

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

WRIT PETITION NO. 3652 OF 2022

1. Nadim Memon
adult, Indian Inhabitant, residing at
22, Munchaw House, Gunbow Street,
4th Floor, Fort, Mumbai 400 001 Petitioner

Versus

1. Mumbai Cricket Association
a society registered under the
Societies Registration Act, 1860 and
a public trust registered under the
Maharashtra Public Trust Act, 1950,
having its registered address at
3rd Floor, Cricket Centre, Wankhede
Stadium, 'D' Road, Churchgate,
Mumbai 400 020
2. Mayank Krishnakant Parikh
adult Indian Inhabitant residing at
B-31, Sarvodaya Nagar,
1st Panjrapole Lane, C.P. Tank,
Mumbai 400 004
3. Anjuman-I-Islam
a public trust registered under the
Maharashtra Public Trust Act, 1950
having its registered address at
Badraddin Tyabji Marg, Off 92,
Dadabhai Naoroji Road - 400 001
4. Muslims Sports Club
a maidan club and member of
Mumbai Cricket Association
having its office at
92, D.N.Road, Fort,
Mumbai - 400 001 Respondents

Dr.Birendra Saraf, Senior Advocate a/w Mr.Aseem Naphade, Mr.Deepak Deshmukh, Mr.Vivek Dwivedi, Mr.Rakesh Gupta i/b M/s.Naik Naik & Co. for the Petitioner

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

Mr.Venkatesh Dhond, Senior Advocate a/w Mr.Rohan Kelkar, Ms.Gargi Bhagwat, Mr.Yohan Mehta i/b M/s.Divekar Bhagwat & Co. for the Respondent no.2

Mr.Satchit Bhogale a/w Mr.Shabbir Jariwala and Ms.Anushka Panchmatia i/b M/s.MDP & Partners for the Respondent nos. 3 and 4

**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 dated 21.03.2022 passed by the learned Ombudsman of the Mumbai Cricket Association (MCA) disqualifying the Petitioner as a Councillor of the Apex Council of MCA.

2 The MCA is a Society registered under the Societies Registration Act, 1860. The MCA has 350 ordinary members. The Apex Council of the MCA is primarily responsible for the governance of the affairs of the Association. The Apex Council comprises of 17 Councillors of whom 5 are elected office bearers as per Rule 6 and

Remaining 12 are; a) Nine to be elected by ordinary members of 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 and 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. The term of the elected council is three years.

3 One Muslim Sports Club (MSC) is an ordinary member of MCA. Dr.Zahir Kazi claims to be an office bearer and president of MSC and representative of Muslim Sports Club in MCA. Dr. Zahir Kazi proposed and seconded the Petitioner's name as a candidate for the 2019 Apex Council elections. The Petitioner submitted his nomination papers to the Electoral Council. The same was accepted.

4 The Petitioner's election as a member of the Apex Council is challenged by the Respondent Complainant on the ground that the Petitioner was never the Secretary of the Muslim Sports Club. The Petitioner misrepresented that he is the Secretary of the Muslim Sports Club and on the basis of said misrepresentation and fraud got elected to the Apex Council of MCA. The learned Ombudsman allowed the complaint thereby disqualifying the Petitioner as a

Councillor of the Apex Council of the MCA. The same is assailed in the present Writ Petition.

5 We have heard Dr.Birendra Saraf, the learned Senior Advocate for the Petitioner, Mr.A.S.Khandeparkar, the learned counsel for Respondent no.1, Mr.Venkatesh Dhond, the learned Senior Advocate for Respondent no.2 and Mr.Satechit Bhogle, the learned counsel for the Respondent nos.3 and 4.

6 The Petitioner does not dispute that he not is the Secretary of the Muslim Sports Club. However, contends that he is the Joint Secretary of the Muslim Sports Club. Dr.Zahir I. Kazi while submitting the requisite form to the Electoral Officer referred the Petitioner as 'Secretary' instead of 'Joint Secretary'. According to the Petitioner, the same was an inadvertent error. Whereas according to the Respondents the same was misrepresentation and fraud played by the Petitioner and Dr.Zahir I. Kazi.

7 It may be because of an inadvertent error, the Petitioner was referred to as a Secretary instead of Joint Secretary, nonetheless, the Petitioner may be the office bearer of the Muslim Sports Club. The office bearer of the Muslim Sports Club could be a member of the

Apex Council of MCA. It does not appear that the learned Ombudsman has discussed as to whether Joint Secretary of Muslim Sports Club could be the representative and eligible to contest the Apex Council election. We do not find any finding on the same.

8 We have been apprised that fresh elections of the Apex Council have already taken place and the term of the members elected in the 2019 has come to an end. In light of that, present petition would merely remain academic. It is also not the case of either of the parties that the order of the learned Ombudsman would be an impediment for the Petitioner to contest fresh elections. In light of that, as the petition would be rendered academic, we are not inclined to entertain the same on merits though we may appreciate that the learned Senior Advocates and the Advocate for the respective parties have strenuously and eruditely canvassed the submissions in detail on the jurisdiction of this court to entertain the Writ Petition under Article 226 of the Constitution of India and so also on merits.

9 As the matter is now academic, we have not considered the arguments on the maintainability and the jurisdiction of the learned Ombudsman, as contended by the respective parties.

10 As the petition has been rendered academic, we dispose of the petition.

11 Writ Petition accordingly stands disposed of. No costs.

(R.N.LADDHA, J.)

(S.V.GANGAPURWALA, J.)