JJ REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 27157 OF 2010
WITH
CC NO. 15249 OF 2010
WITH
SLP(C) No. 11545 OF 2011

Lalit Kumar Modi ...Petitioner

Versus

Board of Control for Cricket in India & Ors. ...Respondents

JUDGEMENT

H.L. Gokhale J.

These three Special Leave Petitions seek to challenge three orders passed by three different benches of Bombay High Court, on the proceedings initiated by the appellant against the first respondent Board of Control for Cricket in India (hereinafter referred to either as ‘first respondent’ or the ‘BCCI’).

2. The first respondent is a society registered under the Tamil Nadu Societies Registration Act, 1975. The petitioner, herein, is a member of the first respondent representing one of its constituent associations. As a part of its activities, the first respondent had organized a cricket competition under the banner ‘Indian Premier League’ shortly known as (IPL), and the petitioner was appointed as the incharge Chairman thereof. Considering the popularity of the

game of cricket, these games were to be televised. Telecasting of these games was expected to fetch a good income to BCCI and the firm entrusted with the telecasting of these games, and therefore, the rights for telecasting were auctioned by first respondent through a bidding process for an appropriate price.

3. In April 2010, the first respondent received a complaint from a bidder alleging breach of confidentiality against the petitioner. The petitioner was therefore, suspended from his position on 25.4.2010.

(a) He was served with a show cause notice dated 25.4.2010 inter-alia alleging/accusing him of (i) accepting multi-million dollar kickback while assigning the telecasting rights for IPL matches; (ii) attempting to rig the bids for the two new IPL teams-that were auctioned the previous month; (iii) having proxy stakes in IPL teams; (iv) entering into transactions with rank strangers

against the mandate of the Governing Council of the IPL; (v) helping family members in benefiting from the IPL contracts.

(b) Thereafter another show cause notice was issued to him on 6.5.2010 which alleged inter-alia that he was seeking to create a parallel cricket body at international level (particularly in England) and thereby subvert the present International Cricket structure. The petitioner sought certain information and documents from the first respondent in this behalf, but the same were not furnished.

4. The petitioner sent his reply to the first show cause notice on 15.5.2010 denying the allegations therein. Thereafter, he wrote to Shri Shashank Manohar, the Honorary President of the first respondent on 25.5.2010 requesting him that he should recuse himself from the decision making process

in the interest of fairness. The petitioner then sent his reply to the second show cause notice on 31.5.2010. The first respondent served him the third show cause notice on the same day i.e. 31.5.2010 wherein they alleged amongst other things that the petitioner had committed irregularities and illegalities in the award of the IPL tenders for the Theatrical Rights. The petitioner replied to this notice on 15.6.2010.

5. Consequent upon the objection raised by the petitioner, Shri Shanshank Manohar recused himself from the Disciplinary Committee, which was to decide upon the show cause notices. The first respondent has a disciplinary committee to deal with the misconducts of its members. It is constituted under rule 1 (q) of the rules governing the first respondent society. This rule reads as follows:-

> (q) Disciplinary Committee: The Board shall at every Annual General Meeting appoint a Committee consisting of three persons of whom the President shall be one of them to inquire into and deal with the matter relating to any act of indiscipline or misconduct or violation of any of the Rules and Regulations by any player, Umpire, Team, Official, Administrator, Selector or any person appointed or employed by BCCI. The Committee shall have full power and authority to summon any person(s) and call for any evidence it may deem fit and necessary and make and publish its decision including imposing penalties if so required, as provided in the Memorandum and rules and Regulations."

6. On Shri Manohar recusing himself from the Committee, Shri Jyotiraditya Scindia was appointed in his place. The other two members of the Committee were Shri Chirayu Amin and Shri Arun Jaitely as nominated earlier.

The petitioner filed a Writ Petition bearing No. 1370/2010 in the Bombay High Court, and prayed that the order of suspension be recalled and he be reinstated,

the three show cause notices be directed to be withdrawn, and the decision to refer the matter to the Disciplinary Committee be also directed to be recalled. Alternatively he prayed that the first respondent be directed to appoint a mutually acceptable and an independent person or panel to consider the replies of the Petitioner to the show cause notices, and to decide whether the allegations are required to be referred to the Disciplinary Committee or the matter should be closed.

7. The petitioner raised two issues in this petition.

(i) The first ground of objection was that the Committee was not validly constituted. This was on the footing that the rules and regulations of the first respondent society are a matter of contract amongst its members, and the Committee should be constituted strictly in accordance with the particular rule. The above referred rule 1 (q) provides for a Disciplinary Committee consisting of the President and two other persons. Since the President had recused himself from the Committee, the Disciplinary Committee will have to either wait until the next President is elected so that the committee is reconstituted after including the new President therein, or if the Committee is to consist of three persons other than the President, it should consist of persons who are unbiased and acceptable to the petitioner.

(ii) The second objection was that the members of the Committee suffered from an institutional bias. The petitioner could not expect fairplay from the members who have already been party to the decision to initiate the disciplinary action against the petitioner.

8. This Writ Petition was dismissed by a Division Bench of Bombay High Court by its judgment and order dated 15.7.2010. The Division Bench rejected the submission about the defect in the Committee. It held that the substitution of the President by Shri Jyotiraditya Scindia was acceptable on the basis of the doctrine of necessity. It repelled the argument with respect to bias, and held that whatever decision is rendered by the Committee could be challenged by the petitioner after the decision became available. The Court further held that in case the petitioner had any grievance against the functioning of any of the members of the Committee, he may apply to the Committee that such a member

may recuse himself from the Committee. This order has been challenged in the first SLP (C) No. 27157/2010.

9. Subsequent to the order passed by the Division Bench, the petitioner applied to the Committee members that they should all recuse themselves from functioning as members of the Disciplinary Committee. The Committee rejected that application. It led to the filing of second Writ Petition by the petitioner in Bombay High Court bearing Petition No. 1909 of 2010. That petition also came to be dismissed by another Division Bench of Bombay High Court by its judgment and order dated 15.9.2010. This order is challenged in the second CC No. 15249/2010.

10. During the course of the calendar year 2010, the first respondent constituted a regular Disciplinary Committee for 2010-2011, and extended the special Committee consisting of Sarvashri Arun Jaitley, Chirayu Amin and Jyotiraditya Scindia for continuing with the enquiry against the petitioner. The extension granted to this Committee was challenged by the

petitioner by filing Suit No. 195/2011 on the original side of the Bombay High Court. The notice of motion moved therein for injunction against the Committee came to be rejected first by a Single Judge and then in appeal by a Division Bench of the High Court by its order dated 5.4.2011. This order is challenged in the third CC No. 11545/2011. Since all these petitions are basically arising out of the same controversy, they have been heard and are being decided together.

11. Shri Ram Jethmalani, learned Senior Counsel and Shri Vinod Bobde, learned Senior Advocate have appeared for the petitioner. Shri Aryama Sundaram, learned Senior Advocate has appeared for the first Respondent. Shri Ranjit Kumar, Senior Advocate has appeared for Shri N. Srinivasan, Secretary of first respondent.

12. As stated above, the objections of the petitioner to the constitution of the Committee are two fold. Firstly, the Committee was not validly constituted and secondly, it suffers from institutional bias. As far as the first objection is concerned, Shri Jethmalani submitted that under the above rule 1 (q), the Disciplinary Committee can consist only of the President and two other persons. A society is constituted as a matter of contract amongst the members who form the society. It is expected to function as per the rules and regulations

of the society which constitute the terms of contract amongst its members. In the present case, the rule concerning the Disciplinary Committee required the Committee to consist of the President and two other persons. If the President recuses himself, from being a member of the disciplinary Committee, either the society should wait until a new President is elected to constitute the new

Disciplinary Committee, or since it is a matter of contract, the Committee be reconstituted with such persons to whom the petitioner has no objection. Shri Jethmalani submitted that he has no objection to a Committee of three former Judges or even a decision by a former Judge of this Hon'ble Court. In his submission the petitioner had a reasonable apprehension of bias against the members of the Committee, and therefore a reconstitution of the Committee as suggested by the petitioner was desirable from the point of view of fair-play.

13. In view of these suggestions, we asked Shri Sundaram, learned senior counsel for the first respondent, whether the first respondent was agreeable to accept this suggestion. In deference thereto, Shri Sundaram did take instructions, but pointed out that the Disciplinary Committee of the first respondent is required to conduct numerous inquiries. If the first respondent agrees to a Disciplinary Committee consisting of outsiders in this matter, it may have to agree to similar request in many such matters, and that would not be desirable.

14. Shri Sundaram submitted that it is only because of the objection of the petitioner that Shri Manohar had recused himself from the Committee in all fairness. In a situation like this, the first respondent had to reconstitute the Committee by substituting another person in place of the President, and in view of the serious allegations against the petitioner, the inquiry could not wait for one more year for the next President to be elected. Since, the substitution had become necessary in view of petitioner's objection, it was not fair on his part to make any grievances against the reconstituted Committee. This submission of the first respondent based on the doctrine of

necessity has been accepted by the Bombay High Court in its judgment rendered in the first Writ Petition bearing No. 1370 of 2010.

15. As far as the allegation of bias against the members of the Committee is concerned, the petitioner had in his letter dated 25.5.2010

objected to Shri Shashank Manohar remaining on the Committee. At that time he did not raise any objection to the other members of the Committee, namely Shri Arun Jaitely and Shri Chirayu Amin. In paragraph 3 (C) of this letter he stated as follows:-

> "C. It is submitted that it is not my endeavor to create any technical hurdle in the process and no hurdle shall be caused if an independent body constituting of other members of the Board is formed. It is submitted that there are only 14 members of the Governing Council and hence BCCI can choose and appoint independent persons to investigate into these allegations....."

16. In his Writ Petition No.1370 of 2010, the petitioner joined S/Shri Chirayu Amin and Arun Jaitely and Jyotiraditya Scindia as respondent no.4, 5 and 6. In para 4 of this Writ Petition, he stated as follows:-

> "4. Respondent Nos.3 (sic), 4 and 5 and 6 are members of the Disciplinary Committee of Respondent No.1 ("the Disciplinary Committee"). This Disciplinary Committee has been entrusted with the function of examining the allegations made against the Petitioner, in the three Show Cause Notices, issued to the Petitioner. The Petitioner is challenging the constitution, composition and continuation of the Disciplinary Committee. The Petitioner is also alleging institutional bias against the Disciplinary Committee. The Petitioner is however making no personal allegation of personal bias or malice against Respondent Nos. 5 and 6."

Thus, it is clear that as far as Shri Jaitely and Shri Scindia are concerned, the petitioner stated that he was not making any personal allegation of personal bias

or malice against them. He was alleging institutional bias against the members of the Disciplinary Committee.

17. As far as Shri Chirayu Amin is concerned, all that was additionally stated against him was that Shri Amin had a 10% share in a party which gave the bid on behalf of an applicant from Pune. Shri Sundaram pointed out that the bid of that party was rejected. The only other blame against Shri Amin was that he succeeded the petitioner as the Chairman of IPL and, therefore, he would be biased against him.

18. The petitioner denies that he has played any deceit in the matter of entering into any of the disputed agreements, or that he has received any kickbacks. The submission of Shri Jethmalani concerning bias was on the footing that the disputed agreements under which the petitioner is alleged to have made some 80 million dollars by way of kickbacks, were approved by the Governing Council of IPL on 11.8.2009. Thus, this was known to all concerned and there was no deceit on the part of the petitioner, and therefore, there was no substance in the allegation. Respondents point out that these three members

of the Disciplinary Committee were not present in that meeting, though, they were present in the subsequent meeting held on 2.9.2009 when these minutes were approved. Petitioner's allegation of bias is also on the footing that the three members of the Committee were present in the meeting of the Governing Council of IPL held on 25.6.2010, when it decided to charge the petitioner with fraud. They were also present in the Special General Meeting of the first respondent held on 3.7.2010 where the President of first respondent was authorized to take appropriate civil and criminal action against the petitioner. An

FIR was lodged in pursuance thereto on 13.10.2010. It is therefore contended that the petitioner has a reasonable apprehension of bias against these three members that he may not get a fair hearing and an unbiased finding on the allegations from them.

19. As far as this aspect is concerned, the respondents maintain that they were kept in dark about the agreement/arrangement that the petitioner entered into with the concerned parties from whom he is alleged to have received kickbacks. In any case, the three members of the Committee were not present in the meeting of Governing Council of IPL held on 11.8.2009 when the disputed agreements were allegedly approved. And to take the argument at its best, they were present in the three subsequent meetings referred by the petitioner. These agreements were approved by the General Body on 2.9.2009. The further action was also approved in the Governing Council meeting of 25.6.2010 and Special General Meeting of 3.7.2010. The question is whether the participation by these members in these three meetings would disqualify them from being the members of the Disciplinary Committee.

20. In view of these objections to these three members of the committee, we asked Shri Jethmalani, whether he was objecting to these members because they were members of the Governing Council in which case some other members from the General Body could be asked to be members of the Committee. Shri Jethmalani, however stated that the appellant was objecting only to these three members of the Governing Council, and not even to the other members of the Governing Council. Now, there is no logic as to why only these three persons can be said to be suffering from institutional bias, and

not the other members of the Governing Council. And, if the other members of

the Governing Council could be members of the Disciplinary Committee, there is no reason as to why these three members could not be.

21. Shri Jethmalani submitted that we are concerned with reasonable apprehension of bias. This principle has been accepted by this Court in Manak Lal Vs. Prem Chand Singhvi reported in [AIR 1957 SC 425], in the context of an inquiry under the Bar Council Act, 1926. At the end of paragraph 6 this Court had observed that 'actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary in order that the appellant should effectively raise the argument that the tribunal was not properly constituted''. He pointed out that in S. Parthasarthi Vs. State of Andhra Pradesh reported in [1974 (3) SCC 459], the view taken by the Court was similar. This Court held that the test of likelihood of bias was based on reasonable apprehension of a reasonable man fully cognizant of the facts, and relied upon the leading English judgment in the case of R Vs. Sussex, JJ, ex. p. McCarthy reported in (1924) 1 KB 256. In paragraph 16 of S. Parthasarthi this Court has observed as follows:-

> "The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court

> will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon]. 1

1. (1968) 3 WLR 694 at 707

We may mention that Shri Jethmalani drew our attention to the recent development in English Law in this behalf, where 'real danger of bias' is no longer considered to be the test, but the relevant consideration is as to whether there was real possibility that the tribunal was biased. He referred to the judgments in the cases of R. Vs. Gough reported in (1993) 2 All ER 724, and Porter Versus Magill reported in (2002) 1 ALL ER 465.

22. Shri Jethmalani and Shri Bobde drew our attention to a judgment of House of Lords in Mclnnes Vs. Onslow Fane reported in (1978)

3 All ER 211 wherein three types of cases are discussed, viz. (i) application cases; (ii) inspection cases; and (iii) forfeiture cases. It was submitted that principles of natural justice have to be followed in any case in the category of forfeiture cases. In the present case the reputation of the petitioner was at stake and, therefore, the principle that no man should be judge in his own case, had to be followed. According to the petitioner, the members of the Disciplinary Committee could not be said to be unbiased. They were part of the institution, and therefore suffered from institutional bias.

23. In reply, Shri Sundaram, learned counsel for BCCI submitted that the members of a Society have to abide by the Rules and Regulations thereof and submit themselves to the jurisdiction of the domestic tribunal, though some of the members of the tribunal may even appear to him to be

acting like prosecutors. A member cannot place himself above the Institution. He is bound by the rules, and cannot complain unless the inquiry disclosed malafides or unfair treatment. A society is comparable to a club or a Masonic Lodge. A judgment in the case of T.P. Daver Vs. Lodge Victoria reported in [AIR 1963 SC 1144] is relevant in this behalf wherein this Court has held in paragraph 7 thereof as follows:-

> "7. Another aspect which may also be noticed is how far and to what extent the doctrine of bias may be invoked in the case of domestic tribunals like those of clubs. The observations of Maugham J. in Maclean's case (1929) 1 Ch. 602 in this context may be noticed. The learned Judge observed in that case thus :
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> "A person who joins in association governed by rules under which he may be expelled,..... has in my judgment no legal right of redress if he be expelled according to the rules, however unfair and unjust the rules or the action of the expelling tribunal may be provided that it acts in good faith..... The phrase, "the principles of natural justice," can only mean in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation. On that point there is no difficulty. Nor do I doubt that in most cases it is a reasonable inference from the rules that if there is anything of the nature of a lis between two persons, neither of them should sit on the tribunal."
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> Another difficulty that one is confronted with in proceedings held by committees constituted by clubs is to demarcate precisely the line between the prosecutor and the Judge. Maugham, J. noticed this difficulty and observed in Maclean's case1 (1929) 1 Ch. 602 thus :
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> "In many cases the tribunal is necessarily entrusted with the duty of appearing to act as prosecutors as well as that of judges; for there is no one else to prosecute. For example, in a case where a council is charged with the duty of considering the conduct of any member whose conduct is disgraceful and of expelling him if found guilty of such an offence, it constantly

occurs that the matter is brought to the attention of the council by a report of legal proceedings in the press. The member is summoned to appear before the council. The council's duty is to cause him to appear and to explain his conduct. It may be that

in so acting the council are the prosecutors. In one sense they are; but if the regulations show that the council is bound to act as I have mentioned and to that extent to act as prosecutors, it seems to be clear that the council is not disqualified from taking the further steps which the rules require."

Though it is advisable for a club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses malafides or unfair treatment."

1. LR (1929) 1 Ch D 602, 623

24. On the issue of bias however, Shri Sundaram pointed out that as far as the law in India is concerned, a Constitution Bench of this Court has already clarified the legal position, and held that the test of 'real danger' of bias is the valid test and not the one of reasonable apprehension. In M.P. Special Police Establishment Vs. State of M.P. reported in [2004 (8) SCC 788], the Constitution Bench was concerned with the question of bias in the context of sanction to prosecute the ministers. In paragraph 14, the Court observed as follows:-

> ".....The question in such cases would not be whether they would be biased. The question would be whether there is reasonable ground for believing that there is likelihood of apparent bias. Actual bias only would lead to automatic disqualification where the decision-maker is shown to have an interest in the outcome of the case. The principle of real likelihood of bias has now taken a tilt to "real danger of bias" and "suspicion of bias....."

The Constitution Bench referred with approval an earlier judgment in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girija Shankar Pant reported in [2001 (1) SCC 182]. In that case the question was whether the Managing Director had a bias against the respondent therein. This Court had held that

mere apprehension of bias was not sufficient but that there must be real danger of bias.

25. With respect to the doctrine of necessity, Shri Sundaram referred to the judgment of this Court in the case of Election Commission of India Vs. Dr. Subramaniam Swamy reported in [1996 (4) SCC 104] where in the context of the disagreement amongst the Election Commissioners, this Court had applied this doctrine of necessity. He pointed out that this Court had

even observed that ‘if the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision making’. Shri Jethmalani on the other hand submitted that the doctrine of necessity could be applied in cases of constitutional or statutory requirements, and cannot be brought into in matters of contract. He submitted that this judgment should be read as such, and assailed the application of doctrine of necessity in the present case.

26. Shri Jethmalani drew out attention to a recent judgment of this Court in Justice P.D. Dinakaran Vs. Hon’ble Judges Inquiry Committee and ors reported in [2011 (6) SCALE 97], where this Court accepted the grievance of apparent bias against a Jurist Member of the Inquiry Committee and requested the Chairman of Rajya Sabha to nominate another jurist in his place in the inquiry against the petitioner. Shri Sundaram however, pointed out that the committee was constituted as a matter of Constitutional requirement where the benchmark required with respect to fairness will be quite high. In the present matter we are concerned with the question of likely

unfairness on the part of members of a domestic tribunal of a society, and that context has to be kept in mind.

27. We have noted the submissions of the rival parties. The objection of Shri Jethmalani to the forming of the Disciplinary Committee was on the basis of rule 1 (q). When we read this rule we find that the rule states that the Board shall at every Annual General Meeting appoint a Committee consisting of three persons. The President shall be one of them and the function of the Committee is to inquire into and deal with the matters relating to any acts of misconduct etc. In view of the wording of this rule, there is no difficulty in accepting that normally the President has to be one of the members of this Committee. The question is with respect to the necessity arising on account of the President being unavailable in a situation like the present one.

28. In this connection, we must note that the word ‘shall’ has been interpreted as ‘may’ in a number of judgments while interpreting such provisions on different occasions. In State of U.P. Vs. Manbodhan Lal reported in [AIR 1957 SC 912] a Constitution Bench of this Court was concerned with the order of Compulsory Retirement of the respondent who had challenged it on the ground that the Union Public Service Commission had not

been consulted. This was in the context of Article 320 (3) (c) of the Constitution which reads as follows:-

> "320 (3) "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted.
> (a).....
> (b).....
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>
> (c) on all disciplinary matters affecting a person serving under the Government of India, or the Government of a State in a civil capacity, including memorials or petitions relating to such matters."

The Constitution Bench held that the consultation was not mandatory. The Court observed in paragraph 11 of the judgment as follows:-

> ".....the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding, or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on 'Statutory Construction' - Art. 261 at p. 516, is pertinent :
> "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....."

29. We may as well profitably refer to a judgment of this Court in the case of State of A.P. and another Vs. Dr. Rahimuddin Kamal reported in [AIR 1997 SC 947]. In that matter this Court was concerned with Rule 4(2) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961, where the expression 'shall' had been used in the Rules, making it obligatory upon the part of the Government, to examine the records, consult the Head of the Department and Vigilance Commission and then pass an appropriate order. In that case the order of removal from service was passed in accordance with law and after conducting appropriate inquiry but without consulting the

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Commission. The Court took the view that the expression 'shall' had to be construed as 'may' and non consultation with the Commission would not render the order illegal or ineffective.

30. In the instant case the petitioner himself had objected to the President being the member of the Committee. That being the position, the

President recused himself from the Committee. When a situation thus arises, in view of the objection of the petitioner, the society cannot be left without a remedy. The submission of Shri Jethmalani is that the alternate disciplinary committee has to be one which is not objected by the petitioner. The rules lay down the terms of the contract amongst the members of the society, and the terms can be altered only with the consent of the concerned members. As far as this submission is concerned, we must note that firstly, the rule does not say that if the President cannot be a member of the Committee no substitution shall take place, nor does it say that the substituting member should be one not objected by the delinquent against whom the enquiry is proposed. This rule is being canvassed as a term of the contract of membership. A member of the society having accepted the rules, agrees to the disciplinary authority of the three member Committee which is to be constituted under these rules. He cannot claim a right to dictate as to who should be the members of the Committee. Any such interpretation will lead to a situation that the delinquent will decide as to who should be the members of the Disciplinary Committee. Such a submission cannot be accepted. In our understanding the rule is elastic enough, and in an appropriate situation the word ‘shall’ can be read as ‘may’. It is very clear that, normally the President shall be a member of three Member

Committee, but if for any reason his presence on the Committee is objected to on grounds of unfairness, and he recuses himself therefrom, the respondent no.1 certainly has the power to substitute him by some other person. The action of the respondents is sought to be defended on the basis of necessity. The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over. Otherwise, as proposed by Shri Jethmalani one will have to wait for one more year for a new President to be elected, which submission cannot be accepted.

31. As far as the disciplinary actions by societies and associations are concerned, many of the societies under the Tamil Nadu Societies Registration Act and similar State Acts, are smaller societies. It is another matter that the first respondent society is a large body having large resources. If the members or the Managing Committee of a Society receive a complaint of any misconduct on the part of any of its office bearers, surely the subject is expected to be taken

up in the General Body Meeting of the Society. These societies are expected to sort out the future course of action with respect to such allegations on their own on the basis of their internal disciplinary mechanism. Merely because all the members of a society have participated in the discussion concerning such allegation, the Society can't be expected to appoint an outsider to hold the disciplinary proceeding. It may not be financially possible as well for such small societies. That apart, only a prima facie opinion is formed in such meetings. Merely because a member has participated in such a meeting he cannot be

accused of bias to disentitle him from being appointed on the Disciplinary Committee.

32. We have noted the submissions of the petitioner with respect to his apprehensions. However, as far as the propositions of law are concerned, we cannot take a different view in the present case from the law laid down in the judgment of the Constitution Bench of this Court in M.P. Special Police Establishment (supra), and the judgment of four Judges in T.P. Daver Vs. Lodge Victoria (supra). As held in M.P. Special Police Establishment, a mere apprehension of bias cannot be a ground for interference. There must exist a real danger of bias. And, following T.P. Daver Vs. Lodge Victoria, though such domestic inquiries have undoubtedly to be fair, a member of a society cannot stretch the principle of fairness to the extent of demanding a tribunal consisting of outsiders, on the basis that the society members are biased against him. As we have noted, the petitioner has, in clear terms stated that he was not making any personal allegations against two members of the Disciplinary Committee, viz. Shri Jaitely and Shri Scindia. Even the grievance against the third member Shri Amin cannot be said to be well founded. The petitioner was alleging institutional bias against the members of the Committee, which was only on the basis of their participation in the meetings of the first respondent society. In this way, institutional bias can be alleged against every member of the Governing Council of IPL and the General Body of the first respondent which cannot be accepted. The petitioner may have an apprehension, but it is not possible to say from the material on record that he was facing a real danger of bias. We cannot presume that the three member committee will not afford the

petitioner a fair hearing, or that it will not render unbiased findings. Taking a view as canvassed by the petitioner will lead to a demand for interference in the

enquiries conducted by all other societies in such situations, and that cannot be approved in view of the law already laid down by this Court. This is apart from the view that we have taken, that the Committee is validly constituted under Rule 1(q) in view of the necessity arising due to the recusal of the President of BCCI from the Committee.

33. This being the position, we find no error in the judgment and order dated 15.7.2010 passed by the Division Bench of the Bombay High Court in Writ Petition No.1370 of 2010. Similarly, we do not find any error in the order of the Disciplinary Committee declining to recuse, or the decision of the Annual General Meeting of the first respondent to extend the term of this Disciplinary Committee for the inquiry against the petitioner. Consequently, there was no error in the two judgments of the High Court upholding those two decisions as well.

34. For the reasons stated above, all the three petitions are dismissed, though parties can certainly bear their cost of the litigation.

.....J.
(J.M. Panchal)

.....J.
(H.L. Gokhale)

New Delhi

Dated: September 26, 2011

ITEM NO.1D COURT NO.9 SECTION IX
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)
No(s).27157/2010

LALIT KUMAR MODI Petitioner(s)

VERSUS

BOARD OF CONTROL FOR CRICKET IN INDIA&OR Respondent(s)

WITH
S.L.P.(C)...CC NO. 15249 of 2010
SLP(C) NO. 11545 of 2011

Date: 26/09/2011 These matters were called on for pronouncement of judgment today.

For Petitioner(s) Mr. Abhishek Singh, Adv.
Ms. Meenakshi Chatterjee, Adv.
Mr. Sarvesh Singh Baghel,Adv.
M/S. Parekh & Co.

For Respondent(s)
M/S. Karanjawala & Co.
Ms. Radha Rangaswamy ,Adv
Mr. Hari Shankar K ,Adv

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Permission to file SLP is granted.

Hon'ble Mr. Justice H.L. Gokhale pronounced the judgment of the Bench comprising of Hon'ble Mr. Justice J.M. Panchal and His Lordship.

The petitions are dismissed in terms of the signed reportable judgment.

(Sonia)
Sr P.A.

(Sneh Bala Mehra)
Court Master

(Signed reportable judgment is placed on file)