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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **W.P.(C) 1731/2023**

Between: -

PONDICHERRY BASKETBALL ASSOCIATION,
THROUGH ITS SECRETARY,
MR.V. RAGOTHAMAN, SON OF
VENUGOPAL, AGED 67 YEARS,
RESIDING AT FIRST CROSS STREET, RAJIV
GANDHI NAGAR, BRINDAVANAM,
PONDICHERRY – 605013.

.....PETITIONER

(Through: Mr.Mukul Rotagi, Dr.Abishek Manu Singhvi, Mr.Rajiv Nayar, Mr. Dayan Krishnan and Mr.Sandeep Sethi, Senior Advocates alongwith Mr. Rishi Agrawala, Mr. T. Mahendhran, Mr. Ankit Banati, Mr.Shravan Niranjn, Mr.Prabhav Bahuguna, Mr.B. Ragunatha Sethupathy, Mr.R. Ganesh Kanna and Mr.Sabari Balapandian, Advocates.)

AND

UNION OF INDIA,
THROUGH ITS SECRETARY,
MINISTRY OF YOUTH AFFAIRS & SPORTS,
DEPARTMENT OF SPORTS,
SHASTRI BHAWAN,
NEW DELHI - 110001

.... RESPONDENT NO. 1

BASKETBALL FEDERATION OF INDIA,
THROUGH ITS PRESIDENT,
DR.K. GOVINDARAJ, MLC,
HAVING OFFICE AT NO.148, BARAKHAMBA
ROAD, B-1 LOWER GROUND FLOOR,

STATESMAN HOUSE, NEW DELHI –
110001 RESPONDENT NO. 2

SHRI MALLESHAPPA,
FORMER DISTRICT JUDGE & RETURNING
OFFICER,
BASKETBALL FEDERATION OF INDIA
ELECTIONS,
NO.148, BARAKHAMBHA ROAD,
B-1, LOWER GROUND FLOOR, STATESMAN
HOUSE, NEW DELHI – 110001. RESPONDENT NO. 3

PROF (WG. CDR) P PRABHAKAR (VEETRAN)
PRESIDENT IETE
HAVING REGD. OFFICE AT
2, INSTITUTIONAL AREA, LODI ROAD,
NEW DELHI- 110030 RESPONDENT NO. 4

(Through: *Mr. Darpan Kumar and Mr. Rajat Jonathan Shaw,*
Advocates for Respondent-2.
Mr. Rajesh Inamdar and Mr. Nizam Pasha, Advocate
for Respondent-3.)

+ **W.P.(C) 1915/2023 & CM APPL. 7291/2023, CM APPL. 10029/2023, CM APPL. 10032/2023, CM APPL. 11305/2023**

Between: -

KULVINDER SINGH GILL
501A, GULMARG VELLY GULMOHAR,
INDORE, MADHYA PRADESH, 452018.PETITIONER NO.1

NORMAN SWAROOP ISAAC
H NO. 10-3-67, TEACHERS COLONY,
EAST MARREDPALLY, SECUNDERABAD,
HYDERABAD, ANDHRA PRADESH 500026.
.....PETITIONER NO. 2

RALIN DE SOUZA
H NO. 559, UBBO-DANDO,
BEHIND DEMPO HOUSE, TISWADI,
SANTA CRUZ, GOA 403005.PETITIONER NO. 3

T CHENGALRAYA NAIDU,
NAIDU BUILDINGS, MITTU, CHITTOOR,

ANDHRA PRADESH 517001.PETITIONER NO. 4

PRADIP KUMAR AUDDY
58, DHIREN DHAR SARANI,
HIND CINIMA, BOWBAZAR,
KOKATA, WEST BENGAL 700012.PETITIONER NO. 5

AEZAZ AHMED,
388/4, L BLOCK, HIG FLATS,
GREEN GARDENS, ANNA NAGAR EAST S.O.,
CHENNAI, TAMIL NADU 600102.
LALRINAWMA HNAME,
A-50, BIAL-II, NEAR PRESBYTERIAN CHURCH,
DAWRPUI VENGHTAR,
AIZAWL MUNICIPAL COUNCIL,
AIZAWL, MIZORAM 796009.PETITIONER NO. 6

DONALD STEVEN WAHLANG
LUMBHALANG, HILLY COTTAGE,
NONGTHYMMAI LAWJYNRIEW,
EAST KHASI HILLS, NONGTHYMMAI,
MEGHALAYA 793014.PETITIONER NO. 7

PRAKASH P. SANDOU
NO. 15, GF-1, MUKESH PALACE,
THIRUVALLUVAR STREET, MUDALIARPET,
PUDUCHERRY 605004.PETITIONER NO. 8

G. CHAKRAVARATHI,
26, RAMACHANDRAPURAM MANDALAM,
VINAYAKA TEMPLE STREET, BEHIND HP PETROL BUNK,
ANDHRA PRADESH 533255.PETITIONER NO. 9

SENTININGSANG LONGKUMER,
H/NO-77, WARD-6,
CHUMUKEDIMA, DIMAPUR,
NAGALAND, 797103.PETITIONER NO. 10

T BRAJABIDHU SINGH
LALAMBUNG MAHOKING TAKHELLAMBAM LEIKAI,
IMPHAL MUNICIPAL COUNCIL, LAMPHELPAT,
IMPHAL WEST, MANIPUR 795004.PETITIONER NO. 11

AADHAV ARJUNA

19 MAHARANI CHINNAMMAL ROAD,
VENUS COLONY, ALWARPET,
TEYNAMPET, CHENNAI
TAMIL NADU 600018.

.....PETITIONER NO. 12

ASHOK KUMAR SAHU,
NEAR GANESH TEMPLE, HILLPATNA,
BRAHMAPUR SADAR,
GANJAM, ODISHA 760005

.....PETITIONER NO. 13

SHAFIQAHMED SHAIKH,
JAMMANSHAH PARK,
OPPOSITE SANJARI RESIDENCY,
2 MUSLIM SOCIETY,
AHMEDABAD, GUJARAT 380009

.....PETITIONER NO. 14

*(Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Rishi
Agrawala, Mr. T. Mahendhran and Mr. Ankit Banati,
Advocates.)*

AND

BASKETBALL FEDERATION OF INDIA,
THROUGH ITS PRESIDENT,
DR. K. GOVINDARAJ, MLC,
HAVING ADDRESS AT:
148, BARAKHAMBA ROAD, B-1,
LOWER GROUND FLOOR, STATESMAN HOUSE,
NEW DELHI 110001

.... RESPONDENT NO. 1

UNION OF INDIA,
MINISTRY OF YOUTH AND SPORTS AFFAIRS
ROOM NO. 401, C-WING, SHASTRI BHAWAN,
NEW DELHI, DELHI 110001.

.... RESPONDENT NO. 2

MR. MALLESHAPPA, RETURNING OFFICER,
BASKETBALL FEDERATION OF INDIA ELECTIONS,
HAVING ADDRESS AT:
148, BARAKHAMBA ROAD, B-1,
LOWER GROUND FLOOR, STATESMAN HOUSE,
NEW DELHI 110001

.... RESPONDENT NO. 3

MR. AJEET SINGH RATHORE,

HAVING ADDRESS AT:

RATHORE BHAWAN, NEAR VETINARY HOSPITAL,
DIDWANA, DISTT. NAGAUR,
RASTHAN 341303

.... RESPONDENT NO. 4

(Through: *Mr. Jayant Mehta, Sr. Advocate along with Mr. Darpan Kumar and Mr. Rajat Jonathan Shaw and Ms. Ayushi Kumar, Advocates for R-1.*

Mr. Amit Sibal and Mr. Devadutt Kamat, Senior Advocates along with Mr. Rajesh Inamdar, Mr. Nizam pasha, Advocate for R-3.

Ms. Amrita Sharma, Advocate for R-4.

Mr. Anirudh Bakhru, Mr. Ayush Puri and Mr. Umang Tyagi, Advocates for R-6.

Dr. Menaka Guruswamy, Senior Advocate along with Mr. Utkarsh Pratap and Ms. Mukta Helbe, Advocates for R-6 to 10 & 13.

Mr. Chetan Sharma, ASG and Mr. Anil Soni, CGSC with Mr. Dipesh, G.P. along with Mr. Devvrat Yadav and Mr. Prateek Rana, Advocates for UOI.)

+ **W.P.(C) 1982/2023 & CM APPL. 7557/2023, CM APPL. 10031/2023, CM APPL. 11300/2023**

Between: -

AADHAV ARJUNA

RESIDING AT:

19 MAHARANI CHINNAMMAL ROAD,
VENUS COLONY, ALWARPET,
TEYNAMPET, CHENNAI
TAMIL NADU 600018.

....PETITIONER NO. 1

TAMIL NADU BASKETBALL ASSOCIATION

THROUGH ITS PRESIDENT,

MR. AADHAV ARJUNA

19 MAHARANI CHINNAMMAL ROAD,
VENUS COLONY, ALWARPET,
TEYNAMPET, CHENNAI
TAMIL NADU 600018.

....PETITIONER NO. 2

AEZAZ AHMED,

388/4, L BLOCK, HIG FLATS,
GREEN GARDENS, ANNA NAGAR EAST S.O.,

CHENNAI, TAMIL NADU 600102.PETITIONER NO. 3

MIZORAM BASKETBALL ASSOCIATION
THROUGH ITS PRESIDENT,
DR. LALRINAWMA HNAMTE
A-50, BIAL-II, NEAR PRESBYTERIAN CHURCH,
DAWRPUI VENGHTAR,
AIZAWL MUNICIPAL COUNCIL,
AIZAWL, MIZORAM 796009.PETITIONER NO. 4

LALRINAWMA HNAMTE,
A-50, BIAL-II, NEAR PRESBYTERIAN CHURCH,
DAWRPUI VENGHTAR,
AIZAWL MUNICIPAL COUNCIL,
AIZAWL, MIZORAM 796009.PETITIONER NO.5

PONDICHERY BASKETBALL ASSOCIATION
THROUGH ITS SECRETARY,
MR. V. RAGOTHAMAN
NO. 15, GF-1, MUKESH PALACE,
THIRUVALLUVAR STREET, MUDALIARPET,
PUDUCHERRY 605004.PETITIONER NO. 6

PRAKASH P. SANDOU
NO. 15, GF-1, MUKESH PALACE,
THIRUVALLUVAR STREET, MUDALIARPET,
PUDUCHERRY 605004.PETITIONER NO. 7

ANDHRA PRADESH BASKETBALL ASSOCIATION
THROUGH ITS PRESIDENT
MR. T CHENGALRAYA NAIDU,
NAIDU BUILDINGS, MITTU, CHITTOOR,
ANDHRA PRADESH 517001.PETITIONER NO. 8

T CHENGALRAYA NAIDU,
NAIDU BUILDINGS, MITTU, CHITTOOR,
ANDHRA PRADESH 517001.PETITIONER NO. 9

G. CHAKRAVARATHI,
26, RAMACHANDRAPURAM MANDALAM,
VINAYAKA TEMPLE STREET, BEHIND HP PETROL BUNK,
ANDHRA PRADESH 533255.PETITIONER NO.10

THROUGH ITS SECRETARY,
MR. SENTININGSANG LONGKUMER,
H/NO-77, WARD-6,
CHUMUKEDIMA, DIMAPUR,
NAGALAND, 797103.PETITIONER NO.11

MR. SENTININGSANG LONGKUMER,
H/NO-77, WARD-6,
CHUMUKEDIMA, DIMAPUR,
NAGALAND, 797103.PETITIONER NO.12

T BRAJABIDHU SINGH
LALAMBUNG MAHOKING TAKHELLAMBAM LEIKAI,
IMPHAL MUNICIPAL COUNCIL, LAMPHELPAT,
IMPHAL WEST, MANIPUR 795004.PETITIONER NO.13

TELANGANA BASKETBALL ASSOCIATION
THROUGH ITS GENERAL SECRETARY
MR. NORMAN SWAROOP ISAAC
H NO. 10-3-67, TEACHERS COLONY,
EAST MARREDPALLY, SECUNDERABAD,
HYDERABAD, ANDHRA PRADESH 500026.
.....PETITIONER NO. 14

MR. NORMAN SWAROOP ISAAC
H NO. 10-3-67, TEACHERS COLONY,
EAST MARREDPALLY, SECUNDERABAD,
HYDERABAD, ANDHRA PRADESH 500026.
.....PETITIONER NO. 15

MADHYA PRADESH BASKETBALL ASSOCIATION
THROUGH ITS PRESIDENT,
MR. KULVINDER SINGH GILL
501A, GULMARG VELLY GULMOHAR,
INDORE, MADHYA PRADESH, 452018.PETITIONER NO.16

MR. KULVINDER SINGH GILL
501A, GULMARG VELLY GULMOHAR,
INDORE, MADHYA PRADESH, 452018.PETITIONER NO.17

MEGHALAYA BASKETBALL ASSOCIATION
THROUGH ITS SECRETARY
MR. DONALD STEVEN WAHLANG
LUMBHALANG, HILLY COTTAGE,

NONGTHYMMAI LAWJYNRIEW,
EAST KHASI HILLS, NONGTHYMMAI,
MEGHALAYA 793014.PETITIONER NO.18

DONALD STEVEN WAHLANG
LUMBHALANG, HILLY COTTAGE,
NONGTHYMMAI LAWJYNRIEW,
EAST KHASI HILLS, NONGTHYMMAI,
MEGHALAYA 793014.PETITIONER NO.19

MR. RALIN DE SOUZA
H NO. 559, UBBO-DANDO,
BEHIND DEMPO HOUSE, TISWADI,
SANTA CRUZ, GOA 403005.PETITIONER NO.20

PRADIP KUMAR AUDDY
58, DHIREN DHAR SARANI,
HIND CINIMA, BOWBAZAR,
KOKATA, WEST BENGAL 700012.PETITIONER NO.21

*(Through: Dr. Abhishek Manu Singhvi, Mr. Dayan Krishnan,
Senior Advocate along with Mr. Rishi Agrawala, Mr.
T. Mahendhran and Mr. Ankit Banati, Advocates.)*

AND

BASKETBALL FEDERATION OF INDIA,
THROUGH ITS PRESIDENT,
DR. K. GOVINDARAJ, MLC,
HAVING ADDRESS AT:
148, BARAKHAMBA ROAD, B-1,
LOWER GROUND FLOOR, STATESMAN HOUSE,
NEW DELHI 110001 RESPONDENT NO. 1

UNION OF INDIA,
MINISTRY OF YOUTH AND SPORTS AFFAIRS
ROOM NO. 401, C-WING, SHASTRI BHAWAN,
NEW DELHI, DELHI 110001. RESPONDENT NO. 2

MR. MALLESHAPPA, RETURNING OFFICER,
BASKETBALL FEDERATION OF INDIA ELECTIONS,
HAVING ADDRESS AT:
148, BARAKHAMBA ROAD, B-1,
LOWER GROUND FLOOR, STATESMAN HOUSE,

NEW DELHI 110001

.... RESPONDENT NO. 3

(Through: *Mr. Jayant Mehta, Sr. Advocate along with Mr. Darpan Kumar and Mr. Rajat Jonathan Shaw and Ms. Ayushi Kumar, Advocates for R-1.*

Mr. Devadutt Kamat, Sr. Advocate with Mr. Nizam pasha, Advocate for R-3.

Dr. Meneka Guruswamy, Sr. Advocate along with Ms. Amrita Sharma, Mr. Utkarsh Pratap, Ms. Mukta Halbe and Mr. Lavkesh Bhambani, Advocates for R-4, 6 - 10 and 13.

Mr. Anirudh Bakhru, Mr. Ayush Puri and Mr. Umang Tyagi, Advocates for R-6.

Ms. Amrita Sharma, Advocate for R-5.

Mr. Chetan Sharma, ASG and Mr. Anil Soni, CGSC with Mr. Sahaj, G.P. along with Mr. Devvrat Yadav and Mr. Prateek Rana, Advocates for UOI.)

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Pronounced on: 02.05.2023

J U D G M E N T

1. This batch of three petitions filed under Article 226 of the Constitution of India, relates to the election of the office bearers and members of the Executive Committee of Basketball Federation of India (hereinafter referred to as 'BFI') for the term 2023-2027. Since common issues are involved, therefore, the same are being decided by this common order.

2. The first petition being W.P.(C)1731/2023 was filed by the Pondicherry Basketball Association, seeking directions against respondent No.1 i.e. Union of India (in short 'UOI'), *inter alia*, to appoint any retired judge of this court or of the Hon'ble Supreme Court to supervise and monitor the conduct of election of respondent

No.2-BFI in a fair, impartial and transparent manner which was scheduled to be conducted on 18.02.2023.

3. It is stated in the petition, that respondent No.2-BFI was formed in the year 1950 and was registered under the provisions of the Societies Registration Act 1860, having its registered office at National Capital Territory of Delhi (hereinafter referred to as 'NCTD'). The provisions of the National Sports Development Code of India, 2011 (hereinafter referred to as 'Sports Code') issued by UOI are applicable to all the National Sports Federation (hereinafter referred to as 'NSF') including respondent No.2-BFI. The NSFs are bound to follow the Sports Code and, the Model Election Guidelines ('MEG') which are the part of the Sports Code.

4. It is stated that the incumbent President of respondent No.2-BFI who is from the State of Karnataka *vide* his letter dated 30.01.2023, informed that one Mr. Malleshappa, former District Judge, has been appointed as the Returning Officer (hereinafter referred to as 'RO'), impleaded as respondent No. 3 herein. It is stated that there was no address available of the RO. It is alleged that such an appointment has been made with an object to ensure that the entire election remains under the control of the incumbent President.

5. On 04.02.2023, respondent No.2-BFI released the calendar of events for the election signed by respondent No.3-RO. It is alleged that the incumbent President of respondent No.2-BFI is a politically influential person and is currently serving as the Deputy Leader of Opposition in the Karnataka Legislative Council and is highly capable of conducting the elections in his favour and influencing the result thereto. Therefore, the RO has been appointed from the State of Karnataka itself and the venue for conducting the election has also



been deliberately chosen as Karnataka, despite the fact that the Head Office of respondent No.2-BFI is situated in New Delhi. Various other averments have been made to indicate the importance of respondent No.2-BFI and the role of the Ministry of Youth Affairs and Sports.

6. For the sake of clarity, prayer clauses in W.P.(C)1731/2023- 'Pondicherry Basketball Association vs. Union of India and Ors.' are reproduced as under:-

"That in the facts and circumstances of the present case, it is most respectfully prayed that this Hon'ble Court may be pleased to pass a Writ Order or direction in the nature of mandamus and thereby directing,

a) Respondent No.1 to appoint any retired Judge from this Hon'ble Court or Hon'ble Supreme Court of India to supervise and monitor the conduct of the Election of Basketball Federation of India (BFI) in a fair, impartial and transparent manner, which is scheduled to be held on 18.02.2023;

OR

b) Appointment of any retired Judge from this Hon'ble Court or Hon'ble Supreme Court of India by this Hon'ble Court to conduct the Election of Basketball Federation of India in a fair, impartial and transparent manner, which is scheduled to be held on 18.02.2023;

c) Direct the observer/ Returning officer appointed by this Hon'ble Court to approve and announce the results of the Election under his own signatures;

d) Respondent No.1 to make facilities to record each and every proceedings of the Election of Respondent No.2, which is scheduled on 18.02.2023 to ensure free and fair elections;

e) Pass any other or such further orders as may be deemed fit and expedient in the light of facts and circumstances of the present case."

7. On 10.02.2023, this matter was taken up for hearing and the learned counsel appearing for respondent No.2-BFI was directed to take instructions and assist this court on the appointment of an independent observer. The matter was, thereafter, taken up from time to time and in the meantime, two more writ petitions i.e. W.P.(C)1915/2023 and W.P.(C)1982/2023 came to be filed. On 16.02.2023, in the present writ petition it was directed that the same be listed on 01.03.2023 along with the other two writ petitions and in the meantime, the parties were granted liberty to file their response/pleadings. The matter was, thereafter, taken up for hearing along with the other writ petitions. Respondent No.2-BFI through its President, namely Dr. K. Govindraj filed a counter-affidavit denying all the allegations. It is stated that the instant petition has been rendered infructuous, as the election stood concluded on 13.02.2023. On merits also, in paragraph 7 of the counter-affidavit, the following averments have been made:

It is submitted that the following emanates from the above factual matrix the following:

- a) *The Respondent No. 2 has strictly followed the Sports Code, 2011 and the Model Election Guidelines in setting forth the agenda for the Annual General Council meeting on 18.02.2023. The Petitioner has not been able to set out anything which demonstrates violation of the Model Election Guidelines.*
- b) *It is rather curious that the Petitioner was duly informed about the appointment of Respondent No. 3/Returning Officer by the president which was done in adherence of Clause 5 of the Model Election Guidelines on 30.01.2023. At that juncture, the Petitioner association did not raise any issue about the same and they accepted it without any demur. On the contrary, the Petitioner actively participated in the process. Hence after participating in the process, accepting the appointment of the Returning Officer/Respondent No.3 without any demur, now the Petitioner is estopped from finding fault with the appointment of the Respondent No. 3*

c) *It is further submitted that the last elections were also conducted in Bengaluru and some previous elections were conducted at different places. There is no provision, clause, or rule whatsoever either in the Sports Code, 2011 or the Model Election Guidelines, which sets out the venue for elections. Thus by conducting the elections in Bengaluru, the Model Election Guidelines have not been violated in any manner neither did the Petitioner or any other person/association raise any objection while the same was informed to everyone on 28.01.2023.*

8. The second petition being W.P.(C)1915/2023 titled as '*Kulvinder Singh Gill & Ors. Vs. Basketball Federation of India & Ors.*' is filed by 15 petitioners. Petitioner Nos. 1 to 13 alleged their illegal ousting from contesting the elections and petitioner Nos. 14 and 15 were supporting the candidature of the other petitioners. All the petitioners are essentially aggrieved by the order dated 10.02.2023, whereby the nominations of the contesting petitioners were rejected by respondent No.3-RO. Various pleadings have been submitted to argue that *en-bloc* rejection of the nomination forms of the petitioners is illegal and improper and the same has resulted in the exclusion of the contesting candidates from the election process. The reason for rejection is then argued to be immaterial. Learned counsel submits that the forms submitted by the petitioners contained all the essential requirements and therefore, on a hyper-technical ground, the nomination forms should not have been rejected. The prayer clauses in W.P.(C)1915/2023 are reproduced as under:-

"In view of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

i. Pass a Writ of Certiorari or any other Writ/Order/Direction of like nature setting aside the Impugned Letter dated 10.02.2023 whereby the Petitioners nomination have been rejected by Returning Officer-Respondent No.3 and direct the Returning Officer to accept



the said nomination forms of the Petitioners by rectifying the list of validly nominated candidates in Form 4/Form 6 by including the names of the Petitioners;

ii. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the Respondent No. 3 to allow the Petitioner Nos. 1 to 13 to contest the elections for the respective posts of Respondent No.1 on 18.02.2023;

iii. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the Respondent No.1 to appoint any retired Judge from this Hon'ble Court or Hon'ble Supreme Court of India to supervise and monitor the conduct of the Election of the Respondent No. 1, the Basketball Federation of India (BFI) in a fair, impartial and transparent manner, which is scheduled to be held on 18.02.2023;

iv. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the appointment of any retired Judge from this Hon'ble Court or Hon'ble Supreme Court of India by this Hon'ble Court to conduct the Election of Basketball Federation of India in a fair, impartial and transparent manner, which is scheduled to be held on 18.02.2023;

v. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the observer appointed by this Hon'ble Court to approve and announce the results of the Election under his own signatures;

vi. Pass a Writ of Certiorari or any other Writ/Order/Direction of like nature directing the deletion of the name of Mr. Ajeet Singh Rathore from the List of Validly Elected Nominations for the posts of Vice-President, Treasurer and Secretary-General being in violation of Rule 6(3) of the Model Elections Guidelines;

vii. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the Respondent No. 3 to open the ballot boxes in the presence of the Petitioner Nos. 1 to 13 and to conduct the election and to declare the results immediately after the counting of votes while video recording the entire election process on 18.02.2023;



viii. Pass any such further Order(s) that this Hon'ble Court may deem fit in the facts and circumstances of the present case."

9. The third petition being W.P.(C)1982/2023 titled as 'Aadhav Arjuna & Ors. Vs. Basketball Federation of India & Ors.' is filed by 21 petitioners challenging the declaration of result by respondent No.3-RO on 13.02.2023 alleging the same being without holding any election. It is averred in this petition that between 06.02.2023 to 07.02.2023, nomination forms by various petitioners were submitted to respondent No.3-RO. On 09.02.2023, respondent No.3-RO published the list of nominations received in Form No. 3 and on 10.02.2023, the RO rejected the nomination forms of some of the petitioners and other candidates.

10. It is the case of the petitioners that the respondent No.3-RO on 13.02.2023, declared that the names of the contesting candidates finding place in Form No.6 are in the same number commensurate to the posts, therefore, they all are deemed to be declared as duly elected unopposed to the post mentioned in Form No. 6. It has been held that in terms of Clause 9(1) of the Sports Code, there was no necessity to conduct a poll. The petitioners in this petition, therefore, challenged the letter dated 13.02.2023, setting aside the declaration in Form No.6 and alternatively, various other prayers have been made therein. The prayers made in W.P.(C) 1982/2023 are reproduced as under:-

" In view of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

i. Pass a Writ of Certiorari or any other Writ/Order/Direction of like nature setting aside the Form 6 along with its Impugned Letter dated 13.02.2023 whereby the Respondent No.3 in violation of Article 14 and 21 of Constitution of India and in violation of Rule 9

(1) of Model Election Guidelines issued by Respondent No.2, in a hasty manner has declared the results of election of office bearers of Respondent No.1 thereby deliberately depriving the petitioners of their fundamental and democratic right of participation and voting in the said election that has been illegally concluded;

ii. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the Respondent No. 1 to hold free and fair elections of the Office Bearers of Respondent No.1 through an Observer who is over and above the designation of the returning officer as may be appointed to monitor the proceedings of the returning officer and to conduct and announce the results of the election on the scheduled date., i.e., on 18.02.2023 or on any other date as may be fixed by this Honourable Court after directing the Respondent No. 3 to approve the names of the contestants including the petitioners to be notified in Form 4 to enable them to stand for the elections in a free and fair democratic manner;

OR

iii. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the appointment of a retired Hon'ble Judge of this Hon'ble Court or retired Judge of Hon'ble Supreme Court of India to freshly conduct and complete the election process of the Respondent No.1 within 30 days from the date of such direction in the presence of observer[s] appointed by this Honourable Court in a fair and transparent manner as per the Model election Guidelines issued by Respondent No. 2 at New Delhi being the registered office of Respondent No.1;

iv. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the Respondent No. 3 or the retired Judge of this Hon'ble Court or retired Judge of Hon'ble Supreme Court of India as may be appointed to conduct the elections as the case may be to open the ballot boxes in the presence of the contestants including the Petitioners and to declare the results immediately after the counting of votes while video recording the entire election process;

v. Pass a Writ of Mandamus or any other Writ/Order/Direction of like nature directing the illegally declared candidates in Form 6 dated 13.02.2023 of the Respondent No. 1 not to operate their official responsibilities until the conduct and completion of election as aforesaid;

vi. Pass any such further Order(s) that this Hon'ble Court may deem fit in the facts and circumstances of the present case. "

11. All the three petitions were listed on 15.02.2023 and the arguments by learned counsel appearing for the respective parties were heard at length on the question of interim relief. The matters were, thereafter, posted for orders on the question of interim relief on 16.02.2023. On 16.02.2023, a common interim order was passed in W.P.(C)1915/2023 and W.P.(C)1982/2023. This court while recording *prima facie* finding, in favour of the petitioner stayed the operation of impugned letter dated 10.02.2023 in W.P.(C)1915/2023 and the impugned letter dated 13.02.2023 in W.P.(C)1982/2023 and directed that the existing office bearers of respondent No.2-BFI, whose term was expiring on 18.02.2023, are restrained from taking any policy decision after 18.02.2023 except with the leave of this court. The parties were directed to complete their pleadings and elected candidates were also directed to be impleaded as parties.

12. Respondent No.2-BFI preferred L.P.A No. 130/2023 and L.P.A No. 131/2023 before the Division Bench of this court against the interim order dated 16.02.2023 passed by this court. On 21.02.2023, respondent No.2-BFI sought liberty to withdraw the LPAs with further liberty to request this court to decide the matters on an early date. The Hon'ble Division Bench while granting the liberty to BFI, requested this court to decide the writ petitions at an early date. The LPAs were, therefore, dismissed as withdrawn.



13. The matters thereafter, were taken up for hearing on 01.03.2023, when the parties were directed to file their written submissions, including the objections with respect to the maintainability of the writ petitions. On 07.03.2023, the arguments on behalf of the petitioners were heard and the matter was fixed for hearing on 17.03.2023 for arguments on behalf of the respondents. Thereafter, the parties were heard at length on various dates.

14. Dr. Abhishek Manu Singhvi and Mr. Dayan Krishnan, learned senior counsel appearing on behalf of the petitioners state that on 28.01.2023, respondent No.2-BFI wrote to all its member states, informing them that the Annual General Council Meeting, including the election of office bearers of respondent No.2-BFI, will be held on 18.02.2023 at the Chancery Pavilion Hotel, No. 135, Residency Road, Bengaluru, Karnataka as per the attached agenda therein. On the same day, respondent No. 2-BFI also issued a letter to all affiliated units i.e. all its member states, requesting them to intimate to respondent No.2-BFI, the names of two representatives who are duly elected members of the Executive Committee of each member state for forming the electoral roll. On 04.02.2023, respondent No.2-BFI issued a letter publishing the electoral roll for the elections to be conducted on 18.02.2023. In the electoral roll, there are 23 State Basketball Associations with 46 votes. Kerala Basketball Association was excluded from participating in the elections, however, this court in writ petition filed by Kerala Basketball Association *vide* order dated 10.02.2023, allowed it to participate in the election subject to the outcome of the writ petition, therefore, including 2 votes of Kerala Basketball Association, the total number of votes came to be 48.

15. As per the election schedule, between 06.02.2023 and 07.02.2023, various candidates including some of the petitioners filed



their nomination forms for their respective posts. It is stated that on 07.02.2023, a written complaint was made by Mr. Aadhav Arjuna (one of the petitioners) as regards the presence of office bearers of BFI in the same room as the respondent No.3-RO, who was discharging his electoral responsibilities as the RO. On 09.02.2023, respondent No.3-RO published the list of nomination received in Form No. 3. For the post of President, two nominations were submitted by Shri K. Govindraj (Present President) and Shri Aadhav Arjuna. Nine nomination forms were received for the post of Vice-President, one nomination form was received for the post of Lady Vice-President, two nomination forms were received for the post of Secretary General, three nomination forms were received for the post of Treasurer, seven nomination forms were received for the post of Joint Secretary and five nomination forms were received for the post of Executive Member.

16. It is alleged that all nomination forms of groups opposite to, or other than, the present incumbent president have been deliberately rejected to ensure that the present incumbent president along with his supported candidates win the election. It is also submitted that the respondent No.3-RO has violated Rule 6(2) of the MEG and the Government of India in its counter-affidavit, dated 24.02.2023, has stated that the ground for the rejection of nominations by the RO is unacceptable as the nomination forms do not lack any of the relevant information which was required to have been submitted in Form No. 2 relied upon by the RO. It is stated that the Government of India in its counter-affidavit has also explained that there was no substantial departure. It is stated that fourteen candidates from the petitioners side filed their nomination forms supported by fourteen proposers and fourteen seconders, therefore, all essential conditions for standing in



the elections under Clause 6(2) of the MEG are fulfilled. Once the essential requirement was substantially complied with, respondent No. 3-RO was barred from rejecting the nomination form merely on the ground that the same was not in the format prescribed by the Government of India. According to the learned senior counsel there is no difference between the format prescribed and the form filed by the contesting candidates. They also stated that while receiving the nomination form, the RO could have pointed out, if at all that was the case, that there was technical non-compliance, and could have further directed or requested that the same be cured. The RO never gave any chance to the contesting candidates to correct the alleged wrong forms. It is also submitted that even some of the returned candidates, namely, Shri Ajay K. Sud, Shri Munish Sharma and Shri Surya Singh in their respective affidavits, filed in these proceedings, admitted that the elections were not fairly held and the same should be held with a full contest. According to them, the facts of the case clearly show that the rejection based on non-existent grounds is illegal and therefore, the petition deserves to be allowed. It is argued that this court in its interim order, elaborately considered the facts and legal position involved therein and unless the same is shown to be otherwise, the opinion expressed in the interim order, deserves confirmation.

17. Learned senior counsel places reliance on various decisions of the Hon'ble Supreme Court in the cases of *Shambhu Prasad Sharma v. Charandas Mahant and Others*¹, *Ramesh Rout v. Rabindra Nath Rout*² and *Bar Council of Delhi v. Surjeet Singh*³, *Sangram Singh v. Election Tribunal (Kotah) & Anr.*⁴, *M.V. Venkataramana Bhat v.*

¹ 2012 (11) SCC 390

² 2012 (1) SCC 762

³ (1980) 4 SCC 211

⁴ AIR 1955 SC 425

*Returning Officer & Tahsildar & Ors.*⁵, *Election Commission of India v. Ashok Kumar & Ors.*⁶, *Nandiesha Reddy v. Kavitha Mahesh*⁷ and *Resurgence India v. Election Commission of India & Anr.*⁸. The decisions of High Court of Bombay in the cases of *Pandurang Hindurao Patil v. State of Maharashtra*⁹, *Chandrakant Mahadev Patole & Anr. v. State of Maharashtra & Ors.*¹⁰ and *Shamrao R. Khangal v. District Deputy Registrar, Co-operative Societies, Nashik & Ors.*¹¹ have also been relied upon. They also submit that an objection with respect to maintainability is not sustainable in view of various decisions such as *Kaushal Kishor v. State of Uttar Pradesh & Ors.*¹², *ABL International Ltd. v. Export Credit Guaranteed Corporation of India Ltd.*¹³, *All India Football Federation v. Rahul Mehra & Ors.*¹⁴, *Rahul Mehra v. Union of India & Ors.*¹⁵, *BCCI v. Cricket Association of Bihar and Others*¹⁶, *BCCI v. Cricket Association of Bihar*¹⁷ and the decision of this court in the case of *Manika Batra v. Table Tennis Federation of India*¹⁸.

18. Mr. Amit Sibal, learned senior counsel, who appears on behalf of the RO argues that the election in the instant case, stands concluded on 13.02.2023 and, therefore, in a concluded election, an appropriate remedy for any aggrieved parties is to take recourse to the remedy prescribed under the statute or to file a civil suit but in no case, a writ petition would be maintainable. He submits that there is no jurisdiction

⁵ (1993) 4 SCC 317

⁶ (2000) 8 SCC 216

⁷ (2011) 7 SCC 721

⁸ (2014) 14 SCC 189

⁹ 1983 SCC OnLine Bom 70

¹⁰ 2009 SCC OnLine Bom 2486

¹¹ 2015 SCC OnLine Bom 412

¹² W.P.(C) 113/2016

¹³ (2004) 3 SCC 553

¹⁴ S.L.P(C) Nos.30478-30479/2017

¹⁵ W.P.(C)195/2020

¹⁶ (2016) 8 SCC 535

¹⁷ (2015) 3 SCC 251

¹⁸ 2022 SCC Online Del 3416

to entertain a dispute under Article 226 of the Constitution of India emanating from a election dispute.

19. According to him, the RO is bound by the scheme of the MEG which is statutory in nature and he is not left with any discretion to dilute any of the conditions mandated under the MEG. According to him, there is no scope for any discretion to adjudge nomination form on the touchstone of substantial compliance. Such discretion would lead to various malpractices which cannot be anticipated at this stage. He, therefore, states that the nomination of a candidate, wanting to be elected as an officer bearer of the Managing Committee, once is prescribed to be submitted in a particular manner i.e. Form 2, the same has to be submitted in Form 2 alone and not otherwise. According to him, in the instant case, the nomination forms submitted by the petitioners are not in Form 2 and, therefore, the rejection of nomination forms cannot be called in question in a writ petition.

20. To substantiate his submissions, he has placed reliance on various provisions of the Representation of the People Act, 1951 (in short 'the RP Act'). According to him, whether a poll is conducted or not is irrelevant for any election. He has submitted that Section 53 of the RP Act recognises the aforesaid position and it is stated that if the number of contesting candidates is more than the number of seats to be filled, a poll shall be conducted and if the number of such candidates is equal to the number of seats that are to be filled, the returning officer shall forthwith declare all such candidates to be duly elected to fill those seats. He, therefore, states that as per Section 67A of the RP Act, the date on which a candidate is declared by the Returning Officer under the provisions of Section 53 or Section 66 to be elected to the House of Parliament or the Legislature of a State shall be the date of election of that candidate. It is submitted that the provision of the RP



Act mirrors the scheme of MEG under the Sports Code. He cites various clauses of MEG to indicate that the declaration of result under Clause 12 is only for the candidates when the poll takes place.

21. While reverting back to the submissions made by the petitioners with respect to declaration of Form 15 in case of unopposed election for the term 2015 to 2019, learned senior counsel has stated that the same would not operate as an estoppel against the rules and the understanding of the then RO would not be the determining factor in deciding upon the correct interpretation of the MEG. While referring to his written submissions, he summarises his arguments under the following heads:

- (a) Un-substantiated and baseless aspersions have been made against the Returning Officer which are disputed questions of fact which need to be adjudicated in appropriate proceedings.
- (b) Election process stands completed and under Rule 9(1) of the MEG, the returned candidates are deemed to be duly elected.
- (c) Once the election process stands concluded, the only permissible challenge is by way of a election petition.
- (d) The writ courts' opinion on the supposed widespread nature of the irregularities or the merits of the grounds for rejection of nomination forms would not render a concluded election a case of no election and clothe the writ court with the jurisdiction to adjudicate on the aforesaid aspect.
- (e) Elections of the BSI are governed by MEG prescribed under the Sports Code which are mandatory.
- (f) The role of the RO has been in full compliance with the relevant statute, rules/by-laws and the election has been conducted in a free, fair and completely unbiased manner.

(g) The defects of the nomination forms are of a substantial character.

22. Mr. Sibal, the learned senior counsel also distinguished all authorities cited by the learned senior counsel appearing on behalf of the petitioner and according to him, in none of the cases cited by the petitioners, a completed election was the subject matter in the writ jurisdiction and more importantly in none of the cases, the High Courts or the Supreme Court has set aside the election once the same is concluded.

23. To substantiate his submissions, he has placed reliance on various decisions such as *Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee*¹⁹, *Umesh Shivappa Ambi v. Angadi Shekara Basappa*²⁰, *Shaji K. Joseph v. V. Viswanath*²¹, *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*²², *Arghya Kumar Nath v. Prof. D.S. Rawat & Ors.*²³, *Himmat Singh v. State of Haryana*²⁴, *Hindustan Coca Cola Beverage (P) Ltd. v. Union of India*²⁵, *BCCI v. Cricket Association of Bihar*²⁶, *Mahipal Singh v. Union of India & Ors.*²⁷, *Rahul Mehra v. Union of India and Others*²⁸, *Rattan Anmol Singh v. Ch. Atma Ram*²⁹, *Prahladdas Khandelwal v. Narendra Kumar Salave*³⁰, *The Yachting Association of India v. Boardsailing Association of India*³¹, *Chandrabhan s/o Dasrath Bagade v. Nitin s/o Jayramji Gadkari*³², *Samadhan Swimming Club*

¹⁹ (2006) 8 SCC 487

²⁰ (1998) 4 SCC 529

²¹ (2016) 4 SCC 429

²² (1952) 1 SCC 94

²³ 2014 SCC OnLine Del 4622

²⁴ (2006) 9 SCC 256

²⁵ (2014) 15 SCC 44

²⁶ Civil Appeal No. 4235 of 2014

²⁷ 2018 SCCOnLine Del 10284

²⁸ 2022 SCC OnLine Del 2438

²⁹ (1955) 1 SCR 481

³⁰ (1973) 3 SCC 104

³¹ 2013 SCC Online Del 3235

³² 2003 SCC OnLine Bom 211

*v. Union of India*³³, *Manda Jaganath v. K.S. Rathnam*³⁴, *Brijendralal Gupta and Anr. v. Jwalaprasad and Ors.*³⁵, *Jagan Nath v. Jaswant Singh*³⁶, *Jyoti Basu v. Debi Ghosal*³⁷, *Pradeep Kumar Sonthalia v. Dhiraj Prasad Sahu*³⁸, *Arun Kumar Bose v. Mohd. Furkan Ansari*³⁹, *W.B. State Election Commission v. Communist Party of India (Marxist)*⁴⁰, *Shambhu Prasad Sharma v. Charandas Mahant*⁴¹, *Ramesh Rout v. Rabindra Nath Rout*⁴², *CCE v. Dunlop India Ltd.*⁴³ and *C. Govindasamy v. The Election Commissioner, Chennai*⁴⁴.

24. Mr. Chetan Sharma, learned Additional Solicitor General ('ASG') who appeared on behalf of respondent No. 2 i.e. Ministry of Youth Affairs and Sports, Union of India stated that BFI is a national level sports body having been recognized as a National Sports Federation ('NSF') for the promotion and development of the sport of Basketball in the country. He stated that the Government has issued the Sports Code containing several instructions/ guidelines for grant of Government recognition to NSFs. He also stated that the recognition of NSFs by the concerned Ministry is regulated in terms of the provisions of the Sports Code which are binding on every national sports body recognized thereunder. He also stated that the BFI is required to follow proper, democratic and healthy management practices which provide for greater accountability and transparency at all levels to ensure that it continues to enjoy the recognition and reap the benefit including financial assistance etc. According to him, the

³³ 2018 SCCOnLine Del 10782

³⁴ (2004) 7 SCC 492

³⁵ 1960 SCR (3) 650

³⁶ 1954 SCR 892

³⁷ (1982) 1 SCC 691

³⁸ (2021) 6 SCC 523

³⁹ (1984) 1 SCC 91

⁴⁰ (2018) 18 SCC 141

⁴¹ (2012) 11 SCC 390

⁴² (2012) 1 SCC 762

⁴³ (1985) 1 SCC 260

⁴⁴ W.A. No. 1506-1508/2010



objective of the election guidelines is that the election of NSFs must be held in a free, fair, transparent, and equitable manner ensuring that the democratic system in the functioning of NSF is followed in true spirit.

25. While referring to his counter affidavit, he stated that the BFI did not intimate the Ministry about its election well in advance and did not make any request to the Ministry for appointment of a government observer for election. According to him, the Ministry received a letter dated 08.02.2023 from the Secretary General of BFI for the scheduled meeting dated 18.02.2023. He, therefore, took a stand that the letter was sent only after the filing of the writ petition. He criticized the *en bloc* rejection of the nomination on technical grounds, resulting in a one sided contest, casting doubt on the entire election process. For the sake of clarity, the stand taken by respondent No.2 in paragraph Nos. 5 to 8 read as under:-

"5. It is submitted that the Sports Code also prescribes Model Election Guidelines for the various activities associated with the elections of NSFs. It is submitted that Sports Code under the 'Guidelines for recognition of NSFs' provides "The election guidelines notified by the Government will apply. "The objective of the election guidelines is that the election of NSF must de nerd in free, fair, transparent and equitable manner ensuring that democratic system in the functioning of NSF is followed in true spirit.

6. It is submitted that the Respondent Federation did not intimate the Answering Ministry about its elections well in advance and did not make any request to the Ministry for appointment of Government Observer for the elections. It is submitted that the National Sports Code requires NSFs to intimate Government well in advance about its General Body Meeting and other Meetings where election of office bearers and other important decisions are to be taken; wherever considered necessary, the Government will have the right to send its observer to the above meetings. It is submitted that the Answering Ministry received a letter dated 08.02.2023 from the Secretary General of Respondent No. 1 Federation informing that the AGM (including election of office bearers) has been scheduled for 18.02.2023. A copy of the letter dated 08.02.2023 written by Secretary General of Respondent No.1 Federation to the Answering Ministry is annexed hereto as Annexure R-2/2. It would be seen that letter was sent by the



Basketball Federation of India after the filing of Writ Petitions concerning the election of BFI.

7. As regards objections raised by the petitioners on en-bloc rejection of their nomination on mere technical ground, thereby making it a one-sided contest casts doubt on the entire election process. It is submitted that Form 2, i.e. 'Nomination Paper for Election' as provided in the election guidelines, indicates that the proposer and seconder have proposed and seconded the nomination, respectively and the nominated person has expressed its assent thereto. The ground in the rejection of nomination by the RO is that the nominations have not been submitted in the prescribed Form 2. In this regard, it is submitted that this Hon'ble Court has already noted in its order dated 16.02.2022 that the form does not lack any of the relevant information which was required to have been submitted in Form 2 relied upon by the respondent No.3-Returning Officer.

8. It is submitted that half of the nomination forms filed for contesting elections to various posts of Respondent No.1 Federation, were rejected by the RO, whereas prima facie it appears from the documents available in public domain that there was no substantial departure from the format prescribed in the Sports Code and the same could have been pointed out by RO to the Petitioners at the time of receiving of such nomination forms. Thus, the situation could have been avoided. This en bloc rejection of nominations by RO does not inspire confidence, and casts doubt over the purity of election process. In this respect, it is pertinent to state that the Hon'ble Supreme Court in *Rameshwar Prasad vs Union of India (2006) 2 SCC 1* has expressed its opinion as follows:-

"Therefore, the well-recognized position in law is that purity in the electorate process and the conduct of the elected representative cannot be isolated from the constitutional requirements."Democracy" and "Free and Fair Election" are inseparable twins. There is almost an inseverable umbilical cord joining them. In a democracy the little man- voter has overwhelming importance and cannot be hijacked from the course of free and fair elections. His freedom to elect a candidate of his choice is the foundation of a free and fair election."

26. Learned ASG has placed reliance on a decision of the Hon'ble Supreme Court in the case of *Benedict Denis Kinny v. Tulip Brian Miranda and Ors.*⁴⁵ and a decision of this court dated 08.05.2017 in the case bearing W.P. (C) No.3057/2017 titled *Saroj vs. Delhi State Election Commission and Anr.*

27. Respondent Nos. 5, 11 and 12, who are the returned candidates for the post of Vice President and Joint Secretaries respectively supported the case of the petitioners.

28. Learned counsel who appeared on behalf of respondent No.5 i.e. Mr. Ajay K. Sud has filed the counter affidavit. He took a categorical stand that his nomination form was rejected by the same RO *vide* order dated 13.02.2023 for the same reason assigned for rejecting the nomination forms of the petitioners. According to him, to his surprise, the same RO on the basis of some forged nomination form of which respondent No.5 has no information, declared respondent No. 5, as a returned candidate. He, therefore, stated that on 10.02.2023 he filed a complaint narrating the entire circumstances. He has categorically stated that the RO has conducted the election in a hurried and non-transparent manner without following the principles of natural justice and therefore it deserves to be set aside.

29. According to him, despite being declared a returned candidate, to maintain the purity of election in the sports association, participation of all rival members is a must, therefore he has no hesitation in surrendering his uncontested election. Paragraph Nos.4 to 9 of his affidavit read as under:-

“4. I say that in order to maintain the purity of elections, that too, in Sports Associations, participation of all rival members is a must. Any appointment of an Office Bearer of a Sports Association which is affiliated with International Sports Associations seeking the participation of sportspersons in international events representing India, should be transparent without any allegation of misdoing and if there is a contested election, then, the contest must be followed. The present election, unfortunately, appoints Office Bearers through a deeming fiction because the so-called Returning Officer rejected the nomination papers filed by one set of contestants which includes me. Surprisingly, the same Returning Officer has declared me to be a Returned Candidate through default on the basis of some nomination form of which I do not even have a copy and the rejection of my own nomination form filed admittedly by me.

5. *I say that I had in fact filed a complaint with the Returning Officer on 10.02.2023 which is being filed along with the present Affidavit and is marked as Annexure R5/2.*

6. *I say that no orders have been passed by the Returning Officer on the said complaint to my knowledge. No order is also available on the website of the Basketball Federation of India in this regard.*

7. *I say that the entire elections conducted by the Returning Officer in a hurried and a non-transparent manner, without adhering to the principles of natural justice, deserves to be set aside.*

8. *I say that the Returning Officer did not even provide an opportunity to me to appear before him for considering my nomination papers and has marked my absence in the Order dated 13.02.2023 at Page Nos. 507-508 of the present Writ Petition.*

9. *I say that I am the Secretary of the Himachal Pradesh Basketball Association and am an elected member thereof. I say that the present election conducted by the Returning Officer deserves to be set aside also on the reason that if such election is approved by this Hon'ble Court, there will be grave danger of misdoings in each and every sports association during the for the governing counsel of those associations. In order to set the right precedent and notwithstanding that I have been appointed as Vice President of the Basketball Federation of India in the Impugned Election, I hereby support the present Writ Petition and say that the Election should be set aside, and this Hon'ble Court may appoint an independent, non-biased and transparent Returning Officer to conduct the elections after accepting all nomination papers."*

30. Mr. Anirudh Bakhru, learned counsel who appeared on behalf of respondent No.5, while taking this court through the order of rejection of the nomination form has stated that the RO himself has analyzed the Handbook for Returning Officers published by the Election Commission of India. The submission then made is that in the absence of any guidelines with respect to the process of election in the Sports Code or under the Constitution of BFI, he is bound to follow the laws applicable to the elections conducted by the Election Commission of India. Therefore, the RO has erred in rejecting the nomination form on a hyper-technical ground as the provisions of the RP Act do not contemplate such a consequence.



31. According to him, there is no substantial defect in the nomination form. He has also stated that only two nomination forms are acceptable on behalf of any candidate as per Clause 6.3 of the Sports Code, whereas, in the case of Ajeet Singh Rathore, three nomination forms were accepted, and they were found to be valid by the RO. He has also stated that the manner in which the entire election has been conducted, cannot be said to be fair and transparent. He has therefore contended that 27 eligible voters, including some of the contesting candidates are in favour of free and fair election which clearly shows that the majority is against the manner in which the present unfair election has been conducted. He has presented the names of 27 eligible voters out of the 48 eligible voters to indicate that the majority of eligible voters are before this court either by way of filing of writ petitions or by supporting the case of the petitioners which itself demonstrates that the rejection of nomination by the RO on hyper-technical ground requires interference by this court.

32. Respondent Nos. 11 and 12 are represented by Mr. Sanjoy Ghose, Senior Advocate alongwith Mr. Pratham Mehrotra and Mr. Rohan Mandal, Advocates.

33. Respondent No. 11 in his counter affidavit has stated that if the governing body of BFI is allowed to function without a contested election and without the confidence of the members of the said association, it would lead to unnecessary disputes in the functioning of BFI. He has further prayed that this court should direct a full-fledged contested election to be held and that he is ready to sacrifice his post of Joint Secretary which he has come to hold as an outcome of an uncontested election. Paragraph Nos. 3 to 6 of his affidavit read as under:-

“3. I say that in the Himachal Pradesh Basket Ball Association also, similar elections are held. I say that I have gone through the Writ Petition and without admitting or denying any of the allegations made therein, I say that BFI being a national body must have a contested election so that all other associations who are members of BEL have confidence in the governing council of BFI that it has been appointed through majority vote.

4. I say that if governing body of BFI is allowed to function without a contested election and without confidence of the members of the State Associations, it would lead to unnecessary disputes in the functioning of BFI. I say that such disputes would not only hinder the progress of BFI but also prove detrimental to the sport and the players who are being represented by BFI all across the world.

5. I say that in the interest of the Sport and BFI, I humbly submit that his Hon'ble Court may direct a full fledged contested election to be held since, my holding the post of "Joint Secretary" of BFI without there having been any election whatsoever would only bring a bad name to me and the BFI. I say that I do not want to set an-example of having been appointed to the governing council of BFI without a contested election and only on the basis of en-masse rejection of nomination forms filed by contestants.

6. I say that I support the Writ Petition and pray before this Hon'ble Court that elections be held with contest so that deserving people are appointed to the governing council of the BFI.”

34. Respondent No. 12 has also taken an almost similar stand as has been taken by respondent No.11. Paragraph Nos. 5 to 8 of his counter-affidavit read as under:-

“5. I say that I expected a full-fledged election but as the facts turned out all contesting candidate's nomination papers were rejected by the RO, only because they were not in the “Format” prescribed by the Model Election Guidelines issued by the Union of India (“UOI”). I say that such an election is an anathema to a democratic process, and I have been facing unnecessary issues in my association due to such a whim.

6. I say that it is my humble prayer before this Hon'ble Court that a full fledged contested election may be announced, accepting all nomination papers of all contestants because there is no glory in winning without a contest.

7. I say that an opposition to a contested election would defy the entire election process and defeat the purpose of the model guidelines on the UOI.

8. I say that with these submissions, I hereby support the present Writ Petition and say that the Form 6 issued by the RO be set aside by this Hon'ble Court and a full-fledged election be

announced by the orders of this Hon'ble court with a free and fair RO be appointed by this Court to hold such elections with an observer Present from the Government of India and Federation of International Basketball Association ("FIBA")."

35. Mr. Jayant Mehta, learned senior counsel who appeared on behalf of BFI supported the submissions made by the RO and in addition, he stated that the very nature of the relief sought for in the instant writ petitions is not amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India. According to him, there is no application of Articles 14 and 21 of the Constitution of India in matters of election and he has stated that the violation of the Sports Code is a question of fact and the same cannot be determined in writ jurisdiction.

36. He has also stated that the instant writ petitions are not maintainable. He has further stated that the rejection of nomination forms cannot be set aside under Article 226 of the Constitution of India and the courts cannot interfere after the commencement of the process of election. In the instant case, once the process has already culminated into a deemed declaration of some of the contested candidates as elected, therefore, no interference is called for. According to him, the BFI is bound by the Sports Code and the rejection of nominations by the RO has been done keeping in view the fact that the scheme prescribed by MEG in the Sports Code has not been complied with. He has supported the order passed by the RO and distinguished the decisions relied upon by the learned counsel appearing on behalf of the petitioners and by the learned ASG.

37. That apart, he has specifically placed reliance on the decisions in the cases of *W.B. State Election Commission (supra)*, *Samadhan Swimming Club (supra)*, *BCCI (supra)*, *The Yachting Association of India (supra)*, *Avtar Singh Hit (supra)*, *Rahul Mehra (supra)*,



***Mahipal Singh v. Union of India*⁴⁶, *CCE (supra)*, *Manda Jaganath (supra)* and *C. Govindasamy v. The Election Commissioner, Chennai*⁴⁷.**

38. Respondent Nos.6 to 10 and 13 are represented by Dr. Menaka Guruswamy, learned senior counsel. She has supported the decision of the RO and has stated that the election process was in consonance with the Sports Code and MEG. She has further explained that the election of NSFs is governed by the will of the State Association as opposed to individual members of the Electoral College, and therefore, the requirement of Form 2 has to be necessarily fulfilled. She has also stated that Form 2 providing and mandating the proposers and seconders to propose and second the name of the candidates is a reflection of the will of the State Association which cannot be substituted by the will of the individual candidate, and therefore, there is a laudable objective in the structuring of Form 2 and in no case, can such structuring of a form be diluted or changed. She has also explained that disputed questions of fact cannot be ordinarily entertained in a writ petition.

39. According to her, if there is any departure from the Sports Code, the concerned NSF may have to suffer drastic consequences including losing recognition of the NSF. She has explained the scheme of MEG while taking this court through various clauses of MEG to emphasize that it is essential and mandatory that Form 2 be strictly complied with. She has also relied on the decisions which have been relied upon by the RO and BFI to support her stance.

40. In rejoinder submissions, Mr. Dayan Krishnan, learned senior counsel appearing on behalf of the petitioners further explained that

⁴⁶ 2018 SCC OnLine Del 10284

⁴⁷ W.A. No.1506-1508/2010

the writ petition for challenging the election result is maintainable if there is an apparent violation of the Sports Code and there is no remedy provided under the Sports Code or under the MEG. He has further explained that in the present case, BFI and the RO have acted in a one-sided, *mala fide* and arbitrary manner in total disregard of the applicable Sports Code. Therefore, the power under Article 226 of the Constitution can be exercised to remedy the injustice caused to the petitioners.

41. He emphasized that there are no elections and when this court finds that the rejection of the nomination forms is on flimsy and arbitrary grounds, this court is not powerless to exercise its power under Article 226 of the Constitution of India. He has further stated that even under the provisions of the RP Act, Section 36(5) requires that an opportunity of hearing be provided in case of any objection to the nomination form either by any person or by the RO. According to him, in the instant case, even if the RO was of the view that the nomination form was defective, an opportunity to rectify the same should have been granted. Since the decision of the RO is in violation of the principles of natural justice and no disputed facts are required to be adjudicated by this court, in view of the stand taken by majority of the eligible voters, this court can exercise the power under Article 226 of the Constitution of India.

42. While explaining the decisions relied upon by the learned counsel appearing on behalf of the respondents, he has presented a chart in a tabular form to indicate that there is no constitutional bar to entertain a writ petition if the petition is for furtherance of the election and not for interdiction. He has also placed reliance on a decision of

the Hon'ble Supreme Court in the case of *Dravida Munnetra Kazhagam (DMK) v. Secretary, Governors Secretariat and Ors*⁴⁸.

43. Mr. Kamat, learned senior counsel who also appeared on behalf of the RO and Mr. Darpan, learned counsel who appeared on behalf of BFI, however, distinguished the decisions relied upon by Mr. Dayan Krishnan, learned senior counsel in his rejoinder submissions. Thereafter, they explained that none of the decisions relied upon by the petitioners will have application under the facts of the instant case.

44. According to Mr. Kamat, learned senior counsel, the decision in the case of *Ashok Kumar (supra)* which has been relied upon in the case of *DMK (supra)* is the one where the election process had not finished, however, in the present case, the election is completed.

45. Mr. Darpan, learned counsel specifically points out that with respect to the earlier election of the same federation, certain grievances were raised by J&K Basketball Federation and those grievances were considered in Civil Suit No. 854/2015 and the said civil suit was entertained and, therefore, the remedy for the petitioners in the instant case is also to file a civil suit and in no case, the writ petitions under Article 226 of the Constitution of India would lie.

46. I have heard learned counsel appearing on behalf of the parties and perused the record.

47. The Hon'ble Supreme Court in the case of *Ashok Kumar (supra)* has considered the scope of interference under Article 226 of the Constitution of India with respect to the election process. The matter had arisen out of an interim order passed by the High Court of Kerala staying the notification issued by the Election Commission of India containing directions as to the manner of counting votes. The

issue was related to the 13th Lok Sabha elections. The poll had taken place on 11.09.1999 and the counting was scheduled to take place on 06.10.1999. Two days before the counting i.e. on 04.10.1999 the order of stay was passed by the concerned High Court. The issue that had arisen for the decision in the case of *Ashok Kumar (supra)* was with respect to the jurisdiction of the High Court to entertain the petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process. The Hon'ble Supreme Court after having extensively considered the decisions in the cases of *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*⁴⁹, *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.*⁵⁰, *Lakshmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors.*⁵¹, *Election Commission of India v. State of Haryana*⁵², *Digvijay Mote v. Union of India*⁵³, *Anugrah Narain Singh v. State of U.P.*⁵⁴, *C. Subrahmanyam v. K. Ramanjaneyullu and Ors.*⁵⁵ and other decisions held in paragraph No. 32 as under:-

“32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of

⁴⁹ (1952) 1 SCC 94

⁵⁰ 1978 AIR 851

⁵¹ 1985 4 SCC 689

⁵² 1984 Suppl. SCC 104

⁵³ (1993) 4 SCC 175

⁵⁴ (1996) 6 SCC 303

⁵⁵ (1998) 8 SCC 703

judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material”.



48. In paragraph No.19 of the said decision it has been noted that the Constitution Bench in the *Mohinder Singh Gill* case (*supra*) could not resist commenting on the *Ponnuswami* case (*supra*) by observing that the non obstante clause in Article 329 pushes out Article 226 where the dispute takes the form of calling into question an election, except in special situations pointed out at, but left unexplored in *Ponnuswami* case (*supra*). It has also been observed in paragraph No. 20 that the Constitution Bench in the case of *Mohinder Singh Gill* (*supra*) in paragraph No. 29 noticed two types of decisions and two types of challenges—the first relating to proceedings which *interfere* with the progress of the election and the second which *accelerate* the completion of the election and acts in furtherance of an election. In paragraph No. 28 in the case of *Ashok Kumar* (*supra*) the Hon'ble Supreme Court observed that election disputes are not just private civil disputes between two parties. The stakes of the constituency as a whole are on trial. Whichever way the *lis* terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is then called for. Whilst neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes, therefore, have to be avoided in dealing with election disputes.

49. It is thus seen that neither the provisions of the Constitution nor the provisions of the RP Act totally exclude the right of a citizen to approach the High Court to remedy a wrong done. Nevertheless, normally, remedy under Article 226 of the Constitution of India would not be available to the petitioner, except in exceptionally extraordinary circumstances. Any approach which has the effect of interrupting,



obstructing or protracting the election process in any manner, through the invocation of judicial remedy, has to be postponed till after the completion of the proceedings in elections. An approach which subserves the progress of the election and facilitates the completion of the election cannot be described as questioning the election. Any attempt at retarding, interrupting, protracting or stalling of the election proceedings needs to be avoided. Judicial review is only permissible on the well-settled parameters which enable judicial review of the decisions of statutory bodies, on grounds such as for instance, *mala fide* or arbitrary exercise of power. Care has to be taken, in order to ensure, that there is no attempt being made to utilise the courts indulgence, by the filing of a petition outwardly innocuous but essentially a subterfuge or otherwise a pretext for achieving an ulterior or hidden end.

50. It is thus seen that there is a narrow scope to interfere into matters arising out of elections. The scope becomes narrower when the election relates to parliamentary or legislative constituencies as the RP Act, provides for efficacious alternative remedy once the election is over. Similar principle applies in all such elections where the statute or scheme that provides for the election or regulates the same, itself provides for a mechanism for adjudication of election dispute.

51. In the case in hand, it is conceded at bar that under the applicable Sports Code or MEG, there is no mechanism provided thereunder, to deal with the election dispute either by any authority or by any specialised tribunal. What has been argued by the respondents is that if there is no remedy provided, the aggrieved person has to file a civil suit and not a writ petition. Reliance is placed on a Division Bench decision of this court in the case of *Samadhan Swimming Club (supra)*. The Division Bench of this court in *Samadhan Swimming*



Club (supra) in turn has relied upon the decision of the Division Bench of this court in the case of **S.D. Siddiqui v. University of Delhi & Ors.**⁵⁶ In paragraph No. 17 of **Samadhan Swimming Club (supra)** it has been held as under:-

“17. In so far as the judgments relied upon by Mr. Lohia are concerned, we find that three judgments [except Bhailal Jagdish (supra)], have been considered and dealt with by the learned Single Judge in the impugned order, with which conclusion we concur. The judgment in the case of Bhailal Jagdish (supra), referred to by Mr. Lohia to contend that a petition under Article 226 of the Constitution of India confer powers of widest magnitude on the High Courts and this power must be invoked redressing wrongs and for passing suitable orders to effectuate its decision under Article 226 of the Constitution of India. Suffice to state as stated above in view of the reliefs prayed in the petition and the subsequent developments including the fact that elections have been held and the members of the executive committee of the DSA have been elected whose personal right shall be effected, being not parties in the writ petition, the writ petition was rightly dismissed. The remedy for the appellants was to challenge the elections surely in accordance with law, which includes the dicta of this Court in the case of S.D. Siddiqui v. University of Delhi, 2006 (3) AD (Delhi) 290, wherein this court held as under:

“Apart from the above, we are further of the opinion that if one wishes to challenge an election, he should file an election petition, if that is provided under the relevant statute or rules, and if there is no such provision in any statute or rule for election petition, then one has to file a civil suit for this purpose and not a writ petition.”

52. If the decision in the case of **S.D. Siddiqui** (*supra*) is perused, the same would indicate that the dispute therein was with respect to the election of Delhi University Teacher Association. In paragraph Nos. 29, 30 and 31 it has been held as under:-

“29. In view of the above discussion, we are clearly of the opinion that the DUTA is not a State or an instrumentality of the State under [Article 12](#) of the Constitution of India and it does not also perform any public functions. It is a purely private body working for the welfare of teachers of the University and affiliated colleges. There is no deep or pervasive control of the State over it. There is no averment that it is largely financed by the State. Hence, in our opinion, no writ lies against DUTA.

30. Apart from the above, we are further of the opinion that if one wishes to challenge an election, he should file an election petition, if that is provided under the relevant statute or rules, and if there is no such provision in any statute or rule for election petition, then one has to file a civil suit for this purpose and not a writ petition.

31. For the reasons given above, we uphold the impugned judgment of the learned single Judge giving our own reasons. There is no force in this appeal. The appeal is accordingly dismissed”.

53. It is thus seen that the ratio of the decision in the case of **S.D.Siddiqui** (*supra*) is that unless the respondent falls within the definition of a ‘State’ or an instrumentality of the State, a petition under Article 226 of the Constitution of India is not maintainable. A Society registered under the Societies Registration Act, 1860 is a purely private body working for the welfare of teachers of the University and affiliated colleges. The observations made in paragraph No. 30 are in the context of that case and, therefore, the same are not binding precedent for the issue involved herein. However, the Division Bench of this court in the case of **Samadhan Swimming**



Club (supra) has non-suited the appellant therein on the ground that elections were already held and the members of the Executive Committee of the Delhi Swimming Association had already been elected who were not party to the case therein and their rights would be adversely affected. Hence the decision in the case of *Samadhan Swimming Club (supra)* is not a binding precedent deciding the issue contended by the respondent- that when the statute does not provide a remedy, the party must be relegated to the civil suit, and in no circumstance would a writ be maintainable.

54. It is settled law that the existence of an alternative remedy does not affect the jurisdiction of the court to issue writs and there is no absolute bar against the same. It is a rule of policy, convenience and discretion rather than a rule of law. There cannot be a blanket ban on the exercise of such jurisdiction as that would effectively mean that the writ court is denuded of its jurisdiction, provided under Article 226 of the Constitution of India, and consistently held by the courts of this land to be plenary, to entertain such writ petitions. The court can, and has in the past, in exceptional circumstances issue a discretionary writ, notwithstanding the fact that the statutory remedy has not been exhausted. However, in the instant case, it is seen that there is no efficacious alternative remedy provided under the applicable Sports Code or MEG. It is equally correct in law that in all cases where there is non-existence of an efficacious alternative remedy, the writ court does not come under an obligation to exercise its powers and can still leave the parties to file a civil suit before the competent court. However, before taking such a decision, the writ court may still examine as to what is sought to be agitated by the parties under Article 226 of the Constitution of India. If a dispute raised in writ proceedings is capable of being adjudicated without requiring any evidence to be



adduced or witnesses to be cross examined, the writ petition can still be entertained.

55. The principle that jurisdiction of Article 226 is not barred in election matters has been recognised along with the caveat of it needing to be sparingly exercised. It is also to be seen that in exercising powers under Article 226, the court has to bear in mind that such an exercise is not creating any obstruction or interruption or protracting the election process in any manner. Once a wrong is found to have been conducted, the court cannot stultify itself by allowing the wrong to be consummated. Any situation that results in postponing the election or creating a situation where the sanctity of the election itself is at stake, is also to be avoided.

56. In the instant case, the dispute is with respect to NSFs and there is no alternative efficacious remedy. The petitioners have alleged that the RO is acting as per the dictate of the present incumbent President, compromising the fairness and transparency of the election process. However, this court refrains itself from adjudicating on all those aspects as the same relate to various disputed facts. This court is confining its scrutiny only to the following issues—whether the nomination forms submitted by the petitioners suffer from substantial defect and, consequently, whether the decision of rejecting the nomination forms by the RO can be said to be correct or not. The next question that arises for consideration is whether the decision of the RO *en bloc* rejecting the nomination forms is arbitrary or illegal so as to call for interference under Article 226 of the Constitution of India.

57. In the case of *Saroj (supra)* a Coordinate Bench of this court had an occasion to consider the order passed by the Returning Officer rejecting the nomination papers submitted by the petitioner therein for



the election on the post of municipal counsellor. The reason for rejection was found to be as under:-

“During the scrutiny, the following discrepancy was observed:-

1. The said nomination of Smt. Saroj was not contained with a declaration made by her that she is a women and she has also failed to tick the mark on male or female in the said nomination paper which is violation of Rules 19(3) of Delhi Municipal Corporation (Election of Councillor) Rules 2012.

During the scrutiny the undersigned marked a round with red ink on the said discrepancy on the part of the said nomination paper.

Thus it is clearly established that Smt. Saroj has failed to comply the provision of the Rules 19(3) & 22(2) (a) & (b) of Delhi Municipal Corporation (Election of Councillor) Rules 2012.

Hence, in the above mentioned circumstances and provisions mentioned in the Delhi Municipal Corporation (Election of Councillor) Rules 2012, the said nomination paper bearing no.08 of Smt. Saroj for the ward no.03E of EDMC is hereby rejected”. (emphasis supplied)”.

58. In paragraph No. 35 of the decision in the case of **Saroj (supra)**, it has been held as under:-

“35. In my view, in the facts of the present case, it cannot be said that the petitioner is calling in question the election-which includes all its processes. The case of the petitioner is that the rejection of her nomination is completely arbitrary, mindless, in violation of the principles of natural justice - which are incorporated in the election rules, and contrary to the election rules, and the determination of the issue does not require a trial i.e. no disputed questions of fact arise which would need to be proved by leading any evidence. Since the petitioner has approached the court with promptitude, i.e. before the list of successful candidates is published, she can assail the order of the RO/SO rejecting his/her

nomination, and for a direction that his/her name be included in the list of eligible candidates. The time period available for taking such an action is very limited i.e. between the time when the nomination is rejected and the time when the list of successful candidates gets frozen and is about to be published. Such an action, in my view, would be an action which accelerates the completion of the election and would be an act in furtherance of an election. A patent or an obvious mistake by the RO/SO in rejecting a good nomination paper of a candidate would lead to an inherently defective election process, which would neither accelerate the completion of the election, nor be in furtherance of an election ”.

59. In paragraph No. 38 of the decision in the case of *Saroj (supra)* this court held that the entire case was based on documents. No trial was thereby necessary and therefore there was no impediment in the way of this court to examine whether the decision of rejecting the nomination form was arbitrary, *malafide*, or patently illegal. It has been held in para 38 as under:-

“38. The facts in the present case are not in dispute. The entire case is based on documents. There is no trial necessary to be held to decide the only issue arising vis a vis the rejection of the petitioner’s nomination. Thus, there is no impediment in the way of this Court to examine whether the impugned action of the RO/ SO is arbitrary, mala fide, or patently illegal”.

60. While relying on various decisions of the Hon’ble Supreme Court, it was found therein that the nomination form was rejected on account of a hyper-technical approach and on insubstantial grounds. Paragraph No. 49 of the aforesaid decision is reproduced as under:-

“49. It is very interesting to note that the RO/SO addresses the petitioner in the impugned order as “Smt.”. Thus, there was no doubt in the mind of the RO/SO with regard to the sex of petitioner. Pertinently, in the impugned order the RO/ SO does



not even return a finding that the defect in her nomination is of a substantial character. A perusal of the impugned order shows that the RO/ SO has heavily relied on the non-compliance of Rule 19(3) of the Rules, which provides that “In a ward where any seat is reserved for woman, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless her nomination paper contains a declaration made by her that she is a women”. Because the petitioner is claimed to have not made a declaration that she is a female, she has been disqualified. What the RO/ SO has failed to appreciate is that the “substantial character” test – in respect of a defect in the nomination form is applicable to all aspects and parts of the nomination form. Thus, the said test was also attracted to the defect in making the declaration by the petitioner in terms of Rule 19(3) of the Rules. He rejected her nomination on account of a hyper technical approach and on insubstantial grounds”.

61. While considering the issue with respect to the exercise of powers under Article 226 relating to election disputes, the Hon’ble Supreme Court in the case of ***Benedict Denis Kinny (supra)*** has held that the jurisdiction of a High Court under Article 226 is not barred in election matters though it has to be sparingly exercised. In paragraph No. 51 of the said decision it has been held as under:-

xxxxxxx

“(i) The power of judicial review vested in the High Courts under [Article 226](#) and this Court under [Article 32](#) of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction under [Article 226](#) is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a tribunal, a statutory authority or an authority within meaning of [Article 12](#) of the Constitution.

(ii) *The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of [Article 226](#) is very wide and can be used to remedy injustice wherever it is found.*

(iii) *The power under [Article 226](#) of the Constitution overrides any contrary provision in a Statute and the power of the High Court under [Article 226](#) cannot be taken away or abridged by any contrary provision in a Statute.*

(iv) *When a citizen has right to judicial review against any decision of statutory authority, the High Court in exercise of judicial review had every jurisdiction to maintain the status quo so as to by lapse of time, the petition may not be infructuous. The interim order can always be passed by a High Court in exercise of writ jurisdiction to maintain the status quo in aid of the relief claimed so that at the time of final decision of the writ petition, the relief may not become infructuous.*

(v) *It is true that requirement of submission of Caste Validity Certificate within a period of one year under Section 5B of Mumbai Municipal Corporation Act is mandatory requirement but in the facts of the case before us before the expiry of the period of six month, the Caste Scrutiny Committee had illegally rejected the claim necessitating filing of writ petition by aggrieved persons in which writ petition the interim relief was granted by the High Court. The power of the High Court to grant an interim relief in appropriate case cannot be held to be limited only for a period of one year, which was period envisaged in [Section 5B](#) for submission of the Caste Validity Certificate. No such fetter on the power of the High Court can be read by virtue of provision of [Section 5B](#).*

(vi) *There is no fetter in the jurisdiction of the High Court in granting an interim order in a case where caste claim of the respondents was illegally rejected before the expiry of period of six months and the High*



Court granted the interim order before the expiry of the period of six months, as then prescribed.

(vii) In the facts of the present case, the deeming fiction under [Section 5B](#) of retrospective termination of the election could not come in operation due to the interim order passed by the High Court”.

62. Even in the case of ***Ponnuswami (supra)***, in paragraph No. 15, it has been held that if the grounds on which an election can be called into question could be raised at an earlier stage and errors, if any, are rectified, there would be no meaning in enacting a provision like Article 329(b) and in setting up a Special Tribunal. It is thus seen that the Hon’ble Supreme Court while deciding the case of ***Ponnuswami (supra)***, which relates to the rejection of a nomination form for election to the Madras Legislative Assembly had in mind, the fact that the provisions of the RP Act provides for the setting up of a Special Tribunal.

63. In any case, the decision in the case of ***Ponnuswami (supra)***, and other decisions of the Hon’ble Supreme Court have been considered by the Hon’ble Supreme Court in the case of ***Ashok Kumar (supra)*** and as has been seen in the preceding paragraphs, the action taken or orders issued by the Election Commission are open to judicial review on the basis of well settled principles that enable judicial review of decisions of statutory bodies. Similarly, in the case of ***Avtar Singh Hit (supra)***, in paragraph No. 29, it has been noted that the dispute raised in that case was purely factual in nature and the newly elected office bearers of the Executive Board were not party to the writ petition and Sections 15 to 20 of the Delhi Municipal Corporation Act, 1957 provided for the resolution of disputes relating to elections by the filing of an election petition. The Hon’ble Supreme Court arrived at the conclusion of not interfering with the view taken



by the Division Bench of the Delhi High Court, which in turn interfered with the view taken by the Single Judge where directions were issued to conduct a fresh election. In the case of ***Umesh Shivappa Ambi (supra)*** the learned Single Judge of the High Court of Karnataka dismissed the writ petition and the Division Bench set aside the order passed by the Single Judge holding that the nomination of the respondent therein was wrongly rejected and in view of the availability of remedy under Section 17 of the Karnataka Cooperative Societies Act, 1959, the order of the Division Bench was set aside by the Hon'ble Supreme Court.

64. In the case of ***Shaji K. Joseph (supra)*** a remedy under Regulation 20 of the Dental Council (Election Regulation 1952) was provided and interference was made by the High Court in allowing the writ petition and setting aside the order of the Returning Officer of rejecting the nomination in respect of the candidature of the respondent therein, and further directing to conduct elections afresh after including the name of the said respondent and to declare the result on the basis of said election.

65. In the case of ***Arghya Kumar Nath (supra)*** the dispute was with respect to the conduct of the election of the office bearers of Delhi University and this court in paragraph Nos. 13 and 14 has held as under:-

“13. This Court is also of the opinion that the power of judicial review conferred under Article 226 of the Constitution is designed to prevent cases of abuse of power and neglect of duty by public authorities. A writ lies where performance of a public or statutory duty is involved. Writs can also be issued against private authorities discharging public functions, provided the



decision sought to be challenged or enforced is in discharge of a public function.

14. Consequently, elections of bar association/society/trade union/college union is a matter of internal management, which does not entitle the aggrieved party to a public remedy like a writ petition under Article 226 of the Constitution”.

66. In the case of **BCCI (supra)**, an interlocutory application was rejected by the Hon’ble Supreme Court mainly on the ground that the election results were notified and the dispute raised therein was with respect to summoning of the electoral officer from Goa instead of Bihar and also that the definition of the expression ‘full member’ was alleged to be altered so as to include district associations and local clubs and it was alleged that the candidates who contested for the posts of President, Secretary and Treasure were not part of the draft or final electoral roll. The same would also have no application under the facts of the present case.

67. In the case of **Rahul Mehra (supra)**, the Division Bench of this court has rightly observed that the legal regime *apropos* sports administration in India has to be implemented fully and effectively. Compliance with the Sports Code is non-negotiable. If a Sports Federation does not comply with the law of the land, it will receive no recognition from the Government. For the sake of clarity paragraph Nos. 102 to 104 are reproduced as under:-

“100. As has been discussed hereinabove, the legal regime apropos sports administration in India has to be implemented fully and effectively. Compliance with the Sports Code is non-negotiable. If a sports federation does not comply with the law of the land, it will receive no recognition from the Government. All benefits and facilities to it will stop promptly. It is better that a legitimate body represents the



cause of sportspersons than one simply masquerading as the real champion of Indian sports. Fairness and legitimacy needs to imbue all public affairs. Recalcitrant entities which defy adherence to rules of the game, while continuing to unjustly enjoy government's largesse and patronage, must be called-out.

101. Governmental monitoring of compliance is expected to be prompt, robust and meticulous at all times. Annual compliances are mandatory for continued recognition. What is the compliance status of the NSFs currently, is not on record. The perceived non-monitoring or selective monitoring or permissive monitoring by the authorities gives cause to citizens to seek judicial review of the same. This needs to be remedied.

102. The history of persistent recalcitrance of the IOA for almost half a century to comply with the Sports Code, despite its consistent assurance to the Government, the societal concerns and the larger public good, make it imperative that the IOA's affairs be put in the hands of a Committee of Administrators (CoA), similar to what has been directed by the Supreme Court on 18.05.2022 in the case of another NSF in All India Football Federation vs. Rahul Mehra & Ors³¹ (SLP (Civil) Nos. 30748-30749/2017). Accordingly, following persons of eminence from the fields of law, public administration, elections and international relations are appointed as members of the CoA, to be assisted by eminent sportspersons, as Consultants:

Committee of Administrators:

- (i) Mr. Justice Anil R. Dave, former Judge of the Supreme Court;*
- (ii) Dr. S.Y. Quraishi, IAS, former Chief Election Commissioner;*
- (iii) Mr. Vikas Swarup, IFS, Former Secretary, Ministry of External Affairs.*

Consultant Sportspersons:

(iv) *Mr. Abhinav Bindra (from Uttarakhand) Sport-Shooter, Olympic Gold Medalist;*

(v) *Ms. Anju Bobby George (from Kerala), Long Jump Olympian;*

(vi) *Ms. Bombayla Devi Laishram (from Manipur), Archer Olympian”.*

68. In various cases, in order to maintain the sanctity of the environment of Sports Federations, necessary directions have been issued by the Hon'ble Supreme Court and by this court including but not limited to *M.S. Malik (supra), Rahul Mehra (supra), Aslam Sher Khan (supra), Indian Olympic Association (supra)* and *All India Football Federation (supra)* etc.

69. All NSFs have been declared as a public authority by Government of India, Ministry of Youth Affairs and Sports, Department of Sports in terms of the Notification dated 30.03.2010. They are also under an obligation to comply with the Government Guidelines on good governance in the context of basic universal principles of good governance of the Olympic and Sports movement. All NSFs are within the purview of the Right to Information Act, 2005. In terms of the Government of India Notification dated 17.05.2010, the elections of all NSFs are to be held in a democratic manner and should be governed by clear, fair and transparent rules. The Model Elections Guidelines are part of the Sports Code and they are under an obligation to comply with the provisions thereto. As per MEG, Electoral College is to consist of each permanent member State/Union Territory duly affiliated to the NSF. The permanent members shall have two votes at the election of office bearers and managing committee members. The relevant portion of Clause 4 of the MEG reads as under:-

“ **4. Electoral College:**

(1) *Each Permanent Member State/Union Territory duly affiliated by _____(abbreviation of Federation) as its Permanent Member shall have two votes at the elections of the Office Bearers and Managing Committee Members,*

(2) *For the purposes of sub-clause (1), each Permanent Member State/Union Territory shall be represented by two members authorised by the President or Secretary General/Secretary of the affiliated Permanent Member State/Union Territory; however, in case President/Secretary General/ Secretary nominates different person(s), the person(s) authorized by the President shall be deemed to be the duly authorised person(s) Irrespective of the date”.*

70. In the instant case, out of 48 eligible voters (i.e. electoral college), 27 eligible voters i.e. more than half of the total electoral college is against the manner in which the nomination forms have been rejected and the elections have been conducted. The rejection of the nomination forms would invariably lead to the exclusion of the participation of a large number of State representatives. Any exclusion of this nature cannot be approved in a democratic polity governed by the rule of law, if the same is found to be based on non-substantial ground.

71. The Hon'ble Supreme Court in the case of ***Bar Council of Delhi & Ors. (supra)*** has held that if the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the grounds of the challenge of the whole election are such that the alternative remedy is no remedy in the eyes of law to cover the challenge or, in any event, is not an adequate and efficacious remedy, then the remedy of filing a writ petition to challenge the whole election process is still available. In paragraph No. 18 of the said decision, it has been held as under:-

“18. Reliance was placed for the appellants upon the decision of this Court in K.K. Shrivastava v. Bhupendra Kumar Jain [AIR 1977 SC 1703 : (1977) 2 SCC 494] that because of Rule 34(8) of the Delhi Bar Council Election Rules the writ petitions ought to have been held to be not maintainable. It would be noticed from the facts of that case that an election petition had already been filed. About four months later a writ petition was also filed to challenge the election. At p. 1704, column I, Krishna Iyer, J, speaking for the court said:

“One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms.”

While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the court should still refuse to entertain a writ petition ...

Finally the view expressed in K.K. Shrivastava case [AIR 1977 SC 1703 : (1977) 2 SCC 494]

“There is no foundation whatever for thinking that where the challenge is to an “entire election” then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Article 226 may be described as misexercise.”

We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone



must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available. In the present case we have pointed out above that the Election Tribunal would have found itself incompetent to declare the proviso to Rule 3(j) of the Delhi Bar Council Rules ultra vires and that being so the alternative remedy provided in Rule 34(8) was no remedy at all”.

72. The respondents have also argued that in the instant case, the election stands concluded and, therefore, the only remedy available is to file a civil suit and not to entertain the instant petition. Firstly, it has already been held by this court that there are no disputed facts being adjudicated by this court; and secondly, there is no remedy much less an efficacious alternative remedy to get the dispute resolved expeditiously. Therefore, under the facts of the present case, whether the election stands concluded or not will not detain this court from exercising its powers under Article 226 of the Constitution of India. In any case the scheme of Section 67A of the RP Act, 1951 sought to be relied upon to argue that the election stands concluded is different than the scheme under MEG. Section 67A of the RP Act states that for the purpose of the Act, the date on which the candidate is declared by the RO, under the provisions of Section 53 or Section 66, to be elected to the House of the Parliament or of the Legislature of a State shall be the date of election of that candidate. Section 53(2), if is perused carefully, provides that if the number of contesting candidates are equal to the number of seats to be filled, the RO shall forthwith declare all such candidates to be duly elected to fill those seats.



73. It is thus seen that at the stage of Section 53 (2) of the RP Act, there is a provision for a specific declaration by the RO of such candidates as elected candidates who are elected unopposed. If the clauses of MEG are compared with the scheme of the RP Act, the same would reveal that under Clause 9 (1), there is no specific provision providing for the RO to declare a candidate who remains unopposed to be the elected candidate. On the contrary, whether the election is uncontested or contested, a formal declaration is required to take place under Clause 12 of MEG which states that the names of contesting candidates who shall be deemed to have been elected in the election in accordance with Clause 11 (6) shall be declared as having been duly elected to the respective posts by the RO at the Annual General Meeting in Form 15.

74. It is thus seen that unless the formal declaration in Form 15 of the MEG takes place, the election cannot be said to be concluded. Therefore, in the absence of compliance with the applicable regulatory framework, the argument that the election stands concluded has no legs to stand on. However, as stated above the guiding principle for exercise of power under Article 226 of the Constitution in cases where no effective alternative remedy is available and the respondent is a State or other authority within the meaning of Article 12 of the Constitution is not whether the election is concluded or underway, yet for the sake of clarity, this court has dealt with the argument and assigned its reasoning.

75. Where the undisputed material available on record suggests that a candidate or candidates are wrongfully and arbitrarily denied the right to contest the election, then it would indeed be highly improper, to ask the petitioner to wait till the returned candidate assumes the charge and only then seek a remedy. The lookout of the High Court is



to see whether injustice has resulted on account of any decision by an authority falling within the meaning of Article 12 of the Constitution of India. The judicial review is designed to prevent and remedy cases of abuse of power or neglect of a duty by the public authority.

76. The determination of the issue involved herein would not require any adjudication on facts so as to call for evidence or to allow for the parties to cross-examine witnesses. What is required to be seen is the comparison of two forms and to determine whether the forms submitted by the petitioners are rightly rejected by the RO or such a decision needs to be interfered with. Hence, in the absence of any alternative efficacious remedy and in view of the issue involved in the instant writ petition, this court holds that the present writ petition filed against the rejection of the nomination forms by the RO is maintainable.

77. Coming back to the core issue in the instant case i.e., whether the decision of rejecting nominations requires to be interfered with, it is to be seen that Clause 6 of the MEG requires that the nomination of a candidate for election as an officer bearer or member of the managing committee shall be made in Form 2. Form 2 prescribed under MEG reads as under:

Name of the Federation
Election of Office Bearers and Members of Managing Committee, _____

FORM2
ELECTION OF OFFICE BEARERS AND MEMBERS OF Managing Committee
To
NOMINATION PAPER FOR
ELECTION AS _____ (NAME OF THE POST)

To,

(Name and address of returning officer).
The Returning Officer for above Election

We nominate Shri/Smt./Ms. _____ (name & address), whose name is entered at Sl. No. ____ in the 'Electoral College list for the above mentioned post.

2. Our particulars are given below:-

	Name of Candidate	Name of Member State/Union Territory/ Board/ Institution	Sl. No. in the electoral College list	Signature
Proposer				
Secunder				

I, the candidate above named, do hereby give my assent to my nomination for the above post. .

Name of the Candidate _____
Name of Member State/Union Territory/ Board/ Institution _____
Sl. No: in the electoral College list _____
Signature _____

Place:

Date:

78. The essential features of Form 2 are as under:

- (i) The name of the federation for which the nomination form is being presented;
- (ii) The post for which the nomination form is being submitted;
- (iii) The name of the person to be nominated for the said post including his address;
- (iv) The serial number at which his name is entered in the electoral college;
- (v) The name of the proposer including the name of the member State/ Union Territory/ board/institution;
- (vi) And the serial number in the electoral college with the signatures;
- (vii) The name of the secunder including the name of the member State/ Union Territory/ board/institution;



(viii) The acceptance by the nominated candidate for the post in question bearing the name of the candidate, name of the member State/ Union Territory/ Board/Institution, serial number in the electoral college and signature.

79. Generally, the purpose of a nomination form in an election is to formally nominate a candidate for a specific position or office. The same is required to be presented along with necessary details to ensure that the candidates meet certain eligibility criteria such as age, sex, caste, residency, party and other statutory or prescribed requirements.

80. The process of nomination also helps to establish the number of candidates running for each position or office, which can in turn affect how the election is to be run. The purpose of nomination form or its scrutiny is not to limit the poll of potential candidates and exclude qualified individuals from running for office. Any restriction or unreasonable scrutiny can undermine the principle of equal opportunity and lead to a less representative governance. The same can also reduce the diversity of candidates and limit voters' choice. It may also result in unqualified or corrupt individuals running for office. The same will have the effect of undermining public trust in the election process and may result in poor governance. Erosion of public trust in the democratic process cannot be countenanced.

81. Interestingly the nomination forms which have been submitted by all the petitioners are similar.

82. One of the nomination forms submitted by Kuldeep Singh Gill is reproduced as under:

“To,

*The Returning Officer,
Basketball Federation of India*

I Shri KULVINDER SINGH GILL, 501 A, GULMARG VELLY GULMOHAR, INDORE, MADHYA PRADESH, 452018 (name & address) is contesting for the post of SECRETARY GENERAL.

2 My Proposer and Seconder are as below:

	Name of Candidate	Name of Member State/Union/Territory/Board/Institution	SI. No. in the electoral college list	Signature
Proposer	SHAFIA AHMED SHAIKH	Gujarat	6	Sd/-
Seconder	AVINASH ANAND	Madhya Pradesh	10	Sd/-

Name of the Candidate: KULVINDER SINGH GILL
Name of Member State/Union Territory/Board/Institution MADHYA PRADESH
SI No. in the electoral College list 10
Signature sd/-

Place: Bengaluru

Date: 6th February 2023”

83. Without going into the correctness of the allegation that the submitted nomination forms to all the petitioners were supplied by the RO himself or otherwise, if the same are considered in juxtaposition to the nomination form structured as Form 2 in MEG it would reveal that the same fulfils all the essential requirements as have been highlighted above. The only difference in the nomination form submitted by the petitioners is it being differently structured and instead of the candidate being nominated by the proposer and seconded by the seconder, the candidate nominated himself who is however, seconded by the seconder. In the instant case there is no objection raised by the proposer or the seconder or by any other candidates that the petitioners are lacking any of the essential eligibility criteria. Neither the states from which the petitioners belong to such as Gujarat, Madhya Pradesh, Tamil Nadu, Orissa, Pondicherry, Telangana, Goa, Nagaland, Manipur, Andhra Pradesh, Mizoram and Himachal Pradesh have

raised any objection that the candidates are not proposed or seconded by them. It is thus seen that the essential information required in the nomination form is not lacking. It is only with respect to the structuring of the form that an objection is raised by the RO. The order passed by the RO, rejecting the nomination forms is almost similar with respect to all the candidates. One of the orders with respect to Adhav Arjuna dated 13.02.2023 reads as under:

"From, 13.02.2023
Returning Officer
Room Number- 111, First Floor,
The Chancery Pavilion Hotel.
No. 135, Residency Road,
Bengaluru, Karnataka
560025

Sub: Nomination of Aadhav Arjuna- Electoral College List No. 19 for the post of President.

Sir,

The Basketball Federation of India through its letter dated 28.01.2023 has invited nominations from the State Associations in the prescribed format being Form 2 as provided under the Sports Code for- election process for electing the executive committee of any National Sports Federation. I have been appointed as the Returning Officer for the smooth conduct of these elections.

I have published the calendar for elections on 04.02.2023 wherein the dates for submission of nomination and conduct of elections have been provided.

I have gone through the constitution of Basketball Federation of India and the affiliate rules regarding the process of elections and the National Sports Development Code and have also, by way of abundant caution, carefully analysed the Handbook for Returning officers published by the Election Commission of India as the National Sports Development Code or the Basketball Federation of India Constitution does not have any such guidelines.

I have received the nomination of Nomination of Aadhav Arjuna - Electoral College List No.19 and have scrutinized the nomination form and the documents submitted along with. On security, the nomination is found to be substantially defective for the detailed reasons stated below.



Oral Submissions by Nominee

It is submitted by him the nomination papers submitted in Form 2 are supplied by the R.O., and the same nomination papers are filled submitted to the R.O., and received the same without any objections. We have taken photos also at the time. The office and R.O., was filled with other persons. The R.O., office was like a coffee bar. The R.O., who received nomination forms on 6-02-2023 and 07.02.2023 without video record.

Reply by R.O.,

To this my reply is that nomination form No.2 filled and filed before the R.O., are not the form supplied by the R.O.,. The RO., has supplied the form No.2 as per the Model Election guidelines to all the nominees. That is the Form No.2 shown in the model election guidelines. SO the submissions made that form no.2 filled and filed before the RO., is supplied by me is in correct and rejected. It is to be added that at the time of receiving nominations it is not necessary to verify or check them because there is stage for scrutiny of nomination papers.

While submitting the filled nomination Forms No.2 all the nominees took photos with R.O., It is a fact that many others members were also present in the R.O. 's office to collect and submit the nomination Form No.2 to the RO., At that time this was their was little rush, since there was no sufficient place to sit outside. The officials of the BFI had arranged for coffee to the members who have had come from different places.

The model election Guidelines Prescribe different types of forms to be compulsorily used in the Election process. That being so, if Form No.2 submitted in different way which is not recognized by B.F.I., if allowed the very purpose of prescribing Form No.2 in the Model Election guidelines will be defeated.

Scrutiny and Conclusion

I have gone through the documents and scrutinized the same by myself. On scrutiny, it was found that the documents were substantially defective and at hence, I am of the opinion that the Nomination is to be rejected due to the reasons stated hereinbelow:

That the nomination form filed by the candidate is not in accordance with the prescribed nomination Form No. 2 as provided under the National Sports Development Code.

I have provided all the candidates with model Form No.2 as per National Sports Development Code. Additionally, the said Form No.2 has also been appended to the "Model Election Guidelines to

be followed by all National Sports Federations”, which is Annexure XXXVII of the National Sports Development Code of India, 2011.

*The nomination form submitted by the Mr. Aadhav Arjana-Electoral College List No.19 for the post of President has been rejected since it is not in the prescribed Form No.2 as provided in the National Sports Code of India, 2011. On comparing the submitted Form No. 2 vis-a-vis the prescribed Form No. 2 in the Code, it is evident that the two are completely distinct and the former cannot be said to have even substantially complied with the prescribed format, which mandates that the proposer and the seconder have to nominate the candidate, who in turn would give his assent. In contradistinction, in the Form No. 2 submitted the candidate has himself directly applied for the post and mentioned the names of the proposer and the seconder, and as such there is a complete departure from the prescribed format, which requires otherwise. It is a well-settled legal principle that when a procedure has been prescribed for the manner in which something has to be done, then it can only be done in that manner and no other (**Rattan Anmol Singh v. Ch. Atma Ram, (1955) 1 SCR 481**). In any event, it is also well settled that there is absolutely no room for equity in an election and it has to be strictly in compliance of what is prescribed in the statutes/rules/byelaws etc. It is also relevant to note that the Hon'ble Supreme Court in **Prahladdas Khandelwal v. Narendra Kumar Salave, (1973) 3 SCC 104**, upheld the rejection of nomination of the candidate on account of his failure to submit details in the Form in the prescribed format.*

I have heard the objection of Aadhav Arjuna – Electoral College List No.19 and it is found that he has failed to prove that the compliance of directions as per the National Sports Development Code in filling of nomination form.

*So, it is my view that the submissions of objectors are liable to be rejected and the nomination of the Aadhav Arjuna - Electoral College List No. 19 for the post of President cannot be allowed as it has also been held by the Hon'ble Supreme Court in **Brijendrala Gupta And Another vs Jwalaprasad And Others, 1960 SCR (3) 650** that the defects which are of substantial character cannot be cured at the stage of scrutiny.*

Hence, the objection that the process at office of the R.O. was improper is liable to be rejected owing to the reason stated above.

It is stated that objections submitted by Nomination of Aadhav Arjuna -Electoral College List No. 19 for the post of President are rejected owing to the reasons as stated above.

Regards
Sd/-
Returning Officer,
Malleshappa,
Former District Judge,
Returning Officer
Room Number 111, First Floor,
The Chancery Pavilion Hotel,
No. 135, Residency Road,
Bengaluru, Karnataka
560025”

84. According to RO's own understanding, in the absence of any guidelines under the Sports Code or under the constitution of BFI, the process of scrutiny of nomination form is governed by the Handbook for Returning Officers published by the Election Commission of India. He states that Form 2 supplied by him was not filled up by the candidates, however, that position was strongly disputed by each of the petitioners.

85. He, however, concludes that the nomination forms filled by the candidate is not in accordance with the prescribed Form 2. On comparison of Form 2 vis-à-vis the prescribed Form 2 in the Sports Code, he found that the two are completely distinct and they cannot be said to have even substantially complied with the prescribed format which mandated that the proposer and the seconder nominate candidates who in turn, would give his assent.

86. Section 36(4) of the RP Act requires that the RO shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The defect of substantial character is not defined under the RP Act, however, generally, the same refers to significant error or omission that may disqualify a candidate from being eligible to contest the election. Substance would mean the essence, the essential quality, as opposed to its mere form. The *proviso* to Section 36 (5) provides that in case an objection is raised by the RO or is made



by any other person, the candidates concerned may be allowed to try and rebut it not later than on the next date but the one following date fixed for the scrutiny, and the RO shall then record his decision on the date on which the proceedings have been adjourned. It is thus seen that under the provisions of the Act itself, due care has been taken to ensure that there should not be any arbitrary or illegal rejection without any substantial reason at the stage of scrutiny of the nomination form. If there is any objection raised by any person or even by the RO, the concerned candidate is allowed to rebut it with an appropriate explanation.

87. The RO plays an important role in the election management and is to ensure that there is no scope left for any complaint⁵⁷.

88. For maintaining purity of the election process, which is the heart and soul of democracy, the role of the RO is pivotal. The RO is a responsible functionary in the election process whose decision can have a great bearing on the outcome of the election and in making or marring the careers of a person with political aspirations in a democratic system. He is expected to act in an impartial manner without any bias or prejudice against any person and is to perform his duty in a manner so as to achieve the purpose and object of the election. Any improper rejection of nomination papers of the candidates on technical, or clerical errors or discrepancies, shall cause immense impact on the institution for which the elections are to be held. The actions of RO must invoke confidence in the impartial conduct of the election. Any departure may give rise to doubting the impartiality, and resulting from it, the purity of the election, it may thus result in adversely affecting the rights of the contesting candidates and public at large.

⁵⁷ See *Ramesh Raut (supra)*.

89. Clause 6 of the Handbook for Returning Officer, February, 2019, Document 23, Edition 1 published by the Election Commission of India, deals with scrutiny. Clause 6.2 prescribes that the scrutiny of nomination paper is an important quasi-judicial function. The RO, therefore, has to discharge his duty with complete judicial detachment and in accordance with the highest judicial standards. Returning Officer must not allow any personal or political predilections to interfere with the procedure that he/she follows or the decision he/she takes in any case. Clause 6.2 of the Handbook for Returning Officer, February, 2019, Document 23, Edition 1 is reproduced as under:

" 6.2 SCRUTINY – A QUASI-JUDICIAL DUTY

6.2.1 Scrutiny of nomination papers is an important quasi- judicial function. Returning Officer therefore has to discharge this duty with complete judicial detachment and in accordance with the highest judicial standards. Returning Officer must not allow any personal or political predilections to interfere with the procedure that he/she follows or the decision he/she takes in any case. Returning Officer should be fair, impartial and treat all candidates equally. Returning Officer must also conduct himself/herself in such a manner that it would appear to all concerned that he/she is following this high code of conduct. Even if a candidate or his agent is difficult or cantankerous, Returning Officer must be courteous and patient, but firm. Returning Officer is expected to be prompt and orderly. Returning Officer should not take any direction from any superior authority including the CEO or the Commission's Observer in deciding the validity or otherwise of a nomination paper. Returning Officer should only be guided by the provisions of the law and the instructions given by the Commission from time to time"

90. Clause 6.7 states that there is a presumption that every nomination paper is valid unless the contrary is *prima facie* obvious or has been made out. It also stipulates that in case of a doubt as to the validity of a nomination paper, the benefit of such doubt must go to



the candidate concerned and the nomination paper should be held to be valid.

91. Clause 6.9 deals with Insufficient Grounds For Rejection Of Nomination Papers, they are reproduced as under:

"6.9 INSUFFICIENT GROUNDS FOR REJECTION OF NOMINATION PAPERS

6.9.1 Do not reject any nomination paper on the ground of any defect, which is not of a substantial character [Section 36(4) of the said Act]. Any mistake or error of a technical of clerical nature should, therefore, be ignored by Returning Officer.

6.9.2 Returning Officer may also note that Rule 4 of the Conduct of Elections Rules, 1961, lays down that failure to complete, or defect in completing a declaration regarding symbols in the nomination paper is not a defect of a substantial character.

6.9.3 Do not reject a nomination paper only because none of the persons referred to in Section 36(1) of RP Act, 1951 was present at the time of scrutiny of nomination. A nomination paper should be accepted or rejected on merits, taking all the available material into account. However, there may be cases where assistance of candidate/ representative would be required for clarifying/ correcting errors or replying to objections. For instance, if the details regarding entries in the electoral roll in respect of the candidate or proposers as mentioned in the nomination paper do not tally with those in the electoral roll, and if the candidate was not able to correct the entries at the time of the preliminary examination by the Returning Officer when the nomination was presented, the candidate or his representative will have to be present during scrutiny to clarify and point out the correct entries in the electoral roll. In such cases if no one turns up for scrutiny on behalf of that candidate, Returning Officer will be justified in rejecting the nomination paper. Returning Officer's order rejecting the nomination paper in such a case should bring out the entire facts. Nomination papers may also not be rejected on the ground that Forms A and



B signed in any ink other than blue (No.56/2012/127 of ECI dated 18th October 2012).

6.9.4 In the past, there were instances where nomination papers were rejected on flimsy grounds, e.g. mistakes made in the nomination paper regarding; a) the year of election, or b) the exact name of the House of the Legislature or any minor error in the name of the constituency, c) the description of an electoral roll number, or d) the choice of symbols, or e) some discrepancy between the age, name, or other particulars of the candidate or his proposer as given in the nomination paper and in the electoral roll and so on,

6.9.5 Such unjustifiable and improper orders of rejection on technical grounds can lead to challenge against the election through election petition. It is up to Returning Officer to interpret the provisions of the law intelligently and with common sense. Returning Officer should not, therefore, reject any nomination paper for such technical or clerical errors or discrepancies. Such technical errors can and should be directed by him/her to be set right at the time of the presentation of the nomination paper [section 33 (4) proviso of RP Act, 1951]. It would, therefore, be very undesirable if Returning Officer fail at the proper stage to help a candidate by exercising his/her powers and discretion under the provision to Section 33(4) of the said Act and later at the time of scrutiny he/she reject the nomination paper on the ground of those very defects which could have been set right under that section.

6.9.6 If the amount toward security deposit is not deposited in cash with Returning Officer, he/ she should examine meticulously the receipts for payments made as deposit either in the Reserve Bank of India or in a Government Treasury with reference to the seals of the Treasury or Bank, etc. and make sure that the deposit has actually been made in the Bank or Treasury. It may be ensured that where a Treasury is a 'Banking Treasury' the payment receipt of the Bank is endorsed on the Challan. Doubts, if any, should be clarified then and there."



92. Clause 6.10 deals with Grounds For Rejection Of Nomination Papers, which are reproduced as under:

“6.10 GROUNDS FOR REJECTION OF NOMINATION PAPERS

6.10.1 Returning Officer must reject a nomination paper, if

i) the candidate is clearly not qualified in law to be a member of the Legislature concerned, or

ii) the candidate is clearly disqualified in law to be such member, or

[N.B. As regards the persons who have been disqualified under Sections 8A and 11A(b) (for corrupt practices) and 10-A (for failure to lodge account of election expenses) of the said Act, 1951, there would be a list of such disqualified persons. Returning Officer should obtain the list from CEO]. Complain regarding other disqualifications, Returning Officer has to decide based on summary inquiry.

iii) Requirements of Section 33 of R.P. Act, 1951 are not fulfilled.

iv) The prescribed affidavit has not been filed at all by the candidate, or [N.B. If the prescribed affidavit has been filed but are alleged or found to be defective or containing false information, the nomination should NOT be rejected on this ground.]

v) The nomination paper has not been signed by the candidate and/or by the required number of his proposer(s), or

vi) The proper deposit has not been made in accordance with Section 34, or

vii) The oath or affirmation is not made by the candidate as required under the Constitution of India, Government of Union Territories Act, 1963 or the Government of National Capital Territory of Delhi Act, 1991, as the case may be, or

viii) The candidate does not belong to the Scheduled Caste or the Scheduled Tribe and he has filed nomination



paper to contest a seat reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes, or

ix) Where the candidate is not an elector of the constituency for which he has filed nomination paper and he has neither filed a copy of the electoral roll of the constituency in which he is registered as an elector or of the relevant part thereof or a certified copy of the relevant entries relating to his name in such electoral roll along with the nomination paper nor produced the same at the time of scrutiny as required under Section 33(5) of the said Act.

x) Columns were left blank in the affidavit and fresh affidavit not filed in spite of notice.

Note on item (viii): In order to prevent non-SC/ST persons contesting election from reserved constituencies, the Returning Officers at the time of scrutiny of nominations should satisfy themselves that the candidates contesting from reserved constituencies belong to SC or ST, as the case may be. Wherever in doubt, the Returning Officer must insist on production of SC/ST certificate issued by competent authorities. Where, however, the certificate produced by the candidate is also challenged, the Returning Officer need not go into that question, except where it is alleged that the certificate produced is forged or is not issued by competent authority. In the case of any allegation/suspicion about the genuineness of the certificate, the Returning Officer should get the position crosschecked with the authority which purportedly issued the SC/ST certificate in question, before deciding the validity of the nomination paper of the candidate concerned. If on such cross-checking/verification, the Returning Officer is satisfied that the certificate in question is not genuine, he should not only reject the nomination of the candidate concerned but should also initiate criminal proceeding against the candidate for adducing forged documentary evidence before him. (Instruction No 4/3/2008/JS-II (vol. III) dated 2.7.2008).

6.10.2 Returning Officer should invariably record the reasons for rejecting a nomination paper on the spot and supply certified copies of the order immediately in cases where all the nomination papers filed by a candidate have been rejected by him/her. This may be done even in



the absence of an application from a candidate and without payment. Where one of the nomination papers of a candidate is accepted by Returning Officer, in that case, he/ she shall supply a certified copy of his/her order rejecting the other nomination paper(s) to the candidate, if he applies for it. It may be noted that if any of the nomination paper is found valid and accepted, that candidate will be a validly nominated candidate even if the other nomination papers are rejected.

6.10.3 In view of the provision in law (made in 1996) whereby the nomination papers of candidates set up by recognized National and State Parties are required to be subscribed by only one elector as proposer and of other candidates by ten electors as proposers' certain clarifications were sought from the Commission regarding setting up of candidates by political parties. Clarifications given on these points are as under:

i) Nomination paper filed by a candidate claiming to have been set up by a recognized National or State Party subscribed by only one elector as proposer, will be rejected, if a notice in writing to that effect signed by the authorized office-bearer of that party has not been delivered to the Returning Officer of the constituency by 3.00 p.m. on the last date for making Nominations, in Form A and B devised by the Commission for the purpose under para 13 of the Election Symbols (Reservation and Allotment) Order, 1968.

ii) If a candidate has filed more than one (but not more than four) nomination papers - some as candidate set up by a recognized political party and the others as candidate set up by an unrecognized political party or as an independent candidate - in case the nomination paper filed as a candidate of a recognized political party is rejected on the ground of the non-receipt of the said notice in Forms 'A' and 'B' by 3.00 p.m. on the last date for making nominations from the concerned recognized political party, any or all other nomination papers will be accepted if the same are proposed by ten electors and are otherwise found valid on scrutiny. In such a case, he would be deemed to be a candidate set up by an unrecognized party, if such party has sent notices in Forms 'A' and 'B' by 3.00 p.m. on the last date for making



nominations and otherwise as an independent candidate. (In such event, the choice of symbols in the nomination paper with ten proposers first delivered to the Returning Officer by that candidate or on his behalf will only be considered whether that nomination paper is accepted or rejected during scrutiny.)

iii) If a candidate has filed one nomination paper with both Parts I & II thereof filled and he fails to bring notice in Forms 'A' and 'B' from the authorized officer-bearer of the concerned political party, the nomination paper may be accepted if Part II is properly filled and subscribed by ten electors as proposers, as there will be substantial compliance with the provisions of Section 33 of the Representation of the People Act, 1951.

iv) If a candidate, who filed his nomination paper as candidate claiming to be set up by an un-recognized political party, fails to bring in his favour a notice from the concerned political party in Forms 'A' and 'B', his nomination paper will be accepted if it is subscribed by ten electors as proposers, and he would be deemed to be an independent candidate.

v) If it is found at the time of scrutiny that a candidate has been nominated from more than two constituencies of the same class of a general election or the simultaneous bye elections, his/her nomination paper filed in the third, fourth constituencies, etc. will not be maintainable under section 33(7). Further, a candidate who has been nominated from more than two constituencies will also be guilty of making a false declaration in his nomination paper, which contains a categorical declaration that he has not been nominated from more than two constituencies. The Returning Officer must, however, be absolutely satisfied beyond any shadow of doubt that the candidate concerned has filed nominations from more than two constituencies, before rejecting his nomination in the third/fourth constituency etc. on this ground.

vi) If nomination papers of a candidate, one nominating him as a candidate set up by a recognized political party and the other as an independent candidate, are accepted, he may be deemed to be a candidate set up by the recognized political party.



vii) The nomination paper of a substitute candidate of a recognized political party signed by only one proposer will be rejected if the nomination paper of the main approved candidate of that recognized political party is accepted. However, if such substitute candidate has also filled Part II of the nomination paper with ten proposers or filed another nomination paper and it is subscribed by ten electors as proposers, his nomination paper(s) will be scrutinized independently by treating the candidate as an independent candidate. Further, if the nomination paper of the main approved candidate of the party is rejected, then the substitute candidate will be treated as the candidate of the party, provided that the party has already intimated his name as its substitute candidate in Form 'A' and 'B' filed before 3 pm on the last date for making nominations.

[N.B. It must be noted that a State Party, which is recognized in some other State/Union Territory but is not recognized as such in Returning Officer's State/Union Territory, such party should be treated as unrecognized party by Returning Officer, even if it has been allowed by the Commission to use its reserved symbol in his/her constituency under the Election Symbols Order, 1968.]”

93. A careful reading of Clause 6.9 i.e. Insufficient Grounds For Rejection Of Nomination Papers and 6.10 i.e. Grounds For Rejection of Nomination Papers would indicate that the grounds for rejection of nomination papers are only those that hit the basic eligibility of the candidate or leaves the question of eligibility undetermined and at the hand of the RO. The other reasons such as the year of election, the exact name of the House of the Legislature or any minor error in the name of the constituency, the description of an electoral roll number, the choice of symbols, some discrepancy between the age, name, or other particulars of the candidate or his proposer as given in the nomination paper and in the electoral roll and so on are considered to be insubstantial grounds.



94. It is to be noted that there were a total of 30 nomination forms which submitted by different candidates. Out of 30 nominations, 15 nominations have been rejected only on the above-detailed singular ground. Out of remaining 15 nominations, 05 candidates withdrew their nominations and there was no contest for electing office-bearers of respondent-BFI which is a national level Sports Federation. As has been noted in preceding paragraphs, 27 members of electoral college are against the manner in which the candidates have been selected. Three of the office-bearers who have been declared as deemed elected namely, Ajay K. Sood, Munish Sharma and Surya Singh have filed their affidavits to state that they are ready to sacrifice their status of deemed elected candidates and are willing to face free and fair election process. The aforesaid facts leave no manner of doubt that the RO has erred in rejecting *en bloc* nomination forms of a large number of candidates on a singular non-significant ground. The reason of rejection of nomination form being insignificant and flimsy. Hence, this court is of the considered view that the rejection order passed by the RO deserves to be set aside.

95. In the case of *Rattan Anmol Singh (supra)* the question was with respect to the attestation of the thumb impression. However, the rule under consideration in that case requires the nomination papers to be subscribed by a proposer or a seconder. The proposer and seconder in that case were illiterate and they placed their thumb impressions instead of the signatures. However, thumb impressions were not attested. In the case of *Prahladdas Khandelwal (supra)*, there were no guidelines as to what are the substantial or non-substantial character defects and, therefore, in paragraph No.10 of the said decision, it was found that there was a failure of compliance of the provisions of



Section 33 of the RP Act which was found to be of a substantial character.

96. The case of *The Yachting Association of India (supra)* and the other decisions relied upon by the learned counsel appearing on behalf of the respondents will not have any application under the facts of the present case, more importantly for the reason that in the instant case *en bloc* rejection on one singular ground has taken place which has resulted in obstructing the election process and the deemed declaration of remaining candidates to be elected. The judgements then cited by the learned counsel have a different set of facts and are therefore in-applicable to the peculiar situation herein, which as mentioned above, is a case where the RO's approach cannot be sustained in a democratic system.

97. Accordingly, the orders dated 10.02.2023 rejecting the nomination forms of all the petitioners on similar grounds, are set aside. Consequently, the declaration of result dated 13.02.2023 is also set aside.

98. At this stage, few aspects which this court has considered also need to be noted, such as non-selection of a neutral place for conducting the election, belated communication of AGM meeting of election to the Government of India in order to allow it to timely appoint its representative for observing the elections as per Sports Code, non-inclusion of names of some of the members in the electoral college compelling them to approach this court in W.P.(C) 1706/2023 titled *Kerala Basketball Association vs. Basketball Federation of India & Ors.*, rejection of *en bloc* nomination forms of petitioners on a singular ground, virtually reducing the election to a non-contested one and the rejection of the nomination form of Mr. Ajay K. Sud, on the

same ground, and later on his declaration as a returned candidate without any reason etc.

99. It is also to be noted that the term of the office bearers of the BFI stood expired on 18.02.2023, therefore, the present elected body does not have any right to continue as the officer bearers of BFI. However, this court in terms of interim order dated 16.02.2023 directed the present office bearers to continue to function with the rider that no policy decision would be taken without the leave of this court.

100. In view of the aforesaid aspects and in the interest of justice, and in supersession of the interim order dated 16.02.2023, the following directions are issued:-

- (i) Hon'ble Mr. Justice P. Krishna Bhat, the former judge of the High Court of Karnataka, "Vasishta", 41, Near Ganesh Emerland, Judicial Layout, 3rd Phase, Hejjala, Bidadi, 562199, Karnataka, (Mobile No.9448289010); is appointed as an Administrator of BFI with immediate effect;
- (ii) The Administrator shall decide whether, the present RO should continue to conduct the election or has to be replaced by another RO. The Administrator shall be at liberty to appoint another RO as he may deem appropriate. The Administrator shall take all steps as may be necessary to conduct the elections of BFI in accordance with the Sports Code and MEG;
- (iii) The election process, however, will continue from the stage of submission of nomination forms after treating the rejected nomination forms as valid.

- (iv) The Government of India, Ministry of Youth and Sports Affairs and BFI are directed to ensure compliance of this order and to render all assistance and cooperation to the Hon'ble Administrator.
- (v) The Administrator shall function till the newly elected body takes over the charge of BFI. There shall be an endeavour to conclude the election process at the earliest;
- (vi) This court leaves it open to the Administrator to charge appropriate remuneration for his assistance as per his discretion which shall be payable by BFI without any delay;
- (vii) All concerned are directed to co-operate with the Administrator for early conduct of the elections.

101. The instant petitions stand allowed in the aforesaid terms. The pending applications stand disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MAY 02, 2023
MJ/nc/p'ma/priya