
(2007) 06 MAD CK 0146

In the Madras High Court

Case No : A. No. 2894 of 2006 and A. No. 4850 of 2007 in C.S. 590 of 2006

Uttar Pradesh Cricket Association

APPELLANT

Vs

The Uttar Pradesh Cricket Association

RESPONDENT

Date of Decision : 05-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 8, Order 7 Rule 11
Companies Act, 1956 — Section 25
Tamil Nadu Societies Registration Act, 1975 — Section 20

Citation : (2007) 06 MAD CK 0146

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : K. Parasan, for M/s. Sathish Parasaran, Raghul Balaji and Yahindra Shuka, for the Appellant; T.V. Ramanujun, for M/s. M. Selvaraju, N. Jothi, G. Ramadoss for the Respondent, Mr. K. Parasan, for M/s. Sathish Parasaran, Raghul Balaji, Yahindra Shuka for the Second Defendant, for the Respondent

Judgement

V. Ramasubramanian, J.—Application No. 2450 of 2007 is an application under Order 7 Rule 11 C.P.C, to reject the plaint in C.S. No. 590 of 2006 and Application No. 2894 of 2006 is an application to revoke the leave to sue granted to the plaintiff in Application No. 2726 of 2006 in C.S. No. 590 of 2006, by an order dated 8.8.2006. Both these applications have been taken out by the second defendant. I have heard Mr. K. Parasaran, learned Senior Counsel appearing for the applicant/second defendant and Mr. T.V. Ramanujun, learned Senior Counsel appearing for the respondent/plaintiff.

2. The facts leading to the institution of the above suit, as culled out from the plaint are as follows :-

(a) that the plaintiff is an Association registered under The Uttar Pradesh (Registration, Recognition and Regulation of Association) Act, 2005, having its Registered Office at Lucknow and it claims to be the Central Body for the Control of the Game of Cricket in the State of Uttar Pradesh;

- (b) that the first defendant is the Board of Control for Cricket in India (B.C.C.I.), which is a body controlling the Game of Cricket in India;
- (c) that the second defendant (the applicant in this application) is an Association registered u/s 25 of the Companies Act, 1956;
- (d) that the second defendant was originally a Society registered under The Societies Registration Act, 1860 and the same represented the State of Uttar Pradesh before the first defendant B.C.C.I.;
- (e) that when the State of Uttar Pradesh promulgated an Ordinance known as Uttar Pradesh Sports (Registration, Recognition and Regulation of Associations) Ordinance, 2004, hereinafter referred to as the Sports Ordinance, mandating all Sports Associations to register themselves under the said Ordinance, the second defendant challenged the validity of the said Ordinance in a writ petition filed before the High Court of Judicature at Allahabad and obtained an interim stay of the operation of the said Ordinance;
- (f) that the Ordinance lapsed by efflux of time, resulting in the writ petition becoming infructuous, but the legislature subsequently enacted the Uttar Pradesh Sports (Registration, Recognition and Regulation of Associations) Act, 2005, hereinafter referred to as the Sports Act;
- (g) that the second defendant challenged the validity of the said Act also in another writ petition W.P. No. 30545 of 2005 and obtained an interim stay of operation of the said Act to the limited extent of preventing any coercive actions against the second defendant under the impugned Act;
- (h) that in the meantime, the second defendant got itself registered u/s 25 of the Companies Act, 1956 and informed the Deputy Registrar, Firms, Societies and Chits, Kanpur, about the incorporation of the Company and the transfer of all the assets and liabilities of the Society, to the newly created Company;
- (i) that the registration of the Uttar Pradesh Cricket Association (second defendant), as a Society under the Societies Registration Act, 1860, came to an end on 10.10.2005 and no Certificate of renewal of registration was granted to them by the Registrar of Societies;
- (j) that the factum of dissolution of the Society and the incorporation of a new Company were suppressed by the second defendant in the writ petitions riled before the Allahabad High Court and also from a Special Observer appointed by the Hon''ble Supreme Court to B.C.C.I. (first defendant);
- (k) that thereafter, the plaintiff applied for recognition and registration under the Sports Act, 2005 and the Registrar of Cooperative Societies, Uttar Pradesh, granted registration to the plaintiff under the Sports Act;
- (l) that by virtue of such registration, the plaintiff has 50 out of 70 District Cricket Associations as its members;

(m) that thereafter, the plaintiff submitted a representation to the Observer appointed by the Hon"ble Supreme Court, requesting him to permit the plaintiff to participate and vote in the Annual General Meeting scheduled to be held in November, 2005 and also to recognise the plaintiff as a rightful member to represent the State of Uttar Pradesh before the first defendant;

(n) that in the Annual General Meeting held on 29.11.2005, the Observer held the second defendant to be the rightful representative for the State of Uttar Pradesh and kept aside the vote cast by the plaintiff in a sealed envelop;

(o) that the Observer subsequently submitted a report on 5.12.2005 to the Supreme Court, leading to the plaintiff filing an application for intervention before the Supreme Court;

(p) that the Supreme Court disposed of the said petition on the ground that it was beyond the scope of the SLP pending before them, but at the same time granted liberty to all parties concerned to approach appropriate Forums for appropriate relief"s;

(q) that thereafter, the plaintiff requested the first defendant-B.C.C.L, to recognise it as the rightful representative for the State of Uttar Pradesh, but the first defendant did not issue any reply;

(r) that thereafter, the first defendant appointed the President of the second defendant as the Chairman of the Media Committee of the first defendant, thereby indicating that the second defendant was recognised by the first defendant;

(s) that the failure of the first defendant to recognise the plaintiff as a rightful representative for the State of Uttar Pradesh, compelled the plaintiff to file the present suit;

3. Since the plaintiff claims to be registered under the Sports Act, 2005 of the State of Uttar Pradesh and the second defendant is a Company registered under the Companies Act, 1956 and having its Registered Office in the State of Uttar Pradesh, the plaintiff filed an application for leave to sue in Application No. 2726 of 2006. It was ordered on 8.8.2006 on the ground that the first defendant was a Society registered at Chennai and having its Registered Office at Chepauk, Chennai-5 and also on the ground that a part of the cause of action arose at Chennai, when the Observer appointed by the Hon"ble Supreme Court considered the representation of the plaintiff for recognition in a Meeting held on 25.11.2005. In paragraph-4 of the affidavit filed by the plaintiff in support of their application for leave to sue, Application No. 2726 of 2006, the plaintiff has relied upon (a) the location of the Registered Office of the first defendant at Chennai and (b) the consideration of the representation of the plaintiff by the Observer of the first defendant on 25.11.2005 at Chennai, as giving rise to a part of the cause of action for the plaintiff to institute the suit on the file of this Court.

4. In the background of the above factual matrix, the second defendant has

come up with the present applications, for rejecting the plaint and for revoking the leave, on the ground that the plaintiff had no cause of action at all to institute the suit and that therefore, there was no question of any part of the cause of action arising within the jurisdiction of this Court.

5. Mr. K. Parasaran, learned Senior Counsel appearing for the applicant/second defendant contended -

(a) that the plaintiff is not a juristic person, inasmuch as a Society is not a legal entity entitled to sue or be sued except by virtue of and in accordance with the provisions of the Act under which it is registered and hence the plaintiff cannot maintain a suit as the present one;

(b) that if the plaintiff is not entitled to maintain a suit, on account of not being a legal entity, it would have no cause of action against the defendants and that a person who had no cause of action against the defendants cannot seek leave to sue on the ground that a part of the cause of action arose within the jurisdiction of this Court;

(c) that the prayer of the plaintiff for a mandatory injunction to direct the first defendant to recognise the plaintiff as a full member, cannot be granted in the light of the Bye-laws of the first defendant, which prohibits direct affiliation to the Board as a full member and that therefore a suit in which no relief can be granted, ought not to have been entertained by the grant of leave; and

(d) that the real lis is actually between the plaintiff and the second defendant, both of whom admittedly have Registered Offices only in Uttar Pradesh and that the plaintiff cannot therefore maintain a suit at Chennai by impleading the first defendant as a party, though no effective relief is claimed against the first defendant.

6. Per contra, Mr. T.V. Ramanujun, learned Senior Counsel for the respondent/plaintiff contended -

(a) that though the plaintiff may not be a legal entity, the suit is nevertheless maintainable in view of the resolution passed by the General Body at the Extraordinary General Meeting held on 2.7.2006, by virtue of the provisions of Order I Rule X C.P.C;

(b) that inasmuch as the first defendant has its Registered Office at Chennai and the application of the plaintiff for recognition was presented at Chennai on 23.11.2005 and was considered by the first defendant in its Meeting at Chennai on 25.11.2005, a part of the cause of action arose at Chennai;

(c) that it is a misconception to say that no relief is claimed against the first defendant, since the very prayer of the plaintiff is for a mandatory injunction to direct the first defendant to recognise the plaintiff as a full member; and

(d) that in view of the recognition granted by the first defendant to the second defendant, the funds were being released by the first defendant to the second

defendant, which gave rise to a cause of action to the plaintiff to sue the defendants.

7. Elaborating on his first submission that the plaintiff is not a juristic person, entitled to maintain a suit, Mr. K. Parasaran, learned Senior Counsel for the applicant/second defendant invited my attention to the various provisions of the Sports Act as well as to the provisions contained in the several State Enactments relating to the Registration of Societies. In all State Enactments relating to Registration of Societies, a suitable provision is incorporated enabling Registered Societies to sue or be sued in the name of any one of the Office Bearers or Trustees of the Society. Such a provision under the heading "suits by and against Societies" is found in Section 7 of The A.P. (Telungana Area) Public Societies Registration Act, Section 6A of The Jammu and Kashmir Societies Registration Act, 1998, Section 15 of The Karnataka Societies Registration Act, 1960, Section 22 of the Madhya Pradesh Society Registration Adhiniyam, 1973, Section 19 of The Meghalaya Societies Registration Act, 1983, Section 6 of The Rajasthan Societies Registration Act, Section 20 of The Tamil Nadu Societies Registration Act, 1975 and Section 9 of The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.

8. Though a Society registered under the Central Act or any of the State Acts, is not a juristic person, it is permitted to sue and be sued in the name of any one or more of the Office Bearers or Trustees, by the Statute itself. Alternatively, the Statute enables the Society to frame Bye-laws naming and authorising one of the Office Bearers or Trustees to sue and be sued on behalf of the Society. But the Uttar Pradesh (Registration, Recognition and Regulation of Associations) Act, 2005, does not contain a similar provision. In other words, the Sports Act does not contain a provision enabling a Sports Association registered under the Sports Act, to sue or be sued in the name of any one or more of its Office Bearers. The Act does not even contain a provision enabling the Association to frame Bye-laws for the said purpose. Section 7 of the Sports Act mandates every Sports Association to frame its Constitution consisting of Part-A and Part-B, containing the Memorandum of Association and the Bye-laws respectively. Section 8 (1) and (2) lists out the matters relating to which a Sports Association shall make provisions in its Bye-laws. But the manner in which a Sports Association can sue or be sued is not listed as one of the matters for which a provision is required to be made in the Bye-laws of a Sports Association, registered under the Sports Act.

9. The absence of such a provision in the Sports Act for enabling such an Association to sue or be sued, assumes significance in view of the judgment of the Supreme Court in *Illachi Devi (D) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others*, The Supreme Court held in the said case that "a Society registered under The Societies Registration Act, is not a Body Corporate as is the case in respect of a Company registered under The Companies Act. Therefore, such a Society is not a juristic person". After extracting the provisions contained in various State Enactments relating to suits

by and against Societies, the Supreme Court held in para-31 of its judgment as follows:-

31. A bare perusal thereof would show that a Society registered under The Societies Registration Act as contra distinguished from a Company registered under the Companies Act cannot sue in its own name. It is to be sued in the name of the President, Chairman, or Principal Secretary or Trustees as shall be determined by the Rules and Regulations of the Society or in the name of such person as shall be appointed by the Governing Body for the occasion in default of such determination. It is, therefore, not correct to contend that it is capable of suing or being sued in its own name.

10. Therefore, the quintessence of the first submission of the learned Senior Counsel for the applicant/second defendant is that the plaintiff registered under the Sports Act, is not authorised by law to institute a suit and that therefore, the plaintiff cannot be said to have had a cause of action against the defendants. If the plaintiff, not being a juristic person, did not have a cause of action against the defendants, it cannot claim that a part of the cause of action arose within the jurisdiction of this Court, so as to maintain the present suit.

11. But, I am unable to countenance the aforesaid submission of the learned Senior Counsel for the applicant/second defendant. Sections 7 and 8 of the Sports Act, 2005 mandates every Sports Association to frame its Constitution consisting of (a) its Memorandum containing aims, objectives and area of operation under Part-A and (b) the Bye-laws under Part-B. Section 8 (1) and (2) merely lists out the matters relating to which provisions should be made in the Bye-laws of a Sports Association. Section 8 (1) and (2) make it clear that the list is not exhaustive. Section 8 (1) reads as follows:-

Subject to the provisions of this Act, every Sports Association which seeks Registration under this Act, shall make, amongst other things, the following provisions in its Bye-laws.

Section 8 (2) reads as follows :-

Every Sports Association shall incorporate a procedure for Election in its Bye-law which shall among other provisions comprise the following.

12. Thus the Sub Sections (1) and (2) of Section 8 use the expressions "amongst other things" and "among other provisions". Therefore, it is clear that the legislature left it to the Associations to make suitable provisions in their Bye-laws, even with regard to matters not listed under these Sub Sections (1) and (2) of Section 8. Consequently, what was left out by the Act, cannot be construed as "a vacuum", but only "an elbow space" for the Associations themselves to fill up. As a matter of fact, the plaintiff, in exercise of the power conferred u/s 7 of the Sports Act, has framed its Constitution, consisting of a Memorandum and Bye-laws, This Memorandum and Bye-laws have been filed by the plaintiff as Document No. 7. Bye-law No. 34 deals with suits by and against the Association

and it reads as follows:-

34. Suit by or against the Association

The ASSOCIATION shall sue or be sued in the name of the ASSOCIATION through the Honorary Secretary of the ASSOCIATION. However in case of any dispute between a member and the ASSOCIATION regarding the Election, the decision and any instruction to be given to the counsels appearing on behalf of the ASSOCIATION shall be taken only with the consent of the General Body. The decision of the General Body would be final and binding. However, in case the General Body is not available then the President may take the decision on behalf of the ASSOCIATION and his decision would have the same effect as that of the General Body.

13. Therefore, I am of the considered view that the plaintiff was entitled to institute the suit, in accordance with Bye-law No. 34 of its Bye-laws, de hors the absence of a specific provision in the Sports Act dealing with suits by or against the Associations registered under the Sports Act.

14. But unfortunately for the plaintiff, my above conclusion, does not go to the rescue of the plaintiff, for a different reason. Though this reason was not projected by the applicant/second defendant, I cannot ignore it, as a Court of Original Jurisdiction. It is seen from the plaint that the present suit has been instituted by the Honorary Treasurer of the plaintiff-Association and not by the Honorary Secretary of the plaintiff-Association. Though Bye-law No. 34 enables the Association to sue through the Honorary Secretary, it is not known as to why and how the suit was instituted through the Honorary Treasurer. As a matter of fact, a Resolution passed at the Extraordinary General Meeting of the plaintiff-Association on 2.7.2006 at Lucknow, filed as Document No. 1 along with the plaint, discloses that the Honorary Treasurer was authorised to sign all papers and pleadings in connection with any legal proceedings. But this Resolution filed as Document No. 1 runs contrary to the provisions contained in Bye-law No. 34. Bye-law No. 34 as extracted above, gives no scope for any tinkering. Primarily, Bye-law No. 34 mandates the Association to sue or be sued in the name of the Association through the Honorary Secretary only. The only exception carved out by Bye-law No. 34, is with regard to a dispute between a Member and the Association. In the case of a dispute between a Member and the Association regarding the Election, the Association is directed to go to the General Body for a decision. This exception under Bye-law No. 34 is not applicable to the present suit, since the present suit is not one between a Member and the Association. The plaintiff has not made a whisper in the entire plaint as to how and why the suit was instituted through the Honorary Treasurer and not through the Honorary Secretary. Therefore, in my considered view, the suit has not been properly instituted.

15. In *Illachi Devi (D) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others*, while holding that a Society is not a juristic person, the

Supreme Court made it clear that in a litigation, a Society must be represented only through a person authorised in terms of its Bye-laws. Paragraph-51 of the said judgment, extracted below, makes it very explicit: -

51. Grant of probate in favour of a Society registered under the Societies Registration Act is refused, as discussed hereinbefore, inter alia on the ground that it is not a juristic person. It, in a litigation, must be represented through a person authorised in this behalf either in terms of its bye-laws or otherwise.

16. The words "or otherwise" used by the Supreme Court in paragraph-51 of its judgment extracted above, cannot also be used to mean that a person authorised by a Resolution of the Extraordinary General Meeting (or Annual General Meeting) will be entitled to sue. Any authorisation by a Resolution of the Annual General Meeting or Extraordinary General Meeting can be used only in the absence of a specific provision in the Bye-laws or if the Bye-laws themselves provide for the Annual General Meeting or Extraordinary General Meeting to grant such authorisation. The Annual General Meeting or Extraordinary General Meeting cannot pass a Resolution contrary to the Bye-laws. This position is also made clear by the Supreme Court in the very same judgment in paragraph-31, which has been extracted in paragraph-10 above. In the said paragraph-31, the Supreme Court made it clear that a Society "is to be sued in the name of the President, Chairman or Principal Secretary or Trustees as shall be determined by the Rules and Regulations of the Society or in the name of such person as shall be appointed by the Governing Body for the occasion in default of such determination". Therefore, in the first instance, a Society can sue only in the name of a person as appointed by the Bye-laws. In the absence of any such appointment under the Bye-laws, it can sue in the name of a person appointed by the Governing Body. In the present case, the Bye-law No. 34 specifically authorises the plaintiff-Society to sue through the Honorary Secretary. Hence, it cannot institute a suit through the Honorary Treasurer on the basis of a Resolution of the Extraordinary General Body.

17. Coming to the second contention of Mr. K. Parasaran, learned Senior Counsel for the applicant/second defendant that if the plaintiff is not a juristic person, it cannot have a cause of action and that consequently the plaintiff is not entitled to claim a part of the cause of action to have arisen at Chennai, it is seen that this contention is actually an offshoot of the first contention. As I have observed in the previous paragraphs, though the Uttar Pradesh Cricket Association is not a legal entity, the Sports Act has enabled the said Association to frame its Constitution consisting of a Memorandum and Bye-laws. The plaintiff has been registered under the Sports Act of the State of Uttar Pradesh and it has framed for itself a set of Bye-laws. Bye-law No. 34 contains an authorisation for the Association to institute a suit in the name of the Honorary Secretary. Therefore, it cannot be said that the plaintiff is not entitled to institute a suit and that it cannot complain of a cause of action. But unfortunately for the plaintiff, the suit has not been instituted through the Honorary Secretary as per Bye-law No. 34.

Hence, though I am unable to appreciate the logic behind the contention of the learned Senior Counsel for the applicant/second defendant, I have no alternative except to accept his conclusion, on the basis of a different reasoning viz., that the suit has not been instituted through the person authorised under Bye-law No. 34.

18. Coming to the issue of cause of action, it is seen from the averments contained in paragraphs-16 and 35 of the plaint as well as the averments contained in paragraph-4 of the affidavit in support of the application for leave to sue, that the only part of the cause of action that arose within the jurisdiction of this Court, according to the plaintiff, was their representation dated 23.11.2005 to the Observer appointed by the Supreme Court and a consideration of the representation by the Observer in a Meeting held at Chennai. In other words, the plaintiff has chosen to invoke the jurisdiction of this Court only on the basis of a representation made at Chennai to the Observer and the consideration of such representation at Chennai by the Observer. But unfortunately for the plaintiff, Document No. 11 filed by the plaintiff himself, along with the plaint, discloses that the entire cause of action for the suit arose only at Kolkata and not at Chennai. Document No. 11 filed along with the plaint is an order passed by the Observer appointed by the Supreme Court on 28.11.2005. The order was passed at Taj Bengal, Kolkata. The order shows that the representatives of the plaintiff appeared before the Observer on 26th and 27th November, 2005 at Taj Bengal, Kolkata and that actually a hearing of the pleas of many Associations, including the plaintiff, by the Observer, took place on 26.11.2005 and 27.11.2005 at Kolkata. After hearing the representatives of all the Associations, including the plaintiff, at Kolkata, the Observer passed an order on 28.11.2005, permitting the second defendant to continue to participate and vote in the Annual General Meeting. Accordingly, the second defendant participated in the Annual General Meeting held at Kolkata on 29.11.2005. Therefore, the bundle of facts which constitute the whole of the cause to action for the plaintiff to institute the present suit, are the hearing of their case by the Observer on 26th and 27th November 2005 at Kolkata, the order passed thereon on 28.11.2005 again at Kolkata and the participation of the second defendant in the Annual General Meeting of B.C.C.I. Held on 29-11-2005 at Kolkata. The order does not disclose any consideration of the representation of the plaintiff, by the Observer at Chennai, though it refers to the appearance of the representatives of some Associations at Chennai on 23.11.2005. Even if the plaintiff is taken to have given a representation to the Observer at Chennai, on 23.11.2005, the consideration of such representation, the hearing of their case by the Observer, and the actual decision of the case, had all taken place only at Kolkata. Therefore, the contention of the plaintiff that a part of the cause of action arose at Chennai, with the plaintiff filing a representation at Chennai, cannot be countenanced. It is now well settled that each and every fact pleaded by the respondents does not ipso facto lead to the conclusion that those facts give rise to a cause of action. Even according to the averments in the plaint, the plaintiff

claims to have given a representation to the Observer of the first defendant at Chennai on 23.11.2005 and that there was a Meeting at Chennai on 25.11.2005. But in the light of the statement made by the Observer in his order dated 28.11.2005, filed as Document No. 11 along with the plaint, that a hearing took place at Kolkata on 26th and 27th November 2005 and that a final decision was taken in the matter on 28.11.2005 at Kolkata, what is pleaded by the plaintiff becomes only a fraction of a cause of action. Such a fraction of a cause of action is not enough to maintain the suit in this Court, since the substantial cause of action admittedly arose outside the jurisdiction of this Court.

19. Interestingly, the plaintiff has not chosen to challenge the decision taken by the Observer on 28.11.2005 at Kolkata to continue to recognise the second defendant as a full member. In the normal course, one would have expected the plaintiff to challenge the order dated 28.11.2005 passed by the Observer. But if the plaintiff had sought to challenge the order passed by the Observer on 28.11.2005 at Kolkata, the plaintiff could not have filed the suit at Chennai. Therefore, the plaintiff has carefully avoided a challenge to the decision of the Observer dated 28.11.2005. But nevertheless the prayer made by the plaintiff in the suit has the effect of annulling the decision of the Observer rendered on 28.11.2005 at Kolkata. The reliefs sought for by the plaintiff are -

(a) A mandatory injunction directing the first defendant to recognise the plaintiff as a full member and to remove the second defendant from the membership of the first defendant.

(b) A permanent injunction restraining the first defendant from recognising the second defendant or allowing the second defendant to participate in any Meeting or exercise any rights as a member of the first defendant.

(c) A permanent injunction restraining the defendants from interfering with the right of the plaintiff to be recognised as a member of the first defendant.

(d) A decree of permanent injunction restraining the second defendant from seeking recognition or exercising any right as a full member of the first defendant.

(e) A decree of declaration declaring the observations made by the Observer to be not binding on the first defendant.

20. It is seen from the prayer for a decree of declaration made in paragraph-38(e) of the plaint, that it is virtually a relief seeking to declare the order of the Observer to be null and void, though it is camouflaged. Since the decision of the Observer was taken at Kolkata, after hearing the representatives of various Associations, including the plaintiff at Kolkata, on two consecutive days viz., 26.11.2005 and 27.11.2005, the plaintiff, in all fairness, ought to have approached the Appropriate Court.

21. As a matter of fact, it is seen from the Report filed by the Observer on 5.12.2005 before the Supreme Court and the order passed by the Supreme

Court on 12.12.2005, both of which have been filed by the plaintiff as Document Nos. 12 and 13 that the Observer brought to the notice of the Hon'ble Supreme Court, the order passed by him on 28.11.2005. In order to ventilate their grievances against the order of the Observer dated 28.11.2005, the plaintiff also filed an application for intervention before the Supreme Court. But the Supreme Court disposed of the Special Leave Petitions, giving liberty to the plaintiff as well as other State Associations to seek appropriate relief before Appropriate Forums. All these facts are admitted by the plaintiff in paragraphs-19 and 20 of the plaint. Therefore, the plaintiff is really aggrieved by the order of the Observer of the first defendant dated 28.11.2005 passed at Kolkata, recognising the second defendant as the full member. But to avoid an objection to the jurisdiction of this Court, the plaintiff has disguised the prayer in paragraph-38 (e) of the plaint.

22. In order to over come the objection with regard to the maintainability of a suit by an Association, Mr. T.V. Ramanujun, learned Senior Counsel for the respondent/plain tiff relied upon the provisions of Order 1 Rule 10 CPC and the Resolution passed by the General Body of the plaintiff-Association in its Extraordinary General Meeting held on 2.7.2006, filed as Document No. 1 along with the plaint. But, in my considered view, the plaintiff cannot, at this stage, fall back upon the provisions of Order 1 Rule 10 CPC or even Order 1, Rule 8, CPC. Order 1 Rule 8 CPC enables one person to sue on behalf of all in same interest. But to do so, the plaintiff should have obtained the permission of the Court under Sub Rule (1) (a) and also given notice of the institution of the suit, to all persons interested in the subject matter, under Sub Rule (2) of Rule 8 of Order 1. Having chosen to institute the suit in the name of an Association, the plaintiff cannot now fail back upon Order 1 Rule 8 CPC, especially when the pleading has not been signed and verified by the person competent to do so under Bye-law No. 34 of the Bye-laws of the plaintiff.

23. Order 1 Rule 10 (1) enables the Court to substitute any person as the plaintiff or add any person as a plaintiff. Order 1 Rule 10 (1) reads as follows:-

10. Suit in name of wrong plaintiff.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

24. But the said provision applies only to a case where the suit has been instituted in the name of a wrong person as a plaintiff "through a bona fide mistake". In the present suit, I am unable to find that the institution of the suit was "through a bona fide mistake". De hors the provision contained in Bye-law No. 34, the Extraordinary General Meeting had passed a Resolution on 2.7.2006 (as seen from Document No. 1 filed by the plaintiff) authorising the Honorary Treasurer to sign all pleadings. Therefore, if the Court has to invoke the power

under Order 1 Rule 10 (1) CPC, to substitute the name of the Honorary Secretary in the name of the Honorary Treasurer, it would militate against the Resolution of the General Body passed at the Extraordinary General Meeting. Hence, the provisions of Order 1 Rule 10 (1) CPC cannot be invoked, since "bona fide mistake" is a sine quo non for invoking the same.

25. Mr. T.V. Ramanujun, learned Senior Counsel for the respondent/ plain tiff pleaded that an application for revocation of leave to sue, filed after a considerable lapse of time, is liable to be rejected on the ground of acquiescence. In support of the said contention, the learned Senior Counsel relied upon the judgment of the Supreme Court in Chittaranjan Mukherji Vs. Barhoo Mahto, which was followed by a judgment of a Division Bench of this Court in P.T. Ummer Kya, Hon. Secretary, All India Chess Federation, Naju Kivage, V.K. Krishna Menon Road, Panniyakara, Calcut-637 003 vs. Tamil Nadu Chess Association, represented by its Hon. Secretary, Manuel Aaron, Hall No. 75, P.T. Ummer Koya, Hon. Secretary, All India Chess Federation Vs. Tamil Nadu Chess Association and Others, But in Chittaranjan's case, the suit was instituted on 17.2.1947, the respondent entered appearance on 11.3.1947, obtained a consent order for the appointment of two Joint Receivers and thereafter came up with an application for revocation of leave on 2.5.1947. Therefore, the Supreme Court found that the defendant was not entitled to have the leave revoked, after having participated in the proceedings and after having obtained some interlocutor relief's from the very same Court. The case leading to the said judgment of the Supreme Court had actually reached a stage, where the Supreme Court thought that it would result in grave injustice to revoke the leave. But in this case, the applicant/second defendant entered appearance and filed the application to revoke the leave simultaneously. Therefore, the question of acquiescence would not arise in the present case.

26. The third contention of Mr. K. Parasaran, learned Senior Counsel for the applicant/second defendant is that the relief prayed for by the plaintiff for the grant of full membership to BCCI cannot be granted in view of the prohibition contained in the Bye-laws. His fourth contention is that there is actually no lis between the plaintiff and the first defendant, but the first defendant has been impleaded just for the purpose of maintaining the suit before this Court. In response to these contentions, Mr. T.V. Ramanujun, learned Senior Counsel for the respondent/plaintiff contended that the plaintiff is not really seeking recognition as a full member in contravention of the Bye-laws. Even as per the Bye-laws of BCCI (first defendant), Uttar Pradesh Cricket Association is already a full member of BCCI, since its name finds a place in Bye-law No. 3 (a) (ii). Therefore, according to the learned Senior Counsel for the respondent/plaintiff, Uttar Pradesh Cricket Association is already a full member and the actual lis is as to whether the plaintiff is that full member or the second defendant is that full member. The plaintiff is not seeking a fresh membership, but is fighting for a declaration that the plaintiff is that Association whose name finds a place as a full member in Bye-law No. 3(a)(ii) of the Bye-laws of the first defendant. Since the

first defendant has recognised the second defendant as the actual Uttar Pradesh Cricket Association, which is a full member, the plaintiff is constrained to file the present suit. Hence, the lis is not merely between the plaintiff and the second defendant, but is actually the recognition of the second defendant by the first defendant.

27. Though the aforesaid submission of the learned Senior Counsel for the respondent/plaintiff is very attractive, the said submission is not supported by the pleadings. Throughout the plaint, the respondent/plaintiff has taken a stand that the applicant/second defendant was the original Uttar Pradesh Cricket Association registered under the Societies Registration Act, 1860 and that it underwent a transformation as a Company incorporated under the Companies Act, 1956 in the year 2005. Some of the averments in the plaint in this regard, are extracted below for easy reference:-

(a) In paragraph-2 of the plaint, the plaintiff describes the second defendant as a Society earlier registered under the Societies Registration Act, 1860 and which represented the State of Uttar Pradesh before the first defendant, but subsequently incorporated as a Company under the Companies Act, 1956.

(b) In paragraph-5 of the plaint, the plaintiff states that it was the second defendant who challenged the validity of the Sports Ordinance before the High Court Judicature at Allahabad in W.P. No. 47052 of 2004.

(c) In paragraph-7 of the plaint, the plaintiff states that it was the second defendant who challenged the Constitutional validity of the Sports Act, 2005 before the High Court of Judicature at Allahabad in W.P. No. 30545 of 2005.

(d) In paragraph-8 of the plaint, the plaintiff admits that the second defendant obtained interim stay of operation of the Sports Act in so far as coercive action by the State for non-compliance with the provisions of the Act was concerned.

(e) In paragraph-9 of the plaint, the plaintiff admits that the second defendant was previously registered under The Societies Registration Act, 1860, but later got incorporated as a Company.

(f) In paragraph-14 of the plaint, the plaintiff admits that they applied for registration and recognition under the Sports Act, 2005.

(g) In paragraph-26 of the plaint, the plaintiff states that the Registration of the second defendant under The Societies Registration Act, 1860 was not renewed, resulting in the Society becoming defunct.

28. Thus, the plaintiff has taken a consistent stand in the pleadings that the second defendant was the originally formed Society which underwent a transition as a Company in the year 2005. It is not the case of the plaintiff that the plaintiff was the original Society registered under The Societies Registration Act, 1860 and that the said Society was the one which got registered under the Sports Act, 2005. Therefore, the dispute does not appear to be a simple one, as to whether

the plaintiff or the second defendant, is the original Uttar Pradesh Cricket Association, recognised as a full member under Bye-law No. 3 (a) (ii) of the first defendant. If that is the real dispute, the plaintiff ought to have shown in the pleadings as to when it was registered originally under The Societies Registration Act, 1860, how many members it had, at what point of time the General Body decided to get registered under the Sports Act, 2005, shedding its registration under The Societies Registration Act, 1860, etc. In the absence of any pleading in the plaint, of these material facts, the present suit cannot be taken to be one born out of an identity crisis as to who is the real Uttar Pradesh Cricket Association.

29. Though Mr. T.V. Ramanujun, learned Senior Counsel for the respondent/plaintiff invited my attention to the Agenda for the Extraordinary General Meeting of Uttar Pradesh Cricket Association held on 3.9.2005 at Kanpur, filed as additional Document No. 3, to show that the Resolution for conversion of the Society into a Company itself came up for consideration only on 3.9.2005, but the Certificate of Incorporation, filed as additional Document, bears the date 13.7.2005, the issue is of little significance. The Propriety of Uttar Pradesh Cricket Association getting incorporated as a Company on 13.7.2005 even before the Resolution for winding up the Society came up for consideration on 3.9.2005, by itself does not make the plaintiff the real Uttar Pradesh Cricket Association, in the absence of any pleading to the effect in the plaint itself. No amount of documentary evidence can improve the case of the plaintiff in the absence of any pleading in the plaint.

30. Therefore, in a nutshell -

(a) The plaint is liable to be rejected on account of the same having been filed through the Honorary Treasurer contrary to the Bye-laws.

(b) The leave to sue originally granted is also liable to be revoked since the entire cause of action arose at Kolkata where the Observer appointed by the Supreme Court to B.C.C.I., heard the representatives as well as the counsel for the plaintiff, on 26.11.2005 and 27.11.2005, and pronounced a decision on 28.11.2005 at Kolkata, recognising the second defendant as the full member and consequent allowed the second defendant to participate in the Annual General Meeting of B.C.C.I., at Kolkata on 29.11.2005. The submission of a representation by the plaintiff on 23.11.2005 to the Observer, Chennai and a consideration of the same (even if any) on 25.11.2005 at Chennai, being a miniscule or a fraction of apart of the cause of action, is not sufficient to institute the suit before this Court.

Therefore, Application No. 2450 of 2007 and Application No. 2894 of 2006 in CS. No. 590 of 2006 are allowed. The leave to sue granted already is revoked and the plaint is rejected.