
(1994) 04 CAL CK 0028

In the Calcutta High Court

Case No : Appeal No. 19 of 1992 with Suit No. 387 of 1992

Kalyan Kumar Dutta Gupta

APPELLANT

Vs

B.M. Verma and others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 39 Rule 2, 100, 9
Constitution of India, 1950 — Article 19
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 471, 488
Royal Calcutta Turf Club Rules — Rule 28, 29, 29(1)

Citation : AIR 1995 Cal 140 : 99 CWN 529

Hon'ble Judges : Shyamlal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Ashok Sen, Bijay Bachwat, Sibaji Sen, Tapas Kumar Banerjee Jr. and Arjun Mukherjee, for the Appellant;

Judgement

Shyamlal Kumar Sen, J.—The appeal arises out of an order passed by the Learned single Judge refusing to pass interim order of injunction restraining respondent Nos. 5, 6 and 7 and/or their servants and agents from proceeding - with the proposed Domestic Enquiry set up by the Club on February, 29, 1992 and/or proceeding for expulsion of the plaintiff/appellant from the Club; alternatively injunction restraining defendants/respondents and/or their servants and agents from proceeding with expulsion of the plaintiff/appellant from the club till the pending Criminal Case being No. 794 of 1991 between State v. Kalyan Kumar Dutta Gupta was finally disposed of.

2. The plaintiff/appellant has impugned the legality and/ or validity of the formation of the "Committee" comprising the defendant/respondents Nos. 5, 6 and 7 as being wrongful, illegal, and ultra-vires the Rules of R.C.T.C. and thus void, ab initio and nullity and praying for an injunction restraining the defendant, their servants, agents and/or assigns from proceeding with the meeting for expulsion of the plaintiff, injunction restraining respondents Nos. 5, 6 and 7 and/

or their servants and agents from proceeding with the domestic enquiry during the pending of the said Criminal Case being Nos. 794 of 1991 and till it is finally resolved and/or disposed of by the Court and for other reliefs.

3. The facts, inter alia, leading to this appeal and the application which are necessary for the purpose of determination of the real question involved are set out hereinafter:

4. In or about 1840 Royal Calcutta Turf Club hereinafter referred to as R.C.T.C. was established as an unincorporated Member's Club, inter alia, to encourage the horse and/or pony racing amongst the public.

5. In or about 1977 the petitioner was elected a Member of the said Club.

6. In 1985 petitioner was elected "Steward" of the said Club. Other Stewards of R.C.T.C. at the material time were the following person) (i) Mr. Sunil Singh Roy, (ii) Mr. Kalyan Kumar Dutta Gupta (Plaintiff), (iii) Mr. P. L. Roy, (iv) Mr. H.M. Sookies (Defendant No, 2) and (v) Mr. B. M. Verma (Defendant No. 1).

7. In 1988 -- 1989 R.C.T.C. took a policy decision that each Steward for the purpose of administrative convenience looked after the activities of the five departments of said Club and the responsibilities of each department was divided as under:--

Department Steward in Charge

(a)

Corporate Planning and development and to Co-ordinate with other Turf authorities.

Mr. Sunil Singh Roy

(b) Bacing

Mr. Kalyan Kumar Dutta Gupta.... (Plaintiff)

(c)

Financial and Administration Labour; and Book makers

Mr. P. L. Roy Mr. H. H. Sookies (Defendant No. 2) Mr. B. M. Verma (Defendant No.1)

8. In the same year the Stewards of the Club passed a Resolution inter alia deciding to invest the surplus fund for a short term deposit in attract interest income thereform. It appears that the said Club had surplus fund nearly to the extent of Rs. 1.5 crores, and pursuant to the decision, the sub-committee on Finance and Administration of the club decided to invest the said fund with Messrs. Classic Leasing Co. Ltd. @ 14 per cent per annum.

9. Between June and December 1989 R.C.T.C. invested on the recommendation

of the plaintiff/appellant with the following Firm/company.

1. Messrs. Ciffco Stewards Rs. 15,00,000.00 Consultant P. Ltd.
2. Messrs. V.C.K. Share Rs. 20,00,000.00 Brokers.
3. Messrs. Eastern Rs. 5,00,000.00 Financiers Ltd.

@ 20 per cent per annum 10. However, Messrs. V.C.K. Share Brokers paid back the loan amount to R.C.T.C. and, thereafter, the said club lent and advanced to Messrs Castle Plaza Pvt. Ltd. a sum of Rs. 17.5 lacs.

11. In May 8, 1991, Eastern Financiers Ltd. paid back and/or refunded the said sum of Rs. 5 lacs to R.C.T.C.

12. In March/ June, 1991 during the audit of the said Club, the Financial controller, one Nikilesh Maitra, drew the notice of the authorities that a sum of Rs. 32.5 lacs was still due and outstanding from two companies (i) Messrs. Eastern Financiers Ltd. (ii) Messrs Castel Plaza Pvt. Ltd.

13. In July 12, 1991, the plaintiff/appellant addressed a letter to Mr. Sunil Singh Roy, the Senior Steward, wherein he took full moral responsibility for the moneys lent and advanced to the said company/firm, and assured that he would do his best to pursue the brokers to pay the said dues, as early as possible.

14. In July 24, 1991, the plaintiff/appellant tendered his resignation from the stewardship of the club.

15. In July 26, 1991, the plaintiff/appellant addressed a letter to Mr. Sunil Singh Roy, the senior Steward, forwarding his letter of resignation dated July 24, 1991 and the letter of undertaking dated July 26, 1991 inter alia, stating that he could not give the exact letter, (sic) by defendant No. 5 as the same would mean putting his family to ruin.

16. In July 26, 1991 the plaintiff/appellant confirmed that at his request, the Financial Committee of R.C.T.C. had deposited a sum of Rs. 32.5 lacs in aggregate with Messrs. Ciffco Steward Consultant Pvt. Ltd. and Castle Plaza Pvt. Ltd. and assured that the said brokers would repay the respective sums to the Club within two months subject to the condition that the Stewards of the Club shall forbear from taking any action against the plaintiff.

17. In August 1, 1991, Mr. Sunil Singh Roy addressed a letter to the plaintiff, intimating the acceptance of the plaintiff's resignation in the meeting of the Stewards held on July 27, 1991, and inter alia, stated that the plaintiff had incurred both criminal and civil legal liability and Stewards had decided to institute legal proceedings, and preliminary steps in this direction were no being taken.

18. In August 3, 1991, at the behest of Mr. B.M. Khaitan, patron of the Club, and the Stewards, Defendant/respondents Nos. 5, gave interview to Mr. C. R. Irani, Managing Director and Editor-in-Chief of the "The Statesman" and the news item

appeared, inter alia, as under:--

"Acting oft the advice of the senior member, who is also an eminent Counsel, it was decided that Mr. Dutta Gupta be given an opportunity to make up the deficit....."

"..... Mr. Dutta Gupta has been informed after the full Meeting of the Stewards that he had already exposed himself to Civil and Criminal Proceedings."

19. In August 9, 1991 the defendant/respondent No. 5 decided that similar information (referring to the "Statesman"s Report) should be given to the "Telegraph" and, thereupon, inter alia, the following "New item" appeared:--

"..... that dubious investments being made would not have come to light but for the sudden cash crunch which the R.C.T.C. faced early this year. There was a back log of payment to the State Government (over Rs. 3 crores by March 31), suppliers" bills were held up and even royalty to the other Racing Clubs (for interstate pettings could not be paid) breeders whose blood stock were auctioned in February did not receive payment on time....."

..... "A new dimension was added when Mr. Dutta Gupta voluntarily informed the senior steward Mr. Singh Roy that, the deposit had been made at his behest. The Club directed Mr. Dutta Gupta to put this in writing, charged with misuse of position Mr. Dutta Gupta was immediately asked to resign which he did..... indeed Mr. Dutta Gupta has been informed that if the R.C.T.C. did not start getting back at least a portion of the investment within a month by the first week of September then criminal and civil proceedings would be initiated."

20. On or about August 19, 1991 at the meeting of the Stewards it was decided to form an "Advisory Committee" consisting of S. K. Mehra, defendant No. 6 M. L. Kapur and J. C. Patel for the purpose of advising the Stewards. Since then, the advisers have been and are participating in the Stewards Meeting and enagaged in taking decision with the Stewards.

21. In October 12, 1991 -- complaint was filed under Sections 120B/406/409/488/471 of Indian Penal Code at the behest of the Stewards and/ or their advisers against the plaintiff and before the Learned Chief Metropolitan Magistrate, Calcutta, inter alia, alleging:--

(a) That on June 8, 1989 a sum of Rs. 15 lacs was paid out of Club"s fund to Ciffco & Company, which in turn paid the said sum to Turnkey International Ltd. within two or three days in collusion and conspiracy with various accused persons: and

(b) On march 30, 1991 a sum of Rs. 17.50 lacs was paid by R.C.T.C. by drawing a cheque in favour of on the account of R.C.T.C. with Castle Plaza Pvt. Ltd. and the same was paid from the said bank account of R.C.T.C. The said sum was made available to Turnkey International Ltd., by the accused persons in collusion and conspiracy with each other.

22. On February 2, 1992 The Secretary of R.C.T.C. issued a Notice on behalf of the Stewards convening a "General Meeting" of the Club on February 21, 1992, inter alia for considering whether the plaintiff should be expelled under the provision of the Rule 29(ii) of the Club, and to constitute a "Committee" consisting of three senior Members for the purpose of making inquiry and taking evidence and making a report to the Members on the aforesaid advances by R.C.T.C.

23. In February, 21, 1992 at the "General Meeting" of the Club the members passed a resolution constituting a "Committee" consisting of Defendants/respondents Nos. 5, 6, and 7, and directed that the Committee Report should be submitted in the meeting of member scheduled on March 20, 1992.

24. In March 8, 1992 the Secretary of the Club issued a Circular to all the Club Members, inter alia, stating that the "Committee", required a little more time to process the matter and hence the Meeting scheduled on March 20, 1992 was postponed.

25. In April 11, 1992, the "Committee" issued a "Show Cause" Notice to the plaintiff/petitioner, to answer the allegation that the petitioner by using his position as steward of the Club diverted or caused diversion of the fund of the Club through intermediary Brokers or financiers to Messrs. Turnkey International Ltd. of which the petitioner was and is, the Managing Director, inter alia as follows :--

(a) On June 5, 1989, a sum of Rs. 15 lacs was diverted through the intermediary, Messrs. Ciffee & Stewards Consultant Pvt. Ltd.; and

(b) On March 13, 1991 a sum of Rs. 17.50 lacs was diverted through, the intermediary, Castle Plaza Pvt. Ltd.

In April 25, 1992, the plaintiff gave reply to the "Show Cause" notice, stating inter alia, that he was unable to participate in the enquiry on the grounds that:--

(i) Criminal Complaint, filed by R.C.T.C. against him, was pending, and as a person charged as an accused, in the said Criminal case, had a constitutional right not to answer those allegation.

(ii) R.C.T.C. having already taken recourse to Criminal Proceedings upon which an order was passed u/s 156(3) of the Code of Criminal Procedure should await the termination of the said proceeding before initiating any enquiry on the self same allegations; and

(iii) The said enquiry, was to be conducted by the said "Committee" which consisted of members of the Convening Body of R.C.T.C. They were thus virtual complainants, and in the premises, the Proceeding was bound to be an idle ceremony.

26. In May 11, 1992 the appellant filed the instant suit in this Court.

27. In May 11, 1992, the appellant also filed an interlocutory application in the said suit, praying, inter alia, for an injunction restraining respondents Nos. 5, 6 and 7 and their servants, agents from proceeding with the domestic enquiry and from proceeding with the expulsion of the petitioner and R.C.T.C. till pendency of said Criminal investigation/ case.

28. After the parties filed their respective affidavits the aforesaid matter came up for hearing before Mrs. Padma. Khastgir, J. as she then was on July 2, 4, 7 and 8, 1992 respectively. After hearing the parties the Learned Judge rejected the said application, inter alia, holding that the suit and the application are premature and that the petitioner's appearance before the Committee would not cause any prejudice.

29. In July 22, 1992, petitioner's Advocate on Record had put in requisition for obtaining certified copy of the judgment and Order.

30. In November 6, 1992, after the delivery of the judgment and other, at the behest of Sri Sarkhal of Lalbazar Station, Officer-in-Charge investigating the Criminal case, tried to resolve the dispute as a result, whereof, a request was made by Mr. Pearson Surita to give telephone call to Mr. Jyantilal Patel. Thereafter, a meeting between J.C. Patel and with V, N. Verma of the respondent No. 1 was arranged in course whereof, modalities were discussed for amicable settlement of the dispute in entirety.

31. November 7, 1992, the respondent No. 1 evinced his unwillingness to withdraw the question of expulsion, notwithstanding the payments to be made by the Company. In view thereof, the aforesaid settlement fizzled out.

32. In November 8, 1992, petitioner received a notice telegraphically addressed from the said Club along with an undated report stated to have been filed by the said Committee, purporting to convene a general meeting for special business on December 3, 1992 at 6.30 p.m. for the purpose of considering the petitioner's expulsion from R.C.T.C. under Rule 29(i) on the basis of the undated report alleged to have been filed by the Committee.

33. On December 1, 1992 appellant filed the instant appeal and in aid thereof also moved the stay application before us. After hearing the counsel for the parties, we inter-alia directed that the meeting scheduled to be held on 3rd December, 1992 would be held only for the purpose of adjourning the same at least for four weeks from the scheduled date as also directed filing of the affidavit-in-. Opposition by 15th December, 1992, and affidavit-in-reply by 21-12-1992.

34. On February 5, 1993 the said application came up for hearing before us and in view of the proposal made by the Counsel appearing on behalf of the appellant in respect of the payment of the balance sum of Rs. 20,00,000/- in instalments, we directed the members of R".C.T.C. to consider whether the Club should proceed any further in pursuance of the show cause notice issued or otherwise.

We also directed the said Club not to proceed with the expulsion proceeding of the appellant from membership.

35. Pursuant to the order dated February 5, 1993, passed at the behest of the appellant, the Turnkey International Ltd. from time to time paid in Aggregate a sum of Rs. 20,00,000/- to the brokers, who, in turn, tendered the said sum to the R.C.T.C. particulars whereof are as under :--

PARTICULARS

Date	Amount
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11-2-1993	5,00,000/-
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12-3-1993	20,00,000/-
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12-4-1993	20,00,000/-
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10-5-1993	2,00,000/-
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12-6-1993	2,00,000/-
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12-7-1993	20,00,000/-
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11-8-1993	20,00,000/-
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6-9-1993	3,00,000/-
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Total :?	20,00,000/-
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36. Pursuant to the Order dated February 5, 1993 or. February 17, 1993 notice was sent to all the members of the R.C.T.C. convening a general body meeting of the members at the Club House on March, 10, 1993.

37. On March 10, 1993 during the deliberation in the meeting in lieu of debating the resolution for amicable settlement, the Chief Patron of the Club Mr. B. M. Khaitan suggested and persuaded the members that the consideration of the "proposal for settlement in terms of the Division Bench's Order be postponed, and/or adjourned for further consideration thereof by members of the club. The said amended proposal of adjournment was thereafter put to vote and it was passed by 10:7 Three members of the Club abstained from voting including the respondent No. 5.

38. On March 12, 1993 the matter again appeared before us when we directed that a fresh meeting be held in terms of the order passed on February 5, 1993 and adjourned the meeting till April 20, 1993.

39. In March 12, 1993 "Sandhya Ajkal" (evening edition) published a news item that a well known horse owner Chiranjit Singh of Ekbalpur, Calcutta, has filed and/or lodged a complaint/criminal case against the authorities of R.C.T.C. including the Racing Manager, veterenary surgen A. S. Codbali and two stewards, Mr. B.M. Verma and Mr. M.M. Sookhias, the respondent Nos. 1 and 2 herein, on

the ground of misappropriation of a sum of Rs. 50,000/- due to the fraudulent and deceitful plea of treatment meted out to his horses, kept in the stable of R.C.T.C.

40. In March 1993 R.C.T.C. issued notice inter alia convening a meeting of general body in terms of the order passed by us on April 9, 1993 at the Club house.

41. In April 12, 1993 Mr. A. L. Sude, Sr. Member of the Club addressed a letter to the Sr. Steward, the respondent No. 2, inter alia, stating that a disturbance took place at the Club's Annual General meeting held on March 26, 1992. It, inter alia, appeared from the said letter that 30 or more extra votes were cast as also other serious charges were levelled against the stewards including the allegation that the races were "Fixed".

42. In April 1993 The learned Magistrate was pleased to issue summons against the aforesaid R.C.T.C. and four accused persons and directed them to be present in Court on April 8, 1993.

43. On April 9, 1993, The General body of the R.C.T.C. rejected the proposal for "settlement" as suggested and/or incorporated in the order dated February 5, 1993. The said proposal has been rejected by the R.C.T.C. by 9:13 ratio. Respondents Nos. 5 and 6 the members of the "Committee" voted against the settlement.

44. It appears to us that the Rule 29(1) of the Rules of the Club was sought to be invoked. The said rule provides as follows:--

"Any member acting in a manner likely to bring discredit on the club may be expelled by the vote of a majority of not less than 2/3rd of the Club members present at a General Meeting especially convened for the purpose, at which not less than 25 club members shall be present."

45. The question involved is if the petitioner/appellant has acted in a manner which is likely to bring discredit on the Club.

46. Mr. Sen referred to the definition of the word "discredit" as appears in the Webster's Encyclopedic Unabridged Dictionary of the English Language which is to the following effect:--

"to injure the credit or reputation of, to show to be undeserving of trust or belief; destroy confidence in, loss or lack of belief or confidence; disbelief; distrust, loss or lack of repute or esteem; something that damages a good reputation."

47. It has been submitted on behalf of the appellant that even assuming the allegations made in the affidavit on the "show cause" notice dated April 11, 1992. Of the club were true and correct whether the alleged diversion of the funds of the club for the benefit of the Company, Turnkey International Ltd. would have the effect of bringing discredit to the club or whether it has in fact brought discredit to the Appellant himself, when admittedly, it was the decision of

R.C.T.C. to invest the fund of the club.

48. It has been submitted that in the facts and circumstances of the case, on the basis of the said allegations, it could only be contended that the alleged diversion of funds, if correct could at the most constitute only discredit to the plaintiff/appellant himself. It ,could not be contended that the said diversion had brought discredit to R.C.T.C. It should be noted that if the monies were paid back on time, the question of discredit would not have arisen.

49. It has also been submitted on behalf of the appellant that the facts on the contrary go to show that the respondents were responsible for giving newspaper reports in the "Statesman" and "Telegraph". Wherein the incident had been blown out of all proportion. It could be fairly stated that the respondents were themselves responsible for bringing discredit to R.C.T.C. by disseminating the said news.

50.- It is the contention of the learned Advocate for the appellant that it has been admitted by respondent No. 5 in the affidavit filed for R.C.T.C. before the learned single Judge that he gave press interviews.,

51. Further, it appears from his affidavit that Mr. B. M. Khaitan, patron of the club and its stewards, advised respondent No. 5 to give the press interviews and publish the news for all.

52. In pursuance of the said interview, the "Statesman" in fact published the said incident on August 3, 1991.

53. In pursuance of the aforesaid interviews and/or views expressed in the said newspapers R.C.T.C. filed the said criminal prosecution on October 12, 1991 against the appellant.

54. It has been submitted that it is clear from paragraph 3 of the "Show Cause" Notice that the Club authorities were relying on

(a) News item in the "Statesman" dated 3rd August, 1991 and the "Telegraph" dated 9th August, 1991 and the news report of the Magazine "the Indian Thoroughbred "dated July/August 1991.

(b) Meeting held on November 25, 1991 at Bangalore of the Turf Authorities of India which are based on the aforesaid press reports.

55. It has been submitted by the learned Advocate for the appellant that it does not follow either that Rule 28 and/or 29 of R.C.T.C. was attracted or the meeting on 25-11-1991 at Bangalore allegedly expressed doubts about R.C.T.C.'s ability to pay the Royalty dues by it for the failure by the Company to pay. It is stated to be the result of the said newspaper report and not the result of the said loan. It is absolutely far-fetched to invoke Rules 28 and/or 29 of R.C.T.C.'s on this. Further there is no allegation that the amount realised by the R.C.T.C.'s at the Magic Million auction sales on 1991 from the Purchaser of the breeders were the subject of diversion therefrom. R.C.T.C.'s alleged failure to pay to the breeders

and the owner has nothing to do with the said loan made earlier between the June and December, 1989 and absolutely irrelevant.

56. It has also been submitted that R.C.T.C. has misconstrued the provision of Rule 29(1) incorporating the said show cause notice on proceeding with said enquiry and assumed jurisdiction not vested in it by and under the Rule 29(1) of the R.C.T.C.

57. It is also the contention by the learned Advocate for the appellant that the R.C.T.C. has meted out discriminatory treatment to the appellant and as such R.C.T.C.'s conduct in initiating expulsion proceeding is liable to be struck down.

58. R.C.T.C. in issuing show cause notice dated April 11, 1992 to the appellant for initiating expulsion proceeding as also filing of the said criminal complaint case against the appellant subjected the appellant to discriminatory treatment, which is highly unfair and unreasonable. While, these steps have been taken against the appellant by the R.C.T.C. in respect of the loan properly granted on commercial tern, serious criminal charges were made against the authorities of R.C.T.C. like racing Manager and two stewards B.M. Verma and S. S. Sookhia the respondents Nos. 1 and 2 involving the said persons with charges of criminal misappro-priation of a sum of Rs. 50.000/- by practising fraud and deceit as published in the evening edition of "Sadhya Aajkal" dated March 12, 1993 were not taken notice thereof.

59. It has been submitted that inasmuch as both the criminal complaint cases and the expulsion proceedings before the club's domestic forum are founded upon the same if not, indentical cause of action, this Court in exercise of its inherent power and/or equitable jurisdiction would be pleased to issue injunction until such time the pending criminal case bearing No. 794 of 1991 is finally resolved and/or disposed of by the Court.

60. Relevant portion from the show cause notice dated April II, 1992 is setout here-under:

"By using your (appellant's) position as a stewards of the Club you diverted or caused the diversion of the fund of the Club through intermediary brokers or financiers to Turnkey International Limited of which you were, and are, the Managing Director.

61. Particulars of the alleged diversions are set out below:--

Date Amount Intermediary

5th June, 1989 15,00,000/- CIFCO & STE-WARDS CONSULTANT PVT. LTD.

13th Mar., 1991 17,50,000/- CASTLE PLAZA INTERMEDIARY PVT. LTD.

62. On 12th October, 1991 a complaint case was filed under Sections 120B/406/409/488/471 of the Indian Penal Code at the behest of the Stewards and/or their advisers before the Chief Metropolitan Magistrate, Calcutta, Inter

alia stating that on June 8, 1989 a sum of Rs. 15,00,000/- was paid out of Club's fund to Cifco which money later on was made available to Turnkey International Limited in collusion and conspiracy with various accused persons and on March 30, 1991 a sum of Rs. 17.50 lac, was paid by Cheque drawn in favour of Castle Plaza Pvt. Ltd. out of the Club's fund which money, later on, was made available to Turnkey International Limited by various accused persons in collusion and conspiracy with each other.

63. It has been submitted that it is clear from the aforesaid facts that the cause of action before the "Domestic Forum" for the appellant's expulsion and the aforesaid criminal complaint were based on similar if not, identical allegations. It has been submitted that this Court will be pleased to stay the expulsion proceeding before the domestic forum of the Club until such time the criminal complaint case is disposed of.

64. It has also been submitted on behalf of the appellant that the conduct and action of the patrons and stewards of the Club. R.C.T.C. in pursuing the case for expulsion of the appellant has been prompted by mala fide intentions.

65. It has been contended on behalf of the appellant that the mala fide conduct of the Club authorities has to be viewed from two different angles -

(a) Mala fide in escalating the disputes for expulsion of the appellant; and

(b) Mala fide in manipulating the meetings.

66. According to the learned advocate for the appellant the facts hereinbefore stated clearly establish the mala fide conduct of the club authorities in escalating the disputes for expulsion of the appellant.

67. Relying upon the aforesaid decision the learned advocate for the appellant submitted that the Court had jurisdiction to examine any decision of the committee which involved a question of law, including one of the interpretation of the rules. In support of his contention the learned advocate relied upon the judgment and decision in the case of Lee v. Showmen's Guild of Great Britain reported in 1952 (2) All ER 1175. In the aforesaid decision on the facts it was held that the committee had misconstrued Rule 15(c) in finding that the plaintiff had been guilty of "unfair competition" within the meaning of that rule; and, therefore, the committee had acted ultra vires and their decision to expel the plaintiff was void.

68. Learned advocate also referred to the judgment and decision in the case of Chiranjani Jadavji Padia Vs. Bhupesh Chandra Dutt and Others, and submitted that the Court has jurisdiction to interfere with the decision of a domestic tribunal.

69. In view of pendency of the criminal case can it be contended that it is against "Public Policy" to allow the "Domestic Forum" to proceed with the matter?

70. Learned advocate also referred to the judgment and decision in the case of

The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and submitted that it was inter alia held in the aforesaid decision that in the event (a) Criminal Trial and Domestic Enquiry are based on the same facts and if the case is of a grave nature or involves questions of law which are not simple it would be advisable for the employer to await the decision of the Trial Court so that the defence of the employee in the criminal case may not be prejudiced, (b) Simultaneous holding of the "Domestic Enquiry" during the pendency of the Criminal Trial would seriously prejudice the employee in his defence and in the interest of "fair play" the departmental proceeding should be stayed.

71. Reliance upon the judgment and decision in the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, was made by Mr. Sen, learned advocate for the appellant wherein it was held that if both "Domestic Enquiry" and prosecution are grounded on the same facts, then the proceedings before the domestic forum should be stayed.

72. Shortly stated submissions made on behalf of the respondents Nos. 1 to 6 maybe summarised as follows:

73. It has been submitted on behalf of the said respondent that the plaintiff has not made out any case for an injunction. The law on the point appears to be that the right of a Club to expel members is based on the contract whereby they become members and if such contract provides for expulsion, a member may be validly expelled provided that the rules regarding expulsion are followed. A Civil Court's jurisdiction to interfere with such expulsion is rather limited. It may set aside the expulsion if the Club has acted without jurisdiction or in bad faith or without giving the expelled member a chance of defence or explanation. The doctrine of bias and the doctrine that a prosecutor shall not adjudge can have no application in the case of a Club unless the rules of the Club provide otherwise, as a member having agreed to be bound by the rules cannot complain if in following the rules those doctrines are not observed.

74. It is for the members to decide whether it is likely to do so. In the judgment and decision in the case of Dawkins v. Antrobus reported in (1881) 17 Ch D 615 the Committee of a Club had decided that the conduct of a member was such as was likely to be injurious to the character, and interest of the Club. With regard to this, the Court of Appeal at page 629 said "unless we can say that their decision that such conduct would be injurious to the character and interest of the club was so manifestly absurd and so manifestly idle that it could only have been a false pretence to cover something else, and therefore was, in fact, fraudulently put forward for the purpose of giving effect to some pre-conceived notion of removing him without just cause for which I can see no ground or foundation whatever, we have no right to sit in judgment on their decision". On this principle, in the facts of the present case, the Court should allow the members to consider this question.

75. It has also been contended on behalf of the said respondent that in the

present case the rules of the Club provide for expulsion of a member if his action is likely to bring discredit to the Club. It cannot be said that the action of the plaintiff is incapable of bringing discredit on the Club. The members of the Club are in the process of following the rules and are in the process of giving the plaintiff every chance of defence and explanation. In this connection it is necessary to read the affidavits of the fifth defendant affirmed on 29th May 1992, 23rd December 1992 and 16th September 1993 in detail, and also the Report of the Committee. There is no evidence of bad faith; on the contrary the fifth defendant's aforesaid affidavits and the said report make it abundantly clear that the members of the Club are acting entirely in good faith.

76. It has also been submitted that the Civil Court interferes if at all, after a decision has been taken to expel a member. There is no reported decision where a Civil Court has enjoined the members of a Club from proceeding against a member in accordance with the Rules. In this case the Rules are being followed and the general body of members has not yet had an opportunity of considering the matter. It has been submitted that the plaintiff has not suffered any injury and is not likely to do so and accordingly is not entitled to any injunction. On the other hand the members of the Club are entitled to proceed in accordance with the Rules and should be permitted to do so.

77. It has been submitted that the contention of the appellant that by appearing before the Committee or the general body he will jeopardise his defence in the criminal case is baseless. It has been submitted that firstly, it is important to bear in mind that so far as the domestic proceedings are concerned, there is no dispute as to the facts regarding the diversion of funds. The only question that is before the members is whether the conduct of the plaintiff has brought discredit on the Club. This is entirely different from the offences of criminal conspiracy and criminal breach of trust. The members are not at all concerned whether the plaintiff has committed any criminal offence and his explanation to the charge of having brought discredit on the Club cannot have any relevance in the criminal proceedings.

78. It has also been submitted that it is well settled that domestic proceedings and criminal proceeding can continue simultaneously. In support of his contention Mr. Chowdhury, learned advocate relied upon the judgment and decision in the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, There are no special circumstances in this case which require the Court to restrain the domestic proceedings, especially as there is no dispute as to the facts on which the domestic proceedings are based.

79. The plaintiff has already disclosed his defence in the domestic proceedings in his affidavit affirmed on 29th May, 1992.

80. It has also been contended on behalf of respondents that the members of the Club are in the process of deciding whether or not to associate with the plaintiff. This is a part of the right to form associations guaranteed by Art. 19 of the

Constitution. It is submitted that the members should be allowed to exercise this right.

81. The plaintiff having obtained leave under O. 1, R. 8 of the CPC has taken no step to advertise this suit or otherwise to bring it to the notice of the persons who may be interested. In the premises the injunction already issued and any injunction which may be subsequently issued will bind only the persons named as defendants in the suit.

82. We have considered the respective submissions of the learned advocates for the parties and decisions cited from the bar.

83. 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 on 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 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.

84. From the decision of the Supreme Court in the case of T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, it is clear that in case where the domestic body acts without jurisdiction or does not act in good faith or acts in violation of the principle of natural justice, the Civil Court is entitled to interfere.

85. The same principle was reiterated by the Supreme Court in the judgment and decision in the case of Ujjal v. Nemichand (supra) (sic) wherein it was held by our Court that Civil Court will interfere with the "Domestic Forum", if Forum oversteps its jurisdiction or proceeds in violation of the principles of Natural Justice or the conduct is mala fide or lacks honesty.

86. Dawkins v. Antrobus((1881) 17ChD 615) (supra) was relied upon by the learned advocate for the respondent. In my view the said decision cannot be of any assistance to him. In the aforesaid decision it was held that, the Court will not interfere against the decision of the members of a club professing to act under their rules, unless it can be shown either that the rules are contrary to natural justice, or that what has been done is contrary to the rules, or that there has been mala fide or malice in arriving at the decision.

87. One of the rules of a club provided that a general meeting might alter any of the standing rules affecting the general interests of the club, provided this was done with certain formalities and by a certain majority.

88. It was held that a rule providing for the expulsion of members who should be guilty of conduct injurious to the interests of the club was within the regulation, and could be validly passed by a general meeting.

89. One of the rules of the club provided that in case the conduct of any member should, in the opinion of the committee, be injurious to the character and interests of the Club, the committee should be empowered to recommend such

member to resign, and if he should not comply, the committee should then call a general meeting, and if a majority of two-thirds of the meeting agreed be ballot to the expulsion of such member, he should be expelled.

90. Since in the aforesaid decision the Club followed the procedure and the rules of the Club the Court did not interfere to restrain the committee from excluding the plaintiff from the Club.

91. In the instant case the appellant positively asserted that the Club has followed a procedure not warranted by the Rules of the Club. It is also the case of the appellant that the action sought to be challenged in the proceedings suffers from mala fide and is not based on good faith as the appellant has alleged violation of the principles of- natural justice; since according to the appellant those who have levelled charges against the appellant will also take decision in the matter. The details of the mala fide conduct as alleged by the appellant has already been mentioned hereinbefore. It is the positive case of the appellant that the formation of the Committee is ultra vires the-Rules of R.C.T.C. The Rules of R.C.T.C. do not contemplate formation of a committee for the purpose of expulsion of a member.

92. We have considered the relevant provision of rules in this connection. The Rules of the Club in our view do not contemplate formation of the committee as has been done in the instant case. In our view this is a question involving interpretation of the rules which requires serious consideration and cannot be brushed aside at the interlocutory stage. The question of bias has been specifically raised by the petitioner. It is on record that the press interview was given by one of the stewards on behalf of the Chief Patron of the Club, making allegations against the appellant and the said steward also participated while taking decision to prosecute the appellant. It has been alleged that the Advisers constituted by the Stewards have also become biased by making statement before taking decision and also by participating in the decision making process to prosecute the appellant and such allegations cannot also be so easily ignored and require careful consideration. The aforesaid allegations if established would clearly constitute violation of the principles of natural justice and demonstrate the mala fide conduct of the respondents to punish the appellant.

93. Be that as it may, it is not proper to make any adjudication on the said allegations at the interlocutory stage. Facts on record, however, clearly demonstrate that prima facie case has been made out which require investigation and consideration towards jurisdictionl issue on the question of the competence of the Committee to decide the question of expulsion of members. The question of mala fide and violation of natural justice are also there. Therefore, at this stage it cannot be said that the Court has no jurisdiction to interfere in the case of expulsion of the appellant.

94. The details with regard to the bias and violation of natural justice has also been pointed out.

95. With regard to the other contention of the respective parties on the question if the proceeding before the domestic forum should continue when there is already criminal prosecution has now been well settled by the decision of the Supreme Court in the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, The Supreme Court in the aforesaid decision considered its several earlier decisions and held that although there cannot be any straight-jacket formula valid for all cases and the general application without regard to the particularities of the individual situation, the Supreme Court in the aforesaid decision stayed the domestic proceedings since both domestic enquiry and prosecution are grounded on the same facts.

96. In the instant case there cannot be any doubt that both the proceedings under the domestic forum and the criminal proceeding are grounded on the same fact and it is, therefore, fit and proper that proceedings before the Domestic Forum should be stayed. This aspect of the matter was not considered by the learned single Judge.

97. It has been submitted on behalf of the respondent that the plaintiff has already disclosed his defence in the domestic proceedings in his affidavit affirmed on 29th May, 1992.

98. Both the proceedings before domestic Forum and Criminal Court are based on identical facts. In that view of the matter we are unable to accept the contention of the learned Advocate for the respondent that the proceedings in the domestic Forum can continue.

99. Considering the facts and circum-stances of the case we are of the view that the balance of convenience is also overwhelmingly in favour of the appellant's claim for interim injunction to be granted in their favour. We are accordingly of the view that the learned single Judge should have passed an order of interlocutory injunction restraining the respondents Nos. 5, 6 and 7 and/or servants and agents from proceedings with the proposed domestic Enquiry set up by the Club till the disposal of the suit and the learned single Judge should have granted the said interlocutory relief.

100. The appellant, therefore, succeeds in this appeal.

101. There will be an order of injunction.

102. The hearing of the suit is expedited. Written Statement to be filed within three weeks, inspection forthwith and the suit will appear in the list for hearing before the Learned single Judge on mentioning 4 weeks thereafter.

103. Stay asked for is refused.

104. All parties concerned to act on a signed copy of the operative part of this judgment and order on the usual undertaking.

Ajit K. SenGupta, J.

105. I agree.

106. Appeal allowed.