

**(2004) 10 DEL CK 0135**

**In the Delhi High Court**

**Case No : Writ Petition (C) 1680 of 2000**

Rahul Mehra and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision : 04-10-2004**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

**Citation :** (2005) 4 CompLJ 268 : (2004) 114 DLT 323

**Hon'ble Judges :** B.C. Patel, C.J.;Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** Rahul Mehra, for the Appellant; A.M. Singhvi Radha Rangaswamy and Viraj Datar for Respondent No. 2, Vineet Bhatia and Sunita Mittal for Respondent No.3, for the Respondent

## Judgement

Badar Durrez Ahmed, J

"There must be no Alsatia<sup>1</sup> in England where the King's writ does not run."

1. This writ petition has been filed in public interest claiming various reliefs against, inter alia, the Board Of Control For Cricket In India (Respondent No.2) (hereinafter referred to as ""BCCI"" ) and the Delhi and District Cricket Association (Respondent No.3)(hereinafter referred to as ""DDCA"" ) which is a member association of the BCCI. As claimed in the first paragraph of the petition, it has been filed to ensure that organizations such as BCCI and DDCA which have been created for the purpose of promotion of cricket in the country and which have acquired a monopoly status by virtue of alleged Government recognition and patronage, perform their duties and obligations which is to promote and develop cricket in the country and that they do not function as private empires of some businessmen and traders who have allegedly come to control it and abuse it for their own interests and profits. The petitioners contend that BCCI and DCCA function as Government recognised monopolies and, as such, perform State functions of promoting cricket in the country. They further contend that BCCI and DDCA cannot be permitted to function as purely private organisations without

any accountability or obligation to the people of this country. The petitioners further seek direction to the Government of India to ensure that BCCI and DDCA function in an accountable manner and for the objects for which they have been created and recognised by the Government, failing which the Government must withdraw its recognition and patronage from these organizations.

2. Without going into the merits or demerits of the case, a serious objection has been taken by the BCCI to the maintainability of this petition. They contend that they are not amenable to the extraordinary writ jurisdiction. Arguments were, Therefore, heard only on this preliminary issue.

2. On his part, the first petitioner (Mr Rahul Mehra), who appeared in person, relied heavily on the judgment dated 17.9.2001 delivered by a Single Judge of this Court in CW 867/2001 Ajay Jadeja Vs. Union of India and Others, . He initially submitted that the issue was decided in that case that a writ petition could be entertained against the BCCI. However, as there was an objection raised by the learned counsel for the BCCI that the said judgment had been set aside by a Division Bench of this Court, the petitioner submitted that, though the Division Bench had not set aside the said judgment on merits but merely on the basis of a consent order, he was free to adopt the reasoning of the learned Single Judge in the said judgment as his submissions before this court to contend that BCCI was amenable to the writ jurisdiction under article 226 of the Constitution of India.

3. Since there was some controversy with regard to the legal effect of the setting aside of the said judgment of the learned Single Judge in Ajay Jadeja's case (supra), it is best to deal with it straight away. The decision dated 17.9.2001 disposed of the preliminary objection to maintainability of the writ petition by holding that a writ petition against BCCI was maintainable as it performed a public duty or a public function. BCCI, being aggrieved by this decision filed a Letters Patent Appeal being LPA 531/2001. The writ petition (CW 867/2001- Ajay Jadeja v UOI and Ors) was, after it was held to be maintainable as aforesaid, placed before a Division Bench of this Court for hearing on merits. The LPA was also placed before the same Division Bench.

In fact, even the present writ petition was heard together with these two matters by the same Division Bench. That Bench passed separate orders in these three matters on 30.10.2002.

4. The first being the order in Ajay Jadeja's writ petition (CW 867/2001). The order recorded that the parties had ""agreed to get the matter resolved through arbitration"". The order further read as under:-

""We clarify that this order is in special circumstances of this case and will not be treated as a precedent in any other case of whatsoever nature.""

""In view of the matter having been referred to the Arbitrator, the petition stands dismissed as withdrawn. All interim orders including the order dated 17th

September, 2001 stand vacated.'''

In other words, the writ petition filed by Ajay Jadeja was withdrawn by him as he agreed to have the matter settled by an Arbitrator. And, the Division Bench was careful enough to record that the order was not to be treated as a precedent. It is in view of these special circumstances and the withdrawal of the writ petition itself that the order dated 17.9.2001 passed by the Single Judge stood vacated. Thus, this order of the Division Bench cannot be regarded as having reversed the decision of the Single Judge on merits. In other words, it cannot be understood to mean that the Division Bench held that the writ petition against BCCI was not maintainable or that it took any view on the question of maintainability. Hence, the argument of Dr Singhvi appearing for the BCCI that this bench is bound by the decision of that Division Bench is misplaced and reliance on the Supreme Court decision in *State of Andhra Pradesh Vs. v.C. Subbarayudu and Others*, is not apposite. Here, the earlier Division Bench did not take any view on maintainability and itself recorded that the order was not to be treated as a precedent.

5. This brings us to the second order of 30.10.2002, that is the one passed in the said LPA filed by BCCI. It reads as under :-

"Mr..... appearing for BCCI says that in view of the respondent no.1 having withdrawn the writ petition and the matter having been referred to the Arbitrator, he is not pressing the appeal. The appeal as such is dismissed as withdrawn."

And, the third order of 30.10.2002 was passed in the present petition to the following effect:-

""This is a public interest litigation. Let it be listed before the bench as per roster on 1st November, 2002.""

Thus, it is clear that the Division Bench did not decide on the maintainability of a writ petition against BCCI. Though, it is also clear that because of the withdrawal of the writ petition by Ajay Jadeja, the order dated 17.9.2001 was also vacated. However, as the petitioner contends, it can be read as part of his submissions before this court. And, that is how we read the same.

6. Another point which needs to be put aside is that the petitioner straight away contended that, in this petition, he is not advancing the argument that BCCI falls within the meaning of ""State"" as defined in Article 12 of the Constitution. He further submitted that he is also not raising the issue as to whether BCCI is an instrumentality of the State or not. It is his contention that a writ petition under article 226 of the Constitution may be directed against ""any person"" and it is not at all necessary that the reliefs must be sought against the ""State"", ""Government"" or ""authority"" or ""instrumentality of the State"". Therefore, we are not called upon to decide the issue whether BCCI would fall within the definition of ""State"" under Article 12. Though, the counsel for the BCCI has given elaborate written submissions on this aspect contending that BCCI was

neither ""State"" nor an ""instrumentality of the State"" relying upon the test laid down in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , we need not refer to them as this issue is not before us. It may be mentioned that by an order dated 23.8.1989 passed in a writ petition (cw 632/1989 : *Mohinder Amarnath v. BCCI and Ors*) a Division Bench of this Court held that the BCCI did not ""qualify to be called a instrumentality of the State under Article 12 of the Constitution"" and declined to entertain the writ petition. In the SLP [SLP(civil) No. 10142/89] preferred against this order of 23.8.1989, the Supreme Court passed an order on 26.9 1989 disposing of the same in the following manner:-

""Since the punishment imposed on the petitioner has been revoked, the petition is disposed of without expressing any opinion on the view taken by the High Court of Delhi.""

So, the Supreme Court neither endorsed the view taken by the Division Bench of this Court, nor rejected it. Anyhow, we are not required to examine these aspects because the issue as to whether the BCCI is, or is not, an instrumentality of the State with in the meaning of Article 12 of the Constitution is not before us.

7. The core question, Therefore, is -- whether BCCI is amenable to the writ jurisdiction under article 226 of the Constitution? Sub-article (1) thereof reads as under:-

""226. POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS.

(1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

xxxx xxxx xxxx xxxx""

A plain reading would suggest that the powers are plenary and the High Court can issue directions, orders or writs to ""any person"" for the enforcement of any fundamental right and ""for any other purpose"". However, these wide powers have been regulated by judicial pronouncements so as to avoid interference in matters where alternative remedies are available as also where the dispute is purely of a private nature having no ""public law"" element. The traditional view was that wherever the State or its instrumentality was involved, it was regarded as an issue within the domain of public law. Likewise, where individuals were at loggerheads, the remedy lay within the precincts of private law. This was all very well as long as governments stuck to governance and private persons or bodies confined their activities to pursuits of a private nature. But, when the state entered into the fields of commerce, industry and business and when private bodies took up public functions and duties, this distinction

between public law and private law based on the public or private character of the institution was no longer clear-cut. Therefore, it was no longer safe to rely solely upon the character of the institution to decide whether it was amenable to writ jurisdiction or not. For instance, where there is a dispute of a purely contractual nature (not being a statutory contract), it does not matter that one of the parties is the "State" or a "statutory body" or "instrumentality of the State", such a matter falls within the arena of private law and judicial review under article 226 would not lie. And, the converse would be equally true. In other words, a dispute in which the State is not directly involved may yet be a public law issue if a public duty or a public function is performed by a private body.

8. Governments have ventured into the private arena and private bodies, likewise, have undertaken public duties or public functions. There is a degree of overlap and the distinction is no longer clear-cut or watertight. The law must be alive to these dynamics. Accordingly, the question of maintainability of a writ petition must not be addressed from the standpoint of amenability. Everybody is amenable to the jurisdiction of the High Courts under article 226. However, Courts have exercised restraint and they exercise these powers only in cases which involve public law. Therefore, the "litmus" test for invoking the writ jurisdiction is whether the act complained of is in the discharge of a public duty or a public function. It matters little as to who discharges the public duty or performs the public function. And so too, the source of the power to discharge or perform such duty or function. Whether the person is empowered by statute or some governmental order or whether such person arrogates to himself the power to perform a public function or discharge a public duty, is of no consequence. What is to be seen is whether there is an infraction in the discharge of such duty or function. If there is, the High Court has power to correct it by issuing an order, direction or writ to any person. Funding is also not an issue. A privately funded private organisation but discharging a public duty would still be within the "net" of article 226.

9. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Supreme Court succinctly put this issue beyond the pale of controversy in the following words :-

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation with by the

person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.""

(underlining added)

The decision in *Andi Mukta* (supra) was further explained in *VST Industries Ltd. Vs. VST Industries Workers' Union and Another*, where the Supreme Court observed as follows [at page 306] :-

""In *Anadi Mukta* case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked.""

And, then in *G. Basi Reddy Vs. International Crops Research Instt. and Another*, the Supreme Court held:-

""28. A writ under Article 226 can lie against a ""person"" if it is a statutory body or performs a public function or discharges a public or statutory duty (*Praga Tools Corpn. v. C.A. Imanuel*, *Shri Anadi Mukta Sadguru Trust v. V.R. Rudani SCC* at p. 6 and 8 and *VST Industries Ltd. v. Workers' Union*)..... Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.""

Ultimately, in *Federal Bank Ltd. Vs. Sagar Thomas and Others*, :

""From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.""

(underlining added)

10. To say that cricket is a great game would be a value judgment. For, there may be people who regard it as an abomination. But, to say that cricket is a craze in India would not be far from the truth. Indeed, it is a passion, an obsession. A victor by the Indian team sends a thrill of exhilaration amongst the masses. Equally, a defeat brings despair and gloom. And, in extreme cases, anger, violence and riots. Every nuance of the game is debated, every umpiring decision is dissected and every ball bowled and run taken is watched by millions with rapt attention. To say that the Indian public is vitally interested in the game and the fate of its team would be an understatement.

11. BCCI is a Society and was registered as such on 28.11.1940 under the Tamil

Nadu Societies Registration Act, 1860. Its objects include:-

""(a) To control the game of Cricket in India and give its decision on all matters which may be referred to it by any State, Regional or other Association;

(b) To encourage the formation of State, Regional or other Cricket Associations and the organisation of Inter-State and other tournaments;

(c) To arrange, control, regulate and if necessary finance visits of teams that are members of the International Cricket Council and teams of other countries in India;

(d) To arrange, control, regulate and finance visits of an India Cricket Team to tour countries that are members of the International Cricket Council or elsewhere in conjunction with the bodies governing cricket in the countries to be visited;

xxxx xxxx xxxx xxxx

(g) To frame the Laws of Cricket in India and to make alteration, amendment or addition to the laws of Cricket in India whenever desirable or necessary;

xxxx xxxx xxxx xxxx

(o) To impart physical education through the medium of Cricket and take all steps to assist the citizens to develop their physique;

xxxx xxxx xxxx xxxx

(r) To take such action as may be necessary to coordinate the activities of affiliated Associations, Institutions and their members in relation to the Board and amongst themselves;

(s) To select teams to represent India in test matches, official or unofficial played in India or abroad, and to select such other teams as the Board may decide from time to time;

xxxx xxxx xxxx xxxx""

12. A look at the Rules and Regulations of the BCCI would show that India has been divided into 5 zones: North, South, East, West and Central, and each zone in turn has several member associations. In all there are 30 member associations such as the Andhra Cricket Association, Assam Cricket Association, Bombay Cricket Association, Delhi and District Cricket Association, Karnataka Cricket Association, Punjab Cricket Association, Tamilnadu Cricket Association, Railway Sports Control Board, Services Sports Control Board. Rule 32 prescribes the Standing Committees and their powers. The Standing Committees include the ""All India Selection Committee"", ""All India Junior Selection Committee"", ""Umpires Committee"", ""Tour, Programme and Fixtures Committee"", ""Technical Committee"" and the ""Junior Cricket Committee"". To demonstrate the all-pervasive nature of the BCCI over cricket in India, it would be sufficient to refer to functions and duties of the Junior Cricket Committee which is required to:

- ""(a) draw programme of coaching at zonal and national levels;
- (b) appoint coaches as required from time to time;
- (c) establish Coaching Centres at zonal and national levels;
- (d) organise and conduct junior tournaments of the Board;
- (e) organise junior tours of foreign countries;
- (f) decide any dispute in regard to junior tournaments;
- (g) generally have control over junior cricket (i.e. For players under the age of 19 years).""

By virtue of Rule 33, no club affiliated to a member or any other organisation can conduct or organise any tournament or, any match in which players/teams from the region within the jurisdiction of a member are participating or are likely to participate without the previous permission of the member affiliated to the BCCI. Further, if a member association wants to conduct or organise any tournament in which players/teams from outside regions are likely to participate, then it cannot do so unless and until it has the previous permission of the BCCI. Similar is the position in respect of a member association contemplating to organise an international tournament or match. More importantly, there is a complete prohibition on ""Private organisations"" staging international matches or involving foreign players. The ban is contained in Rule 33(d) which reads as under:-

""Private organisations shall not be allowed to organise an International Tournament or International match/matches in which foreign players/ teams are participating or likely to participate. If at all such a tournament/ match/ matches is to be staged, then it should be exclusively by the affiliated member which recommends the proposal and within whose jurisdiction the tournament/ match/ matches will be staged.""

Just as virtually no cricket match can be organized without the previous consent of the BCCI, no club or player can participate in any tournament or a match for which the permission of the BCCI has not been previously obtained. If a player contravenes this rule (ie., Rule 34), it shall be construed as misconduct and he shall be dealt with in the procedure laid down in Rule 38. Rule 35 is also significant and it reads as under:-

""No organisation other than a Member or Associate Member, Clubs or Institutions affiliated to such members shall organise foreign tours to or invite teams from abroad. Members or Associate Members or such clubs or institutions, desirous of undertaking tours abroad or inviting foreign teams shall obtain the previous permission of the Board. Such permission may be given in accordance with the Rules framed by the Board.""

In short, organized cricket in India at all levels -- junior, senior, state, zonal,

national or international, is fully and solely controlled and administered by the BCCI. Some of its members such as the Railway Sports Control Board and Services Sports Control Board appear to be governmental/semi-governmental bodies. No player dreaming of playing for his State or Zone or India can be outside the sweep and control of the BCCI. It, by itself or through its arms, selects teams, appoints umpires and referees, organises matches, tournaments, imparts coaching, provides funds to needy players through benefit matches etc. The Team that it selects to represent India, is known as the Indian team and wears the India logo. Likewise, teams selected by the member associations for say the Ranji Trophy are known as the State teams (except for the Railways and the Services). A Ranji match between Delhi and Karnataka is known as such. Not as DDCA XI v KSCA XI. The two teams represent Delhi and Karnataka respectively. When a foreign team visits India, apart from playing test matches or one day internationals it also usually plays matches with State teams and other teams. One such team is termed as the Board President's XI. Now, that team may comprise of all the eleven who play for India, but it is not the Indian team. People do not recognise it as the Indian team. Even, the BCCI does not consider it to be the Indian team. A player who plays for India with pride, would have only a fraction of this pride left in he were told that he does not play for India but for the BCCI XI. We have dwelt on this aspect because an inexplicable argument was advanced on behalf of the BCCI that, in point of fact, the Indian team is not a national side in the sense of having the sanction of the Government, but a side picked by the BCCI amongst Indian players. The teeming millions regard it as the national team, the players feel that they are playing for India and the opponent teams, be they from Australia or Pakistan, all know that they are playing against India. The BCCI ought to take pride in the fact that all this is achieved not on the basis of any statutory power but because it has arrogated this to itself and the Government has let it do so and of course, most important way, because of general public acceptability. There is nothing wrong in this. The only point that we are emphasizing is that the BCCI discharges these functions which normally ought to have been discharged by the sovereign state. Many of these functions are clearly in the nature of public functions. There are many which are purely private in nature. Insofar as the public functions are concerned a writ petition would be maintainable against the BCCI. At the same time, as regards private matters having no public law element, a writ would not lie.

13. The BCCI has a monopoly over organized cricket in India. Every youngster, maybe an aspiring Rahul Dravid or an Irfan Pathan, who dreams to play cricket for his State or zone or India cannot do so without the permission and approval of the BCCI. We must not forget that cricket, is no longer what it used to be. It is not just a sport which people dressed in white flannels and rolled up shirt-sleeves enjoyed on lazy summer's afternoons in England between sips of tea and munches of scones. It is no longer the reserve of the nawabs, the maharajas, the brown sahibs and the rich who had the time and the inclination. It now

permeates all levels of society. To many it presents itself as an opportunity to a better livelihood. Cases abound in India, where cricket has brought financial succour to persons and their families who were otherwise doomed to lead lives enslaved in poverty. Cricket is regarded as a profession, an avocation. Many in India, play cricket not just for the love of the game but for to heir own survival. The BCCI performs the vital public duty and function of providing this opportunity. It has an elaborate network and is a massive organisation controlling every aspect of cricket in India. Dr Singhvi, the learned senior counsel who appealed on behalf of BCCI, submitted that no part of the capital of BCCI is held by the Government; no financial assistance of the State is enjoyed by it; the Government does not exercise any control over it; BCCI is a non-statutory body; no public duty is imposed upon it by statute; it is a society, nothing but a ""private club"" and as such issuance of a writ against it would be completely beyond the scope of article 226 of the Constitution of India. This argument is untenable in the light of the discussion above. Attention to the source of the power is misplaced. Perhaps, the error arises in viewing the classical prerogative writs of, inter alia, certiorari, mandamus and prohibition in the traditional sense as being used only against the government or public authorities. English law is struggling to break out of this tradition and the scope of judicial review, while it is expanding is doing so ever so slowly and lags behind even Scots law<sup>18</sup>. In India, we have no such difficulty as the framers of our Constitution have unshackled us from the traditional fetters and have given us Article 226 which is much wider because it contemplates the issuance of ""directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose"" to ""any person or authority, including in appropriate cases, any Government"". The fact that the Government has no financial stake in or control over BCCI is, Therefore, not relevant. We are not examining the issue as to whether BCCI falls within the meaning of ""State"" as defined in article 12. And, we need not, because the word ""State"" does not appear in article 226 at all! We are examining the question of issuance of orders, directions or writs to ""any person"". Assuming that the BCCI is merely a ""private club"", even then a writ could be issued to it provided, of course, it was for remedying an infraction of a public duty or Public function.

14. Dr Singhvi then contended that if it were held that BCCI was amenable to writ jurisdiction ""startling and legally untenable consequences would follow"". For example, it may be conceivable to hold that the selection of a cricket team is discriminatory for arbitrary. There are several answers, none startling and all legally tenable. Firstly, not every action of the BCCI would fall under the scope of judicial review under article 226. It must not be forgotten that ""the High Court does not act like a proverbial ""bull in a china shop"" in the exercise of its jurisdiction under Article 226"". It will not interfere in matters which do not have any element of public law. Secondly, ""catching the bull by its horns"", as it were, suppose the selection procedure of the BCCI prescribed that players from a

particular region, or a state or belonging to a particular community were not to be selected for the Indian team. Would it be so preposterous if the High Court stepped in under article 226 and quashed such a prescription? Let us take another example. Suppose the Selection Committee of the BCCI were to alter its rules and select a team to represent India not on merit but on the basis of bids. Meaning, the highest bidders got to play for India. Would the High Court then be justified in throwing out a petition of aspiring, meritorious but poor players on the ground that a writ cannot be issued to the BCCI because, as they contend, it has a *carte blanche* to do as it pleases? We think not. Thirdly, even in cases of judicial review, the High Court exercises self-imposed restraints. It does not substitute its views in place of those under review. Although it has become a hackneyed cliché, it bears repetition that in exercise of powers under article 226, the High Court is not so much concerned with the decision itself in the sense as to whether an action is "right or wrong", but with the decision making process signifying as to whether the action is "lawful or unlawful". So, if the selection of the team is lawfully made, the Court would not be concerned with the composition of the team.

15. The petitioner iterated the following observations of the learned single Judge in Ajay Jadeja (*supra*), adopting the same as his submissions:-

"When the Government stands by and lets a body like BCCI assume the prerogative of being a sole representative of India for cricket by permitting BCCI to choose the team for India for appearance in events like the World Cup, then it necessarily imbues BCCI with the public functions at least in or far as the selection of the team to represent India and India's representation in International Cricket fora and regulation of Cricket in India is concerned. Thus the monopoly status of the respondent No. 2 is evident. It is also clear that such monopoly status is indisputably state recognized as evident from the letter of Ministry of Culture, Youth Affairs and Sports dated 22nd December 2000 and indeed by acquiescence of the Government, can be considered state conferred. Similarly the plea of the BCCI that it does not own or lease the stadia is of no consequence as the stadia are owned and leased by its members and it is not disputed that all international matches are played in such stadia. Similarly membership of BCCI of the International Cricket Conference (ICC) cannot ipso facto imply that it is not amenable to writ jurisdiction. In fact BCCI represented India on this own showing and depending upon the nature of the action impugned, would be amenable to writ jurisdiction."

We agree. BCCI, like everyone else, is amenable to writ jurisdiction. However, not every action of BCCI would be subject to the scrutiny of judicial review. Only those actions which fall within the ambit of public law would call for any direction, order or writ under article 226. Disputes or acts in the sphere of pure private law having no traces of public law would not be the subject matter of writs, directions or order to be issued under article 226.

16. Another fear of the BCCI must be allayed. It was submitted and, with some

anxiety, that if the court were to hold that BCCI was within the scope of Article 226 then the splendid institution that has been so assiduously built-up would lose its independence and would fall prey to Governmental intervention and ultimately spell its doom. Without making any value judgment on quality of Governmental intervention, we may straight away say that amenability to judicial review is in no way connected with Governmental interference in the affairs of the BCCI which is a self-regulated body and will continue to be one. The only difference being, that its discharge of public duties and public functions (as distinct from private duties and functions) would be open to judicial review under article 226 of the Constitution. This does not, ipso facto, translate into governmental intervention in the internal affairs of BCCI which would remain a private body.

17. At the cost of repetition, we may state that the whole ""amenability"" issue is misplaced. A body, public or private, cannot be categorised as ""amenable"" or ""not amenable"" to writ jurisdiction. The ""function"" test is the correct one to test maintainability. If a public duty or public function is involved, any body, public or private, qua that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of article 226. The BCCI which is the smile repository of everything cricket in India has attained this ""giant"" stature through its organisation, skill, the craze for the game in India and last but not the least by the tacit approval of the Government. Its objects are the functions and duties it has arrogated to itself. Many of these are in the nature of public duties and functions. Others may be in the field of private law such as private contracts, internal rules not affecting the public at large etc.,. Therefore, BCCI cannot be said to be beyond the sweep of article 226 in all eventualities for all times to come. That is the certificate that BCCI wants from this court. We are afraid, we cannot grant that. Consequently, this petition cannot be thrown out on the maintainability issue.

This does not necessarily mean that the petitioners would be entitled to the orders, directions or writs that they seek. That will have to be examined on merits.