "*agreed to it*" indicate that two-thirds of the members present and eligible to vote at a special meeting to consider the Motion for amendment of the Statutes must actually agree to the Motion for amendment. Mere abstinence will not suffice. Such abstinence cannot be construed as implicit support for the amendment. Article 51(4) provides for a favourable vote by two-thirds of the members present and eligible to vote in support of the amendment. Unless two-thirds of the members present and eligible to vote agree to the amendment, the Statutes could not be amended. Mr Kantak's contention finds no support either from the wording and the plain terms of clause 51(2) or the context. The precedent relied upon by him is also distinguishable. The Bombay and Kerala precedents do not support the contention.

49. Mr Kantak's contention, in effect, wants us to accept the proposition that abstainers must be regarded as active supporters.

Accordingly, their abstinence must be taken as their agreement to the proposal for amendments. However, considering the express and unambiguous language of Article 51(4) and its intent, accepting such a contention would commit violence to the provision, not to mention the principles of interpretation and the precedents on the subject.

50. A similar contention, though, in a different context, was considered by the Hon'ble Supreme Court in *Lily Thomas (Ms), Advocate V/s. Speaker, Lok Sabha And Ors.*¹¹. The Petitioner in the said Petition had contended that the Motion of Impeachment against a sitting judge of the Hon'ble Supreme Court should be deemed to have been carried by construing the expression, support of the majority in Article 124(4) in such a manner that any member who abstained from voting should be deemed to have supported the Motion. The argument was that in the United States, there is a specific provision permitting such abstention, but in the absence of such power, a member of the Parliament is constitutionally obliged either to support or oppose a Motion. Therefore, once he did not oppose it, he should be deemed to have supported it.

51. Article 124(4) of the Constitution provides that:

11 1993 4 SCC 234

*"124(4) - A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and **by a majority of not less than two-thirds of the members of that House present and voting** has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."*

52. The Hon'ble Supreme Court rejected the above contention by holding that the right to vote means exercising the right in favour of or against the Motion or resolution. Such a right implies the right to remain neutral as well. 'Neutral' means 'indifferent', unbiased, impartial, not engaged on either side'. Conceptually it is not aligning with either view. But what happens where a person entitled to vote on a resolution participates in discussion but abstains from voting? It is neither neutrality nor expression of opinion one way or the other. Yet it is legitimate and valid. In the removal of an elected representative by a vote of no-confidence, neutrality, partial or complete, is not unknown. A construction as suggested by the Petitioner would lead to uncertainty as if non-exercise of right by a member, even though present, amounts to support it shall frustrate the entire removal process based on the exercise of the right.

53. The Hon'ble Supreme Court further held that Article 124(4) does not exclude neutrality or abstaining from voting. The use of the expression, 'not less than two-thirds of the members present and voting' in the Article implies that the Motion shall be carried only if the requisite numbers expressed their opinion by casting vote in support of the Motion. One may be present and yet not voting (*sic* vote). Therefore, abstaining or refusal to express opinion by casting vote in favour of or against the Motion cannot be construed on any rule of construction or constitutional interpretation as deemed support of the Motion. The language of the Article, the purpose of its enactment, and the objective behind it do not warrant such construction. When the Constitution mandates that a judge can be removed for proved misbehaviour or incapacity only when out of the members present two-thirds express their opinion in favour of such a Motion by exercising their right of voting, then there is no scope for assumed voting or assumed expression of opinion by invoking the principle that silence amounts to acquiescence in favour of the Motion. The submission made by the Petitioner is contrary to the explicit language of the Article and the inherent philosophy of Parliamentary sovereignty.

54. Precedents apart, in this case, as noted earlier, Article 51(4) refers to the members actually agreeing to the Motion for

amendment. P. Ramanatha Aiyer, *The Law Lexicon*, defines "Agree" as "*concur*". The *Black's Law dictionary* defines "agree" to mean "*concur*" or "*approve or adopt*". A simple act of abstinence or refusing to vote one way or the other certainly does not amount to "agree" as contemplated under Article 51(4) of the GFA statute.

55. Thus, for all the above reasons, we are satisfied that the amendment was never validly adopted by two-thirds of the members present and eligible to vote in the special general body meeting held on 03.02.2019. The impugned amendment and its adoption are therefore illegal, null and void. Based upon the same, respondent no.5 cannot insist upon continuing as the President of the GFA after he has attained the age of 70 years. In fact, he ceased to be the President upon attaining the age of 70 years.

56. In *Netaji Cricket Club* (supra), the Hon'ble Supreme Court, in paragraph 82, has held that an Association or a club that has framed its rules is bound thereby. Therefore, the strict implementation of such rules is imperative. Therefore, necessarily, office-bearers in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner,

keeping in view the public good as also the welfare of the sport of cricket. Therefore, the GFA, by attempting to pass off an amendment that was never validly adopted according to its Statutes, is acting in breach of this principle laid down by the Hon'ble Supreme Court.

57. The impugned amendment defies the directives of AIFF. This is not a matter of simple internal management, as contended by Mr Kantak. The contention that the Petitioner lacks locus, and action, if any, could be taken by AIFF alone also does not impress us. If the AIFF withholds grants or, more importantly, revokes affiliation, the sport of football which is very dear to the hearts of most Goans, will suffer. Footballers toil from a young age to achieve a position in the State squad. They struggle and aspire to play and represent at National and International levels. All these most legitimate aspirations and the eventual glory they bring to the State and its people cannot be jeopardized simply because some executive members, in defiance of the AIFF directives, wish to continue beyond the 70 years cap.

58. Article 31(4) of the GFA statute provides that GFA is a member of AIFF. Accordingly, it is self-obliged to respect the statutes, regulations, directives and decisions of FIFA, AFC and

AIFF and to ensure that these are likewise respected by its members.

59. The AIFF issued at least two directives dated 17.05.2018 and 18.06.2018, requiring the GFA to amend its Constitution and bring it in line with the AIFF constitution and the National Sports Code. Based on these directives, the GFA, in its special general body meeting held on 29.07.2018, did amend its Statute, bringing them in line with the AIFF constitution and the National Sports Code.

60. The impugned amendments allegedly adopted in the special general body meeting held on 03.02.2019 virtually defy the AIFF directives when it comes to putting a cap of 70 years on the tenure of the Executive Committee Members. If the GFA, in terms of its Statute (Article 31-4), is self-obliged to respect the statutes, regulations, directives and decisions of FIFA, then there was no scope for the GFA to defy AIFF's express directives on the subject. Therefore, this is an additional ground to strike down the amendment.

61. The issue of the applicability and binding nature of the National Sports Code given the Central directive need not be addressed in this Petition. This is a larger issue pending before

other Courts. However, at least *prima facie*, the GFA was duty-bound to follow the National Sports Code, given the directives of AIFF to follow the same. This issue is, however, left open for consideration in an appropriate case.

62. On the issue of maintainability, we refer to the 2005 decision in *Netaji Cricket Club & Ors.* (supra). The Hon'ble Supreme Court has held that the BCCI exercises enormous public functions. It has the authority to select players, umpires and other officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deep pervasive and complete. Therefore, in law, there cannot be any dispute that, having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. It cannot act arbitrarily, whimsically, or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards.

63. In *Cricket Association of Bihar & Ors.* (supra), the Hon'ble Supreme Court after an exhaustive survey of the precedents on the subject held that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not a State within the meaning of Article 12. The Court explained that the rationale underlying that view lies in the "nature of duties and functions" which BCCI performs. Such findings were set out in paragraph 33. In paragraph 34, the Court held that the functions of the Board are clearly public functions which should till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Finally, the Court concluded that though the BCCI may not be State under Article 12 but it certainly amenable to writ jurisdiction Article 226 of the Constitution of India. The decision in *Sri Parashuram Maity* (supra) rendered by learned Single Judge of the Calcutta High Court did not have the benefit of the decision of the Hon'ble Supreme Court in *Cricket Association of Bihar & Ors.* (supra).

64. The undisputed material on record establishes that what is BCCI to the game of cricket, AIFF is to the game of football at the National level. Similarly, cricket clubs affiliated with BCCI at state levels are comparable to Clubs Like GFA affiliated with AIFF. They all virtually hold a monopoly over significant aspects

of football at the State level. Mr Kantak, however, submitted that the issue raised in this Petition concerns only the internal management of the GFA and, therefore, no public element was involved.

65. Again, with respect, we are unable to agree. The GFA discharges public functions, mainly at the State level. Therefore, placing an age cap on the office bearers is a provision conceived in the public interest. This provision is accepted in the AIFF Constitution and in the National Sports Code so that such associations that wield the power to make or break the dreams of football players and lovers are governed efficiently.

66. In *Indian Olympic Association* (supra), the Hon'ble Shri Justice S. Ravindra Bhat (as His Lordship then was), in the specific context of the 70 years age cap, has held that the tenure restrictions can and are insisted upon as a part of public interest in the efficient and fair administration of National Sports Federations. The Delhi High Court was considering the challenge to the requirement that the President, the Secretary and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, shall cease to hold that post upon attaining 70 years.

67. On the availability of an alternate remedy under Article 48 of the GFA statutes, again, we think that the reliance placed on the decision of the learned Single Judge of the Madras High Court in *Tirunelveli* (supra) is entirely misconceived. That was a case where the supersession of some local Football Association was under challenge. There was a dispute between two local clubs, and the Tamil Nadu Football Association sided with one of the local clubs. The matter involved disputed questions of fact; therefore, the parties were relegated to arbitration. In the present case, there was no dispute on material facts. Moreover, this Petition was instituted in April 2019. Finally, there is a public element overwhelmingly involved in the matter. Thus, there is no merit in the contention based on either maintainability or alternate remedy.

68. Thus, we hold that there was no infirmity whatsoever in the amendments adopted by the general body in its meeting held on 29.07.2018. Accordingly, such amendments were duly incorporated and had become enforceable and consequently binding upon the GFA unless they were to be amended in accordance with the provisions of the Statute. Moreover, these amendments were even accepted by all concerned.

69. The amendments, based upon which respondent no.5 now insists on continuing as the President without any age cap on the tenure, were not validly adopted. In fact, such amendments are ultra vires Article 51 of the GFA Statute and consequently null and void. Therefore, the tenure of respondent no.5 will have to abide by Article 27(h) of the GFA Statutes as amended by the special general body in its meeting held on 29.07.2018. Based on this, with effect from 16.05.2019, respondent no.5 should have ceased functioning as the President of the GFA.

70. However, if we were to issue an unqualified retrospective declaration to the above effect, his acts beyond 16.05.2019 might come under the cloud. This might involve complications to the GFA. Therefore, while declaring that respondent no.5 ceased to be the President of the GFA from 16.05.2019, we clarify that any acts discharged by him or the executive Committee presided over by him will not be questioned only on the ground that he had crossed the age cap prescribed in Article 27(h) of the GFA Statutes.

71. For all the above reasons, we allow this Petition and quash the impugned amendments allegedly adopted in the meeting dated 03.02.2019. Accordingly, we declare that the Statutes, as amended by the special general body in its meeting held on

29.07.2018, continue to be the Statutes of GFA unless validly amended hereafter. Further, in terms of Article 27(h) of such Statutes, we declare that respondent no.5 has ceased to hold the office of the President on attaining 70 years. Respondent no.5 is accordingly restrained from acting as the President of the GFA with immediate effect. However, we clarify that any acts discharged by him or the Executive Committee presided over by him will not be questioned only on the ground that he had crossed the age cap prescribed in Article 27(h) of the GFA Statutes.

72. The Rule is made absolute in the above terms. Accordingly, there shall be no order for costs.

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73. At this stage, Mr. Zaveri, learned Counsel for respondent no.5 seeks a stay on the judgment and order that we have now pronounced.

74. The continuance of respondent no.5 as the President is in breach of Article 27(h) of the GFA statutes. The respondent no.5 admittedly attained the age of 70 years on 16.05.2019.

Therefore, it will not be proper to extend his continuance any longer. The prayer for stay is therefore rejected.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.