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(2025) 05 DEL CK 0938

In the Delhi High Court

Case No : FAO(Os) No. 182 Of 2024 & Civil Miscellaneous Application Nos. 75479, 75480 Of 2024

Siddhaant Mohta And Ors — APPELLANT

Vs

Delhi Gymkhana Club Ltd. And Ors — RESPONDENT

Date of Decision : 22-05-2025

Acts Referred:
Code of Civil Procedure, 1908 — Order 20 Rule 1, Order 39 Rule 1, Order 39 Rule 2
Companies Act, 2013 — Section 179(2)
Specific Relief Act, 1963 — Section 14(b), 14(d), 41(e)

Citation : (2025) 05 DEL CK 0938

Hon'ble Judges : C. Hari Shankar, J;Amit Mahajan, J

Bench : Division Bench

Advocate : Amir Singh Pasrich, Mohanna Malhotra, Karan Bahmani, Prateek Kumar, Raveena Rai

Final Decision : Dismissed

Judgement

Amit Mahajan, J

1. The dismissal of the application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC'), by the learned Single Judge in CS(OS) 224/2024, by order dated 18.10.2024 ('impugned judgment'), has led to filing of the present Intra-Court appeal by the appellants (plaintiffs).

2. The appellants' right to use the facilities of Respondent No.1 Company was suspended by notice and letter dated 08.03.2022 and was subsequently terminated by order dated 31.03.2022 issued by Respondent No.1 Company.

3. The appellants challenged the validity of the suspension and termination letter in CS(OS) 224/2024. By the present appeal, the appellants challenge the dismissal of the interlocutory applications filed under Order XXXIX Rules 1 and 2 of the CPC, wherein the plaintiffs/appellants had sought interim injunction and stay of operation of the notice dated 08.03.2022 and the order dated 31.03.2022.

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4. Certain other individuals had also challenged their respective notices and termination orders, which took away their right to use the facilities of Respondent No.1 Company, by filing separate suits. Their applications seeking interim relief were also dismissed by the same common impugned judgment.

5. Respondent No.1 is incorporated under the Companies Act, 1930, and is governed by its Memorandum of Association ('MOA') and Articles of Association ('AOA'). It has established the club facility for the purpose of use and enjoyment of its members. Club members are divided into various categories - Permanent Members, Garrison Members, Temporary Members, Casual Members, Special Category Members and Corporate Members. The members enjoy the facilities of Respondent No.1 Company, and the management at this stage is entrusted to the Joint Committee/Respondent No.4. The AOA permits children of members, between the age of 13 to 21, to use the facilities of Respondent No.1 Company as dependents, and additional monthly subscription is charged for this purpose. Children between the age of 13 to 21 enjoy the facilities as dependents of the members and can apply for full membership after attaining the age of 21 years.

6. Article 13 (3b) of the AoA provides that on reaching the age of 21, the son of a member who had previously been using the club facilities as a dependent must apply to become a full member should he wish to continue the use of the Club.

7. Article 13(3c) of the AoA provides that unmarried daughters who were using the Club facilities as dependents can continue to use the facilities of the Club even after attaining the age of 21, as long as they live with their parents.

8. All dependent members, upon attaining the age of 21 years, were allowed to use the facilities of the Club upon submitting an application to become permanent members. These dependent members, even though they had not been granted membership, used the facilities of the Club simply upon submitting a form to become members. This category of persons, who were using the Club facilities as erstwhile dependents of the members of the Club, came to be termed as Green Card Holders. However, the term or category of Green Card Holders as one of the membership categories does not find mention in the AoA.

9. The affairs of the Club came under investigation by the Ministry of Corporate Affairs ('MCA') in regard to membership procedures and certain alleged violations of the AoA. This led to a company petition being filed by the MCA in the year 2020 against Respondent No. 1 before the learned National Company Law Tribunal ('NCLT'). By interim order dated 26.06.2020, the learned NCLT, prima facie, observed that the affairs of Respondent No. 1 were not being conducted in public interest. The operative portion of the interim order dated 26.06.2020 is reproduced hereunder:

"30. In the year 2014, when it came to the notice of the Ministry of Corporate Affairs that the affairs of the Club have not been properly conducted, it has initiated actions under the Companies Act. Later on, having noticed various violations under the Companies Act, the respective authorities filed report and

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thereafter supplementary report. By looking at the supplementary report, the Regulatory Authority has noticed various violations, some out of them, indicated the conduct of the affairs of the company is prejudicial to the public interest therefore this case is initiated.

31. It is an ongoing process in this club that Membership is purely on selective basis, the selection basis is changing from time to time, though permanent membership is limited, under the cover of dependents, green card holders, UCP holders; number of people using the facilities of the club is increasing without any cap. But the people who applied for membership remained waiting to get into because the dependents become members through fast tracking leaving behind the persons applied for membership. This behaviour is nowhere changed by change of managements. By seeing admission process, it appears only big people in essence those who are in top position in the government and outside the Government become members. As I said above, this club has been enjoying 27 acres of the land of the State which costs around thousands of crores. All this shows imperial behaviour and insensitiveness of the Club against the tenets of democracy. It may be said I am speaking of about fundamental rights in section 241 & 242 case, it is not so, the whole discussion is about inequity and prejudice.

xxxx xxxx xxxx

74. This Tribunal having already held that the affairs of the Club are prejudicial to the public interest, now on putting the facts available to the scrutiny under section 242 (1), it is perceived that if Government for any reason taken back the land leased out to the Club, then once the substratum is gone, the Club has to be wound up, or if action is taken under Section-8 then also it would become problem to the club, therefore to avoid such kind of situation, an interim arrangement is devised to resolve the issues afflicting the Club.

75. For the reasons aforementioned I have found prima facie case demonstrating that the affairs of the Club are being conducted in a manner prejudicial to the public interest therefore I hereby direct Union of India to appoint two of its nominees of its choice as Members in the General Committee to monitor the affairs of the Club along with other GC Members and give suggestions to the GC, and direct the Union of India to constitute a Special Committee with five Members of its choice to enquire into the affairs of the Club, utility of the land leased out by the State, with regard to constructions in progress without requisite approvals or with approvals, suggestions for changes in Articles and Memorandum of Association, membership issues including waitlist and about accelerated membership, adherence of the Club to the Rules governed by Section 8 of the Companies Act 2013 and other miscellaneous issues if any and file report of recommendations suggesting for better use of the club premises for the larger good in a transparent manner on equity basis within two months hereof.

76. This Bench further directs the general committee that it shall not proceed with construction or further construction on the site, it shall not make any policy

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decisions and it shall not make any changes to the Memorandum of Association or Articles of Association and it shall not deal with the funds received for admission of Members and it shall not conduct balloting until further orders. The GC is given liberty to carry day to day functions of the Club by using funds of it other than fee collected from applicants. All these directions shall remain in force until further orders."

(emphasis supplied)

10. The learned National Company Law Appellate Tribunal ('NCLAT'), in an appeal filed by Respondent No. 1, upheld the observations of the learned NCLT and by order dated 15.02.2021, suspended the General Committee and directed the Union of India to appoint an Administrator to manage the affairs of Respondent No. 1. Respondent No. 1 was also prohibited from accepting any new memberships.

11. Respondent No. 1 was further restrained from operating the funds received for admission of members during the investigation period. Thereafter, the MCA, appointed Respondent No. 2 as the Interim Administrator, who in turn appointed a Single Member Inquiry Committee headed by a Retired Judge of Hon'ble Bombay High Court (Naidu Committee) to give report in regard to allegations.

12. Following the receipt of the first phase report by the Naidu Committee on 27.01.2022, declaring the Green Card system void ab initio, Respondent No. 2 directed the Club Secretary/ Respondent No.3 to issue a notice dated 08.03.2022, pursuant to which Green Cards issued to overage dependants of members were suspended and blocked.

13. Immediately upon receipt of the second phase report by the Naidu Committee on 30.03.2022, Respondent No. 2 issued the final order dated 31.03.2022, terminating the Green Cards issued to overage dependants in the year 2019, and offering a refund of the entire amount received for the same, excluding the GST amount.

14. The Company Petition, being, C.P. No. 71/2020 came to be decided by the learned NCLT on 01.04.2022, pursuant to which the MCA was permitted to nominate 15 persons as Directors in the General Committee of Respondent No. 1 to manage its affairs and take corrective measures.

15. The appellants were the Green Card Holders using the facilities of Respondent No. 1, who had applied to become a member in terms of Article 13(3b) of the AoA. Their applications, however, were submitted to Respondent No. 1 much after they had crossed the age of 21 years.

16. All the appellants applied after they had crossed the age of 22 and attributed the delay to personal or other reasons, stating that the delay was beyond their control.

17. It appears that a practice had been adopted by the Committees of

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Respondent No. 1 from time to time, easing the requirement for the dependents to apply upon attaining the age of 21 by permitting the applications to be filed within one year of turning 21.

18. As noted above, the dependent members, on attaining the age of 21, were permitted to use the facilities of the Club under the Green Card Category upon applying to become a full member, though they were not the members of Respondent No. 1 Club within the meaning of the Companies Act, 2013.

19. The case of the appellants was reviewed by the General Committee and they were offered the right to use the facilities (Green Card Rights) on payment of certain amounts and penalty. The appellants claim to have paid the said penalty. The penalty structure is set out below:

"Under 25 years: ☐ 2 lakhs + ☐ 1.50 lakhs + GST

26-35 years: ☐ 3 lakhs + ☐ 1.50 lakhs + GST

36-45 years: ☐ 5 lakhs + ☐ 1.50 lakhs + GST

46-55 years: ☐ 6 lakhs + ☐ 1.50 lakhs + GST

56 years and above: ☐ 7 lakhs + ☐ 1.50 lakhs + GST"

20. Thus, the dependent members who, on attaining the age of 21, had missed the opportunity to apply within a period of one year, were permitted to have the Green Card Rights on payment of the aforestated penalty. A total of 125 individuals in this manner were permitted to use the facilities of Respondent No. 1 as Green Card Holders by a notice issued by the General Committee of Respondent No. 1 on 17.05.2019. Respondent No. 1, in this manner, collected approximately ☐ 4.5 crores. The collection of the said fund in this manner was also part of the investigation which led to the petition being filed before the learned NCLT and the appointment of the Administrator.

21. The amount of ☐ 4.5 crores was found to have been collected in violation of the provisions of Companies Act, 2013.

22. As noted above, the Naidu Committee gave its report and found that the system of dependent members being allowed to use the facilities even after attaining the age of 21 was void ab-initio. This led to Respondent No. 1 directing Respondent No. 3, that is, the Club Secretary, to issue the impugned notice dated 08.03.2022. Thereafter, the impugned final order dated 31.03.2022 was issued terminating the Green Card facilities of the appellants, which led to the filing of the subject suit.

23. The appellants/plaintiffs claimed that the impugned notice dated 08.03.2022 and order dated 31.03.2022 terminating their membership was in contravention of the AOA. It was contended on behalf of the appellants that the appellants were granted the rights to use the facilities by issuance of Green Cards in consonance with the historical practices and the Club policies, which have given

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them enforceable legal rights.

24. They further contended that the appellants, pursuant to the notice by Respondent No. 1 Club, had paid fees / penalty and, therefore, they have enforceable contractual rights to use the facilities of the Club. It was further contended that the principles of natural justice have been breached since no hearing was given to the appellants before terminating their right to use the facilities of Respondent No. 1 Club.

25. It was also contended that balance of convenience lies in favour of the appellants since the impugned order dated 31.03.2022 would deny their access to Club facilities causing an irreparable harm.

26. The learned Single Judge dismissed the appellants' application under Order XXXIX Rules 1 and 2 of the CPC, holding prima facie that the issuance of Green Cards is in clear violation of the AoA. The same is like informal authorization or recognition within its governing framework. It was held that the impugned order 31.03.2022 suspending and terminating the privileges given to the appellants was within the scope of directions issued by the learned NCLAT and was part of necessary initiative to address systematic mismanagement.

27. The learned counsel for the appellants submitted that the impugned judgment passed by the learned Single Judge Bench ought to be set aside, as it travels beyond the scope of the dispute and the relief in question, and has been passed without due appreciation of the material facts and law.

28. He submitted that the learned Single Judge erred in the constructive interpretation of Articles 13(3a) and 13(3b) of the AoA to conclude that the privilege arising out of these provisions does not confer any rights upon the dependents, as such it terminates by default unless formal membership is sought through an application and approval. He argued that the said provisions do not reflect any 'restriction', especially in regard to the powers exercised by the General Committee/ Respondent No. 4. He submitted that the learned Single Judge failed to consider Article 13(3c) of the AoA in context to every woman appellant/ plaintiff in the present case.

29. He contended that even as per the termination clause of the AoA, the membership of a member can only be terminated for the reasons set out therein. However, no such reasoning, as adopted by the learned Single Judge, has been stated in that clause and, therefore, the termination of the contract without reference to the AoA is illegal.

30. He submitted that the impugned judgment is based on misappreciation of facts, as the learned Single Judge failed to note that each of the appellants have made the requisite application and are not attempting to bypass the requirement of achieving full membership. He stated that the applications of the dependents were duly approved, and Green Cards were issued to them.

31. He submitted that the learned Single Judge travelled beyond the scope of the

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dispute by concluding that the Green Card system is void ab initio without properly appreciating the prima facie case. He submitted that, even otherwise, as per the provisions of the AoA, the dependent, after attaining the age of 21 years, shall apply to become members of Respondent No.1 Company. However, no upper limit in relation to filing the application has been specified in the said provisions, and this interpretation has been adopted by over 30 elected General Committees.

32. He submitted that the long-standing usage and past practice of issuing Green Cards was not considered while passing the impugned judgment. He drew attention to Article 22(1) of the AoA and Section 179 (2) of the Companies Act, 2013 and stated that the impugned judgment curtails the power of a Board of a Company to interpret its AoA, and takes away its time honoured practices and procedures for admission of new users, which puts the company's governance and autonomy at risk and sets a precedent to open every action taken by the company's board in the past.

33. He placed reliance on the judgment passed by the Hon'ble Apex Court in Ajay Singh v. State of Chhattisgarh : (2017) 3 SCC 330 to state that the appellants had a fundamental inalienable right to be heard before the suspension and termination of their respective Green Cards and that the impugned judgment has been passed in violation of the principles of audi alterum partem.

34. He submitted that since Respondent No. 1 at the time was being run by directors appointed by the State, Respondent No. 1 is to be treated as akin to a State entity until the Board/ General Committee was restored. In this regard, he placed reliance on the judgments passed by the Hon'ble Apex Court in State Bank of India v. Rajesh Agarwal: (2023) 6 SCC1 and Maneka Gandhi v. Union of India : (1978) 1 SCC 248 to contend that the principles of natural justice require decision-making and adjudicating authorities to follow certain substantive obligations and that when an authority has the power to make decisions that could harm the rights of an individual, there is an inherent duty to exercise that power in a fair and judicial manner.

35. He submitted that the learned Single Judge travelled beyond the scope of the application filed by the appellants in holding that the aspect of public interest goes against the appellants, as the interim relief sought therein only pertains to the private rights of individuals. He stated that Respondent No.1 Company is not a public trust or charitable institution and is in fact a company that operates for its members and provides certain rights for their sons / daughters in Articles 13 (3b) and 13(3c). He argued that if these Articles themselves were discriminatory, the same should have been struck down in accordance with law.

36. He submitted that the learned Single Judge erred in placing reliance on the Naidu Committee Reports which lacked reasoning and has been submitted with a one-sided approach. He further submitted that the reliance placed by the learned Single Judge on the judgment dated 01.04.2022 passed by the learned NCLT to

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hold that the issuance of Green Cards was an unauthorised method, is erroneous, in as much as the judgment dated 01.04.2022 only makes the observation that "unauthorised method devised to unjustly enrich the Club by circumventing the AoA provisions", however no reasoning to justify this finding has been made therein.

37. He further placed reliance on the judgment passed in Anil Rai v. State of Bihar : (2001) 7 SCC 318, to contend that after the arguments were heard, the judgment was reserved by the learned Single Judge on 23.07.2024, however the same was delivered belatedly on 18.10.2024 being in violation of Order XX Rule 1 of the CPC.

Analysis

38. The grievance of the appellants in a nutshell is that the benefit granted to them to use the facilities of Respondent No. 1 Club was approved by the General Committee, pursuant to which notice dated 17.05.2019 was issued by the Committee asking for the penalty to be paid by the appellants, which having been paid, gave rise to enforceable rights.

39. It is the appellants' case that the benefit has been granted by the Committee of Respondent No. 1 in consonance with Articles 13(3b) & 13(3c) of the AoA of Respondent No. 1.

40. As discussed above, Respondent No. 1 is a company governed by its MoA and AoA. We are of the opinion that the reading of these articles, prima facie, does not confer any right on the appellants to continue using the facility of the Club despite having attained the age of 21.

41. The Articles, in our opinion, merely provide that the dependents of regular members must apply to become a full members should they wish to continue using the facilities. The words "should he continue to use the Club" in Article 13(3c) of the AoA, merely informs the members that their dependents will have to apply to become full members in order to continue using the facilities. The same, prima facie, cannot be read to mean that dependents, even after attaining the age of 21, can continue using the same facilities as they were enjoying as dependents, despite not being full members.

42. It is not disputed that such members referred to as Green Card Holders are not members of Respondent No. 1 Club, and in the past, were permitted to use the facilities by an arrangement which appears to have adopted by the Committees from time to time.

43. Articles 13(3a) & 13(3b) of the AoA, which govern dependent usage of Club facilities, are reproduced herein for reference:

"13 (3a) Members whose sons and daughters, between the age of 13 and 21 are permitted to use the Club as dependents. shall pay an additional monthly subscription of Rs. 40/ - p.m. for each child using the Club. However, for

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absentee dependent children, a member shall pay Rs. 20/- p.m. for each child.

13(3b) On reaching the age of 21. the son of a member having previously used the Club under Article l 3(3a) must apply to become a full member. should he wish to continue to use the club"

44. A plain reading, prima facie, reveals that the said Articles have been incorporated for a limited purpose – to allow dependents to use the facilities until they attain the age of 21, on payment of certain monthly subscription. The provisions serve as information to members that their dependants, on turning 21 and wishing to continue using the Club, must apply for full membership. These Articles are in the nature of benefits / courtesies extended to the members. However, the same do not confer an independent right on the dependent children to continue using the facilities despite not being full members of Respondent No. 1.

45. It is evident that this privilege is inherently temporary, ceasing once the dependent turns 21. It neither establishes a right to permanent access nor confers any expectation of preferential treatment or entitlement to continued use. These provisions unequivocally establish that access to facilities of Respondent No.1 Company is contingent on defined limitations, reinforcing that any child of a member who wishes to continue using the facilities beyond the stipulated age must undergo the formal membership application process. The absence of any vested rights for dependents underscores the transient nature of their entitlement, highlighting that it does not translate into an automatic or enduring claim to Club privileges.

46. As rightly observed by the learned Single Judge, the system of granting benefits to the dependents of full members through an alternative method bypasses the restrictions imposed by the AoA, making it, prima facie, a violation of Article 13(3b) of the AoA.

47. The AoA, as rightly observed by the learned Single Judge, makes no provision for a distinct membership category namely 'Green Card Holders'. The category, it appears, originated from time to time by the Committees in order to give benefits to the children of full members, despite their having attained the age of 21.

48. The Naidu Committee Report, which was commissioned by the Administrator appointed pursuant to the order passed by the learned NCLAT, also noted that no policy exists under which the dependents of full members could be allowed to continue using the facilities after having crossed the age of 21.

49. The statutory auditors of Respondent No. 1 had also raised concerns over the amount collected as penalties from such members during the period which is subject matter of the suit.

50. The learned NCLAT also took note of the judgment dated 01.04.2022 passed by the learned NCLT, wherein it was observed that issuance of Green Cards was

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an unauthorized method to unjustly enrich the Club by circumventing the AoA. It was observed that the Green Cards were issued to individuals aged 21 to 56 years, which is in clear deviation of the Club Rules.

51. Reference was also made by the appellants to certain rules and bye-laws introduced by Respondent No. 1 through various resolutions. It is contended that the same gave recognition to the rights of the appellants, who were permitted to use the facilities of the Club even after attaining the age of 21 despite not being full members.

52. As rightly observed by the learned Single Judge, the mere fact of a certain bye-law acknowledge the existence of Green Card Holders will not legitimize the said practice when the same is prima facie in clear violation of the AoA of Respondent No. 1.

53. Undisputedly, the conduct of the companies is governed by AoA -being the only governing instrument - and any bye-laws or resolutions that may have been adopted by the Committees from time to time, will not give rise to any right if the same operates outside the provisions of the AoA or overrides the same.

54. The practice of permitting overage dependents to use the facilities, prima facie, is nothing but an informal arrangement for the benefit of members of Respondent No. 1 and does not appear to be in conformity with the AoA. However old the practice may be, it cannot lend legitimacy to actions that were prima facie taken beyond the scope of the AoA.

55. It is also contended that these historical practices are internal club policies that confer enforceable legal rights on the appellants. The record, prima facie, indicates that such practices have been adopted over many years, and numerous persons who had attained the age of 21, and who were using the Club facilities as dependents of the full members, have been permitted to use the facilities upon being conferred Green Cards on terms as thought fit by the Committees from time to time, including payment of fees, penalties etc.

56. It is not disputed that the so-called members, such as the appellants, are not actual members of Respondent No. 1 within the meaning of the Companies Act, 2013.

57. In our opinion, the learned Single Judge rightly observed that while the Committees may have devised a scheme to grant user rights to overage dependents of full members, the same cannot be in violation of the explicit requirements of the AoA.

58. The right to use the facilities cannot be disputed to be available only to the members of Respondent No. 1 Club. The AoA are binding on the company and any deviation from the same can only be through formal amendments and not through the informal practices adopted by the Committees. This fact was also specifically noted in the Naidu Committee’s Report and also by the learned NCLAT, which found the said practice to be inconsistence with the AoA.

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59. As rightly observed by the learned Single Judge, by adopting such a practice, a new category of members has been created without there being any express provision in the AoA.

60. Collecting money from overage dependents, for allowing the use of facilities in contravention of the AoA, will not prima facie confer any right on such individuals.

61. The learned Single Judge, in our opinion, aptly observed that such a new category undermines the structured membership process and confers benefits to overage dependents similar to those of full members, despite their not fulfilling the criteria for full membership and lacking voting rights.

62. The learned Single Judge rightly placed reliance on the judgment passed by this Court in J Daulat Singh v. Delhi Golf Club Limited : AIR 2002 Del 501, where it was held that even if certain individuals were granted membership out of turn, it does not create a legal right for others to claim the same treatment. Therefore, the contention that overage dependents were allowed to use the facilities by issuing Green Cards in the past will not confer any right on the appellants to claim similar treatment.

63. Once it is, prima facie, evident that the appellants were granted the right to use the Club facility in contravention of the AoA, no grievance can be raised against the Administrator suspending the same.

64. The appellants have also sought to claim parity with the Green Cards issued in the year 2007. It is significant to note that the learned NCLT and the learned NCLAT appointed the Administrator upon finding irregularities in Respondent No. 1 Club, which also included the membership being granted to certain persons in an irregular manner, dehors the AoA.

65. The impugned action is, thus, a corrective measure pursuant to the orders passed by the learned Tribunals to restore the functioning of Respondent No.1 Company in a lawful manner, in accordance with the AoA. The action, at this stage, appears, prima facie, to be in consonance with the AoA and, as rightly observed by the learned Single Judge, no immunity can be claimed by the beneficiaries of such irregularities at the interim stage.

66. The learned Single Judge also rightly held that the rights of such members cannot be accorded the status of contractual rights which are enforceable under the Specific Relief Act, 1963. The privilege to use the facilities under the concept which, prima facie, appears to be in violation of AoA, is undisputedly terminable in nature and cannot be enforced in terms of Section 14(b) of the Specific Relief Act, 1963.

67. In our opinion, the learned Single Judge rightly observed as under:

36. Furthermore, even if we assume, for the sake of argument, that a contract of grant of privilege of use of the club under the concept of ‘Green card holder

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rights' exists between the Plaintiffs and the Club, this contract is terminable in nature and cannot be specifically enforced. According to Section 14(d) of the Specific Relief Act contracts of a determinable nature cannot be specifically enforced. Additionally, Section 41(e) of the Specific Relief Act prohibits the granting of an injunction to prevent the termination of such contracts. This legal principle has been reaffirmed in cases like Ramswaroop Sunderlal Goyal v. North India Association, 23 where it was held that the conduct of private contracts, such as club memberships, cannot be supervised by civil courts on a day-to-day basis, and thus cannot be enforced through injunctive relief. In light of the above, the Plaintiffs cannot claim enforceable membership rights under the AoA or Company Law. Additionally, the Club, as a private entity, retains the prerogative to regulate admission and usage of its facilities, limiting membership as it deems fit. Membership or usage of the Club's facilities cannot be claimed as a matter of right. In fact, the Green Card arrangement was a discretionary policy of the General Committee, not a legally binding contract that guaranteed membership or permanent usage rights.

37. Moreover, the AoA forms the bedrock of the Club's constitution and serves as the definitive guide for membership criteria and rights. Article 13(3a) of the AoA specifically limits the use of Club facilities to dependents up to the age of 21. It provides a clear directive that any dependent wishing to continue using the Club beyond this age must apply for full membership. While the Plaintiffs emphasize that no explicit "disqualification" clause exists post-21, the requirement to apply for full membership upon turning 21 inherently sets a boundary. The AoA does not vest the General Committee with the power to create alternative categories of user rights or to circumvent this provision at their discretion. The Plaintiffs' assertion that their situation should be viewed as contractual rights under the AoA overlooks the fundamental principle that contractual rights in a company context are subject to the company's constitutional documents. The General Committee, while empowered to make policy decisions, cannot contravene the explicit provisions of the AoA. The Plaintiffs' suggestion that the Committee acted within its discretion to grant them Green Card user rights ignores the fact that any such decision contradicts the AoA, rendering it legally untenable.

38. The Plaintiffs' reliance on past practices as a basis for asserting contractual rights is also conceptually misplaced. The AoA serves as a binding contract among the members of the Club, regulating their rights and obligations. As such, any practices that contradict or deviate from the express terms of the AoA are ultra vires— beyond the powers granted under the Club's constitution. While the Indian Contract Act recognizes the principle of implied contracts formed through conduct (such as longstanding practices), these practices must be within the with lawful obligations of the Club and cannot contravene an existing framework— here, the AoA of the Club. In this case, the continued grant of user rights to dependents over the age of 21 without requiring formal membership, as mandated by Article 13(3b), was not merely an informal accommodation. The reliance on such practices to claim rights overlooks the fundamental legal

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principle that implied contracts cannot override express contracts. Where the AoA prescribes specific rules governing access and membership, no custom, however longstanding, can be invoked to defeat or bypass those terms. The Plaintiffs' argument that past practices confer enforceable legal rights fails under the Indian Contract Act. For such practices to create an implied contractual obligation, they must be lawful and consistent with the express terms of the governing contract—in this case, the AoA.

68. In regard to principles of natural justice not followed on the appellants not given a hearing, it cannot be ignored that the appellants were only given a right to use the facilities which prima facie was dehors the AoA. It is not denied by the appellants that they were not the members of Respondent No. 1 company. The act of Respondent No. 1 Company to suspend and thereafter terminate the privilege granted to the appellants finds its root in the Naidu Committee Inquiry Report which highlighted the procedural lapses. These lapses were also noted by the learned NCLT, which led to the appointment of the Administrator for the purpose of restructuring and ensuring compliance with the provisions. The action, therefore, was corrective in nature. Even otherwise, the appellants were not members of Respondent No. 1 company and only had the right to use the facilities which were conferred by the acts of the Committees at the relevant time, which, prima facie, were in contravention of the AoA. The practice of granting such benefits has been found to be void ab-initio, being outside the scope of the AoA.

69. The orders passed by the learned NCLT and the learned NCLAT are undisputedly staring at the face of the appellants' claim. The impugned action is taken pursuant to the orders passed by the learned Tribunals in order to restore corporate governance. In the absence of any prima facie case in favour of the appellants, no fault can be found at this stage.

70. It also cannot be denied that the facilities were given for the purpose of recreation, and their discontinuation cannot be elevated to the extent of being termed as irreparable harm. Further, it is admitted case of the appellants that they could not apply within 12 months of attaining the age of 21, although it is contended that the same could not be done without any fault of theirs. Thus, even as per the rules- which themselves, prima facie, seem to be in contravention of the AoA, the appellants should not have been permitted to use the facilities by issuance of Green Cards.

71. It is also significant to note that the Committee appointed by the MCA has also directed the refund of the amount paid by the appellants for using the facilities of Respondent No. 1. Thus, the balance of convenience does not lie in favour of the appellants, and no irreparable harm can be said to have been caused due to the suspension / termination of their right to enjoy the facilities during the pendency of the suit.

72. It is also relevant to note that the present appeal arises out of the order

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passed by the learned Single Judge exercising discretion under Order XXXIX Rule 1 & 2 of the CPC, being interlocutory in nature.

73. The law in regard to the interference by a Superior Court with interlocutory orders is well settled. The Hon'ble Apex Court in Wander Ltd. v. Antox India (P) Ltd. : 1990 Supp SCC 727 held as under:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

74. The view taken by the learned Single Judge is a plausible one and, in our opinion, the discretion has not been exercised arbitrarily or perversely or by ignoring the settled principles of law regarding the grant or refusal of interlocutory injunctions.

75. Thus, we find no reason to interfere with the impugned judgment. The appeal, therefore, is without any merit and is accordingly dismissed.

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