

Young Friends Cricket Club Through Its ... vs Delhi District Cricket Association ... on 23 September, 2024

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 5282/2024 & CM APPL. 21592/2024
YOUNG FRIENDS CRICKET CLUB THROUGH ITS
SECRETARY AND OTHERS

DELHI DISTRICT CRICKET ASSOCIATION THROUGH
GENERAL SECRETARY & ANR.

Through: Mr. Rajiv Nayar,
Sr. Advocates with
Mr. Saurabh Chadha
Gulati, Mr. Rohit
Chakravarty, Ms.
Ms. Riya Kumar, Ms.
Anum Hussain, Adv

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

% 23.09.2024

1. The Petitioners are affiliated clubs registered under the Societies Registration Act, 1860, working for the development of the sport of Cricket in Delhi NCR. They have invoked the jurisdiction of this Court for securing membership with voting rights to affiliated/institutional clubs with Delhi & District Cricket Association (DDCA)/Respondent No. 1. Additionally, they seek a direction to DDCA to form a Sports Working Committee as directed by this Court in "Delhi & District Cricket Association vs. Municipal Corporation of Delhi"¹ in W.P (C) 7215/2011 decided on 30th January, "DDCA v. MCD"

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2. The factual background leading to the initiation of the present proceedings is as follows:

2.1 The Supreme Court in CA No. 4235/2014 titled as "Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.",² vide order dated 22nd January 2015, set up the Justice Lodha Committee to recommend reforms in the practices and procedures of the BCCI, and suggest amendments in their Memorandum of Association and Rules & Regulations.

Accordingly, Justice Lodha Committee submitted its recommendations titled as "Report of the Supreme Court Committee on Reforms in Cricket" dated 30th January, 2017. The Supreme Court, considering the said report, vide order dated 18th July, 2016 directed the BCCI to implement the recommendations thereof.

2.2 Thereafter, this Court in DDCA v. MCD, W.P.(C) No. 7215/2011, through orders dated 30th January, 2017 and 23rd March, 2018, directed DDCA to amend its Articles of Association,³ in terms of the amendments proposed in the BCCI Case as well as in compliance with the Companies Act.

2.3 The Supreme Court, in the BCCI Case, vide final order dated 9th August, 2018, approved the Draft Constitution of the BCCI submitted by the Committee of Administrators.⁴ The Court, through the said order, directed State Associations, including the DDCA to amend their respective Constitutions in terms of Justice Lodha Committee Report. 2.4 In light of the said judgement, Petitioner No. 2 made a representation dated 18th September, 2018 to the President of DDCA, requesting for the "BCCI Case"

"AoA"

"COA"

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 24/09/2024 at 22:39:12 inclusion of voting rights for affiliated/institutional clubs, within DDCA's amended constitution.

2.5 DDCA amended its AoA as per the Justice Lodha Committee Report. However, the amended constitution did not accede to the Petitioner's request for inclusion of voting rights, as noted in the 10th Status Report of the COA dated 28th October, 2019.

2.6 The COA issued directions dated 13th August 2019, recommending all State Cricket Associations to adopt an inclusionary approach towards granting membership to affiliated clubs in their amended constitutions. Subsequently, the COA filed its 11th Status Report dated 14th October, 2019, approving DDCA's amended constitution.

2.7 However, being aggrieved by the non-inclusion of voting rights for affiliated clubs in DDCA's amended Constitution, the Petitioners filed I.A. bearing No. 72928/2019 before the Supreme Court. The Court, vide order dated 8th January, 2024, disposed the said I.A., granting Petitioners the

liberty to pursue remedies in accordance with law.

3. In light of the foregoing factual background, the Petitioners have filed the instant writ petition, praying for membership with voting rights with the DDCA.

4. At the outset, Mr. Rajiv Nayar and Mr. Sandeep Sethi, Senior Counsel for the DDCA, object to the maintainability of the present petition on the ground that the Petitioners have no locus standi to seek membership with DDCA. In addition, they urge that DDCA is a private company incorporated under Section 8 of the Companies Act, 2013. Therefore, the Petitioners have the remedy to apply before the National Company Law Tribunal (NCLT) under Section 241(1) read with Section 244 of the Companies Act. They contend that in light of the availability of the said alternate remedy, the This is a digitally signed order.

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5. Mr. Shashank Shekhar, Counsel for the Petitioners, on the other hand, submits that the right to apply before the NCLT under Section 241 as provided in Section 244 of the Companies Act only extends to the members of a company. The aforesaid provisions stipulate as follows:

"241. Application to Tribunal for relief in cases of oppression, etc.-- (1) Any member of a company who complains that--

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter."

"244. Right to apply under section 241.-- (1) The following members of a company shall have the right to apply under section 241, namely:--

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.--For the purposes of this sub-section, where any This is a digitally signed order.

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(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them."

6. Mr. Shekhar contends that since the Petitioners are not members of DDCA, the right to apply before the NCLT is not available to them, and therefore, the Respondent's submission pertaining to the availability of an alternate remedy is untenable. Moreover, he submits that the jurisdiction of this Court under Article 226 of the Constitution of India, 1950 cannot be ousted, particularly when the COA appointed by the Supreme Court has taken cognizance of the issues raised by the Petitioners in their report dated 13th August 2019.

7. With respect to the aforesaid objection raised by the Petitioners, Mr. Nayar points out that the term 'any member' employed in Section 244 of the Companies Act has been interpreted expansively to include 'any person interested in affairs of the company'. He refers to several judgements, which have categorically held that any person who is interested in the affairs of the company, and alleges mismanagement or oppression in the conduct of its affairs, may approach the NCLT for redressal of such grievances, even if such person is not a member as per the Companies Act. Mr. Nayar places reliance on the view expressed by the Bombay High Court in *Manish Kumar v. Topworth Urja & Metals Limited & Ors.*,⁵ which reads as follows:

"15. If any person, who is interested in the affairs of the Company and who alleges mismanagement or oppression, he shall not be restrained from knocking the doors of the Tribunal merely because the words employed in Section 241; as 'any member' and under Section 242, the Tribunal is expected to exercise its power upon an application A.O. 363/2022.

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16. This is exactly, how the learned Single Judge of the Madras High Court in his judgment articulated his opinion, in the case of Chiranjeevi Rathnam (supra). Paragraph Nos. 25 and 26 of the said judgment are relevant, which read as under:

"24. The right to approach tribunal is given to the members, because none else can have any cause of action or complaint against the management of the company. Whether Company calls for Extraordinary General Body Meeting (EGM) is legal (or) whether or not its Directors are elected following the mandate of the procedure contemplated in the statute or the bye laws of the respective company are all matters of concern only to members of the Company and not for outsiders/non-members.

25. In the light of the facts and circumstances of this case, this Court is of the opinion that the word "member"

employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law, as it is found in this case. Hence, it is essential to apply the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful.

golden Rule construction is that the words and phrases or sentences should be interpreted according to the intent of the legislature that passed the Act. Section 241 and 242 should be read together. If the words of the statutes raises doubt, it is inevitable to call in aid the ground and cause of making the statute and the mischiefs, which the Act intends to redress. Under the new Companies Act, 2013, the intention of the legislature is to vest the power of adjudication the matters referred in Section 242 to the This is a digitally signed order.

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17. I concur with the above view and is of the firm opinion is the word 'member' employed in Section 241 cannot be assigned a confined and narrow meaning as it may lead to abuse of process of law, particularly, by keeping in mind the intention of the legislature, when it created a special Tribunal and conferred powers on it to pass appropriate orders for preventing the oppression and mismanagement in a company.

18. Another reason, which justifies the wider interpretation of the word 'member' is, indicated in proviso appended to Section 244, where the Tribunal may waive all or any of the requirements specified in clause

(a) or clause (b) of Section 241, so as to enable the members to apply to it under Section 241 claiming relief in case of oppression, etc. The legislature, therefore, intended that every matter revolving around the affairs of the Company, by whosoever it is sought to be brought forth before the Tribunal, shall be entertained by it and the jurisdiction of the civil court shall be ousted. In the wake of the above, I do not find any legal infirmity in the impugned order refusing ad-interim relief to the plaintiff."

8. Mr. Nayar further refers to the decision of Viji Joseph v. P. Chander,⁶ whereby the Division Bench of the Madras High Court, had taken a view to the following effect:

"35. The learned single Judge of this Court has within an element of clarity under Sections 241, 242 and 430 of the Act, held in Chiranjeevi Rathnam v. Ramesh (2017 SCC OnLine Mad 23049) as follows:

"19. The word employed in Section 430 of the Act is matter, which Tribunal or Appellate Tribunal is empowered to determine by or under this Act. Thus, it is "matter" in dispute to be taken into consideration and not the "men" in dispute. Therefore, to decide whether the ouster clause applies or not, one has to unmask the plaintiffs and find out the matter in dispute. Obviously, the matter in dispute is regarding affairs of the company alleged to be conducted prejudicial to the interest of the company, there is a matter which the Tribunal is empowered to determine. The subject matter squarely falls within the ambit of Section 242 and 242(2)(c)(h) of the Companies Act, 2013.

25. In the light of the facts and circumstances of this case, this Court is of the opinion that the word "member" employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law, as it is found in this case. Hence, it is essential to apply the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful. The golden Rule of statutory construction is that the words and phrases or 2019 SCC OnLine Mad 10424.

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36. We find that the position of law has been rightly captured by the learned single Judge."

9. In light of the expansive interpretation of the term 'members' used in Section 241 of the Companies Act, the Court is of the opinion that the Petitioners, despite not being members of the DDCA, have an efficacious remedy of presenting their grievances before the NCLT for grant of membership with voting rights to the DDCA as well as for the formation of a Sports Working Committee in DDCA. The Petitioners, by virtue of being 'interested in the affairs' of DDCA, can avail the remedy under Section 242(2)(a) read with Section 241 of the Companies Act, which specifically empower the NCLT to adjudicate upon the regulation of conduct of the company's affairs, including the appointment of people who would conduct the said affairs. Therefore, in light of the availability of the said alternate remedy before the NCLT, the present petition cannot be maintained.

10. Be that as it may, the Court has examined the merits of the case and heard the submissions of the parties, whereby the Petitioners assail the non- inclusion of voting rights for affiliated/institutional clubs within the amended constitution of the DDCA. The Petitioners are also aggrieved by the deletion of clause 23(A) from the existing AoA of DDCA, which dealt with the formation of a 'Sports Working Committee'.

11. Mr. Shekhar contends that various cricket associations, in adherence to the judgement of the Supreme Court in the BCCI case, have granted membership and voting rights to affiliated clubs, and thus, the same must This is a digitally signed order.

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directions dated 13th August, 2019, issued by the COA, to assert his right to seek membership with the DDCA. He highlights that the report prepared by the COA specifically provides as under:

"The Report submitted by the Hon'ble Justice Lodha Committee accepted by the Hon'ble Supreme Court vide its judgment dated 18th July 2016 whilst identifying the problem plaguing the state associations stated as under: "Some Member Associations have clubs and individuals as members, some have only clubs as members and others have individuals and patrons as members. There does not seem to be any guideline or basis for membership, and there seems to be ad-hoc, often at the pleasure of the incumbents. Where clubs are members, a very few interests control several cricket clubs. thereby positioning themselves for easy election with a sizeable chunk of convenient electorate. New entrants are discouraged or muzzled out of contention. Some associations exclude even former Indian cricketers from nascent membership (including legendary performers), without any basis, and ensure that association functions more as a social club controlled by a few families. "The priority often seems to be to have an exclusive venue with bar and dining facilities with other recreational avenues for the members, and not the promotion of cricket. Tickets to games are also distributed as largesse among members as entitlement, thereby shrinking their availability to the public at large."

(Emphasis Added)

2. The Committee of Administrators is of the view in order to implement the recommendations of the Hon'ble Justice Lodha Committee and for the furtherance of the Cricket Reforms process, it is necessary that State Associations should enlarge the pool of members such that persons who are involved in cricketing activities at the grass root level, are involved in cricket governance at the State Association. This will ensure that greater number of persons experienced in cricketing activities are associated with the governance of cricket at the State Association level.

3. In light of the above, the Committee of Administrators is of the view that the State Associations should encourage membership and participation of cricketing clubs within the State, if such club demonstrates good track record and experience in conducting cricketing and cricket development activities. However, the membership structure of the State Association and the existing affiliation of the concerned club with existing member district association and parity and equality in treatment of clubs that are similarly placed shall be borne in mind, while considering applications for membership from such cricket clubs.

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4. Further, there is nothing either in the Report submitted by the Hon'ble Justice Lodha Committee or the judgements of the Hon'ble Supreme Court dated July 18, 2016 and August 9, 2018 that

forbids cricketing clubs (which are not social clubs) from being affiliated to or having voting rights in the respective member associations. Therefore, the Committee of Administrators is of the view that in case any member association has taken away membership or voting rights of such cricketing clubs, who are engaged in established cricketing activities (and are not social clubs) and were earlier affiliated with member associations. it would be appropriate for such member associations to restore membership and/or voting rights in the concerned member association.

5. Further, the Committee of Administrators hereby advises member associations to encourage cricketing clubs carrying on cricketing activities within their respective territorial jurisdiction to make application for membership to member associations Since encouraging membership is in furtherance of cricket governance which is a public function, member associations are bound to deal with the said applications in a fair and transparent manner keeping in mind the aforementioned objective of encouraging membership and participation of cricketing clubs in governance of member associations. In order to ensure transparency and fair play, it is incumbent that member associations give reasons for rejecting such applications for membership."

12. Per contra, Mr. Sethi argues that the AoA of the DDCA, since its inception, never provided for membership or voting rights to the affiliated clubs. He further submits that the 11th Status Report of the COA dated 14th October, 2019 categorically states that the AoA of DDCA are fully compliant with Justice Lodha Committee Report as well as the order of the Supreme Court dated 9th August, 2018 passed in the BCCI Case.

13. The Court has heard the contentions of the parties as well as perused the relevant orders. While the Petitioners have placed reliance on the directions of the COA dated 13th August, 2019 to contend that DDCA should provide membership and voting rights to affiliated clubs, it is noted that the AoA of the DDCA have been approved by the COA, as evident from the 11th Status Report of the COA dated 14th October, 2019. Moreover, the Petitioners' claim of parity with the constitutions of other State This is a digitally signed order.

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14. In such circumstances, the semblance of right asserted by the Petitioners, on the basis of the aforementioned recommendations of the COA, does not survive. This Court cannot grant a mandamus to amend or rewrite the AoA of the DDCA pursuant to the Petitioners' prayers as the same would effectively mean that the Petitioners have the right to question the internal affairs of a private limited company constituted under Section 8 of the Companies Act. Therefore, the Court is of the opinion that the Petitioners do not have the locus standi to maintain the present writ petition with the prayers sought thereunder. Accordingly, the present writ petition is disposed of along with pending application.

SANJEEV NARULA, J SEPTEMBER 23, 2024/ab This is a digitally signed order.

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