Karnataka High Court M.G. Kadali vs A. Krishna on 27 July, 1990 Equivalent citations: ILR 1990 KAR 3446, 1982 (2) KarLJ 453 Author: Ramachandriah Bench: Ramachandriah JUDGMENT Ramachandriah, J. 1. These three appeals are filed by defendants-3, 1 and 2 respectively in O.S. 10600/1989 on the file of the XVIII Additional City Civil Judge, Mayohall, Bangalore City, against the Judgment and decree dated 19-4-1990 decreeing the suit declaring that the plaintiff's nomination paper to the Bangalore Turf Club Ltd. for the election of the office of Stewards held on 27-9-1989 had been improperly rejected by the Management of the Bangalore Turf Club Ltd., although his nomination was valid and proper; directing the club to accept the nomination paper of the plaintiff for the post of Stewards and to conduct fresh election in respect of the same by issuing fresh calendar of events and further declaring that the election of defendants-2 to 4 as Stewards for a period of two years from 27-9-1989 in the election held on that date is illegal and unsustainable in law and consequently, restraining defendants-2 to 4 by means of a perpetual injunction from acting, functioning or participating in the Committee of Management of the club as its duly elected Stewards for a period of two years from 27-9-1989. 2. For the sake of convenience, reference will hereinafter be made to the parties to these appeals with reference to the positions they occupied in the suit in the trial Court, 3. First respondent A. Krishna in these appeals was the plaintiff in the suit. 4. The material averments made by the plaintiff in the plaint presented in the trial Court on 6-10-1989 are that he is a member of the Bangalore Turf Club Ltd., (for short 'the Club') which is a Company registered and incorporated under the Companies Act, 1956 (for short 'the Act'). One of the objectives of the Club was to conduct horse races in Bangalore and to carry on other functions in accordance with the Memorandum of Articles of Association, as amended upto 27th September 1985 (for short 'the Articles of Association') as certified by the Registrar of Companies. The affairs of the Club are managed by a Committee of Management which consists of 14 members of whom 9 are Stewards (Ex-officio Members), 4 are elected by the Members of the Club and one Member is nominated by the State Government. Out of the 9 Stewards, 6 are elected by the Members of the Club and 3 are nominated by the State Government, Total membership of the Club as on 27-9-1989 was 344 according to the plaintiff whereas, 347 according to the Club. The remaining 3 Stewards and one Committee Member are nominated by the Government of Karnataka in every financial year. Senior Steward of the Club is elected from amongst the Stewards and he functions as the Chairman of the Club. Elected Stewards retire by rotation. 3 Stewards had to be elected by the Club in the Annual General meeting of the Club to be conducted on 27-9-1989. Therefore, the Secretary of the Club issued a Notification on 27-8-1989 notifying that the Annual General Meeting of the Club Members would be held on 27-9-1989 at 4 p.m. to transact the business to be notified in the Agenda. It included the election of 3 Stewards and two Members of the Committee in the place of those who retire by rotation. As per the calendar of events published in the Annual General Meeting of the Club for the year 1988-39, the last date for filing nominations for election as a Committee Member/Steward was 12-9-1989 and the last date to give special no-

tice to move resolutions by Club members was also the same date. Being keenly desirous of contesting to one of the 3 posts of Stewards to be elected in the election scheduled to be held on 27-9-1989, plaintiff filed his nomination paper on 17-9-1989, plaintiff therein that he was not the owner of any race horse. But, plaintiff vaguely came to know on 15-9-1989 that his nomination paper was likely to be rejected on the ground that his brother Sri. Venilal Ambaram was the owner of a race horse called "courage" having purchased the same on 2-8-1989. Therefore, plaintiff wrote a letter to the Secretary of the Club (first defendant in the suit) dated 15-9-1989 as per Ex.P-15 stating therein that he does not have any right, title or interest in or over the race horse "courage" owned by his brother Venilal Ambaram and, therefore, his nomination paper was perfectly in order and deserves to be accepted. Plaintiff also filed his affidavit to the same effect on 16-9-1989. Plaintiff had also mentioned in his letter dated 15-9-1989 that there were disputes between him and his brother and litigation was pending between them for over two decades and final decree proceedings were still pending. By Notification dated 17-9-1989, the Secretary of the Club notified the plaintiff of the nominations made for Stewards and Committee Members and the Club had printed the name of the plaintiff under the heading "Nomination for Stewards" and added a note as under: "As per records available with the Club, Mr. Venilal Ambaram, brother of Dr. A. Krishna is the owner of a Race Horse and as such Mr. A. Krishna is to be treated as a Race Horse Owner, as defined in Article 32(c)(i) of the Articles of Association of the Club. (Reproduced in the enclosure for ready reference). But, Mr. A. Krishna has taken a different view and claims that he is not to be treated as a Race Horse Owner. Hence, clarification is being sought from the Government of Karnataka at whose instance the relevant Article was incorporated and pending receipt of that clarification his name has been included in this list." By a letter dated 18-9-1989, plaintiff was notified by the Secretary of the Club that the Managing Committee had decided to include his name in the list of nominees received for election to the office of Stewards pending receipt of clarification from the Government of Karnataka regarding the interpretation of Article 32 of the Articles of Association. Plaintiff came to know on 26-9-89 that the Government had informed the Club that the question of acceptance of the nomination of the plaintiff was an internal matter of the Club and, therefore, it was for the Club to take appropriate decision in the matter. On 26-9-1989, plaintiff wrote a letter to the Club bringing to its notice that the Managing Committee having accepted his nomination had no power to review the decision taken by it in the light of the reply received from the Government and, therefore, the validity of his nomination paper cannot be re-considered by the Club at the Annual General Meeting fixed on 27-9-1989. Plaintiff reiterated the same position in his letter addressed to the Secretary of the Club at 11.05 a.m. on 27-9-1989. With the fond hope that his nomination would be accepted by the Managing Committee of the Club, the plaintiff went to the premises of the Club on 27-9-1989 in order to participate in the Annual General Meeting of the Club. But, to his utter dismay, the Chairman of the Club announced that the plaintiff's nomination paper had been rejected as his brother Sri Venilal Ambaram was the owner of a

race horse. On hearing the said announcement, plaintiff was shocked and he left the meeting place. By a Circular dated 27-9-1989 issued by the Club, plaintiff was notified that Or. T. Thimmiah, Sri M.G. Kadali and Sri Y.S. Surender, defendants 2 to 4 respectively, were duly declared as elected as Stewards of the Club in the election held on 27-9-1989 and defendants- 5 to 9, who were the other contestants, were defeated in the election. According to the plaintiff, the rejection of his nomination paper on the ground that his brother Sri Venilal Ambaram was the owner of a race horse was unjust, invalid and illegal in view of the provisions of Article 32(c) of the Articles of Association and, therefore, it was liable to be quashed. The result of the election to the office of Stewards held on 27-9-1989 is materially affected by the illegal rejection of his nomination paper by the Managing Committee of the Club. Plaintiff further averred in paragraph-10 of the plaint as under: "Both in law and in fact, plaintiff cannot be treated as a Race Horse owner merely because his brother owns or owned a race horse. Plaintiff had made it repeatedly clear that he has no right, title or interest in the race horse purchased and owned by his undivided brother Sri. Venilal Ambaram. Besides, the Committee of Management have not considered the effect of the provisions of the Benami Transactions (Prohibition) Act, 1988 and the Judgment of the Hon'ble Supreme Court of India , which was brought to their notice. In the circumstances, the decision of the Committee of Management of the club in rejecting the nomination of the plaintiff was unjust, void and illegal. . . . . " Thereafter, the plaintiff referred to the vital role played by the Stewards in the conduct of races at Bangalore. He further pleaded that the participation of defendants 2 to 4 in the affairs of the Managing Committee would be illegal and the entire business of the Committee will be beset with illegalities and would be rendered void and ultra vires. He, therefore, urged that defendants 2 to 4 were liable to be restrained from participating at the Meetings of the Committee of Management or functioning as Stewards for any purpose. He also alleged that the principles of natural justice and fair play had been violated by the Managing Committee of the Club as he was not heard before rejecting his nomination paper. For these reasons, plaintiff sought various reliefs mentioned in paragraph-18 of the plaint. 5. Plaintiff also filed an application-I.A.I. under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. praying for an order of temporary injunction restraining defendants 2 to 4 from acting, functioning or participating in the Committee of Management of the Club for a period of two years from 27-9-1989 and during the pendency of the suit. The trial Court ordered issue of emergent notices of that application to the defendants. Thereupon, first defendant-Club entered appearance and filed its objections to I.A.I. and also its written statement contesting the suit. Defendants 2 to 4 also filed their objections to I.A.I. 4th defendant filed separate objections to I.A.I. on 17-10-1989 to which he enclosed the affidavit of Sri Venilal Ambaram dated 16-10-1989 to which reference will be made later. That apart, 4th defendant did not file his written statement contesting the suit. 5th defendant filed a brief written statement on 16-10-1989 virtually supporting the ease of the plaintiff by stating in his written statement that the decision held on 27-9-1989 to elect members of the office of Stewards and Committee Members

was invalid inasmuch as the plaintiff's nomination was rejected and the rejection of plaintiff's nomination paper had materially affected the results of the election, 6. First defendant-Club contended in Its detailed written statement that the Civil Court had no jurisdiction to entertain the suit or to grant any interim order because the matter raised for adjudication related to election of Stewards to be held at the Annual General Meeting of the Club on 27-9-1989 and the first defendant being a Company registered under the Act, the question as to who should be a Steward or Member of the Managing Committee and whether the proceedings at which the elections took place is contrary to any provision of the Act or the Articles of Association of the first defendant can be adjudicated only by the Court invested with jurisdiction in the matter by Section 10 of the Act and the Civil Court is not a Court conferred with such jurisdiction and, therefore, the suit as brought in the Civil Court was not maintainable and the Civil Court has no jurisdiction to grant any of the reliefs sought in the plaint or the interim relief sought in I.A.I. First defendant further pleaded that the nomination paper of the plaintiff had been rejected on valid grounds as his brother Sri Venilal Ambaram, who according to the plaintiff's own say in paragraph-10 of the plaint was his undivided brother, was the owner of a race horse called "courage" and Article 32(c) of the Articles of Association provides that no race horse owner shall be a Steward in the Managing Committee and it is further clarified in Article 32(c)(i) that "for the purpose of Article 32 a race horse owner means a person who owns a race horse either in his own name or of a relative as enumerated in Schedule-I 'A' to the Indian Companies Act or as a lessee" and plaintiff's brother came in the category of relative enumerated in Schedule-1 'A'. The correspondence made by the Club with the Government regarding the interpretation of Article 32 and the background of the object with which Article 32 was amended are set out in great detail in the written statement of the first defendant. It is further urged that plaintiff being the Member of the Club had agreed to the amendment of Article 32 of the Articles of Association of the Club as long back as 1985 itself. It is further pleaded that plaintiff had marked his attendance at the Annual General Meeting of the Club held on 27-9-1989 but he did not vote and he also did not protest then against the decision of the Committee regarding the invalidity of his nomination paper. It is further stated that the contention of the plaintiff that he cannot be regarded as the owner of the race horse owned by his brother Sri Venilal Ambaram by virtue of the Benami Transactions (Prohibition) Act, 1988 (for short 'the Benami Prohibition Act') is wholly untenable and if such a contention is accepted it would defeat the very purpose of Article 32 of the Articles of Association which is in the nature of a contract between the club and its members interse. First defendant further pleaded that any of the injuctive reliefs sought by the plaintiff in the plaint cannot be granted and grant of any such prayer would result in great prejudice and damage to the club, its members and the racing fraternity if the full compliment of Stewards including defendants 2 to 4 is not allowed to function inasmuch as annual income of the first defendant by conducting races is of the order of 9 crores of Rupees and the revenue derived by the Government by way of Betting Tax etc., is to the order of Rs. 8 crores annually and races are

conducted under the direct supervision of the body of Stewards. For all these reasons, the first defendant urged that the suit was liable to be dismissed. 7. Defendants 2 and 3 filed separate but common written statement in which they resisted the suit by contending that the suit as brought was not maintainable in the Civil Court and the Civil Court had no jurisdiction to grant alt or any of the reliefs sought by the plaintiff, much less, the interim relief. They also pleaded that the nomination paper of the plaintiff had been rightly rejected as he was the owner of a race horse as per Clauses (b) and (c) of Article 32 of the Articles of Association. They contended that on several prior occasions Members owning a race horse either in their own name or in the name of their relative had been disqualified from functioning as Stewards. They contended that the provisions of the Benami Prohibition Act have no application to the facts of the case and the decision of the Supreme Court referred to in the plaint has also no bearing. They pleaded that the post of a Steward is that of a Judge and a person holding such a post should be above all suspicions and that is why Article 32 had been introduced in the Articles of Association with the avowed object of conducting the races in a manner free from any manner of suspicion by race-goers. They further stated that they would adopt the stand taken by the first defendant in its written statement in order to avoid repetition. 8. On the said pleadings of the parties, the trial Court raised the following issues: 1) Whether the plaintiff proves that the rejection of his nomination for the office of Stewards for the election held on 27-9-1989 is not valid and not proper? 2) Whether the plaintiff proves that he is entitled for mandatory injunction to accept the nomination of the plaintiff to the office of Stewards and to conduct fresh elections? 3) Whether the plaintiff is entitled for injunction restraining defendants 2, 3 and 4 from acting and functioning as Stewards? 4) Whether the suit is maintainable in law? 5) Whether the defendant No. 1 proves that it is justified in not accepting the nomination of the plaintiff to the office of Stewards? 6) What order or decree? 9. At the trial, plaintiff examined himself as P.W.1 and produced 19 documents which were marked as Exhibits P-1 to P-19. On the side of the first defendant-Club, its Secretary was examined as D.W.1 and 11 documents were marked as Exs. D-1 to D-11. The other contesting defendants did not adduce any independent evidence on their side. 10. On a consideration of the said oral and documentary evidence, the learned trial Judge in his Judgment dated 19-4-1990 recorded findings in the affirmative on issues Nos. 1 to 4 and in the negative on issue No. 5 and decreed the suit in the terms indicated above. 11. Feeling aggrieved by the said Judgment and decree, defendants 3, 1 and 2 respectively have filed these three appeals. 12. As all the three appeals arise out of the same Judgment, common arguments are heard in respect of all the three appeals and they are disposed of by a common Judgment. 13. At the time of hearing of arguments in these appeals, Sri V. Tarakaram, learned Counsel for the plaintiff, filed separate amendment applications under Order VI Rule 17 read with Section 107 C.P.C. on 29-6-1990 seeking amendment of the above extracted portion of paragraph-10 of the plaint by substituting the word “divided” in place of the existing word “undivided” for the reasons stated in the affidavit of the plaintiff enclosed to those applications. They are marked

as I.As.I. II and III respectively. Appellants in R.F.A. Nos. 140 and 141 of 1990 have filed written objections to the said amendment applications. Appellant in R.F.A. No. 139/90 has filed a memo on 3-7-1990 stating that he would adopt the objections filed by the appellant in R.F.A. No. 141/90 to the amendment application. 14. Sri S.G. Sundaraswamy, learned Senior Counsel appearing for the appellant-Club in R.F.A. 140/90, Sri K.S. Savanur, learned Counsel for the appellant in R.F.A. 139/1990, Sri Udaya Holla, learned Counsel for the appellant in R.F.A. 141/1990 and Sri V. Tarakaram, learned Counsel for the contesting first respondent-plaintiff have addressed elaborate arguments in all the three appeals on several dates from 26-6-1990 till 18-7-1990 and have placed reliance on more than 50 decisions in support of their respective contentions. A list of those decisions is found in the memorandum of notes of arguments which is kept in the records and reference to some of the important decisions cited by them would be made as and when necessary. 15. The broad points that arise for determination in the light of the enlightened arguments submitted by the learned Counsel on both sides are as under: 1) Whether the Civil Court has no jurisdiction to entertain the suit in view of the provisions of Section 10 and other provisions of the Companies Act, 1956? 2) Whether the club has violated the principles of natural justice and fair play in rejecting the nomination paper of the plaintiff for the Stewardship of the Club at its meeting held on 27-9-1989? 3) Whether the amendment of paragraph-10 of the plaint sought by the plaintiff in the amendment applications filed in these appeals deserves to be granted? 4) Whether the decision of the Club in rejecting the nomination paper of the plaintiff on the ground his brother Sri Venilal Ambaram owned a race horse called "courage" is illegal and invalid? 5) Whether the plaintiff has waived his right to question the decision of the Club in rejecting his nomination paper on 27-9-1989? 6) Whether the provisions of the Benami Transactions (Prohibition) Act apply to the facts of the case? 7) Whether the trial Court has erred in decreeing the suit of the plaintiff in the terms indicated above? and 8) To what reliefs or order the parties are entitled? 16. POINT NO. (1): The learned trial Judge has not raised any specific issue on the point of bar of jurisdiction of the Civil Court to entertain the suit in view of the provisions of Section 10 of the Act pleaded by defendants 1 to 3. However, he has considered this aspect also in the course of his discussion on issue No. 4 mentioned above in paragraph-8 of the Judgment and has held that the Court has jurisdiction to try the suit and the suit is also maintainable. Sri S.G. Sundaraswamy, learned Senior Counsel for the Club, did not advance any argument on the point of jurisdiction except mentioning that he does not propose to advert to that aspect of the matter as there are some decisions which are against the plea taken by the Club that the Civil Court is barred from entertaining the suit in view of the provisions of Section 10 of the Act. Sri Udaya Holla also did not advance any argument on the point of Jurisdiction of Civil Court. However, Sri K.S. Savanur, learned Counsel for the appellant in R.F.A. 139/90, questioned the finding of "the trial Court as, according to him, the jurisdiction of the Civil Court to try the suit is barred by virtue of the provisions of Sub-section (2) of Section 1, Sub-section (10) and (11)(a) of Section 2 and Sections 10, 12, 186, 237 and 408, Clauses 1,

2, 5 and 6 of the Act read with Rule 9 of the Company Rules. He placed reliance in support of the said argument on the decisions mentioned at Sl.Nos. 8 to 14 in the memorandum of notes of arguments kept in the records for reference. 17. In my opinion, Section 10 of the Act is the only relevant provision. In the Commentary under Section 10 at page 72 of Guide to the Companies Act by A. Ramaiya (11th Edition) 1988, the learned author has observed under the heading"Jurisdiction of the Ordinary Civil Court to Interfere in Internal Affairs of a Company" as under: "Under such circumstances, the need for resort to the Court for relief by way of representative or derivative action is indeed very limited and is nowadays much less than before. If, nevertheless, occasion should arise for such interference, it will be limited to the following matters : (1) Where the act complained of is illegal or ultra vires the Company; XXX XXX XXX (5) Where the voting right and other personal rights of a shareholder are infringed." In all these cases, any aggrieved Member of the Company may seek redress in the ordinary Civil Court. 18. In this connection, Sri V. Tarakaram, drew my attention to the observations of the Supreme Court in DHULABHAI v. STATE OF M.P. of Mulla's Code of Civil Procedure, Vol.I, IV Edition, wherein it is observed as under: "Where the Statute gives finality to the orders of the special Tribunals, the Civil Court's jurisdiction must be held to be excluded, if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. XXX XXX XXX (7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set out apply." Sri V. Tarakaram also placed reliance on another decision of the Supreme Court in ABDUL WAHEED KHAN v. BHAWANI AND ORS. wherein it is observed in paragraph-9 at page 1719 as under: "(9) Under Section 9 of the Code of Civil Procedure, a Civil Court can entertain a suit of a civil nature except a suit of which its cognizance is either expressly or impliedly barred. It is settled principle that it is for the party who seeks to oust the jurisdiction of a Civil Court to establish his contention. It is also equally well settled that a statute ousting the jurisdiction of a Civil Court must be strictly constructed. . . . . ." In this connection, reference may usefully be made to another decision of the Supreme Court in T.P. DAVER v. LODGE VICTORIA NO. 363, S.C. BELGAUM AND ORS . The facts of the said decision are that T.P. Daver was a member of a masonic lodge called the Lodge Victoria, Belgaum which was a Club. He was expelled from the Membership of that Club by the Lodge and that order was confirmed by the District Grand Lodge. Appellant challenged that order by filing a suit in the Court of the Civil Judge, Senior Division, Belgaum, for a declaration that the resolution of the Victoria Lodge expelling him from the Membership of the Lodge was illegal and void and also for perpetual injunction. One of the points that arose for decision in that suit was whether the Civil Court had jurisdiction to entertain the suit? Whether the principles of natural justice were violated is also another point that is considered in the said decision. On a consideration of the decisions, it is observed in paragraph-9 at page 1147

that “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.” In my opinion, the implication of the said observations is that the Civil Court has jurisdiction to entertain a suit of the nature under consideration In these appeals but its jurisdiction is rather limited having regard to the facts and circumstances of the particular case under consideration. 19. Reliance was also placed by Sri V. Tarakaram on another decision of the Supreme Court in ANNE BESANT NATIONAL GIRLS HIGH SCHOOL v. DEPUTY DIRECTOR OF PUBLIC INSTRUCTION AND ORS . wherein it is observed that the Civil Court has jurisdiction to examine whether action or decision of an administrative authority was intra vires the relevant Rules even if the Rules are in the nature of administrative or Departmental instructions. Without multiplying the decisions on this point, I consider it useful to refer to one other recent decision of the Supreme Court in RAJA RAM KUMAR BHARGAVA (dead) By L.Rs. v. UNION OF INDIA AIR 1983 SC 752. After referring to the pronouncements of the Judicial Committee and the Supreme Court in several decisions including the decision in DHULABHAI v. STATE OF M.P. referred to above, their Lordships have observed in paragraph-9 at page 756 as under: “Generally speaking, the broad guiding considerations are that wherever a right not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the Civil Court’s jurisdiction is impliedly barred. If, however, a right preexisting in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the Civil Courts’ jurisdiction,”then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the Civil Courts’ jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai’s case," Therefore, it is necessary to examine whether the jurisdiction of the Civil Court to entertain the suits of the nature under consideration is barred either expressly or by implication by any of the provisions of the Act. Except mentioning the provisions of the Act, Sri K.S. Savanur, did not pin pointedly state which provision bars the jurisdiction of the Civil Court from entertaining the suit for granting the reliefs of the nature sought by the plaintiff in the instant case. He also did not cite any decision in which the Company Court has granted such reliefs. Therefore, my answer to point No. (1) is in the negative. 20. POINT NO. (2) : The grievance of the plaintiff is that the principles of natural justice and fair play are violated by the Club by not giving him a personal hearing before rejecting the nomination paper although he had requested the Chairman of the Club in his fetter dated 15-9-1989 (Ex.P-15) to hear him in the matter and his nomination may be accepted. But, there is no

provision in the Articles of Association that a Member contesting the election to Stewardship has to be heard before accepting or rejecting his nomination paper. In support of the contention that personal hearing need not be given in cases of the nature under consideration, reliance was placed by the learned Counsel for the appellants-defendants on the following passage found at page 542 in SERVICES UNDER THE STATE by Justice M. RAMA JOIS under the heading: "Personal hearing not part of natural justice; A personal hearing is not an essential ingredient of the principles of natural justice. So long as an order is passed after giving full opportunity and after considering the written representations or the appeals presented, the order is in conformity with the principles of natural justice. Though it may be desirable to give a hearing in complicated cases, it may not be obligatory to do so. Therefore, unless the Rules provide for oral hearing the right of oral hearing cannot be claimed as an essential part of the principles of natural justice." It is manifest from the averments made in the plaint that the plaintiff was aware from 15-9-1989 itself that his nomination was likely to be rejected on the ground that his brother Sri Venilal Ambaram had purchased a race horse by name "courage" in June, 1989. After getting that information, plaintiff has addressed letters to the Secretary or the Chairman of the Club on 15-9-1989, 16-9-1989 and again on 27-9-1989 stating in those letters and also in his affidavit that he had nothing to do with the race horse owned by his brother and that his brother was the exclusive owner of that horse and, therefore, his nomination may be accepted, in view of the said representations, the Club had thought it fit to include his nomination also in the printed list of nominations by appending the note extracted above to that printed list. Thereafter, it sought instructions from the Government regarding the interpretation of Article 32(c) and also legal advice in the matter. The Club considered the representations of the plaintiff in great detail in the background of the reply received from the Government at its meeting held on 26-9-1989 and again on 27-9-1989 and came to the conclusion that the plaintiff was not eligible to contest the Stewardship as his brother Sri Venilal Ambaram was the owner of a race horse which he had registered at the Madras Racing Undertaking which is a recognised Turf Authority and it is only thereafter that the Club rejected the nomination paper of the plaintiff as the plaintiff had placed before the Club all the material at his disposal in his letters Exs.P-15, P-17, P-18 and affidavit Ex.P-19 in support of his contention that he had nothing to do with the race horse owned by his brother, there was no need for the Club to give a personal hearing before rejecting his nomination paper about one hour prior to the commencement of the election on 27-9-1989. It is observed by the Judicial Committee in LENNOX ARTHUR PATRICK O'REILLY AND ORS. v. CYRIL CUTHBERT GITTENS AIR 1949 PC 313 that "the principles applicable to the proceedings before such Tribunals are that there must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at if he has had a full opportunity of being heard. Provided that the Tribunal does not, exceed its jurisdiction and acts honestly and in good faith, the Court cannot intervene, even if it thinks that the penalty is severe or that a very

strict standard has been applied." It is observed by the Supreme Court in S.L. KAPOOR v. JAGMOHAN AND ORS as under: "Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken under Section 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis (of which) that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject matter or any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a 'double opportunity' that is, one, opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known, the requirements are met. . . . . " Sri S.G. Sundaraswamy also placed reliance on another decision of the Supreme Court in CHINGLEPET BOTTLERS v. MAJESTIC BOTTLING CO. in which it is observed in para-29 at page 1040: "It is a fundamental Rule of Law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case." And then it is observed after referring to the observations made by Megarry, V.C. in McINNES v. ONSLOW FANE (1978) 3 All.E.R. 211 regarding the principles of natural justice to be observed in "application cases' and"forfeiture cases' and it is observed in paragraph-39 at page 1042 as under: "39. It is now well settled that, while considering the question of breach of the principles of natural justice, the Court should not proceed as if there are inflexible Rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the varying constitutions of statutory bodies and the Rules prescribed by the legislature under which they have to act," In the instant case, the plaintiff has neither alleged nor proved that any of the members of the Club who decided to reject his nomination paper on 27-9-1989 were having any bias towards him. 21. However, Sri V. Tarakaram, argued on the strength of a few decisions of which he laid considerable stress on the latest decision of the Supreme Court in MANAGEMENT OF M.S. NALLY BHARAT ENGINEERING CO. LTD., v. STATE OF BIHAR AND ORS. that principles of natural justice are blatantly violated as plaintiff is not given personal hearing. While considering the action of the Government in transferring certain Industrial Dispute case from the Labour Court, Dhanabad to the Labour Court, Patna without affording an opportunity to the Management it is observed in para-27 at page 57 of the said decision as under: "The Management need not establish particular prejudice for want of such opportunity. In S.L. Kapoor v. Jagmohan , CHINNAPPA REDDY, J after referring to the observation of Don-

aldson, J in Altco Ltd., v. Sutherland [(1971) 2 Llyod's Rep. 515] said that the concept that justice must not only be done but be seen to be done is basic to our system and it is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. It was emphasized that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary." In my opinion, the said observations have no bearing to the facts of the case on hand as the Managing Committee of the Club has rejected the nomination paper of the plaintiff after taking into consideration the written representations of the plaintiff and all other relevant aspects. Extracts of the Minutes of the emergent Meeting of the Managing Committee, of the Club held at 3-30 p.m. on 27-9-1989 is marked as Ex.D-10, a copy of which is found at pages 245 to 249 of the paper book. It shows that the subject of accepting or rejecting the nomination paper of the plaintiff was considered on 26-9-1989 and deferred for detailed consideration on 27-9-1989 and, accordingly, the matter was considered and discussed at great depth in the background of the opinion furnished by Advocates M/s. Sundaraswamy, Ramadas and Anand and the legal adviser of the Club Sri N. Jayaraman, who was also present, and in the light of the various views expressed in the meeting, the proposal was put to vote and it was decided by majority to reject the nomination paper of the plaintiff. Material portion of the Resolution dated 27-9-1989 reads thus: "Thereafter, the Committee by majority taking into consideration the existing conventions, the object of Article 32, the submissions made by Mr. A. Krishna vide his letters dated 15th September, 1989, 16th September, 1989, 26th September, 1989 and 27th September 1989, the reply received from the Government on the clarification sought and considering that Mr. Venilal Ambaram, brother of Mr. A. Krishna was the owner of a race horse and as such his brother Mr. A. Krishna is also to be treated as a race horse owner, decided to reject the nomination dated 8-9-1989 of Mr. A. Krishna filed for election to the office of Steward scheduled to be held at the Annual General Meeting on 27th September, 1989. Accordingly, it was decided to delete his name from the ballot paper containing names of candidates seeking election to the office of Steward at the Annual General Meeting on 27th September, 1989." Therefore, I am of the view that the criticism levelled against the Managing Committee of the Club for not giving personal hearing of the plaintiff before rejecting his nomination paper is not well founded. Point No. (2) is answered accordingly. 22. POINT NO. (3): The prayer made by the plaintiff in identical amendment applications filed in all the three appeals tantamounts to withdrawal of an admission of fact made by him in the plaint regarding the undivided status between him and his brother Sri Venilal Ambaram and it is not a formal or inconsequential amendment. In PANCHDEO NARAIN SRIVASTAVA v. Km. JYOTI SAHAY & ANR. . plaintiff had sought an amendment of plaint seeking withdrawal of fact in the trial Court itself. The trial Court had granted the amendment for effective adjudication of dispute. But, in revision, the High Court had interfered with that order. The Supreme

Court has held that the High Court was not justified in interfering with the trial Court's order in revision. But, in the instant case, plaintiff has filed amendment applications after the learned Counsel for the appellants had argued that in view of the tacit admission made by the plaintiff in paragraph-11 of the plaint to the effect that Sri Venilal Ambaram was his undivided brother, it is not open to the plaintiff to contend otherwise and the trial Court was not justified in observing that it was a typographical error. Amendments of pleadings are no doubt allowed in exceptional cases in the ends of justice if the Court is of the view that disallowing of the amendment will result in great injustice to a party or it would result in multiplicity of suits etc. In my opinion, the case on hand cannot be regarded as one such exceptional case. It is not as if the plaintiff was unaware of the admission made by him inasmuch as the first defendant Club has referred to this admission by stating in para-graph-11 of its written statement that "it is not disputed that plaintiff's brother (admittedly undivided brother) by name Sri Venilal Ambaram is the owner of a race horse by name 'courage' and is registered as such on 2-6-1989 with Madras Racing Undertaking which is a Turf Authority." Again, it is stated in paragraph-13.5 of the first appellant's Memorandum of Appeal in R.F.A. 140/89 as under: "13.5. The Court below erred in holding that a significant admission in the plaint namely that Sri Venilal Ambaram was an undivided brother of the plaintiff was a typographical error. This observation is wholly unjustified. A material admission cannot be brushed aside in this manner. The plaintiff had not chosen to amend the plaint or explain it in his deposition and without any material before it, the Court was not justified in characterising the admission as a typographical error." The word 'undivided' is also underlined in order to lay emphasis on the use of that word by the plaintiff in paragraph-10 of the plaint. Plaintiff-1st respondent is surely served with a copy of Memorandum of Appeal in R.F.A. 140/90. Sri Sundaraswamy had adverted more than once to this admission of the plaintiff in the course of his arguments on 26-6-1990, 27-6-1990 and again on 28-6-1990 on which date he placed reliance on a decision of the Supreme Court in NARAYAN BHAGWANT RAO GOSAVI BALAJIWALE v. GOPAL VINAYAK GOSAVI AND ORS . in support of his argument that plaintiff's admission in the plaint that "Sri Venilal Ambaram was his undivided brother" is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous" and contended that the first defen-dant can take advantage of that admission as it was not retracted by the plaintiff so far and, added to that, Sri Venilal Ambaram had also stated in his affidavit dated 18-10-1989 that he and plaintiff constitute an undivided Hindu family; that there was no partition between them so far although there was some disputes between them in regard to the family properties and the amounts he has invested on the purchase, of the race horse 'courage' was out of the funds belonging to the Hindu undivided family of himself and his brother Sri A. Krishna. Therefore, plaintiff should have filed an application in the trial Court itself or atleast before hearing of arguments in these appeals began seeking amendment of the plaint if the word 'undivided' had been used in the plaint by typographical error. But, plaintiff has filed the amendment applications on

29-6-1990. Therefore, the say of the plaintiff in paragraph-11 of his affidavit that "the word 'undivided' is only a typographical error which has now noticed" is an after-thought and not bonafide and the amendment application is filed at a belated stage with a view to overcome the effect of the material admission made by the plaintiff in the plaint and that the allowing of the amendment would materially affect the case of the defendants and results in great prejudice to them as specifically contended by the appellants in R.F.A. Nos. 140 and 141 of 1990 in their objection statement. Taking all these aspects into consideration, I hold on point No. (3) that the amendment sought by the plaintiff cannot be granted at this stage. Consequently, the amendment applications (I.A.II. in R.F.A. 139/90, I.A.II in R.F.A. 140/90 and I.A.III in R.F.A. 141/90) filed in these appeals are dismissed. 23. Before going into consideration of point No. (4) which is a very vital point in these appeals, I propose to consider point No. (5). 24. POINT NO. (5): Sri Udaya Holla argued that the plaintiff has waived his right to question the rejection of his nomination paper as well as the election: of defendants 2 to 4 in view of his conduct in not protesting and not voting against the resolution though he was admittedly present in the Annual General Meeting held on 27-9-1989. He advanced that argument taking advantage of the evidence of the plaintiff in cross-examination that it is true that he did not object for the rejection of the nomination held at 4 p.m. on 27-9-1989 and then volunteered the answer that he did not object because he was upset by the announcement and then stated that it is true that he did not vote at the Meeting. There is no indication in Ex.D-10 that plaintiff was present in the emergent Meeting of the Managing Committee of the Club held from 3-30 p.m. on 27-9-1989 in which the Managing Committee decided to reject the nomination paper of the plaintiff. It is pursuant to that resolution that the Chairman announced in the Annual General Meeting held about half an hour later, as admitted by D.W.1, that the nomination paper of the plaintiff was rejected. Plaintiff's case is that being shocked of that announcement he left the Meeting place without exercising his vote. In the circumstances, the argument of Sri Udaya Holla that the plaintiff has waived his right to question the validity of the rejection of his nomination paper and also the election of defendants 2 to 4 as Stewards is not sound. Consequently, Point No. (5) is answered in the negative. 25. POINT NO. (5): Clauses (b), (c) and (d) of Article 32 of the Articles of Association of the Club are very material for deciding this point: "32(b). No Horse Owner shall be a Steward in the Managing Committee. (c) For the purpose of this Article a Race Horse Owner means a person who: i) owns a Race Horse either in his own name or of a relative as enumerated in Schedule-1 'A' to the Indian Companies Act or as lessee at any time during the period of three years prior to the date of filing the nomination. (d) If a Non-Race Horse Owner becomes a Race Horse Owner after his election, he shall cease to be a Steward. 26. Interpretation of Clause (c)(i) of Article 32 is not free from doubt as It Is not happily drafted. As a matter of fact that is the view expressed by Sri N. Jayaraman, Legal Adviser of the Club in the Meeting of the Managing Committee of the Club held at 3-00 p.m. on 27-9-1989 (vide Ex.D-10). 27. I propose to refer to the apparent ambiguity or incongruity in the phraseology employed in Article 32(c)(i) of the Act. Legisla-

tive intent aids proper interpretation of statutes or rules having statutory force in such a situation is the observation of the Supreme Court in VATAN MAL v. KAILASH NATH . In the context of construing the provisions of Section 13-A of Rajasthan Premises (Control of Rent and Eviction) Act, 1950, their Lordships of the Supreme Court have further observed in Vatan Mal's case referred to above in paragraph-12 at page 1540 as under:"In construing the terms of Section 13-A, the Court has to bear in mind the object underlying the introduction of the Section by the Legislature. It is a settled principle that the interpretation of the provisions of a statute should conform to the legislative intent as far as possible and the Courts should not take a narrow or restricted view which will defeat the purpose of the Act. . . . . " 28. It is also observed by the Supreme Court in MITHILESH KUMARI AND ANR. v. PREM BEHARI KHARE in the context of considering the question whether the Senami Prohibition Act is retrospective or retroactive in operation that external aid like the Report of the Law Commission can be referred to for construing the provisions of a statute and for ascertaining the legislative intent. This is what their Lordships have observed in paragraphs-15 and 19 at pages 3252 and 1253 of the said decision: "15. . . . . It is permissible to refer to the Law Commission's Report to ascertain the legislative intent behind the provision? We are of the view that where a particular enactment or amendment is the result of recommendation of the Law Commission of India, it may be permissible to refer to the relevant report as in this case. What importance can be given to it will depend on the facts and circumstances of each case." XXX XXX XXX 19. However, the Court has to interpret the language used in the Act, and when the language is clear and unambiguous it must be given effect to. Law Commission's reports may be referred to as external aid to construction of the provisions. It may be noted that the Act is a piece of prohibitory legislation and it prohibits benami transactions subject to stated exceptions and makes such transactions punishable and also prohibits the right to defences against recovery of benami transactions as defined in Section 2(a) of the Act. The Parliament has jurisdiction to pass a declaratory legislation. As a result of the provisions of the Act all properties held benami at the moment of the Act coming into force may be affected irrespective of their beginning, duration and origin. This will be so even if the legislation is not retrospective but only retroactive." 29. What the Court should do if there is obvious anomaly in the application of Law? This point is answered by the Supreme Court in UNION OF INDIA AND ORS. v. FILIP TIAGO De GAMA OF VEDEWI VASCO De GAMA AIR 1990 SC 981: ILR 1990 KAR 3278 by observing an paragraph-17 at page 985 as under: "If there is obvious anomaly in the application of law, the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used: [See: Mahadeolal Kanodia v. The Administrator General of West Bengal,]. The legislators do not always deal with specific controversies which the Courts decide. They incorporate, general purpose behind the statutory words and it

is for the Court to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the Court must strike the balance." 30. In view of the law laid down by the Supreme Court in the above referred latest decisions, I do not consider it necessary to refer to all the earlier decisions of the Supreme Court cited by the learned Counsel on both sides except to one decision in GIRIDHARLAL AND SONS v. BALBIR NATH MATHUR AND ORS. , wherein their Lordships have observed as under: "The golden rule of construction is that where the words of statutes are plain and unambiguous effect must be given to them. The real basis of this rule is that since the words must have spoken as clearly to legislators as to Judges, it may be safely presumed that the legislature intended what the words plainly say. Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases the true intention of the legislature, if it can be determined clearly by other means, should be given effect. Parliamentary intention may be gathered from several sources such as from the statute itself, from the preamble to the statute, from the statement of Objects and Reasons, from Parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too. The draftsman may design his words to meet the 'primary situation.' It will then become necessary for the Court to impute an intention to Parliament in regard to 'Secondary situations'. Such 'secondary intention' may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning to avoid patent injustice, anomaly or absurdity or invalidation of a law. Ascertainment of legislative intent is a basis rule of statutory construction. A rule of construction should be preferred which advances the purpose and object of a legislation. Though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities." 31. Therefore, it is necessary to notice the object with which Article 32 as it now stands was incorporated in the Memorandum of Articles of Association of the Club pursuant to the resolution passed in the extraordinary Annual General Meeting of the Club held on 27-9-1989. It would be useful to mention at this stage itself that the plaintiff was present in the said Meeting and voted in favour of incorporating Article 32 in its present form. This is what the plaintiff has stated in cross-examination: "In 1985, I attended the Annual General Meeting conducted by 1st defendant. At that time, I was also a member of Managing Committee. It is true that Article 32 of the Articles of Association was amended in pursuance of Government directives. I do not remember if suggested that I was present when the Managing Committee considered the directives of Gov-

ernment. It is true that the directives of the Government was placed before the General Body by an Extraordinary General Meeting of the members of the 1st defendant Club. I was present in that meeting. I did not oppose the Resolution accepting and amending. . . . . ." Minutes of the proceedings of the Meeting dated 27-9-89 is marked as Ex.D-1 and its copy is found at pages 204 to 218 of the paper book. It shows that A. Krishna (plaintiff) was also present in that Meeting. After a lengthy discussion, Special Resolution No. 1 regarding the incorporation of Article 32(b) to (e) in its present form was put to vote and it was passed by majority of 132 Members voting for the Resolution and one Member voting against the Resolution. Plaintiff's admission that he did not oppose the resolution accepting the amendment would mean that he voted for the Special Resolution. At this stage, I consider it useful to refer to a decision of the Supreme Court in DR. G. SARANA v. UNIVERSITY OF LUCKNOW AND ORS . in which the "doctrine of waiver and estoppel" is considered. In that case, a certain candidate voluntarily appeared before the Selection Committee and took a chance of favourable recommendation from it. Thereafter, he made a complaint against the Selection Committee by contending that it was biased towards him. In that context, their Lordships have observed in paragraph-15 at page 2433 that having appeared before the Selection Committee and taken the chance of having a recommendation from it, it is not subsequently open to the candidate to turn round and question the constitution of the Committee. Their Lordships have also referred to an earlier decision of the Supreme Court in Manak Lal's case wherein it was observed as under: "It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point." Therefore, I hold that the plaintiff is estopped from contending that Article 32(c) is unjust and ultra vires. 32. Amendment to Article 32 is suggested by the Government as per the Annexure enclosed to Ex.D-11 in order to provide that only non-race horse owners/ members shall be eligible for election as Stewards and such of those Stewards who are race owners may vacate their offices and the vacant post so arising shall be filled in from amongst the non-race owners/members of the Club. Why the Government was of that view? Ex.D-2 is the Minutes of the 31st Meeting of the Managing Committee of the Club held on 28-8-1985. Plaintiff was present in that Meeting. It is stated in Ex.D-2 that four Stewards namely, M/s. D. Kumar Siddanna, M.S. Krishnappa, M.C. Gowda and K.S. Prasad had sent in their resignations as Stewards as they were Stewards and race horse owners as defined by the Government. Amendment to Article 32 suggested by the Government in their letter dated 12-8-1985 (Ex.D-11) is considered in that meeting. Government spokesman Sri M. Shankaranarayanan, who was then functioning as Commissioner for Finance, Government of Karnataka, has explained the views of the Government and the object with which comprehensive amendments to Article 32 are suggested by the Government by saying in the Extraordinary General Meeting of the Club held on 27-9-1985 (vide Ex.D-1) as under: "The allegations were that the elected Stewards, particularly the owner Stewards, were fixing races and

that they were indulging in betting either directly or indirectly. Government had given due consideration to all these matters and had come to the conclusion that some checks were necessary on the affairs of the Bangalore Turf Club, in regard to racing. It was in the background, he said, that various Government Orders had been passed prohibiting owners Stewards from functioning as Stewards in respect of the particular race or for the whole day when his horse/s was participating in the races. In this background, the present proposal of the Government to amend the Articles of Association of the Club to prohibit race horse owners from becoming Stewards should not be considered as anything new as it was only an extension of the measures directed by Government since 1983, Mr. Shankaranarayanan said. He added that even when the memorandum of understanding, with the Club, was entered into in 1979, it was in modification of an earlier direction of Government that race horse owners should not be Stewards." He has further stated that the Government has felt, in order to infuse confidence in the mind of the public, that it was necessary to inquire into these matters and the Commissioner of Police had recommended in his report based on Police enquiry that two conditions should be imposed in order to carry on racing in a healthy, proper and clean manner and those two conditions are: (1) that no race horse owner shall be a Steward; and (2) that no Member of the Managing Committee shall bet directly or indirectly. Sri N. Santosh Hegde, who was then functioning as Advocate-General, Government of Karnataka, in addition to being a Member of the Club has clarified to the Members that the Government had every right to interfere in the affairs of the Club since racing was not confined to 350 Members of the Club but a large number of public was also involved and when a business is open to the public, the Government has every right to control that business. He further pointed out that the Government had not said that race horse owners would be prevented from becoming Stewards for ever; that as a matter of fact, the Government has stated that a Racing Commission would be constituted and all reasonable recommendations would be accepted and that it would mean that when the report is received and if the report recommends race horse owners participation as Stewards, Club Members would be well within their rights, to once again amend the Articles of Association. Therefore, he urged the members to think and vote in favour of the resolution. Sri M. Shankaranarayanan has again clarified in that Meeting that it would be difficult for the Government to issue licence to the Club permitting it to conduct the races if the spirit with which the amendment to Article 32 was suggested was not carried out and that as soon as elections are held in conformity with new Articles of Association to be brought into existence by passing the Resolution at that day's meeting, the Government would constitute a Racing Commission and the Commission would be broad based comprising professionals and all other sections of the racing interests. Dr. H.G.V. Reddy, who was also the member of the Club, explained to the Members that he had occasion to discuss the issues that were coming up before the Members on that day with the Hon'ble Chief Minister who was fully aware of the goings on in the Club and was very sad that the Club to which he belonged had come to earn disrepute in the recent past. Several other Members also spoke in that Meeting

for and against Special Resolution No. 1 suggested by the Chairman to amend Article 32 in the manner suggested by the Government and then put the Resolution to vote and it was carried through by majority of 132 Members voting in favour of the Resolution and one Member voting against the Resolution. I have already pointed out that the plaintiff, who was present in the Meeting, had voted in favour of the Resolution. The matter had been discussed in the Meeting held on 28-9-1985 also in which the plaintiff was present (Vide Ex.D-2). In that Meeting, Sri Shankaranarayanan had clarified that the intention of the Government was to ban race horse owners from being Stewards of the Club and there is no ban on race horse owners serving as Committee Members to the extent of not more than 2 out of 4 elected Committee Members could be race horse owners. It is in pursuance of Dr. S.R. Girirajan's views supported by the plaintiff that the proposed amendment was deferred in the Meeting held on 28-9-1985 for consideration in the Annual General Meeting which was held on 27-9-1989. Therefore, it is clear that Article 32 was amended and Clauses (b) to (d) as they exist now were incorporated practically by an unanimous decision but for lone dissenting vote of one member in the Extraordinary General Meeting held on 27-9-1985 to which the plaintiff was also a party. There was no need to Introduce the said amendment if the owner of race horse only was to be disqualified from contesting Stewardship as it is clearly provided in Clause (b) of Article 32 that "no race horse owner shall be a Steward" in the Managing Committee. 33. Powers of the Stewards as enumerated in Article 51 are vast and of far-reaching consequence. As a matter of fact, plaintiff has clearly stated in his evidence that Stewards are incharge and full control of racing of the Club, which includes judging of the horses and races and fair conduct of racing. He has no doubt denied the suggestion that the Stewards judge placing of the horses in case of dispute and has then volunteered the answer that the Stewards only conduct enquiries. He has, however, further stated that Stewards can change the placing of horses; that they can cancel the results of the races and they have got power to punish owners, trainers and jockeys. Therefore, it had come to the notice of the Government that some Stewards who are owning race horses were misusing the powers vested in them in cases where the interests of their relatives owning race horses came up for consideration and that is why the Government proposed the amendment referred to above and the intention of the Government and also the object with which the amendment was suggested was clearly spelt out by the then Finance Commissioner, Advocate-General and also Dr. H.G.V. Reddy, who was in close touch with the then Chief Minister as per his own say. It can, therefore, be unhesitatingly concluded that Article 32 in the present form was incorporated in the Articles of Association with the wholesome object of conducting the races in an absolutely impartial manner by providing that no person who is owning a race horse in his own name or even if his relatives enumerated in Schedule-I 'A' of the Act own race horses during the relevant period. It is in this background that the provisions of Article 32 have to be interpreted and applied. 34. Plaintiff has made it clear in his several letters and has also declared in his nomination paper (Ex.D-6) dated 8-9-1989 as under: "I also declare that I am not a race horse owner as defined under Article

32 of the Articles of Association." He has further made the position clear in his letters-Exs.P-15, P-17, P-18 and affidavit-Ex.P-19 and also in the course of his cross-examination on 23-11-1989 that his brother Sri Venilal Ambaram is the registered owner of a horse called "courage" and has then denied the suggestion that Sri Venilal Ambaram was his undivided brother even as on that date. 35. Much argument was advanced by the learned Counsel on both sides on the question whether Sri Venilal Ambaram was the divided or undivided brother of the plaintiff. Plaintiff has all along referred to Sri Venilal Ambaram as his brother and that apart, he has nowhere stated that he was his divided brother. Even in paragraph-6 of the plaint he has stated that the race horse "courage" belongs absolutely and exclusively to Sri Venilal Ambaram and there could be no benami ownership after the Benami Prohibition Act came into force. What he has pleaded in paragraph-10 of the plaint is already extracted above. It was only at the stage of evidence that the plaintiff tried to make it appear that there was no love lost between him and his brother Sri Venilal Ambaram and they were divided. But, no document evidencing partition between him and his brother Sri Venilal Ambaram is produced. However, Sri V. Tarakaram argued that the Settlement Deed (Ex.P-1), copy of the plaint in O.S.22/60 filed in the Court of the District Judge, Civil Station, Bangalore (Ex.P-2), copy of the compromise petition (Ex.P-3) filed in O.S.6/70, Estate Duty Officer's order (Ex.P-5) and copy of the plaint (Ex.P-6) in O.S.59/72 on the file of the Civil Judge, Civil Station, Bangalore are sufficient to infer that the plaintiff and Sri Venilal Ambaram were divided in status long prior to the controversy in respect of race horse 'courage' arose. 36. He also placed reliance on paragraph-278 at page 525 and paragraph-471 at page 709 of Mayne's HINDU LAW AND USAGE, 12th Edition. This is what the learned author has observed under the heading "PRESUMPTION OF UNION" in paragraph-278 as under: "The joint and undivided family is the normal condition of Hindu Society. An undivided Hindu family is ordinarily joint not only in estate but in food and worship. The presumption therefore is that the members of a Hindu family are living in a state of union, unless the contrary is established. This general principle has no application in cases where one of the coparceners was admittedly separate from the other member of the family. Merely because members lived and worked at different places but owned a joint family house in common, it cannot be said that they did not form a joint Hindu family. The strength of the presumption necessarily varies in every case. The presumption of union is stronger in the case of brothers than in the case of cousins, and the farther you go from the founder of the family, the presumption becomes weaker and weaker. Brothers may be presumed to be joint but conclusion of jointness with collaterals must be affirmatively proved. The presumption in the case of father and son is in favour of jointness." The author has further observed in paragraph-471 under the heading "FATHER'S POWER TO EFFECT A PARTITION" as under: "A Hindu father under the Mitakshara law can, it has been held, effect a partition between himself and his sons without their consent and this is rested on the Mitakshara I, ii 2. This text has been held to apply not only to property acquired by the father himself but also to ancestral property. The father has power to

effect a division not only between himself and his sons but also between the sons INTER SE. So also it would seem that he has the power to make a division when the sons are dead and his grandsons alone are living. The power extends not only to effecting a division by metes and bounds, but also to a division of status. In all these cases, the father's power must be exercised BONA FIDE and in accordance with law; the division must not be unfair and the allotments must be equal ....." 37. After giving my anxious consideration ,to the argument of the learned Counsel for the plaintiff and the above extracted passages relied on by him, I find it extremely difficult to persuade myself to accept that argument. Ex.P-1 is only a certified copy of Settlement Deed dated 12-2-1951 effected between Ambarak Fakir Bhai Vakaria (father of the plaintiff) and his sons A. Thakurdas, Venilal, A. Ramanlal, A. Suklal alias Laljee, A. Narayanan and A. Krishna @ Kishanlal mentioned at Sl.No. 5. He is stated to be the plaintiff. Except producing a certified copy Ex.P-1 of that Settlement Deed, its execution is not proved and much less, is it established that the terms of that Settlement Deed had been given effect to. Exs.P-2, P-3 and P-6 are only certified copies of the plaint in O.S.22/60, compromise petition filed in that suit, plaint in O.S.59/72. Ex.P-4 is the Assessment order under Section 143(1) of the Income Tax Act 1961 passed by the Income-Tax Officer, Circle-III in respect of the returns for the year 1984-85 to 1986-87 furnished by the plaintiff. Ex.P-5 is Estate Duty assessment order passed under Section 61 of the Estate Duty Act in respect of the Estate Duty assessment of the estate left behind by the late father of the plaintiff and his five brothers. It can be gathered from the certified copy of the Order Sheet in O.S.6/70 which forms part and parcel of Ex.P-3 that final decree proceedings are closed on 18-4-1987 as the parties were absent and the requisite stamp paper was not produced since 19-9-1986. It is not possible to conclude from any of these documents that there was partition between the plaintiff and his brothers and in particular between the plaintiff and Sri Venilal Ambaram. Added to that, plaintiff has stated to the pointed question that was put to him in cross-examination suggesting that there is no partition of the family property of his father as under: "Suit for the purpose of partition is pending." Therefore, it is not possible to accept the belated stand of the plaintiff that he and his brother Sri Venilal Ambaram were divided. In reaching this conclusion, I have not taken into consideration the contents of the affidavit of Sri Venilal Ambaram dated 16-10-1989 produced with the Objection-statement of 4th defendant as the plaintiff had no opportunity to file any counter to that affidavit and none of the defendants has chosen to examine Sri Venilal Ambaram as a witness on their side. The argument of the learned Counsel for the contesting respondents that plaintiff ought to have impleaded Sri Venilal Ambaram as a party to the suit or atleast examined him as a witness on his side cannot be upheld as he was neither a necessary nor a proper party to the suit and the plaintiff was not bound to examine his brother as a witness on his side. 38. The only conclusion that can be reached in the light of the above discussion is that no acceptable material is placed by the plaintiff in support of his contention that he and his brother were divided in status, 39. Even if the stand taken by the plaintiff that Sri Venilal Ambaram was his undivided brother is to be accepted

for the sake of argument, that circumstance also would not enure to the benefit of the plaintiff. in Schedule-I 'A' of the Act, 22 relatives are mentioned as relatives referred to in Section 8(c) of the Act. The relative mentioned against item No. 19 of that list is brother (including step-brother). Even mother including step mother, son including step-son, daughter including step-daughter, sister including step-sister are mentioned in that list. It is not mentioned against item No. 19 that brother does not include an undivided brother. Therefore, even an undivided brother will have to be considered as a relative referred to in Article 32(1)(c). If it was the intention of the Government that race horse owners only are disqualified from becoming Stewards, there was no need for the Government to suggest amendment to Article 32 by introducing Clauses (c) to (e). The use of the word 'of' after the words "either in his own name" and before the words 'a relative' as enumerated in Schedule-I 'A' of the Act" in Article 32(c)(i) has no doubt given room to present controversy. Sri Udaya Holla wanted the Dictionary meaning of the word 'of' to be substituted in place of the word 'of'. If his argument that the words 'in the name of' cannot be substituted before the words 'a relative' is not acceptable. According to him, the Dictionary meaning of the word 'of' is 'belonging to or belonging'. In this connection, he also referred to the view expressed by the Legal Adviser of the Club at page 237 of the paper book. While discussing the letter of the Government in the Meeting held on 17-9-1989, the Legal Adviser Sri N. Jayaraman has stated that as per the existing practice followed by the Club, any candidate seeking election to the office of Steward has been treated as race horse owner if one or more horses is/are registered in the name of the candidate or in the name of any of the relatives (as defined in Section 6 of Schedule-I 'A' of the Companies Act) of the candidate with reference to the real ownership of the horse. In my opinion, substitution of the word 'belonging to' in place of the word 'of' as suggested by Sri Udaya Holla would make no meaning as in that event, Clause (c) will have to be read as "For the purpose of this Article, a race horse owner means a person who owns a race horse either In his own name or belonging to a relative as enumerated in Schedule-I 'A'. It is mentioned in PRINCIPLES OF STATUTORY INTERPRETATION, by Justice G.P. Singh, Fourth Edition 1988 at page 132 under the heading 'DICTIONARIES' as under:"When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that "the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore,"when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers." Under the same heading at page 193, the observations of Justice Krishna Iyer, Former Judge of the Supreme Court, that "Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnish a different denotation", made in STATE BANK OF INDIA v. N. SUNDARA MONEY are also extracted. The same learned Judge has ob-

served in CAREW AND COMPANY LTD., v. UNION OF INDIA that "if the language of a statute can be construed widely so as to salvage the remedial intendment, the Court, must adopt it. Minor definitional disability divorced from the realities of the industrial economics if stressed as the sole touchstone is sure to prove disastrous when special types of economic legislation like Monopolies and Restrictive Trade Practices Act having object is to inhibit concentration of economic power. Therefore when two interpreta- tions are feasible, that which advances the remedy and suppresses the evil as the legislature envisioned must find favour with the Court." Therefore, I am of the opinion that the substitution of that Dictionary meaning of the word 'of' in Article 32(c)(i) would make that clause meaning less and, on the other hand, the substitution of the words 'in the name' would render Article 32(c)(i) meaningful and it is also in consonance with the object with which Article 32(c)(i) was amended. In that event, Article 32(c)(i) has to be read as under: "For the purpose of this Article, a race horse owner means a person who: (1) owns a race horse either in his own name or (2) in the name of a relative as enumerated in Schedule-I 'A' to the Indian Companies Act or as a lessee." having regard to the use of the word 'either' before the words "in his own name or" and keeping in mind the intention or the object with which Article 32 was amended on 27-9-1985. It was argued by Sri V. Tarakaram that even if Article 32(c)(i) is read in that way, then also the plaintiff could not have been disqualified because in that event, Sri Venilal Ambaram was holding a race horse 'courage' as benamidar for and on behalf of the plaintiff and the Supreme Court has ruled in Mithilesh Kumari's case that benami transactions cannot be enforced and the real owner cannot claim the property held by the benamidar as his property. As rightly contended by the learned Counsel for the contesting respondents-defendants, there is no scope for applying the Benami Prohibition Act at all to the present case. 40. In my opinion, the only correct and proper way of reading, understanding and applying Article 32(c)(i) is that even if any of the category of 22 relatives mentioned in Schedule-I 'A' of the Act (plaintiff's brother in the instant case) owned a race horse in his/her own name and in his/her own right, then also the person aspiring to contest for Stewardship is hit by Article 32(c)(i) as the wholesome object and purpose with which Article 32 was amended is to disqualify a member of the Club from contesting for Stewardship because on account of his/her filial or blood relationship with the race horse owner, he/she would not be in a position to take a dispassionate or unbiased view if any dispute in the conduct of races in which that race-horse participates comes up for decision before him/her. In this connection, we have to bear in mind the oft-repeated saying of Lord Hewart, C.J. in R. v. SUSSEX JUSTICES, exparte Mc Carthy: (1969) 10B 577 "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly seen to be done" even if there is no love lost between the prospective Steward and that relative as has been pleaded by the plaintiff in the instant case with reference to his brother Sri Venilal Ambaram as In that event also he/she may give an adverse verdict whenever any dispute concerning the race horse owned by his/her inimically disposed relative comes up before him/her, as rightly argued by Sri

Udaya Holla. 41. Plaintiff has been subjected to cross-examination in order to prove that certain Stewards whose son or brother was a race horse owner had tendered resignations to the post of Stewards held by them, after Article 32 was amended and he was aware of the same. He has admitted that the son of Mr. A.M.C. Gowda who, was a Steward in 1985 owned a race horse. But, he has denied the suggestion that Mr. A.M.C. Gowda tendered resignation because his son owned a race horse and then volunteered the answer that he tendered resignation but he does not know the reason. He has further stated that he does not remember if suggested that he was present on 28th August 1985 at the meeting of the Managing Committee of the Club. He has further deposed that he does not know if it is suggested that brother of Mr. Lachaiah Setty owned a race horce in 1985 although he was in the Committee of the Club in 1985 and he does not remember in which Committee the question of Mr. Lachaiah Setty's nomination came up for consideration and has then stated that the Committee might have considered that Mr. Lachaiah Setty was a race horse owner because his brother owned a horse but he does not know. He has also deposed that he does not remember if suggested that he was present in the Committee when the decision was taken and accepted in respect of nomination of Mr. Lachaiah Setty and he does not remember whether he was present in the Annual General Meeting held in 1985 when the question of Mr. Lachaiah Setty's nomination came up for consideration in the Annual General Meeting. In the course of his further cross-examination on 23-11-1985, plaintiff has admitted that he attended the Managing Committee Meeting held on 28-8-1985; that Ex.D-2 is the Minutes of the Meeting dated 28-8-1985 and he was not a contestant to the office of Steward prior to 1989. It is thus seen that the plaintiff gave evasive answers regarding the grounds on which Mr. A.M.C. Gowda and Mr. Lachaiah Setty had tendered their resignations to the post of Stewards held by them although he was a Member of the Club and also of the Managing Committee during the relevant period. The said conduct of the plaintiff only shows that he had no moral courage to deny the pointed suggestions made to him in the matters of Mr. A.M.C. Gowda and Mr. Lachaiah Setty tendering resignations to the post of Stewardship on the ground that their son and brother respectively owned race horses. It can be inferred from the said conduct of the plaintiff that he was aware of the position that a person owning race horse in his own name or even if his relative like son or brother was owning a race horse could not contest the post of Stewardship. Viewed from any angle, therefore, the rejection of plaintiff's nomination paper on 27-9-1989 cannot be termed unjust or illegal or improper. 42. Sri V. Tarakaram's argument that the Club had no power to review the acceptance of plaintiff's nomination paper in the meeting held at 3-30 p.m. on 27-9-1989 cannot also be accepted. It is not as if the Club had accepted the nomination paper of the plaintiff on any date earlier to 27-9-1989 inasmuch as it is clearly mentioned in the notice Ex.P-9 dated 17-9-1989 given to all the Members of the Club that the nominations from 9 members mentioned therein are received under Articles 33 and 37 of the Articles of Association for election to the offices of the Stewards and Members of the Committee at the Annual General Meeting scheduled to be held at 4 p.m. on 27th September 1989 at the Registered Office

of the Club and the name of the plaintiff is mentioned against Sl.No. 3 with the note already extracted in paragraph-4 at page 7 supra. Pursuant to the resolution followed by the notice (Ex.P-9) dated 17-9-1989, clarification is sought from the Government regarding the, interpretation of Article 32(c) and the matter is discussed on 26-9-1989 and then deferred for detailed consideration on 27-9-1989 and it is decided by majority decision after taking into consideration the reply received from the Government and also the views expressed by Advocates M/s. Sundaraswamy, Ramadas and Anand and Legal Adviser Sri N. Jayaraman to reject the nomination paper of the plaintiff. All that Article 33(b)(i) mandates is that the Committee shall, after scrutinising the proposals, inform the club members of the candidature of a person for the Office of Committee Member or the intention of the Member to propose such person as a candidate for that Office by serving individual notice on the Club Members not less than seven days before the Meeting. Provided it shall not be necessary for the Club to serve individual notice upon the Members as aforesaid if the Club advertises such candidature or intention, not less than 7 days before the Meeting in at least two newspapers circulating in Bangalore. . . . . " That apart, it is nowhere stipulated that nomination papers had to be scrutinised and accepted or rejected on or before such and such a date or prior to a specified period of the election date. Even in the calendar of events, mentioned in the Annual report of the Club for the year 1988-89 only the last date for filing nomination for election as Committee Member/Steward and the last date to give special notice to move Resolution by Club Members is mentioned as 12-9-1989. Therefore, there is absolutely no scope for contending that the Managing Committee of the Club having accepted the nomination paper of the plaintiff could not have rejected it subsequently. In the light of the above discussion, I hold on Point No. (4) that the finding recorded by the trial Court on issue No. 1 is erroneous. Consequently, I record finding in the negative on point No. (4). 43. POINT NO.(6): The trial Court has wrongly applied the provisions of the Benami Prohibition Act in coming to the conclusion that plaintiff's nomination paper had been improperly rejected. The object and purpose with which the said Act is enacted is to prohibit benami transactions, to bar the right to recover the property held benami and for matters connected therewith or incidental thereto. It also does not apply to joint family properties. Therefore, the trial Court was not justified in relying upon the provisions of the Benami Prohibition Act and the decision of the Supreme Court in Mithitesh Kumari's case for holding that plaintiff's nomination paper had been improperly rejected. Consequently, point No. (6) is answered in the negative. 44. POINT NO. (7): Learned Counsel for the contesting respondents argued that injuctive reliefs sought by the plaintiff could not have been granted by the trial Court as they are discretionary reliefs which the Courts are not obliged to grant as per the provisions of the Specific Relief Act, 1963. In particular, stress was placed on Section 36 of the Specific Relief Act which provides that "preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual". But, in my opinion, the Court cannot refuse the relief of injunction sought by the plaintiff on the ground that it is a discretionary relief if his contention that his nomination paper had

been unjustly and illegally rejected is acceptable. (See: SUPREME GENERAL FILMS EXCHANGE LTD., v. HIS HIGHNESS MAHARAJA SIR BRUNATH SINGHJI DEO OF MAIHAR AND ORS.) . 45. One other circumstance that was urged by Sri S.G. Sundaraswamy is that the trial Court's order setting aside the election of defendants-2 to 4 and further directing them not to function as Stewards for a period of two years from 27-9-1989 had resulted in virtual stopping of the activities of the Club whose stakes are very heavy but for the stay of the trial Court's order granted by this Court. 46. I find it difficult to accept the said argument of Sri Sunderaswamy as it is provided in Article 50 that if any one of the Stewards elected under Article 46 is absent for more than 3 months from the State of Karnataka, the remaining Members of the Committee shall appoint a Club Member to act for him during his absence. On the same anology, the remaining 6 Stewards could have managed the affairs of the Club by co-opting any of the Members of the Managing Committee to function as Stewards till the vacancies are filled up in accordance with law. Point No. (7) is answered accordingly. 47. Consequent upon my above findings on Points (1) to (7) I hold on Point No. (8) that all the three appeals have to be allowed and the suit of the first respondent-plaintiff will have to be dismissed by setting aside the impugned Judgment and decree. As regards costs, I consider it just and proper to direct the parties to bear their own costs having regard to the facts and circumstances of the case and also taking into consideration the circumstance that the plaintiff is a long standing Member of the Club. 48. In the result, for the foregoing reasons, these appeals are allowed, the Judgment and decree dated 19-4-1990 passed in O.S. 10600/89 on the file of the XVIII Additional City Civil Judge, Mayohall, Bangalore, are set aside and the said suit is dismissed directing the parties to bear their own costs.