

(2007) 07 CAL CK 0048
In the Calcutta High Court
Case No : G.A. No. 1545 of 2007

Jagmohan Dalmiya

APPELLANT

Vs

The Board of Control for Cricket in India and Others

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Board of Control for Cricket in India Rules — Rule 38
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 8 Rule 1
Constitution of India, 1950 — Article 12, 226, 24 , 32
Consumer Protection Act, 1986 — Section 13(2)
Stamp Act, 1899 — Section 24, 25

Citation : AIR 2008 Cal 227

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : S.B. Mookerjee, P.C. Sen, Pratap Chatterjee, Abhijit Chatterjee and U.N. Banerjee and Amitesh Banerjee, for the Appellant; S.K. Kapur and Debal Banerji and Ranjan Bacchawat Barat-Law, Anil Gupta and Ravi Kapur, for the Respondent

Judgement

Indira Banerjee, J.—In this interlocutory application, the petitioner, a former President of the Board of Control for Cricket in India, hereinafter referred to as Respondent BCCI, has prayed for inter alia an order of injunction restraining Respondent BCCI from giving effect to the resolution taken at the special general meeting of Respondent BCCI held on 16th December, 2006 whereby the petitioner has inter alia forfeited all his rights and privileges as an administrator of Respondent BCCI, ceased to hold any position or office in any member or associate member of Respondent BCCI and been debarred from holding any position or post in any member or associate member of the petitioner in future.

2. Respondent BCCI is a Society registered under the Societies Registration Act, 1860 and deemed to be registered under the Tamil Nadu Societies Registration Act, 1975, hereinafter referred to as the 1975 Act by virtue of Section 53 of the said 1975 Act.

3. Respondent BCCI, as its name suggests controls the game of cricket in India and exercises wide powers which include amongst others the power to frame rules of cricket in India and the power to select players to represent India in cricket matches and/or tournaments. Respondent BCCI arranges, regulates and even finances cricketing tours of Indian teams to foreign countries and arranges, regulates and controls cricket matches in this country between India and members of the International Cricket Council (ICC) as well as Indian teams inter se at the national level. Apart from test matches Respondent BCCI is responsible for organizing other important tournaments of national interest such as the Ranji Trophy and the Duleep Trophy.

4. The petitioner is a well-known personality in the realm of cricket who has been associated with different Cricket Associations and Cricket Clubs. The petitioner has been office bearer of Respondent BCCI in the capacity of President, Honorary Secretary and Treasurer. The petitioner was Honorary Treasurer of Respondent BCCI in 1983-84 and 1984-85, Honorary Secretary in 1990-91 and again from 1993 till July, 1997 when the petitioner took over as the President of the International Cricket Council. The petitioner claims to be the first Asian to have been elected to the coveted post of the President of the International Cricket Council. The petitioner was the President of Respondent BCCI from September, 2001 till January 2005. The petitioner has also been Chairman of the Asian Cricket Council and the President of the Cricket Association of Bengal and the National Cricket Club.

5. According to the petitioner, when the petitioner was elected Honorary Secretary of respondent BCCI in September, 1993 the accounts of Respondent BCCI reflected deficit of Rs. 85 lakhs. When the petitioner laid down office as President of respondent BCCI, respondent BCCI had over Rs. 100 crores in its coffer.

According to the petitioner, the petitioner was instrumental in securing allotment of World Cup 1996 to the Indian subcontinent comprising Pakistan, India and Sri Lanka.

6. After World Cup 1996 was allotted to the sub-continent, the members of the Board of Cricket Control of Pakistan, India and Sri Lanka formed a committee which was known as PILCOM. The Chairman and the Treasurer of PILCOM were from Pakistan and the President and the Convenor Secretary were from India.

7. The petitioner became the Convenor Secretary of PILCOM. An Asian bank account was opened at Citibank, London, U.K. in the name of PILCOM and the Asian signatories were the Convenor Secretary from India, that is, the petitioner and the Treasurer from Pakistan.

8. According to the petitioner the account is still maintained and about 3.7 million U.S. Dollars equivalent to Rs. 18 crores is lying in the account. According to the petitioner, save and except the aforesaid account at Citibank, London, U.K., there is no other account in the name of PILCOM anywhere in India or

abroad.

9. For conducting the World Cup matches in India, Respondent BCCI constituted an Organizing Committee named INDCOM on 24th February, 1997. The petitioner was nominated as the Convenor Secretary of INDCOM.

10. On 9th December, 1995 Indian Overseas Bank was appointed the official banker of World Cup 1996. At the meeting of INDCOM held on 20th December, 1995, it was resolved that a Foreign Exchange Account and an Indian Account be opened with the Indian Overseas bank at Calcutta and the said Account be operated by any one amongst the Chairman INDCOM, the Convenor Secretary and the Treasurer. The said bank deposited Rs. 50 lakhs as part of its sponsorship money in an account of INDCOM at its Bhawanipore Branch, Kolkata being Account No. 1223. The said account was operated by the petitioner.

11. The account of INDCOM was, according to the petitioner, regularly scrutinized and checked and audited by M/s. S.B. Billimoria and Co. the auditors of Respondent BCCI and merged in the Final Accounts of Respondent BCCI.

The accounts were approved by the finance sub-committee of INDCOM and later by the Finance Committee of Respondent BCCI on 17th August, 1996.

12. It is pleaded that the Working Committee of the Respondent BCCI had approved the accounts in the Annual General Meeting of Respondent BCCI held on 25th and 26th September, 1996.

The accounts were approved, adopted and closed and INDCOM along with its sub-committees dissolved.

13. It is stated that in 1996 Income Tax Department initiated proceedings against INDCOM demanding tax to the tune of Rs. 88.71 crores, later scaled down to Rs. 4.82 crores by initiation of legal proceedings, some of which are still pending.

14. In July, 1997, the petitioner became President of ICC and resigned from the office of Secretary of Respondent BCCI. An application was made for transfer of pending Income Tax cases to Mumbai, as the Headquarters of Respondent BCCI was at Mumbai. The request was, however, turned down by the Income Tax Authorities.

15. It is submitted that since the petitioner had to deal with the proceedings in Kolkata, it was unanimously decided that the account with Indian Overseas Bank should be continued to be maintained and the same operated by the petitioner as Convenor Secretary. In support of the submission the petitioner has referred to the minutes of the meeting of the Finance Committee of Respondent BCCI, a copy of which has been annexed to the petition as Annexure "C. According to the petitioner since INDCOM had been dissolved on 25th and 26th September, 1996 the Indian Overseas Bank account was operated by the petitioner in his capacity as Convenor Secretary of World Cup 1996. The account No. 1223 with Indian

Overseas Bank was, according to the petitioner, regularly scrutinized and audited by the Auditors of Respondent BCCI every year. The Annual Reports of Respondent BCCI for the years 1995-1996 onwards were produced in Court.

16. According to the petitioner, the Respondent No. 3 Mr. Niranjana Shah, Honorary Secretary of the Respondent BCCI signed the annual accounts for the year 2001-2002 as Honorary Secretary. The said Niranjana Shah has attended all Annual General Meetings of Respondent BCCI for 10 years.

17. Following complaints of alleged misappropriation from INDCOM account by the petitioner, enquiries and investigations were initiated by Reserve Bank of India, the Income Tax Department and the Revenue Intelligence Department. It is asserted that both Reserve Bank of India and Revenue Intelligence Department issued written certificates certifying that the accounts were in order.

18. The petitioner has annexed to the petition, a letter dated 17th October, 1997 addressed to him by the Enforcement Directorate, relevant portions whereof are extracted hereinbelow:

...Our letter No. T-I/Misc/53/Cal/96/8598 dated 19.9.97, addressed to the Reserve Bank of India was confidential and hence, there cannot be any question of releasing its contents to the media from this office and that letter was to get verification of the genuineness of the suspected information;

We have in effect received a reply from R.B.I. on 13.10.97 wherein they have clarified that scrutinisation of the statement of accounts by them, did not reveal diversion from PILCOM's account to the personal account of Shri Jagmohan Dalmiya;

Hence from the above it is clear that we have till date not detected any violation of the provisions of the Foreign Exchange Regulation Act, 1973 against PILCOM or against yourself.

19. According to the petitioner, the decision taken by the petitioner in the larger interest of Respondent BCCI, to cancel the tender process for awarding televising rights, gave rise to a series of vexatious proceedings against the petitioner.

20. On 29th September, 2004 the 75th Annual General Meeting of Respondent BCCI was held. The Respondent No. 2 and his group were defeated in the elections. There being a tie in votes (15 : 15) the petitioner as President exercised his casting vote in favour of Mr. Ranbir Singh Mahindra who defeated the Respondent No. 2 and became President. The petitioner has not contested for any post in Respondent BCCI since 2004.

21. The petitioner has alleged that by casting his vote in favour of Ranbir Singh Mahindra, the petitioner annoyed the Respondent No. 2, who, along with the Respondent Nos. 3, 4, 5, 6 and a few others embarked upon an agenda of victimizing and maligning the petitioner.

22. The petitioner has asserted that the account No. 1223 at Indian Overseas

Bank was closed on or about 4th February, 2006 and immediately thereafter on 14th February, 2006 the petitioner handed over all papers, documents and records relating to INDCOM to the representative of Respondent BCCI at Eden Gardens, Kolkata.

23. Even though the closing balance in the said Account No. 1223 was Rs. 17,67,365/- the petitioner remitted to Respondent BCCI, through the Cricket Association of Bengal a sum of Rs. 39,41,981/- by adding Rs. 21,94,616/- allegedly withdrawn to meet expenses. This according to the petitioner was done since the Accounts from April 2005 had not been scrutinized and audited and on the understanding that Cricket Association of Bengal would claim reimbursement of the expenses.

It appears that on or about 16th February, 2006 the respondent raised disputes with regard to expenses incurred by the petitioner towards inter alia telephone charges, travelling and hotel charges.

24. According to the petitioner, as Honorary Secretary and later as President of Respondent BCCI, the petitioner was entitled to reimbursement of expenses including expenses towards travel, hotel accommodation and even entertainment.

25. According to the petitioner, the Working Committee of Respondent BCCI had at its meeting held on 27th April, 1997 unanimously decided that the petitioner as President of ICC would be provided with office space, staff members and telecommunication facilities at the cost of Respondent BCCI. A copy of the minutes is annexed to the petition. The petitioner was thus entitled to reimbursement of office expenses and telephone expenses as per actuals.

26. The petitioner remained President of ICC till June, 2000. In September, 2001 the petitioner was elected President of Respondent BCCI. The petitioner held the office of President of Respondent BCCI till 27th January, 2005. The petitioner in the meanwhile also became President of the Asian Cricket Council. On becoming the President of Asian Cricket Council, the petitioner was extended all the facilities that the petitioner enjoyed as ICC President as would appear from the minutes of the meeting of the Working Committee of Respondent BCCI, a copy of which is annexed to the petition as Annexure "G".

27. Allegations have been made by the petitioner of the respondents circulating malicious allegations against the petitioner through the media. Copies of news reports have been annexed. The news reports are, however, not relevant for the purpose of this application for interim relief.

28. On 12th February, 2006, the petitioner was served with a show-cause notice inter alia alleging that the petitioner had, by closing the bank account in Kolkata, committed fraud. The petitioner was charged with misappropriation of around Rs. 21,94,616/-. The respondents proceeded on the reasoning that when the balance in the bank account of INDCOM was only Rs. 17,67,375/-, there could be no reason to pay Rs. 39,41,981/- and assumed that this was done to make up for

the shortfall in the account by reason of misappropriation.

The petitioner appears to have filed a suit in the City Civil Court being Title Suit No. 292 of 2006 challenging inter alia the legality and/or validity of the said show cause notice dated 27th February, 2006. The learned City Civil Court stayed the operation of the said show cause notice.

29. Respondent BCCI preferred an appeal whereupon a Division Bench of this Court extended the time granted to the petitioner to submit his reply till 23rd March, 2006. The petitioner thereafter submitted his reply to the show-cause notice.

In the reply the petitioner pointed out that there were two separate bank accounts, one of PILCOM with Citibank. London which was jointly operated by the petitioner along with the PILCOM Treasurer from Pakistan and the other the World Cup 1996 Account (Account No. 1223) with Indian Overseas Bank, Kolkata. After the decision of the Working Committee of Respondent BCCI on 23rd January, 2006 the petitioner never operated the PILCOM account. The letter dated 24th January, 2006 issued to the petitioner, was silent with regard to the World Cup 1996 Account.

30. Following the dissolution of INDCOM on 25th September, 1996, the name of the INDCOM Account was changed to the World Cup 1996 Account. However, as the petitioner remained Convenor Secretary of World Cup 1996, the petitioner had to deal with a series of Income Tax proceedings involving a liability of Rs. 88.71 crores and other legal and cricketing matters.

The Finance Committee of Respondent BCCI had, therefore, at its meeting held on 31st July, 1997, authorized the petitioner to operate the said account with Indian Overseas Bank in his capacity as Convenor Secretary of the World Cup 1996. Every year expenses incurred in Account No. 1223 were audited by the statutory Auditors of Respondent BCCI and merged with the general account of Respondent BCCI.

31. Since expenses from account No. 1223 were mainly in connection with the Income Tax cases and other genuine expenses the petitioner was asked to handover all files and documents relating to these cases to the Respondent No. 6, Mr. S. Srinivasan, who was appointed Convenor Secretary on 23rd January, 2006.

The petitioner has contended that it is the convention in the Respondent BCCI, for an office bearer laying down office to close the account operated by him and remit the balance in the account to his successor in office. The petitioner claims to have acted in accordance with the said convention of Respondent BCCI.

32. The petitioner has contended that There was never any instruction on the petitioner to stop operating the INDCOM/World Cup 1996 Account at any point of time. Even in the letter dated 24th January, 2006, there was no reference to the said Account.

33. In connection with the allegation of Cricket Association of Bengal having remitted to Respondent BCCI, Rs. 21.74 lakhs more than the closing balance of Rs. 17.32 lakhs in the World Cup 1996 Account, the petitioner submitted that the handing over had to be done in a hurry. The expenses incurred from April, 2005 to January, 2006 had not been audited. As there was no time for scrutiny, Rs. 21.74 lakhs paid from the account to meet expenses was also paid by Cricket Association of Bengal to Respondent BCCI on the understanding that Cricket Association of Bengal would claim reimbursement of the same from Respondent BCCI, at a later stage, after scrutiny.

According to the petitioner without even waiting for the reply of the petitioner, the Respondent No. 3 lodged a First Information Report with Mumbai Police on 15th March, 2006 against the petitioner and three other former office bearers alleging misappropriation of Rs. 21 lakhs odd by the petitioner. The charges were, according to the petitioner, false and vindictive.

34. The petitioner was constrained to file an application for anticipatory bail in the Hon''ble High Court at Bombay. On 9th April, 2006, one day before the final hearing of the application for anticipatory bail, the Respondent No. 2, as President, suspended the petitioner from taking part in the affairs of Respondent BCCI. On the same day, that is, 9th April, 2006 the Respondent No. 3 informed the petitioner that the petitioner's reply to the show-cause notice dated 27th February, 2006 had been found unsatisfactory and accordingly the said show cause notice had been referred to the Disciplinary Committee of the Respondent No. 1.

The letter dated 9th April, 2006 is apparently a cryptic communication of just two sentences unsupported by any reasons. According to the petitioner the reply of the petitioner dated 23rd March, 2006 was not considered at all.

35. On 10th April, 2006 notwithstanding vehement objection from the State of Maharashtra and Respondent BCCI the Hon''ble Bombay High Court granted anticipatory bail to the petitioner, after detailed hearing, inter alia holding that the complaint did not appear to have been filed bona fide. The High Court observed that the complaint had been filed with undue haste, after delay of 10 years.

The State of Maharashtra and Respondent BCCI filed Special Leave Petitions before the Hon''ble Supreme Court challenging the order granting anticipatory bail. The petitioner submitted that the Supreme Court also observed that the actions on the part of the respondents and the police appeared ex facie to be vindictive.

36. Another notice dated 15th April, 2006 was served on the petitioner making allegations of misappropriation of funds. In the said notice dated 15th April, 2006, it was alleged that (i) there were irregularities in the bank account of INDCOM in as much as the said Bank Account should have been operated by the petitioner jointly with the Chairman and Treasurer of the INDCOM and not by the

petitioner alone; (ii) since the petitioner had ceased to be Honorary Secretary of the Respondent BCCI after taking over as President of ICC with effect from 15th July, 1997 by which time INDCOM account had merged with the accounts of Respondent BCCI, the said account was required to be operated only by the Honorary Secretary and the Honorary Treasurer of Respondent BCCI and the petitioner had no authority to operate the account; (iii) funds had been transferred from the account on written instructions given on the letterhead of the Convenor Secretary by Mr. K.M. Chowdhury even though Respondent BCCI had not authorised Mr. Chowdhury to operate the said account. The petitioner thus allowed the account to be operated by an unauthorized person; (iv) the petitioner unauthorizedly utilized funds for payment and/or unauthorizedly withdrew funds from the World Cup 1996 Account under the heads (a) Telephone Bills, (b) Trade Wings Ltd., (c) Taj Palace Hotel, (d) Voyage (e) Cash Withdrawals, (f) Cricket Association of Bengal (g) U.N. Banerjee, Advocate (h) S.G. Traders.

It is alleged that the petitioner was not given inspection of the documents referred to in the said notice dated 15th April, 2006 till 5th May, 2006. On 5th May, 2006 the petitioner was offered inspection. The authorized representative of the petitioner was, however, provided with copies of only 273 vouchers, most of them illegible, out of 1800 to 2000 vouchers relied upon by the Respondents.

37. According to the petitioner, the authorized representative of Respondent BCCI admitted in writing that the notice dated 15th April, 2006 was issued on the basis of random inspection of vouchers and documents. No document was referred to in the purported notice dated 15th April, 2006, and in any case not those 273 vouchers of which inspection had been given. The petitioner was assured that if and when any other documents were obtained inspection thereof would be given to the petitioner.

38. According to the petitioner, without giving the petitioner inspection of the rest of the documents, the case was referred to the Disciplinary Committee under cover of a letter dated 29th June, 2006 of the Respondent No. 3. It was wrongly alleged that the petitioner had been given inspection of all documents on 5th May, 2006 and that the petitioner had failed to reply to the notice dated 15th April, 2006.

By a communication dated 17th July, 2006 the Respondent No. 3 called upon the petitioner to appear before the Disciplinary Committee on 26th July, 2006.

39. The petitioner instituted yet another suit being Title Suit No. 921 of 2006 in the City Civil Court at Calcutta. The Respondents, on being notified of the suit and the interlocutory application for injunction, postponed the hearing fixed on 26th July, 2006.

40. The Court fixed 22nd August, 2006 for final hearing of the interlocutory application. Immediately thereafter the respondents fixed 22nd August, 2006 for hearing. The Court restrained Respondent BCCI from proceeding with the hearing.

41. On 22nd August, 2006, the Court directed the Respondent BCCI to supply copies of documents to the petitioner. It was thereafter on 26th August, 2006 that volumes of loose papers including copies of 273 bank day vouchers were handed over to the petitioner, many pages of which were illegible, not clear and/or meaningless. According to the petitioner it became impossible to co-relate the documents handed over to the petitioner. In the premises the petitioner approached the City Civil Court for relief. The City Civil Court did not, however, grant any relief whereupon the petitioner moved this Court.

Counsel appearing on behalf of the Respondent BCCI in this Court expressly undertook that only legible portions of 273 bank vouchers that had been supplied to the petitioner would be relied upon and no further or other document would be taken into consideration.

42. In view of the aforesaid undertaking this Court on 1st September, 2006 granted leave to the petitioner to file his explanation to the notice dated 15th April, 2006, based on legible vouchers. The Court further granted leave to the Disciplinary Committee to direct the petitioner to appear 7 days after submission of his reply.

43. On 3rd October, 2006 the petitioner submitted his detailed reply to the notice dated 15th April, 2006 with supporting documents. The reply was restricted to 273 legible day vouchers supplied to the petitioner. According to the petitioner, the petitioner explained all his actions.

44. In his reply the petitioner inter alia pointed out that the allegation that a sum of Rs. 1.26 crores had been misappropriated by the petitioner towards alleged telephone charges not related to Respondent BCCI was made suppressing that of the aforesaid amount Rs. 1.26 crores, Rs. 82,56,735/- was paid to the Income Tax Department, expenditure of Rs. 18,35,443/- was incurred before August, 1997, that is, during the World Cup period, and only Rs. 35,89,964/- during the next nine years, inclusive of payment of telephone bills of late Madhav Rao Scindhia, former President of INDCOM and Respondent BCCI.

45. The petitioner in his reply took the stand that it has been the practice of officials of the Respondent BCCI to claim reimbursement towards telephone charges in respect of telephones standing in the name of companies if the telephones were used in connection with the activities of Respondent BCCI. Examples have been cited amongst others of Mr. I.S. Bindra being reimbursed telephone charges in respect of telephones standing in the name of Punjab State Handloom Textile Corporation Ltd. and Mr. Muthaiya being reimbursed for nine phones in the name of his company. It was pointed out that even the Respondent No. 3 had been reimbursed telephone charges for telephones in the name of Saurashtra Cricket Association.

46. With regard to the allegation of unauthorized payments to the extent of Rs. 2,72,00,000/- to M/s. Trade Wings the petitioner submitted that perusal of the 273 day vouchers indicated that the amount was Rs. 2,94,58,186/-, out of which

2,88,99.050/- was paid during the World Cup towards travel inter alia of 14 participating teams, umpires, match referees, officials of Respondent BCCI, officials of Pakistan, Sri Lanka and ICC. A sum of Rs. 5,59,171 was paid in 9 years towards* trips of the petitioner, late Madhav Rao Scindhia, I.S. Bindra, D.C. Agasha, Amrit Mathur, Raj Singh Dungarpur and Dr. A.C. Muthaiya.

47. With regard to Rs. 90,75,000/- alleged to have unauthorizedly been paid to Taj Palace Hotel, the petitioner submitted that the vouchers disclosed showed that the amount was Rs. 87,58,019/- of which Rs. 74,11,569/- had been paid prior to and during World Cup 1996 towards hotel accommodation of 14 participating teams, umpires, match referees, officials of Respondent BCCI, officials of Pakistan, Srilanka, ICC and others. During the subsequent 9 years, Rs. 13,46,440/- was paid towards accommodation and that too mainly in connection with arbitration proceedings that arose in connection with World Cup 1996.

The petitioner's answer to and/or explanation for each and every charge of defalcation levelled against him is given in the various sub-paragraphs of paragraph 33 of the petition. The reply of the petitioner to the show cause notice has also been annexed to the petition.

48. According to the petitioner, the reply of the petitioner dealing with each and every allegation levelled against him was not considered. The petitioner was, however, directed to appear before the Disciplinary Committee on 29th October, 2006. According to the petitioner no disciplinary proceedings could have been conducted in view of Rule 38(VII) of the Rules of the Respondent BCCI extracted hereinbelow:

Rule 38 (VII)

Pending inquiry and proceeding into complaints or charges or misconduct or any act of indiscipline or violation of any Rules & Regulation, the concerned Member, Associate Member, Administrator, Player, Umpire, Team Official, Referee or the Selectors (including the privileges and benefits such as subsidies to the Member or Associate Member) may be suspended by the President from participating in any of the affairs of the Board until final adjudication. However, the adjudication should be completed within six months.

Allegations of bias have been made against the Disciplinary Committee having regard to its composition. However, this Court does not deem it necessary to examine the allegations at this interlocutory stage.

49. According to the petitioner the Disciplinary Committee did not address the preliminary issue raised by the petitioner of the Disciplinary Committee having become functus officio. On the other hand, the Disciplinary Committee proceeded ex parte on 29th October, 2006 and submitted a report on 4th November, 2006. The petitioner has alleged that the report was motivated, predetermined and biased. This Court, however, finds that this preliminary issue has been addressed

by the Disciplinary Committee.

A special general meeting was convened on 25th November, 2006. The petitioner was served with a copy of the report of 4th November, 2006 and informed that he might appear before the Special General Meeting on 16th December, 2006.

50. It is alleged that on 16th December, 2006, the petitioner was asked to leave the hall, after which, a decision was taken by raising of hands as stated in paragraph 59. This has not been denied in the Affidavit-in-Opposition. A resolution dated 16th December, 2006 was taken holding the petitioner guilty of misconduct. The resolution is extracted hereinbelow for convenience:

It is hereby resolved that the report submitted by the Disciplinary Committee is accepted in toto. The House finds Mr. Jagmohan Dalmiya guilty of gross misconduct. The acts of Mr. Jagmohan Dalmiya are detrimental to the interests of the Board of Control for Cricket in India (hereinafter referred to as the Board). Mr. Jagmohan Dalmiya has acted in total breach of the provisions of Memorandum, Rules and Regulations of the Board. The House is convinced that Mr. Jagmohan Dalmiya with dishonest intentions produced forged and fabricated documents before the Indian Overseas Bank and has misappropriated the funds and properties of the Board. The House looking to the gravity of the charges hereby expels Mr. Jagmohan Dalmiya. Mr. Jagmohan Dalmiya forfeits all his rights and privileges as an Administrator. The House further decides as per Sub-clause (V) of Clause 38 of the Memorandum and Rules and Regulations of the Board that Mr. Jagmohan Dalmiya will cease to hold any position or office of any Member or Associate member of the Board. Mr. Jagmohan Dalmiya shall not in future be entitled to hold any position or office or be admitted in any committee of any Member or Associate member of the Board. This decision will come into force with immediate effect.

51. The above suit has been filed for inter alia a declaration that the resolution adopted at the Special General Meeting of Respondent BCCI held on 16th December, 2006 as communicated to the petitioner by the letter dated 17th December, 2006 was illegal, null and void and of no effect. The petitioner has also sought a declaration of illegality and unenforceability of Rules 38(III), 38(IV) and 38(V) of the Rules Regulations of the Respondent as amended and a declaration of nullity of the report of the Disciplinary Committee dated 4th November, 2006.

52. After filing the suit the petitioner filed this interlocutory application for an interim order of injunction restraining the respondents and each of them from giving effect and/or further effect to the resolution of the Special General Meeting of Respondent BCCI dated 16th December, 2006.

53. By an order dated 9th February, 2007 this Court directed the respondents to file their Affidavit-in-Opposition within two weeks. The petitioner was directed to file his Affidavit-in-Reply within one week thereafter and the application was fixed on 5th March, 2007. The application was heard on diverse dates between 2nd

May, 2007 and 2nd July, 2007 when hearing was concluded. The petitioner as also the respondents argued at length and filed their respective written submissions.

54. In spite of directions of this Court no Affidavit-in-Opposition was filed on behalf of the respondents. A copy of an un-affirmed Affidavit-in-Opposition was, however served on the petitioner. It was submitted on behalf of the respondents that the Advocate-on-Record of the respondent had misplaced the original Affidavit-in-Opposition which had duly been affirmed. For the ends of justice this Court gave opportunity to the respondents to affirm the Affidavit-in-Opposition afresh and file the same even though hearing had commenced.

The Affidavit-in-Opposition was ultimately filed on 10th May, 2007. On the face of the pleadings the complaint with regard to the PILCOM/INDCOM account was lodged for the first time in February, 2006.

55. The respondents have objected to interference by the Civil Court, with the internal affairs of a sports association, of disciplinary action against an administrator. The petitioner is alleged to have unauthorizedly operated a bank account, incurred unauthorized expenditure and defalcated and/or misappropriated large sums of money for personal gain.

56. The thrust of the case of the respondents is that the petitioner controlled Respondent BCCI from 1993 till December 2005 either by himself or his nominees and/or associates. It is alluded that the petitioner took advantage of his dominant position, acted in a manner detrimental to Respondent BCCI, incurred unauthorized expenses, secreted funds and made personal gains at the cost of Respondent BCCI. Insinuations have been made of manipulation of accounts. It is emphatically alleged that the petitioner withheld accounts of PILCOM/INDCOM for several years.

57. However, on the admission of the respondents as made in paragraph 8 of their Affidavit-in-Opposition, the petitioner was Honorary Treasurer for two years from 1983 to 1984-85, Honorary Secretary from 1990 to 1991 and again from 1993-94 to 1996-97 (up to 1st July, 1997) and President from 2001-2002 to 2003-2004. In September, 2001, the petitioner became President after defeating Dr. Muthiya, the previous President. No question was raised with regard to the Accounts between July, 1997 and September, 2001 when the petitioner was not an office bearer of Respondent BCCI.

Mr. S.B. Mookerjee appearing on behalf of the petitioner submitted that the allegations levelled against the petitioner were totally vindictive, motivated and incorrect. Since 1996 and till 1st April, 2005 the accounts were audited by the statutory auditors of respondent BCCI and approved by the Finance Committees, Working Committees and finally the general body year after year. It is the case of the petitioner that the Respondent No. 2, upon assuming power, embarked upon a one point agenda of victimization of the petitioner.

58. Mr. Mookerjee submitted that on 23rd January, 2006 the petitioner was removed from the post of Convenor Secretary of PILCOM and a fact finding committee was appointed. The said fact finding committee included Respondent No. 4, who also acted as member of the Disciplinary Committee. A show cause notice dated 21st February, 2006 was issued. However, without waiting for the time for reply to the show cause notice to expire, the respondents filed an FIR in Mumbai.

59. It was argued that by exertion of political power, various proceedings were initiated against the petitioner. The petitioner had to apply for anticipatory bail in the Hon'ble Bombay High Court. Having failed to secure dismissal of the applications of the petitioner for anticipatory bail, further charges were levelled against the petitioner.

60. Mr. Mookerjee referred to the findings and/or observations of the Bombay High Court in the application of the petitioner for anticipatory bail, some of which are extracted hereinbelow:

...A resolution was passed in the BCCI in which it was resolved that such an Account would be opened and will be operated either by the Treasurer or by the Secretary or by the Chairman. The Account was opened and Shri Dalmiya was the authorized signatory of the Account. It is an admitted position that no objection was raised regarding the operation of the Account solely by Shri Dalmiya over a period of 10 years, though the accounts were audited from year to year and the accounts were placed before the Working Committee, Finance Committee and the General Body.

...

At this juncture, it is also necessary to refer to the fact that in 1996 Shri Bindra was the President. However, after he stepped down as a President, he made certain allegations of misappropriation against the present petitioner Dalmiya. The show-cause notices were issued by FERA Authorities and an inquiry was also made by the Reserve Bank of India which was to the knowledge of the complainant in the year 1997-98 during which time, after a thorough investigation, the Enforcement Directorate issued a letter to the petitioner Shri Dalmiya exonerating him from all the allegations which were made against him. The Reserve Bank of India also wrote a letter to the Enforcement Directorate, stating therein that after thorough investigation, the allegations which were made against the petitioner Dalmiya were found to be incorrect and false. In the background of these facts, it has to be seen what steps were taken by the complainant since the opening of the Account till the Account was closed by the petitioner. During all this period, neither the complainant or any of the other members filed any complaint regarding the misappropriation of any amount nor any query was raised by the complainant who was a member of the BCCI during the period of last 10 years in any of the meetings of the Working Committee, Finance Committee or General Body regarding the operation of the Account by

Shri Dalmiya.

...

If the chronology of events and the facts and material which is placed on record is taken into consideration, prima facie, in my view, it is established that the allegations made in the complaint and the material which is placed on record does not establish the allegation of misappropriation of amounts. It also does not establish that the account was opened without the knowledge of the complainant. Further, it does not indicate that the amounts have been used for the personal benefit of the petitioner Shri Dalmiya.

61. Mr. Mookerjee submitted that having failed to secure dismissal of the application for anticipatory bail, a show cause notice dated 15th April, 2006 was issued making a new set of allegations. The petitioner was denied proper and effective inspection of documents. The reply to the show cause notice was not considered impartially with an open mind. The Disciplinary Committee acted in flagrant disregard of the principles of natural justice and/or fair play in proceeding ex parte against the petitioner, without first deciding the preliminary objection taken by the petitioner to continuance of proceeding against the petitioner on the ground of the Disciplinary Committee having become functus officio.

62. Mr. Mookerjee argued that the Respondents acted in violation of natural justice by not informing the petitioner of the documents proposed to be relied upon in the Enquiry or of the names of the witnesses, if any, proposed to be examined.

63. Mr. Mookerjee submitted that the issues against the petitioner had been prejudged. This, Mr. Mookerjee pointed out, would be evident from the fact that even before the impugned resolution was taken, the name of the petitioner was removed from the Telephone Directory of 2007" printed in Germany, even though he continued to remain the President of the Cricket Association of Bengal and the National Cricket Club.

64. Mr. Mookerjee finally submitted that the petitioner was asked to leave the Special General Meeting convened on 16th December, 2006 within a few minutes. The petitioner had no opportunity to address the meeting. The request of the petitioner for circulation of his reply to the show cause notice amongst the members was declined, and the members of the Disciplinary Committee remained present at the meeting chaired by the Respondent No. 2, while voting took place by show of hands.

Mr. Mookerjee argued that the entire action against the petitioner culminating in the impugned resolution was in any event without jurisdiction, unauthorized, invalid, void and of no effect.

65. Mr. Mookerjee submitted that a resolution was adopted on 29th September, 2000 for amendment of the Bye laws of Respondent BCCI. It was this

amendment, which introduced for the first time, the definition of "Administrator". Administrator has been defined to mean and include present and former Presidents, Vice-Presidents, Honorary Secretaries, Honorary Treasurers and Honorary Joint Secretaries of Respondent BCCI, past and present Presidents and Secretaries of members affiliated to Respondent BCCI and any person nominated in any sub committee appointed by Respondent BCCI.

66. Rule 38 was sought to be amended to provide for disciplinary proceedings and penal action against administrators. The Rules as they stood prior to September, 2000 did not contemplate any kind of action against past office bearers.

67. Relying on Section 12(2) and (3) of the 1975 Act Mr. Mookerjee argued that a "registered society" might by special resolution amend its bye laws. The amendment is to be registered, and upon registration the amendment would take effect from the date of the special resolution.

68. Mr. Mookerjee submitted that there could be no special resolution unless at least 3/4th of the members passed the same at a general meeting of which notice of not less than the prescribed period was given specifying the intention to propose the resolution as a special resolution. u/s 27 of the 1975 Act read with Rule 26 of the Tamil Nadu Societies Registration Rules, 1978, hereinafter referred to as the Rules, a special resolution is required to be filed with the Registrar within 3 months. The Registrar might, if sufficient cause is shown, condone the delay for a further period of time not exceeding three months, in view of Section 49 of the 1975 Act read with Rule 48 of the Rules.

Mr. Mookerjee submitted the amendments were of no effect, the same not having been passed by special resolution in terms of Section 2(j) of the 1975 Act and the same not having been registered.

69. Mr. Mookerjee submitted that an amendment cannot be registered unless filed with the registrar within three months or if allowed by the Registrar, a further period not exceeding three months. There could be no registration of amendments filed with the Registrar after six months. Mr. Mookerjee submitted that even if the amendments were subsequently registered such registration would be illegal and of no effect.

70. Mr. Mookerjee cited the judgment of the Supreme Court in the case of T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, where the Supreme Court held that the Civil Court could not obviously sit as a Court of Appeal from decisions of clubs and associations but the Civil Court could set aside the order of such a body, if the body acted without jurisdiction or did not act in good faith or acted in violation of the principles of natural justice.

Mr. Mookerjee next cited the judgment of this Court in the case of Chiranjani Jadavji Padia Vs. Bhupesh Chandra Dutt and Others, where Sabyasachi Mukharji, J. following the judgment of the Supreme Court in T.P. Daver's case (supra)

interfered with the decision of a Brokers" Association refusing to permit its member to induct a partner. This Court found that it had jurisdiction to examine any decision of a* committee which involved a question of law including one of interpretation of the rules. Mukharji, J. observed The jurisprudence of today has shifted from fine spun technicalities and abstract rules to practical justice. It must aspire to remove injustice and the reliefs that the Court might grant must be effective as well as just."

71. Mr. Mookerjee next cited the judgment of this Court in the case of Kalyan Kumar Dutta Gupta Vs. B.M. Verma and others, where a Division Bench of this Court held that a question of interpretation of the rules of a club could not be brushed aside at the interlocutory stage. The Court might grant an injunction restraining a club from giving effect to an order of expulsion of a member of the club, if prima facie the club had acted without Jurisdiction.

72. In support of his argument that Respondent BCCI is a "Registered Society" within the meaning of the Tamil Nadu Societies Registration Act, 1975. bound by the provisions of the said Act. Mr. Mookerjee relied on the judgments of the Supreme Court in the cases of Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, , the Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, and I. I. Nelson and Another Vs. Kallayam Pastorate and Others, .

73. Mr. Mookerjee next cited the judgment of the Madras High Court in the case of Music Academy represented by its Executive Trustees v. Inspector General of Registration and Ors. reported in 2005 (4) LW 67 (Mad) where the Madras High Court held the amendments of the bye-laws of a society registered under the Tamil Nadu Societies Registration Act, 1975 could not be effective unless the same were registered.

74. Mr. Mookerjee cited the judgment in the case of Mohun Bagan Athletic Club and Others Vs. Deba Prasad Mukherjee and Others, where a Division Bench of this Court, after discussing several judgments, held that the Trial Court had power to grant mandatory injunction in an application under Order 39, Rules 1 and 2 of the Civil Procedure Code, where a club had acted illegally and/or without jurisdiction.

75. Mr. Mookerjee submitted that the disciplinary proceedings in the instant case had been conducted behind the back of the petitioner. The petitioner was not furnished with the names of the witnesses nor supplied with all the documents relied upon in the enquiry. In support of his contention that a person against whom misconduct was alleged had a right to cross-examine witnesses and to inspection of documents relied upon in support of the charge, Mr. Mookerjee cited the judgment of this Court in the case of Export Inspection Council of India v. K.K. Mitra reported in 1987 (2) CLJ 344.

76. There can be no doubt that in disciplinary proceedings, the person proceeded against has a right of inspection of documents relied upon in the proceedings as

well as cross-examination of witnesses. In this case apparently no witnesses were at all examined. Inspection was given of some documents. Whether inspection of any relevant documents relied upon in the proceedings has been denied, is an issue that requires examination in the suit.

77. Mr. Mookerjee relied on the judgment of the Supreme Court in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, where the Supreme Court held the Civil Court could interfere with the report of an Enquiry Officer that was based on no evidence. The Court was required to apply its mind as to whether there was sufficient materials to sustain the findings.

78. Mr. Mookerjee also cited the judgment of a Division Bench of this Court in the case of Jayanta Kumar Sikdar Vs. State of West Bengal and Others, where a Division Bench of this Court held that examination of witnesses without intimation to the charged employee amounted to denial of justice. In this case there was apparently no examination of witness.

79. Mr. Mookerjee finally cited the judgment of the Supreme Court in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, , where the Supreme Court held that reasonable likelihood of bias would vitiate an action.

80. Mr. S.K. Kapoor appearing on behalf of the respondent submitted that respondent BCCI was essentially a body which was concerned with sports and mostly related with cricket. It was neither a Government organization not created by statute.

Mr. Kapoor submitted that the affairs of Respondent BCCI are not regulated by any statute, Respondent BCCI is really a private club. The membership consists of various cricket associations.

81. Relying on the judgment of the Supreme Court in the case of Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, (supra) Mr. Kapoor submitted that respondent BCCI was not state within the meaning of Article 12 of the Constitution of India and, therefore, not amenable to the fundamental rights guaranteed under the Constitution.

Mr. Kapoor argued that Respondent BCCI was registered under the provisions of the Societies Registration Act, 1860 long before enactment of the Tamil Nadu Societies Registration Act, 1975.

82. Mr. Kapoor submitted that it was not mandatory to have the Respondent BCCI registered under the 1975 Act. The BCCI was only deemed to be registered under the 1975 Act.

Mr. Kapoor argued that there is no provision in the 1975 Act which regulates, in any way, the conduct of the affairs of Respondent BCCI. Respondent BCCI has the option to have itself deregistered and cease to be subject to the said Act if it so desires.

83. Mr. Kapoor submitted that fundamentally Respondent BCCI was like any other club in the country and its members were not governed by any limits in exercise of disciplinary powers.

Mr. Kapoor next relied on the judgment in the case of *Maclean v. The Workers' Union* reported in 1929 Chancery Division 602. The Chancery Division held that Courts had limited jurisdiction over Tribunals and could not give redress to members of associations on whom hardship was worked by decisions given in good faith and honestly under the Rules of the Association, even though the Rules might be unjust. In this case, however, a question of jurisdiction has been raised. There are serious issues of bias, want of bona fides and/or good faith, violation of principles of natural justice raised, which require examination upon trial.

84. Mr. Kapoor next submitted that the reliefs claimed in this interlocutory application are identical to the reliefs sought in the plaint and the grant of interim relief would in effect amount to the grant of final reliefs claimed in the suit.

Mr. Kapoor further submitted that over six months having elapsed since the date of the impugned resolution, which has already been given effect, this Court should refrain from passing interim orders at this stage.

85. In dealing with the submission of Mr. Mookerjee that no special resolution was passed while amending Rule 38 of the Rules Mr. Kapoor submitted that the amendments were passed by all the members of respondent BCCI unanimously at a meeting held on 29th September, 2000. No member had objected to taking a resolution for amendment in the meeting not even the petitioner, who was personally present in the meeting, actively participated and voted, as would be evident from the minutes of the meeting.

Mr. Kapoor pointed out that notice of the meeting as also agenda for the meeting which included the proposal to amend Rule 38 was duly circulated amongst all the members of BCCI.

86. Mr. Kapoor relied on the decision in the case of *Cane v. Jones* reported in 1981 (1) All E.R. 533 where the Court held that it was open to shareholders of a company to waive the formalities under the Companies Act as to notice of intention." In the aforesaid case it was held that an ordinary resolution taken unanimously was valid as an extraordinary resolution and not open to challenge with regard to its validity.

87. In the case of *Cane v. Jones and Ors.* (supra) cited by Mr. Kapoor the Chancery Division held that it was a basic principle of corporate law that all the corporators of a company acting together could do anything that was intra vires the company. The shareholders acting together could waive the formality of notice. In the aforesaid case, contravention of statutory requirements with regard to registration of amendments and/or filing of Special Resolutions with the

Registrar was not in issue.

Mr. Kapoor next argued that the (amendment had been passed in September, 2000. The petitioner had with full notice and knowledge of the amendments taken no steps to have the amended rules registered. On the other hand, the amended rules were time and again applied in case of others. Examples have been cited of Md. Azharuddin, Abhijit Kale, I.S. Bindra, Ajay Jadeja, Bombay Cricket Association and others.

88. Mr. Kapoor submitted that if members attended a meeting without protest, stood by without protest while their fellow members passed a resolution and formulated all proceedings concerned to act for years on the basis that the resolution was duly passed, the members cannot contend that they are not bound by the resolution.

In the case of *Ho Tung v. Man of Insurance Co. Ltd.* reported in (1902) AC 232 cited by Mr. Kapoor the question raised was whether the regulation of Man on Insurance Company Ltd. were those contained in its articles of association as registered in Hong Kong or were those contained in Table A in the 1st Schedule to the Companies Ordinance (Hong Kong) No. 1 of 1966.

89. The Memorandum of Association duly signed was accompanied by a booklet containing the Articles of Association which had not been signed. The Registrar, however, registered the Articles with the Memorandum and thereupon gave the Certificate of Incorporation of the Company. The Privy Council held that even though the Articles had not been signed by the shareholders, the Articles having been registered, acted upon, amended and added to by the shareholders and the business of the company having been carried as per the regulations contained therein for nineteen years without any objection, it could be inferred that the shareholders had accepted and adopted the Articles as the valid and operative Articles of the Company.

90. Mr. Kapoor submitted that even though statute might provide for a special resolution the entire body might take a decision by following a different procedure.

91. Mr. Kapoor next relied on Section 55 of the 1975 Act which provides that no act of a registered society or any committee or of any officer of the society shall be deemed to be invalid merely on the ground of any defect or irregularity in the act not affecting the merits of the case.

92. Mr. Kapoor relied on the judgment of the Supreme Court in the case of *Bangalore Woolen Cotton and Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. Corporation of the City of Bangalore*, by its Commissioner, Bangalore City, , where the Supreme Court upheld the imposition of a tax, holding that the decision could not be assailed on procedural grounds, if the decision could not be assailed on merits. The judgment is clearly distinguishable on facts.

93. In the case of Municipal Board, Sitapur Vs. Prayag Narain Saigal and Firm Moosaram Bhagwan Das, cited by Mr. Kapoor, the Supreme Court held that procedural defects cannot be regarded as fundamental or as invalidating the imposition of a tax if no substantial prejudice is caused thereby.

94. Mr. Kapoor next submitted that the amendments having been approved by the members of the BCCI unanimously, there had been substantial compliance of the requirement, if any, of a special resolution.

95. According to Mr. Kapoor, notice of the resolution for amendment of Rule 38 had duly been given to all the members and the agenda circulated. Mr. Kapoor next submitted that the amendment was passed in September, 2000. The petitioner had notice and knowledge of the amendment for years. The petitioner had been President of the association for about 4 years during which time as Chief Executive of Respondent BCCI he took no steps whatsoever to have the amended rules registered.

96. Mr. Kapoor next relied on the judgment of the Supreme Court in the case of B.K. Srinivasan and Others Vs. State of Karnataka and Others, where the Supreme Court held that procedural defects not affecting merits would not invalidate an act. In the aforesaid case, however, the Supreme Court found on facts that the provisions of the statute with regard to publication had duly been complied with.

97. With regard to registration of the amended rules, it is submitted that on 22nd May, 2007 a Supplementary Affidavit was filed on behalf of the respondent BCCI by Professor Ratnakar Shetty. In the Supplementary Affidavit there is a categorical assertion of the rules having been registered on 22nd February, 2007. The petitioners chose not to file any affidavit-in-opposition. Thus the averments in the Supplementary Affidavit stood uncontroverted.

Mr. Kapoor next argued that in view of Section 12(3) of the 1975 Act, upon registration, the amendments would date back to the date of passing of the resolution. The proceedings cannot, therefore, be questioned.

98. The judgment of this Court in the case of Stephen Court Ltd. v. The Official Trustees of West Bengal reported in (2000) 2 CLT 1 cited by Mr. Kapoor, was, however, rendered in the context of the provisions of the Transfer of Property Act, 1882.

99. Mr. Kapoor next argued that the certified copy of the amendments was conclusive evidence that the amendments had duly been registered. Mr. Kapoor referred to the meaning of the word "duly" as given in Black's Law Dictionary (6th Edition). The word duly has been defined as follows: "any due or proper form or manner according to legal requirements; regularly; properly; suitably upon a proper foundation as distinguished from mere form according to law in both form and substance."

100. Mr. Kapoor submitted that Section 12(4) specifically provided that

registration by the Registrar was conclusive evidence that the amendments had duly been registered. In support of his submission that registration of amendments to the rules of a society would operate as conclusive proof of evidence Mr. Kapoor cited the following decisions:

- i) Chandranath Mukherjee Vs. Tusharika Debi and Others, ;
- ii) Smt. Somavanti and Others Vs. The State of Punjab and Others,
- iii) Cheeranthoodika Ahmmedkutty and Another Vs. Parambur Mariakutty Umma and Others,
- iv) Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another,
- v) Maharashtra State Finance Corporation v. Masvi & Co. Pvt. Ltd. and Anr. reported in 76 Companies Cases 168 (Bom)

101. Mr. Kapoor argued that where an enactment provided that any evidence would be treated as a conclusive proof of a certain factual position or legal hypothesis, the law forbids any other evidence to be adduced for the purpose of challenging the aforesaid conclusiveness.

102. Mr. Kapoor argued that in the light of the certification of the amendments by the Registrar, there can be no possible challenge to the fact of registration of the amendments. The registration of the amendments of the rules by the Registrar cannot now be challenged on the ground that the application was belated. Mr. Kapoor also submitted that there was a presumption that official acts were duly performed.

103. Mr. Kapoor submitted that the argument that amendments could not be permitted to be registered beyond the period of limitation was fallacious and erroneous. Mr. Kapoor submitted that a perusal of Sections 27, 46 and 49 relied upon by Mr. Mukherjee would demonstrate that there was no limitation for registration of an amendment.

Mr. Kapoor submitted that the period of limitation for registration of a special resolution is a different matter altogether. The period prescribed for filing of special resolutions is directory and not mandatory.

104. Mr. Kapoor argued that there was no provision which provided for the nullification of an act upon failure to comply with the prescribed requirement. Mr. Kapoor argued that the act of filing of the special resolution was procedural in nature and cannot by any stretch of interpretation be interpreted to be mandatory.

Mr. Kapoor submitted that the argument that the amendment of the BCCI rules was void for non-registration is without basis. The statutory presumption of conclusive proof cannot be disturbed by a mere correspondence obtained under some other act including the Right to Information Act.

105. Mr. Kapoor submitted that the allegations levelled by the petitioner against

the respondents of bias, vindictiveness and mala fides was unsubstantiated and incorrect.

Lastly, Mr. Kapoor submitted that this application was liable to be dismissed on the ground of multiplicity of proceedings and abuse of process.

106. There can be no dispute with the proposition of law laid down in the case of Noida Entrepreneurs Assn. Vs. Noida and Others, cited by Mr. Kapoor that criminal proceedings and disciplinary proceedings being different matters, there could be no question of dropping disciplinary proceedings on the ground of initiation of criminal proceedings. In this case the disciplinary proceedings have been challenged, on the ground of lack of jurisdiction and illegality and not merely on the ground of initiation of parallel proceedings disciplinary and criminal.

107. Mr. Kapoor submitted that it was a cardinal principle for grant of injunction that he should stood equated must come with clean hands. The petitioner had not come to this Court with clean hands.

108. In reply to the submissions of Mr. Kapoor Mr. Pratap Chatterjee, appearing on behalf of the petitioner submitted that the amendments were passed at the Annual General Meeting of Respondent BCCI on 29th September, 2000 when Dr. A.C. Muthiah was the President. At the material time when the amendment was passed the petitioner was not even an office bearer of Respondent BCCI. The submission of Mr. Chatterjee is borne out from the Annual Reports of the Respondent BCCI of the relevant years produced in Court.

109. Mr. Chatterjee submitted that Dr. A.C. Muthiah remained the President for about one year from 29th September, 2000. The amendments were required to be registered within three months, that is, within 29th December, 2000. The Registrar could at best have condoned the delay in applying for registration by a further time of three months, that is, 29th March, 2001. During the aforesaid period the petitioner was not an office bearer.

110. Mr. Chatterjee submitted and perhaps rightly, that the petitioner could not be held responsible for non-registration of the amendments to the rules within the stipulated time. Mr. Chatterjee submitted that recourse to the amended rules was taken against I.S. Bindra who was suspended for a period of 2 years on and from 23rd February, 2001 during the Presidentship of Dr. A.C. Muthiah.

111. With regard to proceedings against Md. Azaruddin, Ajay Jadeja, Ajoy Sharma, Mr. Chatterjee argued that they were during the tenure of Presidentship of Dr. Muthiah and in any case, there was power to take disciplinary action against players even before the purported amendment of the Rules.

112. Mr. Chatterjee drew the attention of this Court to a printed rule book published and circulated in 2000 which incorporated amendments. The rule book was published during the tenure of Dr. Muthiah when the petitioner was not even an office bearer.

113. Mr. Chatterjee submitted that having regard to the publication of the Rules incorporating amendments passed on 29th September, 2000 all concerned including the petitioner remained under the impression that the amendments had duly been registered in accordance with the provisions of the 1975 Act and the Rules framed there-under.

114. Mr. Chatterjee submitted that Mr. Kapoor's submission that the petitioner was responsible for the failure to register the amendment is totally baseless. The allegation that the petitioner had invoked Rule 38 against various persons is also baseless.

Mr. Chatterjee next pointed out that PILOOM did not have any bank account in India. The only bank account which the PILCOM had was in Citibank, London. The account was operated under the joint signatures of the "Convenor Secretary" from India and "Treasurer" from Pakistan. The said account is still maintained and there is about U.S. Dollars 3.7 million (equivalent to Rs. 18 crores) in the said account.

115. For conducting World Cup 1996 matches in India the respondent BCCI constituted an Organizing Committee named INDCOM on 24th February, 1995. After the conclusion of World Cup, 1996 the accounts of INDCOM at Calcutta being Account No. 1223 were audited by M/s. S.B. Billimoria, Chartered Accountants, appointed Auditors of the Respondent BCCI. The accounts of INDCOM were duly approved by the sub-committees of INDCOM and thereafter by the Finance Committee of Respondent BCCI. The accounts for the year 1995-96 were finally approved adopted and closed and INDCOM with all its sub-committees dissolved way back in 1996.

116. With regard to the World Cup, 1996 account maintained in Calcutta with Indian Overseas Bank Mr. Chatterjee submitted that the petitioner's authority to operate the said account was never questioned at any stage.

117. Mr. Chatterjee submitted that the Respondent No. 3 being the Honorary Secretary attended all general meetings of respondent BCCI for the last 10 years and also took active part in approving the audited accounts of Respondent BCCI by virtue of his membership of various sub-committees. Mr. Chatterjee also referred to and relied upon the Balance Sheets of the respondent BCCI which duly reflect the INDCOM Account.

118. Mr. Chatterjee distinguished the judgments cited by Mr. Kapoor in support of his contention that the time limit prescribed for registration of amendments, if any, was only directory and non-compliance thereof could not invalidate the amendments. Mr. Chatterjee argued that the judgments were rendered in the context of procedural laws relating to the time limit for the filing of pleadings in a Court of law. Mr. Chatterjee strenuously contended that the document annexed to the supplementary affidavit affirmed by Professor Ratnakar Shetty on 2nd April, 2007 was not a certified copy of the registered amendments to the Rules.

119. Referring to the provisions of the Indian Stamp Act and in particular Article 24 as applicable in the State of Tamil Nadu Mr. Chatterjee submitted that copy or extract certified to be a true copy or extract by or by order of any public officer had to be non-judicial stamp paper of the value of Rs. 10/-.

120. Mr. Chatterjee produced samples of recent certified copies of other amended rules showing registration thereof by the Registrar of Societies, Chennai, all of which were stamped.

121. Mr. Chatterjee pointed out that the document annexed to the supplementary affidavit of Professor Ratnakar Shetty, a copy whereof was produced in Court, nowhere states that it is the true copy or a certified copy of the registered amended Rules. The document is not affixed with any stamp as per requirement of Section 24 of the Indian Stamp Act. No one has compared or verified the purported certified copy.

122. Mr. Chatterjee once again sought leave of this Court to rely upon the supplementary affidavit of the petitioner affirmed on 20th June, 2007. This Court declined leave in view of the objection raised by Mr. Kapoor and also with a view to avoid adjournment of hearing at this belated stage to enable Mr. Kapoor's clients to file their reply thereto. This Court does not, therefore, take note of the documents annexed to the supplementary affidavit or the averments made therein.

123. Mr. Chatterjee lastly submitted that even assuming that the amendments were registered, the amendments were presented for registration and registered over six years after the impugned resolution/decision was adopted by Respondent BCCI and after filing of this suit.

124. In the absence of any validating provision in the byelaws, subsequent registration would not validate the proceedings against the petitioner, which were clearly without jurisdiction.

As argued by Mr. Kapoor Respondent BCCI is essentially a body concerned with sports and predominantly cricket. It is nobody's case that Respondent BCCI is either a Government organization or an organization created by statute.

125. Respondent BCCI was registered under the Societies Registration Act, 1860 and, therefore, by virtue of Section 53 of the 1975 Act Respondent BCCI is deemed to be registered under the 1975 Act. "Registered Society" has been defined in Section 2(h) of the 1975 Act to mean a society registered or deemed to be registered under the 1975 Act. In the case of Zee Telefilms AIR 2005 SC 2677 (supra) and in the case of Board of Control for Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, (supra) the Supreme Court held that Respondent BCCI was a "registered society" under the 1975 Act. This Court cannot, but proceed on the basis that Respondent BCCI is a registered society within the meaning of the 1975 Act. The provisions of the 1975 Act and the statutory rules framed thereunder thus, apply to Respondent BCCI and

Respondent BCCI is bound to comply with the same.

126. The stand taken by the respondents in their Affidavit-in-Opposition in Paragraph 27(a) that none of the provisions of the 1975 Act were mandatorily required to be followed or could be enforced or made applicable to Respondent BCCI is *ex facie* preposterous. The assertion "compliance with none of the provisions of the said 1975 Act was required or necessary" smacks of extreme arrogance, capriciousness and disregard for the laws of the land.

127. Being a "registered society" within the meaning of Section 2(h) of the 1975 Act, Respondent BCCI is bound by the said Act which *inter alia* regulates the functioning of registered societies.

128. A registered society is, therefore, required to have its accounts audited and filed with the Registrar within the stipulated time, supply its members with copies of Balance Sheets and Byelaws, invest and apply its funds in the manner stipulated in Sections 24 and 25, hold Annual General Meetings at least once a year in which an officer nominated by the Registrar might be present, maintain minutes of proceedings and file special resolutions with the Registrar within the time prescribed. The Registrar has been empowered to call for information and/or explanation. The Government is empowered to even supersede the committee of a registered society not functioning properly. The Registrar might at any time inspect the Books of the society (section 35) and even inquire into the affairs of a society of his own motion and cancel the registration. The consequence that flows from cancellation of registration is dissolution.

129. It has judicially been decided by the Madras High Court in the case of Music Academy (*supra*) that amendments to the Bye laws of a society registered under the 1975 Act are compulsorily registrable.

130. It may be true as argued by Mr. Kapoor that registration of a sports society like Respondent BCCI is not compulsory in view of Sections 3 and 4 of the 1975 Act. The fact remains that Respondent BCCI is a society registered under the Societies Registration Act, 1860 and, therefore, deemed to be registered under the 1975 Act. The provisions of the said Act would apply to Respondent BCCI.

131. It is not necessary for this Court to embark upon an academic discussion on the issue of whether it is optional for Respondent BCCI to have itself deregistered, as argued by Mr. Kapoor, since Respondent BCCI has not deregistered itself nor applied for deregistration. There is apparently no provision in the 1975 Act for voluntary deregistration of a society that is registered.

132. BCCI may not be State within Article 12 of the Constitution of India as held by a majority of three Judges of the Hon'ble Supreme Court in the case of Zee Telefilms Ltd. (AIR 2005 SC 2677) (*supra*). The minority of two Judges, however, took a contrary view and held that Respondent BCCI was State within the meaning of Article 12 of the Constitution. Respondent BCCI is, however, an association of national, if not, international importance which controls the game

of cricket in this country, selects players to represent India in test matches and other important matches with members of the International Cricket Council and conducts test matches and other important cricket tournaments in India. The members of Respondent BCCI comprise cricket associations from all over India, which control the game of cricket at the State and/or Regional level. Respondent BCCI cannot be equated with local sports clubs mushrooming at street corners all over the country.

133. In the case of *Zee Telefilms Ltd.* (AIR 2005 SC 2677) the majority of the Judges of the Supreme Court held as follows:

Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.

In any case, even the member of a club cannot be denied the privileges of membership of the club or expelled or otherwise penalized by the club except in accordance with the rules and regulations of the club.

134. In the case of *T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum*, (supra) the Supreme Court held as follows:

The source of power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members. This contractual origin of rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rules must be strictly complied with. The question whether the doctrine of strict compliance with rules implies that every minute deviation from the rules, whether substantial or not, would render the act of such a body void would depend upon the nature of the rule infringed, namely, whether it is mandatory or directory which depends upon the purpose for which it is made and the setting in which it appears.

The principles governing the members of Masonic lodge are: (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 limited; it cannot 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.

135. In the case of Kalyan Kumar Dutta Gupta AIR 1995 Cal 140 (supra) a Division Bench of this Court held as follows:

With regard to the objection raised by the respondent that the Court should not interfere in the domestic affairs of a Club and the Club has right to expel its members on the basis of a contract, the law on the point appears to be well-settled. It has been well established that the Civil Court may set aside the Order of a expulsion of a member if the Club has acted without jurisdiction or in bad faith or without giving the expelled member a chance of defence or explanation.

136. In the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, (supra) the Supreme Court held as follows:

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.

An association or a club which has framed its rules is bound thereby....

Respondent BCCI has framed Rules for conducting its affairs, by which it is governed. At a meeting held on 29th September, 2000, resolution was adopted for amendment of the Rules. u/s 12(3) of the 1975 Act amendments take effect only upon registration. Admittedly, the Rules of Respondent BCCI prior to its amendment, did not provide for disciplinary proceedings/action against past office

137. The amendment of Rule 38 on 29th September, 2000, introduced for the first time, an internal disciplinary procedure to deal with misconduct of administrators, an expression defined to include past Office Bearers. The amendment inter alia introduced the penal provision of debarring an administrator, found guilty of misconduct, from holding any position or office in any member or associate member of the Board, even in future.

138. Section 12(2) of the 1975 Act empowers a registered society to amend its bye laws by "special resolution". Even though Rule 38 was not amended by Special Resolution the said Rules was amended by unanimous resolution of all the members of Respondent BCCI.

139. As rightly argued by Mr. Mukherjee, Special Resolution would mean a

resolution passed by not less than 3/4th of the members entitled to vote and voting in a general meeting convened by a notice of intention to amend the bye laws.

140. Admittedly, the resolution adopted on 29th September, 2000 was not a "Special Resolution". It would, however, in my view, be hyper-technical to disallow amendments on the sole ground of there being an ordinary resolution instead of a special resolution, if the requisites of a special resolution are substantially complied with, as in the instant case, where the meeting was attended and the resolution to amend the Rules was taken by all the members of Respondent BCCI unanimously. It is not necessary for this Court to delve into the question of whether the formality of notice of the requisite period as required by statute of intention to propose a resolution for amendment of the bye laws was given or not. The object of a notice is to put members to knowledge of the meeting in sufficient time to enable members to, attend the meeting to discuss, support, disapprove and/or suggest modifications to the resolutions proposed. No one sought adjournment of the resolution on the ground of want of adequate time to consider the proposed resolution. It is not even the case of the petitioner that there was want of adequate notice. The petitioner as argued by Mr. Kapoor not only attended the meeting but actively participated in the meeting and made suggestions as would be evident from the minutes.

However, as observed above, in view of Section 12(3) of the 1975 Act, an amendment does not take effect unless registered. Once registered, the amendments relate back to the date of the Special Resolution.

141. For grant of interim relief this Court, Has to look into the question of whether, at all, the amendments have been registered and, if so, whether the registration is valid in the eye of law, at least, prima facie.

142. Extensive arguments have been advanced by Mr. Mookerjee and also Mr. Kapoor on the question of whether at all the amendments have been registered, whether there is any time limit for applying for registration, and the effect of registration beyond limitation and in contravention of law.

143. Bye laws of a society registered or deemed to be registered under the 1975 Act are compulsorily registrable. An amendment might only be carried out by Special Resolution. Rule 14 of the Tamil Nadu Societies Registration Rules, 1978 requires every application to the Registrar for registration of amendment of bye laws to be accompanied with a copy of the "Special Resolution" with the date thereof. A Special Resolution is required to be filed with the Registrar within three months from the date of the Special Resolution. If, however, the Registrar is satisfied that there was sufficient cause for the delay in filing the resolution within the time limit the Registrar might u/s 49 condone the delay for a further period of time not exceeding the time prescribed for filing of such a Special Resolution, Rule 48 limits the power of the Registrar to condone delay to any period not exceeding three months.

144. It may be hyper-technical to hold the amendments ineffective solely for non-compliance of the requirement of a Special Resolution, where the amendments have been approved unanimously by all the members. It does not, however, follow that the time limit for filing a Special Resolution would not apply. If a unanimous ordinary resolution, taken at a meeting attended by all the members, is to be treated as a Special Resolution for the purpose of effecting amendments in the Rules, the legal requirements relating to special resolutions including the requirement of filing the same within the requisite time limit for filing the special resolution would be attracted.

145. Having regard to the nature of the Decisions required to be taken by "Special Resolution", legislature has in its wisdom thought it necessary to impose a time limit for filing of special resolutions. The time limit has been fixed by statutory rules which have the force of law. It would be pertinent to note that the Registrar derives the power to condone the delay in filing a special resolution from Section 49 of the 1975 Act read with Rule 48 of the Rules. The power of the Registrar to condone delay, if any, is restricted to further time not exceeding the original time which is three months in this

146. In the case of *Dalchand Vs. Municipal Corporation, Bhopal and Another*, cited by Mr. Kapoor, the Supreme Court held that failure to supply the report of the Public Analyst within 10 days as prescribed under the statutory Rules was not fatal to a prosecution under the Prevention of Food Adulteration Act, 1954.

147. The Supreme Court, in the aforesaid case, held that there were no ready tests to determine whether a provision was directory or mandatory. The weighing of the consequences of holding a provision mandatory or directory would be vital and determinative of the question. The link between the broad purpose of the statute and the particular provision was important.

148. In *Dalchand Vs. Municipal Corporation, Bhopal and Another*, the Supreme Court found that the design of the statute was to prevent a public mischief, but the enforcement of the time stipulation in the Rules literally, to its letter, would tend to defeat that design.

149. Important decisions affecting the composition, objects, nature of functions, rules of business and affairs of the society and the like are required to be taken by "Special Resolution". The legislature has, therefore, deemed it appropriate to provide for filing of a special resolution within the prescribed time or within the time as extended by the Registrar.

150. In view of the use of the words "not exceeding" in Section 49 it prima facie appears to this Court that Registrar has no power to condone the delay beyond six months in filing a special resolution. If an amendment is to be effected by special resolution and if time to file a special resolution cannot be extended beyond six months, an ordinary resolution for amendment, which by virtue of being unanimous may be placed in the same position as a special resolution, also cannot be filed beyond six months. Prima facie it appears that the resolution

adopted on 29th September, 2000 has become infructuous and the same might only be validated by a fresh Special Resolution.

151. In the case of *Topline Shoes Ltd. v. Corporation Bank* AIR 2002 SC 2487 (supra), cited by Mr. Kapoor, the Supreme Court held that the time limit prescribed by Section 13(2)(a) of the Consumer Protection Act 1986 for submitting a reply was not mandatory but directory as no penal consequences had been provided for extension of time beyond the stipulated time.

The Supreme Court was in the case of *Topline Shoes Ltd.* concerned with the procedural provisions of the Consumer Protection Act, 1986 for adjudication of complaints.

152. Significantly, in the aforesaid case too the Supreme Court held as follows:

The power to extend time under Clause (a) is with a rider that the extension may not exceed 15 days. We have, however, already held that the provision saying that extended time may not exceed 15 days is directory in nature. It does not mean that orders extending the time to file reply may be passed repeatedly unmindful of and totally ignoring the provision that the extension may not exceed 15 days. This provision has always to be kept in mind while passing an order extending the time to file a reply to the petition. It is another matter, as we have found that in case time is extended exceeding 15 days, it may not be a kind of illegality which may deny or deprive the respondent to file his reply within the time granted by the Forum/Commission.

153. In the case of *Kailash Vs. Nanhku and Others*, cited by Mr. Kapoor held that the time limit for filing a written statement stipulated in the proviso to Order VIII Rule 1 of the CPC as amended in 2002 was directory.

In the aforesaid case, the Supreme Court-interpreting the particular provision of the CPC held that procedural enactments ought not to be construed in a manner which would leave the Court helpless in meeting extraordinary situations for the ends of justice.

154. The requirements of filing of special resolutions and registration of amendments to bye-laws are, in my prima facie view, not an empty formality. The provisions are to be construed in the context of the regulatory provisions of the 1975 Act and in particular Sections 34 to 37 thereof.

The Registrar conferred with powers of supervision and control over registered societies would be obliged to refuse to allow a resolution or registration of an amendment of bye-laws that is contrary to the 1975 Act or otherwise against public policy, in exercise of power u/s 36(9) of the 1975

155. In construing the time stipulation for filing of a special resolution for amendment of bye-laws and consequentially the essential requirements of making an application for registration of amendments, this Court cannot lose sight of the fact that amendments date back to the date of the special

resolutions. The amendments upon registration, could affect rights of members and third parties with retrospective effect from the date of the special resolution and hence, the time stipulation.

156. If the tests laid down in *Dalchand Vs. Municipal Corporation, Bhopal and Another*, (supra) for determining whether the requirements of Section 27 read with Section 12(3) are mandatory or directory this Court would have to hold the same mandatory.

157. Statutory requirements are of a binding nature. This Court would ordinarily give effect to the plain words of the statute and/or statutory rules unless the consequences thereof would lead to injustice not intended by the statute and/or statutory rules. A special resolution that lapses by reason of failure to file the same within time can always be revalidated by a fresh special resolution.

Certification by Registrar may be conclusive evidence that the amendment has duly been registered but that would not preclude the court from examining the legality and/or validity of the registration. An invalid/registration is no registration.

158. It is prima facie doubtful whether the bye-laws can at all be amended to bring past office bearers within the ambit of internal disciplinary action for misconduct in view of Section 9 under which bye-laws might contain such matters as may be prescribed and/or in other words the matters stipulated in Rule 9 of the Rules.

Having regard to Rule 6K read with Rule 6(n) and Rules 6(f) and 6(g) bye laws might provide for disciplinary action against members, committee members, players and umpires.

It prima facie appears that byelaws of a society cannot impose a penalty whereby a past office bearer may be debarred from holding office in future in independent associations which are only affiliated to and/or members of Respondent BCCI.

159. Mr. Kapoor rightly submitted that there was a presumption that official acts of Registrar have duly been performed. In the *State of Haryana Vs. Hari Ram Yadav and others*, cited by Mr. Kapoor, the Supreme Court held that there was a legal presumption that an official act was done in a regular manner. The presumption is, however, rebuttable and open to scrutiny of the Court when it prima facie appears to the Court, as in the instant case, that the registration, if at all, is contrary to law.

160. In this case, however, the conclusiveness of certificate of registration is not really material since I am inclined to accept the submission of Mr. Chatterjee that the document annexed to the affidavit of Dr. Ratnakar Shetty, the original of which was produced in Court was not at all a certified copy, the same not being stamped. The document prima facie does not appear to be a certified copy of the amended Rules.

161. The petitioner having questioned the entire proceedings against him as without jurisdiction on the ground of the amendments not being registered, the respondents were obliged to produce a certified copy of the registered amendments.

Having regard to the fact that certified copy of the bye laws as amended has not been produced and further having regard to the admitted position that the resolution adopting the amendments were not even filed with the Registrar till after six years from the date of the resolution, this Court is constrained to take the prima facie view that the amendments were not registered, and, therefore, of no effect.

162. The petitioner has also contended that even assuming that the amendments were valid and operative the Disciplinary Committee became functus officio upon expiry of six months from the date on which the petitioner was suspended from participating in the affairs of Respondent BCCI in view of Rule 38(vii) of the Rules as amended which stipulate a time limit of six months from the date of suspension of an administrator for completion of adjudication. The contention of the petitioner cannot be accepted since the adjudication was delayed beyond six months by reason of Court proceedings initiated by the petitioner.

163. On behalf of the respondents it was submitted that the impugned decision having been passed on 16th December, 2006 and taken effect, no interim order should be passed now, after elapse of over six months. This Court is not inclined to refuse interim injunction on the ground of delay. The impugned resolution was communicated to the petitioner by a letter dated 17th December, 2007. This application appears to have been affirmed on 25th January, 2007. The petitioner should not suffer for delay in disposal of the application. In any case, delay is not fatal to the grant of interim injunction.

On a perusal of the resolution adopted by Respondent BCCI at its meeting held on 16th December, 2006 it appears that the petitioner has been held guilty of an offence with which the petitioner had not been charged, that is, the offence of producing forged and fabricated documents before the Indian Overseas Bank. The finding of production of forged and fabricated documents is apparently not based on any evidence on record and is prima facie perverse.

In the show cause notice dated 15th April, 2006 issued to the petitioner, there was no whisper of forgery or fabrication of documents. The charges against the petitioner were essentially of unauthorized operation of the said Account No. 1223 with Indian Overseas Bank, misutilization of funds from the said account and misappropriation. The impugned decision is, therefore, ex facie in violation of principles of Natural Justice and/or fair play in action.

164. A perusal of the Enquiry Report reveals prima facie that the Disciplinary Committee proceeded against the petitioner with closed mind and bias and avoided recording any finding on many of the issues raised by the petitioner. For example, the contention of the petitioner of the Respondent No. 3 using a

telephone in the name of Saurashtra Cricket Association, Mr. I.S. Bindra using telephones in the name of Punjab Handloom Development Corporation and Mr. Muthaiya using nine phones many of which were not in his own name remained unaddressed.

165. From the enquiry report it appears that the submission of the petitioner of making over documents to Auditors has been recorded. In spite of the specific stand of the petitioner with regard to documents having been forwarded to the auditors, adverse finding has been recorded against the petitioner without examining any representative of the auditors. Furthermore there was no finding that the averments of the petitioner with regard to raid and seizure of documents by the Enforcement Directorate being incorrect. The Disciplinary Committee in effect made an observation that the petitioner was entitled to and could have obtained certified copies of the documents seized had he so chosen, but arrived at the finding that the petitioner had withheld documents. Failure to obtain certified copies of the documents seized may amount to want of diligence or want of care or even negligence or breach of duty. Nobody acting reasonably could have held, having regard to its own findings as also the materials on record, that the petitioner had withheld documents, thereby implying deliberateness.

The disciplinary proceedings have cursorily been conducted and the petitioner has in contravention of the Rules been held guilty of an offence with which the petitioner was never charged.

166. Prima facie, the Enquiry Report of the Disciplinary Committee smacks of want of objectivity. The Disciplinary Committee has recorded the contentions of the petitioners in sufficient details but carefully omitted to discuss the discrepancies in the show cause notice in amounts shown towards withdrawals and/or payments to diverse parties, which were pointed out by the petitioner. The report of the Disciplinary Committee is silent with regard to the contention of the petitioner that the bulk of the withdrawals/debits in the World Cup Account 1996 pertained to the World Cup period towards travel, hotel accommodation, local transport of inter alia 14 participating teams, umpires, officials of Pakistan, Srilanka and other participating countries and officials of BCCI as well as for telecommunication and other charges incurred mainly around the time of the World Cup. The Disciplinary Committee has totally ignored the contention of the petitioner that of Rs. 1,28,00,000/- alleged to have been paid towards telephone bills of the petitioner, a sum of Rs. 82,52,735/- had in fact been paid to the Income Tax Authorities under protest. No finding has been recorded either way.

The report of the Disciplinary Committee prima facie vague and is evasive, there being no mention of the amount, if any, actually found to have been misappropriated and/or misutilized, despite the disclosures of the petitioner in his reply to the show cause notices.

167. Unauthorized payments and misappropriation are not one and the same.

There is no finding that payments to lawyers etc. were not on account of Respondent BCCI. Opening of an account without proper authorization and/or incurring of expenditure not strictly within the scope of authorization to incur expenditure does not tantamount to misappropriation.

168. It prima facie appears to this Court that there was no resolution requiring the petitioner not to operate the World Cup 1996 Account. The refund to Respondent BCCI of an amount higher than the amount due and payable cannot possibly constitute misconduct. The inference that a higher amount had been paid to make up for misappropriation is patently conjectural and not based on any materials.

169. In the absence of certified copy of the amendments, this Court is unable to accept, even prima facie, the submission of the respondents that the amendments have been registered. If the amendments have not been registered the entire proceedings against the petitioner are without jurisdiction inasmuch as the petitioner had nothing whatsoever to do with Respondent BCCI at the material time when the proceedings were initiated and/or conducted.

170. The petitioner has raised substantial questions of law as well as facts which require adjudication in the suit. For grant of interim relief the applicant is required to make out a prima facie case. Prima facie case does not mean an iron cast case with cent per cent chances of success. Where there is a serious question to be tried, as in this case, this Court would grant injunction. A strong prima facie case having been made out by the petitioner, denial of interim relief would cause prejudice to him. The penalties purported to be imposed are apparently not authorized by the 1975 Act and the Rules framed thereunder. If interim relief is denied to the petitioner, the petitioner will be prejudiced for the petitioner will have to suffer the penalties imposed by an apparently illegal order. On the other hand, no real prejudice will be caused to the respondents by grant of interim relief.

For the reasons discussed above, this application succeeds.

There will be an order in terms of prayers (a) and (c) of the petition till the disposal of the suit.

Mr. Ranjan Bachawat, learned Counsel appearing on behalf of the Respondent BCCI, prays for stay of operation of this order.

Prayer for stay is considered and re-fused.

171. All parties shall act on a signed copy of the minutes of the operative portion of this judgment and order on the usual undertakings.