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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3334 OF 2022

Kiran Rajaram Powar

Age :46

Occupation: Professional Cricket Coach

Residing at B-2/102, Ascent Residency,
Behind Kalpataru Estate, Poonam Nagar,
Jogeshwari(East), Mumbai 400 060.

.... Petitioner

Vs.

1. Mumbai Cricket Association.
a society registered under the provisions
of the Societies Registration Act, 1960 and
a public charitable trust, registered under
the provisions of the Bombay Public
Trusts Act, 1950, having its office at Cricket
Centre. Wankhede Stadium, Churchgate,
Mumbai - 400 020.
2. Dr. Vijay Patil (President) having his
Office at Mumbai Cricket Association,
Cricket Centre, Wankhede Stadium,
Churchgate, Mumbai - 400 020.
3. Amol Kale (Vice President) having his
Office at Mumbai Cricket Association,
Cricket Centre. Wankhede Stadium,
Churchgate, Mumbai - 400 020.
4. Sanjay Naik (Secretary) having his
Office at Mumbai Cricket Association,
Cricket Centre. Wankhede Stadium,
Churchgate, Mumbai - 400 020.
5. Shahalam Shaikh (Jt. Secretary) having his
Office at Mumbai Cricket Association,
Cricket Centre. Wankhede Stadium,
Churchgate, Mumbai - 400 020.

6. Jagdish Acharekar (Treasurer) having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
7. Dr. Umesh Khanvilkar having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
8. Ajinkya Naik, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
9. Gaurav Payyade, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
10. Vihang Sarnaik, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
11. Abhay Hadap, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
12. Kaushik Godbole, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
13. Amit Dani, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
14. Nadim Memon, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate,

Mumbai – 400 020.

15. Khodadad Yezdigiri, having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
16. Samantha Lobotat (Nominated) having her Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
17. Uday Shinde (Nominated by Accountant General) having his Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
18. Justice V.K. Tahilramani (Retd.) , Ethics Officer-cum-Ombudsman. Mumbai Cricket Association, having her Office at Mumbai Cricket Association, Cricket Centre. Wankhede Stadium, Churchgate, Mumbai – 400 020.
19. Deepan Sunderlal Mistry Residing at C-405, Zaran Enclave, Next to Sai Dham Temple, Aasha Nagar, Western Express Highway, Kandivali (East), Mumbai-400 101

Ms.Sneha Phene a/w Ms.Garima Mehrotra a/w Ms.Khushi Sharma for the Petitioner

Mr.A.S.Khandeparkar a/w Mr.Vikas Warerkar i/b M/s.Warerkar and Warerkar for the Respondent no.1

Mr.Rashmin Khandekar a/w Mr.Anand Mohan i/b Mr.Abhishek Bhat for Respondent no.19

**CORAM: S.V. GANGAPURWALA &
R.N.LADDHA, JJ.**

RESERVED ON: OCTOBER 06, 2022

PRONOUNCED ON: NOVEMBER 25, 2022

JUDGMENT : (PER : S.V.GANGAPURWALA, J.)

1 The Petitioner challenges the order passed by the Ethics Officer (Respondent No.18) thereby (i) barring the Petitioner from the involvement in the game of the Cricket whatsoever for one year and 2) from being a part of the governing body of Respondent no.1.

2 The Petitioner claims to be cricketer and has played for Ranji Trophy, also led the India Under-19 team in the year 1994-95. The Petitioner is a member of Apex Council of the Mumbai Cricket Association, nominated by the Indian Cricketers' Association.

3 Respondent no.19 filed a complaint with Respondent no.18 alleging that the Petitioner was guilty of "conflict of interest" as per the constitution of Respondent no.1. According to Respondent no.19, the Petitioner was appointed as a Coach by Goregaon Sports Club "GSC" and further, the brother of the Petitioner namely Ramesh Powar was appointed as a Coach. The Ethics Officer cum Ombudsman allowed the complaint thereby removing him from his post as a member of the Apex Council of MCA. The Petitioner is also barred for a period of one year from the involvement in the game of the cricket.

4 Ms.Phene the learned counsel for the Petitioner canvassed the proposition in a lucid manner. According to the learned counsel, the Petitioner is well known cricketer who regularly played for the Ranji Trophy. He also led the Indian Under-19 team that visited Australia in the year 1994-95. He was a member of the Apex Council of MCA nominated by the Indian Cricket Association.

5 The finding that there was a conflict of interest on the part of the Petitioner is arrived at by completely failing to consider Rules 21 and 26 of the Constitution of Respondent no.1. Two allegations were made against the Petitioner in the Complaint, in a bid to justify that there was “conflict of interest” (i) that subsequent to the Petitioner being appointed as an Apex Council member, his brother was appointed as a Coach for the Mumbai Senior Men’s Cricket team and (ii) that the Petitioner was cricket coach in GSC while he was the Apex Council Member. It is submitted by the learned counsel for the Petitioner that the Petitioner was not required to disclose any of the aforesaid situations, in as much as there could be said to be no conflict of interest on his part. As per Rules 21(1) and 26(2)(A)(ii) (a) and (b) of the Constitution of Respondent no.1, the appointment of Coaches as also Selection Committees to select players for the Mumbai teams was exclusively to be decided upon by the Cricket

Improvement Committee (CIC) consisting of former first class players and the petitioner as an Apex Council member had no power to decide upon the same.

6 There is no provision in the Constitution of Respondent no.1 which gives the Apex Council the power to reject the recommendations of the CIC. This aspect considered in light of Rules 21 and 26 which gives the exclusive power to the Cricket Committee, Cricket and Umpires Committee and Cricket Improvement Committee to decide on the aspect of appointments of coaches and selection committees, must necessarily lead to the conclusion that the Apex Council had no role whatsoever to play in appointing coaches and / or selection committees.

The finding of the Ethics Officer that the post of an Apex Council Member “calls for decisions of selection” is completely unsubstantiated, and is made without reference to the Constitution provisions including Rules 21 and 26, as such is erroneous and perverse.

7 The learned Ethics Officer has completely and without any reasons, brushed aside the provisions of Rules 21 and 26 by holding that other contentions raised by the respondent regarding the Mumbai Cricket Club appointing his brother Ramesh Powar as Coach

on the recommendation of the independent body like CIC is immaterial.

8 Moreover, the relationship of the petitioner and his brother, both of whom are well known cricketers, was well known to all concerned and the petitioner's brother was appointed inspite of such knowledge. It is further submitted that the petitioner had clearly informed the Ethics Officer that within a few days of being appointed as a coach, he had resigned and subsequently offered the position of 'Sports Mentor' to set up and mentor the various sports academics for the development of sports in the club, which was accepted by him. The Petitioner clearly provided a letter from the GSC to show that his appointment as a Sports Mentor was coming to an end on 09.12.2021. Further, even as per Clause 1 of the original contract by which the petitioner was appointed as a coach by GSC, his term was to come to an end on 09.12.2021.

9 The principles of natural justice are also violated by the Ethics Officer. There was certain correspondence of the MCA and / or the Ethics Officer with the GSC, relied upon by the Ethics Officer to disbelieve the stand of the petitioner that he resigned as a coach and appointed as a Sports Mentor. The petitioner was never provided of any such correspondence or the copies of the same. The fact that the

Ethics Officer has relied upon such correspondence is clear from the observation made in paragraph 21 and 28 of the order passed by the Ethics Officer where it is observed that the GSC has not produced the documents of the resignation of the petitioner as a coach in the GSC despite correspondence on email by MCA with the said club.

10 The Ethics Officer without any reasons, has held in the impugned order that the alleged conflict of interest on the part of the petitioner was intractable. Rule 38(3) of the Constitution of respondent no.1 has not been properly construed by the Ethics Officer. Intractable conflicts are those that cannot be resolved by disclosure and recusal, and would necessitate the removal of the individual from a post or position occupied so that the conflict may cease to exist.

11 Even if it is assumed without admitting that there was any conflict of interest, a plain reading of Rule 38(3) of the Constitution makes it clear that the alleged conflict of interest would at the highest be tractable. In both the instances of conflict of interest alleged against the petitioner, the complaint was made after the alleged conflict of interest ceased to exist. When the complaint was made, the petitioner's brother was no longer a coach of any Mumbai Teams, nor was the petitioner a coach at GSC. Moreover, at the time

the impugned order was passed, the petitioner was no longer associated with the GSC even as a Sports Mentor. Therefore, there could have been no finding of conflict of interest against the petitioner. The finding of the Ethics Officer in paragraph 20 of the impugned order that the non-disclosure made the conflict intractable, is unreasoned and without considering the clear definition of tractable and intractable conflict set out in the constitution of respondent no.1.

12 It is further submitted in alternative by the learned counsel that removal of an individual from a post or position was contemplated only so that the conflict can cease to exist and was not meant to be punitive in nature. Therefore, in the present case, the removal of the petitioner as an Apex Council member when the situations alleged to constitute conflict of interest had come to an end, as also barring the petitioner for a period of one year from being involved in the game of cricket in any manner, was in violation of Rule 38(3).

13 It is further submitted that the finding in paragraph 21 that the respondent has used his position as a Member of the Apex Council of MCA to get appointed as a Cricket-Head Coach in GSC and later on, when he realized that it would create a problem, he

portrayed that now he is appointed in the said club as a Mentor in GSC and for that he was to be paid remuneration of Rs.70,000/- per month, is purely speculative and baseless inasmuch as there is no material for arriving at such a conclusion that the petitioner, a reputed international Cricketer, was appointed as a Mentor by GSC because of his position as an Apex Council Member.

14 The learned counsel for the petitioner submits that contention of the respondent that MCA is not a 'State' within the meaning of Article 12 and the Constitution of India and the Writ Petition is not maintainable, is erroneous. Reliance is placed on the judgment of the Apex Court in the case of *Board of Control for Cricket vs. Cricket Association of Bihar & Ors*¹. So also, judgment of Kerala High Court in the case of *S.Sreesanth vs. BCCI & Ors. dated 07.08.2017 in Writ Petition (C) No.6925 of 2017*. The petitioner also relies upon the judgment of the Jammu and Kashmir High Court in the case of *Omkar Nath Pajnu & Ors. Vs. J&K Cricket Association & Ors*. The petitioner also relies upon the decision of the Patna High Court in the case of *Lakhan Raja vs. The Bihar Cricket Association & Ors. delivered in Civil Writ Jurisdiction Case No.18043 of 2018*.

15 The learned Advocate further submits that Ethics Officer is quasi judicial Authority. Ethics Officer was appointed to reduce the

1 (2016) 8 SCC 535

burden of the courts as has been held by the Apex Court in the case of BCCI but the Ethics Officer in terms of Rule 39(3) of the Constitution of respondent no.1, is necessarily required to follow the principles of natural justice. Ethics Officer is necessarily quasi-judicial authority, as such the orders passed by it are amenable to writ jurisdiction.

16 The learned counsel further submits that the Ethics Officer was not appointed by the General Body of respondent no.1 as mandated by its constitution. As per Rule 39 of the Constitution of respondent no.1, Ethics Officer is appointed by the Association only at the Annual General Meeting. In the present case, Ethics Officer deciding the matter was not appointed at the Annual General Meeting. As such, the order passed by the Ethics Officer is without jurisdiction. The objection was raised before the Ethics Officer. Ethics Officer refrained from deciding the same. Moreover, there is no reason given in the impugned order for banning the petitioner for a period of one year from involvement in the game of the cricket which prevents from earning his livelihood for a period of one year. No justification is coming forth whatsoever as to why it was necessary to ban the petitioner for one year from earning his livelihood.

17 The learned counsel for respondent no.1 and 19 canvassed

their submissions. According to the learned counsel for these respondents, Writ Petition is not maintainable inasmuch as the respondent no.1 is not a State within the meaning of Article 12 of the Constitution of India. As such, this court would not exercise its Jurisdiction under Article 226 of the Constitution of India. The learned counsel also relied upon the following judgments of the Apex Court :

Sr. No.	Particulars
1	Zee Telefilms Ltd. Vs. Union of India (2005) 4 SCC 649
2	Shri Lavoo Mamledar Vs. Maharashtrawadi Gomantak Party & Ors. (Order dated 19 th August 2021 passed by the Hon'ble Bombay High Court at Goa, in Writ Petition No.123 of 2021)
3	St. Mary's Education Society & Anr. Vs. Rajendra Prasad Bhargava & Ors. (2022 SCC OnLine SC 1091)
4	Binny Ltd. & Anr. Vs. V. Sadasivan & Ors. (2005) 6 SCC 657
5	Ramakrishnan Mission Vs. Kago Kunya (2019) 16 SCC 303
6	Kamala Kanta Kalita & Ors. Vs. Assam Cricket Association (Judgment dated 27 th February 2006 in Writ Petition (C) No.272 of 2006 (MANU/GH/0693/2006)
7	Azharuddin Vs. K. John Manoj (2021 SCC OnLine TS 2602)
8	V. Durga Prasad Vs. Andhra Cricket Association & Ors. (Order dated 16 th March 2022 in Writ Petition No.27180 of 2021 (MANU/AP/0435/2022)
9	Sri. Konaseema Coop. Central Bank Ltd. Amalapuram V. N. Seetharama Raju [AIR 1990 AP 171 (FB)]
10	Madhusudan Vs. R.D.C. Coop. Bank Ltd. (2004) 4 Mh.L.J. 994
11	Hiken Naresh Sha Vs. Board of Control for Cricket in India (2018 SCC OnLine Bom 470; [(2018) 2 AIR Bom R 434]
12	Associated Cement Companies Ltd. Vs. P. N. Sharma & Ors. (AIR 1965 SC 1595)
13	Board of Control for Cricket in India Vs. Cricket Association of Bihar (2015) 3 SCC 251
14	Board of Control for Cricket in India Vs. Cricket Association of Bihar (2016 (8) SCC 535)
15	Board of Control for Cricket in India Vs. Cricket Association of Bihar (2018

(9) SCC 634)

18 The learned counsel submits that this court would not in its jurisdiction under Article 226 re-appreciate evidence and review proportionality / quantum of punishment. Reliance is placed on the judgment of the Apex Court in the case of *Union of India vs. Gunaset²*.

19 The petitioner's position of influence was found to be an instance of conflict of interest under Rule 38(1)(v) of the MCA Rules, *inter alia* because the CIC of the MCA who was responsible for appointment of coaches, functions under the direct superintendence/oversight of the Apex Council of which the petitioner was a member. The CIC is required to report its recommendations for various positions, including coaches, directly to the Apex Council of which the petitioner was a member. The superintendence/management/governance exercised by the Apex Council over the CIC (including on the appointment of coaches) is evident from Rule 26(2)(A)(ii)(b); Rule 26(2)(A)(ii)(h); Rule 15(3) and Rule 15(1)(iii) of the MCA Constitution. The petitioner did not make any disclosure of conflict of interest. While serving on the Apex Council, on 03.12.2020 the petitioner had entered into one-year contract for monetary gain as "Head Cricket Coach" of GSC

² (2015) 2 SCC 610

(which is a member club of MCA). The stipulated term of the contract was 10.12.2020 to 09.12.2021. The petitioner had admitted his engagement with GSC in the proceedings before the learned Ethics Officer, as recorded in the Roznama dated 03.12.2021. The petitioner's engagement with the GSC constitute conflict of interest under Rule 38(1)(iii) of the MCA constitution. The petitioner claims that he resigned from the position of Head Cricket Coach and was appointed as a mentor at GSC is not borne out of from any document on record nor he provides his date of resignation as Head Coach of GSC.

20 The impugned order renders a reasoned finding thereafter as to why the aforesaid conflicts were intractable in nature. The removal of the petitioner and debarring for a period of one year from involvement in the game of cricket is within the scope of the powers vested in the Ethics Officer under Rule 39(3) of the MCA constitution. It is submitted that Rule 38 and 39 of the MCA were part of Lodha Committee Recommendations and confirmed by the Hon'ble Supreme Court in the case of BCCI.

21 It is further contended that the petitioner was appointed as Head Coach by the GSC but has admittedly made not disclosures to the MCA and failed to produce any documents of resignation and

reappointment as a mentor with the GSC. The petitioner has admitted that as per the contract he was receiving an amount of Rs.70,000/- and later Rs.1,00,000/- per month from the GSC which he never disclosed to the MCA. This arrangement comes within the ambit of 38(1)(iii) as he has engaged in a professional engagement with a third party as a Head Coach in the GSC. The petitioner has failed to make out any case for entertaining the Writ Petition.

22 We have considered the submissions canvassed by the learned counsel for the parties. So also, gone through the impugned order.

23 The petitioner has raised the issue about the appointment of the Ethics Officer cum Ombudsman. It is contended that the Ethics Officer is not appointed in the Annual General Meeting as required. The Ethics Officer cum Ombudsman is appointed by respondent no.1. The same is not a disputed fact. None of the members of the respondent no.1 has disputed the appointment of Ethics Officer cum Ombudsman. It is also not the case of the petitioner that the Ethics Officer cum Ombudsman does not possess the necessary qualification to act as an Ethics Officer cum Ombudsman. As such, objection of the petitioner that Ethics Officer cum Ombudsman is not competent having not been appointed in the Annual General Body Meeting need not be considered in the present matter.

24 Before we proceed to deal with the submissions of the respective learned counsel, it would be necessary and relevant to reproduce the relevant provisions.

“14. THE APEX COUNCIL

(1) There shall be an Apex Council for the MCA which shall be primarily responsible for the governance of the affairs of the Association.

(2) The Apex Council shall comprise of 17 Councillors of whom 5 shall be the elected Office Bearers as per Rule 6 and the remaining 12 shall be:

(a) Nine to be elected by the Ordinary Members of the MCA;

(b) Two, one male and one female, to be nominated by the Cricket Player's Association from amongst those of its members who hail from the jurisdiction of MCA

(c) One to be nominated by Accountant General of Maharashtra from among the serving senior functionaries of the office, co-terminus with the nominee's tenure;

(3) A person shall be disqualified from continuing as Councillor if he or she;

- i. Is not a citizen of India;
- ii. Has attained the age of 70 years;
- iii. Is declared to be insolvent, or of unsound mind;
- iv. Is a Minister or a government servant or holds public office except for the nominee under Rule 14(2)(c)];
- v. Holds any office or post in a sports or athletic association or federation apart from cricket;
- vi. Has been an Office Bearer of the MCA or any other

state association for a cumulative period of 9 years or office bearer of the BCCI for a cumulative period of 9 years;

vii. Has been charged by a Court of Law for having committed any criminal offence i.e. an order framing charges has been passed by court of law having competent jurisdiction

(4) Each of the elected Councilors shall have a term of 3 years in office, subject to a maximum of 3 Terms on the Apex Council. A councillor who has held any post for two consecutive terms either in a State Association or in BCCI (or combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the cooling off period, such a councillor shall not be a member of Governing Council or of any committee whatsoever of MCA or the BCCI or of any other State Association. The expression "Councillor" should not be permitted to be circumvented by being a member of any other committee or of the Governing Council in MCA or in BCCI or in any other state association as the case may be.

(5) No individual, including one filling up a vacancy under Sub-Rule (9) below shall be a Councillor for more than 9 years. In the event of a Councillor completing 9 years before the expiry of his term, he shall cease to hold office on completion of 9 years.

(6) No nominated Councillor shall have more than one term of 3 years.

(7) Notwithstanding anything contained elsewhere in these Rules, a former President of the MCA shall not be entitled to be elected or nominated to the Apex Council in any capacity except for a second and final term as President, subject to sub-Rules (4) and (5) above.

(8) No Councillor, once elected, shall hold any office in any other Association/s or BCCI. The Ordinary Members shall take steps to fill up the vacancy so created immediately.

(9) Any vacancy in the Apex Council due to death,

resignation, insolvency, unsoundness of mind, nomination to the BCCI or other disqualification shall be filled up for the remaining period:

- a. In the case of an elected Councillor, by elections at a Special General Body meeting of the MCA convened by the Secretary for that purpose within 45 days;
- b. In the case of a nominated Councillor, in the same manner as prescribed for the respective nominee in Rule 14(2) above;

10 For the purposes of the Societies Registration Act, the governing body of the MCA shall be the Apex Council.

15. POWERS AND FUNCTIONS OF THE APEX COUNCIL

(1) The affairs of the Association shall be governed by the Apex Council and its framework of governance shall:

- i. Enable strategic guidance of the entity;
- ii. Ensure efficient monitoring of management;
- ii. Ensure the performance of the respective roles, responsibilities and powers of the CEO, Managers, Cricket Committees and Standing Committees, except the Governing Council.
- iv. Ensure a distribution and balance-of authority so that no single individual has unfettered powers;

(2) The Apex Council shall have all the powers of the General Body and authority and discretion to do all acts and things except such acts as by these rules are expressly directed or required to be done by the General Body. Exercise of such powers, authorities and discretion shall be subject to the control and regulation of the General Body. No regulation shall retrospectively; invalidate any act of the Apex Council which was otherwise valid.

(3) The Apex Council shall exercise superintendence over the

CEO, the Cricket Committees and the Standing Committees in the discharge of their duties generally, and in particular, in accordance with any general or special direction of the General Body, except for the Governing Council of the T20 Mumbai League whenever which is directly accountable to the General Body.

(4) In addition to and without prejudice to the generality of powers conferred directly or by necessary implication under these Rules and regulations and the Memorandum of Association, the Apex Council shall exercise the powers and perform the duties hereafter mentioned:

a. To control, permit and regulate all aspects regarding visits of invitee teams in area controlled by MCA, visits of teams within India and outside India and to settle terms on which such visits shall be conducted.

b.

21. CRICKETING MATTERS

(1) The management of cricketing matters such as selections, coaching and evaluation of team performance shall be exclusively handled by the Cricket Committees comprising only of former first class Players as set out in Rule 26

(2) The management, evaluation and selection of umpires shall be done by the Umpires Committee comprising only of past BCCI panel Umpires as set out in Rule 27.

(3) The reports of the Cricket and Umpires Committees shall be sent to the CEO for being forwarded to the Apex Council, but the CEO shall not in any way be involved in the preparation, approval or amendment of the same.

38. CONFLICT OF INTEREST

(1) A Conflict Of Interest may take any of the following forms as far as any individual associated with the MCA is concerned:

(i) Direct or Indirect Interest: When the MCA, a Member, the IPL or a Franchisee enter into contractual arrangements with entities in which the individual concerned or his/her relative, partner or close associate has an interest. This is to include cases where family members, partners or close associates are in positions that may, or may be seen to compromise an individual's participation, performance and discharge of roles.

Illustration 1:

A is an Office Bearer of the MCA when it enters into a broadcast contract with a company where A's son B is employed. A is hit by Direct Conflict of Interest.

Illustration 2:

C is a Member of the IPL/T20 Mumbai League Governing Council. The IPL/T20 Mumbai League enters into a contract with a new franchisee, the Managing Director of which is C's partner in an independent commercial venture. C is hit by Indirect Conflict of Interest.

Illustration 3:

D is the Office Bearer of a State Association. D's wife E has shares in an IPL/T20 Mumbai League Franchisee which enters into a stadium contract with the State Association. D is hit by Indirect Conflict of Interest.

Illustration 4:

F is President of the MCA. His son-in-law is a; Team Official of a Franchisee. F is hit by Conflict of Interest.

Illustration 5:

G is an employee of the MCA. His wife runs a catering agency that is engaged by the MCA. G is hit by Conflict of Interest.

(ii) Roles compromised: When the individual holds two separate or distinct posts or positions under the MCA, a

Member, the IPL/T20 Mumbai League or the Franchisee, the functions of which would require the one to be beholden to the other, or in opposition thereof.

Illustration 1: A is the Coach of a team. He is also Coach of an IPL/T20 Mumbai League Franchisee. A is hit by Conflict of Interest.

Illustration 2: B-is Secretary of the BCCI. He is also President of the State Association. B is hit by Conflict of Interest.

Illustration 3: C is the Vice President of the BCCI. He is also President of a State Association and member of a Standing Committee. C is hit by Conflict of Interest

Illustration 4: D is a Selector. He is also coach of an IPL/T20 Mumbai League franchisee. D is hit by Conflict of Interest.

(iii) Commercial conflicts: When the individual enters into endorsement contracts or other professional engagements with third parties, the discharge of which would compromise the individual's primary obligation to the game or allow for a perception that the purity of the game stands compromised.

Illustration 1: A runs a cricket academy. He is appointed as a selector. A is hit by Conflict of Interest.

Illustration 2: B is a MCA commentator. He also runs a sports management company which contracts members of the team. B is hit by Conflict of Interest.

Illustration 3: C is a selector. He is contracted to write a column on a tour that the national team is on. C is hit by Conflict of Interest.

Illustration 4: D is a team captain. He is also co-owner of a sports management agency, which is contracted to manage other team members. D is hit by Conflict of Interest.

Illustration 5: E is a member of the IPL Governing Council. He is engaged by a cricket broadcaster to act as

an IPL commentator. E is hit by Conflict of Interest.

(iv) Prior relationship: When the individual has a direct or indirect independent commercial engagement with a vendor or service provider in the past, which is now to be engaged by or on behalf of the MCA, its Member, the IPL or the Franchisee.

Illustration 1: A is President of the MCA, Prior to his taking office, he has been engaged professionally for his services by a firm B. After A becomes President, B is appointed as the official consultants of the MCA. A is hit by Conflict of Interest.

Illustration 2: B is the Secretary of a State Association. Prior to his election, he ran a firm C, specializing in electronic boundary hoardings. Upon becoming Secretary, the contract for the Association's stadium hoardings is granted to C. B is hit by Conflict of Interest.

Illustration 3: D is the Commissioner of the IPL. Before he came into this office he used to engage as his auditor for his business. After becoming Commissioner, E is appointed as auditor to the IPL. D is hit by Conflict of Interest.

Illustration 4: F is the Captain of an IPL team, and G is the teams manager. When F is made Captain of the national team, G is appointed as the national team's manager. F is hit by Conflict of Interest.

(v) Position of influence: When the individual occupies a post that calls for decisions of governance, management or selection to be made, and where a friend, relative or close affiliate is in the zone of consideration or subject to such decision-making, control or management. Also, when the individual holds any stake, voting rights or power to influence the decisions of a franchisee/ club/ team that participates in the commercial league(s) under MCA;

Illustration 1: A is a selector. His son is in the zone of consideration for selection. A is hit by Conflict of Interest.

Illustration 2: B is the Secretary of a State Association. He also runs a cricket academy in the State. B is hit by

Conflict of Interest.

Illustration 3: C is an umpire. His daughter D is a member of a team which is playing a match in which C officiates. C is hit by Conflict of Interest.

Illustration 4: E is the President of a State Association and his company F owns 12 cricket clubs in the State from which probables are selected for the State team. E is hit by Conflict of Interest.

EXPLANATION: The illustrations which refer to a President / Secretary / Vice-President may be read as illustrations referring to any other Office Bearer, and also to the members of the Apex Council, the Governing Council and the Committees.

(2) Within a period of 15 days of taking any office under the MCA, every individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a Conflict of Interest, and the same shall be uploaded on the website of the MCA. The failure to issue a complete disclosure, or any partial or total suppression thereof would render the individual open to disciplinary action which may include termination and removal without benefits. It is clarified that a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency.

(3) A Conflict of Interest may be either Tractable or Intractable.

a. Tractable conflicts are those that are resolvable or permissible or excusable through recusal of the individual concerned and/or with full disclosure of the interest involved;

b. Intractable conflicts are those that cannot be resolved through disclosure and recusal, and would necessitate the removal of the individual from a post or position occupied so that the conflict can cease to exist; Explanation: In illustration (iii) of Rule 38(1)(i), if the wife held 51% shares, the conflict will be treated as intractable. If the wife

holds 3% shares, whether the conflict is tractable or intractable will have to be decided by the Ethics Officer on the facts of the case. If the wife holds only 100 shares out of 1 crore shares, a disclosure of the same may be sufficient.

(4) It is clarified that no individual may occupy more than one of the following posts at a single point of time except where prescribed under these Rules;

- a) Player (Current)
- b) Selector / Member of Cricket Committee
- c) Team Official
- d) Commentator
- e) Match Official
- f) Administrator/ Office-Bearer
- g) Electoral Officer
- h) Ombudsman Ethics Officer
- i) Auditor)
- j) Any person who is in governance, management or employment of a Franchisee / BCCI any other State Association
- k) Member of a Standing Committee
- l) CEO & Managers
- m) Office Bearer of BCCI
- n) Service Provider (Legal, Financial etc.)
- o) Contractual entity (Broadcast, Security, Contractor, etc.)
- p) Owner of a Cricket Academy

(5) As far as incumbents are concerned, every disclosure mandated under Sub-Rule (3) may be made within 90 days of the Effective Date.

39. THE ETHICS OFFICER

1) The Association shall appoint an Ethics Officer at the Annual General Meeting for the purpose of guidance and resolution in instances of conflict of interest. The Ethics Officer shall be a retired Judge of a High Court so appointed by the Association after obtaining his/her consent and on terms as determined by the MCA in keeping with the dignity and stature of the office. The term of an Ethics Officer shall be one year, subject to a maximum of 3 terms in office.

2) Any instance of Conflict of Interest may be taken cognizance

of by the Ethics Officer:

- a. Suo Motu
- b. By way of a complaint in writing to the official postal or email address; or
- c. On a reference by the Apex Council;

3) After considering the relevant factors and following the principles of natural justice, the Ethics Officer may do any of the following:

- a. Declare the conflict as Tractable and direct that:
 - i. The person declare the Conflict of Interest as per Sub-Rule (3);
 - or
 - ii. The interest that causes the conflict be relinquished;
 - or
 - iii. The person recuse from discharging the obligation or duty so vested in him or her.
- b. Declare the conflict as Intractable and direct that:
 - i. The person be suspended or removed from his or her post;
 - ii. Any suitable monetary or other penalty be imposed, and
 - iii. The person be barred for a specified period or for life from involvement with the game of cricket;

The Ethics Officer is wholly empowered to also direct any additional measures or restitution as is deemed fit in the circumstances.

25 The Ethics Officer cum Ombudsman has observed that the act of the present petitioner taking up the post of Head-Cricket Coach in GSC can certainly be perceived to bring the interest of the respondent in conflict with the interest of the game of cricket or

interest of the association and his act can also give rise to apprehension of bias, lack of objectivity or monetary benefits. It is also observed by the Ethics Officer that the respondent was getting monetary benefit is clear from the contract signed with GSC. It is also observed by the Ethics Officer in the impugned judgment that it is clear that on 09.02.2021 when Ramesh Powar the brother of the present petitioner was appointed by MCA as a Coach of Mumbai Senior Team for the Season 2020-21, the petitioner was then and even today is the member of the Apex Council of MCA. The fact that the petitioner was an Apex Council Member when Ramesh Pawar was appointed as a Coach, is not disputed and it goes to show that the respondent had conflict of interest as stated in Rule 38(1) of MCA. The petitioner after being Apex Council Member on 04.10.2019, he should have made a declaration as required under Rule 38(2).

26 The learned Ombudsman has observed in paragraph 17 and 18 as under:

“17. Other contentions raised by the Respondent regarding the MCA appointing his brother Ramesh Powar as Coach on the recommendation of the independent body like Cricket Improvement Committee is immaterial. What is material is the conduct of the respondent in not maintaining transparency which is seen from the fact that he did not declare his conflict of interest on becoming Apex Council member. What is paramount in the Constitution is ‘Transparency’ and the Respondent has

shown total lack of Transparency.

18. It is an admitted fact that Mr. Ramesh Powar, the brother of the Respondent had been appointed as coach by MCA for a period from 21-8-2017 to 31-05-2018. Thus, when the Respondent was appointed as Apex Council Member on 4th October 2019, he knew that there is a possibility, if not certainty of his brother Mr. Ramesh Powar being appointed again as Coach with MCA in the year 2019 or thereafter. In such case the Respondent should have filed his Declaration as required under Rule 38 (2) of the Memorandum of Association of MCA dated 30-9-2019. Rule 38 (2) for easy reference is reproduced below:

"38. CONFLICT OF INTEREST

(2) Within a period of 15 days of taking any office under the MCA, every Individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a Conflict of Interest and the same shall be uploaded on the website of the MCA. The failure to issue a complete disclosure, or any partial or total suppression thereof would render the Individual open to disciplinary action which may include termination and removal without benefits. It is clarified that a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency."

27 Respondent also did not make any disclosure of he being appointed Head Cricket Coach by the GSC. The petitioner failed to produce his resignation letter as a Head Coach. It is not disputed that the petitioner was getting remuneration from GSC. It is also observed by the Ethics Officer that the petitioner was also in a position of influence as visualized under Rule 38(1)(5) of the MCA

constitution.

28 The Apex Council is primarily responsible for the governance of the affairs of the Association.

29 Rule 15 of the Constitution provides that the affairs of the Association shall be governed by the Apex Council and its framework of governance extends to ensure the performance of respective roles, responsibilities and powers of the CEO, Managers, Cricket Committees Standing Committees. Under section 15(3), the Apex Council exercises superintendence over the CEO, Cricket Committees and the Standing Committees in the discharge of their duties.

30 Under section 21, the Management of cricketing matters such as selections, coaching and evaluation of team performance is exclusively handled by the Cricket Committees. Prima donna, the contention of the Petitioner is that the brother of the Petitioner was appointed as a Head Coach of the MCA by the Cricket Committee and the Apex Council has no role to play.

31 Perusal of section 26(2)(A), the CIC is entrusted with the

function and the responsibility enumerated in section 26(2)(A)(ii). One of the function of CIC is to appoint the Head Coach of each of the Mumbai teams, so also recommend any outstanding player to the CEO, to allow him to play in any ongoing selection match, with special permission, for assessment of his class and performance and under sub clause (h) of 26(2)(A)(ii), report their recommendations to the Apex Council. In view of that, it would be clear that the selection and appointment of Head Coach of each of the Mumbai Teams, has to be reported to the Apex Council. The Petitioner was a member of the Apex Council and his brother was appointed as a Head Coach of the Mumbai Cricket Association.

32 The Petitioner did not declare his conflict of interest and became the Apex Council Member. The Petitioner did not maintain the transparency as is held by the Ethics Officer cum Ombudsman. The Petitioner was appointed as an Apex Council Member on 04.10.2019. Earlier also, the brother of the Petitioner was a coach appointed by MCA for a period 21.05.2017 to 31.05.2018 and he knew that his brother was in the zone of consideration. The said fact was not disclosed. The Petitioner ought to have filed his declaration as required under section 38(2). Under section 38(1)(v) a person occupies a position of influence if he occupies a post that calls for

decisions of governance, management or selection to be made, and where a friend, relative or close affiliate is in the zone of consideration or subject to such decision-making, control or management. Also, when the individual holds any stake, voting rights or power to influence the decisions of a franchisee / club / team that participates in the commercial league under MCA.

33 It is held by the Ethics Officer cum Ombudsman that the Petitioner was appointed as a Head Coach of GSC for remuneration. GSC is a member of the MCA. Its team would participate in the tournament conducted by the MCA. The GSC being a member of the MCA would have a right to participate in the elections to be held of the Apex Council.

34 Moreover, being a member of the Apex Council, a person would be in a position of influence in matters of selection as the CIC has to report its recommendation to the Apex Council. In view of the aforesaid facts, it cannot be said that the decision arrived at by the Ethics Officer cum Ombudsman is perverse for this court to interfere.

35 The other limb of the arguments of the learned counsel for the

Petitioner is that there was no reason to debar the Petitioner from involvement in the game of cricket for a period of one year.

36 Under section 39(3)(b), Ethics Officer has a power to suspend or remove a person from his post and also to debar for a specific period or for life for involvement in the game of cricket in case the conflict is intractable. The Ethics Officer has come to the conclusion that the conflict is intractable. The conflict could not have been resolved through disclosure and recusal. The conflict of interest of the respondent is not tractable. There is no full disclosure. If the petitioner would have made disclosure then conflict of interest of disclosure may have been tractable. Reasons are given by the Ethics Officer in that regard. The Ethics Officer has not debarred the Petitioner for life from involvement in the game of cricket but for a limited period of one year. No further penalty is imposed upon the Petitioner though the Ethics Officer had powers to do so under section 39(3)(b)(ii). No further disqualification is also directed against the Petitioner. It cannot be said that the punishment imposed and / or the order passed is shockingly disproportionate for this court to intervene.

37 As on merits, we have not interfered with the findings of the

Ethics Officer cum Ombudsman. We have not considered the objection of the Respondents regarding maintainability of the Writ Petition under Article 226 of the Constitution of India.

38 In light of the above, no interference is called for.

39 Writ Petition is disposed of. No costs.

(R.N.LADDHA, J.)

(S.V.GANGAPURWALA, J.)