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

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*Judgment delivered on: 16.08.2022*

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**W.P.(C) 195/2010**

**RAHUL MEHRA**

..... Petitioner

Through: Petitioner-in-person with Mr. Chaitanya Gosain  
and Mr. Amanpreet Singh, Advocates.

Versus

**UNION OF INDIA AND ORS**

..... Respondents

Through: Mr. Sachin Datta, Senior Advocate with Mr. Anil  
Soni (CGSC), Mr. Vinayak Sharma, Mr. Devesh  
Dubey, Ms. Neetu Devrani, Mr. Himanshu Goel,  
Advocates for UOI alongwith Mr. SPS Tomar,  
Deputy Director (MoYAS), Mr. Sanjib K.  
Mohanty, Advocate with Mr. Amit Acharya and  
Mr. Subesh K. Sahoo, Advocates for R-2 & R-3/  
Sports Authority of India.  
Ms. Shyel Trehan and Ms. Bhagya K. Yadav,  
Advocates on behalf of Dr. Batra, President of  
IOA.  
Mr. D. N. Goburdhun, Sr. Advocate, Mr. Ruchir  
Mishra and Mr. Hemant Phalpher, Mr. Hrishikesh  
Baruah, Mr. Parth Goswami, Mr. Pranav Jain, Ms.  
Apoorva Jain, Mr. Sidhant Kaushik Advocates for  
R-4 (IOA).  
Mr. Chetan Anand and Mr. Akash Srivastava,  
Advocates for R-5 & 12.  
Mr. Premtosh Mishra, Mr. Yojna Goyal and  
Ms. Rytim Vohra, Advocate for Respondent No. 8.  
Mr. Aditya Vikram Sing, and Mr. Kushagra Sinha,  
Advocate for R10/NRAI.  
Mr. Vanshdeep Dalmia and Mr. Suchakshu Jain,  
Advocates for R-11.  
Mr. Vishnu Sharma, Advocate with Ms. Anupama  
Sharma and Mr. Binay Kumar, Advocates for R13.  
Mr. Akshay Ringe, Mr. Kartikeya Rastogi and

Ms. Megha Mukerjee, Advocates for the applicant.  
 Mr. Pathak Rakesh Kaushik and Advocate for applicant in CM Appl. 1401-1403/2022.  
 Mr. Abhay Raj Varma, Ms. Priyanka Ghosh and Ms. Vidhi Jain, Advocates for Indian Golf Union in CM No.47222/2021.  
 Mr. Dayan Krishnan, Senior Advocate with Mr. Anuj Tyagi, Mr. Ankur Chawla, Ms. Maitry Kakade, Advocates for KKFI in CM Appls.43266-68/2021  
 Mr. Pranav Sapra, Advocate for applicant in CM Appl.11091/2022.  
 Mr. Sudhir Nandrajog, Senior. Advocate with Mr. Pranav Sapra, Advocate in CM No.11091/2022.  
 Mr. Jayant Mehta, Sr. Adv with Mr. Pranav Sapra, Advocate in CM No.11091/2022.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN  
 HON'BLE MR. JUSTICE NAJMI WAZIRI**

**W.P.(C) 195/2010 & CM APPLs. 374/2010, 972/2010, 2134/2011,5253/2012, 16396/2012, 18747/2012, 19681/2012, 2218/2013, 12612/2013, 17149/2013, 1114/2014, 25922/2016, 5931/2017, 13610/2017, 44608/2017, 36560/2018, 40205/2018, 54625/2019, 915/2020 4947/2020, 14056/2020, 17630/2020, 19980/2020, 23074/2020, 28431/2021, 28432/2021, 35863/2021, 35864/2021, 40041-40042/2021, 42794-42795/2021, 43183/2021, 43266-68/2021, 44454-44455/2021, 45280-45282/2021, 45672/2021, 47222/2021, 47223/2021, 1401-1403/2022, 11091/2022, 16354/2022**

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### **NAJMI WAZIRI, J.**

1. The adage: “the more things change the more they stay the same”<sup>1</sup>, finds a faithful exemplar in the Indian Olympic Association ('IOA') - respondent no. 4. The IOA is recognised by the International Olympic Committee ('IOC') as the National Olympic Committee ('NOC') for India. The IOC, a non-governmental sports organisation, organizes the Olympic Games. It recognizes only the NOC of a country as the representative sports body of that country. The NOCs constitute, organise and lead their respective delegations at the Olympic Games and at the regional, continental

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<sup>1</sup> “*Plus ça change, plus c'est la même chose*”

or world multi-sports competitions patronised by the IOC. They decide upon the entry of athletes proposed by their respective national federations.<sup>2</sup>

**The Objective:**

2. In the interest of improvement of standards of sports administration in the country, Government of India ('Government') by Circular dated 20.09.1975, laid down conditions for financial and other assistance to National Sports Federations ('NSFs'). The conditions were applicable to IOA too. The Circular was followed by various orders, notifications, instructions, etc. They were modified by Guidelines dated 14.08.2001 ('2001 Guidelines'). All these were later amalgamated into a comprehensive code called the National Sports Development Code of India (NSDCI), 2011 ('Sports Code'). It contains Model Election Guidelines of National Sports Federations (NSFs) and the IOA.

3. The petitioner, an advocate and evidently a sports enthusiast, seeks in the public interest that: i) a mandamus be issued for strict compliance by the IOA and the NSFs with the Sports Code and judicial dicta regarding it; (ii) recognition of defaulting NSF(s) be suspended and/or withdrawn, Government patronage and the benefits the NSFs reap from government largesse such as access to government stadia, sports facilities, financial assistance, tax concessions, customs duty exemptions, funding of travel and hospitality, etc. granted to NSF office bearers for sporting competitions, etc., cease forthwith; iii) such benefits be not resumed till the constitution and administration of the IOA/ NSF is brought into conformity with the Sports Code. The petitioner submits that the management structure prescribed in the Sports Code seeks to provide a degree of transparency and some predictability apropos the decision-making process. Therefore, it should be

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<sup>2</sup> Bye-law 2.1 of Bye-laws to Rules 27 and 28 of IOC Charter

strictly enforced for the betterment and advancement of sports in the country.

**Legal Landscape:**

4. The objective of the Sports Code is the adoption of 'good governance' practises by the NSFs and the IOA. The 'Statement of Purpose' of the Sports Code reads as under:-

*".....1.1 Sport development is a national priority, as it promotes active lifestyle, child and youth development, social inclusiveness, employment opportunities, peace and development, and above all a sense of belongingness and national pride. While as state subject, sports development comes within the purview of the States up to the state level; at the national and international level, (including meeting international treaty obligations), it falls within the realm and remit of the Union Government under its residuary powers and within the ambit of Entries 10 and 13 of the Union List in the Seventh Schedule of the Constitution of India.*

*1.2. At the national policy level, sport is at par with public education and public health, and like them sport is a public good and sport development is a public function. It is for this reason that even though national sports bodies are autonomous in nature both, the Supreme Court of India and several High Courts have, in various judgments, maintained that although national sports bodies are not "State' within the meaning of Article 12 of the Constitution of India, they come within the writ jurisdiction of High Courts under Article 226 of the Constitution of India because they perform state-like functions such as the selection of national teams and representing the country in international sports events and forums.*

*1.3. Globally, countries across the world have enacted laws or enunciated guidelines for the regulation of sports in public interest and in national interest. The need to regulate sports arises out of several considerations such as the need to prevent racism in sports, eradicate doping in Sports, prevent age fraud in sports, protect athletes' rights, prevent child abuse and sexual harassment in sports, protect gender equality*

*in sports, prevent betting and gambling in sports, ban dangerous sports, promote professional management and managerial and financial accountability in sports, address anti-trust and competition policy issues related to sports, regulate sports broadcasting rights, regulate the price and entry to sports events, etc.*

*1.4. Government of India also has been, from time to time, taking various steps and initiatives to promote good governance practices in the management of sports at the national level in pursuance of Successive National Sports Policies. These policies are based on the Basic Universal Principles of Good Governance of Olympic and Sports movement and do not, in any manner, contradict or interfere with the autonomy of the national sports bodies in discharging their functions and duties in accordance with the International Olympic Committee Charter.*

*1.5. Accordingly, after the notification of the 2001 National Sports Policy the Government notified revised Guidelines for Assistance to National Sports Federations (NSFs) in August 2001 and issued subsequent guidelines from time to time, which are legally binding on the National Olympic Committee (NOC), i.e., the Indian Olympic Association (IOA), and the National Sports Federations (NSFs) if they are desirous of regulating and controlling sports in India, or using the name of India or representing India within or outside India, or availing themselves of various benefits and concessions, including financial benefits such as customs duty exemption or income tax exemption that are available to NSFs, including the NOC. Although these bodies may be registered in different states under the Societies Registration Act or the Companies Act, their authority to function as the NOC or NSF will be dependent on compliance with the government guidelines.*

*1.6. In the recent past Government has taken various steps to further improve the management of NSFs and sports in the country such as notification of the Anti-Doping Code, introduction of annual recognition of NSFs to ensure transparency and accountability of NSFs; enforcement of age and tenure limit in respect of office bearers of NSFs, including the Indian Olympic Association; bringing NSFs under the*

*purview of Right to Information Act; measures to ensure free, fair and transparent elections by the NSFs; and measures to combat age fraud in sports, and guidelines for the prevention of sexual harassment of women in sports.*

*1.7. The various orders/ circulars issued by the Government from time to time are amalgamated under this National Sports Development Code of India, 2011.*

## *2. Introduction*

*2.1 Sports and games form an essential part of human resource development. Government of India attaches utmost importance to sports for development and sports for excellence. It has been the endeavour of the Government to lay down procedures for effective coordination among various agencies involved in the promotion of sports and extend required infrastructure, training and other facilities to the sportspersons for achieving excellence in the international events.*

*2.2 Over the years a number of Nationals Sports Federations (NSFS) have come up for development of specific games/ sports disciplines. Government of India has been actively supporting these Federations in achieving their objectives.*

*2.3 Guidelines of 2001 laid down the following principles, which now stand subsumed in the National Sports Development Code of India (Sports Code) 2011:*

*i. A clear role delineation between NSFs, SAI and the Government.*

*ii. Grouping of sport disciplines into "priority", "general" and "others" for the purpose of determining the entitlement for government assistance.*

*iii. Detailed guidelines for preparation of Long Term Development Plans (4-year cycle). Provision made for annual sanction budgets of development plans.*



*iv. Binding tripartite agreements between NSFs, the Department and the SAI to be drawn up.*

*v. An emphasis on professionalizing and upgrading the administrative and financial management of Federations.*

*vi. An emphasis on systems to handle players' grievance.*

*vii. The appointment of registered chartered accountants to ensure maintenance of proper and transparent accounts.*

*viii. Recognition of the role of sports promoters, particularly in event management."*

5. By letter dated 17.05.2010, the Government directed the IOA and all NSFs to: (i) comply with the 2001 Guidelines, including age and tenure limits of NSF office bearers and members, (ii) ensure the conduct of elections democratically, including representation of athletes/sportspersons with full voting rights in the management of sports bodies. The Government reminded them that sports lie in the public domain, sports governance is a public function, involving both public and national interest. It emphasized the urgency for mandatory compliance of the extant Guidelines, especially in view of the recommendations of the IOC Seminar on 'Basic Universal Principles of Good Governance of the Olympic and Sport Movement', held in February, 2008.<sup>3</sup> Some of the said Basic Principles include: -

*"(i) Elections to sports bodies should be governed by clear, transparent and fair rules (which in our view, should include, a*

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<sup>3</sup> An event in which 170 participants from various National Olympic Committees ('NOCs'), International Sports Federations ('ISFs') and their respective Associations, IOC Members and its senior staff participated. It highlighted i) the essentiality of athletes' involvement in decision making, ii) along with full voting rights and, iii) the establishment of grievance redressal mechanism for athletes.

*clean electoral roll, known to the public in advance; an independent returning officer, and secret ballot).*

*(ii) Adequate procedural regulations must exist to ensure there is no conflict of interests.*

*(iii) The terms of office, should be of limited duration, in order to allow, renewal of office bearers on a regular basis; and give access to new candidates.*

*(iv) Cooperation, coordination and consultation with government to preserve autonomy."*

6. These principles are already an integral part of the 2001 Guidelines. Indeed, they find an echo in the 1975 Circular. The Government noted that: (i) unfortunately, the majority of NSFs, including IOA, were yet to fully implement the basic principles of good governance and (ii) the mandatory involvement of sportspersons in the decision-making process, to enable their full participation in the administration of sports, had not been complied with. The letter further notes, *inter alia*:

*"9. The Government hopes, that the IOA and their associates, will not disappoint the country, by falling short of what is rightfully expected of them. They should keep in mind, the observations made by the Hon'ble Delhi High Court in CWP 7868 of 2005, that the Government guidelines to national sporting bodies are legal, valid and enforceable; and not in violation of the Olympic Charter. They should also take note of the sentiments expressed by Members of Parliament, from all Parties, in the Rajya Sabha debate on 22.04.2010, supporting the age and tenure limits. Above all, they should take note, of the aspirations and expectation of the people of India, who want their national sports bodies to be at the forefoot of good governance in the Olympic and Sports Movement, in the 21<sup>st</sup> century.*

*10. It is requested, that this communication be circulated to the members of the Executive Council and the General Assembly of the IOA, for thorough deliberations and*

*appropriate decisions, as deemed fit. IOA may like to intimate its stand to the Hon'ble Delhi High Court, which is hearing this matter on the 19th instant. IOA should also apprise this Ministry, which is bound by the directions of Parliament, Courts, and public opinion, of its decisions on the matter."*

*(emphasis supplied)*

7. The Government's repeated directions and exhortations to the NSFs and the IOA have remained just that, mere exhortations. Even after lapse of more than 12 years from the letter of May 2010 and 47 years from the 1975 Circular, the same irregularities and anomalies in the governance structure and management of national sports bodies continue to fester their affairs. There is blatant violation and disregard of the Sports Code, the IOC Charter and court orders. Why was this allowed to continue is another matter. The logical remedy to the situation would have been to derecognise the defaulting entities. However, corrective measures were adopted sparingly.

8. The Sports Code lays down guidelines for recognition of a NSF for it to enjoy various facilities/concessions provided by the Government. Failure to comply with guidelines could result in one or more of the following consequences:

*"3.6.*

*(i) Shall not be able to select the national teams and represent India in any international event or international forum.*

*ii) Shall not be allowed to use the word "India" or the National Emblems and Names in team participation;*

*iii) Shall lose its All-India character and may not be able to regulate and control the sports discipline concerned in the country.*

iv) *Shall not be able to avail itself of Custom Duty Exemption for import of sports goods, sports equipment, sports requisites as an NSF/Apex Body.*

v) *Shall not be able to avail itself of Income Tax exemptions under the provisions of section 80(G) (2)vii) (c) of the Income Tax Act, 1961,*

vi) *Shall not be able to avail itself of the special dispensation available to NSFs to remit funds towards sponsorship, prize money for activities abroad.*

vii) *Participation by the sportspersons in the national and international events organised by the unrecognized NSFs shall not be considered for appointment to the government jobs under sports quota, nor would they be able to get admissions under sports quota in schools and colleges, nor would they be entitled for railway concession or other concessions granted for participation in the national championship.”*

9. The criteria for recognition of NSFs, the Sports Code stipulates, *inter alia:*

*"3.6 No office bearer of a National Federation shall hold office simultaneously, in any other National Federation excepting the Indian Olympic Association.*

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*3.9 The membership of the Federation should be confined to the corresponding State/UT and other special units affiliated (like Sports Control Boards etc.) and where Federation grant membership to individual clubs or individual persons, such membership does not confer on such members the right to vote in any of the Federation's meetings.*

*3.10 At the National level, there will be only one recognised federation for each discipline of sport. Only the duly recognised National Sports Federation would be entitled to financial grants as admissible. Only one State/UT Association from each State/UT shall be admitted as a member of the Federation, provided it has a minimum of 50% of the District*

level Associations affiliated to it. Any organisation of an all India standing and connected with the Sport may be given the status as that of a State or that of a U.T. and admitted as affiliated Member. Other categories of membership may also be given, but while each affiliated State/UT Unit shall have a right to cast vote in the General Body Meetings, no other class of Member(s) shall have any right to vote, in the Federation's meetings. While granting recognition/affiliation to a State /UT Association, the National Federation should take into consideration the representative character of the State/UT Association so as to ensure that only truly representative body of the game gets the recognition/affiliation.

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3.20 Inclusion of prominent sportspersons of outstanding merit as members of the respective federations on a tenure basis. The strength of such prominent sportspersons with voting rights should be a certain minimum percentage (say 25%) of the total members representing the federation and selection of such sportspersons should be in consultation with the Department."

(emphasis supplied)

10. It lays down the procedure for suspension/withdrawal of recognition in: (i) instances of serious irregularities in the functioning of a NSF, (ii) violation of the terms and conditions of recognition or of Guidelines, and (iii) the NSF not functioning in the best interest of development of the sports.

11. According to the Model Election Guidelines to be followed by all NSFs and the IOA, the Managing Committee can be of only 7 (seven) Officer Bearers (in addition to 5 Executive Members) as under: -

1	President	1 (one)
2	Vice-Presidents	2 (two)
3	General Secretary	1 (one)
4	Treasurer	1 (one)

12. As per the Note appended to the Election Guidelines, the above number may change according to the Constitution of the NSF concerned. However, this provision for expansion of the size of the Managing Committee has to be prudently and sparingly used and not as an enabling clause for large, unwieldy or expensive to convene Executive Committees ('ECs').

13. The Government has recognized 56 NSFs, of which only 29 relate to Olympic sports. Respondents nos. 5 to 13 are various NSFs. IOA is sought to be represented by three sets of counsel - one for IOA itself, another for its Secretary General and yet another for its 'President'. The first two set of counsel object to the 'President' being heard on the ground that: i) he has no *locus standi* to make any submissions on behalf of the IOA; ii) the IOA can be represented only through its Secretary General<sup>4</sup>, who may engage and instruct counsel, to defend the IOA.

14. The learned counsel for the IOA's Secretary General, contends that: i) the petition is not maintainable as it is not in public interest; ii) it is an exercise in personal vindication premised by a personal grudge, therefore, no judicial review is maintainable; iii) the IOA being a private body registered under the Societies Registration Act, 1860, is free to function under its own rules which can be modified only in terms of the said Act; iv) the petitioner cannot seek to impose any rule whatsoever; v) the IOA is an autonomous body under the IOC Charter and is governed by its own Constitution as approved by the IOC; vi) the amendments can only be made with the approval of the IOC. He further contends that insofar as the prayers

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<sup>4</sup> As held by this Court on 30.07.2020 in W.P.(C) No.3364/2020, titled *Sudhanshu Mittal vs. Union of India & Anr (SB)* with reference to Rule 31.3 of the Rules and Regulations of the IOA. [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=122854&yr=2020](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=122854&yr=2020)

(a), (b), (d) and (e) have become *infructuous* and that prayers (c), (h), (i), (j) and (k) are not supported by the pleadings, the petition is not maintainable. Therefore, the reliefs sought, cannot be granted. Arguments on behalf of the IOA too are largely on the same lines. Reference was made to some judgments as well.

15. Additionally, the IOA and its 'President' contend that: i) the guidelines for recognition of NSFs, as contained in clause 8.3 of the Sports Code, would apply only to the NSFs and not to the IOA, as the latter deals directly with the IOC, the international body organising international sporting events including the Olympic Games; ii) the procedure for suspension/withdrawal of recognition and consequences thereof and the Model Election Guidelines are applicable only to the NSFs; iii) as per Rule 4.4 of the Olympic Charter, there is no bar to the appointment of a Life Member in the IOA; iv) Honorary President and Honorary Members can be elected for life but without voting rights and v) the Government's stand in this regard has been, that the respective NSFs may take a view apropos such inclusions or appointments.

16. The issue whether the IOA is bound by the Sports Code is no more *res integra*. In the past decade judicial pronouncements have held that the Sports Code is equally applicable to the IOA and the NSFs. A Division Bench of this Court by its judgment dated 09.05.2014 in *Indian Olympic Association vs. Union of India* (2014) 5 SCC Online Del 2967<sup>5</sup>, has held:

*"67. In view of the above discussion, it is held that the impugned stipulations in the Sports Code, spelling out tenure restrictions, for various office bearers, and their concurrent operation, do not violate the Petitioners' rights under Article 19(1)(c).*

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<http://164.100.69.66/jupload/dhc/SRB/judgement/11-05-2014/SRB09052014CW23102012.pdf>

*Are the impugned regulations to be held unenforceable as they impose disproportionate or unreasonable conditions violating Article 14 and expose the IOA or NSFs to the risk of disaffiliation or de-recognition by IOC or other such international bodies.*

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84. *The breadth of the above regulations — which go to the extent of prescribing the staffing requirements and pay, salaries, etc. of NSFs and IOA, and stating that irregularities in the manner of holding elections, or failure to hold elections can result in loss of recognition — show that the Central Government has placed measures which enable it to oversee the activities of these bodies, for ensuring that the funds are properly utilized. It is necessary to emphasize that aid given to these bodies and organizations is not in the form of monetary grant alone; it enables sports women and sports men as well as sports administrators to travel stay abroad, buy equipment, attend international events, whenever necessary obtain coaching expertise, attend administrative or international non-sporting meetings, etc. Besides, sports and sports related equipment (specialized medical equipment geared for sports) are imported, on payment of nominal or nil duty. Many organizations might be obtaining sponsorships or international sponsorships or endorsements, or be the canalizing bodies for such endorsements and sponsorships on account of the conditions they impose on sports men and administrators, and in the process earn considerable revenue, or facilitate it. These are at least in many cases based on official recognition. That the petitioners has not an issue with the manner the Central Government dictates how funds are to be utilized, in all the verisimilitude of controls and guidelines discussed above, is at once interesting and revealing. The petitioners are not aggrieved by such degree of control — their objection is only as to the tenure restrictions.”*



85. *In the opinion of the Court, aid or recognition is not a one way street. The Central Government's legitimate right to recognize these sporting bodies, for the purpose of use of the expression "India" enabling national sports teams sponsored by these NSFs and the IOA to in turn use that appellation, carries with it, the right to insist that certain basic standards are followed. With the right to grant or withhold such recognition is also the right to spell out conditions, for the grant of aid — as such is undoubtedly the case, because travel expenditure, and assistance for procurement of equipment would be aid (apart from use of State resources such as stadia, customs duty waiver for importation of equipment, facilitation and coordination during international events, etc). The figure mentioned on behalf of the Central Government towards positive grants for use these last four years for travel purposes alone was Rs. 435 crores. Considering that the NSF and IOA are free to use the national status conferred upon them by the recognition and garner revenue, in the form of endorsement, sponsorships, sale of event coverage rights to the media, etc, there cannot be two opinions about existence of an overriding public or State concerns that such bodies do not remain the preserve of the few, or worse, the moneyed and the powerful."*

86. *For the aforementioned reasons, it is held that the petitioners' contentions are rejected. The Court reiterates its conclusions that international sports and regulation of NSFs, and IOA, in respect of the matters which are the subject of these proceedings, falls within Entry 97 of the First List to the Seventh Schedule to the Constitution of India. The Central Government can insist upon adherence to these provisions, without the aid of legislation. It is also held that the Sports Code does not violate the freedom under Article 19(1)(c) of the Constitution. Neither are its provisions arbitrary. The tenure restrictions impugned in this case can and are insisted upon as a part of the public interest in efficient and fair administration of such NSFs. This Court also specifically notes the letter/notice dated 20.09.1975, which forms part of the Sports Code, as modified by the later letter of 01.05.2010, to the following extent:*

*“i. The President of any recognized National Sports Federation, including the Indian Olympic Association can hold the office for a maximum period of twelve years with or without break:*

*ii. The Secretary (or by whatever other designation such as Secretary General or General Secretary by which he is referred to) and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, may serve a maximum of two successive terms of four years each after which a minimum 'Cooling off period of four years will apply to seek fresh election to either post.*

*iii. The President, the Secretary and the Treasurer of any recognized National Sports Federation, including the Indian Olympic Association, shall cease to hold that post on attaining the age of 70 years.*

*iv. The other provisions in respect of the tenure limit as contained in the letter of 1975 mentioned above shall remain as it is.*

*v. The above dispensation will come into operation with immediate effect.”*

*This regulation (subject to any subsequent amendments) should, till appropriate legislation is framed by Parliament, bind the parties and all NSFs as a condition for recognition, aid and crucially, for the use of the term “India” by any team in International Olympic sporting event.” ...*

II. Even in this petition, on 17.12.2021 it was observed that: -

*“3. As noted above, the NSFs, IOA and other sports bodies recognized by the Government of India would have to bring their constitution in accordance with the Sports Code, as held by the Supreme Court in Maharashtra Archery Association Vs. Rahul Mehra & Ors. (2019) 18 SCC 287 as well as by this court in the*

*case of Indian Olympic Association Vs. Union of India, (supra). The court is informed that barring 6, none of the other 56 NSFs are complying with the Sports Code. That being the position, they cannot be deemed to even be the representative body in terms of the Sports Code...”*

III. In *S. Nithya v. Secretary*<sup>6</sup> (UOI) (2022 SCC MAD 318) (SB) the High Court of Madras has held, *inter alia* as under:

*“After the notification of the 2001, National Sports Policy, the government notified revised guidelines for assistance to National Sports Federations in August 2001 and issued subsequent guidelines from time to time, which are legally binding on the National Olympic Committee (NOC) ,i.e., the Indian Olympic Association (IOA) and the National Sports Federations, if they are desirous of regulating and controlling sports in India, or using the name of ‘India’ while representing India within or outside India or availing themselves of various benefits and concessions, including financial benefits such as custom duty exemption or income tax exemption that are available to NSFs, including the NOC. Although these bodies may be registered in different states under the Societies Registration Act or the Companies Act, their authority to function as the NOC or NSF will be dependent on compliance with the government guidelines...”*

17. In view of the above and in view of the directions of the Supreme Court regarding elections to the All-India Football Federation and Archery Association of India for adherence with the Sports Code, the afore-stated arguments against the petition are redundant and untenable.

18. Now, since it is established that the Sports Code will be applicable to the IOA in full measure, what is to be seen is whether or not the Constitution of the IOA is in consonance with the Sports Code.

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<sup>6</sup> <https://www.mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/629657>

### **Thirteen Pitfalls:**

19. The petitioner has, in particular, raised the following issues apropos IOA's constitution, management structure and Rules. He contends that for the sake of good governance, meaningful promotion of sports and robust protection of interests of sportspersons in the country, these glaring anomalies need to be remedied in terms of the Sports Code:

- (i) No entity like Life President.
- (ii) Differential voting rights cannot be permitted.
- (iii) Non-determination of the Electoral College by the IOA is in contravention of judicial orders and is contrary to the objectives of the Sports Code.
- (iv) Only NSFs for Olympic disciplines should be members of the IOA with voting rights.
- (v) Age and tenure limits should be applied to all members of the Executive Committee ('EC') and General Assembly of IOA and not only to President, Secretary and Treasurer.
- (vi) EC's size should be reasonable and not unwieldy.
- (vii) There cannot be any restrictive, undemocratic clause, regarding elections to any post.
- (viii) IOA Constitution permits a person to hold offices for 20 years without undergoing a cooling-off period, this must be rectified in accordance with the law of the land, i.e., not more than three tenures alongwith cooling-off period(s).
- (ix) IOA must have independent Ethics, Athletes, Election and Arbitration Commissions, and Ombudsman, devoid of any control, direct or indirect, of the IOA. These Commissions must be funded by the Government from the budgetary allocation for NSFs including IOA.

- (x) Appointment of 25% prominent sportspersons of outstanding merit with voting rights in General Assembly and EC is mandatory in terms of clause 3.20 of 2001 Guidelines and para 9.3 (xii) of the Sports Code.
- (xi) A person against whom criminal charges have been framed should not be permitted to be a member either of the EC or the General Assembly.
- (xii) Persons seeking successive re-election for the same post must secure two-thirds majority.
- (xiii) The Sports Code must be made applicable to the IOA and to all NSFs.

20. The said issues are discussed in detail as under:

**(i) No entity like Life President**

21. On 30.12.2016, the Government suspended IOA's recognition as a sports federation because the latter had appointed two political persons as its Life Presidents. The objection was based upon clause 23.5 of the IOA's Constitution which reads as under:

*“ 23.5 Where the charges have been framed by any Court in India, in respect of an offence which is of serious nature under the Indian Penal Code/ Prevention of Corruption Act, in which the punishment of imprisonment of more than 2 years is prescribed then the Member / Office Bearer/ Member of the Executive Council of the IOA will resign immediately and if not then they will be provisionally suspended and will not be eligible to contest in the elections and the case will then be referred to the IOA Ethics Commission for further guidance. ”*

22. Criminal charges had been framed against the said two persons rendering them ineligible to hold any post in the IOA. Ostensibly, to overcome this impediment, the IOA passed a Resolution in its General Body

Meeting on 27.12.2016, to appoint the said persons as its Life Presidents. The Government's objection was that when such persons who were ineligible to even contest elections to any post in the IOA, the aforesaid appointment was in spirit violative of IOC's conditionalities and IOA's own constitution. The Government's show-cause notice to the IOA was to no avail. IOA failed to conform. The Government's view being that the highest level of probity and transparency is needed in the working of the IOA, the latter is required to follow proper, democratic and healthy management practices that provide for greater accountability at all levels and serve as an example for other sports bodies to emulate. Therefore, in furtherance of the due respect for the IOC Charter and being committed to protecting the autonomy of sports, the Government could not remain a mute spectator to blatant violation of principles of ethics and good governance by IOA. National prestige and public sentiments were at stake. In the circumstances, the deemed recognition granted to the IOA was suspended.

23. However, 13 days later, the suspension was revoked in view of IOA's Resolution clarifying that its decision of appointing the aforesaid two persons was erroneous, null and void. IOA expressed its regret to the Government for the inconvenience and embarrassment caused by it. Therefore, in the hope that IOA would uphold the highest standards of probity and ethics in its functioning, as well as in the larger interest of promotion and development of sports in the country, the Government revoked the said suspension of deemed recognition.

24. A similar issue arose regarding the Wrestling Federation of India which too appointed a Life President. In *Dushyant Sharma v. Haryana Wrestling Association*, 2012 SCC OnLine Del 157.<sup>7</sup>, this court has held, *inter-alia*, as under:-

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<sup>7</sup> <http://164.100.69.66/jupload/dhc/RSE/judgement/12-01-2012/RSE10012012LPA182012.pdf>

"8. Besides the aforesaid, we on a larger plane are of the opinion that a Clause as Article XIII (d) supra in the Constitution of respondent No.3 WFI which is a National Sports Body recognized by the Government of India in the sport of Wrestling, is undemocratic and unsustainable. Once elections of the respondent No.3 WFI are required to be held periodically, we find it absolutely illogical to restrict the elections to the post of President, Secretary General and Vice President to only those who have held the said office earlier. There is no basis whatsoever for perpetuating control and management of the respondent Federation in a few persons and it ought to be left to the electorate of the Federation to elect whosoever they find most suitable for discharging the obligations thereunder. A clause as Article XIII (d) smacks of creation of fiefdom which cannot be permitted. The elected officials cannot in this manner be given carte blanche which will have the effect of eliminating elections and allowing them to retain their offices indefinitely. Decentralized power is preferable to power centralized and concentrated. Article XIII (d) supra tantamounts to one-man rule which is in negation of democracy and jeopardizes the democratic mechanism intended for the Societies.

9. This Court in *Narinder Batra Vs. UOI* ILR (2009) 4 Delhi 280 noticed the Guidelines of the Government mandating that in order to be entitled to financial assistance or recognition as a National Level Body by the Union Government, the same is required to be a Society or an Association or a Federation which enforces democracy by fixing the tenure of the office bearers. It was further observed that such national level federations enjoy a monopoly position and are directly concerned with selection of teams to represent the country and the same set of office bearers cannot be permitted to control selection or act in other matters relating to National Sports Federations influencing the development of sports in the country. It was yet further held that if such tenure clause was not enforced, the office bearers could be repeatedly elected allowing them to dominate the affairs of the Association / Federation resulting in creation of monopoly having the potential to damage the sport itself. A limited office tenure minimizes if not eliminates allegations, criticisms and elements of nepotism, favouritism and bias of any kind. New office bearers with fresh ideas and enthusiasm can make a valuable

*addition to such organizations and also ensure removal of corrupt and undesirable in the organization."*

25. Despite the above judicial pronouncements, the IOA's constitution provides for appointment of Life President as under:-

*"13 Life President*

*At the General Assembly of the IOA, the House may nominate up to three persons who have rendered unique and distinguished service for the cause of the Olympic movement in the country as Life President. Such Life Presidents shall hold office during their lifetime. The Life President shall be invited to the General Assembly meeting of the IOA. The Life President shall have no right to cast his vote at the Annual General or Special General meetings of the IOA."*

26. The said clause is contrary to the Sports Code and judicial dicta. It needs to be removed. As long as the said clause exists in the IOA's Constitution, it cannot be granted recognition by the Government.

27. Also, in *Mahipal Singh & Ors. vs. Union of India & Ors.*<sup>8</sup>, 2018 SCC Online Del 10284, a Division Bench of this court held that the Sports Code does not visualize the post of Life President either as an Office Bearer or otherwise<sup>9</sup>.

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<sup>8</sup> <http://164.100.69.66/jupload/dhc/CHS/judgement/03-08-2018/CHS03082018CW46012013.pdf>

<sup>9</sup> 67. *The Model Election Guidelines annexed to the Sports Code I and constituting a part thereof clearly set out the officers who would constitute Office Bearers of the NSF, and the post of "Life President" is not among them. Indeed, neither does the Sports Code I, nor do any of the Circulars issued prior thereto, contemplate a post of "Life President" in an NSF. While Clause 19 of its pre-amended MOA included, in the Office Bearers of the AKFI, only the President, Vice Presidents, Honorary General Secretary, Honorary Joint Secretaries and Honorary Treasurer, Clause 8.9 of the amended MOA of the AKFI included, among the Office Bearers, the "Life President". This was, on the face of it, illegal, as the Sports Code I did not visualize any post of Life President at all, in an NSF, either as an Office Bearer, or otherwise.*

68. *In our opinion, as a beneficiary of the recognition conferred by the Government, the AKFI was bound by the stipulations contained in the Sports Code I, and other Cognate Guidelines issued by the Government, and had no authority to create posts de hors, and in excess of, those contemplated by the Sports Code I.*



28. Recently on 25.05.2022, in *Aslam Sher Khan v. Union of India*<sup>10</sup>, 2022 SCC OnLine Del 1569, this court has held that in a NSF the posts of Life President, Life Member and CEO with voting rights (as distinct from an employee or consultant) are illegal, as the same are contrary to the Sports Code. The same rationale would apply to IOA.

29. The essence of the preceding discussion is that there can be no room for a permanent post in a NSF or the IOA. The tenure of each EC is fixed. Life itself is finite. So is a game of sport. Nobody can contemplate of a permanent position in any organization which discharges public functions and receives government funds and recognition. Indeed, it would be sporting, democratic and honourable for an individual to gracefully move-on in life once her/his tenure of office gets over. There is no place for staleness. Sports and sporting activities are about the excitement of competing to win and excel against the best. Fair competition and the transparency of processes, are immutable elements in matters governing sports administration.

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69. *Apart from the fact that the AKFI, in its capacity as a NSF availing recognition from the Government, did not have any authority to create a post of "Life President", where the Sports CodeI did not contemplate the existence of any such post, Clause 15.8 compounded the illegality by providing that the Life President would hold office during his life entire time. This stipulation, again, directly infringed the tenure limits, specified in the Sports CodeI which, as already noted hereinabove, were binding on all recognised NSFs, including the AKFI. The creation of such an immortal entity, blessed with the gift of "ichhamrityu" (death at will) was, we are certain, not even remotely within the imagination, not to say contemplation, of the framers of the Sports Code.*

70. *Equally, the post of Life President itself being an illegally created post, there could be no question of the holder of the said post having any right to represent the AKFI at any international forum. The Sports CodeI, as well as the Guidelines issued prior thereto, clearly permitted representation, by any NSF, in continental or international sports events in which India was a participant, only if the NSF complied with the stipulations prescribed therein, which included adherence to the age specifications and tenure limits specified, as well as conducting of elections in accordance with the Model Election Guidelines.*

<sup>10</sup> [http://164.100.69.66/jupload/dhc/NAW/judgement/25-05-2022/NAW25052022CW57032020\\_183323.pdf](http://164.100.69.66/jupload/dhc/NAW/judgement/25-05-2022/NAW25052022CW57032020_183323.pdf)

30. In view of the above, the post of Life President and any such permanent post for an individual in the IOA are struck down as being illegal.

**(ii) Differential voting rights cannot be permitted**

31. According to Clause 10.1 of the IOA Constitution, NSFs representing sports included in the Programme of the Olympic/ Asian/Commonwealth Games and the National Federation of Indigenous Game Kho-Kho, are to have three representatives with a vote to each, which they are entitled to cast in the Annual General Meetings and Special General Meetings of the IOA. Whereas for State Olympic Associations ('SOAs') and Union Territories (with Legislative Assembly) Olympic Associations (UTOAs), only two representatives with a vote each, is provided. According to the Sports Code, each permanent member is to be represented by two delegates with a vote each. The population of a UT (like Delhi) is comparatively more than some States of the Indian Union. The Government says that IOA and SOAs are subject to the same age, tenure and election related stipulations. Indeed IOA's Constitution itself contemplates an identical regime for the SOAs. The differential voting rights denotes some entities as being of a lesser value or significance. This principle is *per se* iniquitous and undemocratic. There cannot be a half voter or a one 1/3<sup>rd</sup> voter. This anomalous weightage in votes to different entities is neither contemplated in the Sports Code nor in the IOC Charter. Therefore, it is struck down. Voting and election results only in terms of the Sports Code will be recognized. Continuance of the said provisions in the IOA Constitution will disqualify it from recognition by the Government.

**(iii) Non-determination of the Electoral College by the IOA is in contravention of judicial orders and is contrary to the objectives of the Sports Code.**

32. During the pendency of this petition, elections to the Executive

Committee of the Archery Association of India ('AAI') were initiated. The procedure adopted was impugned. The Court held on 15.10.2012, that insofar as nominations were to be submitted either in person or through registered post in a sealed envelope and though addressed to the Returning Officer but at the address of the then President, AAI, the said procedure was contrary to Clause 4(4) of the Model Election Guidelines. Furthermore, the uncertainty of the Electoral College as well as the likelihood of 'List of Voters' being tampered with in due course, made the electoral result suspect. The election notice did not specify if the elections would be held by secret ballot. AAI's Forms for Nomination of Candidates and Forms for Withdrawal of Nominations, were different from the Model Forms prescribed in the Sports Code; no time for electoral campaigning was accorded, thus depriving prospective candidates and aspirants of a fair contest. Reference was made to *Haryana Wrestling Association (supra)*. The Court held that: i) the elections had not been held fairly on account of tight time-schedule which took away the opportunity of campaigning by a candidate and ii) AAI's Nomination Forms D and C needed to be as per the Model Forms prescribed in the Model Election Guidelines of the Sports Code.

33. The essence of the dicta and the preceding discussion is that NSF's (including the IOA) have to comply with the Model Election Guidelines. In the circumstances, the IOA Constitution shall so conform or risk derecognition.

**(iv) Only NSF's for Olympic disciplines should be members of IOA with voting rights.**

34. Rule 28 of the IOC Charter permits a NOC (IOA) to include as its members NSF's affiliated to International Federations ('IF's') representing sports disciplines which are included in the programme of the Olympic

Games, as well as sports which are not so included. The voting majority of a NOC (IOA) and of its Executive Body is to consist of the votes cast by the NSFs referred to in Rule 28(1). However, when dealing with the questions relating to Olympic Games, only the votes cast by such corresponding NSFs and the elected representatives of athletes, are to be taken into consideration.

35. When the IOA Constitution was being revised in 2013, the Government had communicated its views to the IOC and the IOA. Clause III (b) of the then draft Rules and Regulation of the IOA stipulated that membership to SOAs and NSFs of Indigenous Games/ Sports not included in the Olympic Games would be as non-voting members. However, as noted above, SOAs have been given voting rights. Interestingly, a decade ago, by its letter dated 23.02.2011, the Government had conveyed to IOA as follows<sup>11</sup>:-

*"(i) inclusion of State Olympic Associations as voting members is not in conformity with the relevant Rule of the Olympic Charter which deals with the composition of NOC. State/UT Olympic Associations are to represent IOA at the State level and for discharging that function they need not get the voting rights.*

*(ii) IOA should be a confederation of NSFs dealing with the Olympic Sports and not a confederation of its own affiliated and other sports bodies.*

*(iii) The Executive Council with 28 members is very large.*

*(iv) Clause VIII (a) of IOA's Constitution is very restrictive and all the members of the Society should be free to contest the elections for any post."*

(emphasis supplied)

36. Rule 31.2 of the IOA stipulates that no NSF shall affiliate a sports Unit of any State/Department that has not been approved by a three-member

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<sup>11</sup> Government's affidavit of 08.01.2014

committee comprising a representative each from IOA, State Olympic Association and the National Sports Federation concerned. This Rule, in effect, purports to control even primary membership to a NSF. There is no such authority of oversight to IOA over a NSF under the Sports Code. Any endeavour of IOA to influence or exercise such control is illegal. NSFs are independent entities, over which the IOA cannot exercise managerial control, even in a circuitous way. IOA's stipulation has to go and is struck down. Same shall be the fate of Rule 4 which accords equal votes in the General Meeting to a NSF, irrespective of whether or not it represents an Olympic sport. A difference between the two types of NSFs is envisaged in the IOC Charter. NSFs of non-Olympic Sports cannot have a voting right apropos matters concerning Olympic sports disciplines. The Government's stand in this regard is correct. The IOA constitution will have to abide by the IOC Charter. Let it be so done.

37. The SOAs have no role whatsoever, in the context of the Sports Code because "the NSFs for individual sports disciplines are representative of the State units of the sports discipline concerned". It is in this context that this Court had directed Union of India on 19.12.2013 to file an affidavit while observing as under:

“ ...  
(3) *The Union of India shall further indicate as to the rationale of allowing participation of State Olympic Association in the election and decision making of the national Olympic body. i.e., the IOA in the context of the Sports Code which it has drawn. Prima facie, these bodies do not have any role whatsoever since the national federations for individual sports disciplines are representative of the State units of the discipline concerned. Apparently, the participation of State Olympic Association members - either as members of the Governing Council or as nominated members - entitled to vote and make decisions would result in imbalance in the decision making with regard to the sports administration and*

*particularly the selection of deserving and meritorious sportspersons. Once the National Sports Federation of the sports concerned is represented in the IOA which in turn would have its own composition, the need to allow participation of State Olympic Association appears to be illogical.*

*(4) In its affidavit, the Union of India shall also indicate as to why the restrictive clause in respect of election of members of the Governing Council and Office Bearers has been permitted. The Court notices that the restrictive clause, besides being complicated, is also ambiguous; it permits virtual monopoly of few people in the administrative and decision making process thus preventing infusion of fresh representatives especially meritorious sportspersons who would have the best hands-on and practical experience to raise and address the most relevant issues concerning their individual sports disciplines and the interest of sportspersons and sports in general.*

*The IOA receives extensive funding and assistance from the Government of India. In this regard, the Court notices that no restrictive conditions have been spelt out in the constitution of the IOA with respect to those who are not termed as 'Office Bearer' (defined in Article 14 to include only three posts, i.e., President, Secretary and Treasurer). The IOC Charter in this regard - produced in Volume 6 page 1304 - (Bye Law and Rules 28 & 29, Sub-Rule 1.3). The IOC constitution is specific. In that the provision made in the IOC Charter would prevail over National Olympic Committee such as the IOA.*

*The existing Regulations and constitution of the IOA permits what appears to be a glaring imbalance. For the purpose of voting at two positions within the Executive Council, for instance, the National Sports Federations are entitled to three votes, the State Olympic Association is entitled to two votes and the athletes and sports persons are entitled to one vote each as are the representatives of Services Federations [Article 10 (a) of the latest IOA constitution as amended on 8.12.2013]. This too tends to confer disproportionate influence and power in the hands of those who have been in the administration and entrench it for considerable periods of time and at the same time disempowers athletes and sports persons who are marginalised in the decision making and electoral process.*

State Olympic Associations (SOAs) are not necessary in the IOA structure. It has no worthwhile role or history of having added to sports development in the country for half a century. Sports promotion and administrative action can be carried out through managers, employees and consultants from whom there will be accountability, rather than having a huge body of multiple SOAs. The aspirant IOA members can always contest for leadership and management posts/Office Bearers/Members of the Managing Committee.

...”

(emphasis supplied)

38. There is no response by either party to the aforesaid views of the court.

39. Inclusion of sports disciplines vary from one Olympic Games to the other. For example, in the Tokyo 2020 Olympics, 23 sports disciplines were included, for Paris Olympics 2024, competition will be held in 32 sports. South Asian Games 2019, Asian Games 2022 and Commonwealth Games 2022 cover varying sports disciplines. There is an enabling dynamism for bringing new sports disciplines in every Olympic Games. The Host City/Nation gets to choose three games from the variable list. Nevertheless, over 90% of sports disciplines have consistently been part of the Games.

40. Of the 56 NSFs recognized by the Government, only 29 NSFs represent Olympic sports. The remaining 27 NSFs are for non-Olympic sports. Two votes each to be cast by each member from the latter category would equal 54 votes, which would create a vote bank in favour of earlier EC members or their “camps” who may have granted membership to these NSFs. Perpetuation of control or hegemony of a group over a Society/Association or entity is *ex facie* undemocratic. All-the-more, in cases where the entity discharges public functions.

41. For the reasons discussed hereinabove, there should be no SOAs. However, should the IOA insist on having them, the SOAs’ shall have no

votes in the IOA nor will their members be elected to the IOA EC or discharge any position of authority or control, nor will the SOAs' be funded, patronized or supported in any manner by the Government because as the Government rationally says: *"IOA should be a confederation of NSFs dealing with Olympic Sports and not a confederation of its own or other sports bodies"*.

**(v) Age and tenure limits should be applied to all members of the EC of the IOA and not only to President, Secretary and Treasurer as well as to everyone in the General Assembly.**

42. Over the years the Government has exchanged communication<sup>12</sup> with the IOC apropos the restrictions of age and tenure of office bearers of the NSFs and the IOA; it also sent an advisory to the NSFs and IOA to deliberate on the measures to be adopted to ensure good governance, especially regarding the following: -

- (i) Democratising the process of elections to sport bodies with emphasis on transparency and accountability.
- (ii) Provision for adequate procedural regulations to prevent conflicts of interest.
- (iii) Limitation of tenure of office bearers.
- (iv) Cooperation, coordination and consultation with government while preserving autonomy.

43. The Government says that: i) it has always respected the autonomy of sports bodies but the NSFs must exhibit strong and visible good governance practices and; ii) it is bound by court orders and there is no scope for review of its directions dated 01.05.2010<sup>13</sup>.

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<sup>12</sup> UOI affidavit of 16.08.2010.

<sup>13</sup> Affidavit of 16.08.2010.



44. The Government presented a voluminous Dossier<sup>14</sup> to the IOC apropos commitments made to the Government during the Meeting at Lausanne. IOC by its letter dated 10.08.2010 has reaffirmed the commitments made by IOA during the meeting on 18.06.2010, to the effect that IOA was revising its Constitution in cooperation with the IOC, to incorporate fundamental principles of good governance and to bring it in line with the principles inherent in the Olympic Charter and Olympic Movement. The Government has publicly clarified its position<sup>15</sup> that its order of 01.05.2010, restricting the age and tenure of the office bearers in NSFs, was issued after taking into account the existing scenario in NSFs as well as the views expressed by the courts and the Parliament<sup>16</sup>. The Government noted that the NSFs were recalcitrant in complying with the provisions of the Sports Code.

45. The aforesaid Dossier records, *inter alia*, as follows: -

*"94. The IOC will note that while the power of the Government to legislate on Sports is expressly recognized by the Constitution of India, it has elected to respect the autonomy of the IOA and the NSFs and has implemented Guidelines with a view to ensuring conformance with universal Good Governance Principles, which, admittedly, are in conformity with the Olympic Charter. However, the Government of India maintains that 'absolute autonomy' and/or 'autonomy without accountability' is no longer a credible option in the present day context, especially in a functioning democracy like India.*

*95. Furthermore, given that it expends a substantial amount of public monies in the development of Sports and in assisting the IOA and the NSFs with over US\$ 60-70 Million annually in the*

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<sup>14</sup> Government of India Guidelines on Good Governance in Sports Bodies.

<sup>15</sup> In the Lok Sabha

<sup>16</sup> The aforesaid clarification of 01.05.2010, was in particular, apropos Hockey India, Badminton Association of India and Swimming Federation which had been resisting the adoption of the 2001 Guidelines to whom show-cause notices had already been issued.

*last three years, the Government can no longer countenance a situation of absolute and unrestricted autonomy to the IOA/NSFs.*

*96. As mentioned hereinabove, the requirement of reintroducing the 1st 2010 May communication, inter alia, was a result of failure on the part of IOA/NSFs coupled to keep their commitment to bring in adequate self regulation to ensure good governance, which they have failed to keep in spite of repeated commitments in 1975, 1988, 1997 and 2001. That the Constitutions of the IOA and the NSFs, in most cases, are contrary to the core principles and ethical values of the Olympic Charter is pertinent to the present discussion.*

*97. The IOA's Constitution itself raises several issues in relation to Good Governance which need immediate redressal as is evident from the following:*

- Chapter 4 of the Olympic Charter prescribes the procedure and Guidelines for the National Olympic Committee (NOC), including, inter alia, composition of members.*
- Rule 29.1 contains the mandatory composition of an NOC*
- Sub Rule 1.3 thereof, makes provision for active athletes and retired Olympians, to be included in the composition of the NOC with the condition that they must retire from their posts at the latest by the end of the third Olympiad after the last Olympic Games in which they took part.*
- No such mandate for inclusion of athletes exists in the Charter of the Indian Olympic Association despite the fact that adherence to the Rule 28 & 29 are mandatory for the recognition of the NOC.*
- Moreover, the List of Members appended to the IOA Constitution reveals the absence of reservation for active/retired athlete (Olympian) in its membership.*
- Similarly, Rule 29.2 of the Olympic Charter recognises the ability of an NOC to include as Members (i) National Federations affiliated by the IOC, sports of which are not included in the Programme of the Olympic Games; (ii)*

*multi-sports groups and other sports oriented organisations or their representatives as well as nationals of the country liable to reinforce the effectiveness of the NOC or whoever render distinguished services to the cause of sport and Olympism. However, no right of voting is contemplated in regard to these bodies and the same is restricted only to National Federations affiliated to International Federations governing sports included in the Olympic Games or their representatives.*

- *A perusal of the IOA Constitution however, reveals that in addition to the the National Federations referred to in Rule 29.1.2 of the Olympic Charter, the IOA Constitution empowers various 'State Olympic Associations' and Federations/ Sports Associations to vote, which is a clear departure from the binding mandate of the Olympic Charter.*

- *Similarly, a large number of national federations dealing with indigenous sports have also been given voting rights whereas the Indian Golf Union, which falls within Rule 29.1.2 of the Olympic Charter, has been denied recognition for reasons best known to IOA and its application for membership remains pending for long without any overt justification.*

- *Additionally, the disproportionate voting rights given by the IOA to entities other than National Sports Federations dealing with Olympic Sport and/or International Federations recognized by the IOC also heightens the possibility of misuse and defeats the intent expressed by the Olympic Charter of National Sports Federations constituting a voting majority in every NOC.*

98. Similarly, the Constitutions of most NSFs in India are severely lacking in good governance practices, which is unacceptable to the democratic principles on which India is governed. Many of them do not even have prescriptions against doping and the democratic procedure is virtually non-existent in many."

(emphasis supplied)

46. The Government's affidavit further notes: (i) the lack of uniformity in the number of votes allocated to different categories of voters; (ii) it asserts

that the provisions contained in Rule 28 of the IOC Charter should be followed; (iii) thereby ensuring that the voting majority of an NOC ('IOA') and of its executive body shall consist of votes cast by NSFs affiliated to International Federations ('IFs') governing sports which included in the Olympic Games or their representatives; (iv) that the size of the IOA General Body should be reasonable i.e., IOA does not/cannot have unbridled flexibility to add categories/members to augment the number of voters; (v) the age and tenure restrictions should extend to all office bearers; (vi) IOA as the mother body of all NSFs, should function as per the Olympic Charter; and (vii) the Government has not formulated the guidelines for the IOA for its structure and internal functioning so far and IOA is not required to seek recognition specifically.

47. The aforesaid last clause articulated by the Government was, however, over-ruled by this Court in the present petition by an order dated 19.12.2013 observing that the Sports Code shall apply to the IOA in full measure. Therefore, IOA's structure and rules of governance too shall be governed by the Sports Code.

**Age:**

48. As noted above, the Government has clearly asserted that the age and tenure restrictions should extend to all office bearers<sup>17</sup>. Indeed, even the IOC had advised the IOA that such restrictions should apply not only to the President, Secretary General and Treasurer but also to all Office Bearers and members of the EC.

49. In *Board of Control for Cricket vs. Cricket Association of Bihar & Ors.*<sup>18</sup> (2016) 8 SCC 535, the Supreme Court has held that the upper age limit of 70 years should be applied to all members of the EC of the BCCI

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<sup>17</sup> Affidavit dated 08.01.2014

<sup>18</sup> <https://main.sci.gov.in/jonew/judis/43799.pdf>

along with tenure restrictions for an EC member of not more than three tenures, with a compulsory cooling-off period between two terms. The BCCI Apex Council has been restricted to a nine-member Body, of whom five are to be elected office bearers, while four are to be nominated Councillors<sup>19</sup>; each term is to be for three years; the total period for which a person can be a member or Councillor of the Apex Council is nine years, with a compulsory cooling-off period after each term. In order to ensure that there is an appropriate cooling-off period, no person can be a member of the Apex Council for two consecutive terms. A selected Councillor shall stand automatically disqualified after nine years in office.

50. The Sports Code has prescribed 70 years as the upper age limit for Office Bearers of NSFs. Largely, the sporting fraternity has accepted the same as a reasonable limit.

### **Tenure:**

51. Clauses 15, 15.4, 15.5, 15.6 and 15.7 of the IOA Constitution, read as under: -

#### ***. "15. Tenure of Posts***

*Office-bearers and Members of Executive Council of the Association shall be elected for a term not exceeding four (4) years as per the procedure for elections defined in Bye-law 1 to the Rules.*

*They may be eligible for re-election as below:*

***15.4 No member shall hold a post of Office Bearer, as defined in Rule 14 upon attaining the age of superannuation as***

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<sup>19</sup> two (one male, one female) were to be nominated by the Players Association, one to be elected by the Full Members of BCCI from amongst themselves and one to be nominated by the Comptroller & Auditor General ('CAG')

*prescribed in the Statutes of the International Olympic Committee (IOC).*

*15.5 No member shall hold one or more Office Bearer Post for more than 5 consecutive terms or 20 years, whichever is less.*

*15.6 No Member shall hold the post of President for more than three consecutive terms or twelve years, whichever is less.*

*15.7 No Member shall hold the post of Secretary General or Treasurer for more than two consecutive terms or eight years, whichever is less, but can contest for the post of President after completion of two terms without a cooling off period."*

(emphasis supplied)

52. *Ex facie* these clauses enable perpetuation of a person/group for decades, over the IOA's affairs. They have to be rectified in consonance with the preceding observations, otherwise, the very purpose of democratic representation will be defeated and hegemony of one group or camp could continue for years on end. The induction of fresh talent and vigour would be discouraged. The clauses are contrary to the provisions of Sports Code. Recognition cannot be granted to the IOA till due amendments are made.

53. The learned Senior Advocate for the UOI supports the petitioner's contention. He says that the very purpose of providing strict age and tenure restrictions is to prevent the mischief noted in *Narinder Batra vs. Union of India*<sup>20</sup>, ILR (2009) IV Delhi 280 as well as in *Indian Olympic Association*

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<sup>20</sup> 243. *Certainly the prescription by the Government of the office bearers to two tenures which brings a length of the total office held by them to 8 years as a condition for eligibility for recognition as a national sports federation or for entitlement of financial assistance from the Government, cannot by any measure be considered insufficient for any office bearer to impart his best to the organisation or the development of the sport or to make a difference. Such a restriction would ensure new office bearers with fresh ideas, enthusiasm and the wealth of their experience making a valuable addition to the organisation. It would also ensure circulation and removal of such who are corrupt or undesirable in the organisation who perhaps by virtue of exercise of political might or other resources, are able to get repeatedly re-elected which would really sounds a death knell for the sport and talented players.*

vs. *Union of India (supra)*<sup>21</sup>.

54. The Olympic Games are held every four years. The tenure of each EC of the IOA is four years. If an Office Bearer holds the same position for two successive tenures, there will necessarily have to be cooling-off period of one tenure, after which elections for another tenure could be contested. In effect at least, 16 years would have gone by before completion of three tenures by an individual. This is a long period for any person to occupy a position in the top management of a NSF/IOA. In 16 years, subsequent generations of sportspersons, who would have represented India in about four Olympic Games and other international sports competitions, would be knocking at the IOA's doors, to be let in and contribute to better sports

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*This is not to say that regional representation alone is the benchmark for selection of a national team. Merit alone can guide selection. However inability of a state to ever produce player(s) who reach national trials or the national team would certainly reflect on the failure of a national sports federation to develop the sport nationally which is its prime mandate.*

<sup>21</sup> 87. *Sports administration in this country appears to have reached depths from where neither sporting bodies nor the State seem to care any longer for the successive generations" sporting future. Reform is to be introduced urgently by the State. Sports administration appears to be mired in power play, where money, influence and chicanery play a dominant part and those who had participated in competitive sports at some stage are given token representation at best, or mostly marginalized. As the cliché goes, the state of sports is in a lockjaw where roughly 1.2 billion people have to rest content with a harvest of medals so meager as to be surpassed by just one individual like Micheal Phelps. The London Olympic saw India notch up a tally of six medals. This averages to one medal for roughly every 207 million inhabitants. It is not without truth that the common perception that Karnam Malleswari, Col Rajyavardhan Singh Rathore, Abhinav Bindra, Sushil Kumar Tehlan and Vijender Singh were driven for individual personal reasons to focus on competitive sports. Sport administration, the way it is run in India, through coteries, cabals, manipulations and intrigues, seems to discourage a vast majority of the population to devote itself to athletics, shooting, judo, table tennis, gymnastics, soccer, boxing, fencing and the like. Sports can be popularized and made successful, when those who genuinely feel the need to inspire and attract talent, and are themselves driven by inspiration, evolve policies that result in a range of sporting activities becoming as or even somewhat as rewarding as cricket. As a nation too, we should not be deadened to news that sportspersons sell their proudly and hard earned medals to fight off penury (as in the case of Sita Sahu, a mentally challenged teenager from Rewa who won two Bronze Medals in the 2011 Olympic Games). Till the time that India, with her more than a billion, continues to have a feeble sporting outlook, those who excel will do so despite the state of NSFs and sports bodies controlling them.*

administration in the country. Understandably, with equal, if not a greater sense of pride and commitment for the office which they aspire to serve. It is only prudent, therefore, that the tenure of Office Bearers or members of EC be restricted to three tenures with at least one cooling-off period in between, irrespective of the post which the individual occupies in the EC.

55. The 1975 Circular provides that “no office bearer shall hold office consecutively for more than two terms or 8 years”. However, the second successive term will have to be secured by a majority of not less than 2/3<sup>rd</sup> of the members. The term “Office Bearers” has been defined in the Model Election Guidelines. The Government’s letter of 01.05.2010 notes that the IOA President can serve for maximum 12 years. The different tenures of President and other office bearers of international organizations such as World Badminton Federation, International Hockey Federation (‘FIH’) and International Governing Body of Swimming (‘FINA’) were also discussed in the said letter. Some of them permit a maximum of two terms in the EC. In that context, the Government fixed a maximum tenure of 12 years for the President. The rationale for limiting the maximum tenure of an individual to 12 years/3 tenures in the EC, irrespective of the position in the EC, has been discussed above. Let it be so implemented by the IOA and NSFs. The maximum term for the President and likewise to all Office Bearers and members of the EC will accordingly be limited to 3 tenures.

**(vi) EC's size should be reasonable and not unwieldy**

56. Over the years, General Body of IOA has increased to 184 members. Its constitution provides for election/appointment of 32 members in the EC, of which 26 members can be nominated at the discretion of its President. This vests disproportionate and unbridled powers in the President, to virtually control the EC and the IOA itself. In contrast, the IOC which



regulates Olympic Sports, has an affiliation with 206 entities, including 37 International Federations and a General Body of 115 members manages its affairs with an Executive Board of only 15 members<sup>22</sup>.

57. Cricket, which is the most popular sport in the country, has an Executive Body of merely 9 members. The Supreme Court has held that nominations to an executive position are neither laudable nor desirable. Transparency, financial discipline and accountability are fundamental values to which any authority discharging public functions must be committed to.

58. The Government contends that the size of the IOA EC and its General Body should be reasonable and IOA should not have unbridled flexibility to add newer categories and members<sup>23</sup>. The Government's persuasive rationale is as under:-

*"23. That with regard to the contention of the Petitioner raised in the prayer Clause I regarding the amendment of the definition of the office bearers to include all the offices held in an executive of the recognized NSFs, it is submitted that it is true that the term "Office Bearers" includes not only the President, Secretary/Secretary General/Hony. Secretary or Treasurer but may also include Senior Vice President(s), Vice President(s), Joint Secretaries and members of the Executive Council as all of them are elected during the elections of the Federations. It may also kindly be noted that the term "Office Bearers", as defined in all the constitutions of the various NSFs including IOA includes not only the President, Secretary/Secretary General/Hony. Secretary or Treasurer but may also include Senior Vice President(s), Vice President(s), Joint Secretaries and members of their Executive Council. This is also in conformity with the IOC Olympic Charter and adheres to the Basic Principles of Good Governance & International Best Practices by bringing in transparency and accountability."*

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<sup>22</sup> Rule 19 of IOC Charter

<sup>23</sup> Affidavit of 08.01.2014

59. In defence of its large General Body and EC, the IOA submits that the size of the NOC depends on the population of the country it represents. For example, the NOC of China has 119 members in the General Body and 47 members in its EC. In the earlier exercise of revision of the IOA constitution, the IOC had advised IOA to limit its General Body to 115 members and EC members to 19. For some reason, IOA has chosen to ignore the advice.

60. Unlike in the context of IOC, regional representation in the IOA General Body is not an issue. India is a Union of States. The IOA is a confederation of NSFs. The Model Election Guidelines provides for 7 office bearers and 5 Executive Members for the EC i.e., a 12-Member EC. The same is applicable to the IOA. At best, what could be a reason for increase of Executive Members is the need for diverse Olympic sports disciplines to find representation in the EC, so that their voice is heard at the highest decision-making forum. In the circumstances, the IOAs EC will limit its office bearers to 7 but could have 8 Executive Members instead of 5, for the special consideration as noted above. Provision for such addition is available in a Note to the said Model Guidelines. The 8 Executive Members shall be elected from candidates belonging to Olympic sports disciplines classified in two groups: a) Team Sports and b) Individual Sports as included in the programme of Olympic Games. Four eminent sportspersons each, shall be elected from the said groups with equal number of men and women from each group. No sports discipline will have its Executive Member for two successive terms in the EC.

61. The Sports Code mandates a minimum of 25% sportspersons with voting rights both in the management of a NSF (EC) as well as in a total number of members representing the Federation (GB). The 25% is only an indicative figure. It sets the bare minimum that must be ensured. There is no

bar to this number increasing. The Sports Code has to be read as an enabling code and not as a restrictive document. Sportspersons are important stakeholders, they would best espouse the concerns of players and would benefit the administration of a NSF with their experience and knowledge. Therefore, their inclusion in the General Body and in the EC would augment the objectives of the Sports Code. Keeping in mind the minimum requirement and the need to have more eminent players who have represented the country, it is desirable that the number of sportspersons with voting rights in the General Body should be equal to at least the NSFs representing Olympic sports. This category shall have equal number of women and men. If need be, on rotational basis for each successive tenure.

62. Special representation of women in Governing Bodies is a requirement under Clause 2.4 of the IOC's Code of Ethics. Women comprise about 50% of the country's population. Their numbers in sporting activities is increasing by the day. Their representation in the Indian contingent at the Olympics and other international sporting events is in equal measure with men. Their participation in such events and the celebrations of their victories is as much a matter of pride and joy, as the victories of their male counterparts. There is every reason to acknowledge women's significant presence in the sporting world. Sports administration is not a male preserve. It is a matter of record that in all its 95 years of existence the IOA has never had a woman as its President or Secretary General. Surely women do aspire to be in significant positions in the decision making process. Their presence both in the GB, as well as the EC of the IOA, will lend to fruition of their valid aspirations. Accordingly, women shall comprise half of the category of sportspersons with voting rights in the General Body as well as in the EC. The IOA and the NSFs shall prepare a data, based on performance of eminent individual players in various

international and national sporting events as indicated in the letter dated 10.01.2008 (Annexure-XLVIII of the Sports Code).

63. The Government's view has been that the size of the EC and the General Body should be reduced. As noted above, the size of the EC has been reduced to 15. The IOC which is affiliated with 206 entities, manages its affairs with a 115 member General Body. The IOA which deals with 56 NSFs, of which only 29 NSFs relate to Olympic sports, can surely find due representation of all relevant parties in a General Body of 90 members. These members shall include: i) NSF representing Olympic sports, ii) equivalent number of sportspersons of eminence from each Olympic discipline largely dependent upon the medals won by them in international competitions<sup>24</sup> and iii) other NSFs. Consequently, the General Body of IOA shall be restricted to 90 members i.e. thrice the number of NSFs representing Olympic sports. Its EC strength shall not exceed 15 members comprising 7 Office Bearers and 8 elected sportspersons.

**(vii) There cannot be any restrictive, undemocratic clause, including as to who can contest for any position.**

64. Clause 11.1.3 of the IOA Constitution reads as under: -

*"11.1.3. However, it shall be a mandatory requirement for elections to the Posts of President and Secretary General that only those members, who had held the office and were members in any of the preceding five Executive Council of the IOA, shall be eligible to contest the elections."*

65. This Clause is *ex-facie* illegal, monopolistic in character. It limits the

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<sup>24</sup> As has been defined in para 8 of Clause 4 of the Sports Code i.e., "The definition of sportspersons of eminence was defined vide office Orders No. 1-9/92-SP-IV dated 13.07.1993. According to which (i) Medal winners in International Sports Events which are recognized by corresponding international bodies; (ii) Arjuna Awardees; (iii) Sportspersons who have achieved upto 8<sup>th</sup> position in individual events or upto 4<sup>th</sup> position in team events in the open National Championship/ National Games; and (iv) in case of Junior Players, the sportspersons who have achieved upto 8<sup>th</sup> position in individual events or upto 4<sup>th</sup> position in team events in the National Championship (open for Junior) are defined as sportspersons of eminence"

field of contestants thereby eliminating new aspirants from contesting for the said posts<sup>25</sup>. It enables virtual monopoly of few people in the administrative and decision making process, thereby preventing infusion of fresh talent, especially meritorious sportspersons who may have the latest hands-on and practical experience, to raise and address the most relevant issues concerning sports disciplines and interests of sportspersons. Therefore, the restrictive conditions and Clauses have to go from the IOA's Constitution. It is so directed. Voting apropos Olympic Games and non-Olympic Games strictly will have to be followed in terms of the Olympic Charter.

**(viii) IOA Constitution permits a person to hold offices for 20 years without undergoing cooling-off period, it must be in accordance with the law of the land, i.e., not more than three tenures alongwith cooling-off period(s).**

66. The rationale for limiting tenures to three terms with a cooling-off period between each executive post has been discussed hereinabove. Adoption of this salutary principle will be prudent for promotion of sports in India. Accordingly, there shall be a maximum of three tenures (12 years) in the IOA's EC, in any capacity. Twelve-years in office, is when the final whistle blows. It is a long time to serve the cause of sports at the helm of affairs i.e., in the EC of the IOA or any NSF. While an individual's passion for and interest in a sport, may continue, there comes a time when one should gracefully make way for newer generations for management of sports federations. The spirit of accommodation of others and letting newer generations participate anew, augments Olympism. Therefore, the holding of office for 20 years is untenable and is struck-down. As discussed

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<sup>25</sup> *Haryana Wrestling Association & Anr. (supra)*, held such restrictive clause as being undemocratic and against the provisions of the Sports Code.

hereinabove, a person can serve in the EC for 12 years with a cooling-off period in between.

**(ix) IOA must have Independent Ethics, Athletes, Election and Arbitration Commissions, and Ombudsman, devoid of any control, direct or indirect, by the IOA or NSF. These commissions must be funded by the Government from the budgetary allocation for NSFs including IOA.**

67. The IOC Charter requires the formation of independent Ethics, Athletes, Election and Arbitration Commissions, and Ombudsman. These Commissions are to address complaints or grievances apropos IOA's governance or fairness in elections, etc. Logically such entities should be without any direct or indirect control or influence of IOA.

68. While dealing with the issue of need of independence of Ombudsman and Ethics, Athletes, Election and Arbitration Commissions to be independent, the Supreme Court in the case of *Board of Control for Cricket (supra)*, has noted as under: -

*"24. In Chapter Seven, the Committee has dealt with need for Ombudsman, Ethics and Electoral Officer. The Committee notes that several disputes that exist within the BCCI are born out of years of apathy in governance and gross mismanagement. The Committee has found that the relationship between the Associations, on the one hand, and the BCCI, on the other, has rarely been equitable and balanced, with the latter exercising its hegemony over the former. The Committee has therefore recommended moderation of such relationship in an objective manner. The Committee has referred to the problems of disgruntlement and litigation in the States of Bihar, Rajasthan, Delhi and Jammu and Kashmir. The Committee has found that absence of suitable dispute resolution mechanism has compounded the situation. Even the arbitration system that has hitherto existed has been found to be insufficient and palpably inappropriate when two unequals are pitted against each other, especially with the State associations remaining beholden to the Board for matches, grants and revenues. In order to reduce the*

*judicial role and the burdening of the courts and to expedite dispute resolution, the Committee has recommended the appointment of a retired Judge of the Supreme Court or a former Chief Justice of a High Court as the Ombudsman of the BCCI, to be appointed once a year at the Annual General Meeting to investigate any complaint received by him/her or suo motu and to resolve any dispute between the Board and any of the above entities or among themselves by following the principles of natural justice, production of evidence and fair hearing. So also the Committee has recommended an Ethics Officer for monitoring adherence to the principles governing avoidance of Conflict of Interest. The Committee has recommended that Ethics Officer shall have powers inter alia of laying down of additional guidelines or bye-laws on ethics, initiation of investigation or adjudicatory proceedings and the award of warnings, fines, reprimands, suspensions or other action as may be recommended to the BCCI. According to the recommendation all non-IPL ethics issues shall be administered and adjudicated by the Ethics Officer who shall be a former Judge of the High Court to be appointed by the Board. Recommendation for appointment of an Electoral Officer for conducting elections of the Committee under the Rules has also been made by the Committee. The Committee has recommended that in order to ensure competence and to distance the entity from any suspicion or bias, a former Election Commissioner for India could be appointed as the Electoral Officer for the BCCI, whose decision on any subject relating to elections shall be final and conclusive.*

69. While the Commissions are appointed by the IOA through a collective decision of the EC, the tenure of the said Commissions has been summarily ended by its “President”. The tone and tenor of the letters and the manner in which the Commissions have been sought to be disbanded, shows them as dispensable entities.<sup>26</sup>

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<sup>26</sup> The Court has been shown comments posted on the internet by the ‘President’ of IOA. Apropos former Judges, *prima facie* it was disparaging to the dignity of the courts and judges in India. The post was promptly removed from the internet but possibly not before some people may have read it. An apology has been tendered after about 7 years, at the end of the hearing of this petition. For now, we do not say anything more on the matter.

70. Presently, the Athletes Commission of the IOA is in violation of the IOC requirements since all the Commission members are ex-officio. The objective of the Olympic Charter is to have meaningful Commissions for the Ethics, Elections and Arbitration Commissions. The Government too supports the said position. The learned Senior Counsel for the Government asserts that the IOC Charter, in this regard must be read to be a part of the IOA Constitution. *Board of Control for Cricket* has laid the path for the manner in which such independent Commissions can be constituted and operationalized. Accordingly, including the Ethics Commission, the Athletes Commission, the Election Commission and Arbitration Commission shall be presided by former Judges of Constitutional Courts of India and their expenses be borne by the Government in the first instance, to be set-off against such financial aid or support or grants as may be extendable to IOA.

**(x) 25% prominent sportspersons of outstanding merit with voting rights in General Assembly and EC is mandatory in terms of clause 3.20 of 2001 Guidelines and para 9.3 (xii) of the Sports Code.**

71. This issue has already been dealt with hereinabove, but for the sake of detail some relevant provisions of the Sports Code are addressed here.

72. Clause 3.20 of the 2001 Guidelines requires inclusion of prominent sportspersons of outstanding merit as members of the respective sports federations on a tenure basis. The strength of such prominent sportspersons with voting rights should be a certain minimum percentage (say 25%) of the total members representing the federation.

73. The Clause 9.3(xii) of the Sports Code requires that the National Sporting Organizations must meet, *inter-alia*, the following criteria: -

*“Include sportspersons (say 25%) with voting rights in the management of NSFs.”*

74. On 13.12.2017, this Court had noted the necessity for mandatory



compliance of Clause 3.20 above, i.e., for provision for at least 25% representation of prominent sportspersons in the management of NSFs and IOA. It was directed, *inter-alia*, as under: -

*"The application seeks interdiction with the electoral process initiated by the IOA for election of its Office Bearers. Although several contentions were urged and the counsel for the IOA too opposed the grant of interim relief at this stage, we are of the opinion that it would be inappropriate to stall or injunct the election process. However, at the same time it is made clear that election results shall be subject to the outcome of this application. Further, the respondents are hereby directed to ensure that for the purposes of election, all the provisions of the Sports Code including the condition under paragraph 3.20 of Annexure-II and conditions held applicable by this Court in its judgment reported as Indian Olympic Association v. Union of India, 2012 DLT 389 are strictly followed. Furthermore, the respondents UOI shall also ensure, that National Sports Federations that have been de-recognised are not reckoned for the purposes of electoral college. Successful candidates shall be informed about this order while declaring the results."*

75. The Code of Ethics and other texts of the IOC mandates that there should be due representation of women and athletes in the governing bodies. Clause 2.4 of the said Code reads as under: -

*"Representative governing bodies*

*Members of the organization should be represented within the governing bodies, particular women and athletes.*

*Special care should be taken for protection and representation of minority groups."*

76. In its Dossier, presented to the IOC, the Government had highlighted this issue, *inter-alia*, as under: -

*"97. The IOA's Constitution itself raises several issues in relation to Good Governance which need immediate redressal as is evident from the following:*

- *Chapter 4 of the Olympic Charter prescribes the procedure and Guidelines for the National Olympic Committee (NOC), including, inter alia, composition of members.*
- *Rule 29.1 contains the mandatory composition of an NOC*
- *Sub Rule 1.3 thereof, makes provision for active athletes and retired Olympians, to be included in the composition of the NOC with the condition that they must retire from their posts at the latest by the end of the third Olympiad after the last Olympic Games in which they took part.*
- *No such mandate for inclusion of athletes exists in the Charter of the Indian Olympic Association despite the fact that adherence to the Rule 28 & 29 are mandatory for the recognition of the NOC.*
- *Moreover, the List of Members appended to the IOA Constitution reveals the absence of reservation for active/retired athlete (Olympian) in its membership.*
- *Similarly, Rule 29.2 of the Olympic Charter recognises the ability of an NOC to include as Members (i) National Federations affiliated by the IOC, sports of which are not included in the Programme of the Olympic Games; (ii) multi-sports groups and other sports oriented organisations or their representatives as well as nationals of the country liable to reinforce the effectiveness of the NOC or whoever render distinguished services to the cause of sport and Olympism. However, no right of voting is contemplated in regard to these bodies and the same is restricted only to National Federations affiliated to International Federations governing sports included in the Olympic Games or their representatives.*
- *A perusal of the IOA Constitution however, reveals that in addition to the National Federations referred to in Rule 29.1.2 of the Olympic Charter, the IOA Constitution empowers various 'State Olympic Associations' and Federations/ Sports Associations to vote, which is a clear departure from the binding mandate of the Olympic Charter.*

• *Similarly, a large number of national federations dealing with indigenous sports have also been given voting rights whereas the Indian Golf Union, which falls within Rule 29.1.2 of the Olympic Charter, has been denied recognition for reasons best known to IOA and its application for membership remains pending for long without any overt justification.*

• *Additionally, the disproportionate voting rights given by the IOA to entities other than National Sports Federations dealing with Olympic Sport and/or International Federations recognized by the IOC also heightens the possibility of misuse and defeats the intent expressed by the Olympic Charter of National Sports Federations constituting a voting majority in every NOC."*

77. BCCI (supra), has held that an association of cricket players would undoubtedly give to the cricketing community not only an opportunity to contribute to the promotion of the game but a sense of participation as well. It further held that the recommendation requiring financial support to the players association cannot, therefore, be rejected especially when the extent of such support is left to the BCCI (to be decided on a fair and objective view of its financial resources and commitments).

78. The primary objectives of any sports body/ sports federation would be to support the players and budding talent to excel in the sport. In deserving cases, it may even extend to interim financial stipends and/or requisite sports gear and sports facilities. This vital supportive and nurturing facet of a sports federation needs to be considered by the IOA and the NSFs. Players from the village level right up to the national level should be rendered assistance and financial support to the extent possible, lest budding talent be subsumed by extraneous circumstances. There are frequent reports in newspapers of a sporting talent or a national player or a person who has won laurels for the country in international sporting events, giving-up the sport due to economic reasons and being compelled to selling food, fruits, vegetables, etc. by the

street side<sup>27</sup>.

**(xi) A person against whom criminal charges have been framed should not be permitted to be a member either of the EC or the General Assembly.**

79. The petitioner contends that although the IOA Constitution provide

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<sup>27</sup> After making the nation proud, the sportspersons in India do not surely deserve to struggle every day to make ends meet. An athlete from Madhya Pradesh, who is a medallist at the Special Olympics in Athens in 2011 had to leave her passion for running and had resort to selling chaats and golgappas for a living.<sup>27</sup>

<https://timesofindia.indiatimes.com/sports/cricket/news/india-must-focus-on-sports-healthier-lifestyle/articleshow/62215388.cms>

It is utterly unfortunate that an Archer from Jharkhand had to sell her prized possession- a set of bow and arrow worth Rs 4 lakhs for just Rs 50,000 for the maintenance of her worn out mud house. She had on several occasions requested the State Governments for financial assistance for training at National Institute of Sports in Patiala.<sup>27</sup> <https://www.thehindu.com/news/national/other-states/article59987898.ece>

A young National level shooter from Gujarat has resorted to selling noodles on a roadside stall in 2015 due to financial constraints. In order to survive, she has been attracting customers to her stalls with all the medals and prizes she has won so far.<sup>27</sup> <https://indianexpress.com/article/sports/sport-others/rifle-shooter-sells-chinese-food-to-pursue-dream/>

An archer from Assam has around 72 medals at national, state and district level. At the young age of 19, she won a gold medal at Kerala National Games 2015. She has been suffering from illness, and battling <https://eclecticnortheast.in/national-level-archer-gohela-boro-now-battling-life-assam/> for her life, but had no money and support to recover and continue the game.<sup>27</sup> <https://www.indiatodayne.in/assam/story/ailing-assam-archer-gohela-boro-seeks-governments-assistance-stay-alive-409964-2019-10-16>

A differently abled powerlifter from Pune, awarded with around 35 gold medals at various international and domestic events, struggled for 17 years to make ends meet. She had been left with no option but to sell her medals as scrap to pay the medical bills of her ailing mother.<sup>27</sup> <https://www.thehindu.com/news/national/other-states/maharashtras-top-differentlyabled-athlete-sells-medals-to-cover-mothers-medical-bills/article6386465.ece>

that a person who has been charge-sheeted for an offence which could entail imprisonment of more than two years, would not be a member of the Executive Body, it does permit the said member to continue to be a member of the IOA. He submits that such person unless discharged in the criminal case should be barred from any sport activities under the IOA.

80. Mr. Sachin Datta, the learned Senior Advocate for the Government contends that clauses 5.2.3, 10.3 and 23 of the IOA Constitution cover the issue to a large extent. He submits that a charge-sheeted person cannot be permitted in the EC of the IOA. The said clauses read as under: -

**“Clause 5.2.3**

*Where the charges have been framed by any Court in India, in respect of an offence which is of serious nature under the Indian Penal Code / Prevention of Corruption Act, in which the punishment of imprisonment of more than 2 years is prescribed then the Member / Office Bearer/ Member of the Executive Council of the IOA will resign immediately and if not then they will be provisionally suspended and will not be eligible to contest in the elections and the case will then be referred to the IOA Ethics Commission for further guidance.”*

**“Clause 10.3:**

*The voting units will forward to the IOA the names of their representative(s) entitled to attend and vote at the Elective General Meeting of the IOA at least 20 days prior to the holding of the General Meeting. The representatives nominated by each unit must be members of the executive bodies of such units. The nomination shall be signed by both President and Secretary-General (This can also come by 2 separate emails) of the concerned unit. The right of exercising the vote shall vest with the authorized representative of the voting member unit.*

*Representatives deputed by Member Units to attend Annual or Special General Assembly meetings shall be citizens of India and men of good standing, sound judgment and independent mind with a knowledge of and belief in Olympic*

*principles. The President or, in his absence, the Chairman of the meeting shall approve the accreditation of all members before the commencement of the Annual or Special General Assembly meeting. In case of any doubt or dispute, the case shall be submitted to the General Meeting for final decision at the commencement of the meeting.”*

**“Clause 23. Disciplinary Sanctions**

*In case of violation of this Constitution and/or the Olympic Charter and/or the IOA or IOC’s Code of Ethics, the I.O.A. member units or their representatives and the members of the Executive Council are liable to the following disciplinary sanctions :-*

*23.1 Caution (by the Executive Council)*

*23.2 Warning (by the Executive Council)*

*23.3 Suspension for a specified period of time (by the Executive Council or by the General Meeting)*

*23.4 On conviction of an offence which is of serious nature under the Indian Penal Code / Prevention of Corruption Act, the Executive Council Member / Office Bearer / member of IOA shall resign immediately and if not then they will be excluded and will not be allowed to contest in the elections of the Executive Council / Office Bearers of IOA till three years after completion of the sentence and the case will then be referred to the IOA Ethics Commission for further Guidance*

*23.5 Where the charges have been framed by any Court in India, in respect of an offence which is of serious nature under the Indian Penal Code / Prevention of Corruption Act, in which the punishment of imprisonment of more than 2 years is prescribed then the Member / Office Bearer/ Member of the Executive Council of the IOA will resign immediately and if not then they will be provisionally suspended and will not be eligible to contest in the elections and the case will then be referred to the IOA Ethics Commission for further guidance*

*23.6 Any member of IOA whose conduct / behavior compromised with IOC Ethics and the Olympic Charter shall*

*be referred to the IOA Ethics Commission for further guidance.*

*23.7 Expulsion from the I.O.A. (by the General Meeting)*

*The final decision for expulsion shall be made by the General Meeting and after having given a reasonable opportunity to the member concerned to be heard. Such decision shall be made by a majority of at least 2/3 of the votes cast by the voting members present.*

*23.7.1 Any other allegation of unethical conduct shall be referred to the Ethics Commission within 2 weeks, who will forward its findings within 60 days to the Executive Council for a decision. In case the finding is against any Office Bearer or Member of the Executive Council, then he/she will need to recuse from that Executive Council meeting.*

*Note :-*

*(i) No penalty shall be imposed before the Unit at fault has been heard at the interrogation specially conducted for this purpose.*

*(ii) Should an affiliate Unit fail to present itself through its accredited office-bearer at the interrogation, it shall be considered as having been interrogated.*

*(iii) As a general rule, except in special circumstances duly appreciated, suspension shall be applied as a temporary measure.*

*(iv) Disciplinary sanction, such as suspension or expulsion, will not be taken unless supported by two-thirds of the General Assembly Members present and voting... ”*

81. Referring to Clause 10.3 of the IOA Constitution, Mr. Dutta contends that to cast their votes in IOA, the representatives nominated by NSFs must be members of the Executive Bodies of such NSFs. The latter, in turn, ought to have been elected strictly in conformity with the provisions of the Sports Code. The Government does not recognize any person in a NSF or as

a representative of a NSF, who does not enjoy the representative position in accordance with the Sports Code. This issue has been covered in *Aslam Sher Khan (supra)*.

82. As discussed above, the Government refused to accept two charge-sheeted persons as elected representatives of the IOA; its objection being that persons who are charge-sheeted in criminal cases, which could entail imprisonment for more than two years, should refrain from being in any managerial capacity or oversight authority in sports bodies. Clearly, the exclusion of such persons would lend to protection of the goodwill of the sports body, add to transparency in its governance practices and repose an individual's faith in the system. Accordingly, it is directed that a person who is charge-sheeted in criminal proceedings, which could entail imprisonment of two years, shall cease to be a member of the IOA and/or NSF.

**(xii) Persons seeking re-election for the same post must secure two-thirds majority.**

83. The 1975 Circular stipulates that financial and other assistance shall be extended only to those organizations dealing with the sports and games, which fulfill the following conditions: -

- (i) An office bearer of a National Federation/Association may hold office as such for one term of 4 years, and may be eligible for re-election for a like term or period.
- (ii) No such office bearer shall hold office consecutively for more than two terms or 8 years:

84. Explanation 2 stipulates that the President, Secretary/Secretary-General in a NSF having held the office for two consecutive terms or 8 years will be eligible to seek re-election to the said office or to the office of the



Vice President or Treasurer only after the cooling-off period of four years from the last date of vacating the office.

85. The Circular also stipulates that in the event of election for the second term, an office bearer who has completed one term shall be deemed to have been elected only if he/she secures a majority of not less than two third of the members of the National Federation concerned. In the event of failure to obtain such majority, the repeat Office Bearer concerned shall be deemed to have lost the election. Resultantly, the person receiving the most votes after the said successive “second term candidate” shall be deemed to be elected to the post.

86. As discussed earlier the maximum tenure in the EC can be three, in any post or in different posts, with a cooling-off period of one tenure. In case of successive terms for the same post, the cooling-off will be after the second term.

**(xiii) The Sports Code must be made applicable to the IOA and to every constituent NSFs and to every State and District Level Association.**

87. Various judgments have held that conformity to the Sports Code is a *sine-qua non* for grant of recognition to a NSF and the corollary access to benefits which flow from such status. The court is informed that Government expense, in this regard, extends to hundreds of crores of rupees annually. Without government support, the NSFs and IOA would not be able to discharge their duties. Forty-seven years have gone by, but non-conformity with the Sports Code and court directions continues unabated. In fact, non-conformity has almost attained permanence. This should end now.

88. In the past few years, whenever the Government took strict action against non-compliance by a NSF, the latter promptly fell in line and complied duly. Some of the NSFs so advised were: -

- (i) Athletics Federation of India
- (ii) Archery Association of India
- (iii) All India Football Federation
- (iv) Boxing Federation of India
- (v) Wrestling Federation of India
- (vi) Amateur Kabaddi Federation of India
- (vii) Judo Federation of India
- (viii) Hockey India

89. The pendency of this petition<sup>28</sup> for the last 12 years could have been avoided. It is another matter though that during this period three Olympic Games have been represented by Indian sportspersons, albeit through a non-compliant IOA. A sterner approach is warranted apropos recalcitrant entities. About five years ago an exercise to revise the Sports Code was initiated by the Government. The Committee assisting in the said exercise included sportspersons. A Revised Draft Sports Code was submitted in a sealed cover. By court order dated 16.11.2018 it was returned on the Government's request for reconsideration. Nothing has been heard about it since. Be that as it may, law on the subject has evolved and there can hardly be any retraction from it.

**Subterfuge:**

90. The Government has, rather indulgently, interacted with the IOA since 2011 so that the latter could amend its constitution in conformity with

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<sup>28</sup> running into 17,822 pages, 37 volumes and being listed 203 times.

the Sports Code. It found major deviations in the draft amendment documents and intimated the IOA by its letter dated 23.02.2011 as under:-

*“2. On comparison of the amended constitution with the draft document that was vetted by IOC, which was to be considered by AGM of IOA, it is found that there are major deviations, which appear to have diluted the entire reform process that was assured to the Government by the IOA and IOC at the meeting with IOC on 18.06.2010 in Lausanne.”*

91. A comparative statement of the original draft and the amended constitution submitted by the IOA was attached to the said communication, so that IOA could take corrective measures. The IOA did not remedy the situation. The comparative statement is reproduced hereunder:-

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**STATEMENT INDICATING DEVIATIONS BETWEEN THE DRAFT CONSTITUTION OF IOA VETTED BY IOC AND THE AMENDMENTS APPROVED BY THE AGM OF IOA AT THE MEETING HELD ON 12.02.2011 AT RANCHI**

Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
1	2	3	4
<b>Rules and Regulations of IOA</b>			
I. vi	Definitions and Explanations vi) 'Federation' means affiliated units of the IOA, e.g. National Sports Federation	'Federation' means affiliated units of the IOA, i.e. National Sports Federation/State Olympic Associations/S.S.C.B. etc.	The definition of 'Federation' has been enlarged which is not in conformity with Olympic Charter and IOC's suggestions.
III	Membership The Membership of the Association shall be open to the under-mentioned	III. Membership The Membership of the Association shall be open to the under-mentioned subject to the approval of the General Assembly:	Comments indicated below
III a.	<b><u>Voting Members</u></b> All National Sports Federations affiliated to the International Sports Federations whose sports are included in the	<b><u>Voting Members</u></b> All National Sports Federations affiliated to the International Sports	It should be an automatic inclusion or exclusion on the basis of the criteria given in Col. 2 to eradicate any element of

1 3165

*[Handwritten signature and date 23/2/11]*

Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
	programme of Olympic/Asian or Commonwealth Games.	Federations whose sports are included in the programme of Olympic/Asian or Commonwealth Games subject to the approval of 2/3 members present and voting in the general assembly.	subjectivity.
III b)	<b>Non-voting Members</b>	Included in Voting Members	This is not in conformity with the Rule 29 of the Olympic Charter which deals with the composition of NOC. Further, State/UT Olympic Associations are to represent IOA at the State level and for discharging that function need not get the voting rights, as was correctly envisaged in the original proposal vetted by IOC. IOA should be a confederation of NSFs dealing with Olympic Sports and not a
i)	State Olympic Association	State Olympic Associations and Union Territories (UTs)	
ii)	National Sports Federations of Indian Games	Service Sports Control Boards	
		The National Federation of the Indian Kho Kho <b>(Added)</b>	
III c)	The Government or any other public authority shall not designate any member in the IOA. They will be neither part of the General Assembly or the Executive Council	Removed	

*[Handwritten Signature]*  
21/12/11

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Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
			confederation of its own affiliates and other sports bodies, hence IOA cannot garner for itself more than 30 votes on captive basis which goes against the basic principle of democracy.
VIII	<b>Elections</b>	Elections	Against 13 members in Executive Council proposed in the draft vetted by IOC (Col.2), the IOA has increased it to 28 members. This is a very large EC and is not at all in conformity with the IOC's recommendations.
	President	President	
	Vice President (One)	Senior Vice President and Four Vice Presidents	
	Secretary General	Secretary General	
	Treasurer	Treasurer	
	7 Members election from amongst the representatives of the National Sports Federation	Four Joint Secretaries (Added)	
	IOC Members in India	IOC Members in India	
	One representative elected out of the Athletes' Commission	One representative elected out of the Athletes' Commission	
		14 Executive Council Members (Added)	
	No provision	VIII a. However, it shall be	The clause is very

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Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
		mandatory requirement for elections to the posts of President and Secretary General that only those members, who had held the office and were members in the Preceding Executive Council of the IOA for four years, shall be eligible to contest the elections	restrictive. All the members of the Society should be free to contest the elections for any post. Further, it is not at all as per the Olympic Charter.
VIII (B)	National Sports Federations will forward to the IOA the name of the representatives who should be the member of the National Sports Federation 30 days prior to the holding of the elections at the Annual General Meeting of the IOA entitled to attend the Annual General Meeting. The President of the National Sports Federation must attend the meeting in person, he can nominate only if he is unable to attend the meeting	The Voting units will forward to the IOA the names of the representatives who should be their member 20 days prior to the holding of the elections at the annual General Meeting of the IOA entitled to attend the Annual General Meetings. The name of the representatives entitled to vote and the accompanying representative as per the rules must be either approved in the AGM/SGM or duly	There is no justification for reducing the time limit.

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Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
		signed by the both President and Secretary-General of the concerned unit	
X	No office bearer of a National Sports Federation shall be eligible to be office bearer simultaneously of any other National Sports Federation.	No office bearer of a National Spots Federation can be office bearer of any other National Sports Federation, affiliated to Indian Olympic Association. Similarly, no office bearer of State/Union Territory Olympic Association can be office bearer of any other State/Union Territory Olympic Association, affiliated to the Indian Olympic Association.	Such distinctions will not hold good in the eyes of law. Moreover, it is against the eligibility criteria prescribed by the Government.
XII	<b>VOTING</b>		
i)	National Sports Federation whose sports is included in the Olympic, Commonwealth and Asian Games Programme – One representative with one vote	NSF whose sports is included in the Olympic/Asian/ Commonwealth Games programme – One representative with one vote with value of two votes.	One representative with one vote with value of two votes may not be legally tenable and is not in accordance with Olympic Charter.

3169

5

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Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
		State Olympic Associations/National Federation of Indian Game Kho-Kho/Services Sports of Control Board – one representative with one vote with a value of one vote	Grant of voting rights to these bodies dilutes the reform process, which is aimed at a compact body for Olympic disciplines.
		Union Territories Olympic Association – one representative with one vote with a value of half vote.	The concept of One vote each with a value of half vote may not be legally tenable.
	Athletes' Commission – Two representatives with one vote each	Two representative of Athletes Commission – one vote each with a value of two votes each.	The concept of One vote each with a value of two votes does not appear to be legally tenable
XXI	Settlement of Dispute All NSFs and State Olympic Association affiliated to IOA shall include in their Constitution a provision that the Federations/Association would have all unresolved disputed settled by the Arbitration Commission of IOA and their Members shall voluntarily settled by the Arbitration Commission of IOA and their	Retained	Surrendering the right of seeking redressal in any court of Law is not legally tenable.

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6

Para of the Constitution	Draft Constitution provided by IOA in January, 2011 (reported to be as per IOC's suggestions)	Amended constitution submitted by IOA on 19.02.2011	Remarks
	Members shall voluntarily surrender their right of seeking redress in any Court of Law		

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92. None of the amendments which were assured to the Government through the IOC's communications have been brought into effect by the IOA. The latter kept up a charade of attempting to amend its constitution but kept on defaulting. This cannot continue. The Government has been more than considerate in granting sufficient time and opportunity to the IOA to comply with the Sports Code. After the Government revoked IOA's earlier suspension on a solemn promise, subterfuge has perpetuated the untenable position of the IOA. A spectre is conjured-up that if the IOA is de-recognized the country, Indian players and Indian sports would have to play under the IOC Flag and not under the Indian Flag.

**Accountability:**

93. IOA's role extends to external relations on behalf of the country. The responsibility it discharges has an effect on Indian public interest, Indian sports and sportspersons.

94. *Aslam Sher Khan (supra)* held and directed, *inter alia*, as under:-

*"Accountability*

*34. Individuals who have exhausted their age and/or tenure in terms of the Sports Code automatically disqualify themselves from contesting for any Executive Posts. The*

*mere fact that the constitution of the NSF is not aligned with the Sports Code of 2011 and the law, it will not be to the advantage of either the NSF or its office-bearers. The age and tenure restrictions came into effect from 1st May 2010. The Sports Code only reiterates it in 2011.*

*...Revenues generated by a NSF are largely on account of recognition granted to it by the Government of India. In the absence of such recognition, the Society/Association would have no legitimacy or occasion to seek or attract sponsorship for any tournament, sporting event, travel, accommodation, training and/or other administrative measures. The monies which are so generated by a NSF, are more in the nature of public trust and the same is to be utilized in the public interest i.e. promotion of the sport and representation of India in international tournaments ...”*

95. R-3 in *Aslam Sher Khan (supra)* and ‘President’ of R-4 in this petition, is the same person. The latter’s position as President of IOA has been pivoted on his position as President of Hockey India. When the basis of his Presidentship of Hockey India has itself been held to be illegal, his subsequent position of President, IOA too would be illegal. The IOA tenure is long over. The IOC’s website<sup>29</sup> apropos the President IOA records him as: Member of the Olympic Channel Commission (2020), IOA representative in negotiations for successful restoration of recognition of IOA (suspended from December 2011) by IOC in February 2014. Yet there has been consistent resistance to conformity to the Sports Code by IOA.

96. Therefore, persons who have occupied posts as Life President, Life Members and CEO or other posts in IOA or a NSF which are in contravention or otherwise not permissible under the Sports Code, will not

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<sup>29</sup> <https://olympics.com/ioc/overview>



be treated as eligible for elections to any post of office bearer or EC Member or any managerial posts in the IOA for the next immediate election tenure.

**Repeated opportunities granted to IOA to remedy its affairs:**

97. The IOA is divided into two groups with no scope for even a dialogue or discussion between them. Even as late as last December, the court accorded the IOA an opportunity to set its affairs in order. The detailed order of 17.12.2021<sup>30</sup> records this. A former Judge of this Court was appointed as an Observer to facilitate a rapprochement and remedial action but the meetings and an Expert Committee did not agree to any changes in the IOA Constitution, let alone make any endeavour adhere to the Sports Code. The delay in compliance is on account of IOA. The Government has been more than accommodative. The restoration of the IOA recognition was on the assurance that there will be compliances in terms of the advice given to IOA by IOC and the Government. However, despite a passage of over 12 years, there is no light at the end of the tunnel.

98. The Government's approach has been to steer the NSFs and the IOA, to the correct path i.e., adherence to the Sports Code and judicial pronouncements. Its affidavit of 03.10.2012 states:-

*“21. That with regard to contentions raised in para 16 regarding Triathlon it is submitted that it is a non recognised federation. However, whenever any such incident comes to the knowledge of the answering Ministry, the federations are advised to persuade such person to resign from the post held by him in other federation(s) or to remove him from the post held by him in that federation, failing which suitable action could be initiated against the erring federation(s). Recently an incident about Shri I.D. Nanawati holding posts in three different NSFs came to the*

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<sup>30</sup> [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=235842&yr=2021](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=235842&yr=2021)

*notice of the UOI and all the three NSFs have been advised to persuade him to relinquish the post held in more than one NSF. A copy of letter dated 20<sup>th</sup> June, 2012 issued to that effect is enclosed at Annexure-III. As regard holding of post of President in All India Chess Federation and that of Hony. Secretary in Board of Control for Cricket in India by Shri N.Srinivasan, it is informed that Mr. Srinivasan has already resigned from the post of President, All India Chess Federation.*

*22. In response to para 17 it is submitted that the Government Guidelines of 1<sup>st</sup> May, 2010 are binding on the National Sports Federations recognized by this Ministry. Be that as it may, as a matter of Basic Practices including restrictions on age and tenure as mandated in the Olympic Charter, what is good for the parent NSF's including IOA should also be good for their Members State/District level Federations and/or Associations."*

99. The IOA's constitution rightly stipulates that it shall be governed according to the Olympic Charter and the law of the land. It also stipulates that non-compliance of the directives issued by the IOC from time to time is likely to lead to disaffiliation/de-recognition/suspension of a NSF and SOA. This could be as a result of not holding elections after completion of the normal tenure for which the office bearers are elected; non-submission of annual audited statement of accounts, annual report and list of current office-bearers within the stipulated time period; disaffiliation/de-recognition of the National Sports Federation by the International Federation. It also notes that IOA must respect the autonomy of the NSFs as independent legal entities.

### **Conclusion and Directions:**

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 & Ors*<sup>31</sup> (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:

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<sup>31</sup> [https://main.sci.gov.in/supremecourt/2017/35846/35846\\_2017\\_4\\_2\\_35993\\_Order\\_18-May-2022.pdf](https://main.sci.gov.in/supremecourt/2017/35846/35846_2017_4_2_35993_Order_18-May-2022.pdf)

**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

103. Concurrence of the members of the CoA would be sought, for their assistance. Their functions shall largely be the same as outlined by the Supreme Court in *All India Football Federation vs. Rahul Mehra* (supra) which are, that the CoA shall:

- (i) assist in the preparation and adoption of the Constitution of IOA as per the Sports Code and court rulings;
- (ii) prepare the Electoral Roll/Electoral College for the purpose of conducting the elections to the Executive Committee in accordance with the provisions of the Constitution, as may be proposed;
- (iii) carry out the day-to-day governance of IOA;
- (iv) in discharging its task in terms of (iii) above, the CoA would be at liberty to take the assistance of the erstwhile EC of IOA which has continued thus far, in order to facilitate decisions being taken, inter

alia, apropos the holding of tournaments, selection of players and all other matters necessary for the proper administration and management of IOA;

- (v) the erstwhile Executive Committee of IOA shall forthwith hand over the charge to the CoA;
- (vi) the CoA would be at liberty to make all appropriate arrangements for the governance of IOA until fresh elections are held in terms of a constitution conforming to the Sports Code and as noted hereinabove;
- (vii) facilitate the holding of elections and the handing over of the affairs to a democratically elected body in terms of its constitution which will be adopted, preferably within a period of 16 weeks from the date the CoA members give their assent.

104. The honorarium payable to the CoA members and facilities to be extended to them will be akin to what may be fixed in *All India Football Federation vs. Rahul Mehra* (supra). For the moment, however, as interim honorarium, a deposit of Rs. 3 lacs per month shall be made with each CoA member. The Consultant Sportspersons will, for the moment, be paid Rs. 1.5 lacs each. Their travel expenses, accommodation, etc. shall be borne by the IOA in the first instance, failing which the Government shall pay the monies and bear the expenses, since it is in the public interest that the IOA (NOC for India) runs properly and the cause of sports does not suffer. Such expenses could be set-off against future grants in-aid and financial assistance as may be extendable to IOA.

105. All NSFs complying with the Sports Code and representing Olympic sports, will automatically qualify for IOA membership subject to completion of formalities. Accordingly, the application of Indian Golf Union shall be so

considered by the IOA within four weeks, for full voting rights and it shall be a part of the electoral college.

106. The logical corollary to the preceding discussion would be that IOA would disqualify itself from retention of its recognition as a sports federation because of non-compliance with the Sports Code and the law of the land. However, for the duration that the COA assists in bringing IOA's affairs in order, IOA's recognition will not be disturbed. If the compliance is not done by IOA, within the time specified hereinabove, its recognition by the Government shall stand suspended. The urgency for cooperation with the CoA and onus for compliance with the Sports Code is upon the IOA.

107. The petition is disposed-off in terms of the above.

**NAJMI WAZIRI, J.**

**Per Manmohan, J (Concurring Opinion)**

108. I have gone through the erudite judgment penned by my learned brother. He has not only handled this litigation for nearly a decade, but has written several judgments on the issue of administration of sports bodies. I agree with his conclusions. However, I would like to pen a few sentences in support of my learned brother's conclusion.

109. What the present writ petition highlights is that electoral colleges of most of the sports bodies are controlled by a few individuals where genuine sportsmen find it difficult to get elected and play an important role in management. Most of the sports bodies are split down the middle. Even the Electoral College/ list of authorised representatives to attend and vote at the General Body meeting of the IOA is seriously disputed.

110. This Court is surprised that the IOA Constitution in vogue stipulates that President of IOA can be for life. Seeing the present Constitution, one is reminded of the mausoleum of first Emperor of China Qin Shi Huang, where terracotta soldiers were buried with the purpose of protecting the Emperor in his afterlife!

111. Despite lapse of a few decades, a preliminary and a small step taken by the Union of India in the form of Circulars/Sports Code have not been accepted by all the sports bodies till date. What is surprising is that even those individuals who agreed to abide by the suggestions of the Union of India & IOC in the minutes of meeting executed between the IOC, Union of India and IOA on 18<sup>th</sup> June, 2010 voted against their compliance in the General Body of IOA as noted by Union of India in its letter dated 23<sup>rd</sup> February, 2011!

112. This is baffling as nearly the entire money and infrastructural support is provided by the Central and State Governments.

113. Consequently, this Court is of the view that the Sports Code must be made applicable to every constituent of every NSF, including IOA as well as its constituents. This is conceded by Union of India in its affidavit dated 3<sup>rd</sup> October, 2012, wherein it is stated, *“In response to para 17 it is submitted that the Government Guidelines of 1<sup>st</sup> May, 2010 are binding on the National Sports Federations recognized by this Ministry. Be that as it may, as a matter of Basic Principles of Good governance and International Best Practices including restrictions on age and tenure as mandated in the Olympic Charter, what is good for the parent NSF’s including IOA should also be good for their Members State/District Level Federations and/or Associations.”* Accordingly, respondent No.1/Union of India is directed not to grant recognition or any facility (monetary or otherwise) to the IOA or to

any NSF and/or any of its affiliated Associations, if they refuse to comply with the Sports Code as directed by this Court.

114. Further, those who mismanage the sports bodies and those who have converted the sports bodies into their personal fiefdoms, dare the Government / Authorities and Courts that if they try to democratize the sport association and remove the mis-management, the country would suffer de-recognition and the Indian sportsmen would not be able to participate under the country's flag in the immediate future. In fact, the respondents have tried their best to brand the '*problem solver*' (i.e. the Court/Government) as the '*problem*'.

115. It is high time that structural reforms are implemented to remove the mis-management in the sports bodies and to democratize these institutions. The Central and State Governments may well consider passing a comprehensive legislation with regard to recognition and management of sports bodies incorporating the best practices and the IOC Charter without which no facility (monetary or otherwise) should be granted by any State and Union of India.

116. This Court clarifies that the intent of the judgment is to improve the '*eco system*' and bring about structural reforms and is not directed against a particular individual or sports federation.

117. With these observations, I concur with the reasoning, conclusion and direction given by my learned brother.

**MANMOHAN, J**

**AUGUST 16, 2022**

sb/kk/rd/rw/ss/js