

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4235 OF 2014

Board of Control for Cricket in India

...Appellant

Versus

Cricket Association of Bihar & Ors.

...Respondents

With**CIVIL APPEAL NO.4236 OF 2014**

Cricket Association of Bihar

...Appellant

Versus

Board of Control for Cricket in India & Ors.

...Respondents

WITH**CIVIL APPEAL NO. 1155 OF 2015**
(Arising out of SLP (C) No.34228 of 2014)

Cricket Association of Bihar

...Appellant

Versus

The Board of Control for Cricket in India & Anr.

...Respondents

Signature Not Verified
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 Shashi Sareen
 Date: 2015.01.22
 11:08:45 AM
 Reason: 

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. Allegations of sporting frauds like match fixing and betting have for the past few years cast a cloud over the working of the Board of Cricket Control in India (BCCI). Cricket being more than just a sport for millions in this part of the world, accusations of malpractices and conflict of interests against those who not only hold positions of influence in the BCCI but also own franchises and teams competing in the IPL format have left many a cricketing enthusiasts and followers of the game worried and deeply suspicious about what goes on in the name of the game. There is no denying the fact that lower the threshold of tolerance for any wrong doing higher is the expectation of the people, from the system. And cricket being not only a passion but a great unifying force in this country, a zero tolerance approach towards any wrong doing alone can satisfy the cry for cleansing.

3. These appeals arise out of two successive writ petitions filed in public interest by the appellant-Cricket Association of Bihar before the High Court of Bombay for several reliefs

including a writ in the nature of mandamus directing BCCI to recall its order constituting a probe panel comprising two retired Judges of Madras High Court to enquire into the allegations of betting and spot fixing in the Indian Premier League (IPL) made among others against one Gurunath Meiyappan. The High Court has by its order dated 30th July, 2013 passed in PIL No.55 of 2013 granted that relief but declined a possible reconstitution of the panel. Aggrieved, BCCI has assailed the order passed by the High Court in Civil Appeal No.4235 of 2014. In the connected Civil Appeal No.4236 of 2014, Cricket Association of Bihar has prayed for further and consequential orders which according to the appellant could and indeed ought to have been passed by the High Court, *inter alia*, for removal of respondent No.2 from the post of President of BCCI and cancellation of the franchise favouring Chennai Super Kings and Rajasthan Royals for the IPL matches to be conducted in future. In Civil appeal arising out of SLP (C) No.34228 of 2014 the association challenges the validity of Regulation 6.2.4 of the BCCI Regulations for Players, Team Officials, Managers, Umpires & Administrators (for short 'BCCI Regulations') and the order

passed by the High Court dismissing PIL No.107 of 2013.

4. Cricket Association of Bihar is a society registered under the Societies Registration Act, 1860 just as respondent - BCCI is a Society registered under the provisions of Tamil Nadu Registration of Societies Act 1975. Mr. N.Srinivisan - respondent No. 2 in Civil Appeal No.4236 of 2014 is the President of the Board besides being the Vice-Chairman and Managing Director of respondent No.3-India Cements Limited, a public Limited Company.

5. In a meeting held on 13th September, 2007, the working committee of the respondent-Board appears to have taken a decision to launch what came to be known as Indian Premier League (IPL) to be run by a Committee constituted by general body of the BCCI to be called IPL Governing Council. In December 2007 the IPL Governing Council invited tenders for grant of IPL franchises on open competitive bidding basis, in which only corporate bodies were allowed to participate. India Cements Ltd. was one of those who participated in the auction for the Chennai franchise and emerged successful in the same.

The team it assembled was christened Chennai Super Kings. Jaipur IPL Cricket Private Limited partly owned and promoted by respondent No.5 similarly emerged successful for the Jaipur Franchise and assembled a team called Rajasthan Royals. Franchise Agreements were, pursuant to the auction, signed by BCCI with the franchisees concerned.

6. On 27th September, 2008 Mr. N.Srinivasan was elected as the Secretary of the BCCI in a General Body Meeting. In the same meeting Regulation 6.2.4 of the IPL Regulations was amended to exclude from its operation events like IPL and Champions' League twenty-20. We shall presently turn to Regulation 6.2.4 but before we do that we need to complete the factual narrative.

7. In April 2013, Special Cell, Delhi Police, Lodhi Colony, New Delhi, is said to have received secret information that certain members of the underworld were involved in fixing of matches in the recently concluded edition of the IPL. FIR No.20 of 2013 was, on that information, registered by the Special Cell, Delhi Police, under Sections 420 and 120 B of the IPC and Mr. S. Sreesanth, Mr. Ajit Chandila and Mr. Ankit Chavan of the

Rajasthan Royals alongwith 7 bookies detained for allegations of spot-fixing. Shortly thereafter Mr. Gurunathan Meiyappan, son-in-law of Mr. N.Srinivasan was also arrested by the Mumbai Police on 25th May, 2013 in a spot fixing/betting case. Soon after the arrest on 26th May, 2013 came an announcement that a Commission comprising two members of the BCCI and one independent member would be constituted to enquire into allegations of betting and spot fixing. This was followed by nomination of two former Judges of the High Court of Madras and Shri Sanjay Jagdale as members of a Probe Commission to enquire into the allegations of betting and spot fixing. Shri Sanjay Jagdale, however, resigned as member of the Probe Commission leaving the two former Judges to complete the probe. Mr. N.Srinivasan announced that he was stepping aside from the post of President of the BCCI until the probe was completed ostensibly because of the alleged involvement of his son-in-law in the betting and spot fixing racket.

8. It was in the above backdrop that the appellant-Association filed W.P. No.55 of 2013 before the High Court of Judicature at Bombay, *inter alia*, for a declaration that appointment of the

two-member Probe Commission was *ultra vires* of the Rules and Regulations of the BCCI and for a mandamus directing constitution of a panel comprising retired Judges to hold an enquiry against among others Mr. Gurunath Meiyappan for his involvement in betting and spot fixing. The petitioner further prayed for termination of the franchise agreement entered into between the BCCI, on the one hand, and Chennai Super Kings and Rajasthan Royals on the other. A mandamus directing institution of disciplinary proceedings against Mr. N.Srinivasan was also prayed for, besides a prayer for his suspension pending the probe and other proceedings. The appellant-Association in addition prayed for a prohibition against Mr. N.Srinivisan restraining him from contesting the election for the post of President of BCCI in future and representing the BCCI in the International Cricket Council (ICC).

9. By its order dated 30th July, 2013, a Division Bench of the High Court of Bombay declared that the Probe Commission set up by the BCCI was not validly constituted being in violation of the provisions of Rules 2.2 and 3 of Section 6 of the IPL Operational Rules. The High Court, however, declined to grant

any further relief by way of constituting a panel to conduct an enquiry under the supervision of the High Court. The High Court was of the view that constitution of a Probe Committee under Section 6 of the IPL Operational Rules was the prerogative of the BCCI. Civil Appeal No.4235 of 2014 preferred by the BCCI assails the said order of the High Court to the extent it declares the constitution of the Probe Commission to be illegal and *ultra vires* of the relevant rules and regulations. The Cricket Association of Bihar has also, as noticed earlier, assailed the very same order in Civil Appeal No.4236 of 2014 to the extent it has declined to grant further and consequential relief to the appellant.

10. When this matter came up for hearing on 27th September, 2013 before a Bench comprising A.K. Patnaik and J.S. Khehar JJ., this Court permitted the Annual General Meeting of the respondent-BCCI to be held on 29th September, 2013 as scheduled and so also election to the post of President, subject to the condition that in case respondent No.2-Mr. N.Srinivisan got elected, he will not take charge until further orders. When the matter came up again on 8th October, 2013, this Court noted

that although Mr. N.Srinivasan had been elected as the President of the Board yet a probe into the allegations of betting and spot fixing was necessary. A reading of order dated 8th October, 2013 passed by this Court would show that the constitution of the Probe Committee comprising Mr. Justice Mukul Mudgal, retired Chief Justice of Punjab and Haryana High Court, Mr. L. Nageshwar Rao, Additional Solicitor General and Mr. Nilay Dutt, Senior Advocate, Gauhati High Court was passed with the consent of the parties. Justice Mukul Mudgal was appointed Chairman of the Probe Committee.

11. The Probe Committee started its proceedings in the right earnest and invited all such persons as had any information in their possession regarding the Terms of Reference to furnish such information to the Committee. It also interacted with Gurunath Meiyappan, Raj Kundara and the players against whom the BCCI had taken action for match fixing and spot fixing. Besides the Committee interacted with the law enforcement agencies, former players associated with IPL, personnel from the team management, eminent sports journalists and sport commentators, personnel from

anti-corruption unit of the BCCI and ICC, personnel from the BCCI and the IPL Governing Body and persons whose name featured in the documents pertaining to the Terms of Reference. Based on the enquiries made by it from all concerned, the Committee submitted a report dated 9th February, 2014, in which the Committee arrived at the following conclusions:

- (i) That Gurunath Meiyappan formed an integral part of Chennai Super Kings and most persons viewed him as the face of the team, though *de-jure* ownership vested in India Cements Ltd.
- (ii) That Gurunath Meiyappan was a team official within the meaning of IPL Operational Rules if not *de facto* owner of CSK.
- (iii) That Gurunath Meiyappan had knowledge of or was in a position to easily access sensitive team information, team strategies knowledge about match conditions etc. which knowledge was outside the purview of an ordinary person following the game of cricket.
- (iv) That Gurunath Meiyappan was also a participant under IPL Anti-corruption Code hence IPL Rules and Regulations were squarely applicable to him.
- (v) That Gurunath Meiyappan was in regular touch with

bookies and punters.

(vi) That several calls were traced between Gurunath Meiyappan and Vindoo Dara Singh who was himself a punter in close proximity with several other bookies, evident from the telephonic transcripts produced by the Bombay Police.

(vii) That Mr. Ramesh Vyas and Jupiter were acting for Vindoo Dara Singh who was also placing bets for certain IPL stakeholders and actors including Mr. Gurunath Meiyappan. Mr. Meiyappan was in close contact with Mr. Vikram Agarwal who is a hotelier and alleged punter operating from Chennai as revealed by call record details produced by the Chennai Police in Crime No.1 of 2013 registered by the CBCID Branch.

(viii) That Mr. Gurunath Meiyappan would regularly place bets in IPL matches both in favour of his team (i.e. CSK) and against his team - a fact established from call records produced by the Mumbai Police.

(ix) That Mr. Gurunath Meiyappan would place bets through Vindoo Dara Singh and such bets were even placed during the course of IPL match as revealed by

transcripts produced by Mumbai Police.

- (x) That in one instance Mr. Gurunath Meiyappan made certain predictions to Mr. Vindoo Dara Singh regarding the runs that would be scored in a match between CSK and Rajasthan Royals held on 12th May, 2013 at Jaipur. According to Mr. Meiyappan's prediction that CSK would score 130-140 runs came true as CSK actually scored 141 runs only.

12. The Probe Committee on the above findings held Mr. Gurunath Meiyappan guilty of betting which in its opinion was accentuated by his position in the CSK. What is important is that the Probe Committee held that Mr. Gurunath Meiyappan had in his acts of betting the implicit approval of the franchisee owner India Cements thereby bringing the team to disrepute and violating Sections 2.2.1 and 2.14 of the IPL Operational Rules besides Articles 2.2.1, 2.2.1, 2.2.3 of the IPL Anti-Corruption Code and Articles 2.4.4 of the IPL Code of Conduct for Players and Team Officials.

13. The Committee also held that franchisee owner CSK was responsible for its failure to ensure that Mr. Gurunath Meiyappan

complied with BCCI Anti-Corruption Code, IPL Operational Rules and IPL Regulations. The franchisee's actions were on that basis held to be in violation of Section 4.4.1 of the IPL Operational Rules and Clause 11.3 of the franchise's agreement. The Committee summed up its conclusion regarding the investigation against Mr. Gurunath Meiyappan and India Cements Ltd. the owner of ICL in the following passage:

"Thus, the Committee is of the view that for the acts of betting by Mr. Meiyappan, which is further accentuated by the position he held in CSK, which was held by Mr. Meiyappan with the implicit approval of the franchisee owner India Cements, Mr. Meiyappan is in violation of Sections 2.2.1 and 2.14 the IPL Operational Rules for bringing the game in disrepute, Articles 2.2.1, 2.2.2. and 2.2.3 of the IPL Anti Corruption Code for his acts of betting and Articles 2.4.4 of the IPL Code of Conduct for Players and Team Officials, for bring disrepute to the game of cricket. The said illegal acts further stand accentuated in light of his position/role in CSK. The Committee is also of the opinion that the franchisee owner of CSK is responsible for failing to ensure Mr. Meiyappan (Team Officials) had complied with the BCCI Anti-Corruption Code, IPL Operational rules, IPL Regulations and hence the franchisee's actions are in violation of Section 4.4.1 of the IPL Operational Rules and Clause 11.3 of the franchises agreement."

(emphasis supplied)

14. As regards the allegations of betting and spot-fixing in IPL made against Mr. Raj Kundra, the Committee opined that further and serious investigation was required to be conducted into the said allegations for the allegations of betting if proved against

Mr. Kundra and his wife Ms. Shilpa Shetty, would constitute a serious infraction of the provisions of IPL Operational Rules, the Anti-Corruption Code and the Code of Conduct for Players and Team Officials. The Committee also examined the allegations of match/spot fixing made against several players and noticed that the BCCI had conducted an inquiry into the allegations and found the same to be proved. The Committee was, however, of the view that the disciplinary action taken by BCCI against the delinquent players was adequate and satisfactory.

15. Having said that the Committee referred to allegations of sporting frauds made before it during its interaction with several persons connected with the game. The Committee placed before this Court the names of persons against whom such allegations were made in a sealed envelope. The Committee also mentioned other issues including the issue of "conflict of interest" between Mr. N.Srinivasan as the BCCI President on the one hand and CEO of India Cements Ltd. on the other. The Committee concluded its report by making certain recommendations that would, in its opinion, help remove the malaise of spot/match fixing and detect sporting frauds by BCCI's Investigation Wing.

16. The report submitted by the Probe Committee was then considered by this Court in its order dated 16th May, 2014 by which this Court permitted the Probe Committee to enquire into the allegations made against those named in the sealed cover filed before the Court by the Committee including Mr. N. Srinivasan. This Court also provided the necessary manpower for a quick and effective investigation by constituting an investigation team with the direction that the team shall have the power to investigate, require attendance of witnesses and record their depositions and the power to search and seize apart from other powers necessary for conducting the investigation except the power to arrest. The Committee filed an interim report dated 1st September, 2014, and wound up its proceedings by its third and final report dated 1st November, 2014 in which it took note of the scientific evaluation of Gurunath Meiyappan's recorded voice which revealed that the recorded voice was indeed that of Mr. Gurunath Meiyappan. In a separate report submitted by Mr. Nilay Dutta, the third member of the Probe Committee, Shri Dutta had observed that for the Committee to arrive at a conclusive finding as regards the voice alleged to be

that of Mr. Gurunath Meiyappan, a scientific evaluation was necessary. The Committee's final report took note of the scientific evaluation and recorded a unanimous conclusion that Mr. Gurunath Meiyappan had actually indulged in betting in IPL matches. It, however, found no material to show that Gurunath Meiyappan was involved in match fixing.

17. As regards Mr. Raj Kundra, the Committee came to the conclusion that Mr. Kundra had indulged in betting in violation of BCCI Regulations and IPL Anti-Corruption Code. The Committee further came to the conclusion that N. Srinivasan was not involved in match fixing activity nor was he involved in preventing investigation into match fixing. The Committee held that although Mr. N. Srinivasan was aware of the violation of the players' code, by individual No.3 yet no action was taken against him by Mr. Srinivasan or any other official who was aware of the infraction.

18. Copies of the report except the portion that related to findings *qua* the players were made available to counsel for the parties to give them an opportunity to respond to the same. Since Mr. Raj Kundra and Mr. Gurunath Meiyappan were not

parties to these proceedings, this Court issued notice to them enclosing and made copies of the reports available to them to enable them to respond to the findings recorded by the Committee. That opportunity was usefully utilized by all the parties concerned by filing their respective responses.

19. We have heard learned counsel for the parties at considerable length. The following questions fall for our determination:

- (1) *Whether the respondent-Board of Cricket Control of India is 'State' within the meaning of Article 12 and if it is not, whether it is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India? (See Paras 20 to 30)*
- (2) *Whether Gurunath Meiyappan and Raj Kundra were 'team officials' of their respective IPL teams - Chennai Super Kings and Rajasthan Royals? If so, whether allegations of betting levelled against them stand proved?(See Paras 31 to 46)*
- (3) *If question No.2 is answered in the affirmative, what consequential action in the nature of punishment is permissible under the relevant Rules and Regulations, and against whom? (See Paras 47 to 62)*
- (4) *Whether allegations of cover up, levelled against Mr. N. Srinivasan stand proved. If so, to what effect? (See*

Paras 63 to 65)

- (5) Whether Regulation 6.2.4 to the extent it permits administrators to have commercial interest in the IPL, Champions League and Twenty-20 events is legally bad?
(See Paras 66 to 98)*
- (6) Whether allegations levelled against Mr. Sundar Raman, Chief Operating Officer IPL, stand proved? If so, to what effect? (See Paras 99 to 105)*
- (7) What orders and directions need be passed in the light of the discussions and answers to questions 1 to 5 above? (See Paras 106 to 109)*

We propose to deal with the questions ad seriatim:

Re: Question No.1:

20. Article 12 of the Constitution of India gives an inclusive definition to the expression 'State', and says that for purposes of Part III of the Constitution the expression 'State' includes the Parliament of India, the Government and the Legislature of each of the States and Local or other authorities within the territory of India or under the control of the Government of India. A long line of decisions of this Court have examined and interpreted the expression appearing in Article 12 with a view to determining whether or not a given entity is 'State' within the meaning of Article 12. It is unnecessary to refer to all such decisions

pronounced over the past few decades not only because the law is by now fairly well settled by Constitution Bench decisions of this Court but also because the question whether or not BCCI is 'State' within the meaning of Article 12 may not make any material difference to the case at hand in view of the admitted position that respondent-BCCI does discharge several important public functions which make it amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. We may all the same refer to a few landmarks on the judicial landscape only as a reminder to what is settled and binding upon us.

21. In ***Sukhdev and Ors. etc. v. Bhagatram Sardar Singh Raghuvanshi and Anr. etc. (1975) 1 SCC 421***, one of the questions that fell for considerations was whether an employee of statutory corporation like Oil and Natural Gas Commission established under the Oil and Natural Gas Commission Act 1959, Indian Finance Corporation, established under the Indian Finance Corporation Act, 1948 and the Life Insurance Corporation under the Life Insurance Corporation Act, 1956, was entitled to claim protection of Articles 14 and 16 against the

Corporation. A Constitution bench of this Court answered the question in the affirmative by a majority of 4:1. Mathew J., in his concurring judgement referred to ***Marsh v. Alabama (3) 326 U.S. 501: 19 L. ed. 265*** to hold that even where a corporation is privately performing a public function it is bound by the constitutional standard applicable to all State actions. ***Marsh v. Alabama*** (supra), it is noteworthy, arose out of a prosecution launched against a Jehovah's witness for her refusal to leave the side walk where she was distributing religious pamphlets. She was fined five dollars but aggrieved by her prosecution she approached the Supreme Court to argue that the corporation that owned the town had denied the right of religious liberty available to Marsh. The U.S. Supreme Court upheld the contention and declared that administration of public bodies like a town through private entities were tantamount to carrying out functions of a public body. Private right of the corporation could, therefore, be exercised only within constitutional limitations. Black J. speaking for the Court observed:

"The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and

constitutional rights of those who use it. Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm. Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to state regulation”.

22. Justice Frankfurter in his concurring opinion simply added that the function discharged by the corporation as a municipal corporation was a public function hence subject to State Regulation.

23. Borrowing support from the above decision and several others this Court in **Sukhdev’s** case (supra) held:

"97. Another factor which might be considered is whether the operation is an important public function. The combination of State aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a State agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. If the function does not fall within such a description, then mere addition of State money would not influence the conclusion.

101. *In America, corporations or associations, private in character, but dealing with public rights, have already been held subject to constitutional standards. Political parties, for example, even though they are not statutory organisations, and are in form private clubs, are within this category. So also are labour unions on which statutes confer the right of collective bargaining....*

102. *Institutions engaged in matters of high public*

interest or performing public functions are by virtue of the nature of the function performed government agencies³⁵. Activities which are too fundamental to the society are by definition too important not to be considered government function. This demands the delineation of a theory which requires Government to provide all persons with all fundamentals of life and the determinations of aspects which are fundamental. The State today has an affirmative duty of seeing that all essentials of life are made available to all persons. The task of the State today is to make possible the achievement of a good life both by removing obstacles in the path of such achievements and in assisting individual in realising his ideal of self-perfection.

24. In ***Ramana Dayaram Shetty v. International Airport Authority of India and Ors. (1979) 3 SCC 489***

this Court held that while a corporation may be created by a statute or incorporated under a law such as the Companies Act, 1956, or the Societies Registration Act, 1860, the question that often arises is as to when does the corporation become an instrumentality or agency of the Government and what are the tests to determine whether a corporation is or is not such an instrumentality or agency. While holding that there is no cut and dried formula that can provide an answer, this Court referred to American decisions in ***Evans v. Newton 382 US 296 15 L.Ed.-2nd 373, Ch 614 = 1963 1 All. E.R. 590*** and ***New York v. United States 326 US 572*** to declare that if

the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the State. This Court said:

"16. There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a concept of State action where public functions are being performed. Vide Arthur S. Miller: "The Constitutional Law of the 'Security State'". It was pointed out by Douglas, J., in Evans v. Newton that "when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State". Of course, with the growth of the welfare State, it is very difficult to define what functions are governmental and what are not, because, as pointed out by Villmer, L.J., in Pfizer v. Ministry of Health there has been since mid-Victorian times, "a revolution in political thought and a totally different conception prevails today as to what is and what is not within the functions of Government". Douglas, J., also observed to the same effect in New York v. United States: "A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit." Cf. Helvering v. Gerhardt¹⁴. A State may deem it as essential to its economy that it own and operate a railroad, a mill, or an irrigation system as it does to own and operate bridges, street lights, or a sewage disposal plant. What might have been viewed in an earlier day as an improvident or even dangerous extension of State activities may today be deemed indispensable. It may be noted that besides the so-called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an

instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram where the learned Judge said that "institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions".

(emphasis supplied)

25. In ***Ajay Hasia and ors. v. Khalid Mujib Sehravardi and ors. (1981) 1 SCC 722***, this Court noted the constitutional philosophy of a democratic socialistic republic requiring the government to undertake a multitude of socio-economic operations, and the practical advantages of functioning through the legal device of a corporation for a myriad of commercial and economic activities. But any such contrivance of carrying on such activities cannot, declared this Court, exonerate the government of its basic obligation to respect the fundamental rights of the citizens for otherwise it would be the easiest thing for any government to assign to a plurality of corporations almost every State business and thereby cheat the people of this country of the fundamental rights guaranteed to them under the Constitution. The Court went on to enunciate certain tests applicable for determining

whether an entity is an “instrumentality or the agency of the State”, an expression that does not figure in Article 12 of the Constitution but which would constitute an authority under Article 12 of the Constitution.

26. In ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. (2002) 5 SCC 111*** a seven-Judge Bench of this Court was examining whether Council of Scientific and Industrial Research was a State within the meaning of Articles 12 and 13(2) of the Constitution. The Court decided by a majority of 5:2 that the tests formulated in ***Ajay Hasia's*** case (supra) were not a rigid set of principles so that if a body falls within any of them it must be considered to be a ‘State’. The question in each individual case, declared this Court, would be whether on facts the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive to make any such body State within the meaning of Article 12. Mere regulatory control whether under statute or otherwise would not be sufficient. Overruling an earlier decision of this Court in ***Sabhajit Tewary***

v. Union of India and Ors. (1975) 1 SCC 485, this Court held that Council of Scientific and Industrial Research even when registered as Society was 'State' within the meaning of Article 12.

27. In **Board of Control for Cricket in India & Anr. v. Netaji Cricket Club and Ors. (2005) 4 SCC 741**, this Court had an occasion to consider the role and the nature of functions being discharged by the BCCI. This Court held that the Boards control over the sport of cricket was deep and pervasive and that it exercised enormous public functions, which made it obligatory for the Board to follow the doctrine of 'fairness and good faith'. This Court said:

"80. *The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regards regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State associations except Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international fora. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the*

Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deeply pervasive and complete.

81. *In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of "fairness" and "good faith" in all its activities. Having regard to the fact that it has to fulfil the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards."*

(emphasis is ours)

28. The question whether the respondent-BCCI is 'State' within the meaning of Article 12 fell directly for consideration of this Court in ***Zee Telefilms Ltd. and Anr. v. Union of India and Ors. (2005) 4 SCC 649***. By a majority of 3:2 this Court ruled that respondent-BCCI was not 'State' within the meaning of Article 12. This Court held that the Board was not created by any statute, nor was a part of the share capital held by the Government. There was practically no financial assistance given to the Board by the Government, and even when the Board did enjoy a monopoly status in the field of cricket such status was not State conferred or State protected. So also there is no deep and pervasive State control. The control, if any, is only regulatory in nature as applicable to other similar bodies. The

control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions. The Board is not created by transfer of a government-owned corporation and was an autonomous body. Relying upon the tests laid down in ***Pradeep Kumar Biswas's*** case (supra), this Court held that the Board was not financially, functionally or administratively dominated by or under the control of the Government so as to bring it within the expression 'State' appearing in Article 12 of the Constitution. Having said that this Court examined whether the Board was discharging public duties in the nature of State functions. Repelling the contention that the functions being discharged by the Board were public duties in the nature of State functions which would make the Board a State within the meaning of Article 12 this Court observed:

"29. *It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions*

can only be an instrumentality of State, therefore, the Board falls within the definition of State for the purpose of Article 12. Assuming that the abovementioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12? While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it, but the Board has denied the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it, and that the Board is discharging these functions on its own as an autonomous body."

29. Having said that this Court recognized the fact that the Board was discharging some duties like the Selection of Indian Cricket Team, controlling the activities of the players which activities were akin to public duties or State functions so that if there is any breach of a constitutional or statutory obligation or the rights of other citizens, the aggrieved party shall be entitled

to seek redress under the ordinary law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32. This Court observed:

"31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32."

(emphasis supplied)

30. The majority view thus favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not 'State' within the meaning of Article 12. The rationale underlying that view if we may say with utmost respect lies in the "nature of duties and functions" which the BCCI performs. It is common ground that the respondent-Board has a complete sway over the game of cricket in this country. It regulates and controls the game to the exclusion of all others.

It formulates rules, regulations norms and standards covering all aspect of the game. It enjoys the power of choosing the members of the national team and the umpires. It exercises the power of disqualifying players which may at times put an end to the sporting career of a person. It spends crores of rupees on building and maintaining infrastructure like stadia, running of cricket academies and Supporting State Associations. It frames pension schemes and incurs expenditure on coaches, trainers etc. It sells broadcast and telecast rights and collects admission fee to venues where the matches are played. All these activities are undertaken with the tacit concurrence of the State Government and the Government of India who are not only fully aware but supportive of the activities of the Board. The State has not chosen to bring any law or taken any other step that would either deprive or dilute the Board's monopoly in the field of cricket. On the contrary, the Government of India have allowed the Board to select the national team which is then recognized by all concerned and applauded by the entire nation including at times by the highest of the dignitaries when they win tournaments and bring laurels home. Those distinguishing

themselves in the international arena are conferred highest civilian awards like the Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri apart from sporting awards instituted by the Government. Such is the passion for this game in this country that cricketers are seen as icons by youngsters, middle aged and the old alike. Any organization or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial

review of State action. Our answer to question No.1, therefore, is in the negative, qua, the first part and affirmative qua the second. BCCI may not be State under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.

Re: Question No.2:

31. The Probe Committee, on an interpretation of the provisions of the relevant rules and the material placed before it, recorded a specific finding that Gurunath Meiyappan was working/associated with the IPL as team official of the Chennai Super Kings. The Committee further held that for the operation of the relevant Rules and Regulations it made no difference whether Gurunath Meiyappan was the owner or simply a team official of CSK. That is because so long as Gurunath Meiyappan was a team official, which the Committee found he was, the consequences of his acts of betting would flow even when he was not the owner, or the perceived owner of the CSK. That Gurunath Meiyappan was a team official of CSK owned by India Cements Ltd. was not disputed by either India Cements Ltd. or any other party appearing before us. Mr. Siddharth Luthra,

learned senior counsel appearing for Mr. Gurunath Meiyappan, however, declined to commit himself to any stand on that aspect. When asked if his client was a team official of CSK, Mr. Luthra claimed the right to remain silent as his client was being prosecuted in a Court at Mumbai for betting. We will concede to Mr. Gurunath Meiyappan the right to silence in view of the pendency of the prosecution launched against him. That does not, however, prevent the Court from examining whether Gurunath Meiyappan was a team official for purposes of disciplinary action permissible under the relevant rules and regulations. We may hasten to add that our examination of that issue will be without prejudice to Mr. Gurunath Meiyappan's right to claim that he was not a team official if at all the said question arises for consideration in the criminal trial pending against him, nor shall our opinion on the subject be taken as binding upon the criminal court where the question can be examined independently.

32. Having said that we find that the Probe Committee has correctly appreciated the facts as emerging from the documents and the depositions of witnesses recorded by it and rightly come

to the conclusion that Gurunath Meiyappan was a team official of CSK. That is so especially when India Cements Ltd. who owns the team made a candid admission before us that Gurunath Meiyappan was indeed a team official within the meaning of that expression under the rules. We, therefore, see no real, much less compelling reason, for us to disagree or reverse the finding recorded by the Probe Committee on that aspect.

33. The Probe Committee has on the basis of the material available to it further held that Gurunath Meiyappan was indulging in betting. That finding was not seriously assailed before us by Mr. Luthra, learned Senior Counsel appearing on his behalf. Mr. Luthra's concern was that since Mr. Gurunath Meiyappan was being prosecuted, any specific stance that he may take is likely to prejudice him at the trial in the criminal case. We have, however, made it clear and we do so again that any finding as to the involvement of Mr. Gurunath Meiyappan in betting activities recorded by the Probe Committee or by this Court shall remain confined to the present proceedings which are addressing the limited question whether any

administrative/disciplinary action needs to be taken against those accused of such activities. Having said so, we must make it clear that given the nature of the proceedings entrusted to the Probe Committee and the standard of proof applicable to the same, we see no reason to disagree with the conclusion of the Probe Committee that Gurunath Meiyappan was indeed indulging in betting. The material assembled in the course of the investigation by the Probe Committee provides a reasonably safe basis for holding that the accusations made against Gurunath Meiyappan stood established on a preponderance of probabilities. We are at any rate not sitting in appeal against the findings of a Domestic Tribunal set up to enquire into the allegations of misconduct levelled against a team official of a participating team. We are not, therefore, re-appraising the material that has been assembled by the Probe Committee and relied upon to support its finding. The finding is by no means without basis or perverse to call for our interference with the same.

34. That brings us to the findings recorded against Mr. Raj Kundra, whose part ownership and accreditation as a team

official of Rajasthan Royal was not disputed before us. In its report dated 9th February, 2014, the Probe Committee had referred to the statement of Mr. Umesh Goenka, recorded under Section 164 of the Cr.P.C. by a Delhi Court in which the said Mr. Goenka had stated that Mr. Raj Kundra used to indulge in betting in IPL matches through him. The Probe Committee opined that the allegations levelled against Mr. Raj Kundra and his wife Ms. Shilpa Shetty required to be investigated further. The Committee held that if the allegations of betting were found proved against Mr. Raj Kundra and his wife Shilpa Shetty the same would constitute serious infraction of the IPL Operational Rules, the IPL Anti-Corruption Code and the IPL Code of Conduct for Players and Team Official. The Committee observed:

"The Committee is thus of the view that if the allegations of betting against Mr. Raj Kundra and Ms. Shetty who are part of Rajasthan Royals, stand proved the same would constitute a serious infraction of Sections 2.2.1 and 2.14 of the IPL Operational Rules for bringing the game in disrepute, Articles 2.2.1, 2.2.2 and 2.2.3 of the IPL Anti Corruption Code for acts of betting and Articles 2.4.4 of the IPL Code of Conduct for Players and Team Officials, for bring disrepute to the game of cricket."

35. A concurring report submitted by Mr. Nilay Dutta the third member of the Probe Committee also expressed a similar view when it said:

*"There seems to have been an effort to cover up the involvement of Mr. Raj Kundra in betting. In terms of the regulations in force of the BCCI, even legal betting is not permitted on the part of an owner of a franchisee. No benefit would accrue to Mr. Raj Kundra by an attempt to show that bets were placed through legal betting methods in other countries. **There are materials on record which justify an appropriate investigation to ascertain the culpability of Mr. Raj Kundra and his wife Ms. Shilpa Shetty in placing bets as owner of a franchisee in IPL. Any such culpability on the part of the Kundras would fasten liability on the franchisee, Jaipur IPL Cricket Private Limited and it would be incumbent to ascertain such liability of the franchisee for purposes of appropriate sanctions under the Operational Rules and/or the Franchise Agreement.** The Committee understands that the suspension imposed on Mr. Raj Kundra by the BCCI is still in force. The BCCI must take a zero tolerance position as regards corruption in cricket and any possible violation of the BCCI Anti-Corruption Code and the Operational Rules by any person. It goes without saying that Mr. Raj Kundra and his wife Ms. Shilpa Shetty Kundra were owners as per the Franchise Agreement and accredited as such under the IPL Operational Rules. They are Team officials within the meaning of the said Rules. Being Team officials they are subject to the Code of conduct for Players and Team Officials prohibiting betting in course of IPL matches and would face appropriate sanctions under the Operational Rules. It would be in fitness of things that pending final determination of the culpability of the Kundras, they be kept suspended from participating in any activity of the BCCI including the IPL matches in view of the materials on record."*

36. This Court taking note of the observations made by the Probe Committee not only directed further investigation into the allegations against Mr. Raj Kundra but also provided necessary support to the Probe Committee to do so effectively. The Committee has on the basis of the said further investigation and enquiry come to the conclusion that Mr. Raj Kundra was a 'team official', a 'player support personnel' and 'participant' within the meaning of the relevant rules and that he had indulged in betting.

37. The Committee has, while dealing with the case of Mr. Raj Kundra, referred to as Individual No.11 in the said report observed:

"Individual 11: This individual was in touch with the bookies about betting and thus by not reporting contact with the bookie has violated BCCI/IPL Anti-Corruption Code. The Committee also found that the investigation against this individual was abruptly and without reason stopped by the Rajasthan Police upon receiving the case papers from Delhi Police. The Committee found that a friend of individual 11 was a known punter. The said punter has given a section 164 statement to the effect that he was placing bets on behalf of individual 11. Individual 11 had introduced him (punter) to another bookie who dealt with larger stakes. Section 161 statement made by another player confirmed that individual 11 introduced him to a bookie. Materials on record indicate that individual 11 was placing bets or was at the minimum standing guarantee for his punter friend.

These infractions also violate BCCI/IPL Anti-Corruption Code."

38. Appearing for Mr. Raj Kundra, Mr. Shakher Naphade, learned senior counsel, argued that the report submitted by the Probe Committee could at best be taken as a preliminary report. A proper enquiry into the allegations made against Mr. Raj Kundra shall have to be separately conducted in terms of the relevant rules and regulations. In support of that contention he placed reliance upon the disciplinary procedure prescribed under Rule 6.2.2 of the IPL Operational Rules which postulates establishment of a "Disciplinary Procedure Commission" to hear and adjudicate upon any complaint alleging any breach or misconduct under the regulations. In terms of Rule 6.2.2 the Commission has to comprise three members of IPL Code of Behaviour Committee selected by BCCI. The Commission is in terms of Rule 6.2.4 empowered to investigate any breach of the regulations or any Player Contract by any person subject to the Operational Rules. Rule 6.3.1 prescribes the complaint procedure which is according to the learned counsel mandatory especially when Rule 6.3.8 requires the hearing to be conducted in a fair manner and in consonance with the principles of natural

justice including the right to call and to question and examine witnesses in person or by telephone or video conference where necessary. Reliance was placed upon Rule 6.3.19 to argue that standard of proof in support of the complaint shall be whether "the Commission is comfortably satisfied" bearing in mind the seriousness of the allegations made regarding the 'commission of the offence' and that the standard of proof in all cases shall be considered on a sliding scale from, at a minimum, a mere balance of probability upto proof beyond a reasonable doubt from the least serious to the most serious offences. It was contended that the person found guilty is then entitled to file an appeal before the Appeal Commission established under Section 6.5.4 consisting upto three members to hear and decide the appeal. This procedure, it was argued by Mr. Naphade, could not be deviated from as the rules were binding upon the parties concerned. Reliance in support was placed on the decisions of this Court in ***T.P. Daver v. Lodge Victoria No.363 S.C. Belgaum and Ors. (AIR 1963 SC 1144), Ambalal Sarabhai and Ors. v. Phiroz H. Anita (AIR 1939 Bombay 35) and Lennox Arthur Patrick O' Reilly and Ors. v. Cyril Cuthbert***

Gittens (AIR 1949 PC 313).

39. On behalf of Jaipur IPL Cricket Private Ltd. it was argued by Mr. Ashok Desai, learned senior counsel that there was no direct allegation against the said company and that the findings recorded by the Probe Committee that Mr. Raj Kundra was the owner of Rajasthan Royals was not wholly correct inasmuch as Raj Kundra and his family own just about 11% equity in the holding company of respondent No.4-Jaipur IPL Cricket Private Ltd. Having said that Mr. Desai fairly conceded that Raj Kundra was duly accredited and doubtless a 'team official' in terms of IPL Operational Rules and also 'Player Support Personnel' and Participant in terms of the IPL Anti-Corruption Code. Mr. Desai, however, assailed the findings recorded by Justice Mudgal Committee that Mr. Raj Kundra had indulged in betting in IPL matches and argued that the report was vague and unsustainable against Mr. Raj Kundra more so against Rajasthan Royals. It was argued by him that Mr. Raj Kundra was never a part of the management directly or indirectly and had never participated in the management decisions including decisions regarding the purchase of players or the strategy adopted by

the franchisee or its team. No notice was, according to Mr. Desai, served upon respondent No.4-company although Mr. Raj Kundra was summoned and examined by the Probe Committee. According to the learned counsel, Justice Mudgal Committee had only completed the first stage process of investigation leaving the second stage 'fact finding' and the third stage 'adjudication' issues open. It was contended that even if Mr. Raj Kundra was held to be guilty of betting, the question whether any punishment/sanctions could be imposed upon a franchisee will have to be considered in the totality of the circumstances having regard to the fact that other promoters of the company that owns Rajasthan Royals need not be punished for the misconduct of one of the promoters holding only 11% equity. The question of proportionality of the sanction/punishment shall also have to be kept in mind argued Mr. Desai.

40. There is no gainsaying that the IPL Operational Rules provide for what is described as 'disciplinary and complaint procedure' to be followed in regard to the complaints and/or breaches of the regulations and/or charges of misconduct levelled against anyone connected with the IPL. This procedure

includes establishment of a 'Disciplinary Procedure Commission' to hear and decide such matters. The Commission is in terms of Rule 6.2.2 to comprise three members of the IPL Code of Behaviour Committee to be selected by the BCCI. It is also clear from Rules 6.3.1 to 6.3.21 that the Commission is required to follow a fair and reasonable procedure consistent with the principles of natural justice. In terms of Rule 6.3.19 standard of proof can vary between balance of probability and proof beyond a reasonable doubt depending upon the seriousness of the allegations being examined by the Commission. What is important is that the Commission is not in terms of Regulation 6.3.20 bound by strict rules of evidence and that facts relating to any offence can be established by any reliable means including admissions. This procedure can and indeed ought to be followed in cases where there is no real or compelling justification for a departure. Two distinct aspects all the same need be kept in mind in the case at hand. The first is that even the BCCI had not adhered to the prescribed procedure in the present case. Instead of constituting a 'Disciplinary Procedure Commission' comprising three members of IPL Code of

Behaviour Committee, the BCCI had appointed a three-member Committee comprising two former Judges of the High Court of Madras with Mr. Jagdale as the third member. The departure came ostensibly because of a public hue and cry over betting by those owning the participating teams. The situation was in that view extraordinary which called for an extraordinary approach. A Committee comprising two former Judges of the High Court of Madras was BCCI's response to the extraordinary situation with Mr. Jagdale as the third member. The Probe Committee was reduced to two members after Mr. Jagdale decided to resign, but the Committee was asked by the Board to continue and complete the probe even with its reduced strength. This was a conscious departure by the BCCI from the procedure laid down by the IPL Operational Rules which was faulted by the High Court of Bombay in the writ petition filed by the appellant-association. When the matter travelled to this Court the seriousness of the allegations and the ramifications involved led to the setting up of a High Powered Probe Committee in place of the Disciplinary Procedure Commission contemplated by the IPL Operational Rules and Regulations. The whole purpose

behind setting up of the Probe Committee was to make the entire process of investigation and enquiry into the allegations credible. The Probe Committee headed by a former Chief Justice of the High Court of Punjab and Haryana was never intended to conduct a preliminary investigation as was suggested by M/s Naphade and Desai. It was on the contrary understood by all concerned to be a substitute for the Disciplinary Procedure Commission under the Rules empowered to examine the allegations and record findings. It is wholly wrong to suggest that the report of such a High Powered Probe Committee could be trivialised by treating it as a preliminary investigation that could lead to no more than initiation of proceedings before the Disciplinary Procedure Commission envisaged by Rule 6.2.2 of the Rules mentioned above.

41. The second aspect is that the Probe Committee set up by the BCCI had expressed its inability to do anything in the matter on account of absence of any material to support the allegations appearing in the press. The BCCI had, for all intents and purposes, treated that finding to be conclusive giving a quietus to the controversy. It was not as though the finding of the

Committee comprising two former Judges of the Madras High Court was meant to be some kind of a preliminary report which would require scrutiny or examination by the Disciplinary Procedure Commission before a clean chit was given to the individuals concerned. If that be so, it is difficult to countenance the argument that IPL Operational Rules had any further role to play in the matter of an enquiry into the allegations levelled against the persons concerned. It is equally difficult to appreciate how the significance of the reports submitted by the Probe Committee set up by this Court could be undermined simply because the IPL Operational Rules provide for a Disciplinary Procedure Commission with a particular composition. We have in that view no hesitation in rejecting the contention urged by M/s. Naphade and Desai that the procedure prescribed by the IPL Operational Rules must be followed despite all that has transpired till now or that the report submitted by Justice Mudgal Committee was of no value except that it could provided a basis for setting the Disciplinary Procedure into motion. We need to remember that the direction for appointment of a Probe Committee was issued in exercise of

appellate powers vested in this Court in proceedings arising out of Article 226 of the Constitution as also those vested in this Court under Article 142 thereof. We also need to remember that the directions came in a public interest petition with a view to finding out whether there was any truth in the allegations that owners of IPL teams and franchisees were in a big way indulging in sporting frauds thereby discrediting the game and cheating the public of their confidence in its purity. That being the object, it is futile to set up the "disciplinary procedure" under the Rules against the exercise of such plenary powers as are vested in this Court under the constitutional provisions mentioned above.

42. Having said that we must say and say it without any hesitation that like the Disciplinary Procedure Commission even the Probe Committee set up by this Court was bound to observe the principles of natural justice in the matter of conducting the probe entrusted to it. That is because of the consequences that would flow from any finding which the Probe Committee would record against those accused of wrong doings. As seen earlier, Raj Kundra has been found to be a team official of Rajasthan Royals by the Probe Committee. Even according to the

concessions made before us by the learned counsel appearing for Mr. Raj Kundra Jaipur IPL Cricket Private Ltd. he was a duly accredited team official. Such being the position a notice was required to go only to Mr. Raj Kundra for it was he alone who was alleged to have indulged in betting. Mr. Desai's contention that since the Committee did not issue any notice to Jaipur IPL Cricket Private Ltd. the owner of Rajasthan Royals the finding recorded by the Probe Committee holding Mr. Raj Kundra guilty of betting was vitiated does not appear to be sound to us. Whether or not Mr. Raj Kundra's misconduct can and should result in loss of franchise granted to Rajasthan Royals is a matter which may concern Jaipur IPL cricket Private Ltd. but that is a different matter altogether. The question immediately falling for our consideration is not whether the franchise held by Mr. Desai's client should be cancelled. The question is whether Mr. Raj Kundra was heard by the Justice Mudgal Committee, before holding him guilty of betting. Our answer to that question is in the affirmative. Admittedly, Mr. Raj Kundra was heard by the Committee before concluding that he had indulged in betting. Absence of any notice to anyone else was of little

consequence so long as the person concerned was duly notified and afforded a fair opportunity. To that extent, therefore, the grievance sought to be projected by the Jaipur IPL Private Ltd. regarding absence of any notice need be noticed only to be rejected.

43. There was no serious challenge to the findings recorded by the Probe Committee on the merits of the findings against Mr. Raj Kundra. Mr. Desai appearing for Jaipur IPL Cricket Private Ltd., no doubt, contended that the finding was based on certain assumptions, but we do not see any merit in those contentions. Even otherwise strict rules of evidence do not have any application to an enquiry like the one entrusted to the Probe Committee or contemplated by IPL Operational Rules. The essence of the rules applicable even to the Disciplinary Commission is that it ought to adopt a fair and reasonable procedure while enquiring into the allegations of misconduct. Rule 6.3.19 of the Operational Rules specifically states that the standard of proof in respect of all complaints shall be "whether the Commission is comfortably satisfied" with the allegations that the offence has been committed. Such satisfaction could on

a sliding scale vary from a mere balance of probability upto proof beyond a reasonable doubt. Rules of evidence are made specifically inapplicable to the disciplinary proceedings in terms of Rule 6.3.20 of the IPL Operational Rules. The Probe Committee's findings in our opinion comply with all the basic requirements of fairness and reasonableness and, therefore, call for no interference from us particularly when we are not sitting in appeal over the said findings nor are we required to substitute our own conclusion based on a reappraisal of the material that was available before the Probe Committee for those of the Committee.

44. In the light of what we have stated, the decision of this Court in ***T.P. Daver's*** case (supra) does not lend any assistance to the respondents Raj Kundra or Jaipur IPL Cricket Private Ltd. That was a case arising out of expulsion of the appellant Mr. Daver as a member of Lodge Victoria No.363 S.C. at Belgaum on allegations suggesting commission of 12 masonic offences by him. The charges levelled against the appellant were put to vote and the members of the Masonic Lodge held each one of those charges to have been proved. This culminated in the passing of

a resolution expelling the appellant from the Lodge. An appeal against the said decision was dismissed and so was a further appeal to the Grand Lodge of Scotland who considered the sentence imposed on the appellant as one of "*suspension sine die*". It was in that background that a suit was instituted by Mr. T.P. Daver in the Court of Civil Judge, Senior Division for a declaration that the resolution passed by the Victoria Lodge was illegal and void and that he continued to be a member of the Lodge despite the said resolution. The suit was contested by the defendants and was eventually dismissed and so was an appeal before the High Court of Mysore. In a further appeal this Court held that while expelling a member, the conditions laid down in the rules must be strictly complied with. Relying upon ***Maclean v. Workers Union LR 1929 1 CHD 602, 623*** and ***LAPO Reilly v. C.C. Gittens (AIR 1949 PC 313)*** this Court held that in matters of this kind the decision of the domestic tribunal cannot be questioned so long as the Tribunal has not exceeded its jurisdiction or acted dishonestly or in bad faith. This Court summed up the principles applicable in the following words:

"9. *The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is*

bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra."

45. The present appeals do not arise from a suit as was the position in **T.P. Daver's** case (supra). More importantly, the present appeals arise out of writ proceedings instituted in public interest, a concept unknown when **T.P. Daver's** case (supra) was decided. At any rate, the domestic Tribunal under the rules in the instant case was substituted by a Tribunal constituted under the orders of the Court and with the consent of the parties, to serve a larger public good viz. to find out the veracity of the serious allegations of sporting frauds like spot fixing, match fixing and betting by those who were not only participants in the tournaments played but also managing the affairs of the BCCI giving rise to serious issues of conflict of interest adversely affecting the game so popular in this country

that any fraud as suggested was bound to shake the confidence of the public in general and those who love it in particular. Same is the position with the decision of the Bombay High Court in ***Ambalal Sarabhai and Ors. v. Phiris H. Antia (AIR 1939 Bom. 35)***. That was also a case where a member of a social club was expelled from the club and the expulsion challenged in the Court. A Single Judge of the High Court of Bombay in second appeal held that the club had not followed the elementary principles of natural justice which gave enough room to the Civil Court to interfere. The position in the case at hand is in no way analogous to the fact situation of that case. So long as Mudgal Committee has conducted the proceedings in consonance with the principles of natural justice, the Committee's finding that Raj Kundra was a team official of Rajasthan Royals and that he had indulged in betting cannot be faulted.

46. Our answer to question No.2 is, therefore, in the affirmative.

Re: Question No.3:

47. What possible action is permissible against Mr. Gurunath Meiyappan and Raj Kundra and their teams and Franchisees is

what logically falls for our consideration in the face of our answer to question No.2 above. There is no gainsaying that the question shall have to be answered by reference to the set of rules applicable. It is common ground that there are different sets of rules and regulations applicable to the fact situation at hand. It is also not in dispute that even the franchise agreement between the BCCI and the franchisees contain provisions that provide for action in situations like the one at hand. We shall, for the sake of clarity, answer the question by reference to each set of rules separately.

(i) **Permissible action in terms of the IPL Operational Rules:**

48. In Section I of the IPL Operational Rules are defined different expressions used in the said Rules. Sections 2 and 4 stipulate obligations of the franchisees and team/players while Section 6 thereof prescribes regulations and disciplinary procedure which, *inter alia*, includes under Section 6.1 sanctions that can be imposed for acts of misconduct if any committed. The relevant provisions of IPL Operational Rules effective from 15th March, 2013 are as under:

"SECTION 1 – DEFINITIONS

1.1 In these Operational Rules (unless the context requires otherwise) the following expressions shall have the following meanings:

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

Franchisee means an entity which has entered into a Franchise Agreement with BCCI;

Franchise Agreement means an agreement between BCCI and a third party (a Franchisee) under which such Franchisee as agreed to filed a Team in the league and pursuant to which such Franchisee enjoys certain rights and has assumed certain obligations as set out therein and as contemplated by these Operational Rules;

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

Person means any individual, company, partnership or any other entity of any kind.

Person subject to these Operational Rules means any Franchisee, any Player, any Team Official and/or any Match Official;

Player means a person who has been registered as a player with BCCI;

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

Regulations means, together, these Operational Rules and the IPL Regulations;

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

SECTION 2 – FRANCHISEE AND TEAM/PLAYER OBLIGATIONS-GENERAL

2.1 EFFECT OF OPERATIONAL RULES

Participation in or other involvement with the League is deemed to constitute and to be an acceptance by each person subject to these Operational Rules of an agreement with and obligation owed to BCCI to be bound by and subject to the

Regulations, the Laws of Cricket, the terms of each relevant Player Contract (insofar as such Player Contract relates to any Persons subject to these Operational Rules) and the jurisdiction of the BCCI in connection therewith.

2.2 OBLIGAION TO COMPETE/OTHER MATCHES

2.2.1 *Each Franchisee shall procure that its Team shall in good faith compete to the best of its ability in the League in general and in each Match in which its Team participates*

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

2.14 CONDUCT

Each person subject to these Operational Rules shall not, whether during a Match or otherwise, act or omit to act in any way which would or might reasonably be anticipated to have an adverse affect on the image and/or reputation of such Person, any Team, any Player, any Team Official, the BCCI, the League and/or the Game or which would otherwise bring any of the foregoing into disrepute.

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

SECTION 4 – OTHER FRANCHISEE OBLIGAIONS

4.1 TEAM OFFICIALS

4.1.1 *Each Franchisee shall ensure that each of its Team Officials complies with the Regulations, including without limitation, the BCCI Anti-Corruption Code for Participants (and the attention of Franchises is drawn in particular to Article 2 of the BCI Anti-Corruption Code for Participants for a list of the offences under that code). For the avoidance of doubt, all of those persons who are accredited as representing the Franchisee, whether accredited for the League by BCCI either centrally or locally, shall be deemed to be a Team Official for the purpose of the Regulations.*

XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX

SECTION 6 - REGULATIONS AND DISCIPLINARY PROCEDURE

6.1 APPLICABLE REGULATIONS

6.1.1 *The provisions of the regulations listed in paragraph 1.2 of this Section (being the IPL Regulations) together with these Operational Rules shall apply to the League and bind any person subject to these Operational Rules such that they shall be bound to comply with such of them as apply to each such Person.*

6.1.2 *The IPL Regulations referred to in paragraph 1.1 above are as follows;*

(i)
.....
.....

(viii) the IPL Code of Conduct for Players and Team Officials;
.....
.....

(xiv) the BCCI Anti-Corruption Code for Participants;
(xv) the IPL Auction Briefing;
(xvi) BCCI's Minimum Standards for Players and Match Officials Areas at Matches.
(xvii) any other code as may be issued by BCCI from time to time which shall be made available either on the Official IPL website, the Tournament Handbook or otherwise by BCCI (and each Person subject to these Operational Rules shall be obliged to ensure that it abides by the latest version of the Regulations)

6.4 SANCTIONS

6.4.2 *The Commission may, through BCCI, impose one or more of the following sanctions or actions in relation to any Offence;*

- (a) *order compensation and/or an order that the reasonable costs of the proceedings in relation to any Complaint be borne by whichever Person has been found to have committed the Offence or apportioned in cases where two or more Persons have committed an Offence;*
- (b) ***suspend a Player or other Person Subject to these Operational Rules from playing or otherwise being involved in Matches for a specified period;***

(c) *suspend a Team or Franchisee from the League;*

- (d) *order the payment of money from a Person subject to these Operational Rules either to BCCI or to another Person including another Person subject to these Operational Rules;*
- (e) *order a declaration as to any finding of fact or interpretation of the Regulations and/or any Player Contract.*
- (f) *order a deduction of points from a Team;*
- (g) *order rectification of a contract or refuse the registration of a Player by BCCI;*
- (h) *order the specific performance of an act or matter, or to do or stop doing or not to do something;*
- (i) *Impose a financial penalty payable to BCCI or any other Person*
- (j) *order any other sanction action that the Commission views as reasonable in the interest of justice."*

49. A careful reading of the Operational Rules extracted above would show that every franchisee, player, team official, and/or match official is subject to the said rules. In terms of Rule 2.1 (supra) participation or other involvement with the league is deemed to constitute an acceptance by each person subject to these operational rules of an agreement with an obligation owed to BCCI to be bound by the regulations, the laws of cricket, the terms of the player contract and the jurisdiction of the BCCI in connection therewith. In terms of Rule 2.1.4 (supra) each

person subject to these rules is restrained from acting or omitting to act in any way that would or might reasonably be anticipated to have an adverse affect on the match and/or reputation of such person, any team, any player, any team official, the BCCI, the league and/or the game or which would otherwise bring any of the foregoing into disrepute. More importantly, each franchisee is in terms of Rule 4.1.1 under an obligation to ensure that each of its team official complies with the regulations, and in particular Article 2 of the BCCI and Anti-Corruption Code. The rule, however, provides that all those persons who are accredited for the league by BCCI either centrally or locally, shall be deemed to be team officials for the purposes of those regulations. In terms of Regulation 6.4 (supra) BCCI can impose any one of the sanctions enumerated thereunder which includes suspension of the player or other person subject to the Operational Rules from playing or involving in matches for a specified period and suspension of the team or franchisee from the league. Payment of money from a person subject to these Operational Rules either to BCCI or to any other person subject to those rules is also provided as one

of the permissible sanctions.

50. The upshot of the above discussion is that once Mr. Gurunath Meiyappan and Mr. Raj Kundra are accepted as team officials, their misconduct which has adversely affected the image of the BCCI and the league as also the game and brought each one of them to disrepute can result in imposition of one or more of the sanctions stipulated under Rule 6.4 (supra). It is noteworthy that those sanctions are not limited to Gurunath Meiyappan and Raj Kundra alone but may extend to suspension of the team or the franchisee from the league also.

(ii) **Permissible action under the Anti Corruption Code for participants:**

51. The BCCI claims to have adopted the Anti Corruption Code for achieving, what it describes as certain “fundamental sporting imperatives”. We may fruitfully reproduce those fundamental sporting imperatives only to highlight that the BCCI is, by the standards set by it, duty bound to ensure that the game of cricket is played in accordance with those sporting imperatives not only because the game itself is described as a gentleman’s game but also because adherence to sporting imperatives alone

can maintain the public confidence in its purity. The BCCI has, as will appear from a plain reading of the imperatives set out in the Rules, committed itself in no uncertain terms to maintaining public confidence in the game. The BCCI stand firmly committed to the following fundamental sporting imperatives:

"1.1.1 All cricket matches are to be contested on a level playing-field, with the outcome to be determined solely by the respective merits of the competing teams and to remain uncertain until the cricket match is completed. This is the essential characteristic that gives sport its unique appeal.

1.1.2 Public confidence in the authenticity and integrity of the sporting contest is therefore vital. If that confidence is undermined, then the very essence of cricket will be shaken to the core. It is the determination to protect that essence of cricket that has led the Board of Control for Cricket in India to adopt this Anti-Corruption Code.

1.1.3 Advancing technology and increasing popularity have led to a substantial increase in the amount, and the sophistication, of betting on cricket matches. The development of new betting products, including spread-betting and betting exchanges, as well as internet and phone accounts that allow people to place a bet at any time and from any place, even after a cricket match has started, have all increased the potential for the development of corrupt betting practices. That, in turn, increases the risk that attempts will be made to involve participants in such practices. Even where that risk is more theoretical than practical, its consequence is to create a perception that the integrity of the sport is under threat.

1.1.4 Furthermore, the nature of this type of misconduct is such that it is carried out under cover and in secret, thereby creating significant challenges for the BCCI in the enforcement of rules of conduct. As a consequence, the BCCI needs to be empowered to seek information

from and share information with competent authorities and other relevant third parties, and to require Participants to cooperate fully with all investigations and requests for information.

1.1.5 The BCCI is committed to taking every step in its power to prevent corrupt betting practices undermining the integrity of the sport of cricket, including any efforts to influence improperly the outcome or any other aspect of any Match or Event."

(emphasis supplied)

52. In Appendix 1 to the Anti-Corruption Code for Participants are given definitions for different terms appearing in the said Code including a definition for expressions like, bet, Corrupt Conduct, domestic match, event, ineligibility, inside information, match, participant, player, player support personnel etc. The relevant part of the Appendix dealt with the definition may also be extracted for the sake of clarity:

"DEFINITIONS:

Anti-Corruption Code. This Anti-Corruption Code promulgated by the BCCI on the Effective date.

Bet. Any wager, bet or other form of financial speculation, and Betting is the carrying out of such activity.

Corrupt Conduct. Any act or omission that would amount to an offence under Article 2 of this Anti-Corruption Code or the equivalent provisions of anti-corruption rules of any other National Cricket Federation or the ICC Anti-Corruption Code.

Domestic Match. Any 'First-Class Match', 'List A Limited Overs Match' or 'List A Twenty20 Match', as those terms

are defined in the ICC Classification of Official Cricket (as amended from time to time) including all matches organized by the BCCI.

Event. Any competition, tournament, tour, event or equivalent that involves one or more Matches.

Ineligibility. Means the Participant is barred for a specified period of time from participation in the sport of cricket, as set out more specifically in Article 6.5.

Inside Information. Any information relating to any Match or Event that a Participant possesses by virtue of his/her position within the sport. Such information includes, but is not limited to, factual information regarding the competitors in the Match or Event, the conditions, tactical considerations or any other aspect of the Match or Event, but does not include such information that is already published or a matter of public record, readily acquired by an interested member of the public, or disclosed according to the rules and regulations governing the relevant Match or Event.

Match. A cricket match of any format and duration in length in which two cricket teams compete against each other.

Participant. Any Player, Player Support Personnel, Umpire, Match Referee or Umpire Support Personnel.

Player. Any cricketer who is selected (or who has been selected in the preceding twelve (12) months) in any playing or touring team or squad that is chosen to represent the BCCI or any of its affiliate and associate bodies in any International Match or Domestic Match.

Player Support Personnel. Any coach, trainer, manager, selector, team official, doctor, physiotherapist or any other person employed by, representing or otherwise affiliated to a playing/touring team or squad that is chosen to represent a National Cricket Federation in any Domestic Match or International Match or series of such Matches.

Suspension. Means the Participant is temporarily barred from participating in the sport of cricket pending a decision on the allegation that he/she has committed an

offence under this Anti-Corruption Code, as set out more specifically in Article 4.6.”

53. In terms of Article 2 appearing in the Code of Anti-Corruption, betting, misuse of inside information are some of the actionable wrongs under the Code. Article 2 reads:

**"ARTICLE 2 – OFFENCES UNDER THIS ANTI-CORRUPTION CODE
2.2.1 CORRUPTION**

2.2.1 Fixing or contriving in any way or otherwise influencing improperly, or being a part to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any Match or Event.

2.1.2 Seeking, accepting, offering or agreeing to accept any bribe or other Reward to fix or to contrive in any bribe or other Reward to fix or to contrive in any way or otherwise to influence improperly to result, progress, conduct or any other aspect of any Match or Event.

2.1.4 Soliciting, including, enticing, instructing, persuading, encouraging or facilitating (a) any Participant to commit an offence under any of the foregoing provisions of this Article 2.1 and/or (b) any other person to do any act that would be an offence if that person were a Participant

2.2.2 BETTING

2.2.1 *Placing, accepting, laying or otherwise entering into any Bet with any other party (whether individual, company or otherwise) in relation to the result, progress, conduct or any other aspect of any Match or Event.*

2.2.2. *Soliciting, including, enticing, instructing, persuading, encouraging, facilitating or authorising any other party to enter into a Bet for the direct or indirect benefit of the Participant in relation to the result, progress, conduct or any other aspect of any Match or Event.*

2.2.3 MISUSE OF INSIDE INFORMATION:

2.3.1 *Using, for Betting purposes, any inside information*

2.3.2 *Disclosing inside information to any person (with or without Reward) before or during any Match or Event where the participant might reasonably be expected to know that disclosure of such information in such circumstances could be used in relation to Betting.*

NOTE: Any potential offence under this Article will be considered on its own set of facts and the particular circumstances surrounding any relevant disclosure. For example, it may be an offence under this clause to disclose inside information: (a) to journalists or other members of the media; and/or (b) on social networking websites where the Participant might reasonably be expected to know that disclosure of such information in such circumstances could be used in relation to Betting. However, nothing in this Article is intended to prohibit any such disclosure made within a personal relationship (such as to a member of the Participant's family) where it is reasonable for the Participant to expect that such information can be disclosed in confidence and without being subsequently used for Betting.

2.3.3. *Soliciting, inducing, enticing persuading, encouraging or facilitation (a) any Participant to commit an offence under any of the foregoing provisions of this Article 2.3 and/or (b) any other person to do any act that would be an offence if that person were a Participant.*

2.4 GENERAL

2.4.1 *Providing or receiving any gift, payment or other benefit (whether of a monetary value or otherwise) in circumstances that the Participant might reasonably have expected could bring him/her or the sport of cricket into disrepute.*

NOTE: This Article is only intended to catch 'disrepute' that, when considered in all of the relevant circumstances, relates (directly or indirectly) to any of the underlying imperatives of and conduct prohibited by this Anti-Corruption Code (including as described in Article 1.1.)

Where any substantial gift, payment or other benefit is received by any Participant from an unknown person or organisation and/or for no apparent reason, such Participant is advised to report such receipt to the Designated Anti-Corruption Official (or his/her designee). Where such Participant does not make such a report, then that is likely to constitute strong evidence of the commission of this offence.

2.4.2 *Failing or refusing to disclose to the ACU BCCI (without undue delay) full details of any approaches or invitations received by the Participant to engage in conduct that would amount to a breach of this Anti-Corruption Code.*

2.4.3 *Failing or refusing to disclose to the ACU BCCI (without undue delay) full details of any incident, fact or matter that comes to the attention of a Participant that may evidence an offence under this Anti-Corruption Code by a third party, including (without limitation) approaches or invitations that have been received by any other party to engage in conduct that would amount to a breach of this Anti-Corruption Code.*

Note: All Participants shall have continuing obligation to report any new incident, fact, or matter that may evidence an offence under this Anti-Corruption Code to the ACU-BCCI, even if the Participants' prior knowledge has already been reported.

2.4.4 *Failing or refusing, without compelling justification, to cooperate with any reasonable investigation carried out by the Designated Anti-Corruption Official (or his/her designee) in relation to possible offences under this Anti-Corruption Code, including failure to provide any information and/or documentation requested by the Designated Anti-Corruption Official (or his/her designee) (whether as part of a formal Demand pursuant to Article 4.3 or otherwise) that may be relevant to such investigation.*

2.5.1 *Any attempt by a Participant, or any agreement between (a) a Participant and (b) any other person, to act in a manner that would culminate in the commission of an offence under this Anti-Corruption Code, shall be treated as if an offence had been committed, whether or not such attempt or agreement in fact resulted in the*

commission of such offence. However, there shall be no offence under this Anti-Corruption Code where the Participant renounces the attempt or agreement prior to it being discovered by a third party not involved in the attempt or agreement.

2.5.2 *A participant who authorises, causes, knowingly assists, encourages, aids, abets, covers up or is otherwise complicit in any acts or omissions of the type described in Article 2.1 – 2.4 committed by his/her coach, trainer, manager, agent, family member, guest or other affiliate or associate shall be treated as having committed such acts or omissions himself and shall be liable accordingly under this Anti-Corruption Code.”*

54. Sanctions prescribed under Article 6 of the Code include suspension ranging from six months to a lifetime depending upon the nature and gravity of the offence/misconduct proved against the person concerned. Article 6 runs as under:

"6.1 Where it is determined that an offence under this Anti-Corruption Code has been committed, the BCCI Disciplinary Committee will be required to impose an appropriate sanction upon the Participant from the range of permissible sanctions described in Article 6.2. In order to determine the appropriate sanction that is to be imposed in each case, the BCCI Disciplinary Committee must first determine the relative seriousness of the offence, including identifying all relevant factors that it deems to:

6.1.1 aggravate the nature of the offence under this Anti-Corruption Code, namely:

.....

6.1.1.4 where the offence substantially damaged (or had the potential to damage substantially) the commercial value and/or the public interest in the relevant Match(es) or Event(s);

6.1.1.5 where the offence affected (or had the potential to affect) the result of the relevant Match(es) or Event(s);

6.1.1.6 where the welfare of a Participant or any other person has been endangered as a result of the offence;

6.1.1.7 where the offence involved more than one Participant or other persons; and/or

6.1.1.8 any other aggravating factor(s) that the BCCI Disciplinary Committee considers relevant and appropriate.

6.1.2 mitigate the nature of the offence under the Anti-Corruption Code, namely;

6.1.2.2 the Participant's good previous disciplinary record;

6.1.2.3 the young age and/or lack of experience of the Participant;

6.1.2.4 where the Participant has cooperated with the Designated Anti-Corruption Official (or his/her designee) and any investigation or Demand carried out by him/her;

6.1.2.5 where the offence did not substantially damage (or have the potential to substantially damage) the commercial value and/or the public interest in the relevant Match(es) or Event(s);

6.1.2.6 where the offence did not affect (or have the potential to affect) the result of the relevant Match(es) or Event(s);

6.1.2.8 where the Participant has already suffered penalties under other laws and/or regulations for the same offence; and/or

6.1.2.9 any other mitigating factor(s) that the BCCI Disciplinary Committee considers relevant and appropriate.

6.2 Having considered all of the factors described in Articles 6.1.1 and 6.1.2, the BCCI Disciplinary Committee shall then determine, in accordance with the following table, what the appropriate sanction(s) should be:"

ANTI		ADDITIONAL
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CORRUPTION CODE OFFENCE	RANGE OF PERMISSIBLE PERIOD OF INELIGIBILITY	DISCRETION TO IMPOSE A FINE
Articles 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (Corruption)	A minimum of five (5) years and a maximum of a lifetime.	AND (in all cases) the Anti-Corruption Tribunal shall have the discretion to impose a fine on the Player or Player Support Personnel up to a maximum of the value of any Reward received by the Player or Player Support Personnel directly or indirectly, out of, or in relation to, the offence committed under the Anti-Corruption Code.
Articles 2.2.1, 2.2.2 and 2.2.3 (Betting)	A minimum of two (2) years and a maximum of five (5) years.	
Articles 2.3.1 and 2.3.3 (as it relates to an offence under Article 2.3.1) (Misuse of inside information)	A minimum of two (2) years and a maximum of five (5) years.	
Articles 2.3.2 and 2.3.3 (as it relates to an offence under Article 2.3.2) (Misuse of inside information)	A minimum of six (6) months and a maximum of five (5) years.	
Articles 2.4.1 and 2.4.2	(General) A minimum of one (1) year and a maximum of five (5) years).	
Articles 2.4.3 and 2.4.4	(General) A minimum of six (6) months and a maximum of two (2) years.	

55. It is manifest that Article 2.2.1 treats betting as one of the actionable wrongs under the Code. In terms of Article 2.5.2 the participant who authorises, causes, knowingly assists, encourages, aids, abets, covers up or is otherwise complicit in any act or omission of the types described in Articles 2.1. to 2.4 committed by his/her coach, trainer, manager, agent, family

member, guest or other associate shall be treated as having committed such an act or omission himself and shall be liable accordingly under the Anti-Corruption Code. The expression 'participant' has been defined to include any player, player support personnel, Umpire, match Referee or Umpire Support Personnel. The expression 'player support personnel' means any coach trainer, manager, selector, team official, doctor etc. Mr. Gurunath Meiyappan having been found to be a team official of Chennai Super Kings is a "player support personnel" hence a participant within the meaning of the Anti-Corruption Code. What is important is that apart from Gurunath Meiyappan in his capacity as the team official if any participant connected with CSK, authorises, causes, knowingly assists, encourages, aids, abets, covers up or is otherwise complicit in any act or omission he/she will also be liable to action under the Anti-Corruption Code as if he/she had himself/herself committed the act of misconduct.

56. In terms of Article 6 of the Code, upon consideration of relevant factors the disciplinary committee of the BCCI is empowered to impose an appropriate sanction upon the

delinquent having regard to the provisions of Article 6.2 and the Table appearing thereunder. There is, therefore, no manner of doubt that even under the Anti-Corruption Code for participants any act like betting can attract sanctions not only for the person who indulges in such conduct but also for all those who authorise, cause, knowingly assist, encourage, aid, abet, cover up or are otherwise complicit in any act of omission or commission relating to such activity.

(iii) **Permissible action under the “Code of Conduct for Players and the Team Official”:**

57. Code of conduct for Players and Team Officials also prescribes punishment/sanctions for players or team officials found guilty of different levels of offences stipulated in the said Code. Articles 2.1 - 2.5 stipulate different levels of offences which, if committed by the players or team officials, can lead to imposition of sanctions against them. Article 2.4.4 is, however, a catch all provision to cover all types of conduct which are not covered by specific offences set out in the Code. It reads:

"2.4.4. *Where the facts of the alleged incident are not adequately or clearly covered by any of the above offences, conduct that either; (a) is contrary to the spirit of the game; or (b) brings the game into disrepute.*

Note: Article 2.4.4 is intended to be a 'catch-all' provision of cover all types of conduct of an overwhelmingly serious nature that are not (and, because of their nature, cannot be) adequately covered by the specific offences set out elsewhere in the Code of Conduct.

See guidance notes to Article 2.1.8 for examples of conduct that may (depending upon the seriousness and context of the breach) be prohibited under Article 2.4.4."

58. The team official who is found guilty of betting is certainly acting against the spirit of the game and bringing disrepute to it. Article 7 of the Code empowers the match Referee or the Commissioner to impose suitable sanction upon the person concerned depending upon the level of the offence which is committed. The punishment can range between warning to suspension for a lifetime depending upon the nature and the gravity of the offence committed.

59. We may, before parting with the discussion on this question, refer to the Franchise Agreement executed between BCCI on the one hand and the franchisees on the other. Clause 11.3 of the said agreement reads:

"11.3 BCCI-IPL may terminate this Agreement with immediate effect by written notice if:

(a) there is a Change of Control of the Franchise (whether direct or indirect) and/or a Listing which in each case does not occur strictly in accordance with Clause 10;

(b) the Franchisee transfers any material part of its business or assets to any other person other than in accordance with Clause 10;

(c) the Franchisee, any Franchisee Group Company and/or any Owner acts in any way which has a material adverse effect upon the reputation or standing of the League, BCCI-IPL, BCCI, the Franchisee, the Team (or any other team in the League) and/or the game of cricket."

60. In terms of Clause 11.3 (c) (supra) if the franchisee, any franchisee group company and/or any owner acts in a manner that has a material adverse effect upon the reputation or standing of the league, BCCI-IPL, BCCI, the franchisee, the team or any other team and/or the game of cricket, the BCCI-IPL is empowered to terminate the agreement. The expression 'owner' has been defined in Clause 1.1 as under:

"Owner shall mean any person who is the ultimate Controller of the Franchisee;"

61. It is evident from the above provisions that the BCCI-IPL is in situations stipulated under Clause 11.3 competent to direct the termination of the agreement. What would constitute "material adverse effect" upon reputation or standing of the league or BCCI-IPL, BCCI, the franchisee, the team or game of cricket shall, however, depend upon the facts and circumstances of each case. What cannot be disputed is that the right to terminate the agreement is available to the BCCI-IPL even in

accordance with the provisions of the franchise agreements themselves.

62. Question No.3 is answered accordingly.

Re: Question No.4:

63. The Probe Committee has recorded a specific finding that the allegations of Match fixing, spot-fixing or betting were not proved against Mr. Srinivasan in the course of the enquiry. That finding was not seriously assailed before us, by Mrs. Chidambaram, counsel for the appellant Association. What was all the same strenuously argued by the learned counsel was that the facts brought on record clearly established that Mr. Srinivasan had attempted to cover up the betting activities of his son-in-law who was a team official of CSK. The attempted cover up, it was contended, was a serious offence, which would call for action against him and ICL who owned CSK. The argument was primarily based on the following circumstances and inferences drawn from facts proved or admitted:

- (i) A three-Member Committee comprising two former Judges of the High Court of Madras and Mr. Jagdale

was hastily set up to enquire into the allegations of betting on 28th May, 2013 i.e. within four days of the arrest of Gurunath Meiyappan. The setting up of the Committee by Mr. Srinivasan was aimed at giving Mr. Gurunath Meiyappan a clean chit and along with him a clean chit to ICL owned by Mr. Srinivasan and his family.

- (ii) The Committee got reduced to two members only, after resignation of Mr. Jagdale, but was asked to continue the probe which was over within a day resulting in an all clear report in favour of Gurunath Meiyappan. The Committee opined that there was no material laid before it to substantiate the allegation that Gurunath Meiyappan was betting. The appellant association alleges that the BCCI then headed by Mr. Srinivasan did not do anything to make good the charge of betting leveled against Gurunath Meiyappan, not because it could not do so but because it was not interested in doing so. Any attempt to prove the allegation would have led to Gurunath

Meiyappan being found guilty, which would in turn lead to cancellation of the franchise held by ICL owned by Srinivasan.

- (iii) Before the Mudgal Probe Committee, representatives of India Cements appeared to assert that Mr. Gurunath Meiyappan had no share holding in ICL thereby withholding information that Gurunath Meiyappan's wife and Mr. Srinivasan's daughter held equity in ICL which gave Gurunath Meiyappan a substantial clout over the affairs of ICL cricketing or otherwise.
- (iv) Mr. N. Srinivasan and M.S. Dhoni, in their depositions before the Committee took the stand that Gurunath Meiyappan had nothing to do with the cricketing affairs of CSK and that he was only a cricketing enthusiast. That stand was proved to be factually wrong by the Probe Committee who found that Gurunath Meiyappan was a team official who had access to sensitive match information not available to any ordinary cricketing enthusiast.

64. The above circumstances, it was contended by Ms. Chidambaram, highly probablised the cover up theory, having regard to the fact that Mr. Srinivasan had a deep rooted interest in such a cover up no matter as the President of BCCI he was duty bound to do everything humanly possible to discover the truth and allow the law to take its own course. Inasmuch as the conflict between his own interest as owner of the team that could be disenfranchised and his duty to remain above board, and objective in his capacity as President of the BCCI prevented the truth from coming to light by what was according to Ms. Chidambaram a device contrived to get a clean chit, Mr. Srinivasan had also committed an act of misconduct that could call for suitable punishment for him.

65. It is, in our opinion, difficult to hold that the circumstances enumerated by Mrs. Chidambaram proved by preponderance of probability the charge of cover up leveled against Mr. Srinivasan. The appointment of a Probe Committee comprising former Judges of the High Court cannot be seen as an attempt to cover up nor can Mr. Srinivasan be accused of withholding any incriminating material from the Probe Committee especially

when there is nothing to show that Mr. Srinivasan was indeed in possession of any incriminating material that was withheld by him. Mr. Srinivasan had in fact stepped aside while the probe was on to avoid any accusation being made against him. Similarly, the allegation that an effort was made to suppress facts before the Mudgal Committee or that Mr. Gurunath was shown only as a cricket enthusiast whereas he was a team official, may, at best, raise a suspicion against Mr. Srinivasan but suspicion can hardly be taken as proof to hold him guilty of the alleged cover up. We cannot, therefore, with any amount of certainty, say that the charge of attempted cover up leveled against Mr. Srinivasan stands proved. Our answer to question No.4 is, therefore, in the negative.

Re: Question No.5:

66. Amendment to Rule 6.2.4 was assailed before the High Court of Bombay on three principal grounds. The first was that the amendment was *mala fide* inasmuch as the whole object underlying the same was to protect the grant of Chennai Franchise to Mr. Srinivasan's India Cements Ltd. which was as

on the date of the grant in clear breach of Rule 6.2.4 as it existed before its amendment. As treasurer of BCCI Mr. Srinivasan was an administrator who could neither acquire nor hold any commercial interest in any BCCI event including IPL, Champions League & Twenty-20 tournaments as all these tournaments are fundamentally BCCI events. Suit filed by Mr. Muthiah had no doubt brought up the question of conflict of interest, in breach of Rule 6.2.4 but the challenge was sought to be neutralized by amending the rule itself and taking the three events mentioned above out of the mischief of Rule 6.2.4

67. The second limb of the challenge to the amendment was that the same was brought hurriedly without any supporting recommendation from any Committee without an agenda item for deliberations of the BCCI and without a proper notice to the members who were supposed to discuss the same. The amendment was pushed through under the residuary and omnibus "any other item" appearing in the agenda even when it was an extremely important matter of far reaching implications which changed a fundamental imperative applicable to all the events organized by BCCI. In substance, the second limb of the

challenge was also suggestive of the amendment having been brought about to serve the personal interest of those administering the affairs of BCCI rather than any ethically or morally correct proposition to ensure purity of the game or to nurture the confidence of those who are fond of it.

68. The third ground on which the amendment came under challenge was that the same is opposed to public policy and good conscience. The argument, it appears, was that inasmuch as the amendment permitted in perpetuity a conflict between administrator's duty and his commercial interest, it fell foul of the concept of fairness, transparency and probity in the discharge of public functions by the BCCI and its administrators.

69. The High Court of Bombay has, as seen earlier, repelled the challenge and upheld the amendment in question by its judgment and order impugned in Civil Appeal arising out of SLP (Civil) No.34228 of 2014. We have, while dealing with question No.1 above, held that BCCI is amenable to writ jurisdiction under Article 226 of the Constitution as it discharges "Public Functions". The natural corollary flowing from that finding is

that all actions which BCCI takes while discharging such public functions are open to scrutiny by the Courts in exercise of their powers under Article 226 of the Constitution. It also implies that such actions shall when under scrutiny be judged by the standards and on principles that govern similar actions when taken by the State or its instrumentalities. The approach which a Court exercising powers of judicial review of administrative action adopts will remain the same irrespective of whether the action under review is taken by the State or its instrumentality or by any non statutory non government organisation like the BCCI in the case at hand. It follows that Rule 6.2.4 will be subject to the same tests and standards as would apply to any similar provision emanating from a statute or the general executive power of the State.

70. Rule 6.2.4 before amendment was in the following words:

"No Administrators shall have, directly or indirectly, any commercial interest in the matches or events conducted by the Board."

71. The impugned amendment added the following words at the end of the above Rule:

“excluding events like IPL or Champions League Twenty 20.”

72. It is common ground that the validity of the impugned amendment to Rule 6.2.4 shall have to be tested on a threefold basis viz. (i) whether the amendment is made by the authority competent to do so; (ii) whether the authority competent to bring about an amendment has followed the procedure prescribed for the same; and (iii) whether the amendment falls foul of any statute or principle of law, violation whereof cannot be countenanced.

73. Seen in the light of the Articles of Association, we find no infirmity in the amendment to Rule 6.2.4 in so far as the legislative competence (if we may use that expression) of the authority that brought about the amendment is concerned. It is nobody's case that the amendment was beyond the competence of the authority that made it. So also, there is in our opinion no merit in the argument that the amendment should fall because the same did not figure as an item in the agenda for the meeting in which the same was passed. The Contention that the amendment came as a side wind on the basis of a report of a

Committee that was supposed to examine issues touching anti racism also does not carry any conviction. It is true that the circumstances, in which the amendment came about, may create a suspicion as to the *bona fides* of the exercise but a mere suspicion may not be enough to strike the same down. So long as the forum where the matter was taken-up, discussed and a resolution passed was competent to deal with the subject, procedural deficiencies which do not affect the competence of the authority do not matter much. We have, therefore, no hesitation in rejecting the contention that the amendment is bad because the same came up all too suddenly for discussion, without any real research or other work to support it and without adequate notice to the members to think about and usefully contribute to the deliberations.

74. That leaves us with the third facet of the question which is not free from difficulty and must therefore be dealt with more comprehensively. The amendment has not been questioned on the ground that the same violates the Tamil Nadu Registration of Societies Act under which BCCI stands registered as a Society. It is also not challenged on the ground that any other Statute

regulating such societies is breached. What is contended is that inasmuch as the amendment permits commercial interest to be held by administrators in the events organised by BCCI it violates a fundamental tenet of law that no one can be a judge in his own cause, recognized universally as an essential facet of the principles of natural justice which must permeate every action that BCCI takes in the discharge of its public functions. That contention is not without merit and needs to be carefully explored from different angles. But before we do so we may usefully refer to the decision of this Court in ***A.K. Kraipak & Ors. v. Union of India & Ors. (1969) 2 SCC 262*** where a Constitution bench of this Court was examining whether Principles of Natural Justice have any application to purely administrative actions as distinguished from those described as quasi judicial in nature. The question there arose in the context of a selection process in which Naqishbund who was a member of the Selection Committee was himself a candidate alongwith others for induction into the Indian Forest Service. The challenge was founded on the plea that there was a conflict between the duty which Naqishbund was required to perform as

a member of the selection Committee and his interest as a candidate for selection. In defence of his role and the selection made by the Committee it was argued that the Selection Committee discharged Administrative functions to which the principles of natural justice had no application. Repelling the contention this Court held that horizons of natural justice were constantly expanding, and that the principles apply only in areas not covered by any law validly made. The Court observed:

"20. *The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered*

administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala¹⁰ the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

75. Dealing with the conflict of duty and interest and the test applicable when examining whether a given process is vitiated by bias, this Court made the following telling observations:

"15. *It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He*

was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates."

(emphasis supplied)

76. The significance of the principles of natural justice *vis-a-vis* Article 14 of the Constitution is no longer *res integra*. The principles have been held to be a part and parcel of the guarantee contained in Article 14. We may in this connection briefly refer to the decision of this Court in ***Union of India and ors. etc. v. Tulsiram Patel etc. (1985) 3 SCC 398*** where this Court declared that Principles of natural justice have now come to be recognized as being a part of the constitutional guarantee contained in Article 14 of the Constitution. The Court observed:

"Violation of a rule of natural justice results in arbitrariness which is the same as discrimination and

where discrimination is the result of State action, it is a violation of Article 14. Therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice, nor those principles are the creation of Article 14. Article 14 is not their begetter but their constitutional guardian."

77. The above position was reiterated in ***Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr. etc. (1986) 3 SCC 156***. This Court observed as under:

"95. *The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."*
(emphasis supplied)

78. There is no gainsaying that in the ever expanding horizons of the principles of natural justice, it makes little or practically

no difference whether the action or the nature of the proceedings being tested are administrative or quasi-judicial. The principles apply to either more or less uniformly. It follows that even if the duties and functions which BCCI discharges are administrative and not quasi-judicial, the principles will find their application with the same rigor as may be applicable to quasi-judicial functions. Does the amendment to Rule 6.2.4, in any way violate the principles of natural justice or the essence thereof is the real question.

79. On behalf of the appellant it is contended that the amendment authorizes, contrary to what is demanded by the principles of natural justice, the creation and continuance of a conflict of interest situation. That is what is not permissible on a true and proper application of the principles of natural justice. The contention is that but for the amendment, Rule 6.2.4 would debar any conflict of interest, by forbidding administrators of BCCI from having any commercial interest in the events organized by the BCCI. That is according to the appellant an ideal situation which gets distorted and corrupted by the amendment permitting such commercial interests disregarding

the fact that creation or continuance of such interests will, bring about a serious conflict between the duties of administrators on the one hand and their personal/commercial interest on the other.

80. The respondents, on the contrary, argue that conflict of interest is a reality of life and exists in any number of situations some of them at times unavoidable. But, what is important is that the Rules should provide for resolving the conflict. Relying upon, rules applicable to conflict of interests in different sporting bodies, it was contended by Mr. Sibal that unless, the conflict of interests is so palpable, that there is no room for any resolution; the rule cannot and should not be struck down simply because it may give rise to a conflict of interest at any time in future.

81. There is no gainsaid that a conflict of interest situation may arise even when the rules or the norms do not specifically authorize acts or transactions that may lead to such a conflict. The scheme of the rules, may itself suggest that a conflict of interest is not welcome. And yet, such a conflict may at times arise, in which event, the rules can provide for a mechanism, to

resolve the conflict as is the position in some of the rules to which our attention was drawn in regard to some other sports. The question, however, is whether a rule can by a positive and enabling provision permit acts and transactions which would by their very nature bring about a conflict of interest. Our answer is in the negative. It is one thing to say that conflict may arise even when rules do not specifically permit such a conflict situation and a totally different thing to permit acts which will per se bring about such a conflict. The case at hand falls in the latter category. Rule 6.2.4 after amendment, permits creation of commercial interests in the events organized by BCCI by its Administrators. This enabling provision disregards the potential conflict of interest which will arise between an administrator's duty as a functionary of the BCCI on the one hand and his interest as the holder of any such commercial interest on the other. The respondents may argue as indeed they have done, that commercial interest held by India Cements Ltd. in the IPL and other events do not constitute a conflict per se so as to fall foul of the principle that such conflicts are impermissible on the touchstone of fairness, reasonableness and probity in the

discharge of public functions by the BCCI. But that contention is specious and deserves notice only to be rejected. Three real life situations that have arisen in the past, qua India Cements owned by Mr. Srinivasan's family and captained by him, simply demonstrate how such conflicts have arisen between the duty which Mr. Srinivasan owes to BCCI and through the BCCI to the cricketing world at large and his commercial if not personal interest in the events which BCCI organizes. The first instance arose when BCCI awarded compensation of a sum of Rs.10.40 crores to Chennai Super Kings – on account of the cancellation of the Champions League Tournament 2008. It is not in dispute that Mr. Srinivasan was one of those who contributed to the taking of the decision to award that amount towards compensation to his own team. True it is that a similar amount was awarded to Rajasthan Royals the other finalist also, but that does not, mean that to the extent Mr. Srinivasan, participated and deliberated in the proceedings leading to the award of a hefty amount of compensation, he was not privy to a self-serving decision that benefited India Cements Ltd. a company promoted by Mr. Srinivasan. The fact that some others

also participated in the decision-making process as members of IPL Governing Council does not cure the legal flaw arising out of the benefactor also being the beneficiary of the decision. The situation is analogous to Naqishbund participating in the selection proceedings even when he was himself a candidate for selection as in ***Kraipak's*** case (supra). As a matter of fact, Naqishbund had recused himself from the proceedings when his own case was taken up for consideration. But this Court remained unimpressed and took the view that any such recusal did not make any material difference, as bias in such like situations operates in a subtle manner. In the case at hand Mr. Srinivasan had not even done that much no matter it would have made little or no difference even if he had done so. At any rate, the test is not whether bias was actually at work when the decision was taken. It is the reasonable likelihood of bias that determines whether the action can be faulted. A reasonable likelihood of bias is what can be seen even in the case at hand when the decision to award compensation was taken by the governing council of IPL with Mr. Srinivasan, present and participating as a member.

82. A similar award of a sum of rupees 13.10 crores came in the year 2009 which too fell foul of his duty on the one hand and interest on the other. Mr. Sibal, no doubt, argued that this amount was returned by ICL subsequently, but such return, does not improve the matters. The decision to award an amount higher than the one awarded earlier appears to have led to public criticism raising the pitch further for Mr. Srinivasan's removal from the BCCI on the principles of conflict of interest. Return of the amount because of a public outcry may no doubt mean that Mr. Srinivasan tried to come clean on the subject even when his company may have suffered a loss, but it may as well mean that the return of the amount came only under public pressure and in recognition of the fact that the amount was not actually due and payable and yet was paid to the detriment of BCCI who is a trustee of general public interest in the sport of cricket and everything that goes with it.

83. The third instance where Mr. Srinivasan's commercial interest came in direct conflict with his duty as President of BCCI is when allegations of betting were leveled against his son-in-law Mr. Gurunath Meiyappan. Even ignoring for a moment

the argument that Mr. Srinivasan had made a deliberate attempt to cover up the betting racket that came to light, facts now prove that Mr. Gurunath Meiyappan was involved in betting in IPL matches even when he was a team official of CSK. We have, while dealing with question No.3, held that the misconduct of Mr. Gurunath Meiyappan and Raj Kundra can result in award of punishment not only to the said two persons but even to the franchisees themselves. That being so, a clear conflict of interest has arisen between what is Mr. Srinivasan's duty as President of BCCI on the one hand and his interest as father-in-law of Mr. Gurunath Meiyappan and owner of team CSK on the other. The argument that Mr. Srinivasan owns only 0.14% equity in ICL is of no avail if not totally misleading when we find from the record that his family directly and/or indirectly holds 29.23% of the equity in the ICL with Mr. Srinivasan his wife and daughter as directors on the Board of that company.

84. It is in the light of the above unnecessary to delve further to discover conflict of interest although, the appellant has relied upon several other matters in which there is a potential conflict

between his duty as President of the BCCI and his commercial interest. Suffice it to say that amendment to Rule 6.2.4 is the true villain in the situation at hand. It is the amendment which attempts to validate what was on the date of the award of the franchise invalid as Rule 6.2.4 did not as on that date permit an administrator to have any commercial interest in any event organized by BCCI. While it may not be feasible at this stage to interfere with the award of the franchise to ICL especially when hundreds of crores have been invested by the franchisee, the amendment which perpetuates such a conflict cannot be countenanced and shall have to be struck down.

85. The validity of the Rule 6.2.4 as amended can be examined also from the stand point of its being opposed to "Public Policy" But for doing so we need to first examine what is meant by "Public Policy" as it is understood in legal parlance. The expression has been used in Section 23 of the Indian Contract Act, 1872 and in Section 34 of the Arbitration and Conciliation Act, 1996 and a host of other statutes but has not been given any precise definition primarily because the expression represents a dynamic concept and is, therefore, incapable of any

strait-jacket definition, meaning or explanation. That has not, however, deterred jurists and Courts from explaining the expression from very early times. Mathew J. speaking for the Court in ***Murlidhar Aggarwal and Anr. v. State of U.P. & Ors. (1974) 2 SCC 472*** referred to Winfield's definition in Public Policy in English Common Law 42 Harvard Law Review 76 to declare that:

"31. Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time."

86. The Court then grappled with the problem of ascertaining public policy if the same is variable and depends on the welfare of the community and observed:

"32. If it is variable, if it depends on the welfare of the community at any given time, how are the courts to ascertain it? The Judges are more to be trusted as interpreters of the law than as expounders of public policy. However, there is no alternative under our system but to vest this power with Judges. The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, as already stated Judges are not hidebound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which

direction they must cast their gaze. The Judges are to base their decisions on the opinions of men of the world, as distinguished from opinions based on legal learning. In other words, the Judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. The Judges must consider the social consequences of the rule propounded, especially in the light of the factual evidence available as to its probable results. Of course, it is not to be expected that men of the world are to be subpoenaed as expert witnesses in the trial of every action raising a question of public policy. It is not open to the Judges to make a sort of referendum or hear evidence or conduct an inquiry as to the prevailing moral concept. Such an extended extra-judicial enquiry is wholly outside the tradition of courts where the tendency is to "trust the Judge to be a typical representative of his day and generation". Our law relies, on the implied insight of the Judge on such matters. It is the Judges themselves, assisted by the bar, who here represent the highest common factor of public sentiment and intelligence. No doubt, there is no assurance that Judges will interpret the mores of their day more wisely and truly than other men. But this is beside the point. The point is rather that this power must be lodged somewhere and under our Constitution and laws, it has been lodged in the Judges and if they have to fulfil their function as Judges, it could hardly be lodged elsewhere."

(emphasis supplied)

87. In ***Central Inland Water Transport Corporation*** (supra) this Court was also considering the import of the expression 'Public Policy' in the context of the service conditions of an employee empowering the employer to terminate his service at his sweet will upon service of three months notice or payment of

salary in lieu thereof. Explaining the dynamic nature of the concept of public policy this Court observed:

"Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy.

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It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution.

88. We may also refer to the decision of this Court in ***Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705***, where this Court was considering the meaning and

import of the expression "Public Policy of India" as a ground for setting aside an arbitral award. Speaking for the Court M.B. Shah, J. held that the expression 'Public Policy of India' appearing in the Act aforementioned must be given a liberal meaning for otherwise resolution of disputes by resort to Arbitration proceedings will get frustrated because patently illegal awards would remain immune to Courts interference. This Court declared that what was against public good and public interest cannot be held to be consistent with Public Policy. The following passage aptly summed up the approach to be adopted in the matter:

"31. *Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:*

- (a) fundamental policy of Indian law; or*
- (b) the interest of India; or*
- (c) justice or morality, or*
- .(d) in addition, if it is patently illegal.*

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

89. In ***Oil and Natural Gas Corporation Ltd. v. Western GECO International Ltd. (2014) 9 SCC 263***, this Court was examining the meaning of 'Fundamental Policy of Indian Law' an expression used by this Court in ***Saw Pipes'*** case (supra). Extending the frontiers of what will constitute 'Public Policy of India' this Court observed:

"35. *What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as provide a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long*

as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. *Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.*

39. *No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.”*

90. To sum up: Public Policy is not a static concept. It varies

with times and from generation to generation. But what is in public good and public interest cannot be opposed to public policy and vice-versa. Fundamental Policy of Law would also constitute a facet of public policy. This would imply that all those principles of law that ensure justice, fair play and bring transparency and objectivity and promote probity in the discharge of public functions would also constitute public policy. Conversely any deviation, abrogation, frustration or negation of the salutary principles of justice, fairness, good conscience, equity and objectivity will be opposed to public policy. It follows that any rule, contract or arrangement that actually defeats or tends to defeat the high ideals of fairness and objectivity in the discharge of public functions no matter by a private non-governmental body will be opposed to public policy. Applied to the case at hand Rule 6.2.4 to the extent, it permits, protects and even perpetuates situations where the Administrators can have commercial interests in breach or conflict with the duty they owe to the BCCI or to the people at large must be held to be against public policy, hence, illegal. That is particularly so when BCCI has in the Anti Corruption Code adopted by it

recognized public confidence in the authenticity and integrity of the sporting contest as a fundamental imperative. It has accepted and, in our opinion rightly so, that all cricket matches must be contested on a level playing field with the outcome to be determined solely by the respective merits of the competing teams. The Anti Corruption Code of the BCCI does not mince words in accepting the stark reality that if the confidence of the public in the purity of the game is undermined then the very essence of the game of cricket shall be shaken. The BCCI has in no uncertain terms declared its resolve to protect the fundamental imperatives constituting the essence of the game of cricket and its determination to take every step in its power to prevent corrupt betting practices undermining the integrity of the sport including any effort to influence the outcome of any match. Unfortunately, however, the amendment to Rule 6.2.4 clearly negates the declarations and resolves of the BCCI by permitting situations in which conflict of interest would grossly erode the confidence of the people in the authenticity, purity and integrity of the game. An amendment which strikes at the very essence of the game as stated in the Anti Corruption Code

cannot obviously co-exist with the fundamental imperatives. Conflict of interest situation is a complete anti-thesis to everything recognized by BCCI as constituting fundamental imperatives of the game hence unsustainable and impermissible in law.

91. Before we wind up the discussion on the validity of Rule 6.2.4 and the vice of conflict of interest it permits after the impugned amendment, we may in brief deal with the submissions which Mr. Kapil Sibal, learned senior counsel for the respondent Mr. Srinivasan urged before us. It was contended by Mr. Sibal that IPL was conceived as a commercial enterprise, structured in a manner that it eliminated all possibility of conflict of interest. That is because all decisions, financial or otherwise relating to the IPL, are already known to all the participants leaving no discretion with any official of the BCCI. The commercial interest of an administrator in the IPL can never be in conflict with the administrator's duty in the BCCI argued Mr. Sibal. That apart, every franchise is treated equally since the contractual obligation with the BCCI is identical for each franchise leaving no possibility of differential treatment by BCCI.

It was also argued that IPL is Distinct from other matches/events conducted by the BCCI so that there is no question of any conflict of interest between the role of a person as an administrator of BCCI and an owner of an IPL franchise. The following distinguishing features were in this regard relied upon:

- (i) IPL is not a tournament to test the players' ability to play representative cricket since the record of each player in the IPL is not considered for National Selections. IPL is only a platform provided to cricketers – both Indian and International, to make a living from the sport outside of playing representative cricket, which is not as remunerative.
- (ii) The IPL teams revolve around a business structure and each team is formed pursuant to winning a franchise for a particular stadium in a commercial tender floated by BCCI, whereas in representative cricket it is the BCCI, a non-for-profit society which manages the teams selected by it.
- (iii) The franchise in the IPL has a contractual arrangement by which the franchise fee is paid to the BCCI and in return the franchisee gets a share of the broadcast and sponsorship revenue. In representative cricket, the income from sponsors and broadcast fee goes exclusively to the BCCI.

- (iv) IPL was started as a commercial venture by BCCI to bring more money into the game from the private sector for being ploughed back into the sport in the form of infrastructure, development of the game, players' benefit and ground facilities in all parts of the country. Income from broadcast rights of the National Team is incidental to the membership of the BCCI to ICC that permits the BCCI to field the India Team against other teams of other Member Nations.
- (v) In IPL, the Selection Committees of BCCI for various age groups have no role to play. Players from all over the world through their respective National Boards enroll for the auction. Players cannot pick or choose a franchisee to play once enlisted for the auction. The player intake by a franchisee is dependent on Open Market principles. In the IPL, the players are allowed to be traded between franchisees within the rules of permitted salary caps as detailed in the Players Regulations.
- (vi) Entertainment of the public hitherto not interested in the sport, i.e. bringing in newer fans to the game has been a goal of the IPL whereas representative cricket is the more serious version and a pathway to the National Selection."

92. There is no gainsaying that Mr. Sibal was right in contending that in certain areas the BCCI or anyone of its administrators/office bearers does not have any discretion

except to go by what is prescribed as a uniform pattern for all the franchisees. But, to say that there is no possibility of any conflict of interest arising in IPL format between an administrator's duty and the commercial interest if any held by him is not in our opinion correct. The three live situations to which we have adverted in the earlier part of this order in which a conflict has arisen in the case at hand only prove that conflict of interest is not only possible but ominously looming large if an administrator also owns a competing team. So also the contention that, IPL being a commercial venture of BCCI and a platform for Indian and International cricketers to make a living from the sport, is neither here nor there. No one has found fault with IPL as a format, nor is there any challenge to the wisdom of BCCI in introducing this format for the benefit of cricketers or for its own benefit. The question is whether the BCCI can afford to see the game lose its credibility in the eyes of those who watch it, by allowing an impression to gather ground that what goes on in the name of the game is no more than a farce because of sporting frauds like betting, match fixing and the like. Can the BCCI live with the idea of the game being

seen only as a means to cheat the unsuspecting and gullible spectators watching the proceedings whether in the stadium or on the television with the passion one rarely sees in any other sporting enterprise. BCCI's commercial plans for its own benefit and the benefit of the players are bound to blow up in smoke, if the people who watch and support the game were to lose interest or be indifferent because, they get to know that some business interests have hijacked the game for their own ends or that the game is no longer the game they know or love because of frauds on and off the field. There is no manner of doubt whatsoever that the game enjoys its popularity and raises passions only because of what it stands for and because the people who watch the sport believe that it is being played in the true spirit of the game without letting any corrupting influence come anywhere near the principles and fundamental imperatives considered sacrosanct and inviolable. All told whatever be the format of the game and whatever be the commercial angles to it, the game is what it is, only if it is played in its pristine form free from any sporting fraud. And it is because of that fundamental imperative that these proceedings assume such

importance. The fundamental imperatives, to which BCCI is avowedly committed in the Anti Corruption Code, cannot be diluted leave alone neglected or negated.

93. In ***K. Murugon v. Fencing Association of India, Jabalpur and ors. (1991) 2 SCC 412*** this Court held that sports in India have assumed a great importance for the community while international sports has assumed greater importance over the past few decades. Despite this, however, several sports bodies in this country have got involved in group fights leading to litigation in the process losing sight of the objectives which such societies and bodies are meant to serve and achieve. This Court therefore emphasized the need for setting right the working of the societies rather than adjudicating upon the individual's right to office by reference to the provisions of law relating to meetings, injunctions, etc. The following passage from the ***Murugon's*** decision (supra) is a timely reminder of the need of the hour:

"12. *This does not appear to us to be a matter where individual rights in terms of the rules and regulations of the Society should engage our attention. Sports in modern times has been considered to be a matter of*

great importance to the community. International sports has assumed greater importance and has been in the focus for over a few decades. In some of the recent Olympic games the performance of small States has indeed been excellent and laudable while the performance of a great country like India with world's second highest population has been miserable. It is unfortunate that the highest body in charge of monitoring all aspects of such sports has got involved in group fight leading to litigation and the objectives of the Society have been lost sight of. The representation of India in the IOA has been in jeopardy. The grooming of amateurs has been thrown to the winds and the responsibility placed on the Society has not been responded. This, therefore, does not appear to us to be a situation where rights to office will have to be worked out by referring to the provisions of the law relating to meetings, injunction and rights appurtenant to elective offices. What seems to be of paramount importance is that healthy conditions must be restored as early as possible into the working of the Society and a fresh election has to be held as that seems to be the only way to get out of the malady."

(emphasis supplied)

94. We may also refer to the decision of this Court in **N. Kannadasan v. Ajoy Khose and Ors. (2009) 7 SCC 1**, where this Court was examining the question relating to qualities required for appointment of a candidate as President of the State Consumer Commission. The petitioner was in that case found unfit to be appointed as a permanent Judge of the High Court. The question was whether his being unsuitable for appointment as a permanent Judge could be a reason for denying to him an appointment as President of the State

Consumer Disputes Redressal Commission. Dealing with the question of a possible conflict between public interest on the one hand and private interest on the other this Court in para 93 of the decision observed:

"93. The superior courts must take into consideration as to what is good for the judiciary as an institution and not for the Judge himself. An act of balancing between public interest and private interest must be made. Thus, . institution as also public interest must be uppermost in the mind of the court. When such factors are to be taken into consideration, the court may not insist upon a proof. It would not delve deep into the allegations. The court must bear in mind the limitations in arriving at a finding in regard to lack of integrity against the person concerned."

95. The decision in **Kannadasan** case (supra) was relied upon by a three-Judge Bench of this Court in **Centre for PIL and Anr. v. Union of India and Anr. (2011) 4 SCC 1** where this Court dealt with the importance of institutional integrity and declared that an institution is more important than an individual. The following passage from the decision is apposite:

"45. Thus, we are concerned with the institution and its integrity including institutional competence and functioning and not the desirability of the candidate alone who is going to be the Central Vigilance Commissioner, though personal integrity is an important quality. It is the independence and impartiality of the institution like the CVC which has to be maintained and preserved in the larger interest of the rule of law (see

Vineet Narai (1988) 1 SCC 226).”

96. BCCI is a very important institution that discharges important public functions. Demands of institutional integrity are, therefore, heavy and need to be met suitably in larger public interest. Individuals are birds of passage while institutions are forever. The expectations of the millions of cricket lovers in particular and public at large in general, have lowered considerably the threshold of tolerance for any mischief, wrong doing or corrupt practices which ought to be weeded out of the system. Conflict of interest is one area which appears to have led to the current confusion and serious misgivings in the public mind as to the manner in which BCCI is managing its affairs.

97. It was lastly argued by Mr. Sundaram, learned senior counsel for BCCI that if administrators were held to be disentitled to have any commercial interest in BCCI events including IPL, the same may adversely affect not only the IPL format but certain outstanding sports persons who by reason of their proficiency in cricket and its affairs are often engaged as coaches, mentors, commentators or on similar other positions

may also be rendered disqualified to get such engagements. This would mean that the teams will lose the advantage of having these outstanding sports persons on their side while the sport persons will lose the opportunity to earn a livelihood only because they hold or have at an earlier point of time held an administrative office in BCCI. Such an interpretation or disqualification would not be in the interest of the game or those who have distinguished themselves in the same, argued Mr. Sundaram.

98. The expression 'Administrator' appearing in Rule 6.2.4 has been defined to mean and include present and past Presidents, Honorary Secretaries, Honorary Treasures, Honorary Joint Secretaries of the BCCI. Presidents and Secretaries present or past of members affiliated to BCCI are also treated as administrator along with representative of a member or an associate member or affiliate member of the Board. That apart, any person connected with any of the committees appointed by the Board are also treated as administrator; none of whom could have any commercial interest in any BCCI event but for the impugned amendment to

Rule 6.2.4. What is important, however, is that the challenge in the present proceedings arises in the context of Mr. Srinivasan, President of BCCI having commercial interest in the IPL by reason of the company promoted by him owning Chennai Super Kings. It is common ground that the owner of a team buys the franchise in an open auction. India Cements Ltd. owner of CSK has also bought the Chennai franchise in an open auction held by BCCI. This sale and purchase of the franchises is a purely commercial/business venture for India Cements Ltd. involving investment of hundreds of crores. The franchise can grow as a 'brand' and in terms of franchise agreement executed between franchisee and the BCCI be sold for a price subject to the conditions stipulated in the agreement. There is, therefore, no manner of doubt that the investment made by India Cements Ltd. is a business investment no matter in a sporting activity. To the extent the business investment has come from India Cements Ltd. promoted by Mr. Srinivisan and his family, India Cements and everyone connected with it as shareholders acquire a business/commercial interest in the IPL events organised by BCCI. The association of India Cements Ltd. and

Mr. Srinivasan with IPL is being faulted on account of this commercial interest which India Cements Ltd. has acquired for itself. Whether or not players engaged as mentors, coaches, managers or commentators in connection with the events for remuneration payable to them will also be ineligible for any such assignment does not directly fall for our consideration in these proceedings. That apart, it may well be argued that there is a difference between commercial interest referred to in Rule 6.2.4 and 'professional engagement' of a player on account of his proficiency in the game. It may be logically contended that the engagement of a player even though made on a remuneration remains a professional engagement because of his professional skill in the game of cricket and not because he has made any investment like India Cements Ltd. has done in acquiring a franchise or in any other form. Be that as it may, we do not consider it necessary or even proper to authoritatively pronounce upon the question whether such engagement of players, as are mentioned above, would fall foul of the prohibition contained in Rule 6.2.4 as it stood before amendment. The issue may be examined as and when the same

arises directly for consideration. All that we need say at this stage is that whether or not a player who is an 'administrator' by reason of an existing or earlier assignment held by him can acquire or hold a commercial interest in any BCCI event, will depend upon the nature of the interest that such person has acquired and whether the same is purely professional or has any commercial element to it. Beyond that we do not propose to say anything at this stage. Question No. 5 is accordingly answered in the affirmative and Amendment to Rule 6.2.4 permitting Administrators of BCCI to acquire or hold commercial interests in BCCI like IPL, champions league and T-20 held to be bad for the reasons we have set out in the foregoing paras.

Re: Question No.6:

99. Mr. Sundar Raman in his capacity as the Chief Operating Officer was charged with the duty of overseeing the tournament and all other live events including the opening ceremony and also the general operations, sponsorships activities, television production, estimations of costs, negotiation of contracts, administration duties, travel and transport and other related

functions. According to the allegation levelled against him, he was in constant touch with Mr. Vindoo Dara Singh evidenced by nearly 350 calls made thereto between them during the IPL.

100. The investigating team headed by Mr. B.B. Mishra summed up its conclusion about Mr. Sundar Raman's involvement in its report dated 28th August 2014 in which it stated:

"The allegation emanated from a statement of Bindra. The verification so far indicates that Vindoo Dara Singh and Sundar Raman knew each other, but in the years 2012 and 2013, they have hardly made calls to each other. The CDR of Vindoo Dara Singh for the period 01.01.2013 to 20.5.2013 which is available doesn't indicate any call made/received by him to/from Sunder Raman. Virk will have to be requested to join investigation and part with the information available with him."

101. In its final report dated on 1.11.2014 the Probe Committee recorded a finding that Mr. Sundar Raman, described as Individual 12 in that report, had known a bookie and had contacted him at eight different times in the IPL. The Committee said:

"This individual knew a contact of a bookie and had contacted him eight times in one season. This individual admitted knowing the contact of the bookies but however claimed to be unaware of his connection with betting activities. This individual also accepted that he had received information about individual 1 and individual 11 taking part in betting activities but was informed by ICC-ACSU chief that this was not actionable information."

This individual also accepted that this information was not conveyed to any other individual."

102. In the objection filed before this Court, Mr. Sundar Raman has, *inter alia*, argued that the Probe Committee has not recorded any specific finding that he had knowledge of Mr. Vindoo Dara Singh being a bookie. It is also asserted by Mr. Sundar Raman that he knew of Mr. Vindoo Dara Singh only as a celebrity who used to frequently attend IPL matches and events with other celebrities. Mr. Sundar Raman has specifically denied having any knowledge about the activities of Vindoo Dara Singh and his contacts. Based on certain call records produced by Mr. Sundar Raman, it is claimed that there were only 5 calls between the two of them during a period of ten months and that making or receiving such calls was a part of his job as the Chief Operating Officer of IPL.

103. The other allegation against Mr. Sundar Raman was that even though he had received information that a number of owners/team officials were involved in betting yet he had taken no action in the matter. When asked about the correctness of this accusation, Mr. Sundar Raman appears to have argued that it was Mr. V.P. Singh who had verbally informed him about

reports alleging that a number of owners/team officials were involved in betting on IPL matches but Mr. V.P. Singh is also alleged to have told Mr. Sundar Raman that the information was not actionable.

104. From a reading of the report submitted by the investigating team, we find that the team intended to request Mr. Virk to join the investigation and part with the information with him regarding Mr. Sundar Raman's proximity to Vindoo Dara Singh, the alleged bookie/contact of the bookie. The Probe Committee has stopped short of recording a specific finding regarding the complicity of Mr. Sundar Raman in the betting racket, nor is there any explicit justification provided by the report for the finding that 8 and not 350 calls were made between Mr. Sundar Raman and Vindoo Dara Singh. Suffice it to say that the report submitted by the investigating team and the Probe Committee do not indict Mr. Sundar Raman in clear words. The observations made regarding his role and conduct simply give rise to a serious suspicion about his involvement in the betting affairs of the team owners/officials apart from suggesting that having received information about betting

activities in connection with IPL matches, he remained totally inert in the matter instead of taking suitable action warranted under the circumstances.

105. The question then is whether Mr. Sundar Raman can be declared to be completely innocent or does his conduct and activities call for any other probe or investigation. Mr. Sundar Raman was, and continues to be the Chief Operating Officer of IPL. He has held and continues to hold a very important position in the entire system. On his own showing he was dealing with practically all aspects of organization of the game, including facilitating whenever necessary the appearance and participation of celebrities and organizing tickets, accreditation cards and such other matters. He was, therefore, the spirit behind the entire exercise and cannot be said to be unconcerned with what goes on in the course of the tournament especially if it has the potential of bringing disrepute to the game/BCCI. We are, therefore, not inclined to let the allegations made against Mr. Sundar Raman go un-probed, even if it means a further investigation by the investigating team provided to the probe committee or by any other means. Truth about the allegations,

made against Mr. Sundar Raman, must be brought to light, for it is only then that all suspicions about the fraudulent activities and practices floating in the media against the BCCI and its administrators in several proceedings before different courts can be given a quietus. Having said that we propose to issue appropriate directions regarding further investigation and probe into the activities and conduct of Mr. Sundar Raman on conditions that we will stipulate separately in the later part of this judgment.

Re: Question No.7:

106. We have while answering Questions No.2 and 3 held Mr. Gurunath Meiyappan and Mr. Raj Kundra to be guilty of betting. We have also while answering those questions held that the misconduct against these two individuals is actionable as per the relevant rules to which we have referred in detail. Not only that, we have held that action under the rules can also be taken against the franchisees concerned. We have noticed that that the quantum of sanction/punishment can vary depending upon the gravity of the misconduct of the persons committing the same.

107. One of the issues that would fall for determination in the light of these findings would be whether we should impose a suitable punishment ourselves or leave it to the BCCI to do the needful. Having given our anxious consideration to that aspect we are of the view that neither of these two courses would be appropriate. We say so because the power to punish for misconduct vests in the BCCI. We do not consider it proper to clutch at the jurisdiction of BCCI to impose a suitable punishment. At the same time we do not think that in a matter like this the award of a suitable punishment to those liable for such punishment can be left to the BCCI. The trajectory of the present litigation, and the important issues it has raised as also the profile of the individuals who have been indicted, would, in our opinion, demand that the award of punishment for misconduct is left to an independent committee to exercise that power for and on the behalf of BCCI. This would not only remove any apprehension of bias and/or influence one way or the other but also make the entire process objective and transparent especially when we propose to constitute a committee comprising outstanding judicial minds of impeccable

honesty.

108. The other aspect, which needs attention, is the need for a probe into activities of Mr. Sundar Raman. We are of the view that, once we appoint a Committee to determine and award punishment, we can instead of referring the matter back to Mudgal Committee, request the proposed new Committee to examine the role played by Mr. Sundar Raman, if necessary, with the help of the investigating team constituted by us earlier.

109. The proposed Committee can also, in our opinion, be requested to examine and make suitable recommendations on the following aspects:

- (i) Amendments considered necessary to the memorandum of association of the BCCI and the prevalent rules and regulations for streamlining the conduct of elections to different posts/officers in the BCCI including conditions of eligibility and disqualifications, if any, for candidates wanting to contest the election for such posts including the office of the president of the BCCI.
- (ii) Amendments to the memorandum of association, and rules and regulation considered necessary to provide a

mechanism for resolving conflict of interest should such a conflict arise despite Rule 6.2.4 prohibiting creation or holding of any commercial interest by the administrators, with particular reference to persons, who by virtue of their proficiency in the game of Cricket, were to necessarily play some role as Coaches, Managers, Commentators etc.

- (iii) Amendment, if any, to the Memorandum of Association and the Rules and Regulations of BCCI to carry out the recommendations of the Probe Committee headed by Justice Mudgal, subject to such recommendations being found acceptable by the newly appointed Committee.
- (iv) Any other recommendation with or without suitable amendment of the relevant Rules and Regulations, which the Committee may consider necessary to make with a view to preventing sporting frauds, conflict of interests, streamlining the working of BCCI to make it more responsive to the expectations of the public at large and to bring transparency in practices and

procedures followed by BCCI.

110. In the result we pass the following order:

- (I) Amendment to Rule 6.2.4 whereby the words 'excluding events like IPL or Champions League Twenty 20', were added to the said rule is hereby declared void and ineffective. The judgment and order of the High Court of Bombay in PIL No.107 of 2013 is resultantly set aside and the said writ petition allowed to the extent indicated above.
- (II) The quantum of punishment to be imposed on Mr. Gurunath Meiyappan and Mr. Raj Kundra as also their respective franchisees/teams/owners of the teams shall be determined by a Committee comprising the following:
 - i) Hon'ble Mr. Justice R.M. Lodha, former Chief Justice of India – Chairman.
 - ii) Hon'ble Mr. Justice Ashok Bhan, former Judge, Supreme Court of India – Member.
 - iii) Hon'ble Mr. Justice R.V. Raveendran, former Judge, Supreme Court of India – Member.

The Committee shall, before taking a final view on the quantum of punishment to be awarded, issue notice to all those likely to be affected and provide to them a

hearing in the matter. The order passed by the Committee shall be final and binding upon BCCI and the parties concerned subject to the right of the aggrieved party seeking redress in appropriate judicial proceedings in accordance with law.

- (III) The three-member Committee constituted in terms of Para (II) above, shall also examine the role of Mr. Sundar Raman with or without further investigation, into his activities, and if found guilty, impose a suitable punishment upon him on behalf of BCCI.

Investigating team constituted by this Court under Shri B.B. Mishra shall for that purpose be available to the newly constituted Committee to carry out all such investigations as may be considered necessary, with all such powers as were vested in it in terms of our order dated 16th May, 2014.

- (IV) The three-member Committee is also requested to examine and make suitable recommendations to the BCCI for such reforms in its practices and procedures and such amendments in the Memorandum of

Association, Rules and Regulations as may be considered necessary and proper on matters set out by us in Para number 109 of this order.

- (V) The constitution of the Committee or its deliberations shall not affect the ensuing elections which the BCCI shall hold within six weeks from the date of this order in accordance with the prevalent rules and regulations subject to the condition that no one who has any commercial interest in the BCCI events (including Mr. N. Srinivasan) shall be eligible for contesting the elections for any post whatsoever. We make it clear that the disqualification for contesting elections applicable to those who are holding any commercial interest in BCCI events shall hold good and continue till such time the person concerned holds such commercial interest or till the Committee considers and awards suitable punishment to those liable for the same; whichever is later.
- (VI) The Committee shall be free to fix their fees which shall be paid by the BCCI who shall, in addition, bear all incidental expenses such as travel, hotel, transport

and secretarial services, necessary for the Committee to conclude its proceedings. The fees will be paid by the BCCI to the members at such intervals and in such manner as the Committee may decide. The venue of the proceedings shall be at the discretion of the Committee.

111. We hope and trust that the Committee concludes the proceedings as early as possible, but as far as possible within a period of six months.

112. These appeals shall stand disposed of in the above terms with the direction that the relevant record received from Justice Mudgal Committee shall be forwarded to the Chairman of the newly appointed Committee without any delay.

113. We place on record our deep appreciation for the work done by the Probe Committee headed by Justice Mukul Mudgal and all those who assisted the Committee in the Probe and its early completion.

114. All miscellaneous applications shall also stand disposed of in the above terms.

.....J.
(T.S. THAKUR)

.....J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

New Delhi;
January 22, 2015

Item No.1A
(For Judgment)

COURT NO.2

SECTION IX

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

Civil Appeal No(s).4235/2014

BOARD OF CONTROL FOR CRICKET

Appellant(s)

VERSUS

CRICKET ASOCIATION OF BIHAR & ORS.

Respondent(s)

WITH

Civil Appeal No.4236/2014

CRICKET ASOCIATION OF BIHAR

Appellant(s)

VERSUS

BOARD OF CONTROL FOR CRICKET IN INDIA & ORS.

Respondent(s)

Civil Appeal NO. 1155 of 2015
(Arising out of SLP (C) No.34228 of 2014)

CRICKET ASOCIATION OF BIHAR

Appellant(s)

VERSUS

BOARD OF CONTROL FOR CRICKET & ANR.

Respondent(s)

Date: 22/01/2015 These matters were called on for pronouncement of judgment today.

For Appellant(s)
(C.A.4235/14)

Mr. C.A.Sundram, Sr. Adv.
Mr. P.R.Raman, Adv.
Ms Akhila Kaushik, Adv.
Ms. Radha Rangaswamy, Adv.
Mr. S.P.Arthi, Adv.
Mr. Rahil Masearenhans, Adv.
Ms. Rohini Musa, Adv.
Ms. Ranjeeta Rohtagi, Adv.

(C.A.4236/14)	Ms. Nalini Chidambaram, Sr. Adv. Mr. Rajat Sehgal, Adv. Mr. Chandrashekhar Verma, Adv. Mr. Puneeth K.G. Mr. Gagan Gupta, Adv.
(SLP 34228/2014)	Mr. Vikas Mehta, Adv.
For Respondent(s)	Mr. Harish N. Salve, Sr. Adv. Ms. Nalini Chidambaram, Sr. Adv. Mr. Rajat Sehgal, Adv. Mr. Chandrashekhar Verma, Adv. Mr. Puneeth K.G. Mr. Gagan Gupta, Adv. Mr. Siddhartha Luthra, Sr. Adv. Mr. Ishwar Nankani, Adv. Ms. Rashmi Singh, Adv. Mr. Rahul Mehta, Adv. Mr. Abhishek Singh, Adv. Ms. Priyanka Rai, Adv. Mr. Chirag M. Shroff, Adv. Mr. Raju Ramachandran, Sr. Adv. Ms. Pooja Dhar, Adv.
C.A.4236/14 (R-1)	Mr. C.A. Sundram, Sr. Adv. Mr. P.R. Raman, Adv. Ms. Akhila Kaushik, Adv. Ms. Radha Rangaswamy, Adv. Mr. S.P. Arthi, Adv. Mr. Rahil Masearehans, Adv. Ms. Rohini Musa, Adv. Ms. Ranjeeta Rohtagi, Adv.
C.A.4236/14	Mr. Amol Chitale, Adv. Ms. Pragya Baghel, Adv. Mr. Salim Inamdar, Adv.
C.A.4236	Mr. P.B. Raman, Sr. Adv. Mr. T.K. Bhaskar, Adv. Mr. K. Harishankar, Adv. Mr. Aditya Verma, Adv. Ms. Chaitra Rawat, Adv. Ms. S. Lakshmi, Adv. Mr. Vikas Singh Jangra, Adv. Ms. Aarti Goyal, Adv.

C.A.4236/14	Ms. Tamali Wad, Adv. Mr. Siddharth Vaid, Adv. Mr. Ishwar Mohanty, Adv. Mr. Vaibhav Sharma, Adv. Mr. Rohan Shah, Adv. Mr. Deep Roy, Adv. Mr. Anthony Handique, Adv. Mr. Anish Dayal, adv. Mr. Kirat Singh Nagara, Adv. Mr. Monish Panda, Adv. Mr. Kshitiz Karjee, Adv.
C.A.4236/14	Mr. Shekhar Naphade, Sr. Adv. Mr. Dayan Krishnan, Sr. Adv. Ms. Neha Sharma, Adv. Mr. Deeptakriti Verma, Adv.
C.A.4236/14	Mr. Siddharth Luthra, Sr. adv. Mr. Ishwar Nankani, Adv. Ms. Roshmi Singh, Adv. Mr. Mishra Saurabh, Adv. Mr. Gaurav Sharma, Adv. Mr. Hari Shankar K., Adv. Mr. M. Yogesh Kanna, Adv. Ms. Vanita Chandrakant Giri, Adv. Mr. Rahul Pratap, Adv.
Intervenor	Mr. P.B.Suresh, Adv. Mr. Vipin Nair, Adv. Mr. Udayaditya Banerjee, Adv. For M/s. Temple Law Firm

Hon'ble Mr. Justice T.S. Thakur pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla.

Leave granted in SLP © No.34228 of 2014.

In terms of the signed judgment these appeals stands disposed of:

"110.....

(I) Amendment to Rule 6.2.4 whereby the words 'excluding events like IPL or Champions League Twenty 20', were added to the said rule is hereby declared void and ineffective. The judgment and order of the High Court of Bombay in PIL No.107 of 2013 is resultantly set aside and the said writ petition allowed to the extent indicated above.

(II) The quantum of punishment to be imposed on Mr. Gurunath Meiyappan and Mr. Raj Kundra as also their respective franchisees/teams/owners of the teams shall be determined by a Committee comprising the following:

(i) Hon'ble Mr. Justice R.M. Lodha, former Chief Justice of India - Chairman.

(ii) Hon'ble Mr. Justice Ashok Bhan, former Judge, Supreme Court of India - Member.

(iii) Hon'ble Mr. Justice R.V. Raveendran, former Judge, Supreme Court of India - Member.

The Committee shall, before taking a final view on the quantum of punishment to be awarded, issue notice to all those likely to be affected and provide to them a hearing in the matter. The order passed by the Committee shall be final and binding upon BCCI and the parties concerned subject to the right of the aggrieved party seeking redress in appropriate judicial proceedings in accordance with law.

(III) The three-member Committee constituted in terms of Para (II) above, shall also examine the role of Mr. Sundar Raman with or without further investigation, into his activities, and if found guilty, impose a suitable punishment upon him on behalf of BCCI.

Investigating team constituted by this Court under Shri B.B. Mishra shall for that purpose be available to the newly constituted Committee to carry out all such investigations as may be considered necessary, with all such powers as were vested in it in terms of our order dated 16th May, 2014.

(IV) The three-member Committee is also requested to examine and make suitable recommendations to the BCCI for such reforms in its practices and procedures and such amendments in the Memorandum of Association, Rules and Regulations as may be considered necessary and proper on matters set out by us in Para number 109 of this order.

(V) The constitution of the Committee or its deliberations shall not affect the ensuing elections which the BCCI shall hold within six weeks from the date of this order in accordance with the prevalent rules and regulations subject to the condition that no one who has any commercial interest in the BCCI

events (including Mr. N. Srinivasan) shall be eligible for contesting the elections for any post whatsoever. We make it clear that the disqualification for contesting elections applicable to those who are holding any commercial interest in BCCI events shall hold good and continue till such time the person concerned holds such commercial interest or till the Committee considers and awards suitable punishment to those liable for the same; whichever is later.

- (VI) The Committee shall be free to fix their fees which shall be paid by the BCCI who shall, in addition, bear all incidental expenses such as travel, hotel, transport and secretarial services, necessary for the Committee to conclude its proceedings. The fees will be paid by the BCCI to the members at such intervals and in such manner as the Committee may decide. The venue of the proceedings shall be at the discretion of the Committee.

111. We hope and trust that the Committee concludes the proceedings as early as possible, but as far as possible within a period of six months.

112. These appeals shall stand disposed of in the above terms with the direction that the relevant record received from Justice Mudgal Committee shall be forwarded to

the Chairman of the newly appointed Committee without any delay.

113. We place on record our deep appreciation for the work done by the Probe Committee headed by Justice Mukul Mudgal and all those who assisted the Committee in the Probe and its early completion.

114. All miscellaneous applications shall also stand disposed of in the above terms."

(SHASHI SAREEN)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed Reportable Judgment is placed on the file)