

(1999) 02 BOM CK 0103

In the Bombay High Court

Case No : Notice of Motion No. 242 of 1999, in Suit No. 412 of 1999, with Notice of Motion No. 243 of 1999 in Suit No. 413 of 1999, with Notice of Motion No. 241 of 1999 in Suit No. 414 of 1999

Capt. Kailash Nath Harsh

APPELLANT

Vs

D.C. Patel and others

RESPONDENT

Date of Decision : 02-02-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Companies Act, 1956 — Section 29

Constitution of India, 1950 — Article 23, 32, 34, 36, 6

Citation : AIR 1999 Bom 133 : (1999) 2 ALLMR 389 : (1999) 2 BomCR 411 : (1999) 82 FLR 811 : (1999) 2 MhLj 190

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : R.A. Kapadia, A.V. Vazirani, Chaudry, N. Thakkar and D.J. Khambatta, instructed by Hariani and Company, for the Appellant; Zahir Bharucha, instructed by Eastley Lam and Co., for the Respondent

Judgement

S.S. Nijjar, J.—This order will dispose of Notice of Motion Nos. 242 of 1999, in Suit No. 412 of 1999, 243 of 1999 in Suit No. 413 of 1999 and 241 of 1999, in Suit No. 414 of 1999.

The plaintiffs in the three suits have challenged the show cause notices dated 13-1-1999 culminating in the suspension order dated 21-1-1999 on the grounds that they are ultra vires the Articles of Association of the defendant No. 12 Club. A declaration was also sought to the effect that the plaintiffs are entitled to all the benefits of the membership of defendant No. 12 including the use of the golf course. Prayer is also made for issue of an order of permanent injunction restraining the defendant No. 12 Club, its General Committee and its servants, officers and agents from restraining the plaintiff from in any manner enjoying the benefits of their members. The plaintiffs have also claimed that the defendant No. 1 to 10 be ordered and decreed jointly and severally to make payment to

each of the plaintiffs by way of damages in the sum of Rs. 1,00,000/- to compensate the plaintiff for the loss of reputation and the defamation caused by the defendants acts.

2. Notices of Motion have been taken out for an order of injunction restraining the defendants from in any manner preventing the plaintiffs from enjoying any of the rights and privileges of their membership of the 12th defendant and/or from participating in the gold tournaments to be held on the Golf Club of defendant No. 12.

3. Defendant No. 12 is the Bombay Presidency Golf Club (hereinafter referred to as BPGC), a Company incorporated under the Indian Companies Act, 1913. The 12th defendant Company owns property situate at Chembur on which stands a Club house and an 18 Hole Golf course. Various facilities including golf are offered to the members of the BPGC which is managed by a General Committee elected by the general body of the members of BPGC. Defendant Nos. 1 to 10 are current members of the General Committee of BPGC who are parties to the decision of the General Committee that is challenged in the three suits. Defendant No. 11 is the Paid Secretary and the Chief Executive Officer of the BPGC. Defendant No. 1 is the President of BPGC. Defendant No. 2 is the Captain of BPGC. As Captain, defendant No. 2 is responsible for the maintenance of the golf course and the golfing activities of the BPGC. All the plaintiffs in the three suits are long standing members of BPGC. All the plaintiffs have been actively participating in the activities of the Club. Plaintiff No. 1 in Suit No. 412 of 1999 was ex-President of the Club. Plaintiff in Suit No. 413 has been on the General Committee of the Club. Plaintiff in Suit No. 414 is currently on the General Committee. The dispute between the parties arose out of an incident which took place in the evening of 9th January, 1999. A golf tournament was scheduled to be held at the BPGC on 9th and 10th January, 1999. For representation in the aforesaid tournament, plaintiffs in the above three suits were selected as players in a meeting held on 6th January, 1999. After the first day of the inter club tournaments on 9th January, 1999 a meeting of the members of the BPGC was held in the conference hall to discuss the pairings and strategy for the next and the final day of the tournament i.e. 10th January, 1999. After the meeting broke up, the plaintiffs in the three suits discussed certain changes in the pairing which had been decided and finalised by the defendant No. 1. This decision to change pairings was taken by the plaintiffs in the three suits without consent of defendant No. 1 and defendant No. 2. Defendant No. 1 was present in the Club premises till about 8.30 p.m. in the evening, yet the change in pairing was not brought to his notice. At around 9.00 p.m. that night plaintiff in Suit No. 412 of 1999 telephonically informed the first defendant about these changes. The first defendant indicated that he was upset with these changes having been made without his approval. The plaintiff apologised and explained the circumstances in which the changes had to be so made and added that the original pairings could be reverted to if the first defendant so desired and could make a request to that effect to the sponsors. The first defendant is alleged to have told the plaintiff that

he would ensure that every member of the team would play the next day i.e. 10th January, 1999. The first defendant is also alleged to have promised at the Club house the next morning before the first match teed off which was scheduled for 8.10 a.m. The first defendant did not revert to the original pairs but accepted the changes made by the plaintiffs and the two plaintiffs in the other suits. It is further alleged that on 10th January, 1999 the first defendant arrived at the Club house after a few team had already been teed off. One of the players of the BPGC Shri Sirus Gazdar, refused to play and conceded his match in objection to the changes which have been made without his consent. Another player also disqualified his indignation. The plaintiff is said to have again apologised to the first defendant for the changes made. According to the plaintiffs, these changes had been made in the best interest of BPGC. The plaintiff further states that he was under the genuine belief at that time that the first defendant though initially upset ultimately accepted the explanation and the apology offered by the plaintiff. It is further stated that the plaintiff did not see the second defendant at all at the BPGC on 10-1-1999. Thereafter the three plaintiffs were served with a show cause notice on 13-1-1999. These show cause notices are challenged in the three suits. The show cause notice have been served under the signatures of defendant No. 1. In the show cause notices it is stated that Inter club tournament was slated on 9th and 10th January, 1999 and the team of BPGC for 9th January, 1999 was announced after the detailed perusal and discussion by the Tournament Committee. The team for 10-1-1999 was also announced after the detailed deliberations and unanimous decision of the participants. The same was submitted to the organisers under the due signatures of the President. However, thereafter plaintiffs had changed the Team/Combination without specific authorisation prior approval either from the President or the Captain, thereby creating a lot of confusion causing great damage to the image of BPGC. The plaintiffs in the three suits were required to explain as to why disciplinary action should not be taken against them. It was stated that the reply of the plaintiffs must reach the Club office at 3.00 p.m. on Monday the 15th January, 1999.

4. The plaintiffs in Suit No. 412 of 1999 submitted his reply on 15-1-1999. In this reply he has stated that the method by which the show cause notice was served upon him was deliberately adopted to embarrass the plaintiff and to publicise the issue of the show cause notice. On merits it is stated that the changes in the team were made with the sole intention of gaining some additional points for the B.P.G.C. team and no sleight whatsoever was intended. In paragraph B of the reply the plaintiff admits that there was a procedural lapse on his part and he very much regrets the same. Thereafter he proceeds to give an explanation. He also states that at the time when the change of pairings was notified to the President on the telephone he was very upset about the changes. The plaintiff is said to have apologised to the President and told him that the President could always order the status quo. It is further stated that the President informed the plaintiff that he was being hassled by Mr. S.S. Dugal who

was refusing to play the next day. This would not have happened only if the plaintiff had informed the President about the changes earlier. The President is stated to have assured the plaintiff that there is nothing to worry about and that he would come to the Club house before the first match teed off and in case of any drop outs he would play. The plaintiff further states that on 10-1-99 when the President came around 8.55 a.m. he told the plaintiff in the presence of many visiting golfers first in the lobby and latter in the change room that he was very upset about the changes and he did not want the plaintiff to play and the President would take his place. Plaintiff states that he again apologised to the President and told him that he would abide by the decision of the President. He states that the President subsequently changed his mind and permitted the plaintiff to play which he did. In paragraph D it is stated as follows.

"However, I take a very strong exception to your allegation. I am responsible for "causing great damage to the image of B.P.G.C." as this amongst to character assassination. The fact is that the damage has been caused firstly by the player who conceded his match inspite of being requested by all those present including the sponsors there by depriving the Club of vital 2 1/2 points, secondly by the player who openly declared his intentions and went on to tee-off with his putter causing great embarrassment and the entire country came to know of it the next day through the newspapers and lastly the President who failed to react though for warned about the scored players intention. Incidentally the second player also happens to represent the west zone on the I.G.U. Council and I shudder to think the reaction of the fellow council members when they come to know of it."

"In paragraph F it is stated that" and lastly an internal matter of the Club has been blown of proportions by certain members who always put themselves above the Club." At the end the request is made to the General Committee to investigate the matter throughout before arriving at any hasty decision. It is also requested that the plaintiff be given an opportunity to be heard by the entire General Committee as the plaintiff strongly believes that the show cause notice has been served without ascertaining all the facts.

5. The plaintiff in Suit No. 413 of 1999 also gave his reply on 15th January, 1999. He also states that the suggestions made for the change of pairings were made purely with the intention of gaining a few vital points and there was no malicious intent behind the same. He denies that he is responsible for causing great damage to the image of B.P.G.C.. He states that it is totally uncalled for since the people responsible for the same are the ones who conceded a match and the one who teed off with a putter making a mockery of the whole thing in public. He further states that the President firstly told him on 10th January, 1999 that he would put his signature on the changes made by the three plaintiffs if he had been informed earlier. He further states that "To me personally it was only a procedural lapse which I deeply regret. "He also requests for a personal hearing to explain the sequence of events. It appears that another show cause notice was also issued to this plaintiff for using foul and unparliamentary language in

public. To this show cause notice the plaintiff has also replied. This show cause notice, however, is not the subject matter of this suit.

6. Plaintiff in Suit No. 414 of 1999 submitted his reply to the show cause notice on 14th Jan., 1999. This reply is also in the similar terms where it was stressed that the change in item combination was done without any malicious intent. This plaintiff further states that the team combination was changed after receiving request from certain team members. He states that prior approval of the President could not be taken due to shortage of time. He further states that the change in combination did not cause any damage to the image of the club. He reiterates the plea taken by the other two plaintiffs that the damage caused to the image of the Club by the act of two of the members of the team who either refused to play or deliberately gave away the match. He has further stated that there are innumerable instances where the decision of the Committees, Convenors, Captains and Presidents have been changed without prior approval of the deciding authorities. However, in all such cases the decisions were later ratified. He states that he does not know of any occasion where either a show cause notice had been issued or any disciplinary action taken, He states that he is surprised by the rather harsh step being taken by the Committee without either the Captain or President first talking to the errant and trying to defuse the situation. He also states that the changes were a mere procedural lapse.

7. Thereafter the order of punishment dated 21-1-99 has been passed after hearing the plaintiffs in the three suits.

8. Mr. Kapadia, Mr. Thakkar and Mr. Khambatta, learned Counsel appearing for the plaintiffs in the three suits have submitted that the Club is a Company limited by Guarantee without any shares. As such it is submitted by them that the Articles of Association of the Club have to be made in conformity with section 29 of the Companies Act, read with Table -C. The Memorandum and Articles of Association having been framed on the basis of the aforesaid statutory provision have to be strictly adhered to. It is submitted that under the Memorandum and Articles of Association, there is no general power of suspension of the members of the Club. All that the Articles of Association provide is that a member may be suspended in case proceedings for his expulsion are to be conducted in terms of Article 23 of the Articles of Association. It is further submitted that there can be no removal of the member of the Company which is limited by shares. The present Club being limited by Bank Guarantee without shares does not make any difference to the legal situation. It is further submitted that the property of the Club vests in the Club and the members are the beneficial owners thereof. Therefore, he submits that the present Club cannot be compared with a proprietary Club where the ownership vests in an individual or a trust. Relying on the aforesaid it is submitted by the learned Counsel for the plaintiffs that the order of suspension could not have been issued. It amounts to interfering with the proprietary rights of the plaintiffs. In support of the aforesaid submission, the learned Counsel has relied upon a Division Bench judgment of the Kerala High

Court in the case of P.C. Aravindhan v. M.A. Kesavan and others, 1973 Tax LR 1844. Replying to this submission, Mr. Bharucha, learned Counsel appearing for defendants, has submitted that the aforesaid judgment will not be at all applicable in the facts and circumstances of this case as no proprietary rights of the plaintiffs are being infringed. He submits that the aforesaid judgment would be applicable only in the event the plaintiffs are being sought to be wrongfully expelled from the Club. He submits, in those circumstances the plaintiffs could perhaps complain of being deprived of certain property rights, as in the event of the Club being wound up, the property would be shared among the members in accordance with Article 6 of the Articles of Association.

9. The learned Counsel for the plaintiffs have next submitted that though it is accepted that generally courts will not interfere in the management of the Clubs but there are certain areas where reliefs can be granted. It is submitted that if the action of the Club is beyond the powers conferred on the Club by the Articles of Association, the Court would direct the Club to act strictly in accordance with the provisions of the Memorandum and Articles of Association. It is further submitted that in the case of punishment the same could only be imposed strictly in accordance with the provisions of the Memorandum and Articles of Association. Further, if the punishment is to be imposed, the same can only be done after complying with the rules of natural justice. For this proposition the learned Counsel have relied on a judgment of the Supreme Court in the case of T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, . The Learned Counsel has relied upon paragraph 9 of the judgment wherein the principles on which the courts will exercise jurisdiction have been culled out. In the aforesaid paragraph it is held that the jurisdiction of a Civil Court is rather limited; it cannot obviously sit as a Court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice. It is submitted that admittedly the President has shown his displeasure on a number of occasions as enumerated above. The learned Counsel submits that being biased the President ought to have excluded himself from the deliberations on the basis of which the impugned orders came to be passed.

10. Mr. Bharucha also relied on the aforesaid judgment to submit that facts as narrated by the plaintiffs are not altogether correct. He submits that the President did not at any stage condone that lapse committed by the plaintiffs. He also submits that there are discrepancies in the versions which are put forward by the different plaintiffs. He submits that Club is an Association of gentlemen. The purpose and the activities of the Clubs are generally social. Members are expected to abide by the Rules. Emphasis is on membership and not on Company matters. These are essentially private matters where courts seldom interfere. There are, according to the learned Counsel, limited grounds on which courts can interfere. These are, when the Club acts without jurisdiction; against the principles of natural justice or mala fide. He further submits that even if any of the above grounds are proved, it is not necessary that the courts

will give the relief of permanent injunction. He submits in such matters the aggrieved member can always be compensated by damages. For these propositions the learned Counsel has relied on the same judgment i.e. *Dover's* case by referring to paragraphs 8 and 9 thereof., He submits that the defendant No. 1 is a Company. The President had to participate in the deliberations of the meeting. In para 8 of the aforesaid judgment, observations of Maugham, J., in *Maclean's* case have been noticed. Therein it is held that a person who joins an Association governed by rules under which he may be expelled.....has no legal right of redress if he be expelled according to the Rules, however, unfair and unjust the rules or the action of the expelling tribunal may be, provided that it acts in good faith---It has been also held that the principles of natural justice can only mean the principles of fair play. All that is required is that the accused should be given his chance of defence and explanation. It is further held that there is no doubt that in most cases it is a reasonable inference from the Rules that if there is anything of the nature of a *lis* between two persons, neither of them should sit on the Tribunal. Mr. Bharucha submits that nothing has been pointed out that the Committee has acted in bad faith. At the time of the hearing no objection was raised by either of the three plaintiffs, to the effect that defendant No. 1 could not participate in the proceedings. The plaintiffs are therefore estopped from taking this plea. He further submits that the Court cannot presume that merely because the President participated in the proceedings that prejudice has been caused to the case of the plaintiff. There can be no presumption of bias or breach of rules of natural justice. Relying on the further observation in the same paragraph the learned Counsel submits that in this set of circumstances the President who was necessarily entrusted with the duty of adjudication appears to be acting as a Prosecutor as well as a Judge. Paragraphs 8 and 9 of the aforesaid judgment are as follows.

"8. Another aspect which may also be noticed is how far and to what extent the doctrine of bias may be invoked in the case of domestic tribunals like those of Clubs. The observations of Maugham, J., in (*Maclean's* case), 1929 1 Ch. 602 in this context may be noticed. The learned Judge observed in that case thus:

"A person who joins an Association governed by rules under which he may be expelled, has in my judgment no legal right of redress if he be expelled according to the rules, however, unfair and unjust the rules or the action of the expelling tribunal may be, provided that it acts in good faith. The phrase, "the principles of natural justice, "can only mean in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation. On that point there is no difficulty. Nor do I doubt that in most cases it is a reasonable inference from the rules that if there is anything of the nature of a *lis* between two persons, neither of them should sit on the tribunal."

Another difficulty that one is confronted with in proceedings held by Committees constituted by Clubs is to demarcate precisely the line between the Prosecutor

and the Judge. Maugham, J., noticed their difficulty and observed in Maclean's case, 1929 1 Ch. 602 thus:

"In many cases the tribunal is necessarily entrusted with the duty of appearing to act as well as that of judges, for there is no one else to prosecute. For example, in a case where a Council is charged with the duty of considering the conduct of any member whose conduct is disgraceful and of expelling him if found guilty of such an offence, it constantly occurs that the matter is brought to the attention of the Council by a report of legal proceedings in the press. The member is summoned to appear before the Council. The Council's duty is to cause him to appear and to explain his conduct. It may be that in so acting the Council are the prosecutors. In one sense they are; but if the regulations show that the Council is bound to act as I have mentioned and to that extent to act as prosecutors it seems to be clear that the Council is not disqualified from taking the further steps which the rules require."

Though it is advisable for a Club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses mala fides or unfair treatment.

"9. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules: whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a Civil Court is rather limited; it cannot obviously sit as a Court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra."

11. Mr. Thakkar has reiterated the arguments of Mr. Kapadia. Mr. Khambatta appearing in Suit No. 414 of 1999 submits that the plaintiff has been a member of the General Committee since 1995. In accordance with Article 32 he was entitled to a notice of the meetings held on 12-1-99, 15-1-99 and 17-1-99. He submits that since he was the person being proceeded against he may not have insisted on participation but that option ought to have been left to him. In fact in the meeting which was held on 12-1-99 no notice had been issued but on coming to know about the meeting he wanted to attend the meeting. He was not permitted to do so. However, at the time of the hearing, Mr. Bharucha has produced the Minutes of the meeting held on 12-1-1999. A perusal of this would indicate that the plaintiff had participated when the show cause notices had been issued. These Minutes are disputed by Mr. Khambatta. He further submits that under Article 34, there is no general provision of suspension. As earlier argued by Mr. Kapadia and Mr. Thakkar, he also submits that power of suspension is

available in the Memorandum and Articles of Association only with the General Body of the Club. This power is confined to proceedings for expulsion as contained in Article 23. There is no general power of suspension in the Committee on the basis of Article 34. Mr. Bharucha has, however, countered this by saying that a perusal of Article 34 would make it abundantly clear that this is a general residuary power with the Committee. This Article provides a two fold power. First part of the Article provides that the Committee in addition to the powers and authorities by statute or by these Articles expressly conferred upon the Committee by the statute or these Articles, the Committee may exercise all other powers which may be directed or otherwise to be done by the Club which are not expressly directed to be done by the Club in the general meeting. The second part of the power relates to the acts and things which are not regulated by Articles of Association.

In other words, this Article gives the general power to the Committee to act in its affairs which are not specifically provided for. Suspension not having been specifically provided for anywhere the Committee has acted under this Article. This Article is also to be read along with Article 36 which shows that the powers are in furtherance and/or not in limitation of any of the other powers specifically conferred by the Memorandum and Articles of Association. That being so, he submits that the plaintiffs can hardly complain that the action has been taken without any power under the Articles of Association. He further submits that even if the submissions made by the learned Counsel for the plaintiffs are accepted no relief whatsoever can be granted to the plaintiffs by this Court by way of a permanent injunction. In support of this proposition, learned Counsel relies on a Single Judge decision of this Court given in appeal from Order No. 884 of 1997 in Notice of Motion No. 3071 of 1997 in B.C.C. Short Cause Suit No. 3277 of 1997 therein the learned Single Judge distinguished the judgment of the Supreme Court earlier relied upon by the plaintiff in Dover's case. The learned Single Judge held that the Supreme Court in the case of T.P. Daver has not considered the question whether Civil Court has a power to grant injunction enforcing rights which are of personal nature. The learned Single Judge considered the question whether even after finding that the resolution of the Managing Committee is beyond its powers, whether the Civil Court can issue an injunction enforcing a personal right. Relying on the judgment of the Chancery Division in the case of *Rigby v. Connol*, XIV Ch. Division 482 the learned Single Judge has held that no injunction could be granted. After considering the case law the learned Single Judge has held:

"Thus, it is clear that to the general rule that no injunction can be issued for enforcement of a personal right, two exceptions are recognised: (1) where a right to property is involved and (2) where a right to carry on business or earning one's livelihood is involved and in such cases, a Civil Court can issue an injunction for enforcement of even a personal right."

It is submitted by Mr. Bharucha that the plaintiffs in the present case are not

being deprived of any property right nor are they being deprived of any livelihood. Relying on the aforesaid judgment, the learned Counsel submits that the plaintiffs Notice of Motion deserve to be dismissed outright.

12. Having considered the rival submissions made by the learned Counsel for the parties it is to be noticed that the controversy is very narrow. This Court is called upon prima facie at this stage to decide as to whether or not the plaintiffs have any property rights in the Club by virtue of their membership. The Court has to consider whether the plaintiffs have been deprived of any of those property rights by the mere suspension of their membership. Whether or not the rules of natural justice have been breached. Even if it is held that the rules of natural justice have been breached whether it is necessary to grant the relief of permanent injunction to the plaintiffs.

13. Coming to the basic fact it cannot be disputed by the parties that the Club is limited by guarantee without shares. It is also not disputed that the Articles of Association have been framed keeping in view the Companies Act. It also becomes fairly apparent that specific power of suspension is granted by Article 23 of the Articles of Association. Show cause notice has been issued to all the plaintiffs. The reply has also been submitted by all the plaintiffs. All the plaintiffs were personally heard on 15-1-99 The President participated in the deliberations of the Committee on 12th, 13th, 15th and 17th Jan., 99. It is agreed by all the parties that the President had shown his displeasure at the change in pairings. It is also not disputed that plaintiffs in Suit Nos. 412 and 413 of 1999 have apologised for the lapse. All three plaintiffs have admitted that this was a procedural lapse. The impugned orders have been issued by the Club by exercising powers under Article 34. Having considered the Articles 23, 34 and 36, I am of the considered opinion that there is substance in the submissions made by Mr. Bharucha that Article 34 would clothe the Club with the power of suspension. If this interpretation to Article 34 is not given there would be only punishment available to the Club and that is to expel the member from the Club. Thus the Club would not be in a position even to fine or admonish a member. If these powers cannot be traced to Article 34, it would lose the very purpose for which it is enacted. I am, however, not inclined to accept the submission of Mr. Bharucha that no property rights of the plaintiffs have been infringed by a mere order of suspension. A member under the Articles of Association is entitled to all the amenities and privileges of the Club subject to any restrictions which the Committee may prescribe. This is so provided in Article 7(a). An order of punishment such as order of suspension in the present case, in my view, cannot be equated to the restrictions which are mentioned in Article 7. In my view, these restrictions would be the kind of restrictions which are normally found in Clubs such as children under particular age may not be permitted to use the golf Club. There were certain other restrictions for the use of the Clubs, Swimming pool or the Gymnasium. It would be difficult to hold as is sought to be argued by Mr. Bharucha that the order of suspension would fall under such a restriction. In accordance with Article 6 all members have a beneficial right in the properties of

the Club. It would therefore have to be held that this is not a Proprietary Club. Having held that this is not a Proprietary Club it would now have to be seen as to whether the judgment of the learned Single Judge would be applicable. A perusal of the facts in that case would show that the Club was owned by trustees. The members had no share or beneficial right in the properties. It was in these circumstances that the learned Single Judge has held that by granting a permanent injunction it would amount to enforcing & personal right. This in my view, is not the situation in the present case. In such circumstances, in my view the judgment of the learned Single Judge would not be applicable.

14. Coming now to the point as to whether or not there has been a breach in the rules of natural justice or as to whether the President, defendant No. 1 has acted mala fide. It has been noticed from the pleadings above that the President had expressed his displeasure at the change in the pairings without his consent. In spite of indicating his mind to the effect that he held the plaintiffs responsible for the damage having been caused to the Club he chose to sit in deliberations. It is true that the plaintiffs did not raise this objection at the time when they ought to have raised it i.e. before the proceedings. The hearing to the plaintiffs so far as their guilt is concerned would not be of much relevance in view of the admission that there was a procedural lapse. But in my opinion, they were certainly entitled to be heard impartially on the question of quantum of punishment. It is not for this Court to substitute the punishment which has been imposed by the Committee. The Courts do not sit in appeal over the decision of the domestic tribunals. But invariably the Courts have come to the rescue of an individual who has complained about the breach of rules of natural justice. Admittedly defendant No. 1 has participated in all the meetings. He has made it known to the plaintiffs that he was displeased with their action. In such circumstances I am constrained to hold that defendant No. 1 had wholly disqualified himself from deliberating in the proceedings. An oft repeated maxim of law is that justice must not only be done but it must be seen to be done. It is for this reason that rules of natural justice are to be observed mandatorily by authorities and bodies whilst conducting disciplinary proceedings. The Judges in these proceedings have to act impartially. They must not have any interest in the proceedings. This interest, as has been recognised, may be pecuniary or personal. What particular rule of natural justice should apply to a given case must depend on the facts and circumstances of the case. In order to ensure impartiality of the Judges, it is expected that the person who may be a complainant should not be a Judge in the same proceedings. A person cannot act as a witness as well as a Presiding Officer. It is only when the disciplinary proceedings are decided by persons who do not have any interest in the proceedings that they can be said to be impartial. The Supreme Court in *Dover's* case has culled out as one of the propositions that the Courts do not sit as Courts of Appeal over the decisions of the domestic bodies but can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice. In para 8 of the said

judgment the Supreme Court has quoted with approval a passage from the observations of Maugham, J., in Maclean's case (1929 - 1 Ch. 602) which are as follows:

"Nor do I doubt that in most cases it is a reasonable inference from the rules that if there is anything of the nature of a lis between two persons, neither of them should sit on the tribunal."

Admittedly the defendant No. 1 was of the opinion that the plaintiffs have acted deliberately in changing the pairings without his consent. On the other hand the plaintiffs had categorically stated that there was no malicious intent in changing the pairings. This, to my mind is a lis between the plaintiffs and defendant No. 1. There is controversy also with regard to whether defendant No. 1 had condoned the lapse committed by the plaintiffs. When considering the question of bias, the courts do not look for the proof of actual bias. What is to be seen by the courts is in the facts and circumstances of each case as to whether there is reasonable likelihood of bias. As noticed earlier, in the present case the President is complaining that the pairings was changed deliberately without his and the Captain's consent. Prima facie, I am, therefore, of the opinion that there was a reasonable likelihood of the President acting with a biased mind. In my opinion, the President has acted as a Judge in his own cause which is against the basic tenets of justice. The principles of natural justice ensure that the decisions are arrived at fairly and the delinquent facing the departmental proceedings is not treated unfairly. A person acting as a Judge in his own cause is shocking to the notions of judicial propriety and fairplay. The aim of rules of natural justice is to secure justice. These rules supplement the law and do not supplant the law of the land. The submission of Mr. Bharucha that there is no impropriety in the defendant No. 1 in participating in the deliberations is also answered in the very same judgment where it is held :

"In many cases the tribunal is necessarily entrusted with the duty of appearing to act as prosecutors as well as that of judges, for there is no one else to prosecute."

A bare perusal of the extract reproduced above would show that this principle applies only in cases of necessity. There may be situations where only one individual officer is available and none can take the decision. In the present case the Club as well as the General Committee could well have taken the decision without the participation of the President. To be fair to Mr. Bharucha he has placed considerable stress on the last part of the para wherein the Supreme Court has held as follows.

"Though it is advisable for a Club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses mala fides or unfair treatment."

I have already alluded to some of the factors and the sequence of events before

the passing of the impugned order on 15th Jan., 1999. It is to be seen that the plaintiff in Suit No. 412 of 1999 had apologised to the President on occasions not less than three. There is no dispute as to whether these apologies were ever tendered. This position is accepted. In spite of those apologies the President-Defendant No. 1 initiated the show cause notice which culminated in the order of punishment. In such circumstances on the present state of pleadings it would not be possible to hold prima facie that the President had acted bona fide or has not subjected the plaintiffs to unfair treatment. In those circumstances the aforesaid observations would not be of much assistance to Mr. Bharucha at this stage.

15. Lastly it was submitted by the learned Counsel for the plaintiffs that balance of convenience is in favour of the plaintiffs in the event of the relief of injunction not being granted they would be irreparably deprived of the facilities for that period of time. On the other hand if ultimately the suit is dismissed the suspension of the plaintiffs can always be reactivated. In reply to the aforesaid submissions, Mr. Bharucha has submitted that balance of convenience cannot possibly lie in favour of the persons who act in breach of the discipline of the Club. He further submits that if the order of injunction is granted, this would lead to further indiscipline in the Club. He cautions that the courts have always been very circumspect in interfering in matters which are of private nature. He further submits that even if the suit is ultimately decreed the plaintiffs can well be compensated by award of damages. He submits that in fact the plaintiffs have claimed a sum of Rs. One lakh by way of damages. This is however answered by the learned Counsel for the plaintiffs by submitting that claim for damages is in addition to injunction on account of defamatory acts of the defendants No. 1 and the other Committee members. Having considered this also I am of the opinion that the balance of convenience clearly lies in favour of the plaintiffs. In the event of the suit being dismissed the plaintiffs can always be punished in accordance with the impugned order.

In view of the above the Notices of Motion are made absolute in terms of prayer Clause (a) which reads as under.

"(a) That pending the hearing and final disposal of the suit this Hon'ble Court be pleased to issue an order of injunction restraining the defendants and/or their servants, agents and officers and/or successors from in any manner preventing the plaintiff from enjoying any of the rights and privileges of his membership of 12th defendant and/or from participating in the golf tournaments to be held on the 12th defendant golf course and/or from in any manner acting pursuant to or in furtherance of the Show Cause Notice dated 13th January, 1999 (Exh. "A" to the plaint) and the order of the General Committee contained in the letter dated 21st January, 1999 (Exh. "C" to the plaint.)."

At this stage Mr. Bharucha prays for stay of the operation of the order. I do not find any justification for the prayer. Rejected.

Certified copy expedited.

16. Notice of Motion made absolute.