

**(2009) 07 MAD CK 0553**

**In the Madras High Court**

**Case No :** O.A. No's. 1299 and 1300 of 2008 and Application No. 5740 of 2008  
in C.S. No. 1167 of 2008

Dr. A.C. Muthiah

APPELLANT

Vs

The Board of Control for Cricket in India

RESPONDENT

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**Date of Decision :** 13-07-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
Companies Act, 1914 — Section 91B  
Contract Act, 1872 — Section 23  
Tamil Nadu Societies Registration Act, 1975 — Section 4(2)

**Citation :** (2009) 07 MAD CK 0553

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** Nalini Chidambaram, SC for C. Uma, for the Appellant; P.S. Raman, Addl. AG for P.R. Raman, for R1 and K. Harishankar, for R2, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Chandru, J.—When this matter was taken up for arguments before this Court, this Court informed both parties that for the IPL league matches, complementary tickets were given to the Judges of this Court and this Court, being recipient of one such complementary ticket (though never utilized it), was it proper for this Court to hear this matter. Both the Senior counsels emphatically stated that the grant of complementary ticket was part of publicity act of the BCCI and for sponsored events, it has always been the practice to send complementary tickets to VIPs, including the Judges of the High Courts. It was only thereafter this Court permitted both sides to advance their arguments.

2. The Board of Control for Cricket in India (for short BCCI) has its own subsidiary regulations for Players, Team Officials, Managers, Umpires and Administrators. Certain amendments made to its regulations, more particularly amendments made to Clause 6.2.4 at its General Body Meeting held at Mumbai on 27.09.2008 has given rise to this litigation.

3. The plaintiff, the past President of the BCCI, filed these two suits, claiming certain reliefs against the second defendant, who is its present Treasurer and for setting aside the amendment made to Clause 6.2.4 of the subsidiary regulations.

4. The first suit C.S. No. 930 of 2008 was filed for injuncting permanently the BCCI from allowing the second defendant to participate in its general body meeting scheduled at Mumbai on 27.09.2008 and for taking action against the second defendant in terms of Clause 38(II) of the rules and regulations framed for the BCCI. A further prayer for suspending the second defendant by the first defendant by exercise of its power under subsidiary Regulation 8(6). The suit came to be filed before this Court on 24.09.2008. Pending the suit, an injunction was sought for against the second defendant from proceeding to attend the general body meeting.

5. After hearing both sides, this Court passed an order, dated 26.09.2008 in A. No. 1041 of 2008 and dismissed the said application. The ground of dismissal was that the application was brought at the last minute and arrangements for the meeting had already been made. Further, the subsidiary regulation also provides for penalty to be levied in case of any breach of rule.

6. Before filing the suit, it transpires that the plaintiff had sent a letter, dated 5.9.2008 to the President of the BCCI, seeking for an action to be taken against the second defendant. This was on the footing that the subsidiary Regulation 6.2.4 specifically prohibits any administrator to have either direct or indirect commercial interest in the matches or events conducted by the BCCI. Regulation 6.2.1 provides for penalty in such cases.

7. It was the stand of the plaintiff that the second respondent, who is the Managing Director of the India Cement Limited and continuing as the Treasurer of the BCCI got a Franchise of Indian Premier League (IPL) tournament to his company and therefore, he had earned commercial interest and benefits from the matches and events conducted by the BCCI. It was followed by a further letter, dated 19.09.2008, wherein a specific reference was made to the subsidiary regulations made in August, 2000, which is a Regulation for Players, team officials, Managers, Umpires and Administrators, including the office bearers of the BCCI. Therefore, Regulation 8(5) read with 38(II) provides for actions to be initiated against the second respondent. The suspension of the second respondent, pending further action, was also sought demanded by him in terms of Regulation 8.6.

8. The Correspondence which the plaintiff had with the President of the BCCI got wide publicity in the newspapers, including the Times of India, dated 23.09.2008. It was after this publicity, the suit was presented before this Court. It also transpires that the Annual General Meeting of the BCCI was convened at Mumbai on 27.09.2008 and 28.09.2008 and the agenda circulated in the meeting contained no reference to proposals for amendment to the subsidiary regulations. However, it transpired that in the meeting, certain amendments

have been made to those regulations. For the first time in the regulation, the Twenty 20 match was defined as one having "a limited over International was classified as Twenty 20 in accordance with the ICC regulations". The amendments were also made to para 1.2 and 6.2.4 of the regulations. The following table will show the subsidiary regulation before and after the amendments made:

| Before amendment                                                                                                                                                                                                                                                      | After amendment                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.2 This Regulations shall apply to: (a) ODI Matches (b) Test Matches (c) Tour Matches (d) Any domestic or (e) Any domestic or international matches.                                                                                                                 | 1.2 This Regulations shall apply to: (a) Test Matches (b) ODI Matches (c) Twenty20 Matches (d) Any domestic or international matches.                                                                                                                                                                                        |
| 6.2 Additional Regulations for Administrators : The Administrators are required to follow the Regulations as mentioned here under: 4. No Administrators shall have, directly, or indirectly, any commercial interest in the matches or events conducted by the Board. | 6.2 Additional Regulations for Administrators : The Administrators are required to follow the Regulations as mentioned here under: 4. No Administrators shall have, directly, or indirectly, any commercial interest in the matches or events conducted by the Board excluding events like IPL or Champions League Twenty20. |

— (Emphasis added)

9. After amendments were made during September, 2008, the second suit came to be filed by the plaintiff in C.S. No. 1167 of 2008. This was presented before the court on 10.12.2008 with the reliefs already set out. It is in this suit, three applications, namely O.A. Nos. 1299 and 1300 of 2008 and A. No. 5740 of 2008 were filed. The relief claimed in these applications is to deny the second respondent from contesting future elections and also from functioning as the Secretary of the BCCI and that the prohibition found in Clause 6.2.4 must also apply to IPL and Champions Twenty 20 league events.

10. On notice from this Court, the respondents have filed detailed counter affidavits, dated 27.1.2009 and 16.2.2009 respectively. The applicant had also filed a reply affidavit, dated 7.3.2009.

11. It is in this factual backdrop, Mrs. Nalini Chidambaram, learned Senior Counsel appearing for the applicant/plaintiff contended that the second respondent was liable to be proceeded in terms of subsidiary regulations, as he had committed grave misconduct inasmuch as India Cement Limited, of which R-2 is the Managing Director had taken a franchise for the IPL matches. He also participated in the general body meeting, in which these amendments were carried out. The amendments were made with a view to protect the second respondent and to get over the objections raised in the first suit filed by the plaintiff. In any event, the said amendment is opposed to the public policy and made with bad faith. Hence it is liable to be struck down by this Court.

12. The learned Senior Counsel further contended that the BCCI has already been held to be an authority amenable to writ jurisdiction and this Court has ample power to strike down the impugned regulation. If the intention was to cover the IPL matches to be regulated, the existing regulations are sufficient and it does not require any amendment. Since the purpose of the amendment is to save one individual, i.e. the second respondent, it is an abuse of power vested on BCCI and it does not serve any public good. Further, in the general body meeting held on 27.09.2008 and 28.09.2008, there was no agenda for making any amendment. The President of the BCCI ought to have taken action against the second respondent. In any event, in view of the pendency of the first suit before this Court, the particular subject ought not to have been dealt with by the BCCI.

13. The Senior Counsel also stated that the BCCI must be controlled by competent persons such as Civil servants or Judges or eminent sportsmen and should not be occupied by business men, having commercial interest in the game.

14. Countering to these arguments, Mr. P.S. Raman, learned Additional Advocate General submitted that both suits are not maintainable as they were filed under misconception. The BCCI is a registered society registered under the Societies Registration Act, 1860 and it came to be a deemed society by virtue of Section 4(2) of the Tamil Nadu Societies Registration Act, 1975. It has got its own memorandum of association and bye-laws. The plaintiff/applicant obviously is trying to confuse the present amendment made to the regulations framed as if it is an amendment to the registered bye-laws of the Society. The general body of the BCCI has got only 30 institutional members and it is the supreme body which can deal with the affairs of the society.

15. He further stated that the meeting convened at Mumbai on 27.9.2008 and 28.09.2008 is the Annual General Body Meeting and apart from the subject introduced therein, the society can transact other business, including the business of amending its regulations. The amendments which is sought to be impugned in the suit are not registered bye-laws of the society, but its subsidiary regulations framed by its Working Committee. Bye-law No. 13 authorises the Working Committee to frame regulations for the management and affairs of the Board. Bye-law No. 43 provides for an arbitration in case of disputes between the members and the Board or members inter-se or for any other dispute, which the President may think fit, to refer for arbitration. Such disputes can be raised only by the members of the BCCI and not by persons like the plaintiff, who is not a member of the BCCI. As the past President, his attempt to bring him within the definition of the term "Administrator" as per para 2 of the subsidiary regulations cannot give him locus standi to question the action of the BCCI. Regarding BCCI and its functioning, the plaintiff is a stranger.

16. The sub-regulations, which were amended in 2008, was originally framed at a Working Committee meeting held on 20.08.2000. The framing of the regulations is to regulate the players, team officials, managers, umpires and administrators. It became necessitated because of wide spread allegations of

match fixing in the Cricket World by its stake holders. At the relevant time, the idea of IPL matches was not known and no regulations were made. When IPL matches became part of the BCCI events, necessity arose to include those events. Hence the Working Committee and the general body amended those regulations so as to include the IPL matches within its ambit. The amendments were incorporated after accepting the recommendations made by a two member committee. It has no relevance to the suit instituted by the plaintiff.

17. The learned Additional Advocate General further submitted that it was necessary to regulate the matches like IPL. As it was a new innovation and being conscious of the format of these matches, involving sponsorship and participation by business groups, an exemption was given to members of the BCCI regarding the participation of their business groups. Original regulation 6.2.4 was so wide and if it was applied to IPL matches, it will result in members of the BCCI getting disqualified to hold office. Further, it will be difficult to keep track as to who was having interest. The disqualification was not only for any direct commercial interest, but also for indirect commercial interests. Further, the very idea of IPL matches was commercially oriented and commercial interest in sponsorship of matches cannot be avoided.

18. He further stated that the plaintiff is confusing the issue by stating that an administrator was prohibited to have any direct or indirect commercial interest in the matches or events. Those regulations were made to enable the BCCI to take action against those indulged in match fixing and unethical acts. The original regulations were framed on 20.08.2000. The amendments made on 28.09.2008 also had the approval of the BCCI. These regulations cannot be the basis for taking action against members of the BCCI.

19. It is also stated that even as early as on 29.12.2007, the second respondent wrote to the President stating that whether it was proper for the India Cement Limited to participate in the tender/bidding process to get franchise for IPL matches. It was replied by the BCCI President on 5.1.2008 that participation of the India Cement Limited will not mean that the second respondent has any personal/direct or indirect commercial interest and there was no impediment for the Company in participating in the bidding process. It was after getting such an authoritative permission, the India Cement Limited participated. ICL became the highest bidder in the bid for the game and they have paid 91 million US Dollars or its rupee equivalent. Even though the plaintiff is aware of the bid participation by the India Cement Limited, he did not challenge the same at the relevant time, but chose to wait for nearly 9 months to move this Court. There is no prima facie case for grant of any injunction and that the suit cannot be allowed at the instance of the plaintiff as it was not filed in a representative capacity.

20. Mr. K. Hari Shankar, the learned Counsel appearing for the second respondent submitted that the plaintiff was motivated in filing the suit inasmuch as he had lost in the election held for the Tamil Nadu Cricket Association (TNCA) to the second respondent by a huge margin. He also attempted to stall the said

election. Having failed to become the office bearer of the TNCA, by which one can be a member of the BCCI, the plaintiff has come forward to file the suit to settle scores with the second respondent.

21. In the light of the above submissions, the learned Counsels referred to certain legal precedents, bearing on these applications.

22. The learned Senior Counsel for the applicant/plaintiff referred to the decision of the Supreme Court in *The State of Assam Vs. Bhubhan Chandra Dutta and Another*, to drive home the point that any amendment to save one's own office will be frowned upon by the courts. Emphasis was made to paragraph 308 which reads as follows:

308. If Clause (4) was an exercise in legislative validation without changing the law which made the election invalid, when there ought to have been an exercise of judicial power of ascertaining the adjudicative facts and applying the law, the clause would damage the democratic structure of the Constitution, as the Constitution visualises the resolution of an election dispute by a petition presented to an authority exercising judicial power. The contention that there was no election dispute as Clause (4) by repealing the law relating to election petition had rendered the petition filed by the respondent non est, if allowed, will toll the death knell of the democratic structure of the Constitution. If Article 329(b) envisages the resolution of an election dispute by judicial process by a petition presented to an authority as the appropriate legislature may by law provide, a constitutional amendment cannot dispense with that requirement without damaging an essential feature of democracy viz. the mechanism for determining the real representative of the people in an election as contemplated by the Constitution.

23. The learned Senior counsel also submitted that Courts will also strike down a law which exhibits discrimination and removes an individual from his office. She referred to the decision of the Supreme Court in the case relating to *P. Venugopal Vs. Union of India (UOI)*, . Paragraphs 38 and 39 will show the basis on which the said decision was rested on.

38. In *D.S. Reddi*, the facts of that case are somewhat similar to that of the writ petitioner. In that decision, D.S. Reddi was already a Vice-Chancellor for the past seven years and had not challenged the fixation of term from five years to three years. He was aggrieved by the second amendment in the University Act whereby Section 13-A was introduced to make the provision of Section 12(2) providing for inquiry by an Hon'ble Judge of the High Court/Supreme Court and hearing before premature termination of the term of the Vice-Chancellor inapplicable to the incumbent to the office of the Vice-Chancellor on the commencement of the second Amendment. The core contention of D.S. Reddi was that this amendment was only for his removal and therefore was a case of ? naked discrimination? as it also deprived the protection of Section 12(2) to him when Section 12(2) was applicable to all other Vice-Chancellors and there being

no distinction in this regard between the Vice-Chancellor in office and the Vice-Chancellors to be appointed. In that situation, the plea of the respondent Government was that the provision similar to Section 13-A was also incorporated in two other enactments relating to Andhra University and Shri Venkateswara University and was, therefore, not a one-man legislation. It was further contended by the State that it was always open and permissible to the State Legislature to treat the Vice-Chancellor in office as a class in itself and make provisions in that regard. All the contentions on behalf of the State Government were rejected by the Constitution Bench judgment of this Court in D.S. Reddi and it was held that it was a clear case of 'naked discrimination' for removal of one man and by depriving him of the protection u/s 12(2) of the Act without there being any rationality of creating a classification between the Vice-Chancellor in office and the Vice-Chancellor to be appointed in future.

39. It was further held in D.S. Reddi that such a classification was not founded on an intelligible differentia and was held to be violative of Article 14 of the Constitution of India. Accordingly, the provision of Section 13-A was held to be ultra vires and unconstitutional and hit by Article 14 of the Constitution. Similarly in the present case, the impugned proviso to Section 11(1-A) itself states that it is carrying out premature termination of the tenure of the writ petitioner. It is also admitted that such a premature termination is without following the safeguards of justifiable reasons and notice. It is thus a case similar to D.S. Reddi and other decisions cited above that the impugned legislation is hit by Article 14 as it creates an unreasonable classification between the writ petitioner and the future Directors and deprives the writ petitioner of the principles of natural justice without there being any intelligible differentia.

24. The learned Senior Counsel submitted that if the BCCI wanted an amendment explicitly for covering IPL matches within its ambit, it can do so. But while covering the IPL within its ambit by the impugned amendment, it made the very exercise only to cover the private interest of R-2. The impugned amendment to Rule 6.2.4 goes contrary to the inclusion of IPL matches into the rule by the grant of exemption to members who have commercial interest in the games. In this context, she referred to the decision of the Supreme Court in R.S. Garg Vs. State of U.P. and Others, . She referred to the following passage found in para 31 which reads as follows:

31. The State proceeded on the basis that the act of conversion would require an amendment to the Rules. Whether such an amendment was necessary or not, as was argued by Mr. Dwivedi, loses much significance in view of the fact that the State itself was of the opinion that the same was necessary. Despite the same, the Principal Secretary, Labour Department had put up the note, as noticed hereinabove, before the Chief Minister without bringing the same to her notice. The note was not put up only highlighting the necessity therefor. Two views were placed: Firstly, the conversion would not entail any financial loss and provide promotional avenues for candidates of Scheduled Castes, which by itself cannot

be a matter of public interest; and secondly, the case of the 3rd respondent was highlighted, stating that he had been in service since 1987-88 with interruption and since 1989 without interruption and up to 1995 on ad hoc basis and in regular service since 15-11-1995. It was also stated that relaxation could be given to fulfil reservation quota under the 1994 Act, in terms whereof relaxation for qualifying service for the aforementioned post could be accorded. Why the Public Service Commission was ignored, has not been explained. The idea of conversion of the post should have been mooted keeping public interest in view and not the interest of an individual. The entire approach of the authorities of the State of U.P., thus, was only for achieving a private interest and not the public interest. It was in that sense, the action suffered from the vice of malice in law. It has not been disputed that there were other employees also who belonged to the Scheduled Caste and were senior to the 3rd respondent.

25. The learned Senior Counsel contended that an unfair and untenable or irrational clause in a contract is unjust and always amenable to judicial review. She stated that Rule 6.2.4 insofar it excludes the disqualification clause for the events like IPL and Champions League Twenty 20. She made a reference to the decision of the Supreme Court in its judgment in LIC of India and Another Vs. Consumer Education and Research center and Others, . Paragraph 32 of the said judgment reads as follows:

32. An unfair and untenable or irrational clause in a contract is also unjust and amenable to judicial review. In common law a party was relieved from such contract. In Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd. Lord Denning for the first time construing the indemnity clause in a contract questioned that are the courts to permit party to enforce his unreasonable clause, even when it is so unreasonable, or applied so unreasonably, as to be unconscionable, and stated:

26. The learned Senior Counsel submitted that an irrational rule can be struck down by courts and in this context, she referred to the Supreme Court's judgment in Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, . Reliance was placed on the following passages found in paragraphs 19 and 20 of the judgment, which reads as follows:

19. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows: (All ER p. 950 h-i)

Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ?

illegality?, the second ?irrationality? and the third ?procedural impropriety?. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ?proportionality? which is recognized in the administrative law of several of our fellow members of the European Economic Community;

Lord Diplock explained ?irrationality? as follows: (All ER p.951a-b)

By ?irrationality? I mean what can by now be succinctly referred to as ?Wednesbury unreasonableness?. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

20. In other words, to characterize a decision of the administrator as ?irrational? the court has to hold, on material, that it is a decision ?so outrageous? as to be in total defiance of logic or moral standards. Adoption of ?proportionality? into administrative law was left for the future.

27. The learned Senior Counsel also submitted that the BCCI was held to be an authority for the purpose of issuance of Writs vide the decision of the Supreme Court in *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, . Hence the action of the BCCI can be questioned before the Courts. For this purpose, reliance was placed upon the following passages found in paragraphs 245 to 247 and it reads as follows:

245. Furthermore, having regard to the nature of activities viz. the Board represents a sovereign country while selecting and fielding a team for the country with another sovereign country promoting and aiming at good relations with the said country as also peace and prosperity for the people, even at the domestic level the citizens of the said country may be held to be entitled to the right to invoke the writ jurisdiction of this Court even if thereby no personal fundamental right is directly infringed.

246. With the opening up of economy and globalisation, more and more governmental functions are being performed and allowed to be performed by private bodies. When the functions of a body are identifiable with the State functions, they would be State actors only in relation thereto.

247. An authority necessarily need not be a creature of statute. The powers enjoyed and duties attached to the Board need not directly flow from a statute. The Board may not be subjected to a statutory control or enjoy any statutory power but the source of power exercised by it may be traced to the legislative entries and if the Rules and Regulations evolved by it are akin thereto, its actions would be State actions. For the said purpose, what is necessary is to find out as to whether by reason of its nature of activities, the functions of the Board are public functions. It regulates and controls the field of cricket to the exclusion of others. Its activities impinge upon the fundamental rights of the players and

other persons as also the rights, hopes and aspirations of the cricket-loving public. The right to see the game of cricket live or on television also forms an important facet of the Board. A body which makes a law for sports in India (which otherwise is the function of the State), conferring upon itself not only enormous powers but also final say in disciplinary matters and, thus, being responsible for making or marring a citizen's sports career, would be an authority which answers the description of 'other authorities'.

28. The learned Senior Counsel also submitted that in respect of the very same BCCI, the Supreme Court after dealing with its activities, emphasized the need for the activities of BCCI to be pregnant with fairness and good faith. For this purpose, reliance was placed upon the decision of the Supreme Court in its judgment in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, . Attention of this Court was drawn to the following passages found in paragraphs 80 to 82 and it reads as follows:

80. The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regards regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State associations except Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deeply pervasive and complete.

81. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards.

82. An association or a club which has framed its rules is bound thereby. The strict implementation of such rules is imperative. Necessarily, the office-bearers in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner, keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body in charge of controlling the sport of cricket should involve itself in litigations completely losing sight of

the objectives of the society. It is furthermore unfortunate that room for suspicion has been created that all its dealings are not fair. The Board has been accused of shady dealings and double standards.

29. The decisions cited by the learned Senior Counsel have no relevance to the case on hand. The BCCI being a society is entitled to amend its own bye-laws through its general body. The plaintiff is not even its member and has no locus standi even to question the amendment to the bye-law. In the present case, it is not the case of an amendment to the bye-law of the society which requires previous registration, but an amendment to the subsidiary regulations framed for the control of the game. By framing of such subsidiary regulations, it cannot be said that the general body membership of the BCCI can be removed. In fact, the membership of the BCCI is on the basis of institutional membership and no individual has been made as its member. Therefore, the authorities like BCCI being a public authority, its subsidiary rules framed must stand scrutiny by a civil court cannot be accepted.

30. In any event, as it was demonstrated by the respondents, the amendments were not made for one individual, but for taking note of the new conceptual structure of IPL matches without which sponsorship for such matches will become doubtful. If there is any member of the BCCI aggrieved by such framing of regulations, the registered bye-law provides for arbitration and the civil suit is not a remedy.

31. The plaintiff is not even the member of the BCCI and he is only a third party or a stranger. At his instance, the issue raised herein cannot be gone into. The contention that the amendment was made with the interest of one person cannot be accepted. In the absence of any interim order in the first suit, the BCCI has power to amend its subsidiary rules. It is also open to them to bring new agenda in its meetings, though not circulated earlier. Only a member of the BCCI, who can object to the same and not by a third party. The concept of indoor management will squarely apply to this case. In cases where there was statutory bar on directors of a company voting on an interested subject, the Supreme Court had recognised the well known power of the company to ratify such actions.

32. Mr. P.S. Raman, the learned Additional Advocate General (AAG) contended that even a member of a Society could not have questioned the decision of the general body of a society. Having agreed to work under the bye-laws of a society, a member cannot have an higher right. In essence a stream cannot rise above than the source. For this proposition, he relied upon the decision of the Supreme Court in Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, . Paragraphs 17, 25 and 35 of the said judgment reads as follows:

17.... In State of U.P. v. C.O.D. Chheoki Employees? Coop. Society Ltd. this Court after referring to Daman Singh case held in para 16 that: (SCC p.691)

16. Thus, it is settled law that no citizen has a fundamental right under Article

19(1)(c) to become a member of a cooperative society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and the bye-laws and is subject to its operation. The stream cannot rise higher than the source.

25. It is true that it is very tempting to accept an argument that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our Constitution-makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. But, while being thus tempted, the court must also consider what lies behind the formation of cooperative societies and what their character is and how they are to be run as envisaged by the various Cooperative Societies Act prevalent in the various States of this country. Running through the Cooperative Societies Act, is the theory of area of operation. That means that membership could be denied to a citizen of this country who is located outside the area of operation of a society. Does he not have a fundamental right to settle down in any part of the country or carry on a trade or business in any part of the country? Does not that right carry with it, the right to apply for membership in any cooperative society irrespective of the fact that he is a person hailing from an area outside the area of operation of the society? In the name of enforcing public policy, can a Registrar permit such a member to be enrolled? Will it not then go against the very concept of limiting the areas of operation of cooperative societies? It is, in this context that we are inclined to the view that public policy in terms of a particular entity must be as reflected by the statute that creates the entity or governs it and on the rules for the creation of such an entity. Tested from that angle, so long as there is no amendment brought to the Cooperative Societies Acts in the various States, it would not be permissible to direct the societies to go against their bye-laws restricting membership based on their own criteria.

.....

35. Section 23 of the Contract Act provides that where consideration and object are not lawful the contract would be void. But for Section 23 to apply it must be forbidden by law or it must be of such a nature that it would defeat the provision of any law or it is fraudulent or it involves or implies injury to the person or property of another or the court regards it as immoral or opposed to public policy. If we proceed on the basic premise that public policy in relation to a cooperative society is to be looked for within the four corners of the Act, the very

enactment under which the very society is formed, a bye-law that does not militate against any of the provisions of the Act cannot be held to be opposed to public policy unless it is immoral or offends public order. It cannot be said that a person bargaining for membership in a society or for coming together with those of his ilk to form a society with the objects as set out in the bye-laws subscribed to by him, can be considered to be doing anything immoral or against public order. An aspirant to membership in a cooperative society, is at arm's length with the other members of the society with whom he enters into a compact or in which he joins, having expressed his willingness to subscribe to the aims and objects of that society....

(Emphasis added)

33. He further relied upon a decision of this Court for the very same proposition, i.e. that the power of the court to have judicial review over the decisions of a society is very limited. He referred to the decision of this Court vide its judgment in Chennai Kancheepuram Tiruvelore District Film Distributors Association, rep by its Secretary and Anr. v. Chinthamani S. Murugesan and Ors. reported in 2001 (3) CTC 349. He placed emphasis on the following passages found in paragraphs 5 and 6 of the judgment, which reads as follows:

5. The Executive Committee of a voluntary association cannot be put on par with a Court or a Tribunal when dealing with the disciplinary matters concerning the membership of the Body. They have a very wide latitude in deciding as to when disciplinary action is warranted, and the extent to which the powers vested in them under the Rules or byelaws should be exercised while penalizing the members for the misconduct which the appropriate Body within the association empowered to decide that question, considers him to be guilty. The procedure to be followed by such an association also cannot be that which is normally expected to be followed in a Court, or a Tribunal. Every letter written by the Executive Committee of an association to its member calling for an explanation is not to be judge under a lens to find out the possible defects therein for the purpose of holding that the action that followed was not in consonance with the principles of natural justice. Even principles of natural justice are not required to be applied with the same degree of rigour as they would be in the case of adjudication before a Court or a Tribunal.

6. What is required of such bodies is that they act fairly in a broad way without having to imitate the Courts and Tribunals, with regard to the rigour and the formality of the procedures. Such bodies are of course expected to act in accordance with their own Rules, and stay within the limits imposed by those Rules. If the Body vested with the power under the Rules, exercise that power within the ambit of the Rule, after having afforded an opportunity to the member concerned to have his say in the matter, the decision rendered by such Committee cannot be regarded as illegal, or violative of natural justice, or as arbitrary. The Courts will not sit in appeal over the decisions of such Committees, subject to such decision being broadly in consonance with the general standard of fairness.

(Emphasis added)

34. The learned Senior Counsel for the plaintiff/applicant stated that when the general body of the BCCI met on 27.09.2008, this amendment was not specifically included in its agenda and it has been surreptitiously brought into the meeting at the instance of the second respondent. To counter the said argument, the learned AAG appearing for BCCI submitted that an agenda can be included in a meeting with the permission of the house. Such actions cannot be invalidated and that too at the instance of the applicant. He placed reliance upon the decision of the Supreme Court vide its judgment in Myurdhwaj Cooperative Group Housing Society Ltd. Vs. The Presiding Officer, Delhi Cooperative Tribunal and Others, . The following passage found in para 14 of the judgment upon which reliance was made may be usefully extracted below:

14. So far as giving notice to Respondent 3 is concerned, we find there is specific averment by the appellant that a registered notice dated 26-4-1986 was sent to her, a copy of which has been filed in this appeal. The respondent's case is, she has not received any notice from the Society either of the default or laying down cut-off date for the payment, including notice dated 26-4-1986, further the decision of the General Body dated 6-1-1990 of relegating her or other such person to Phase II was not on the agenda. To this last argument, we do not find any merit. A general body can always with the approval of the house in the meeting of its members take up any other matter not covered by the agenda and on that account, no illegality could be held.

35. In this context, it may be noted that in the Companies Act, 1914, a provision was made to prohibit directors of the company from participating in any discussions where he was interested in a particular contract. The said provision in Section 91-B of the Act may be noted. Section 91B which was inserted by Act II of 1914 as modified by Act 22 of 1936. The first sub-section to 91-B reads as follows:

No director shall, as a director vote on any contract or arrangement in which he is either directly or indirectly concerned or interested nor shall his presence count for the purpose of forming a quorum at the time of any such vote and if he does so vote, his vote shall not be counted.

36. The Supreme Court while considering the said provision in relation to an act of a Director vide its judgment in Narayandas Shreeram Somani Vs. The Sangli Bank Ltd., has held as follows:

6. Now, a director of a company stands in a fiduciary position towards the company and is bound to protect its interest. For long, it has been an established rule of equity that he must not place himself in a position in which his personal interest conflicts with his duty, and unless authorised by the company's articles, he must not vote as a director on any contract or arrangement in which he is directly or indirectly interested. Standard articles give effect to this rule of equity. See Palmer's Company Precedents, 17th Edn., Part I, p. 553. If he votes in such

a case, his vote would not be counted, and his presence would not count towards the quorum, that is to say, the minimum number fixed for the transaction of business by a board meeting, for a quorum must be a disinterested quorum, and must be comprised of Directors who are entitled to vote on the particular matter before the meeting. See *In re Yuill v. Greymouth Point Elizabeth Railway and Coal Co. Limited* 1904-I Ch 32. If an interested director votes and without his vote being counted there is no quorum, the meeting is irregular, and the contract sanctioned at the meeting is voidable by the company against the director any other contracting party who has notice of the irregularity, see *Transvaal Lands Co. v. New Belgium (Transvaal) Land and Development Co.* 1914-2 Ch 488; but the company may waive the irregularity and affirm the transaction. The matter is put succinctly by Gore-Browne in *Handbook on Joint Stock Co.* 41st Edn.p. 363 thus:

According to the well established rule that an agent cannot act on behalf of his principal in a matter in which the agent has a conflicting interest or duty, Directors are precluded from taking part in any resolution under which they take a benefit or which adopts a contract that concerns them unless the articles authorise their doing so. It must be here noted that if interested Directors take part in any transaction there is an irregularity which renders the transaction voidable by the company as against the Directors and any persons who have knowledge of the facts.

7. Section 91-B embodied the existing rule of equity in the form of a statutory provision. In AIR 1938 159 (Privy Council) , at pp. 162, 163, Sir George Rankin observed that the section is a concise statement of the general rule of equity explained in the *Transvaal Lands Company* case, 1941-2 Ch 488, and he pointed out that the impugned transactions on which the interested Directors had voted, were voidable by the official liquidator of the Company. The voting by the interested director, of itself, does not invalidate the contract. The effect of Section 91-B is that the vote of the interested director must be excluded, and if as a result of such exclusion there is no quorum, the resolution sanctioning the contract is irregular and the contract is liable to be avoided by the company against the Directors and any other contracting party having notice of the irregularity. Section 91-B is meant for the protection of the company, and the company may, if it chooses, waive the irregularity and affirm the contract.

(Emphasis added)

37. The very same view was again reiterated in a subsequent decision of the Supreme Court vide its judgment in *Seth Mohan Lal and Anr. v. Grain Chambers Ltd., Muzaffarnagar and Ors.* reported in AIR 1968 SC 772.

38. The Supreme Court while dealing with an action of a society considered the scope of jurisdiction of the Civil Courts vide its decision in *T.P. Daver Vs. Lodge Victoria* No. 363, S.C. Belgaum, and held as follows:

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*.

(Emphasis added)

39. This Court in its decision in *S. Krishnaswamy and Others Vs. South India Film Chamber of Commerce and Others*, dealt with the scope of the power vested on a civil Court for the grant of injunction under Order 39 Rule 1 and had set out parameters. It also analysed as to what constitutes a *prima facie* case and as to when a balance of convenience can set to arise. Useful reference may be made to paragraphs 13 and 14 of the said judgment:

13. The principles which govern the grant or refusal of an interim injunction in aid of the plaintiff's rights are well settled and they depend upon a variety of circumstances. In the nature of things, it is impossible to lay down, any set, rigid or general rule on the subject by which the discretion of the court ought in all cases be regulated. As the plaintiff, by the interim injunction undoubtedly seeks to interfere with the rights of the opponent before the plaintiff's right is finally established, the injunction is not granted as a matter of course and it is necessary for the plaintiff to make out a strong *prima facie* case in support of the right that he asserts. It is true that at the interlocutory stage, the court should not embark upon a detailed investigation on the relative merits of the contentions of the parties and it is enough if the plaintiff raises questions of a substantial character calling for decisions after an examination of the facts and the law arising in the case. The Court can consider the nature and the merits of the rival contentions at the interlocutory stage only as bearing upon the limited question as to whether or not the plaintiff has made out a strong *prima facie* case. The Court should avoid expressing any opinion on the merits which would partake the character of a decision of the main issues in the case. The plaintiff should next make out the Court's interference if necessary to protect him from an injury or mischief imminent and it is at the same time irreparable. He should make out that the injury is so serious, irreparable and imminent that an immediate order of Court is necessary even before his rights are established at the trial. Inseparably connected with this, is the burden, which lies upon the plaintiff to make out, that the comparative mischief or inconvenience which would ensue from withholding the injunction would be far greater from what would ensue from the injunction being granted. Lastly, which again is a very important consideration, is that in considering whether an interim injunction

should be granted the court must have due regard to the conduct and dealings of the parties, before the application is made to the Court, by the plaintiff to preserve and protect his rights, since the jurisdiction to interfere being purely equitable, is governed by the equitable principles (Vide 21, Halsbury's Laws of England, paragraphs 766 and 767).

14. On the question of the balance of convenience and the threatened mischief or injury irreparable or otherwise, regard must be had to the nature of the suit and the particular right asserted like suits against Government, Public Corporations, Municipal Corporation, Statutory bodies, Social clubs and its members, Societies registered under the Societies Registration Act and its members distinguished from litigation between private individuals. In the case of clubs and Societies registered under the Societies Registration Act, the general principles governing the right of suit of an individual share holder or a member of the Company would apply and ordinarily the Court will not interfere with the internal management of the Society at the instance of one or some only of the members of the Society subject to well recognised exceptions (1) where the impugned act is ultra vires of the Society, (2) the act complained of constitutes fraud or (3) whether the impugned action is illegal. The Rules are made by the Society itself for the convenience of its members for regulating their own conduct as members and for regulating the affairs of the Society as an entity. A breach of any Rule made by the Society would not give rise to a cause of action for any member to rush to Court, it must be a case of manifest illegality or where the act of omission or commission is something which goes to the root of the matter. All the members would be bound by the decision taken by the general body though there may be some violation of some Rules provided it is something which could well be condoned and ignored by the general body (Vide Shridhar Misra and Others Vs. Jaichandra Vidyalkar and Others, ; Satyavart Sidhantalankar Vs. The Arya Samaj, and K.A.S. Mohammed Ibrahim Vs. Jaithoon Bivi Ammal, represented by her next friend and guardian, Shaik Dawood Rowther, .

40. In the very same decision, this Court also held that such decisions of a society taken by its majority cannot be thwarted at the instance of one individual. Useful reference may be made to para 22 of the judgment, which reads as follows:

22. The next aspect that has to be considered is the question of balance of convenience and the irreparable mischief or damage which the plaintiff would sustain in case the interim injunction is refused. As prefaced in my preliminary observations, this involves two aspects, (a) whether the mischief or injury is irreparable and so serious and (b) whether the plaintiff's complaint of the threatened injury is real or merely illusory and imaginary. In the first place, it has to be borne in mind that it is established law that at the instance of one member Courts are highly reluctant to interfere; at any rate, would not lightly interfere with the functioning of a corporate body or a Society. It is not a dispute between two private individuals....

(Emphasis added)

41. As to when an injunction can be granted under Order 39 Rule 1 C.P.C. has been propounded by the Supreme Court in several decisions. One such case of the Supreme Court is in Dalpat Kumar and Another Vs. Prahlad Singh and Others, . It is necessary to quote the following passage found in paragraphs 4 and 5 of the said judgment, which reads as follows:

4. Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause was brought on statute by Section 86(i)(b) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power u/s 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that

there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of the granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

(Emphasis added)

42. In the light of the above factual matrix and the legal precedents set out above, the plaintiff has not made out any prima facie case. The balance of convenience is not for grant of any interim order. The very locus standi of the plaintiff in maintaining the suits themselves are doubtful. In the light of the same, all the applications will stand dismissed with costs of Rs. 25,000/- (Twenty five thousand only). The cost shall be paid to the Tamil Nadu State Legal Aid Services Authority, Chennai-600 104 within four weeks.