

(1968) 01 KAR CK 0004
In the Karnataka High Court

S.M. Ramakrishna Rao

APPELLANT

Vs

Bangalore Race Club Ltd.

RESPONDENT

Date of Decision : 04-01-1968

Acts Referred:

Companies Act, 1956 — Section 291, 295, 297, 398

Citation : (1970) 40 CompCas 1154

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Advocate : T. Raghavan, for the Appellant; S.G. Sundara Swamy, for the Respondent

Judgement

Narayana Pai, J.—This petition u/s 398 of the companies Act, 1956, is by a member of a company called the Bangalore Race Club since re-named as bangalore Turf Club Ltd., and complains of a certain state of affairs said to be prejudicial to the interests of the company on the basis of the which the petitioner seeks an appropriate order under the said section. The respondent is the company itself.

2. Notice of the petition was directed to the central Government the company itself and individually to twelve members of the managing committee of the company.

3. The Central Government has filed a statement through one of its under secretaries to the effect that the company Law Board does not propose to made any representation in the matter.

4. The allegations in the petition are traversed by a common affidavit filed on behalf of the company and members of its governing body sworn to by an assistant secretary of the company.

5. Certain facts are not disputed. The Bangalore Turf Club, hereinafter referred to as the "company" was prior to 1962 an unincorporated body of persons running principally horse races in Bangalore. It was incorporated into a company under

the companies Act, 1956, on the 31st of March, 1962. Although the objects are set out in long clauses in paragraph 3 of the memorandum of association, the principal object undoubtedly is the carrying on the business of a race club in all its branches. The paragraph includes or sets out other which are really in the nature of powers intended for effective achievement of the main object. Among them may be mentioned the power under clause (c) to give moneys either by way of gratuity or towards prizes, cups, ,stakes, and other reward to any club, organisation or association of any kind, private or public, which is or shall be formed having amongst any of its objects the playing of games or racing for sport, and the power under clause (h) to enter into any arrangement for union of interests, co-operation, reciprocal concession or otherwise with any person, association or company carrying on or engaged in or about to carry on or engage in any business or transactions which the club is authorised to carry on or engage in.

6. There has been Mysore for some years now another race club called the Mysore Race Club. It was started as and continues to be an ordinary unincorporated club or association of persons. But, it has been governed from September, 1951, by a set of rules stating the objects and constitution of the club and providing for various organisation details like election, finance, audit etc., The Object of the club is to carry on the business of a race club in all its branches. Its membership is limited to 25 persons. Its governing body consists of stewards, two of whom are elected by the members, two nominated by His Highness the Maharaja of Mysore and three nominated by the committee of the Bangalore Race Club Ltd.

7. It is common ground that almost from its very inception, the running of races by the Mysore Race Club was made possible only be reason of the fact that all assistance and facilities for the purpose, including subsidies in cash provided to it by the Bangalore Club or the company. Such assistance by or collaboration with the company was continued even after the Bangalore Club was incorporated into a company. During the period anterior to the incorporation, the Bangalore Club had met the losses of the Mysore Club amounting to little over Rs. 40,000. The losses so met by the Bangalore Club for the subsequent years were as follows :

8. 1963 Rs. 3,600 1964 Rs. 20,405 1965 Rs. 52,448 1966 Rs. 30,540

9. All these losses were disclosed both in the accounts of the Mysore Club as well as company. The balance sheets were from year to year placed before the general meeting of the shareholders of the company and adopted by it.

10. It would, appear, however that at least from towards the end of 1966 on early 1967 differences of opinion did arise between the members of the company on the question of the advisability of continuing to provide the Mysore Club with the assistance as heretofore done and as to the manner in which if at all such assistance should be made available. Although I may have to refer to this matter in some detail at a later stage it is sufficient now to observe that the petitioner

and certain other members were strongly of the opinion that further association with the Mysore Club had better be discontinued for the reason that it had all along resulted in the company taking over large losses incurred by the Mysore Club. At the annual general meeting of the company held on the 20th of March, 1967, some reference was made to this question by the petitioner and certain other members of his way of thinking. But, no definite resolution was proposed or adopted at that meeting on the question of continued association the Mysore Club losses to the extent of Rs. 30,000 was adopted by the meeting.

11. On the 1st of July, 1967, the petitioner and 43 others sent a requisition to the secretary of the club to arrange for conversing an extraordinary general meeting of the company at which the signatories proposed to move the following resolutions :

12. RESOLVED that in view of the South India Turf Club having been dissolved and the Bangalore Race Club Ltd. having become an independent turf authority and further in view of the fact that the Bangalore Race Club Ltd. have lost their appeals before the Income Tax Tribunal to treat the losses incurred by the Mysore Race Club as losses of the Bangalore Race Club this extraordinary general body meeting directs the committee to terminate the agreements entered into between the Bangalore Race Club and the Mysore Race Club Ltd not to finance the Mysore Race Ltd in any manner in future."

13. The committee of the company met on the 14th of July, 1967, at which two of the matters considered were the above requisition and a letter from the Mysore Race Club seeking the facilities on the same lines as had been extended to it in previous years. The disposal of these matters as recorded in the minutes of the said meeting is as follows :

2. To consider the letter received from the Mysore Race Club :

Read and recorded.

14. The usual facilities extended during the previous years to the Mysore Race Club may be allowed during the current year also.

15. In the event of the general body not agreeing to this proposal the extension of facilities referred to above will stand cancelled. Mr. M.H.Raju, and Mr. B.R.Ram expressed the opinion that the subject may be deferred, as the matter is before the general body.

4. To consider the requisition from club members to convene an extraordinary general meeting :

Action may be taken for convening an extraordinary general meeting in accordance with the companies Act."

16. The action taken was to call a meeting on the 21st of August, 1967. At that meeting the principal matter for consideration was the moving of the resolution set out in the requisition which I have already copied. One of the members of the

company present at the meeting raised a point of order as to whether the said resolution when passed could be legally effective and whether therefore the said resolution could at all be moved and considered at the meeting. The member who raised the point of order expressed the view that the general body had no power to issue any such directions to the committee in view of the provisions of section 291 of the companies Act and articles 31 and 40(c) of the articles of association of the company. Then followed a series of speeches by various members, some of whom cited rulings of various courts in India as well as of the House of Lords in England bearing on the topic. Ultimately, after the meeting was adjourned for a short while for tea, the president, K.N.Guruswamy, returned and gave the following ruling :

17. I have carefully examined the point of order raised by Mr. P. Sreenivasan and the speeches made by way of reply to meet the objection and in support of the point of order. My ruling on the point of order is as follows :

18. The resolution, if passed, has the effect of interfering with the lawful exercise of the discretionary powers vested in the committee under the articles of association, 40(c), and (f), of the Bangalore Race Club. There is no legal warrant or justification for this kind of interference in the management of the day to day affairs of the club. There is no provisions in the companies Act of 1956 which refers the discretion of the committee in such matters or curbs their authority when once they have acquired that power under the articles of association.

19. Before any derivative as embodied in the resolution can be issued, the general body should assume the requisite power by amending the relevant articles of association by a special resolution.

20. The procedure now adopted by the sponsors of the resolution is illegal. Therefore, I upheld the point of order.:

The petitioner and his friends obviously dissatisfied with the result of the meeting, approached this court with this petition. The petition was presented on the 5th of September, 1967. After rectifying some of the defects or deficiencies pointed out by the court, the petition could be brought up for first orders only early in October, 1967.

21. In the meanwhile, the committee of the company appears to have changed its view as to the manner in which the assistance could be extended to the Mysore Club. I should have stated earlier that the present committee took office only on March, 1967. In February, 1967, the previous committee had lent a sum of Rs. 15,000 to the Mysore Race Club. The meeting of the present committee on the 6th of September, 1967, appears to have been an emergent meeting, and the only question, considered was the nature of assistance to be extended to the Mysore Race Club. The matter was brought up by letters of 5th of September, 1967, addressed to the company by some members as well as by the Mysore Race Club. As much agreement turns on the proceedings of this meeting. I give below a full copy thereof :

22. Minutes of an emergent meeting of the committee of the Bangalore Race Club Ltd. held at the registrar office of the club, on Wednesday, the 6th September, 1967 at 7 p.m..

23. PRESENT Mr. J.B. Mallaradhya (in the chair) Mr. K.N. Guruswamy Mr. N.S. Bharath Mr. Chandappa Patel Mr. R.Subbanna Mr. L.S. Venkaji Rao Mr. M.Ashad Ali Khan (secretary)

24. Proposed by Mr. R. Subbanna and second by Mr. Chandappa Patel, Mr. J.B. Mallaradhya took the chair.

25. Mr. K.N.Guruswamy who was present did not participate in the deliberations. Leave of absence was granted to M/s. M.H. Raju, D.M. Shivaswamy, H.C. Patel, B.R. Ram, the Jagirdar of Arni and C.Krishnaswamy Naidu.

AGENDA DECISION 1. To consider the request of the Letter Dated 5-9-67 from Mysore Race Club to grant permission M/s. M.H.Raju, H.C.Patel, to run the Mysore Race Meeting at B.R.Ram, D.M.Shivaswamy Bangalore. and the Jagirdar of Arni was read and recorded. Letter Dated 5-9-67 from Mr. N.S.Bharath and also letter dated 6-9-67 from Mr. L.S.Venkaji Rao were read and recorded. Read letter dated 5-9-67 from the Hon. Secretary, Mysore Race Club,request- ing permission to run Mysore Races in Bangalore during the current year. RESOLVED that permission be granted subject to the following conditions :- (1) Rs. 15,000 advanced during February,1967 to be recor- ded in full. (2) The net profits to be realised from the big meeting to be held Ban- galore be shared 50% - 50% equity between Bang- lore Race Club and Mysore Race Club after deducting all items of necessary expenditure. All facility for conducting the race meetings including the services of officials, staff,vehicle,equipment, etc,to be extended to the Mysore Race Club. Sd. M. Ashad Ali Khan Sd. J.B.Mallaradhya SECRETARY. CHAIRMAN."

26. The petition, after setting out the facts summarised above-excepting the committee meeting of 6th September, 1967, makes the following previous years :

(a) For the termination or setting aside of any agreement or arrangement between the company and the Mysore Race Club o of setting aside any decision of the board of management for the payment of moneys by way of grant or subsidy for the conduct of the Mysore races.

(b) For an appropriate direction restraining the negotiation of contracts or payments to be made by the company to the Mysore Race Club or others in excess of the limits imposed by section 293 of the companies act without first ascertaining the legality thereof and the opinion and consent of the general body or members.

(c) For a direction that an adjourned general meeting of the company be held as soon as may be practicable to give effect to the requisition of the petitioner and other signatories and for the resolution to be moved thereat of which notice has been duly given, and

(d) For such other order that may be made in the premises as shall be just."

27. It will be seen that the prayers are obviously related to the position before the resolution of the committee of 6th September, 1967.

28. The counter-affidavit in paragraph 9 thereof makes the following references to the previous arrangements between the two clubs :

"....It is true that the agreement between H.H.Maharaja of Mysore and the Mysore Race Club regarding the lease of Mysore Race Club expired in April, 1967. A long term renewal is under negotiation with H.H.Maharaja of Mysore and pending its conclusion renewal by the period ending March, 1968, has been secured. All this is, in any case, irrelevant inasmuch as the resolution of September 6, 1967, provided for the holding of the Mysore races at Bangalore and the sharing of profits thereof between the company and the Mysore Race Club."

29. Obviously for the reasons stated in the last sentence in this extract, no further on detailed information was given of the previous arrangement. But the said agreements were brought to court by the learned counsel for the respondent at my request and it appears therefrom that the arrangements was in the nature of a tripartite understanding between the two clubs and the Maharaja of Mysore who owned the race course in Mysore. The said race course was leased out for the purpose of conducting races by the Mysore Race Club, and the company, the Bangalore Club, was supplying funds to meet the expenses thereof. A renewed agreement for the period ending 31st March of this year has not been obviously acted upon. We have, therefore, in the existing circumstances, to examine only the position as under the resolution of the committee of September 6, 1967.

30. There is another reason why attention should be confined to the said subsequent situation, viz, that so far as subsidies to or the bearing of the losses of the Mysore Club are concerned, they had, as already stated, been displayed in the balance-sheets of the Bangalore Club year to year and all balance-sheets up to and inclusive of the balance-sheet of 1966 had been placed before the general body of shareholders and adopted by them. There has not been before me any scope for controversy in the regard to those matters.

31. In this view, the question whether the company may be said to have suffered any prejudice by reason of the previous association between the two clubs and the details of the terms of the agreements between them do not arise for consideration. As there is at present no such long term agreement or arrangement between the company and the Mysore Club, the first prayer will not arise. Whether and if so, what arrangement can or should be or may be entered into between the clubs in future is not a matter on which I need express any specific opinion at present. There could, however, be no doubt that the observations and findings that I may record in this case will govern the conduct of the two clubs in future to the extent those observations or findings may be of relevance to the course of conduct proposed to be adopted by them in future.

32. The second prayer also and the reference to section 293 of the companies Act therein do not arise for consideration because the loan of Rs. 15,000 was made by the previous committee, and as matters now stand, that loan has since been recovered.

33. The question whether the third prayer does survive, and if so what extent is not capable of an answer at this stage.

34. The petition, as already stated, proceeds upon the footing that certain prejudice to the interests of the company has been brought about by reason of the assistance rendered to the Mysore Club by the company or by reason of the association of the two clubs for running races in the name of or on behalf of the Mysore Club. The case of the petitioners is that the situation in the matter of the administration of the affairs of the company is such that the said prejudice can be relieved against only by an order of this court u/s 398 of the companies Act.

35. The question for consideration is whether and if so what prejudice has resulted by reason of the action taken by the company pursuant to the resolution of the committee dated September 6, 1967, and what directions, or to prevent recurrence of similar situations resulting in prejudice to the interests of the company.

36. Along with the petition, an Interlocutory Application No. 119 of 1967 was filed in the first instance for an interim order in the nature of injunction or a prohibitory order. As the prayers therein were closely connected with the prayers in the petition which became unnecessary by reason of a change in circumstances, the application was not pressed. A separate Application No. 120 of 1967 was filed with special reference to the position as under the resolution of the committee dated September 6, 1967. In view of the express provisions of the said resolution, I considered it sufficient, in the interests of all concerned, to make an order directing the company to file into court accounts of the races scheduled to be held by the Mysore Club at the Bangalore Race Course on the 8th, 11th, 15th, 18th and 22nd of October, 1967, as then arranged. In the first instance, accounts for the first four races were directed to be filed before the 19th of October, 1967. The said accounts disclosed that the surplus proceeds were sufficient not only to recover the loan of Rs. 15,000 made pursuant to the resolution of the company but also leave an estimated net profit of the order of Rs. 45,000 . After pursuing the said accounts, I made a direction for immediate appropriation of Rs. 15,000 towards the indebtedness and also recorded that according to the expectation of the parties, the distribution of surplus profits might not be capable of being completed before the final disposal of the main petition.

37. The company has since filed a consolidated account relating to all the five races. The result disclosed by it is that after recovering the loan of Rs. 15,000 there remains a net profit of just over Rs. 68,000.

38. The prejudice, according to the petitioner, need not necessarily be a financial

or monetary disadvantage in the nature of loss ; it may also be, according to him, a course of conduct pursued by the managing committee involving a contravention of certain of the provisions of the memorandum or articles of association of the company which may be regarded as fundamental to the constitution of the company. The learned counsel for the respondent accepts only the first position as correct but not the latter.

39. If the contention pressed on behalf of the respondent-company by its learned counsel is to be accepted then of course, no prejudice of the type originally apprehended by the petitioner has in fact resulted. The accounts already referred to disclose a picture far different from what was apprehended on the basis of the experience of previous years.

40. The matter for investigation therefore is whether there is prejudice of the second type as contended for by the learned counsel for the petitioner. Here again, the approach is two-fold. In the first place, it is stated that the very association with the Mysore Race Club may be regarded or should be regarded as a step beyond the normal scope of the objects of the company. The second or alternative approach is that the manner in which the present arrangement has been contemplated to be given effect to and actually put through does involve a contravention of some of the fundamental legal duties and restrictions imposed upon the directors of the company as well as a departure from the provisions of paragraph 4 of the memorandum of association.

41. The first contention of a total lack of relation between the objects of the company and the company's association with the Mysore Race Club appears to me to be not well-founded. I have already set out the relevant portions of the memorandum of association of the company as well as of the rules of the Mysore Club defining its objects. Both the clubs are undoubtedly clubs formed with the principal object of encouraging horse racing. Where as the memorandum of the company goes into the details of what may be regarded as allied activities, the relevant rule of the Mysore Club refers to them in general terms. Clauses (c) and (h) of paragraph 3 of the memorandum of association, the relevant portions of which have already been referred to above, also make it perfectly clear that collaboration with or rendering assistance to clubs of the type of the Mysore Race Club were not only matters within the scope of the principal object of the company but also matters actually contemplated and provided for in the document of constitution, the memorandum. The close association between the two clubs for more than a decade is a matter of admission, although the petitioner was not a member of the managing committee after the incorporation of the company under the companies Act, he was admittedly a person closely associated with both the clubs for a number of years. The expenses incurred or losses met by the company on account of its association with the Mysore Race Club during all the years right down to 1966 had been accepted by the company by its general body adopting the balance-sheets year after year. I have also referred to the fact that under the rules of the Mysore Club, three of its stewards

are persons to be nominated by the company itself.

42. I do not, therefore, accept the argument that any association by the company with the Mysore Race Club or any assistance that it may render to it or any arrangement for extending all facilities to the Mysore Race Club for the purpose of running races can be straightway condemned as an activity beyond the scope of the objects of the company.

43. Two matters, however, which have been the subject of detailed and emphatic arguments before me, are that certain of the directors of the company have had in existing circumstances such interest in the Mysore Club as to disentitle them from taking part in any decision relevant to the company's association with the Mysore Club, and that the effectuation of the committee's resolution of September 6, 1967, has resulted in a contravention of the provision of paragraph 4 of the memorandum of association.

44. The first contention may be easily disposed of. From the copy of the minutes of the meeting of 6th September, 1967, given above, it will be seen that there were present the following persons at that meeting :

45. J. B. Mallaradhya K. N. Guruswamy N. S. Bharath Chandappa Patel R. Subbanna L. S. Venkaji Rao, and M. Ashrad Ali Khan.

46. The last among them is a paid employee of the company appointed by its committee pursuant to article 54 of the articles of association of the company. He is not a member of the committee. N.S.Bharath and Chandappa Patel are officers of the Government nominated to the committee by the State Government. Mallaradhya, Venkaji Rao and Subbanna are members of the company nominated by it as stewards of the Mysore Club at all. The other two are members of both the clubs. K.N.Guruswamy is an elected steward of the Mysore Race Club and also a member of the Bangalore Club. The minutes show that he did not participate in the deliberations of the committee. The only persons, in relation to whom the questions of law argued arises , are mallaradhaya and Venkaji Rao and Subbanna the first question being whether they had any personal interest or indirect interest in the subject of deliberation, and the second question being whether they had disclosed their interest or taken part in the discussion.

47. The interest attributed to them is the interest in the Mysore Race Club as steward of that club. Assuming for a moment that it may be an interest relevant to section 299 of the companies Act, no express disclosure by them of that interest may be said to be essential because they hold the position of stewards of the Mysore Club under an appointment of nomination by the company itself. The company, which already knows these facts, does not stand in need of being informed of the same. It has been argued on behalf of the respondent that, in the peculiar circumstances of this case, even these persons cannot be said to hold any such interest as would attract the provisions of section 299 of the companies act or connected provisions. The argument is that as nominees of the company they are persons interested in the company itself and not in the Mysore

Club, their position as stewards in the latter club subserving the interest of the company which while extending assistance or other facilities to the Mysore Club, is continued and efficient management of the affairs of the Mysore Club. This argument probably is or may be available in the case of Subbanna; but it may not be clearly available in the case of Mallaradhya and Venkaji Rao, who are not only members of the company but also members of the Mysore Club. In any event, it is not possible in their case to argue that no situation at all would arise in which some conflict arises between their interest and duty. Their participation therefore in the deliberations of the committee at its meeting of 6th September, 1967, may be inoperative or ineffective from the point of view of voting strength. The result, however, is not such as to render the entire resolution totally non-existent or ineffective. Apart from the fact that the rest of the persons might be sufficient to constitute quorum, the resolution of 6th September, 1967, appears to have been confirmed at a subsequent meeting of the committee held on 22nd September, 1967.

48. Quite apart from these legal niceties, the one thing that is of considerable importance from the point of view of the present proceedings is that no mala fides or personal advantage or a desire to secure personal advantage has been attributed to any one of the persons. The controversy has always been one of commercial prudence or otherwise of the arrangement set up under the resolution and not one of dishonesty or mala fide course of conduct.

49. The more difficult and subtler arguments are those relating to the alleged contravention of paragraph 4 of the memorandum, the relevant portion of which reads :

50. The income and property of the club whensoever derived shall be applied solely towards the promotion of the objects of the club as set forth in this memorandum of association and no portion, thereof shall be paid or transferred directly by way of dividend, bound or otherwise howsoever by way of profit to the members of the club...."

51. Now, the Mysore Club, is not an incorporated body, it has at present 23 members out of whom 18 are members of the Bangalore Club also. It was strongly pressed that the Mysore Club was not a legal association in the light of section 11 of the companies Act. The relevant sub- section thereof, viz, sub-section (2), requires that any association of more than 20 persons for the purpose of gain should be registered under the companies Act, as a company. The consequences of disobedience of the said sub-section are set out in sub-section (4) and (5) of the said section, viz, that the persons so associating themselves will not have the benefit of limited liability but be subject to personal liability to the fullest extent and that they may be proceeded against criminally.

52. For these reasons, the further argument is that any arrangements with such an illegal body should itself be regarded as a prohibited matter or, in the alternative, the arrangement should be regarded as one to which every one of

the individuals, constituting the association is a party, that to the extent such person may also occupy the position of member of the Bangalore Club, the receipt of profits by the Mysore Club must be regarded as a receipt of profits by every one of such individuals and that such receipt is in direct contravention of paragraph 4 of the memorandum.

53. The question whether the Mysore Club is affected by section 11 of the companies Act depends upon the further question whether it is an association for gain or not. The argument on behalf of the petitioner is that whereas the memorandum of association of the Bangalore Club contains the express provisions under paragraph 4 cited above prohibiting the distribution of any profits of its members, the rule and regulations of the Mysore Club do not contain any such provision. The answer on behalf of the respondent is that, ordinarily, the expression, "Club" connoted an association not for gain and that therefore the petitioner is met with the position and that in discharging that burden the petitioner is met with the position that the rules of club do not provide for any distribution of profits among its members.

54. Though, prima facie, the position taken up by the respondent appears to be more acceptable, I do not think it is necessary to settle this controversy for the purpose of disposing of this petition. Whether the Mysore Club is a lawful association or an illegal association, the one thing that is clear is that it is not an incorporated body. It does not therefore have a separate corporate legal personality distinct and different from the legal personality of individuals constituting the same. It is therefore a collection of persons, and in the eye of the law each one of them, may be regarded as personally enjoying the benefit or personally suffering the consequences of any act purported to have been done on behalf of the association.

55. Now, in the resolution of the committee of the company of September 6, 1967, an express provision is made for distribution of net profits equally between the two clubs. The argument on behalf of the petitioner is that the profits or share of the profits which go to the Mysore Club is a receipt of profits by the 23 persons who constitute that club, and that 18 among them who are members of the Bangalore Club must be regarded as receiving profit in contravention of paragraph 4 of the memorandum of association of the company.

56. The argument so constructed appears to me to lack the foundation on which the entire structure is built. What is prohibited by paragraph 4 is the distribution of the properties or assets of the Bangalore Club by way of profits among its members. The profit itself must be profit earned by the Bangalore Club before it can attract the provisions of paragraph 4 of its memorandum of association. Under the resolution of the committee of the Bangalore Club dated September 6, 1967, the race is an affair of the Mysore club and what the Bangalore Club did was to provide the Mysore Club with the necessary facilities including not only the use of the Bangalore Race Club. The profits, therefore, are profits of a venture of the Mysore Club. The fact that the Bangalore Club gave all its

assistance to ear that profit cannot in my opinion, be relied upon to make out that the profit can in any manner be traced to the ownership of, or earning by, the Bangalore Club. Even the theory of a joint venture is not, in my opinion, possible in this case because, whatever may be the case under the rules of the Mysore Club, the undoubted position under the memorandum of association of the Bangalore Club is that its working is not for gain. If the assistance rendered to other associations like the Mysore Club is a matter within scope of the objects of the Bangalore Club and it is so as already held it is not open, in my opinion, to make any presumption is that regard, except in proof of dishonesty, that the rendering of such assistance by it was an act in derogation of its objects and purposes or was an act motivated by the prospect of gain. As there is no suggestion of any dishonesty, rendering of assistance by the Bangalore Club must in normal course be regarded as a course of conduct inspired with a desire of achieving the objects of the club and not with a desire or must be regarded as profits earned, by the Mysore Club. If therefore no part of the said profits can be regarded as property or assets or profits of the Bangalore Club, no question can be rendered as property in contravention of paragraph 4 of its memorandum can arise.

57. There has therefore not been established by the petitioner any prejudice to the interests of the company either from the point of view of the financial gain or loss from the point of view of any departure from its objects or any contravention of the fundamentals to its constitution.

58. The only remaining question is whether there is anything in the manner in which the of rendering assistance to the Mysore Club had been pursued by way of loans or sub dies or other similar way. In such an event, it would have been possible for the petitioner to invoke the provisions of section 293 of the companies Act, particularly clause (e) of sub-section (1) thereof. Apparently, that was the position in contemplation of the committee at the time it adopted the resolution No. 2 at its meeting held on July, 1967, in the, light of the requisition already received from the petitioner and 43 others. As no action was taken on the said resolution and the action actually taken actually taken was one taken pursuant to the resolution of 6th September, 1967, I do not consider that it is now relevant to the case of the petitioner's examine the legality of the proceedings or the correctness of the chairman's ruling. I also consider it not in the interests of either party to present opinion on the scope of article 40 of the articles of assoication in the present proceedings. It will be for the company or persons in charge of its affairs or management to examine the exact frontiers of the powers of the committee or general body in regard to the relations which the company may have or may propose to have with other associations like the Mysore Club.

59. In this connection, the proposition was sought to the made on behalf of the petitioner that an arrangement of the type mentioned above may result in a contract between the company and such of its directors as are in their individual

capacity members of the Mysore Club and that in the absence of a provision in the articles of association enabling the directors of the company to enter into a contract with the company, such persons as are directors cannot at all enter into a contract with the company. From the point of view of examining whether there has been any prejudice to the interests of the company for the purpose of or within the meaning of section 398 of the companies Act, I am not satisfied that any decision on this question of law its necessary. it is, however, difficult for me to accept the broad proposition of law that ordinary right contract which an individual may have under the contract act is taken away from him the moment he becomes a director of the company in the matter of entering into a contract with that company. The position of a director is in certain respects fiduciary. The point for examination in each case is whether, in a given situation, there arises any conflict between his duty as a director and interest as an individual. Apart from that essential circumstance which operates as an informative factor, the only position that has to be examined is whether having regard to the terms and nature of the contract, the entering into the same is governed or controlled by any way of the specific provisions of the companies act like sections 295, 297, etc.

60. For these reasons, I do not think that any case has been made out for interfere u/s 398 of the companies Act. I also do not think that the situation calls for the issue of any particular directions by me under the said section.

61. The petition is dismissed . No costs.

62. Company Application 120 of 1967 which has been posted along with the petition stands closed as no further orders on it are necessary.

63. Petition dismissed.