

**IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH**

**CWP-6863-2021 (O&M).**  
**Reserved on: 25.07.2023.**  
**Date of Decision: 17.08.2023.**

AMATEUR KABADDI ASSOCIATION HARYAYA

.. Petitioner

Versus

AMATEUR KABADDI FEDERATION OF INDIA AND ORS

... Respondents

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

Argued by Mr. Chetan Mittal, Sr. Advocate, with  
Mr. Udit Garg, Advocate,  
Mr. Ritvik Garg, Advocate, and  
Ms. Shifali Goyal, Advocate,  
for the petitioner.

Mr. Sudhir Nar, Sr. Panel Counsel,  
for respondent No.1/UOI.

Mr. Anmol Rattan Sidhu, Sr. Advocate, with  
Mr. Shiv Kumar Sharma, Advocate,  
Ms. Tejaswini Yadav, Advocate,  
Mr. U.K. Agnihotri, Advocate, and  
Ms. Anshul Agnihotri, Advocate,  
for the respondent No.2.

**VINOD S. BHARDWAJ, J.**

The questions which arise for determination in the  
present petition is as to whether the Administrator, who is vested  
with the powers of the President of the respondent AKFI, could

have referred a dispute to the Sole Arbitrator (which such power, if any, is with the General body) where the Bye laws provide a remedy of Appeal and where the petition for reference of dispute to arbitration had been withdrawn earlier without any liberty and as to whether such reference is bad for want of authority in the person (Administrator) to make such reference and liable to be set aside with all consequential proceedings.

Challenge in the present petition is to the order dated 15.02.2021 passed by the Administrator of Amateur Kabaddi Federation of India whereby he has referred the appeal against affiliation of the Respondent No.2 – Haryana Kabaddi Association with AKFI to an Arbitrator along with the consequential order dated 19.02.2021 nominating a sole arbitrator for adjudication of the said appeal.

### **FACTS**

That the petitioner-Amateur Kabaddi Association of Haryana (hereinafter referred to as “AKAH”) is a registered State Level Sports Association for the game of Kabaddi under the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter to be referred to as “the Act of 2012”). It claims to be affiliated with the respondent No.1- the Amateur Kabaddi Federation of India which is the National Sports Federation for the abovesaid sport. The respondent No.1 AKFI being the apex

body for the game of Kabaddi in India, is exclusively entitled to recommend team to represent 'India' for the International events. For discharging such functions, the grants come from the Government/Union of India. The AKFI is thus covered under 'agencies and instrumentalities of State' under the aegis of Article 12 of the Constitution of India. The respondent No.1-AKFI has been managing and controlling the game of Kabaddi from last more than 50 years and various State Level/Union Territory Kabaddi Associations are the members of the AKFI and constitute the General Body of AKFI.

Initially, for the purpose of controlling and managing the game of Kabaddi in the State of Haryana, the Haryana Kabaddi Association (here-in-after referred to as "HKA")-respondent No.2 was registered under the Societies Registration Act, 1860, in the year 1985 and was granted membership of the AKFI. The State of Haryana promulgated the Act of 2012 on 26.03.2012 repealing the Societies Registration Act of 1860 within its territorial jurisdiction. Under the mandatory provisions of the Act of 2012, every Society working and registered in the State of Haryana under the Societies Registration Act, 1860, was required to re-register itself under the provision of Act of 2012. Section 9 (1) thereof provides for registration of new Societies while Section 9 (4) of the Act of

2012 prescribed for re-registration of the existing Societies and apply for a new registration within a period of 2 years. The Act of 2012 and the rules notified thereunder provided not only for a distinct application under separate provisions but also for a distinct certificate of registration under separate Form. While an application for registration is required to be submitted in statutory Form-II and the certificate of Registration is issued under Form-III, the application for re-registration of an existing society is required to be submitted under a statutory Form-VI and the revised certificate is issued under Form VII. Separate registers are also maintained for each of such societies under the Act of 2012. Even though the erstwhile HKA was registered under the Societies Registration Act, 1860 in the year 1985, however, it did not get itself re-registered under the Act of 2012 and instead an application for fresh registration under Section 9(1) of the Act of 2012 was submitted by the respondent No.2-HKA, in statutory Form –II whereupon a fresh certificate in a statutory Form-III was issued to it on 07.12.2015. As it seized to be a continuation of the erstwhile body on having been registered as a new entity, it was required to seek a fresh affiliation with the AKFI. A separate claim for affiliation with the AKFI was also filed by the petitioner as the State sports Association.

Upon consideration of the rival claim to affiliation and the totality of circumstances including that the respondent no.2 HKA could not be deemed as continuation or alter-ego of the erstwhile society, the respondent No.1-AKFI affiliated the petitioner as against respondent No.2. Apart from being a new registered Society, later in point of time than the petitioner, certain other issues and defects were also noticed by the AKFI while rejecting the claim of respondent No.2-HKA for affiliation. It was also recorded that since election to the Executive Bodies of the erstwhile HKA had not been held a show cause notice dated 30.03.2017 (Annexure P-6) was issued to respondent No.2-HKA by the respondent No.1-AKFI. The respondent No.2, however, failed to submit any reply despite opportunity, whereupon, vide its order dated 02.05.2017 (Annexure P-7) respondent No.1 – AKFI disaffiliated respondent No.2 as its member, in exercise of its powers contained under Articles 29.1.2; 22.5 and 24.5 of the Memorandum of Association and Constitution of the AKFI. It was specifically observed therein that the last democratic elections of HKA had taken place on 17.04.2011 and that no elections were held thereafter. It was also noticed that it was registered as a new Association on 07.12.2015 and members of the above Association are different from members of the erstwhile Association affiliated with the AKFI, hence, it could not claim itself to be same Association. It was

also advised that the respondent No.2 HKA should not use the term “Affiliated to Amateur Kabaddi Federation of India”.

The above said order of 02.05.2017 of refusal of affiliation was challenged by the HKA through CWP No.10861 of 2017. The contentions of the HKA as petitioner therein (the respondent No.2 herein) was to the effect that they were not granted an opportunity of filing their response, hence, the order of refusing affiliation was in violation of the Principles of Natural Justice and on certain other grounds on merits.

After hearing counsel for the respective parties and without examining the merits of the case, this Court noticed that there appeared to be a violation of principles of natural justice and accordingly, the above said order dated 02.05.2017 was set aside solely on the ground that the petitioner therein (respondent No.2 herein) was not granted proper opportunity to contest the show cause notice. A time schedule was thereafter fixed for the parties to appear and submit their response(s) and the AKFI was to pass a fresh speaking order. The above CWP no.10861 of 2017 was accordingly disposed off in above terms by the High Court vide its order dated 18.05.2017 (Annexure P-8).

Pursuant thereto, the respondent No.1 –AKFI appointed an Ombudsman (a former judge of Rajasthan High Court) to look into the claim and objections of the respondent

HKA and to make his recommendation. Upon consideration of the rival claims, the Ombudsman recorded a finding that the HKA failed to hold periodical elections and hence violated the Memorandum of Association and Constitution of AKFI and also that there a complete change of the composition of the erstwhile Society and the respondent no.2. A decision was thus taken to disaffiliate respondent No.2 vide order dated 09.06.2017.

The said order dated 09.06.2017 alongwith the letter of disaffiliation was challenged in CWP No.20912-2017 titled as 'Haryana Kabaddi Association Versus Amateur Kabaddi Federation of India and others. This Court noticed the consensus of the parties that the Ombudsman was not competent to pass the above said order of disaffiliation and that such an order could only have been passed by the General Assembly of the AKFI in terms of Clause 29 of the Memorandum of Association and the Constitution of the AKFI. Accordingly, the writ petition was disposed of setting aside the order as well as the letter of disaffiliation dated 9.6.2017 and the matter was sent to the General Assembly with the observation that the parties shall be at liberty to raise all the issues available to them and the General Assembly of the AKFI shall decide the matter afresh after giving proper opportunity of hearing to the respective parties and in accordance with law.

The matter was accordingly placed before the General Assembly of AKFI which is undisputedly stated to be vested with the exclusive powers to decide on the issue of affiliation of any of the State Bodies/Member Bodies.

Pursuant to the above said order passed by this Court in CWP No.20912-2017, a meeting of the General Assembly was convened on 02.11.2017 and decision was to be taken. The voting on the decision was also held and by a majority of 54:03 votes of the General Assembly, respondent No.2-HKA was again disaffiliated, broadly on the following three grounds:-

*“This is with reference to the above orders dated 18-05-2017 and 19- 09-2017 passed by the Hon'ble Punjab & Haryana High Court. An opportunity of hearing has been given to you by the General Body of the AKFI and in pursuance thereof, a decision has been taken by the General Body of the AKFI, in its meeting dated 02-11-2017 held at Hotel Golden Tulip, M.I. Road Jaipur which was attended by 60 Representatives of AKFI including your good self.*

*After having elaborate discussions and close scrutiny of facts, the General Body of the AKFI with a majority of 54-03 votes (as per secret ballot demanded by you is of the opinion that the erstwhile Haryana Kabaddi Association (bearing Reg. No.*

*193/1985-86), represented by the District members has become a defunct and de-registered, by virtue of section 9 (4) of Haryana Registration and Regulation of Societies Act 2012. The present newly registered Haryana Kabaddi Association which claims to be the erstwhile association is not the same entity inasmuch as the composition of newly registered Haryana Kabaddi Association has been changed completely and the registered bye-laws/ constitution of newly registered Haryana Kabaddi Association (Reg. No. 1748/2015) gives voting right to individual members only and curtails the voting rights of the institutions (district-associations) which is in direct contravention of the National Sports Development Code, 2011-issued by the Ministry of Youth Affairs and Sports, Government of India. The purportedly elected District representatives of the Haryana Kabaddi Association had never participated in the alleged meetings of 07.11.2015, 08.11.2015, and 15.11.2015 and further, as per 3.10 and 3.19 of the National Sports Development Code 2011, the district associations are required to be the constituents of the association with full voting rights and the individuals though elected, do not have any voting rights whatsoever. The newly registered Haryana Kabaddi Association (Reg. No. 1748/2015) is clearly not the erstwhile Haryana Kabaddi Association (Registration No. 193 / 1985). Only the name of the association has been misused for registration of a new association which had actually never ever applied to the AKFI*

*for recognition and the AKFI at no point of time ever recognised this association (Haryana Kabaddi Association Reg. No. 1748/2015).*

*That during the intervening period, the participation of Haryana Kabaddi Association was because of the same name used by it and the same person leading the association. Needless to say that the AKFI was completely misled & the communications sent to the Haryana Kabaddi Association during 2014 to 2017 were because of the above said confusion.*

*The present executive committee of newly registered association in the name and style of the 'Haryana Kabaddi Association' has been elected only amongst the 11 initial individual members having shown present in the meetings dated 07.11.2015, 08.11.2015 and 15.11.2015 and the same cannot be treated as valid representation of democratically elected district representatives as the same shall be in violation of 3.10 and 3.19 of the National Sports Development Code, 2011. In the newly registered association, you have included the persons of your choice with voting rights, with an intention of having single handed control & dominion over the elections of the association whereas grass root representation of Districts has been deprived from exercising voting rights. This makes the newly registered Haryana Kabaddi Association (Reg. No. 1748/2015) a pocketed*

*association working for personal gains & ignoring the interest of the game of Kabaddi*

*The composition of the 'Haryana Kabaddi Association (Reg. No. 01748 dt. 07-12-2015) and the erstwhile 'Haryana Kabaddi Association (Reg. No. 193/1985-86) are altogether different. The newly registered 'Haryana Kabaddi Association (Reg. No. 01748 dt. 07-12-2015) was never recognized by the AKFI and the General Body of the AKFI has refused to recognize the same due to the above.*

*The 'Haryana Kabaddi Association (Reg. No. 01748 dt. 07-12-2015) is clearly not a Member Unit of AKFI & therefore, you are advised not to use the term 'affiliated to Amateur Kabaddi Federation of India or a member unit of AKF'I."*

The above said decision of the General Assembly of the AKFI was again challenged by HKA by filing CWP No.29848-2017 titled as 'Haryana Kabaddi Association Versus Amateur Kabaddi Federation of India' before this Court. The above said writ was decided by this Court vide its order dated 22.12.2017 after noticing that there was a provision of appeal as per the Clause 24.6 of MOA and Constitution of AKFI. It was also noticed that the Appellate Body is designated as an 'Arbitration Commission' as per the Constitution of the AKFI

and that such Body had not been constituted. Accordingly, compressive directions were issued by this Court directing respondent No.1-AKFI to constitute the Arbitration Commission i.e. the Appellate Body and upon the said Body being made functional, the information was to be supplied to the respondent HKA about the constitution of the said Appellate Authority. A further period of 21 days was granted to respondent No.2 to prefer its appeal after receipt of information and a final order was thereafter required to be passed on the appeal by the Appellate Authority viz. the Arbitration Commission. The relevant extract of the directions issued by this Court in its order dated 22.12.2017 passed in CWP No.29848-2017 are reproduced as under:

*“After hearing learned counsel for the parties and taking into consideration the aforesaid facts and circumstances, the present petition is disposed of with the following directions:*

- *The right to appeal is created in the Memorandum of Association and Constitution of the AKFI which has to be provided to the petitioner.*
- *If the Arbitration Commission, as stated by the learned counsel for respondent No.1, is not functional then it has to be made functional forthwith.*

- *The petitioner shall be informed by respondent No.1 about the constitution of the Arbitration Commission within 15 days from the date of receipt of certified copy of this order and the petitioner shall be granted 21 days time to file the appeal thereafter.*
- *It is made clear that on the filing of an appeal, the Arbitration Commission shall try to decide the same as early as possible but preferably within a period of three months from the date of initiation of the proceedings.”*

In compliance to the abovesaid order passed by the High Court, the respondent No.1 constituted the Appellate Authority designated as ‘Arbitration Commission’ under Article 24.6 of the Memorandum of Association and Constitution of the AKFI. An intimation was thereafter sent to respondent No.2 vide communication dated 08.01.2018 (Annexure P-11) informing that the Arbitration Commission had been made functional. Further, the AKFI also conveyed the names of three persons (former judges of High Courts) and an option was made to respondent No.2 to choose any one of them. Receipt of the aforesaid communication is neither disputed nor denied by the respondent No.2, however, it chose not to respond to the above said communication or exercise an option and/or to file an appeal before the Arbitration Commission. Rather the respondent No.2

approached this Court by way of an Arbitration Petition No.42 of 2018 invoking powers under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. The said Arbitration Petition was eventually withdrawn by respondent No.2 by filing CM No.27942 of 2018 and without seeking any liberties to pursue any alternative remedies. Accordingly, vide order dated 21.12.2018, the Arbitration Petition No.42 of 2018 was dismissed as withdrawn.

Apart from the above proceedings before this Court, a Writ Petition (Civil) bearing No.4601 of 2013 titled as 'Mahipal Singh and others Versus Union of India and others' had been filed before the Delhi High Court challenging the amendments to the Memorandum of Association and Constitution of respondent No.1-AKFI whereby the respondent No.5 therein had been enabled to be nominated as President of the AKFI. A further challenge was also raised to the election held on 19.05.2013 for the various posts of office bearers of respondent No.1-AKFI. A prayer for appointment of Returning Officer for conducting fair and impartial election to the Governing Body of AKFI was also made in addition to appointment of an *ad-hoc* Committee comprising of sports persons to oversee the day to day functioning of the AKFI. Vide its judgment dated 03.08.2018, the Delhi High Court allowed the

said writ petition and also set aside the election of the President of the AKFI and proceeded to appoint an Administrator to take over control of the AKFI and to administer all its affairs. He was ordered to substitute the President of the AKFI and to exercise all such powers which existed, heretofore, in the President of the AKFI. The operative part of the aforesaid judgment of the Delhi High Court dated 03.08.2018 is extracted as under:

*“77. In view of the above discussion, we allow the present writ petition. Resultantly, Clauses 8.9, 15.22, 15.8 and 17.2 of the amended MOA of the AKFI, are struck down as illegal. The appointment of Respondent No. 4 as Life President of the AKFI, is also, consequently, declared illegal. Equally, the election and consequent appointment of Respondent No. 5, as President of the AKFI, on 19th May, 2013 and 23rd April, 2017, are also declared illegal, and are accordingly quashed and set aside.*

*78. Given the totally clandestine and surreptitious manner in which the provisions of the MOA were illegally amended, in order to enable Respondent No. 5 to contest for the post of President, we further direct that Respondent No. 5 render accounts of all financial benefits, which have enured to Respondent No. 5, as and in her capacity as President of the AKFI since the time of her appointment to the said post on 19 th May, 2013 until date, and the same be recovered from her, forthwith.*

*79. Additionally, in view of the apparent anarchy, prevailing in the affairs of the AKFI, owing to the machinations of Respondents No. 4 and 5, we are of the opinion that it would be necessary, to preserve the very existence of the AKFI, to entrust its control and affairs to an impartial Administrator. We, therefore, issue additionally, the following directions:*

- (i) We appoint Shri Sanat Kaul, IAS (Retd.) as Administrator, who would, till further orders, take over control of the AKFI, and administer all its affairs. He shall stand substituted in place of the President of the AKFI, and shall be entitled to exercise all powers which existed, heretofore, in the President of the AKFI.*
- (ii) The Administrator shall ensure that the Electoral College of the AKFI is prepared, and elections held, in accordance with the Model Election Guidelines, within three months thereof.*
- (iii) The body so elected shall carry out the amendments to the MOA, to bring it in conformity with the NSCI.*
- (iv) Once this is done, a fresh round of elections shall be carried out, as per the amended MOA and in terms of the NSCI, ensuring that all stipulations in the NSCI, including age and tenure restrictions, are strictly complied with.*
- (v) The entire exercise shall be carried out within a period of six months from today.*

- (vi) *The AKFI shall make available to the Administrator an appropriate office space and facilities for the discharge of the aforesaid directions and make available such staff and personnel as the Administrator may express the need for. Alternatively, the Administrator may appoint such personnel to assist him in the aforesaid matter and expense towards the same shall be borne by the AKFI.*
- (vii) *Till the elections are conducted and results declared in consonance of the NSCI and in compliance with the preceding directions, the AKFI shall not make any new financial commitments except with the prior approval of the Administrator. Routine expenses of AKFI too shall be defrayed, with the due prior approval of the Administrator.*
- (viii) *The Administrator would submit a three-monthly report, to this Court, so as to enable this Court to be satisfied that the affairs of the AKFI are in order. The monthly remuneration of the Administrator is fixed at ₹ 1,00,000/- per month apart from miscellaneous expenses, tour and travel, secretarial assistance, etc., on actuals which would be disbursed, by the 5th of every month, by Respondent No. 1.*
- (ix) *The Bank accounts and other assets of AKFI shall be handed, and dealt with, only by the Administrator, or such other person (s),*

*whom he may choose to depute/appoint in this regard.”*

After the appointment of the Administrator of the respondent No.1-AKFI, the list of electoral college for the first round of election of the Executive Members of the AKFI was prepared by the Administrator and objections from all affiliated members were invited. The petitioner nominated its two representatives for the electoral college against which the objections were filed by respondent No.2- HKA. The Administrator thus proceeded to hear the respective parties on the objection raised to the representatives of the affiliated unit. After considering the rival submissions, the Administrator passed an order dated 25.01.2019 (Annexure P13), whereby the objections raised by the respondent No.2 against representative nominated by petitioner were not accepted and the claim of the petitioner, as the affiliated State Sports Association was accepted. The relevant part of the order dated 25.01.2019 passed by the Administrator shows that a specific reference was made to the earlier round of litigation initiated at the instance of respondent No.2 as also the fact that respondent No.2 had chosen not to opt for any of the Members of the Arbitration Commission for adjudicating its appeal and also not to prefer any appeal before the Appellate Authority. It was also noticed that a petition

for appointment of an Arbitrator had also been filed by respondent No.2 and the same was withdrawn without any further liberties. The Administrator finally held that the disaffiliation of respondent No.2 – HKA had not been set aside and that as a necessary consequence thereof, the petitioner – AKAH continued to be affiliated unit of Respondent No.1 – AKFI. Elections of the AKAH were duly conducted in the presence of the Observers from the respondent No.1-AKFI on 29.10.2017 and it has been performing various activities relating to Kabaddi. The relevant part of the abovesaid order is extracted as under:

*“It has come on record that previously HKA was the affiliated unit of AKFI. However vide show cause notice dated 03.05.2017, AKFI withdrew its affiliation. A new Body AKA Haryana came into existence and AKFI conferred affiliation to it. Apparently, there was some dispute between Mr. Vijay Prakash, the President and Mr. Kuldeep Dalal the Secretary of HKA. Mr. Kuldeep Dalal submitted his recognition and subsequently became the General Secretary of AKAH. Both the parties were asked to explore possibility of settlement as they were part of the same Association. Both the parties expressed their desire to resolve the dispute amicably.*

*It is on record that the Objector had challenged the withdrawal of affiliation by filing*

*CWP No.10861/2017 which was decided on 18.05.2017. Order dated 02.05.2017 was set aside on the ground that Mr. Vijay Prakash was not given the opportunity to contest the show cause notice. Order dated 19.09.2017 in CWP No. 20912/2017 reveals that the said petition was disposed off and the matter was sent back to General Assembly of AKFI to decide the dispute in terms of Clause 29 of the Memorandum of Association and Constitution of AKFI, Again HKA filed CWP 29848 of 2017 which came to be disposed by an order dated 22.12.2017. The Arbitration Commission was directed to be made functional and to decide the dispute as early as possible preferably within a period of 3 months. It is not disputed that AKFI appointed 3 former judges of Rajasthan High Court, Justice K.S. Rathore, Justice I.S. Israni and Justice Mahesh Sharma and conveyed it to the petitioner/objector on 08.01.2018. The petitioner was not satisfied with the appointment of the Arbitrators and again filed Arbitration Petition No.42/2018 before the Hon'ble High Court. While the said petition was pending, the Objector filed the objections in question.*

*There is change of circumstances after the hearing of the objections. The Objector moved an application under Section 151 CPC for withdrawal of the said petition as he wished to pursue his remedy before Administrator AKFI and to resolve all the disputes with the respondents therein amicably. By an order dated 21.12.2018, the said application for withdrawal of petition was allowed.*

*Apparently the disaffiliation which was challenged by the Objector of HKA has not yet been set aside so far. The AKAH continues to be the affiliated unit of AKFI. Its elections have been conducted in the presence of the observers from AKFI on 29.10.2017. It has performed various activities relating to Kabaddi since it came into existence. Allegations regarding irregularities and illegalities in the running of AKFI and financial benefits enjoyed by the previous Presidents cannot be gone into at this stage without conducting detailed inquiry in due course.*

*Names of the representatives of the affiliated unit have been called only for a limited purpose to prepare an "Electoral College" to constitute an elected body in terms of the judgement of Hon'ble High Court of Delhi for the purpose to amend the Constitution of AKFI to make it compliant with NSCI Code. The first round of election is to be carried out and after the amendment in terms of the order, the second round of election to elect a body is to be performed. So far the purpose of first round of election, names of the representatives of AKAH are to be accepted."*

The above said order passed by the Administrator was also not challenged by the respondent No.2 before any other Court/Forum. Instead, the respondent No.2 filed Writ Petition (Civil) bearing No.1340 of 2019 before the Delhi High Court for

seeking issuance of directions to the Administrator to issue Affiliation to the respondent No.2- HKA and to allow them to represent on behalf of the State of Haryana in other national and international sporting events. However, the above said writ petition was also withdrawn by the respondent No.2-HKA vide order dated 08.02.2019 (Annexure R-26). No liberty was sought for or granted by the Hon'ble Delhi High Court to respondent No.2 to file any fresh petition on the same cause of action.

Thereafter, a second round of election of AKFI was also held on 01.09.2019. Fresh objections filed by the respondent No.2 – HKA against the petitioner – AKAH to represent the State of Haryana in the elections of the Federation. The same was again rejected by the President/Administrator of the AKFI after also noticing that objections of respondent No.2 had already -been rejected on an earlier occasion as well by a detailed order dated 25.01.2019 (Annexure P-13) and the said order had become final between the parties. It was specifically held by the Administrator/President of the respondent No.1-AKFI that the respondent No.2 could not be permitted to attend the Annual General Body Meeting of the AKFI and that the names sent by them were liable to be rejected. The said objections were dismissed by the same Administrator/President of AKFI, who had now referred the dispute to the Sole Arbitrator. Even the

aforesaid order passed by the Administrator in the second round of elections was not challenged by the respondent No.2-HKA before any other Forum/Court.

After maintaining silence for a period of nearly 20 months, a representation was submitted by respondent No.1-HKA on 07.09.2020 to the Administrator to appoint an Arbitrator under Article 24.6 of the Memorandum of Association and Constitution of the AKFI.

Notice of the above said representation/application was issued to the petitioner-AKAH and a detailed response was submitted to the same on 10.12.2020 taking numerous objections including that the Administrator had no power or authority to appoint an Arbitrator and that the respondent No.2-HKA had abandoned and/or waived its rights to get the dispute resolved through the appellate mechanism having failed to respond to the communication sent by the AKFI. Notwithstanding that there had been three round of writ petitions and an Arbitration Petition been filed earlier before this Court as also dismissal of the objections on two occasions by the Administrator and withdrawal of writ petition from the Delhi High Court, the Administrator allowed the representation of the respondent No.2-HKA and decided to refer the matter/appeal to the Arbitrator. Vide subsequent order dated 19.02.2021 (Annexure P-18), the

respondent No.3 was appointed as Sole Arbitrator to adjudicate the issue amongst the parties. The issue is pending before the Sole Arbitrator and an application under Section 16 of the Arbitration and Conciliation Act, 1996 has also been filed by the petitioner and the same is pending before the Arbitrator.

At the same time, the petitioner preferred the instant writ petition before this Court challenging the aforesaid order of the Administrator on 22.03.2021 and prior to appearance before the Sole Arbitrator to defend their rights and without prejudice to the remedy already availed. Vide order dated 05.05.2021, the proceedings before the Sole Arbitrator had been stayed by this Court.

### **REPLY**

Despite service of notice, the respondent No.1-AKFI has chosen not to appear in the proceedings before this Court. A separate reply was, however, filed by respondent No.2-HKA wherein it has been asserted that it is a duly registered association working in the field of promoting the discipline of Kabaddi in the State of Haryana since 02.07.1985. It was re-registered on 07.12.2015 after the promulgation of the Act of 2012. The petitioner-AKAH was illegally inducted and affiliated by AKFI in violation of the bye-laws, governing Constitution and the National Sports Development Code, 2011. It is pointed

out that earlier the name of the respondent No.2-HKA was Haryana State Kabaddi Association (HSKA), however, after the coming into force of the Act of 2012, the word “State” was not allowed to be used and had to be deleted from its name. Hence, the same was re-registered under the name of “Haryana Kabaddi Association (HKA)”. It is stated that there are 22 districts in the State of Haryana and as such there are 22 units/members of the respondent No.2-HKA. It sent a letter on 05.12.2016 to AKFI as well as to the Secretary General, Haryana Olympic Association communicating the scheduled date of election to be held on 18.12.2016 in Bhiwani (Haryana). A subsequent letter dated 06.12.2016 was also sent to the District Registrar of Societies, Bhiwani, Haryana intimating about the scheduled elections. A response was received by the respondent No.2-HKA that election to the Society can be conducted once in three years and as per the record of the respondent No.2, available with the Office of District Registrar, the same were not due. A request was thus submitted vide letter dated 14.12.2016 to the District Registrar and it was again prayed that the elections may be allowed to be conducted since the entire Governing Body of respondent No.2-HKA had already been dissolved. A representation was also submitted by HKA to the AKFI informing that due to coming into force of the Act of 2012, no Society or Association could run its activities under the old Act and that the name had to be

changed on account of the mandate of the Act of 2012 and the words like “Union” and “State” were not allowed to be used under the said Act of 2012. It was thus conveyed that the Registration Certificate of respondent No.2- HKA may be new, however, it remains the same old society. Despite the detailed communication, the AKFI passed an order against the respondent No.2 without affording any opportunity of hearing. The said orders as well as the subsequent order were subject matter of challenge in various writ petitions that have already been noticed above. It was further averred that as per Clause 29 of the Memorandum of Association and Constitution of respondent No.1-AKFI, it could have disaffiliated/de-recognized/suspended any member unit on account of the following reasons:

- (i) Non-observance of directive issued by the AKFI.
- (ii) Not holding elections after the completion of the normal tenure for which the office bearers are elected.
- (iii) Not submitting annual audited statement of accounts, annual report and list of current office bearers within the stipulated time period.

It is contended that since none of the aforesaid event had ever occurred or noticed in the impugned orders, the AKFI

could not have disaffiliated/de-recognized the respondent No.2-HKA. It could not be said to be in default of holding any election as it had sent letters/communications for holding elections, however, the District Registrar of Firms and Societies did not allow the HKA to conduct the elections. Hence, there was no default on the part of the respondent No.2-HKA. It was further submitted that it was wrongly recorded in the order/communication dated 20.11.2017 that respondent No.2-HKA had become defunct and has been re-registered as per Section 9(4) of the Act of 2012 and the provisions of the Act of 2012 do not stipulate any Association to become defunct as is written/interpreted by respondent No.1-AKFI in its proceedings held on 02.11.2017. Challenge was also raised to the reasoning of the General Assembly of AKFI in its meeting held on 02.11.2017 qua the status of respondent No.2-HKA as a totally different Association on the following grounds:

*“(i) Haryana Registration and Regulation of Societies Rules, 2012 framed under the Haryana Registration & Regulation of Societies Act, 2012 contemplate what types of members can be elected to a registered Society. In terms of Section 14 of the said Act, it is contemplated that a Society shall consist of minimum seven members at the time of its registration and it may admit persons, founding members, life members, ordinary*

*members, associate members, tenure member or honorary member in accordance with the provisions as contained in the bye-laws.*

*(ii) Further, as per Haryana Registration & Regulation of Societies Rules, 2012 it was contemplated that there could be four types of members who are detailed herein-below:-*

*(a) Founder Members: Founder member is a member who has been admitted as a founder member at the time of registration of the society. There were 11 founder members in the Respondent No.2 Haryana Kabaddi Association (HKA).*

*(b) Life Members: Life member is a member who may be admitted as a life member on payment of prescribed fee and such person can be admitted as a life member of the society. There were 31 (thirty-one) life members in the Respondent No.2 Haryana Kabaddi Association (HKA)*

*(c) Ordinary Member: Ordinary members in the society shall be the ones who would continue to enjoy the membership till they are not in any arrears of payment of annual subscription fee. There were 22 districts in Haryana and each district was represented by two members in the*

*Respondent No.2 Haryana Kabaddi Association and thus there were 44 ordinary members who were entitled to vote.*

*d) Honorary Members: Honorary members are the ones who have distinguished talent and merits or whose association is deemed to be beneficial to the society or who has rendered services of outstanding merit to the society. There were no honorary members inducted in the society. In any case, the honorary members are entitled to attend the meetings and contribute the deliberations but they have no right to vote.*

*iii. Thus, the Respondent No.2 HKA had in due compliance of the provisions of the Haryana Registration and Regulation of Societies Act, 2012 and the Rules framed thereunder inducted the abovementioned members who were entitled to vote as well.*

*iv. Thus, the allegations of the Respondent No. 1 AKFI in the minutes of meeting dated 02.11.2017 which were conveyed vide Letter dated 20.11.2017 that the earlier association had become defunct and the composition of the new association were totally baseless.”*

It is thus averred that the respondent No.1-AKFI had acted in an arbitrary and highhanded manner and has disaffiliated the respondent No.2-HKA for invalid considerations and in an undue haste which reflects malafide in its action. Subsequent proceedings initiated by it and the orders passed therein are also not disputed by the respondent No.2-HKA. It is, however, contended by counsel for respondent No.2 that the affairs of the respondent No.1-AKFI, being conducted in an arbitrary manner, were duly examined by the High Court of Delhi in its judgment dated 03.08.2023 passed in Writ Petition (Civil) No.4601 of 2013, wherein the elections of respondent No.1-AKFI held on 09.08.2013 and 23.10.2017 were held to be illegal and were set aside including the appointment of the then President of respondent No.1-AKFI and further, a power was conferred upon the President to prepare a fresh panel of the General Assembly for conducting elections to the Governing Body of respondent No.1-AKFI. A reference was made to the observation recorded by the Delhi High Court in its order/judgment which impugned the functions of respondent No.1-AKFI and the manner in which the National Federation had been held as a personal property by the office bearers. It is thus contended that the General Assembly itself seized to exist and the power of the General Assembly were to be exercised by the Administrator himself. Representation was accordingly

submitted before the Administrator to pass an order for affording an opportunity of hearing. It is further contended that the petitioner having already appeared before the sole Arbitrator, all issues can be examined by the sole Arbitrator and he cannot plead any prejudice merely on account of the remedy for redressal of grievance having been made available to the respondent No.2 against its wrongful disaffiliation. The petitioner was registered later in point of time as compared to respondent No.2-HKA and cannot steal a march over and above the entitlement of respondent No.2 to be affiliated with the National Body-AKFI. It is also averred that the affiliation granted to the petitioner is not in accordance with the National Sports Development Code, 2011. It is further averred that the petitioner has the remedy to take/raise all pleas before the sole Arbitrator including the jurisdiction in terms of Section 16, which is still pending. Such remedy was also available to it by filing an application under Section 12 of the Arbitration and Conciliation Act, 1996. Further, the petitioner having participated in the on-going proceedings before the sole Arbitrator and having not filed any application under Section 14 of the Act of 2012 seeking termination/removal of the said Arbitrator, there is no reason as to why the proceedings before the Arbitrator ought to be discontinued at this stage. A prayer for dismissal of the writ petition was also made.

No reply was filed on behalf of the Respondent no.3- the sole arbitrator.

**ARGUMENTS OF THE PETITIONER**

Learned senior counsel appearing on behalf of the petitioner has vehemently argued that the appointment of the Arbitrator by the Administrator is wholly illegal, void *ab initio* and without jurisdiction. He has submitted that by virtue of the order dated 03.08.2018 passed by the High Court of Delhi, the Administrator was conferred with the powers of the President only. As an Administrator, he had no powers to refer any dispute to an arbitrator and any such power could have been exercised only by the general assembly of the AKFI. Still further, as the Arbitral Commission being the Appellate Authority had already been appointed and intimation had been sent to the respondent No.2 HKA vide letter dated 08.01.2018, there was no occasion or cause for the Administrator to have appointed a sole Arbitrator to look into the subject matter of appeal which could only have been decided by the Appellate Authority prescribed in the framework of the MOA and Constitution of AKFI. It is also argued that a time period of 21 days to prefer an appeal, after the constitution of the Arbitration Commission, had been granted by this High Court in its order dated 22.12.2017 (Annexure P-10) and that the reference of the appeal to the Sole Arbitrator, much

after the expiry of the period of limitation to file an appeal, is clearly an attempt to over-reach the order passed by this court after recording the consent of the parties and bypassing the statutory remedy of appeal that has been prescribed. It is also in violation of the laws of limitation which crystallized rights in favour of the petitioner. He further submits that in its essence, the reference of a dispute to a Sole Arbitrator is an exercise of jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, whereas no such jurisdiction has been conferred upon the Administrator. There had been no arbitration agreement between the parties as per section 7 of the Arbitration and Conciliation Act, 1996 to refer an appeal against the decision of the AKFI to the Sole Arbitrator. The mere nomenclature or description of the appellate authority as “Arbitral Commission” cannot be constructed or interpreted to mean as resolution of the dispute through an ‘arbitration proceeding.’ The decision of the Administrator to make reference of the issue to arbitration is hence void ab initio for want of an authority.

It has been further argued that the respondent No.2/HKA would be deemed to have abandoned its claims and waived off all its rights by having not preferred any appeal before the Arbitral Commission within the prescribed statutory time frame and as reiterated by this Court in its order dated 22.12.2017 supra.

It is further argued that the HKA also preferred a petition for seeking reference of the dispute to the Arbitrator in arbitration Petition No.42 of 2018 filed before this Court. The said arbitration petition was withdrawn unconditionally and without seeking any liberties. Subsequently, another writ petition raising a claim that it was the state body entitled to be affiliated to the AKFI was filed before the Delhi High Court and even the said proceedings were also withdrawn. Not only that, when the election to the governing body of AKFI were to be held and general assembly/electoral college was to be prepared, the respondent HKA filed objections to the nominations of the petitioner-Association to participate in the said election process. The said objections were dismissed twice over and at both stages of the election processes. The said orders passed by the Administrator were not challenged by the respondent HKA before any competent Forum. The same thus attained finality. Having chosen not to agitate or press for its rights, in case of any grievance flowing from the orders passed by different authorities at various points of time, there is a deemed waiver and abandonment of rights. Reliance is placed on the judgment of *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P. Gwalior and others, reported as 1987 (1) S C C 5* to substantiate the argument that where there is an unconditional withdrawal of the petition, the same would amount

to abandonment of right to reagitate the said issue. The relevant extract of the said judgment is reproduced hereinafter below:-

*“5. In this case we are called upon to consider the effect of the withdrawal of the writ petition filed under Articles 226/227 of the Constitution of India without the permission of the High Court to file a fresh petition. The provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') are not in terms applicable to the writ proceedings although the procedure prescribed therein as far as it can be made applicable is followed by the High Court in disposing of the writ petitions. Rule 1 of Order XXIII of the Code provides for the withdrawal of a suit and the consequences of such withdrawal. Prior to its amendment by Act 104 of 1976, Rule 1 of Order XXIII of the Code provided for two kinds of withdrawal of a suit, namely, (i) absolute withdrawal, and (ii) withdrawal with the permission of the Court to institute a fresh suit on the same cause of action. The first category of withdrawal was governed by sub-rule (1) thereof as it stood then, which provided that at any time after the institution of a suit the plaintiff might, as against all or any of the defendants 'withdraw' his suit or abandon a part of his claim. The second category was governed by sub-rule (2) thereof which provided that where the Court was satisfied (a) that a suit must fail by reason of some formal defect, or (b) that there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it might, on such terms as it thought fit, grant the plaintiff permission to withdraw from such suit or abandon a part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Sub-rule (3) of the former Rule 1 of order XXIII of the Code provided that where the*

*plaintiff withdrew from a suit or abandoned a part of a claim without the permission referred to in sub-rule (2) he would be liable to such costs as the Court might award and would be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Since it was considered that the use of the word 'withdrawal' in relation to both the categories of withdrawals led to confusion, the rule was amended to avoid such confusion. The relevant part of Rule 1 of Order XXIII of the Code now reads thus:--*

*"Rule 1. Withdrawal of suit or abandonment of part of claim--(1)  
At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:*

*\*\*\*                      \*\*\*                      \*\*\*\*\**

*(3) Where the Court is satisfied--*

*(a) that a suit must fail by reason of some formal defect, or*

*(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.*

*(4) Where the plaintiff--*

*(a) abandons any suit or part of claim under sub-rule (1), or*

*(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),*

*he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."*

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7. The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. Invito beneficium non datur. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally

decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit, or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court.

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao and Ors. v. The State of U.P. and Ors.*, [1962] 2 S.C.R. 575 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India

*because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao's case (supra) is to be found at page 593 and it is as follows:*

*"If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."*

*9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed*

*to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open.*”

A reference is also made to the judgment of this Court in the matter of **Housing Board Haryana and another Vs. M/s Comfits Marketing and others, FAO NO.4329 of 2004, decided on 13.08.2019**, to emphasize on the plea that the claim raised by respondent No.2 before the Administrator would be barred by limitation. Reliance is also placed on the judgment of the Hon’ble Supreme Court in the matter of **Wildlife Institute of India, Dehradun Vs. Vijay Kumar Garg, reported as (1997) 10 S C C 528**. The relevant extract of the said judgment is reproduced hereinafter below:-

*“6. It is also necessary to refer to the arbitration clause under the contract which clearly provides that if the contractor does not make any demand for*

*arbitration in respect of any claim in writing within 90 days of receiving the intimation from the appellants that the bill is ready for payment, the claim of the contractor will be deemed to have been waived and absolutely barred and the appellants shall be discharged and released of all liabilities under the contract in respect of these claims. The liability, therefore, of the appellants ceases if no claim of the contractor is received within 90 days of receipt by the contractor of an intimation that the bill is ready for payment. This clause operates to discharge the liability of the appellants on expiry of 90 days as set out therein and is not merely a clause providing a period of limitation. In the present case, the contractor has not made any claim within 90 days of even receipt of the amount under the final bill. The dispute has been raised for the first time by the contractor 10 months after the receipt of the amount under the final bill.”*

Reference was also made to the judgment with respect to abandonment, delay and waiver of the Hon’ble Madras High Court in the matter of **Mr. Ramasamy Athappan and another Vs. The Secretariat of the Court, International Chamber of Commerce, reported as 2008 SCC Online Mad. 789** which relied on the judgment of the **Food Corporation of India (FCI) Vs. Yadav Engineer and Contractor, reported as**

(1982) 2 SCC 499. The relevant extract of the Ramaswamy (supra) judgment is reproduced hereinafter below:-

*“32. One of the circumstances when an arbitration agreement may become inoperative is, when the dispute arising out of the underlying contract is resolved. The Supreme Court of New South Wales, Commercial Division, Australia, took such a view in Shanghai Foreign Trade Corporation (PR China) vs. Sigma Metallurgical Co. Pty. Ltd., (Yearbook Commercial Arbitration, Vol. XXII-1997 page 609). An agreement may be rendered inoperative even by acts of omission or commission, on the part of the parties. Waiver, abandonment, renunciation, election, acquiescence etc., are some of the acts of commission or omission, by which an agreement may be made inoperative by a party. In his "The Law and Practice of Arbitration and Conciliation (2nd Edition) Mr.O.P.Malhotra, the learned Author says the following about waiver:-*

*"Waiver of the right to arbitration, however, cannot be easily assumed. It requires an unequivocal demonstration of intent to waive. In determining whether a party has waived its right to arbitration, the Court examines the following factors -*

*(i) whether the party's actions are inconsistent with the right to arbitrate;*

*(ii) whether the litigation machinery has been substantially invoked and the parties were well into*

*preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate;*

*(iii) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay;*

*(iv) whether a defendant seeking arbitration filed a counter-claim without asking for a stay of the proceedings;*

*(v) whether important intervening steps (eg, taking advantage of judicial discovery procedures not available in arbitration) had taken place; and*

*(vi) whether the delay affected, mislead, or prejudiced the opposing party (Jackson Trak Group, Inc v Mid States Port Auth 242 Kan 683, 751, P 2d 122, 129 (1988) cited in Malarky Enterprises (US) v Healthcare Technology Ltd (UK), Yearbook Commercial Arbitration, vol. XXIII-1998 (US No.248) 945, 947)"*

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*34. The issue of abandonment of the right to arbitration was considered by the Apex court in F.C.I. Vs. YADAV ENGINEER AND CONTRACTOR {(1982) 2 SCC 499}, wherein the Supreme Court held as follows:-*

*“Abandonment of a right to seek resolution of dispute as provided in the arbitration agreement must be clearly manifested by the step taken by such party. Once such unequivocal intention is declared or abandonment of the right to claim the benefit of the agreement becomes*

*manifest from the conduct, such party would then not be entitled to enforce the arbitration agreement because there is thus a breach of the agreement by both the parties disentitling both to claim any benefit of the arbitration agreement. Section 34 provides that a party dragged to the Court as defendant by another party who is a party to the arbitration agreement must ask for stay of the proceedings before filing the written statement or before taking any other step in the proceedings. That party must simultaneously show its readiness and willingness to do all things necessary to the proper conduct of the arbitration. The legislature by making it mandatory on the party seeking benefit of the arbitration agreement to apply for stay of the proceedings before filing the written statement or before taking any other steps in the proceedings unmistakably pointed out that filing of the written statement discloses such conduct on the part of the party as would unquestionably show that the party has abandoned its rights under the arbitration agreement and has disclosed an unequivocal intention to accept the forum of the Court for resolution of the dispute by waiving its right to get the dispute resolved by a forum contemplated by the arbitration agreement. When the party files written statement to the suit it discloses its defence, enters into a contest and invites the Court to adjudicate upon the dispute. Once the Court is invited to adjudicate upon the dispute there is no question of then enforcing an arbitration agreement by forcing the parties to resort to the forum of their choice as set out in the arbitration agreement. This flows from the well-settled principle that the Court would normally hold the parties to the bargain*

*{see Ramji Dayawala & Sons (P) Ltd Vs. Invest Import {(1981) 1 SCR 899 : (1981) 1 SCC 80}.*

35. Again in *GENERAL ELECTRIC CO. Vs. RENUSAGAR POWER CO. {(1987) 4 SCC 137}*, the Supreme Court held as follows:-

*“Thus we see that it is the view of this Court that a step in the proceeding which would disentitle the defendant from invoking Section 34 of the Arbitration Act should be a step in aid of the progress of the suit or submission to the jurisdiction of the Court for the purpose of adjudication of the merits of the controversy in the suit. The step must be such as to manifest the intention of the party unequivocally to abandon the right under the arbitration agreement and instead to opt to have the dispute resolved on merits in the suit. The step must be such as to indicate an election or affirmation in favour of the suit in the place of the arbitration. The election or affirmation may be by express choice or by necessary implication by acquiescence. The broad and general right of a person to seek redressal of his grievances in a Court of law is subject to the right of the parties to have the disputes settled by a forum of mutual choice. Neither right is insubstantial and neither right can be allowed to be defeated by any manner of technicality. The right to have the dispute adjudicated by a Civil Court cannot be allowed to be defeated by vague or amorphous miscalled agreements to refer to arbitration. On the other hand, if the agreement to refer to arbitration is established, the right to have the dispute settled by arbitration cannot be allowed to be defeated on technical grounds.”*

*(Emphasis supplied)*

Learned Senior counsel appearing on behalf of the petitioner has further argued that the clause relating to the appeal under the bye-laws/Constitution of the Society (AKFI) cannot be construed or interpreted to be an arbitration clause within the meaning of Arbitration and Conciliation Act of 1996. An agreement amongst the parties for reference of a dispute to arbitration is a *sine qua non*. He places reliance on Section 7 of the Act of 1996 to contend that there has to be an agreement amongst the parties to refer a dispute to arbitration and in the absence thereof, the Administrator could not have referred the issue to the Sole Arbitrator. The provisions contained in the MOA and Constitution of the AKFI are independent, distinct and operate in separate spheres. Provisions of the Act of 1996 cannot be imported for adjudicating the appeal by misinterpreting and misapplying the nomenclature of ‘Arbitral Commission’ as The Appellate Authority as the process of arbitration. Reliance is placed on the judgment of **Mahanadi Coalfields Ltd. vs M/S IVRCL Amr Joint Venture 2022 SCC Online SC 960**. The relevant paragraphs are extracted as under:-

*“7. The submission which has been urged on behalf of the appellants by the learned Attorney General is that clause 15 of the Contract Agreement dated 30 January 2012 does*

*not constitute an arbitration agreement. Hence, it has been urged that in the absence of an arbitration agreement within the meaning of Sections 2(b) and 7 of the 1996 Act, the very invocation of the jurisdiction under Section 11(6) was not valid. In order to appreciate the submission, it would be necessary to extract clause 15 of the Contract Agreement. The provision reads as follows:*

*“15. Settlement of Disputes/Arbitration:*

*15.1 It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level. The contractor should make request in writing to the Engineer-in-Charge for settlement of such disputes/claims within 30 (thirty) days of arising of the case of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.*

*15.2 If differences still persist, the settlement of the dispute with Govt. Agencies shall be dealt with as per the Guidelines issued by the Ministry of Finance, Govt. of India in this regard. In case of parties other than Govt. Agencies, the redressal of the disputes may be sought in the Court of Law.”*

*8. Section 2(b) of the 1996 Act defines an arbitration agreement to mean an agreement as referred to in Section 7. In terms of Section 7, an arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise*

*between them in respect of a defined legal relationship, whether contractual or not. Sub-section (2) of Section 7 stipulates that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. In terms of sub-section (3) of Section 7, the arbitration agreement has to be in writing. Sub-section (4) of Section 7 then stipulates that:*

*“(4) An arbitration agreement is in writing if it is contained in-*

*(a) a document signed by the parties;*

*(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or*

*(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.”*

*9. In Jagdish Chander v. Ramesh Chander, (2007) 5 SCC 719, a two-judge bench of this Court, while relying upon the earlier decisions in K. K. Modi v. K. N. Modi, (1998) 3 SCC 573, Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd, (1999) 2 SCC 166 Bihar State Mineral Development Corpn v. Encon Builders (I) (P) Ltd., (citation) and State of Orissa v. Damodar Das, (1996) 2 SCC 216, enumerated the principles governing what constitutes an arbitration agreement. Justice R V Raveendran, speaking on behalf of the bench, held that the words used in an arbitration agreement should disclose a determination and obligation on behalf of parties to refer disputes to arbitration. This court held:*

*“8 (i) The intention of the parties to enter into an arbitration agreement shall have to be gathered from the terms of the agreement. If the terms of the agreement clearly indicate an intention on the part of the parties to the agreement to refer their disputes to a private tribunal for adjudication and a willingness to be bound by the decision of such tribunal on such disputes, it is arbitration agreement. While there is no specific form of an arbitration agreement, the words used should disclose a determination and obligation to go to arbitration and not merely contemplate the possibility of going for arbitration. Where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding arbitration agreement.*

*(ii) Even if the words “arbitration” and “Arbitral Tribunal (or arbitrator)” are not used with reference to the process of settlement or with reference to the private tribunal which has to adjudicate upon the disputes, in a clause relating to settlement of disputes, it does not detract from the clause being an arbitration agreement if it has the attributes or elements of an arbitration agreement. They are:*

- (a) The agreement should be in writing.*
- (b) The parties should have agreed to refer any disputes (present or future) between them to the decision of a private tribunal.*
- (c) The private tribunal should be empowered to adjudicate upon the disputes in an impartial manner,*

*giving due opportunity to the parties to put forth their case before it.*

*(d) The parties should have agreed that the decision of the private tribunal in respect of the disputes will be binding on them.*

*(iii) Where the clause provides that in the event of disputes arising between the parties, the disputes shall be referred to arbitration, it is an arbitration agreement. Where there is a specific and direct expression of intent to have the disputes settled by arbitration, it is not necessary to set out the attributes of an arbitration agreement to make it an arbitration agreement. But where the clause relating to settlement of disputes, contains words which specifically exclude any of the attributes of an arbitration agreement or contains anything that detracts from an arbitration agreement, it will not be arbitration agreement. For example, where an agreement requires or permits an authority to decide a claim or dispute without hearing, or requires the authority to act in the interests of only one of the parties, or provides that the decision of the authority will not be final and binding on the parties, or that if either party is not satisfied with the decision of the authority, he may file a civil suit seeking relief, it cannot be termed as an arbitration agreement.*

*(iv) But mere use of the word “arbitration” or “arbitrator” in a clause will not make it an arbitration agreement, if it requires or contemplates a further or fresh consent of the parties for reference to arbitration. For example, use of words such as “parties can, if they so*

desire, refer their disputes to arbitration” or “in the event of any dispute, the parties may also agree to refer the same to arbitration” or “if any disputes arise between the parties, they should consider settlement by arbitration” in a clause relating to settlement of disputes, indicate that the clause is not intended to be an arbitration agreement. Similarly, a clause which states that “if the parties so decide, the disputes shall be referred to arbitration” or “any disputes between parties, if they so agree, shall be referred to arbitration” is not an arbitration agreement. Such clauses merely indicate a desire or hope to have the disputes settled by arbitration, or a tentative arrangement to explore arbitration as a mode of settlement if and when a dispute arises. Such clauses require the parties to arrive at a further agreement to go to arbitration, as and when the disputes arise. Any agreement or clause in an agreement requiring or contemplating a further consent or consensus before a reference to arbitration, is not an arbitration agreement, but an agreement to enter into an arbitration agreement in future.”

(emphasis supplied)

10. In the present case, clause 15 of the Contract Agreement is titled “Settlement of Disputes/Arbitration”. However, the substantive part of the provision makes it abundantly clear that there is no arbitration agreement between the parties agreeing to refer either present or future disputes to arbitration.

11. Clause 15.1 contains a reference to the steps to be taken for settlement of disputes between the parties.

*Clause 15.2 stipulates that if differences still persist, the settlement of the disputes with government agencies shall be dealt with in accordance with the guidelines of the Ministry of Finance. In the case of parties other than government agencies, the redressal of disputes has to be sought in a court of law.*

12. A clause similar to clause 15 of the Contract Agreement in the present case was considered by a bench of this Court in *IB Valley Transport, Vijay Laxmi (P) Ltd. v. Mahanadi Coalfields Ltd* consisting of *J Chelameswar and A. K. Sikri, JJ. (2014) 10 SCC 630*. In the said case, the clause was interpreted as an alternative remedy at the company level to be exhausted before taking recourse to other suitable legal remedies. It was observed:

“10. From the aforesaid narration of facts, it becomes clear that Clause 12 of the general terms and conditions provides for a mechanism of dispute resolution before resorting to the legal remedies. This clause specifically states that it is incumbent upon the contractor to avoid litigation and disputes during the course of execution. If any dispute takes place between the contractor and the department, effort shall be made first to settle the disputes at the company level. Further, this clause states that the contractors should make request in writing to the Engineer Incharge for settlement of such dispute/claim within 30 days of arising of cause of dispute/claim.”

(emphasis supplied)

13. The above extract makes it abundantly clear that clause 15 of the Contract Agreement is a dispute resolution mechanism at the company level, rather than an arbitration agreement. Consequently, in case of a dispute, the respondent was supposed to write to the Engineer-in-charge for resolving the dispute. Clause 15 does not comport with the essential attributes of an arbitration agreement in terms of section 7 of the 1996 Act as well as the principles laid down under Jagdish Chander (supra). A plain reading of the above clause leaves no manner of doubt about its import. There is no written agreement to refer either present or future disputes to arbitration. Neither does the substantive part of the clause 8 refer to arbitration as the mode of settlement, nor does it provide for a reference of disputes between the parties to arbitration. It does not disclose any intention of either party to make the Engineer-in-Charge, or any other person for that matter, an arbitrator in respect of disputes that may arise between the parties. Further, the said clause does not make the decision of the Engineer-in-Charge, or any other arbitrator, final or binding on the parties. Therefore, it was wrong on the part of the High Court to construe clause 15 of the Contract Agreement as an arbitration agreement.

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xxx    xxx    xxx  
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16. The communication dated 7 April 2017 merely indicates a desire on behalf of CIL to have disputes related to work contracts settled by arbitration. It requires both the parties to arrive at a further agreement to

*proceed to arbitration when the dispute arises. Therefore, in view of the principles laid down in Jagdish Chander (supra), following a line of precedent, clause 5 in the aforesaid communication cannot be construed as an arbitration agreement between the appellants and the respondent in terms of section 7 of the 1996 Act so as to compel the appellants to appoint an arbitrator.*

*17. The order of the Chief Justice of the High Court of Orissa dated 20 July 2018 proceeds on an understanding that the learned counsel for both the sides did not dispute the fact that clause 15 of the Contract Agreement and clause 5 of the policy decision 7 April 2017 taken by CIL provide for appointment of an arbitrator in case there is any dispute or difference between the parties. The order has, therefore, proceeded on an understanding of counsel, which in any event cannot be regarded as a binding statement of law on the existence of an arbitration agreement.”*

*(Emphasis supplied)*

It is also contended that Clause 24.4 of the Memorandum of Association and Constitution of AKFI (erstwhile Clause 24.6) lacks essential ingredients as required under Section 7 of the Act of 1996 and that the Administrator could not have involved the petitioner as a third party in the above said arbitration process more-so when the dispute was, at best, inter se amongst the AKFI and HKA regarding disaffiliation of respondent No.2 by the AKFI.

He further relies on the judgment of Vimal Kishore Sha and others Vs. Jayesh Dinesh Shah and others, reported as 2016 (8) SCC 788, to support his argument that there is a necessity for existence of a valid arbitration agreement, as per Section 7 of the Act of 1996, before reference of any such dispute. Relevant para thereof is extracted as under:-

*“53. We, accordingly, hold that the disputes relating to Trust, trustees and beneficiaries arising out of the Trust Deed and the Trust Act are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. A fortiori – we hold that the application filed by the respondents under Section 11 of the Act is not maintainable on the ground that firstly, it is not based on an "arbitration agreement" within the meaning of Sections 2(b) and 2(h) read with Section 7 of the Act and secondly, assuming that there exists an arbitration agreement (clause 20 of the Trust Deed) yet the disputes specified therein are not capable of being referred to private arbitration for their adjudication on merits.*

*54 We thus add one more category of cases, i.e., category (vii), namely, cases arising out of Trust Deed and the Trusts Act, 1882, in the list of (vi) categories of cases specified by this Court in Para 36 at page 546-547 of the decision rendered in Booz Allen & Hamilton Inc. (2011) 5 SCC 532 which as held above cannot be decided by the arbitrator(s).”*

*(Emphasis Supplied)*

Reference is also made to the judgment of ***Vidya Drolia and others Vs. Durga Trading Corporation, reported as 2021 (2) SCC 1***, and the judgment in the matter of ***Indian Farmers Fertilizers Cooperative Limited Vs. Bhadra Products, reported as 2018 (2) SCC 534*** to hammer the existence of a valid arbitration clause and privity to the arbitration agreement. The relevant extract of the ***Vidya Drolia (supra)*** judgment is reproduced hereinafter below:-

*“2. A deeper consideration of the order of reference reveals that the issues required to be answered relate to two aspects that are distinct and yet interconnected, namely:*

*2.1 Meaning of non-arbitrability and when the subject matter of the dispute is not capable of being resolved through arbitration; and*

*2.2 The conundrum – “who decides” – whether the court at the reference stage or the arbitral tribunal in the arbitration proceedings would decide the question of non-arbitrability.*

*2.3 The second aspect also relates to the scope and ambit of jurisdiction of the court at the referral stage when an objection of non-arbitrability is raised to an application under Section 8 or 11 of the Arbitration and Conciliation Act, 1996 (for short, the ‘Arbitration Act’).*

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*18. Arbitration is a private dispute resolution mechanism whereby two or more parties agree to resolve their current or future disputes by an arbitral tribunal, as an alternative to adjudication by the courts or a public forum established by law. Parties by mutual agreement forgo their right in law to have their disputes adjudicated in the courts/public forum. Arbitration agreement gives contractual authority to the arbitral tribunal to adjudicate the disputes and bind the parties.*

*19. The expression ‘arbitration agreement’ has been defined in clause (d) of sub-section (2) to mean an agreement as defined in Section 7 of the Arbitration Act.*

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*21. The term ‘agreement’ is not defined in the Arbitration Act, albeit it is defined in Section 10 of the Indian Contract Act, 1872 (for short, the ‘Contract Act’), as contracts made by free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not thereby expressly declared to be void. Section 10 of the Contract Act also stipulates that aforesaid requirements shall not affect any law in force in India (and not expressly repealed) by which a contract is required to be made in writing, in presence of witnesses or any law relating to registration of documents. Thus, an arbitration agreement should satisfy the mandate of Section 10 of the Contract Act, in addition to satisfying other requirements stipulated in Section 7 of the Arbitration Act.*

*22. Sections 12 to 18 of the Contract Act state when a person can be said to be of a sound mind for the purpose*

*of contracting and define the expressions ‘consent’, ‘free consent’, ‘coercion’, ‘undue influence’, ‘fraud’ and ‘misrepresentation’. Sections 19 to 23 relate to voidability of agreements, the power to set aside contracts induced by undue influence, when both the parties are under mistake as to a matter of fact, effect of a mistake as to the law, effect of a mistake by one party as to a matter of fact and what considerations and objects are lawful and unlawful. Sections 24 to 30 relate to void contracts and Sections 26 and 27 therein state that agreements in restraint of marriage and agreements in restraint of trade, respectively are void, albeit Exception (1) to Section 27 saves agreements for not carrying out the business of which goodwill is sold. Section 28 of the Contract Act states that agreements in restraint of legal proceedings are void, but Exception (1) specifically saves contracts by which two or more persons agree that any dispute, or one which may arise between them, in respect of any subject or class of subjects shall be referred to arbitration.*

*23. Arbitration agreement must satisfy the objective mandates of the law of contract to qualify as an agreement. Clauses (g) and (h) of Section 2 of the Contract Act state that an agreement not enforceable in law is void and an agreement enforceable in law is a contract. As a sequitur, it follows that an arbitration agreement that is not enforceable in law is void and not legally valid.*

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*54. Implicit non-arbitrability is established when by mandatory law the parties are quintessentially barred*

*from contracting out and waiving the adjudication by the designated court or the specified public forum. There is no choice. The person who insists on the remedy must seek his remedy before the forum stated in the statute and before no other forum.*

*55. Doctrine of election to select arbitration as a dispute resolution mechanism by mutual agreement is available only if the law accepts existence of arbitration as an alternative remedy and freedom to choose is available.*

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*236. Having established the threshold standard for the Court to examine the extent of validity of the arbitration agreement, as a starting point, it is necessary to go back to Duro Felguera (2017) 9 SCC 729 which laid down:*

*“48.....From a reading of Section 11(6–A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.” At first blush, the Court seems to have read the existence of the arbitration agreement by limiting the examination to an examination of its factual existence. However, that is not so, as the existence of arbitration agreement does not mean anything unless such agreement is*

*contractually valid. This view is confirmed by the Duro Felguera case (supra), wherein the reference to the contractual aspect of arbitration agreement is ingrained under the Section 7 analysis. A mere agreement is not legally binding, unless it satisfies the core contractual requirements, concerning consent, consideration, legal relationship, etc. In Mayavati Trading Case (2019) 8 SCC 714 and Garware Wall Ropes Ltd. v. Coastal Marine Construction and Engineering Ltd., (2019) 9 SCC 209, the aforesaid stand has been confirmed. Therefore, the scope of the Court to examine the prima facie validity of an arbitration agreement includes only the determination of the following:-*

*237.1 Whether the arbitration agreement was in writing? or*

*237.2 Whether the arbitration agreement was contained in exchange of letters, telecommunication, etc?*

*237.3. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?*

*237.4 On rare occasions, whether the subject-matter of dispute is arbitrable?*

*238. At the cost of repetition, we note that Section 8 of the Act mandates that a matter should not be referred to an arbitration by a court of law unless it finds that prima facie there is no valid arbitration agreement. The negative language used in the Section is required to be taken into consideration, while analyzing the Section. The Court should refer a matter if the validity of the arbitration agreement*

*cannot be determined on a prima facie basis, as laid down above. Therefore, the rule for the Court is ‘when in doubt, do refer.’*

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It has also been argued that a mere submission of an application under section 16 of the Act of 1996 cannot be interpreted as acceptance of the arbitration. Scope of section 16 goes to the maintainability and/or objections with respect to the subject matter of dispute and it cannot question the appointment of the arbitrator.

While referring to the provisions of the Haryana Registration and Regulations of Societies Act, 2012, learned senior counsel vehemently argued that Section 9 of the Act of 2012 read with the rules framed thereunder specifically provides different forms of registration of the Societies. Not only the application has to be filed under different substantive provisions, even the forms prescribed for submission of such application is separate. A distinct and independent certificate of registration is issued by the competent authority under the Act of 2012 and the Rules framed thereunder. Section 9 (1) of the Act of 2012 deals with new registrations while section 9(4) deals with registration of the existing societies. An application had been submitted by respondent no.2 for seeking registration under Section 9 (1) and the application (Form II) was submitted in the prescribed

statutory form applicable to Registration of new societies notwithstanding that existing societies seeking re-registration under Section 9 (4) of Act of 2012 were required to submit application in separate Form VI prescribed thereunder. He thus contends that apart from the above said statutory issues noticed, the General Assembly of the AKFI had also noticed numerous other deficiencies and defects in the functioning of respondent No.2 before the order of dis-affiliation was passed. It was also noticed that the members of the newly registered Society were not the same as that of the Society of 1985 and hence, respondent No.2 could not be labeled as a successor entity of the Society of 1985. The said Society of 1985 would be deemed as having ceased to exist. The respondent No.2 cannot step into the shoes of the said Society and claim same status and/or rights in law. Once the statute prescribed a particular procedure for granting continuity and status, having opted not to approach the authorities under the applicable provisions, an inference has to be drawn against respondent No.2.

Certain general arguments with respect to the powers of the Administrator to take decisions and concealment of facts by respondent No.2 had also been raised. However, not much emphasis was laid on the said arguments during the course of hearing. The same are thus not being referred to.

**ARGUMENTS OF RESPONDENTS.**

Learned senior counsel appearing on behalf of respondent No.2/HKA does not dispute the above factual aspects referred to by the learned counsel for the petitioner. He however contends that respondent No.2 has not been afforded any opportunity to lead his defence before disaffiliation. The representation was accordingly submitted by respondent No.2 with the Administrator for adjudication of the issue whereupon a reference to arbitration was made by him. The Administrator having been conferred all the powers was fully competent to refer the parties to Arbitration.

It is contended that the petitioner having appeared before the Arbitrator, all such issues that are being agitated before this Court, can also be examined by the arbitrator and he is fully competent to rule on the same.

It is further argued by the learned senior counsel for the respondents that the petitioner has not been granted affiliation by Indian Olympic Association and as such, he has no right to file the present petition and the same is not maintainable in the present form. The challenge, if any, can only be raised by the AKFI and not by the petitioner to the reference of the dispute to arbitration.

An argument is also advanced that the petitioner has an efficacious remedy against the award that may be passed and

that the apprehensions of the petitioner are misconceived and are unsustainable. He vehemently argues that respondent No.2 is in fact a continuation of the former association that had been registered in the year 1985 and that mere erroneous submission of the application under Section 9 (1) of the Act of 2012 would not take away the erstwhile status of respondent No.2 Association. It is pointed out that since the nomenclature “State,” “Union”, had to be removed from the registered names as per the Act of 2012, hence, an application was submitted by the respondent No.2 for seeking registration of the Society after coming into force of the Act of 2012. All the members of the said Society happen to be the same members who were originally the members of the Society of 1985. Hence, there is a continuity.

It is further submitted that reasoning given by the General Assembly of the AKFI-respondent No.1 for disaffiliating the respondent No.2 is untenable and that all necessary compliances had been made.

In so far as the reason as regards the election having not been held since the year 2011 is concerned, learned counsel refers to the averments contained in the written statement to contend that intimation for holding elections had been sent to the office of the District Registrar Firms and Societies and also to the respondent Federation. They refused to nominate the Observers and/or their officials to conduct the

proceedings/elections. Resultantly, any consequences for the lapse in holding elections cannot be attributed to respondent No.2.

A reference is also made to the order passed by the High Court of Delhi in CWP No.4601 of 2013 to contend that it was specifically noticed by the Delhi High Court in its judgment dated 21.12.2017 that the affairs of the AKFI were being run as a family fiefdom and that the Administrator who was so appointed was also directed to prepare the Panel of the electoral college all over again. Consequently, the General Assembly ceased to exist and hence, all powers of the General Assembly would vest with the President. Hence, he has rightly exercised the above powers and jurisdiction and has committed no illegality in referring the dispute to the arbitrator. It is also contended that the petitioner has already submitted an application under Section 16 of the Act of 1996 which is pending before the Arbitrator and owing to the proceedings having been stayed by this Court, final decision thereupon could not be taken. The issues and objections raised herein could thus be decided by the arbitrator himself and he is competent to rule on the same. The grounds that have been raised by the petitioner in the present writ petition for impugning the order passed by the Administrator have also been raised in the application moved by the petitioner before the sole arbitrator under Section 16 of the Act of 1996.

Learned Senior counsel contends that the petitioner was at liberty to move an appropriate application under section 14 of the Act of 1996 for seeking removal of the sole arbitrator so appointed in case he has any objection to the same. Having not done so and having chosen to appear before the arbitrator in the ongoing proceedings he has submitted to the jurisdiction of the sole arbitrator and the proceedings cannot thereafter be challenged by way of a writ petition.

Reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **Bhaven Construction through Authorised signatory, reported as (2022) 1 SCC 75**. The relevant extract is reproduced hereinbelow:-

*“26. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the Court examines the same under Section 34. Respondent No. 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In Deep Industries case (2020) 15 SCC 706, this Court observed as follows: (scc p.718, para 22)*

*“22. One other feature of this case is of some importance. As stated herein above, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is*

*provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34.”*

*(Emphasis Supplied)*

It is also argued by the learned Senior counsel that respondent No.2 had submitted an application for reference of the dispute to the arbitrator in terms of Clause 24.6 of the unamended Memorandum of Association and Constitution of the AKFI which is undisputedly *pari materia* to clause 24.4 providing for the appellate remedy. The administrator having been conferred with total control and all powers of the General Assembly was fully competent to make a reference of the aforesaid dispute to the sole arbitrator. Further, no prejudice is likely to be caused to the petitioner on account of the above said disputes being decided by the sole arbitrator and it shall have the remedies available under the Act of 1996. It is further contended that clause 24.4, 24.5 and 25 of the Memorandum of Association (MOA) and Constitution of AKFI have to be harmoniously construed and that the resolution of the disputes has to be done through the process of arbitration as stipulated in Clause 24.5 and 25. Accordingly, the power of reference of the dispute to the arbitrator has been rightly invoked by the administrator.

It is also contended that a mere withdrawal of the petition filed by the petitioner under Section 11 (6) of the Act of 1996, would not act to the detriment of the rights of the petitioner. The arbitration as well as its process having been statutorily contemplated under the Memorandum of Association and Constitution of AKFI, the respondent No.2 would not be precluded from approaching the AKFI (the administrator) for referring the dispute to arbitration within the aegis thereof. Reference having been made in terms of and in exercise of the powers conferred under the MOA, there would be no waiver or acquiescence and/or estoppel against respondent No.2-applicant.

### **ARGUMENTS IN REBUTTAL**

In rebuttal, learned Senior counsel for the petitioner has contended that the issue pertaining to the dis-affiliation/de-recognition of the Member Unit is covered under Clause 29 of the MOA and not under the general clauses. Clause 24.5 is applicable only with respect to the requirement of the member units to subject their dispute to the said mechanism. The said clause is not applicable when the issue relates to any decisions or orders passed by the AKFI and such issues are to be dealt with under clause 24.4. i.e. General disciplinary regulations. The power/function exercised being covered under a specific and separate provision, the other clauses under the disciplinary

proceedings of the general head of Clause 24 cannot be applied to the appellate proceedings against an order passed in exercise of the powers conferred under Clause 29 of the MOA.

He further contends that the respondent No.2 had challenged the earlier order passed by the Administrator before the Delhi High Court and sought restoration of its disaffiliation and the writ petition was eventually withdrawn. The above said fact was kept concealed by them and came to light only when a subsequent response was filed by them (P-13).

### **CONSIDERATION**

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present petition with their able assistance.

For the facility of reference, certain provisions of the MOA and Constitution of the AKFI, as are being relied upon by the respective parties, are extracted as under:-

#### ***“24. General Disciplinary Regulations –***

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*24.4. Appeal – Any decision taken by the AKFI is subject to appeal before the Arbitration Commission of AKFI within 30 days after the receipt of the decision.*

*24.5. All Member Units of AKFI will commit themselves to refer their unresolved disputes for settlement through the process of Arbitration with the Arbitration Commission which would be highest independent authority for the resolution of disputes.*

*25. Settlement of Disputes/Conflicts in the Member Units – All State/U.T. Kabaddi Associations and member units affiliated to AKFI will include in their Constitution a provision that the Associations would have all unresolved disputes settled by the Arbitration Commission of AKFI and their Members will voluntarily surrender their right of seeking redress in any Court of Law.*

*xxx    xxx    xxx*

*28. Residual Powers – In the event of disagreement concerning the above Disciplinary Rules, the interpretation of these regulations will fall within the competence of the AKFI General Assembly, which will be the final authority as and when referred by the Executive Council.*

*29. Disaffiliation/De-Recognition of Member units-*

*29.1 The AKFI General either directly or through the AKFI Executive Council, based on its discretion, is entitled to consider disaffiliation / de- recognition of the Member Unit of AKFI on one or more of the under mentioned grounds, after ensuring that a Show Cause Notice has been served and an explanation has been obtained and considered from the organization recommended for disaffiliation/de- recognition.*

- 29.1.1. *Non-observance of directives issued by the Amateur Kabaddi Federation of India from time to time.*
- 29.1.2. *Not holding elections after the completion of the normal tenure for which the office bearers are elected.*
- 29.1.3. *Not submitting annual audited statement of accounts, annual report, list of current office-bearers and list of affiliated units within the stipulated time period.”*

**The Arbitration and Conciliation Act, 1996.**

**“2. Definitions.**

*(1) In this Part, unless the context otherwise requires,—*

*(a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;*

*(b) "arbitration agreement" means an agreement referred to in section 7;*

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*(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;*

xxx    xxx    xxx

**7. Arbitration agreement**

*(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

*(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

*(3) An arbitration agreement shall be in writing.*

*(4) An arbitration agreement is in writing if it is contained in -*

*(a) a document signed by the parties;*

*(b) an exchange of letters, telex, telegrams or other means of telecommunication <sup>1</sup>[including communication through electronic means] which provide a record of the agreement; or*

*(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*

*(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.*

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***16. Competence of arbitral tribunal to rule on its jurisdiction -***

*(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*

*(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*

*(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*

*(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.*

*(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.*

*(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.*

*(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.*

*(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”*

*(Emphasis supplied)*

For determining the questions that arise for consideration by this Court it is to be determined whether the Administrator could have referred the appeal to Arbitrator, despite such a remedy not being prescribed under the MOA and Constitution of AKFI and without not being conferred with the powers of the General Body under clause 28 of the MOA, more so when such appellate body as stipulated under clause 24.4 had been duly constituted and an opportunity was extended to the party to prefer an appeal and also as to whether the Administrator could refer an issue to the sole arbitrator notwithstanding that there was no arbitration agreement as under Section 7 of the Act of 1996.

However, before adverting to the said issues, it is essential to advert to an objection raised by the respondent No.2 as regards the maintainability of the present petition and the locus of the petitioner to file the same. The objection is raised for the reason that the challenge before the administrator was to the decision of the General Assembly relating to its dis-affiliation. Once the decision to refer the matter to Arbitration is not being challenged either by the AKFI or by the HKA, the petitioner AKAH would have no right to feel aggrieved of such a reference and to file the present petition.

It has been argued by the counsel for the petitioner that as per the National Sports Development Code, there can be only one sports body that can be affiliated to the National body. Since there is no functional general assembly or a duly elected body of AKFI and that any decision taken on the representation of respondent No.2 has a bearing on the rights of the petitioner, hence, it has the locus to raise a challenge to an act/order passed by the Administrator which prejudices its prospect of its own recognition considering that it has already been granted affiliation by the AKFI and only its recognition by the Indian Olympic Association remains pending.

He has further submitted that even the petitioner-association has also been subjected to arbitration proceedings which are not maintainable and the respondent had no authority to make such a reference, as such, it has a locus to raise a challenge to file the instant petition.

The petitioner also claims that the appellate remedy(ies) available to respondent No.2 have already come to an end after the judgment of this Court in CWP No.29848 of 2017 whereby the parties were relegated to the remedy of appeal before the Arbitral Commission and respondent No.2 had been granted a period of 21 days to prefer an appeal after the constitution of the Arbitration Commission. Despite intimation

thereof to, the respondent no.2 failed to avail the remedy of appeal. The rights in favour of the petitioner thus stand crystallized. Reopening of such rights, that have become final and binding between the parties, would have an irreparable and prejudicial impact.

No serious objection to above said contention(s) and maintainability of the petition at the behest of the petitioner is asserted by the counsel for respondent No.2 during the course of arguments.

Having heard the learned counsel for the parties and taking into consideration the fact that the parties have been long litigating before this Court for their inter se rights and also the fact that the petitioner has also been referred by the Administrator to the arbitration proceedings, it cannot be said that the reference of the issue to arbitration in the above manner would have no bearing on the rights of the petitioner or that it has no right to raise a challenge to any such order. It being well settled that there can only be one sports body that can be affiliated with the National Sports Federation, the claim of the petitioner that the order of disaffiliation/de-recognition of the respondent HKA having become final and binding, the petitioner Association is the undisputed sports body affiliated with the National Sports Federation. Even though the AKFI may not have

raised any challenge, however, merely because of an absence of the challenge, on account of absence of an elected body, cannot be taken as a consent of the AKFI to the reference of dispute to the Arbitration. Acts done by the Administrator cannot be said to be having the backing of the general body of the AKFI. The entire dispute, which had already become final, has been reopened notwithstanding the litigation history and the rights that have settled in parties therefrom.

Taking all the above said factual aspects and their effect on the respective rights of the parties coupled with no serious objection by the respondents to the maintainability of the present petition, I am of the opinion that the present writ petition would be maintainable at the behest of the petitioner AKAH.

Now, while advertng to the question for consideration before this Court about the legality, validity and sustainability of the reference of the dispute by the Administrator to the sole arbitrator, the contention of the petitioner is that the Administrator had no capacity or authority to nominate any arbitrator or to refer the dispute between the AKFI and other members to Arbitration considering that there was a prescribed statutory remedy of appeal under clause 24.4. of MOA and further that in the previous round of litigation initiated by respondent No.2-HKA before this Court, they had admitted and

acknowledged about the above said remedy and had also subjected itself to the appellate jurisdiction.

Even though a contention had been raised on behalf of respondent No.2, who was the petitioner in the above said writ petition, that it does not have faith in the Arbitral Commission required to be constituted as per the MOA, however, notwithstanding the above said objection, this Court directed the AKFI to constitute the Arbitral Commission and to inform about the same to the respondent HKA and it was granted the time period as prescribed under Memorandum of Association and Constitution for preferring an appeal. Hence, the attempt made by the petitioner to seek reference of the dispute to arbitration or to any other independent body (other than Appellate body – Arbitral Commission) was not only noticed but was also declined by this Court by necessary inference, as per the order passed by this Court. Once the respondent no.2 had been relegated to the remedy of approaching only the appellate forum, any reference and/or initiation of proceedings by way of an arbitration would be contrary to the provisions of the MOA and be in supersession of the appellate remedy prescribed under the MOA as well as the direction issued by this Court in its order dated 22.12.2017 passed in CWP No.29848 of 2017.

Per contra, the emphasis of the counsel appearing on behalf of respondent No.2 has been only on the aspect that clause 24.5 stipulates settlement of disputes through the process of arbitration and that the respondent No.2 had submitted an application for resolution of the dispute as per clause 24.6 (now 24.4.) of the amended MOA and that the AKFI opted to refer the appeal to the sole arbitrator. Hence, the decision was taken by the AKFI itself to refer the dispute to the appellate remedy of arbitrator and that the proceedings must be construed as those under clause 24.4 by the process of the arbitration under the Act of 1996. It has further been argued that once the arbitrator as nominated by respondent No.1 is already seized of the matter, no prejudice would be caused in case all these issues are decided by the arbitrator appointed by respondent No.1-AKFI. He has laid emphasis on the need to reconcile different clauses of the MOA and Constitution of AKFI.

It is apparent from a perusal of the clause 24.4 of MOA and the Constitution of the AKFI that the same provides for remedy of appeal against any order of the AKFI by way of an appeal to the 'Arbitration Commission.' Clause 28 of the aforesaid MOA and the Constitution of the AKFI deals with the residuary powers and confers all such authority with the General Assembly of the AKFI. Respondent No.2 had itself conceded

that the jurisdiction to take a decision with respect to the affiliation/disaffiliation is within the domain of the General Assembly and not that of the President. It is also conceded by the counsel for the respondent no. 2 that the power to refer the dispute to arbitration is also vested with the General Assembly. An attempt has been made to justify the order of reference by arguing that the Administrator was competent to exercise the powers of the General Assembly in the absence of a duly constituted General Assembly, and that the reference to the Arbitration is hence validly made.

Clause 29 of MOA of AKFI relates to the decision pertaining to the affiliation/dis-affiliation for the member(s) Association(s). Clause 24.5, however, deals with the inter se disputes of the members Association(s), which such disputes of members Association(s) have been prescribed to be resolved by way of an arbitration process. Clause 24.5 mandates that the affiliated member Associations shall subject themselves to the process of arbitration for resolution of their disputes while clause 25 mandates such member associations to incorporate similar clause in their respective bye-laws/Articles of Association as well. Resultantly, the process of Arbitration as stipulated under Clause 24.5 read with clause 25 of MOA and Constitution of the

respondent no.1 AKFI is in reference to the disputes of the members association and not against the decision of the AKFI.

Clause 24.4 of the MOA, confines itself to the remedy of a party aggrieved against decisions taken by AKFI. Above clause is not the remedial clause for resolution of any dispute inter se amongst the member Association. The remedy uses the expressions ‘appeal before Arbitration Commission’ which is required to be separately constituted. It is apparent that under the same head of clause 24, while Clause 24.4 of the MOA uses the expression ‘arbitration commission’, however, in clause 24.5 of the MOA and the Constitution of the AKFI, it uses the expression for resolution by way of “process of arbitration”. The authority was thus conscious of both the expression and the scope of their operation as well as the dispute resolution mechanism, however, it yet chose to prescribe different ways for resolution and did not use the expression “process of arbitration” in relation to proceedings under clause 24.4 thereof. The use of different expressions cannot be said to be mere omission or negligence in drafting of the provisions.

As per the settled law, while carrying out interpretation of contracts/statutes/ regulations, the literal rule of interpretation mandates that the plain and commonly understood meaning has to be ordinarily assigned to the expressions used

therein unless such plain reading leads to vague or contradictory meanings. This principle has been often referred to in English law and has been accepted as well as reiterated in numerous judgments by the Hon'ble Supreme Court of India including in the judgment of *Jugal Kishore Saraf Versus Raw Cotton Co. Ltd. reported as AIR 1955 SC 376* as well as in the matter of *State of Haryana versus Suresh reported as AIR 2007 SC 2245*. Hence, the rule has been consistent in its application and adoption. The strict grammatical meaning has been considered as a safe guide for interpretation of the words and expressions used in the statute or contracts. Any hyper-technical interpretation is ordinarily to be avoided unless the plain reading and interpretation leads to an inherent absurdity and fails to reconcile the conflict between various clauses. It has been repeatedly held that the temptation of substituting other expressions for the words of the statute by way of explaining what it is thought the legislature is endeavouring to say has to be discouraged. The court cannot provide for what the legislature does not intend as any such act amounts to legislation and not interpretation. At the same time, it is also well settled in law that each and every word should be assigned a meaning which weaves into the legislative fabric. It was held by the Hon'ble Supreme Court in the matter of *Aswini Kumar Ghose Vs Arabinda Bose reported as AIR 1952 SC 369* that it is not a sound principle of construction to brush

aside words in a statute as being inappropriate surplusage, if they can have appropriate application in the circumstances conceivably within the contemplation of the statute. The above rule was further followed by the Hon'ble Supreme Court in its judgment in the matter of **Rao Shiv Bahadur Singh versus State of Uttar Pradesh reported as AIR 1953 SC 394** that the courts should avoid a construction which would render a part of the statute devoid of any meaning or application. It was further held in the matter of **JK Cotton Spinning and Weaving Mills Co. Ltd. Versus State of Uttar Pradesh, reported as 1965 SCC Online SC 2** as well as in the matter of **Ram Phal Kundu Versus Kamal Sharma, reported as 2004 SCC Online SC 110** that in the interpretation of statutes, the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Legislature thus does not waste its words or to say anything in vain.

Even though counsel for respondent No.2 has vehemently argued that expression of 'process of arbitration' stipulated in Clause 24.5 should be interchangeably read into clause 24.4 and the Appellate Authority which is the 'arbitration commission' should be interpreted to be under the 'process of arbitration' as stipulated under the Act of 1996 read with clause

24.5 of the MOA. The interpretation as suggested by the counsel for the respondent is per se unacceptable as it is likely to cause an addition and substitution of the said clause and same would have to be construed as “adjudication of the appeal by the arbitration commission under the process of arbitration.” It would amount to rewriting the clauses of the MOA and the Constitution of the AKFI, which the laws of interpretation would not permit or justify. The nomenclature “arbitration commission” as was used for the appellate authority under the MOA cannot be confused as an arbitration Tribunal or as an arbitration proceeding under the Act of 1996.

If the Constitution of AKFI ever so intended the clauses to be read in the manner as suggested, there was no impediment for the competent authority to provide for the remedy of arbitration against orders passed by the AKFI as well and to further hold that such proceedings would be governed by the provisions of Act of 1996. It having consciously chosen not to provide for the remedy under the Act of 1996 and rather providing for a statutory remedy of appeal before an authority designated as “arbitration commission,” it cannot be confused to be an arbitral tribunal as stipulated under the Act of 1996.

Even otherwise, for adjudication of a dispute by way of arbitration under the Act of 1996, there has to be an

arbitration agreement amongst the parties. An Arbitration agreement has been defined under Section 2 (b) as an agreement executed between the parties under Section 7 of the Act.

Invariably for reference of a dispute to arbitration, an arbitration agreement is a pre-requisite. Counsel for the respondent No.2 has failed to refer to any agreement amongst the parties to refer the dispute to arbitration. Rather, he has reiterated his emphasis on clause 24.5 to submit that the process of arbitration prescribed therein ought to be a sufficient compliance of Section 7 of the Act of 1996 and would by necessary inference be an arbitration agreement amongst the parties. The submission of respondent to draw inference in the above manner cannot be accepted since it runs contrary to the statutory intent and object. Arbitration or adjudication by way of arbitration is an acknowledgment of party autonomy and their joint consent to the adjudication of disputes amongst them through the above process, except in cases where there is a statutory arbitration. The statutory arbitration in the present case can at best be read qua the dispute amongst the members as per clause 24.5 but there is no such mandate for resolution of disputes arising out of decisions taken by the AKFI and the remedy is only by way of an appeal. The arbitration agreement cannot be per se read into in clause 24.4. by relying on the expression used in clause 24.5.

It is also not a case where both the provisions or expressions i.e. ‘appeal by Arbitration commission’ and ‘decision by process of arbitration’ used in clause 24.4 and 24.5 of the MOA and Constitution of AKFI cannot be reconciled without contradicting each other or without being repugnant to the letter, intent and object of the statute or that a meaningful interpretation can be given effect to only if the interpretation as suggested by counsel for respondent No.2 is accepted. Separate procedures and grievance redressal mechanism has been prescribed under the MOA to the distinct category of disputes and such intent needs to be given effect.

Accordingly, the expression “process of arbitration” as used in clause 24.5 cannot be read into clause 24.4. The ‘arbitration commission’ as envisaged in 24.4 has to be construed as an “appellate authority” and not as a primary adjudicatory authority like the arbitrator. The expression “arbitration commission” used in clause 24.4 thus should not be interpreted as a synonymous of arbitration tribunal as mentioned in the Act of 1996. A mere similarity of expression would not by itself subject the parties to a statutory framework/regulatory procedure that has not been prescribed, stipulated or agreed upon.

Further, it is also well settled position in law that the remedy of appeal has to be invoked as per the manner prescribed.

The remedy being binding in nature and as prescribed in the MOA and constitution of the AKFI, power of such appellate authority cannot be vested in any other person or Forum by the Administrator merely by misinterpretation of the similarity of the nomenclature of 'Arbitration Commission'.

It is clear from reading of the Memorandum of Association that clause 24.5 is confined itself to the disputes amongst member Associations of AKFI. The AKFI, does not take any decision on disputes covered under Clause 24.5. pertaining to the members. Dispute resolution through process of arbitration is the body of first instance for decision and is not any appellate body. In the present case, the Arbitration Commission acts as an independent appellate authority against the decisions taken by the AKFI. Hence, the process of arbitration as in clause 24.5 is not the same as the appellate authority of arbitration commission under clause 24.4 of the MOA and Constitution of the AKFI.

In the said background, it is now to be examined as to whether the Administrator could have referred the appeal against the decision taken by the General Assembly of the AKFI to an Arbitration and that too to be conducted by some arbitrator other than the appellate authority prescribed and be deemed to be vested with powers of the General Assembly.

It is undisputed that the Administrator was appointed by the High Court of Delhi and the powers vested with the Administrator were qualified as to be that of the President. The High Court of Delhi chose not to confer the powers of the General Assembly upon the Administrator. Undisputedly, the power to admit and/or terminate membership of anybody has been conferred upon the General Assembly. The order of the Hon'ble Delhi High Court having qualified the powers to be exercised by the Administrator to be that of the President of the AKFI. It would be improper to construct that merely because the electoral college was to be reconstituted, the Administrator would be competent to exercise the powers of the General Assembly as well. The interpretation as suggested by the counsel for the respondent would travel beyond the ambit of the order passed by the Division Bench of the Delhi High Court. This court cannot read into the order what has not been provided therein. The administrator being created under the orders passed by the Court, he exercises the powers and functions that have been vested him and cannot expand the scope of his powers. It was thus not open for the Administrator to exercise a power not vested in him. Additionally, reference of the disputes to arbitration, in the absence of any provision in the bye-laws/memorandum of association and Constitution of the AKFI

and that too in violation of the prescribed remedy of appeal is thus a deviation from the procedure prescribed under law.

In so far as the issue of alternative remedy being a bar to writ jurisdiction is concerned, it is equally well settled that existence of an alternative remedy is not a bar against constitutional powers. High Court can still exercise its powers where there is a manifest illegality which would violate the entire proceeding. It is not necessary for High Court to wait for the entire procedural route to be followed before an illegal action is set aside. It may, if circumstances warrant, exercise its powers to undo an illegal or malicious abuse of power which perpetuates violation of law.

### **DECISION**

The decision of the Administrator to refer the dispute to a sole arbitrator is thus held to be bad for the following reasons:-

- (i) The decision as regards affiliation/membership is required to be taken by the General Assembly of the AKFI. Against a decision of the AKFI, a remedy of appeal has been prescribed under Clause 24.4 of the MOA and the Constitution of the AKFI to the Arbitration Commission.

- (ii) That the appellate authority under the name and style of “Arbitration Commission” also acts as arbitrator for resolution of disputes between members Associations as per Clause 24.5 of Memorandum of Association. The adjudication of those disputes by way of a ‘process of arbitration’ has been specifically stipulated therein.
- (iii) That the dispute in the present case was not a dispute amongst the members and was rather a dispute arising out of an order of dis-affiliation of respondent No.2 passed by the AKFI in this regard.
- (iv) The respondent No.2 had, in the initial round of litigation, itself acknowledged that General Assembly is the competent body for taking decisions as regards affiliation/membership of a State body. The matter was accordingly referred for a decision by the General Assembly which had again dis-affiliated respondent No.2. In the challenge raised to the aid order by way of a writ petition by respondent No.2, it accepted that there is a remedy of appeal prescribed under the Memorandum of Association, however, the only impediment was that the appellate authority viz the Arbitration Commission had not been constituted.

The High Court vide its order dated 22.12.2017 in CWP No.29848 of 2017 directed the respondent to constitute the appellate authority i.e. the Arbitration Commission and to intimate the same to respondent No.2 and liberty was granted to respondent no.2 to file an appeal within a period of 21 days thereafter as prescribed in the provisions.

- (v) That despite having been apprised of the constitution of the Arbitration Commission, respondent No.2 preferred not to file an appeal before the Commission.
- (vi) That respondent No.2 sought reference of dispute to arbitration under Section 11 of the Arbitration and Conciliation Act, 1996 by this Court and the said arbitration petition No.432 of 2018 was withdrawn by it without seeking any liberty.
- (vii) That the objections filed by respondent No.2 against accepting the representatives of the petitioner association in the general body of the AKFI was dismissed twice over by the Administrator and no further challenge was raised by respondent No.2 to any of the said orders which attained finality. Rather, writ petition filed before the Delhi High Court was also withdrawn without any liberty.

- (viii) That the Administrator was appointed by an order of the Division Bench of the Delhi High Court which conferred only the powers of the President on the Administrator and not that of the General Assembly. Hence, the power was restricted and qualified.
- (ix) That the President of the AKFI does not have the power to subject the AKFI to any arbitration proceedings, if any, and such power at best could only be exercised by the General Assembly. An arbitrator cannot exercise any authority more than what the person nominating the arbitrator is conferred with. The reference cannot travel beyond the authority of the employer. Hence, Arbitrator could not look into the matters for which the power of reference was only with the General Assembly especially when no reference had been made by the General assembly.
- (x) That a mere use of nomenclature “Arbitration Commission” cannot be constructed or interpreted as an arbitration proceeding or process of arbitration as contemplated under the Arbitration and Conciliation Act, 1996. The Memorandum of Association and Constitution of AKFI is specific about circumstances relating to the applicability of

the process of arbitration as per the Arbitration and Conciliation Act, 1996 and restricted the same to proceedings under clause 24.5 thereof.

- (xi) That the respondent No.2 failed to assign any reason as to why it did not prefer the appeal to the appellate authority as provided in the Memorandum of Association and Constitution of the AKFI.
- (xii) That mere filing of objections under Section 16 cannot be construed as submission to the authority of the arbitrator. As a matter of fact, the objection under Section 16 is based on the principle of the Kompetenz-kompetenz and is not a waiver and acquiescence of the rights of the objector. Further, it is also well settled position in law that an error of jurisdiction is fundamental and goes to the root of a dispute. An exercise of the jurisdiction which is invalid in law or travels beyond the contours of the powers conferred or is based upon misconceived assumption of jurisdiction is an illegality that cannot be validated. The proceedings and a final decision that arise on account of invalid proceedings are also vitiated.
- (xiii) The same administrator who had rejected the objections filed by the respondent no. 2 HKA on

two occasions and holding that it is no further affiliated to the AKFI chose to make a reference of dispute to an arbitrator without assigning any reasons. So much so, he nominated an arbitrator himself immediately thereafter without even considering as to whether the Appellate Authority was functional or not or assigning any reason as to how and why the prescribed remedy of appeal was not a proper remedy and ought to be superseded.

(xiv) The initiation of the Arbitration proceeding in violation of the binding provisions cannot be a sufficient ground to take away the jurisdiction of the writ court and leave it to watch illegal proceedings to mature and attain finality. Being a court of law, justice and equity, a writ court can exercise the writ jurisdiction under Article 226 of the Constitution of India when the illegality is writ large as per the law laid down by the Hon'ble Supreme Court in the matter of **Radha Krishan Industries Versus State of Himachal Pradesh, reported as 2021 SCC OnLine SC 334.** The relevant extract of the judgment is reproduced herein below:-

*“27 - The principles of law which emerge are that:-*

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
- (iii) Exceptions to the rule of alternate remedy arise where*
  - (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;*
  - (b) there has been a violation of the principles of natural justice;*
  - (c) the order or proceedings are wholly without jurisdiction; or*
  - (d) the vires of a legislation is challenged;*
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*
- (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory*

*remedies is a rule of policy, convenience and discretion; and*

*(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.*

*Plea of an alternative remedy does not impose an absolute bar on the powers of the writ court.*

*For the foregoing reasons and in view of the settled position of law as also of the statutory provisions as well as the fact that the order suffers from an inherent defect, the present writ petition deserves to be allowed. A mere making of a reference, without being conferred with such power, cannot be accepted as a valid basis to contend that the power of judicial review of a Constitutional Court would be ousted and that any illegality or impropriety or an apparent overreach of the authority cannot be examined by a Constitutional Court. It would rather be a travesty of justice on the part of the Constitutional Court and would be abdication of its role if such illegality is not nipped. It has been held by the Hon'ble Supreme Court in the matter of Krishna Lal Chawla and others vs. State of Uttar Pradesh and Another reported as 2021 SCC OnLine SC 191 that:-*

*“17. Frivolous litigation should not become the order of the day in India. From misusing the Public Interest Litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfill personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in **Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470:***

*"191...One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his..."*

*While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years, hence, and there has still been no reduction in such plight. A falsely accused*

*person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.*

*18. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land.*

xxx xxx xxx

*21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilizing the institution of justice for unjust means.*

*Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.*

*22. This Court's inherent powers under Article 142 of the Constitution to do 'complete justice' empowers us to give preference to equity and a justice-oriented approach over the strict rigours of procedural law (**State of Punjab v. Rafiq Masih (Whitewasher)**, (2014) 8 SCC 883). This Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (**Monica Kumar (Dr.) & anr. v. State of Uttar Pradesh**, (2008) 8 SCC 781). Other decisions have held that inherent powers of High Courts provided in section 482, CrPC, 1973 may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or mala fide motives. (**Sirajul & ors. v. State of Uttar Pradesh**, (2015) 9 SCC 201; **State of Haryana v. Bhajan Lal**, AIR 1992 Supreme Court 604). Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants.”*

The Courts thus must not wait for the proceedings to mature only to be set aside especially when an illegality can be noticed and cured at the very outset.

The present petition is accordingly allowed. The order dated 15.02.2021 (Annexure P-17) passed by the Administrator referring a dispute to arbitration as well as the order dated 19.02.2021 (Annexure P-18) passed by the Administrator nominating the sole arbitrator are set aside along with all consequential proceedings arising therefrom.

Respondent No.2 may, if so advised, take recourse to the remedy of appeal as stipulated in Clause 24.4 of the memorandum of association as per law, if permissible, and without prejudice to the rights of any other party to raise valid objections to the same.

August 17, 2023  
raj arora

(VINOD S. BHARDWAJ)  
JUDGE

*Whether speaking/reasoned* : Yes/No  
*Whether reportable* : Yes/No