

BEFORE FORMER CHIEF JUSTICE V. K. TAHILRAMANI
ETHICS OFFICER-CUM-OMBUDSMAN,
MUMBAI CRICKET ASSOCIATION, MUMBAI
COMPLAINT NO. 9 OF 2021

In Re:

Mr. Mayank Krishnakant Parikh,
Representing Victory Cricket Club,
Son of Krishnakant Parikh, Aged
About 57 years, Indian Inhabitant,
Residing at B-31, Sarvodaya Nagar,
1st Panjrapole Lane, C.P. Tank,
Mumbai-400004,
Email ID :mayankparikh1@gmail.com

... Complainant

Vs.

- 1) Nadeem Memon
Residing at 22, Munchaw House,
Gunbow Street, 4th floor,
Fort, Mumbai 400 001
Email ID :nadim@live.in
(Respondent Nos.2 and 3 are newly
added vide order dated 31.1.2022)
- 2) The President,
Anjuman-I-Islam,
Badruddin Tyabji Marg,
Off. 92, D.N.Road,
Mumbai-400001
- 3) The President,
Muslim Sports Club,
Mumbai Aman Committee,
13, SabooSiddikMusafirkhan Bldg.,
Ground floor, Room No.13,
L.T. Marg, Carnac Bunder Road,
Mumbai-400001

... Respondents

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APPEARANCES:

Ms. Gargi Bhagwat i/b M/s. Divekar Bhagwat & Co. for Complainant

Mr.Aseem Nafde i/b Mr. Subhash Bane Advocate for Respondent No.1-Mr. Nadeem Memon

Mr. Satchit H. Bhogale i/b MDP Partners Advocate for the Respondent Nos.2 and 3.

Mr. Nadeem Memon Respondent No.1 in person present.

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FINAL ORDER

(RESERVED ON 09.03.2022)
(DECLARED ON 21.03.2022)

1. Heard Advocate Ms. Gargi Bhagwat i/b M/s. Divekar Bhagwat and Co. for Complainant-Mayank Parikh, Advocate Mr. Aseem Nafde i/b Advocate Mr. Subhash Bane for Respondent No.1 and Advocate Mr. Satchit H. Bhogale i/b MDP Partners for Respondent Nos.2 and 3 for considerable length of time on 28.02.2022, 3.3.2022 and 9.3.2022.

2. Perused the Complaint dated 22.11.2021 filed by the Complainant-Mayank Parikh against Respondent No.1-Nadeem Memon.

3. It is the case of the complainant that the complainant is a member of the Mumbai Cricket Association (for short "MCA").



The complainant recently came to know from reliable sources and from the official website of the MCA that Respondent No.1- Nadeem Memon was not the Secretary of Muslim Sports Club at the relevant time as claimed by Respondent No. 1 and therefore Respondent No.1 is not entitled to be a part of the Apex Council of the Mumbai Cricket Association. It is further the case of the complainant that the Respondent No.1 is claiming to be Secretary of Muslim Sports Club and has in fact given a declaration in Annexure-1 i.e. Undertaking in Form A to the Electoral Officer of MCA which is Annexure-B to the complaint that Respondent No. 1 is the Secretary of the Muslim Sports Club which is registered and which falls under the Trust / Organization by name Anjuman-I-Islam and any Resolution of Anjuman-I-Islam or any Change Report filed with the concerned Charity Commissioner showing Respondent No. 1 was Secretary of Muslim Sports Club at the relevant time, is not disclosed by the Respondent No.1.

4. It is further the case of the Complainant that the Undertaking given by the Respondent No.1 under form A (Annexure-B to the complaint) to the Electoral Officer to stand for election for becoming Apex Council Member of MCA, is false. According to the Complainant it is a clear cut false representation and such Undertaking given and relied upon by the Respondent No.1 to stand for the said elections, held on 4-10-2019 is totally illegal. Hence, the Respondent No.1 cannot become and continue as Member of the Apex Council of the MCA and hence, appropriate action be taken against the Respondent No.1 for such false

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representation and the Respondent No.1 should be asked to resign or should be expelled from his post as a Member of the Apex Council of the MCA. It is therefore, prayed that it be declared that the Respondent No.1 is in breach of the provisions of the Constitution of the MCA and he is not eligible for the membership of the Apex Council of the MCA. During the pendency of the complaint, the complainant also prayed for the interim relief for calling of the record/file appointing the Respondent No.1, to take it into custody and to provide inspection of the record to the complainant.

5. It is also the case of the complainant, as per the letter dated 4.4.2003 which is annexed at Annexure-A to the complaint, addressed to MCA by Muslim Sports Club that as per Bye-laws, whoever becomes the Secretary must be the staff member, ex-student of the Anjuman-I-Islam or connected with the Management of the Anjuman-I-Islam. It is further stated in the letter that as Nadeem Memon (Respondent No.1) is neither a current staff member or an office bearer in the Executive Council of the Anjuman-I-Islam, hence, he cannot hold any post in these clubs under the management of Anjuman-I-Islam. It is contended by the Learned Counsel for the Complainant that the Respondent No.1 herein was not ex student, or staff member or was not connected in any manner with the management of Anjuman-I-Islam, therefore, the Respondent No.1 cannot claim to be the Secretary of the Muslim Sports Club. As far as this letter is concerned, at the outset, I would like to say that the letter being of the year 2003, I

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am not inclined to take the same into consideration because, I am not concerned with the situation as it stood in 2003. It is possible that in the year 2003, the Respondent No. 1 was not eligible to hold any post in Muslim Sports Club or the Anjuman-I-Islam but later became eligible, hence, I am only concerned with the situation in the year 2019, and whether the election of the Respondent No.1 as Apex Council Member of MCA, in October 2019 is proper and valid.

6. In view of the contentions of the Complainant in paras 3 to 4 of the complaint, by Order dated 8-12-21, the MCA through its Secretary was directed to produce the copies of the said documents i.e. bye-laws of the Anjuman-I-Islam / Muslim Sports Club and the Resolution authorizing Mr. Nadeem Memon as a Secretary either by Muslim Sports Club or Anjuman-I-Islam, Mumbai from Anjuman-I-Islam Institute. The MCA vide its letter dated 31st January, 2022 informed the office of the Ethics Officer and Ombudsman that the MCA wrote a letter dated 17.12.2021 to the President of Anjuman-I-Islam Institute (present Respondent No. 2) for production of the aforesaid documents. By the said letter dated 31-1-2022, the MCA informed that the MCA also sent email on 20.12.2021 to Anjuman-I-Islam by way of reminder and the MCA stated that they have not received the said documents from the President, Anjuman-I-Islam Institute. However, the MCA by the said letter, produced before me from their records, a copy of the Undertaking signed by Dr. Zahir Kazi President of Muslim Sports Club (present Respondent No. 3) confirming that Mr. Nadim

Memon is the Secretary of the Muslim Sports Club. However, it is noticed that the Undertaking given by Dr. Zahir Kazi is the same as that of Annexure-B to the Complaint which is disputed by the Complainant. The copy of the Constitution of Muslim Sports Club submitted to MCA on 18.1.2012 was also produced alongwith the letter of MCA dated 31.1.2022. However, it was noticed that even the said copy of Constitution of the Muslim Sports Club, does not reflect the name of the Respondent No.1-Nadeem Memon as the Secretary of the Muslim Sports Club or how he is nominated/appointed/selected as a Secretary of the Muslim Sports Club.

7. The complainant has also filed Additional Affidavit dated 20.12.2021. In para 3 of the said additional affidavit, it is the further case of the complainant that on 3rd September, 2021 a meeting of the Apex Council of the MCA was held and several Resolutions were passed. In para 4, it is stated that vide Resolution No. 7, the Apex Council member should be made head of various standing committees. It is stated that the Agenda for this Resolution was proposed by Mr. Kiran Powar and was seconded by the Respondent No.1 herein. It is further stated that from perusal of the minutes of the meeting of the Apex Council dated 3rd September, 2021, before taking any decision, Resolution No. 7 was to be referred to the Legal Committee for getting its approval whether Resolution could be implemented and acted upon. In para 5 of the said Additional Affidavit, it is stated that the Respondent No.1 herein was appointed as a Co-Ordinator of the Maidan and

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Stadium Committee and the Respondent No.1 has started acting as the Co-ordinator. It is further stated in the said paragraph that several other Apex Council members were also appointed as Co-ordinators/members of other Standing Committees. It is further stated in the said paragraph that the approval of the legal Committee which was to be obtained before Resolution No. 7 be passed in the meeting dated 3rd September, 2021, and could be implemented and acted upon, is yet to be received. In para 6 of the Additional Affidavit, it is stated that the Councillors of the Apex Council cannot be appointed as the members of any other Committee or of the Governing Council in MCA or BCCI or in any other State Association. It is stated that the rationale behind the said provision in the Constitution of the MCA is "One man one Post". In para 7 of the Additional Affidavit, it is stated that in breach of the provisions of the Constitution of the MCA, the Apex Council has passed the aforesaid Resolution which is contrary and in conflict with the provisions of the Constitution of the MCA and therefore, the same may be quashed and set aside.

8. In my view, what is material for consideration is whether the Respondent No.1- Mr. Nadeem Memon was the Secretary of the Muslim Sports Club at the relevant time in the month of September-October, 2019 that is when the election for the post of Councillor of MCA took place. The issue is also whether Respondent No. 1 was the Secretary of the Muslim Sports Club as reflected in the undertaking /declaration submitted on 28-9-2019 to the Electoral Officer of MCA and relied upon by Respondent No.

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1 to stand for election for the post of Councillor of the Apex Council of MCA held on 4-10-2019. It would also have to be seen whether immediately before the said election Respondent No. 1 was nominated for the election for the post of Councillor of the Apex Council of MCA by the Muslim Sports Club or the Anjuman-I-Islam. Therefore, if it is proved that Respondent No.1 was not duly nominated as a Secretary for the election of the Member of the Apex Council on or about September-October, 2019, then the Undertaking given in Annexure-B stands as "not valid" and if this is discarded from consideration, then the entire basis of the respondent no.1 to stand for election of Member of the Apex Council of the MCA, will be invalid and baseless.

9. Ms. Gargi Bhagwat, the learned Advocate appearing for the complainant has reiterated the contentions raised in the complaint and in the additional affidavit of the complainant dated 20th December, 2021 and prayed that appropriate orders be passed holding that the Respondent No.1 is in breach of the provisions of the Constitution of the MCA by making false representation / Undertaking to the MCA and thus, he is not eligible for the membership of Apex Council of the MCA.

10. The learned Advocate for the complainant pointed out Annexure-B to the complaint which is an undated letter allegedly issued and signed by Dr. Zahir I. Kazi, which was submitted to the Electoral Officer, MCA on 28-9-2019, stating therein that the Respondent No.1-Nadim Memon is holding the office of Secretary

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of Muslim Sports Club. The learned Advocate Ms. Bhagwat submitted that from perusal of the said letter, it is clear that it does not bear the stamp/seal of the Muslim Sports Club or of the Anjuman-I-Islam which is the parent Body of the Muslim Sports Club. Therefore, this document cannot be said to be a valid and legal document and the same should be discarded from consideration. The learned Advocate for the complainant therefore, prayed that the complaint be allowed and necessary orders be passed.

11. By order dated 31.1.2022 the Respondent No. 1-Nadeem Memon was directed to produce the latest Constitution of Anjuman-I-Islam Institute or Muslim Sports Club and change Reports if any, along with his affidavit in reply to show that he was the Secretary of Muslim Sports Club at the relevant time. It was also directed by the said order that the Respondent No.1 should state in his affidavit in reply that whether he was a student of Anjuman-I-Islam Institute at any point of time and if so, the exact period that is from which date to which date, he was a student of Anjuman-I-Islam. It was so directed because the Rules and Regulations of Muslim Sports Club submitted by letter dated 3-1-2012 by the Club Secretary of Muslim Sports Club Mr. Mohd. Farid Shaikh to MCA stated that only ex students of Anjuman-I-Islam will be members of Muslim Sports Club. This letter dated 3-1-2012 was received by MCA on 18-1-2012. It is to be noted that Respondent No.1 though directed to do so, in his affidavit in reply has not stated he was a student of Anjuman-I-Islam at any



point of time. In fact on 9-3-2022, he personally admitted that he was never a student of Anjuman-I-Islam. By the said order dated 31.1.2022, the complainant was also directed to add the President, Anjuman-I-Islam Institute and the President, Muslim Sports Club as Respondents and accordingly, the notices were directed to be issued to the newly added Respondent Nos. 2 and 3. It may be stated here that present Respondent No. 2 that is President of the Anjuman-I-Islam and present Respondent No. 3 that is the President of Muslim Sports Club are one and the same person that is Dr. Zahir I. Kazi.

12. The Respondent No.1-Nadeem Memon appeared through advocate Mr. Subhash Bane and has filed his affidavit-in-Reply dated 25th February, 2022. He has denied all the contentions, averments and allegations made in the complaint. It is stated by Respondent No.1 in his affidavit-in-reply that there are sufficient documents on record which show his association with the Muslim Sports Club and the fact that he has been an office bearer of the said club at the relevant time. He has also stated in the said affidavit in reply that from the letter dated 25.3.1987, it is clear that name of Respondent No.1 Nadeem Memon was recommended to be the Secretary of the Muslim Sports Club. He has annexed various documents in order to show that he was named as Secretary of the said Muslim Sports Club. Reliance was also placed on various annexures particularly, annexures H, I, J, K and L to the affidavit in reply filed on behalf of the Respondent No.1 in order to show that he was associated with the Muslim Sports Club.

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According to me any document prior to 2018 is of no significance. Only documents of the year 2018 and onwards would have any significance or bearing on the matter in hand. It is most important to note that the respondent No.1 did not state anywhere in his affidavit-in-reply that at the relevant time i.e. in the month of October, 2019, he was Secretary of the Muslim Sports Club. In such case, the question arises as to how in Undertaking Annexure-B to the complaint, which is relied upon by the complainant as well as by the advocate for the respondent no.1, it is stated that the Respondent no.1 was holding the office of Secretary of the Muslim Sports Club. If this document which is given by the authorized signatory (present Respondent No. 3) of Muslim Sports Club at the time of election of member of the Apex Council of MCA in the month of October, 2019 is held to be invalid, then it proves that the authorized signatory of Muslim Sports Club as well as Respondent No.1 have falsely represented before the MCA at the time of election for Apex Council Member in October, 2019, that Respondent No.1 was holding the office in his capacity as Secretary of Muslim Sports Club.

13. The fact that Respondent No.1 was not holding the office of Muslim Sports Club in his capacity as Secretary but he was holding the office as Jt. Secretary of the Muslim Sports Club, is also proved from the further affidavit-in-reply dated 2.3.2022 filed on behalf of Respondent nos. 2 and 3 wherein it is sought to be clarified that the Respondent no.1 was inadvertently described as the 'Secretary' and not the 'Joint Secretary in the undertaking submitted to the

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Electoral Officer of MCA for the elections held on 4-10-2019. This infact, supports the case of the complainant that the respondent no.1 was not the Secretary of Muslim Sports Club at the time he stood for election of member of the Apex Council of MCA in the month of October, 2019 as sought to be represented by Respondent No.1 at the time of the said election. This is the sole document which is relied upon by the respondent no.1 at the time of giving information for election of member of the Apex Council of MCA in October, 2019 to show that he was secretary of Muslim Sports Club. No other supporting document is coming forward to substantiate the case of the respondent no.1 that he was Secretary in the month of October, 2019 which was infact, represented by Respondent No.1 before the MCA. Even the respondent no.1 in his affidavit in reply dated 25.2.2022 has not stated that he was holding the office of Secretary of the Muslim Sports Club in October, 2019. The entire stand taken by the respondent no.1 is vague which gives rise to a serious doubt about the authenticity of the document at Annexure-B to the complaint given by the authorized signatory of Muslim Sports Club at the time when Respondent No.1 stood for election of member of the Apex Council of MCA in October, 2019.

14. Heard Advocate Mr. Aseem Nafde with Mr. Subhash Bane appearing for Respondent No.1 on 28.2.2022, 3.3.2022 and 9.3.2022. He has reiterated the case of the respondent no.1 in his affidavit in reply and submitted that even as an office bearer of the Muslim Sports Club, the respondent no.1 was eligible to contest

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the election of the Apex Council of the MCA. He has pointed out and placed reliance on the Annexure-B annexed to the Complaint by the complainant, which shows that the Respondent No.1- Nadeem Memon was the Secretary of the Muslim Sports Club at the relevant time. He has also stated that this authority i.e. Ombudsman does not have jurisdiction to look into the present complaint. He has placed reliance upon Rule 33(3) of the Rules and Regulations of the MCA. Rule 33(3) says that “in case of any dispute or objection as to candidacy, disqualification, eligibility to vote, or the admission or rejection of a vote in the elections to the Apex Council or any of the Committees, the Electoral Officer shall decide the same and such decision shall be final and conclusive”. Moreover, the learned advocate for the respondent no.1 has also placed reliance on Rule 22 of the Rules for Election which are on page no.68 of the Constitution of the MCA. Rule 22 stipulates that “In case of any dispute or objection as to candidacy, disqualification, eligibility to vote, or the admission or rejection of a vote in the elections to the Apex Council, the Players’ Cricket Association or any of the Committees, the Electoral Officer shall decide the same and such decision shall be final and conclusive”. However, a bare perusal of Rule 33(3) on page no.52 of the Rules and Regulations of the MCA and Rule 22 of the Election Rules on page no.68 of the Constitution of MCA, makes it clear that those Rules are identical. Moreover, a plain reading of the said Rules, makes it further clear that both the Rules are relevant when the election process is ongoing or immediately after the elections and during such process, if any dispute arises, then the Electoral

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Officer has powers to look into such complaints. Thus, in my view, the reliance placed by the learned advocate for the Respondent no.1 upon Rule 33(3) of the Rules and Regulations of the MCA and Rule 22 of the Rules for Elections, is misplaced as the said provisions would only apply when any dispute arises in respect of elections only during and immediately after the election process and in that eventuality, the Electoral Officer can have jurisdiction or power to look into any such disputes. The learned advocate for the complainant has also rightly pointed out that the powers given in Rule 33(3) of the Rules and Regulations and Rule 22 of Rules for Election of the MCA, would be exercised during the election process and not after the elections are over. In my view, the submission of the learned advocate for respondent no.1 that the Ombudsman does not have jurisdiction to decide the present complaint is totally misplaced, misconceived and incorrect.

15. The further case of the complainant and as argued by the advocate for the complainant, is that at the relevant time that is when the Respondent No.1 stood for election to be elected as Member of the Apex Court in the month of October, 2019, he was not the Secretary of the Muslim Sports Club. She has submitted that from Annexure-B to the complaint, it is clear that the name of Respondent No.1 is shown as Secretary of the Muslim Sports Club at the time of election which was held in October 2019, however, there is no date and seal or stamp of the Muslim Sports Club on

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the said Annexure-B, therefore, the said document at Annexure-B cannot be relied upon.

16. In my opinion, the documents from the year 1987 till the year 2018 relied upon by the Respondent No.1 to show that he was Secretary of the Muslim Sports Club, are not relevant, hence, they cannot be looked into. The relevant documents are only which are of the month of October 2019 or immediately before the election process of the Member of the Apex Council of MCA started. Hence, only those documents can be relied upon to prove that the respondent no.1 was the Secretary of the Muslim Sports Club at the relevant time.

17. The learned advocate for respondent no.1 has placed reliance on Exhibit-G annexed to the affidavit in reply of Respondent No.1 which is the Minutes of the meeting of Managing Committee of the MCA dated 23.11.2013. The said Minutes show that while considering Item No.5, the MCA gave approval to the names of new authorised signatories of Muslim Sports Club i.e. Dr. Zahir Kazi and Mr. G.A.R. Shaikh. Further reliance was placed on Exhibit-H to the said affidavit which is a letter from MCA to the President, Anjuman-I-Islam which gives approval to the authorised signatories and change of address. Thereafter, a letter dated 15.12.2013 at Exhibit-I which is a covering letter forwarding the information annexed thereto at page 31 which records the name of Mr. Nadeem Memon (Respondent No.1) as Joint Secretary is relied upon. The said letter also records the name of Dr. Zahir Kazi as Chairman/President and Mr. G.A.R. Shaikh as General Secretary.

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Reliance was also placed by advocate for Respondent no. 1 on the annexures to the said letter i.e. Aims and Objectives, and Rules and Regulations of the Anjuman-Islam. The learned advocate for respondent no.1 thereafter pointed out Exhibit-J to the said affidavit in reply which is a letter written by Hon. General Secretary Mr. G.A.R. Shaikh addressed to the MCA. The 2nd paragraph of the said letter states that the President of Muslim Sports Club Dr. Zahir I. Kazi is the authorised signatory at MCA and his office bearers and committee members were mentioned therein which includes the name of Respondent no.1 as Joint Secretary. This letter does not record the name of Respondent no.1 as an authorized signatory of Muslim Sports Club. Moreover, Reliance is placed on Exhibits H, I and J to Respondent No.1's Affidavit to show that he is the Joint Secretary. These are mere letters addressed by Anjuman I Islam and not any resolutions. Without admitting the correctness of these documents, they are mere recording letters not supported by any resolutions or valid appointment letters.

18. Thereafter, reliance was also placed by the learned advocate for respondent no.1 upon Exhibit-K to the affidavit in reply, to show that Respondent No. 1 was Secretary of Muslim Sports Club. The said annexure is a form which was submitted by the authorised signatory of the Muslim Sports Club bearing photograph of the respondent no.1 thereon and certifying that **he was nominated representative for the election of Apex Council**, however, again, from this document it is not clear as to whether he was the



Secretary of the Muslim Sports Club at the relevant time. Moreover, no document has been produced by the respondent no.1 to show that the change was approved by the MCA to the effect that respondent no.1 was appointed as an authorised signatory or representative of Muslim Sports Club along with the President Dr. Zahir I. Kazi like the change which was approved in the meeting dated 23.11.2013 as per Exhibit-G. Exhibit -G is the Minutes of the Managing Committee of the MCA (relevant page 24) Item no. 5 therein is: To consider the letters received from following clubs for change in representatives/signatories. It is seen that for Muslim Sports Club the Names of Original Authorised Signatories were Mr. Parvez Ziauddin and Mr. Mohd. Farid Shaikh and the New Authorised Signatories were Dr. Zahir Kazi and Mr. G. A. R. Sheikh, which change was accepted by the MCA.

19. Thereafter, reliance was placed upon Exhibit-L which is a certificate dated 21.12.2021 issued by the President Dr. Zahir Kazi present Respondents Nos. 2 and 3 certifying that the respondent no.1 is an office bearer and representative of Muslim Sports Club to represent it at various forums and he has been nominated in the year 2013-2014 onwards. However, even this certificate does not show that the respondent no.1 was Secretary of the Muslim Sports Club at that time or that MCA had accepted Respondent No. 1 as authorised Representative of Muslim Sports Club. The learned advocate for the complainant has pointed out that the present complaint has been filed on 22.11.2021 and notice was issued to the respondent no.1 on 8.12.2021, which means that the respondent

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no.1 was well aware that the complaint was filed on 22.11.2021 against him before this authority and in order to create a document to show that he was the Secretary of the Muslim Sports Club, he got issued the said certificate at Exh-L to the affidavit in reply of the respondent no.1 without there being any necessity to obtain such a Certificate from the Muslim Sports Club. I find much force in this contention raised by the advocate for the complainant because, had the respondent no.1 not been aware of the complaint, there was no necessity to get this certificate issued from the Muslim Sports Club on 21.12.2021. This document must have been procured only to give a counterblow to the contention of the complainant that the respondent no.1 was not Secretary of the Muslim Sports Club at the relevant time. This document is signed by Respondent no. 2. It is significant to note that this certificate is issued after notice was issued to Respondent No.1 on 8-12-21 and it was known that the complaint proceeded mainly on the basis that Respondent No. 1 was not entitled to be part of the Apex Council, as Respondent No.1 was not the Secretary of Muslim Sports Club. However, this certificate obtained on 21-12-21 also does not state that Respondent No.1 was the Secretary of Muslim Sports Club but merely very vaguely states that Respondent No.1 was the office bearer of Muslim Sports Club.

20. As far as the other annexures annexed to the affidavit in reply of the respondent no.1 are concerned, they are not relevant for deciding the issue as to whether the respondent no.1 was Secretary of Muslim Sports Club at the relevant time i.e. in the



month of September-October 2019. No other valid and authentic document is coming forward from any of the respondent nos.1 to 3 to show that the respondent no.1 was Secretary of Muslim Sports Club at the relevant time i.e. in the month of September-October, 2019. The Annexure-B which was given at the time of election of Apex Council member by respondent nos.2 and 3 and also relied upon by the Respondent No.1 to stand for election of member of the Apex Council of MCA, does not bear the date & stamp of the respondent nos.2 and 3 Clubs, therefore, the authenticity of such document is doubtful and disputed by the Complainant. It is important to note that no other supporting document i.e. any letter/document showing nomination/ selection/ appointment of the Respondent no.1 as the 'Secretary' of the Muslim Sports Club in the month of September-October 2019 i.e. at the time of election of Member of the Apex Council of MCA is produced before me.

21. Upon notices being issued to the added respondent nos.2 and 3, on 25th February, 2022, affidavit-in-reply of Mr. Aqil Yusuf Hafiz who is shown to be the Authorized Representative of Anjuman-I-Islam was filed. In para 6 of the said affidavit in reply, it is contended that respondent no.1 is closely associated with the activities of the Muslim Sports Club from the year 1984. However, it is not specifically stated that respondent no.1 was the Secretary of the Muslim Sports Club at the relevant time i.e. in the month of September-October, 2019. It is stated in the said affidavit in reply in para no.8 that as per the practice, the President of Anjuman-I-Islam is also normally appointed as the President/Chairman of



Muslim Sports Club. The learned advocate Mr. Bhogale appearing for Respondent Nos.2 and 3 informed me that it is the sole prerogative of the President to nominate a person as the Secretary of the Muslim Sports Club. On repeated questions asked to the learned advocate for respondent nos.1 to 3 as to whether there is any document showing that the President has nominated the Respondent No.1 as the Secretary of the Muslim Sports Club at the relevant time, the learned advocates were unable to point out anything. The learned advocate for respondent nos.2 and 3 submitted according to practice no meetings / elections are held to appoint office bearers of Muslim Sports Club and members become Office Bearers including Secretary only on nomination by the President. Based on this submission, a query was put by me to the learned advocates for respondent nos.1 to 3, that, what is the basis of their statement that it is the sole prerogative of the President to nominate a person as the Secretary of the Muslim Sports Club. None of the learned Advocates for Respondent nos. 1 to 3 were able to point out from the Constitution of Anjuman- I-Islam or Muslim Sports Club or any document in support of the contention that the President has absolute power to nominate a person to be the Secretary of the Muslim Sports Club.

22. Except for mere statements in the two Reply Affidavits, no supporting documents are produced to show the blanket powers of the President of the parent Trust The Anjuman-I-Islam. Further nothing is produced on record to show that the President of



Anjuman-I-Islam automatically becomes the President of Muslim Sports Club.

23. The Constitution of Muslim Sports Club has not been brought on record despite several chances. Exh. I to Respondent No.1's Affidavit is merely a letter addressed by Anjuman-I-Islam to MCA. Reliance is placed on the so called Rules and Regulations annexed as a part of Exh. I to claim that this is the Constitution of Muslim Sports Club. But that cannot be so as the same does not mention anything about the composition of Muslim Sports Club, its office bearers including the President, their qualifications, powers etc. Reliance placed on the second Rule at page 33 is totally misplaced as the same talks about eligibility for members of Muslim Sports Club and not its Office bearers.

24. The Memorandum and Articles of Association (Constitution) of Anjuman-I-Islam produced at the hearing on 9.3.2022 does not show the blanket powers of the President of Anjuman-I-Islam in any manner. It is important to note that, the name of Muslim Sports Club is nowhere found in this Constitution of Anjuman-I-Islam. Page X of this Constitution sets out the names of the institutions under Anjuman-I-Islam and the name of Muslim Sports Club finds no mention anywhere in the Constitution of Anjuman-I-Islam.

25. It is to be noted that though notice was specifically issued to the President of Anjuman-I-Islam and Muslim Sports Club and not



to the clubs, yet Mr. Aqil Yusuf Hafiz filed affidavit based on a general authorisation for Anjuman-I-Islam and not a specific authorization by the President of Anjuman-I-Islam and Muslim Sports Club for him to file the said affidavit on behalf of respondent no.2 and 3. It was necessary for the President to file the affidavit. It is seen that the Anjuman-I-Islam and Muslim Sports Club have been avoiding to answer the simple query whether respondent no.1 was the Secretary of Muslim Sports Club at the relevant time or to produce any document to support the fact that respondent no.1 was the Secretary of Muslim Sports Club at the relevant time, that is, when he stood for election of member of the Apex Council of MCA on 4-10-2019. This is despite the fact that on the directions of the Ethics Officer and Ombudsman in Order dated 8.12.2021, the Secretary of MCA wrote a letter dated 17.12.2021 to the President of Anjuman-I-Islam Institute (present Respondent No. 2) for production of the aforesaid documents. As the documents were not received by MCA, reminder email was also issued to Respondent No. 2. In spite of this, no documents were produced till 28.2.2022. Therefore, during the hearing on 28.2.2022, the learned advocate appearing for Respondent Nos. 2 and 3 was called upon to answer as to why the affidavit-in-reply has been filed by the authorized signatory of Anjuman-I-Islam and not the respondent nos.2 and 3 that is the President of Anjuman-I-Islam or President of Muslim Sports Club. Thereupon, he informed that on the next date, if the President does not remain present, he will file affidavit-in-reply of the President of Respondent Nos.2 and 3 stating that respondent no.1 is the



Secretary of Muslim Sports Club. Hence, the matter was kept on 3.3.2022 for the aforesaid limited purpose.

26. On 3.3.2022 the learned advocate for the respondent nos. 2 and 3 has tendered further affidavit-in-reply of Dr.Zahir I. Kazi dated 2.3.2022. On the query directed to the learned advocate for Respondent Nos.2 and 3 as to in what capacity this further affidavit-in-reply dated 2.3.2022 has been filed, the learned advocate replied that this further affidavit-in-reply is filed by Dr. Zahir I. Kazi in his capacity as the President of Muslim Sports Club. This affidavit reiterates that the President of Respondent Nos.2 and 3 has the prerogative to appoint the Secretaries and all office bearers of the Club. It is stated in the said affidavit-in-reply dated 2.3.2022 that Anjuman-I-Islam is a public charitable trust and it is registered under the Bombay Public Trust Act, 1950, however, no Constitution/Rules/Regulation is produced showing the powers of the President that is Respondent Nos.2 and 3 to nominate Office Bearers including the Secretary of Muslim Sports Club. The said affidavit-in-reply further states that Muslim Sports Club is not required to make filings before anybody including before the Charity Commissioner, which statement is totally incorrect, as will be seen from the later paras of this order.

27. What is most important is that by order dated 28.2.2022 Respondent Nos.2 and 3 were directed to produce the document showing that Respondent No.1 was nominated as Secretary by him and the date when Respondent No.1 was nominated as Secretary by

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him. However, the said affidavit-in-reply dated 2.3.2022 is totally silent on the point of date when the Respondent No.1 was appointed as Secretary by Respondent Nos.2 and 3, nor has any document been produced to support that Respondent No.1 was indeed appointed as Secretary at the relevant time. There is also no document to show that he was appointed as Secretary and this was approved and ratified by the MCA in its Managing Committee Meeting. Moreover, in paragraph 10 of the further affidavit-in-reply dated 2.3.2022, it is stated that Respondent No.1 was inadvertently described as the "Secretary" and not the "Jt. Secretary". It is further stated that the exact nomenclature of each of the offices under the club is not to be regarded as very significant. It is pertinent to note that though notices were issued to respondent no.1 on 8-12-2021 returnable on 21-12-2021 and the respondent no.1 was present on 21-12-21 and sought time till 12-1-2022, which was granted and thereafter also the matter was heard on 31-1-2022 and 28-2-2022, for the first time on 3-3-2022 the stand of Respondent Nos.2 and 3 came forward that in the undertaking the respondent no.1 was inadvertently described as the Secretary of Muslim Sports Club. Till 28-2-2022 it was sought to be contended by respondent no.1 that the undertaking relied upon by him to contest the election of member of the Apex Council of MCA is correct. Later, respondent no.1 tried to back track and say that the undertaking was not submitted by him but by Respondent Nos.2 and 3, hence, respondent no.1 cannot be held liable. However, the undisputed fact remains that respondent no.1 relied on this undertaking to stand for election of member of the



Apex Council of MCA, hence, Respondent No. 1 has also to be held responsible for this false undertaking and misrepresentation of facts.

28. On the repeated queries put to the learned advocate for Respondent Nos.2 and 3 for producing the Constitution of the Muslim Sports Club or Anjuman-I-Islam to show the powers of the President of Muslim Sports Club or Anjuman-I-Islam to appoint the Secretary of Muslim Sports Club or any document showing the exact date when Respondent No.1 was nominated / appointed as Secretary of the Muslim Sports Club or any other document showing that it is the sole prerogative of the President of Respondent Nos.2 and 3 to appoint or nominate the Secretary of Muslim Sports Club, the learned advocate for Respondent Nos. 2 and 3 requested that time may be granted to produce the Constitution and the required documents from Muslim Sports Club or Anjuman-I-Islam. Again on 3.3.2022 query was put to Respondent No.1 regarding the date when he was appointed as Secretary of Muslim Sports Club, but he was unable to give a proper reply. The learned advocate for respondent nos. 2 and 3 was also not able to state the date when respondent no.1 was appointed Secretary of Muslim Sports Club. In view of these facts, by order dated 3.3.2022 Respondents were directed to produce on or before 7.3.2022 the documents i.e. (1) any document showing the exact date when Respondent No.1 was nominated as Secretary of the Muslim Sports Club by the President of Anjuman-I-Islam or President of Muslim Sports Club i.e. Respondent Nos.2 and 3

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herein, (2) Constitution/Rules/ Regulations of the Anjuman-I-Islam and Muslim Sports Club and (3) any document to show that the President of Respondent Nos.2 and 3 has absolute power to nominate Respondent No.1 as Secretary of Muslim Sports Club and the matter was adjourned to 7.3.2022 at 3.30 p.m. only for the limited purpose of producing the aforesaid documents.

29. By email dated 6.3.2022, parties were informed that in order to give more time to enable Respondent Nos. 2 and 3 to produce the requisite documents, the matter was kept on 9.3.2022 at 3.30 p.m.

30. On 9.3.2022, pursuant to the order dated 3.3.2022, advocate Mr. Satchit Bhogale for respondent nos.2 and 3 has tendered Copy of the Constitution of Anjuman-I-Islam of the year 2000, letter bearing Ref. 1751 dated 16.12.2013 and the letter bearing Ref. 926 dated 21.12.2018. The said letters are relied upon by the learned advocate for Respondent Nos.2 and 3 to show that respondent no.1-Nadeem Memon was appointed as Joint Secretary of Muslim Sports Club in the year 2013 and he was reappointed as Joint Secretary of Muslim Sports Club in the year 2018 for a period of five years.

31. Again the learned advocate for the respondent no.1 has placed reliance upon the letter dated 9.12.2013 which is at Exhibit-H to the affidavit in reply of Respondent No.1 dated 25.2.2022, however, that letter is to the effect that the Managing Committee of



MCA at its meeting held on 23.11.2013 has approved the change in the Authorised signatory and address of the Muslim Sports Club w.e.f. 23.11.2013, however, again that letter does not reflect that the Respondent No.1 was in fact nominated by the Muslim Sports Club as Secretary of the said Club. Thereafter, learned advocate placed reliance on Exhibit-I which is a letter dated 15.12.2013 from Anjuman-I-Islam issued to the MCA and annexed to the affidavit in reply of respondent no.1, which shows that in response to the letter dated 9.12.2013 from MCA to Anjuman-I-Islam, the MCA has approved the changes of the Authorized Signatories and Correspondence address. By the said letter dated 15.12.2013, the Anjuman-I-Islam informed the MCA the names of the Managing Committee members, aims and objectives, Regulation of Rules and Bank account and details of the Muslim Sports Club. Annexed at page 31 to the affidavit in reply of respondent no.1 dated 25-2-2022, are the names of the Managing Committee Members of Muslim Sports Club in the year 2013. It reads as under:

“MANAGING COMMITTEE MUSLIM SPORTS CLUB

The Office bearers will be as follows:

- | | | |
|----|---------------------|--------------------|
| 1. | Dr.Zahir I. Kazi | President/Chairman |
| 2. | Mr. G. A. R. Shaikh | General Secretary |
| 3. | Mr. Nadim Memon | Jt. Secretary |
| 4. | Mr. Moiz Miyajiwala | Treasurer |

The Members will be as follows:

1. Mr. Mobin Hetavkar
2. Mr. Farid Shaikh
3. Mr. Asif Dadarkar
4. Mr. Khizar Dafedar”

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Thus, this document shows that in 2013, Respondent No.1 was the Joint Secretary and one Mr. G.A.R.Shaikh was the General Secretary. One very important fact emerges from this document which is that it shows that in 2013 (which term went on till 2018) there was no post of 'Secretary' in Muslim Sports Club but only the post of the General Secretary and Joint Secretary.

32. Thereafter, the learned advocate for respondent no.1 pointed out Exhibit-J annexed to the same affidavit, which is a letter dated 21.12.2018 bearing reference No.934. The contents of the said letter shows the Reconstituted Committee of Muslim Sports Club and Anjuman-I-Islam Sports Club after 5 years (2018-2023). The relevant portion of said document reads as under:

"The President of Muslim Sports Club, Dr. Zahir I. Kazi is the authorized signatory at MCA and his office bearers and committee members are as follows:

The Office bearers will be as follows:

- | | | |
|----|---------------------|----------------------|
| 1. | Dr.Zahir I. Kazi | - President/Chairman |
| 2. | Mr. G. A. R. Shaikh | - Secretary |
| 3. | Mr. Nadim Memon | - Jt. Secretary |
| 4. | Mr. Moiz Miyajiwala | - Treasurer |

Members:

- a) Mr. Mobin Hetavkar
- b) Mr. Farid Shaikh
- c) Mr. Asif Dadarkar
- d) Mr. Khizar Dafedar"

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Thus, from the above, it is clear that at the relevant time Mr. G. A. R. Shaikh was the Secretary of Muslim Sports Club and not the respondent no.1.

33. Thereafter, the learned advocate for respondent no.1 relied upon Exhibit-K annexed at page 35 to the very same affidavit in reply of respondent no.1 and pointed out the photo thereon, which is certified by the MCA in order to show that the respondent no.1 is a nominated representative of Muslim Sports Club. This Exhibit-K is signed by the respondent no.1 and there is seal of MCA and details of the MCA thereon.

34. Exhibit - K seems to have been given by the authorized signatory of the Muslim Sports Club certifying that the respondent no.1 was nominated as representative from Muslim Sports Club for the election of the Apex Council of the MCA to be held on 4th October, 2019. Query was made to Ld. Counsel for Respondent No. 1 to 3 that what does this document exactly indicate? Does it indicate that Respondent No. 1 was representative of Muslim Sports Club to participate in voting in election of Apex Council of MCA? or Does it indicate that Respondent No. 1 is representative of Muslim Sports Club to stand for election as member of Apex Council? However, none of them could reply that it indicated that Respondent No. 1 is representative of Muslim Sports Club to stand for election as member of Apex Council.

35. Lastly, the learned advocate for the respondent no.1 has placed reliance upon a certificate dated 21.12.2021 which is



annexed at Exhibit-L to the affidavit in reply of Respondent No.1 which is issued by Muslim Sports Club. The said certificate shows that Mr. Nadim Memon is the office bearer and representative of Muslim Sports Club to represent it at various forums he has been nominated in the year 2013-2014 onwards. Again, as pointed out by the learned advocate for the complainant that this certificate seems to have been issued after the filing of the present complaint as the present complaint is filed on 22.11.2021, notice to the respondent no.1 of the present complaint was issued on 8.12.2021 and this certificate seems to have been issued on 21.12.2021 which is after filing of the present complaint. Ms. Bhagwat pointed out and in my opinion rightly so, that this certificate has been procured only to give a counterblow to the allegation of the complainant that respondent no.1 is not the Secretary of the Muslim Sports Club on or about 4th October, 2019. Even this certificate dated 21.12.2021 does not show that the respondent no.1 was the Secretary of Muslim Sports Club as on 4th October, 2019. This document in no way proves that the respondent no.1 was the Secretary of the Muslim Sports Club on 4th October, 2019 and he was nominated in his capacity as Secretary for the purpose of contesting election for the post of member of the Apex Council of MCA in the month of October, 2019. Therefore, this document also is not helpful to the respondent no.1.

36. It may be stated that on 28-2-2022 a letter addressed to the Ethics Officer cum Ombudsman was received by MCA at 12:45pm and handed over to me just prior to the hearing of this matter



started at 3:30 pm. The Letter is dated 28-02-2022, it is on the letter head of Muslim Sports Club and it is from Mr. Mohd. Farid Shaikh, Member - Anjuman-I-Islam. The letter is marked 'X' for identification. In the letter, it is stated as under:

"Dear Madam,

We received a letter dated 4th February, 2022 addressed by Divekar Bhagwat & Co. Advocates for the Complainant whereby they have forwarded a copy of the notice dated 4th February, 2022 issued by you in the above referred Complaint along with the copy of the amended Complaint. The aforesaid letter dated 4th February, 2022 is addressed to the President of our club.

We have perused the copy of the amended Complaint forwarded with the letter dated 4th February, 2022 including the letter dated 4th April '03 annexed as Annexure "A" and undated Undertaking annexed as Annexure "B" to the Complaint.

From the contents of the Complaint, it appears that the undated Undertaking at Annexure "B" was submitted on behalf of Mr Nadeem Memon with the Electoral officer of the Mumbai Cricket Association at the time of the elections of the Mumbai Cricket Association in the year 2019 and Mr. Nadeem Memon was elected as a member of the Apex Council of the Mumbai Cricket Association.

We would like to state for the record that Mr. Nadeem Memon is/was not the Secretary of our Club, either today or at any other point of time including in the year 2019. There is no resolution or authorization appointing Mr. Nadeem Memon as the Secretary of our Club. Mr. Nadeem Memon is also not a staff member or office bearer of our club.

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Our Club comes under the management of the Anjuman-I-Islam trust. As far as we are aware, Mr. Nadeem Memon is not an ex-student or staff member or office bearer of Anjuman-I-Islam.

We are writing this letter to you on behalf of our Club as your Notice dated 4th February, 2022 as well as the letter dated 4th February, 2022 of the Complainant's Advocate is addressed to the President of our Club.

*Thanking you,
Yours faithfully,*

Sd/-

*Farid Shaikh
Member Anjuman-I-Islam
(Letter attached)"*

The documents annexed to Affidavit in reply of Respondent No.1 at Exhibit I at page 31 and Exhibit J at page 34 show that Mr. Mohd. Farid Shaikh is indeed the member of Anjuman-I-Islam and Muslim Sports Club. It is pertinent to note that the document annexed by Mr. Mohd. Farid Shaikh to his letter is the same as that relied upon by Respondent No.1 which is annexed by Respondent No.1 to his affidavit in reply as Exhibit I at page 31. Therefore about document annexed by Mr. Mohd. Farid Shaikh there can be no dispute. However, I am not taking this letter into consideration as it neither supported by affidavit of Mr. Mohd. Farid Shaikh nor is Mr. Mohd. Farid Shaikh a party to present matter/ proceedings.

37. Since it is now the stand of the Respondent Nos.2 and 3 in the further affidavit in reply dated 2.3.2022 that the Respondent No.1 was nominated as Joint Secretary of the Muslim Sports Club and not as Secretary of the Muslim Sports Club, therefore, it is



clear that the respondent no.1 was not Secretary of the Muslim Sports Club on 4th October, 2019 when he stood for election for the post of member of Apex Council of the MCA. This is the very same claim made by the complainant in his complaint that the respondent no.1 was not the Secretary of the Muslim Sports Club at the relevant time. Further, from the Respondents no supporting document like any decision taken in the Managing Committee Meeting or any letter of nomination of the Respondent No.1 as Secretary issued by the Muslim Sports Club to that effect, is coming forward to show that the respondent no.1 was indeed nominated as Secretary of the Muslim Sports Club. Hence, it does appear that the undertaking submitted to the Election Officer is false and a clear misrepresentation.

38. It has also come to my notice during the course of arguments that the Muslim Sports Club is not registered as a Public Trust under the provisions of Maharashtra Public Trusts Act 1950 even though Muslim Sports Club is an ordinary member of MCA. It is the Muslim Sports Club which is the member of MCA and not the Anjuman-I-Islam. The categorical case of Respondent Nos. 2 and 3 i. e. President of Muslim Sports Club and Anjuman-I-Islam as seen from para 5 of his affidavit-in-reply dated 2-3-2022, is that Muslim Sports Club is not required to make filings before anybody including before the Charity Commissioner. This statement is totally incorrect, in view of Rule 3 (g) of the Constitution / Rules and Regulations of MCA. However, first it would be necessary to peruse the definition of "Club" given in the Constitution of the

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MCA. "Club" is defined in Rule 1(A)(h) of the Rules and Regulations of the MCA, which reads as under:

"CLUB" shall mean a club, gymkhana, institution, association or cricketing body to be a registered as non-profit Company under section 8 of the Companies Act, 2013 or Public Charitable Trust under the Maharashtra Public Act, 1950 excluding clubs of commercial firms or companies or offices who actively promote the game of cricket."

Thereafter it is necessary to peruse the conditions of Membership and jurisdiction of Members as stipulated in Rule 3(g) of the Rules and Regulations of the MCA, which reads as under:

"3.(g) No Member either Ordinary or Associate shall be affiliated or its affiliation continued, unless it is registered as a Public Trust not for profit under the Maharashtra Public Trusts Act, 1950 or as a not for profit Company registered u/s 8 of the Companies Act, 2013. This condition shall be complied, except by the Office and school college Clubs, within 3 months of coming into force the amendment in respect of all existing Affiliated Members. Failure to comply will result in loss of Affiliation".

39. Admittedly, Muslim Sports Club is a member of MCA and not Anjuman-I-Islam. Muslim Sports Club is not registered and is therefore ineligible for membership of MCA. When this is pointed out, argument is advanced that Anjuman-I-Islam is a de facto

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member of MCA. If that is the case, then office bearers of Anjuman-I-Islam will be eligible to be representatives of Anjuman-I-Islam in MCA and to stand for elections of MCA and not the office bearers of Muslim Sports Club. Here, I would like to state that I am required to deal with these issues as most of these issues have come to light only in view of the incomplete documents produced by the Respondents and from the averments made in the affidavits of Respondent Nos. 1 to 3.

40. It is an admitted fact that Muslim Sports Club is an ordinary member of MCA. It is not the case of the Respondents that Muslim Sports Club is an office and school college club, therefore, as per the above Rule 3(g), it is mandatory on the part of the Muslim Sports Club to get itself registered within a period of 3 months of coming into force the amendment in respect of all existing Affiliated Members, with the Charity Commissioner. Moreover, Rule 3(g) specifically states that failure to comply will result in loss of Affiliation.

41. It is also not the case of the Respondents that Anjuman-I-Islam is either an ordinary or an associate member of the MCA, therefore, failure to produce any supporting document in the form of minutes of the meeting of the Managing Committee of Anjuman-I-Islam or Muslim Sports Club thereby nominating / appointing the Respondent no.1 at the relevant time as Secretary of Muslim Sports Club, would be fatal to the continuance of respondent no.1 as Apex Council member. No authentic and

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concrete document is coming forward from any of the Respondents to show that respondent no.1 was the Secretary of Muslim Sports Club at the relevant time. Hence, the Undertaking given by Dr.Zahir I. Kazi (Annexure-B to the complaint) of Muslim Sports Club which is also relied upon by respondent no.1, cannot be said to be a valid document. If this document is discarded from consideration, the Respondent No.1-Nadeem Memon becoming member of the Apex Council after the elections held on 4th October 2019, cannot be said to be valid and legal. This is so, as the sole basis of the respondent no.1 contesting the said election was on the basis of the said Undertaking at Annexure-B to the complaint, which undertaking is totally false and based on misrepresentation.

42. It is to be noted that Respondent No. 1 in his affidavit in reply has not stated that he was the Secretary of Muslim Sports Club. In the affidavit in reply of Mr. Aqil Yousuf Hafiz dated 25th February, 2022 it is nowhere stated that the respondent no.1 was nominated as Secretary of the Muslim Sports Club. Moreover, in the further affidavit in reply dated 2.3.2022 filed on behalf of Respondent Nos. 2 and 3 by Dr.Zahir I. Kazi, it is stated in paragraph 10 thereof that in the electoral form of respondent no.1 annexed to the complaint at Annexure-B, inadvertently the Respondent No.1 was described as the Secretary of Muslim Sports Club and not the Joint Secretary of Muslim Sports Club.

43. In the said affidavit dated 2-3-2022 of respondent nos. 2 and 3 in para 11, the deponent showed his ignorance of the document dated 4.4.2003 annexed to the complaint by the complainant at

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Annexure-A and he has specifically denied the signatures thereon. In para 5 above, I have already stated that I am not taking this document into consideration. In paragraph 12 of the said affidavit, Respondent Nos. 2 and 3 have stated that the respondent no.1 was validly appointed as the Joint Secretary of the Muslim Sports Club and is an office bearer of the club. However, no valid and genuine document is coming forward from the respondents to show that the respondent nos. 2 and 3 had the power to nominate/appoint respondent no.1 as the Secretary or the Joint Secretary of the Muslim Sports Club. Not a single document is produced on record by the Respondents to show what is the eligibility criteria for being appointed as a Secretary of Muslim Sports Club.

44. In order to show that the President of Anjuman-I-Islam has absolute power to nominate a person to be the office bearer including the Secretary, General Secretary, Jt. Secretary, Treasurer of the Muslim Sports Club or Anjuman-I-Islam, the learned counsel for respondent nos. 2 to 3 placed reliance upon the Constitution of the Anjuman-I-Islam. It is stated by the learned advocate for the respondent nos. 2 and 3 that this Constitution is of the year 2000 and thereafter, no change in the Constitution was effected and the same Constitution is being followed in Anjuman-I-Islam and Muslim Sports Club. Reliance was placed on Article 46 of the Constitution of Anjuman-I-Islam, which stipulates that "at its first meeting after the adoption of these Articles and at its first meeting every three years thereafter, the General Council will elect from among the elected members of the General Council, the

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President who will subject as hereinafter mentioned, hold office for a period of three years from the date of election and will be eligible for re-election. If the person who has been elected as the President of the Anjuman retires by rotation as a member of the General Council before expiry of the term of three years of his office but is not re-elected as a member of the General Council on such retirement, he shall cease to be the President". In order to show that the President has absolute powers to nominate persons to be the Joint Secretaries of the Anjuman-I-Islam, the learned advocate for the respondent nos. 2 and 3 placed reliance on Article 54 of the Constitution of the Anjuman-I-Islam. The said Article 54 provides that "As soon as may be after the election, the President shall nominate two Joint Secretaries from among the members of the General Council. The Joint Secretaries will hold office at the pleasure of the President and in any case the term of their office will not exceed the term of office of the President. "It is pertinent to note that the term of the President of Anjuman-I-Islam is three years" which is clear from Article 46 of the Constitution of Anjuman-I-Islam. The Learned Advocate for Respondent nos. 2 and 3 had contended that the same rules as Anjuman-I-Islam apply to Muslim Sports Club. However, it is seen that for Anjuman-I-Islam the period for holding office is 3 years, whereas Exh. J to the affidavit in reply of Respondent No. 1 shows that the term of member holding office is 5 years. Conveniently, the Respondents take contradictory stands. On one hand they contend that Muslim Sports Club is not a separate entity and is governed by the Rules of the Anjuman-I-Islam. But when Rule 46 of the Constitution of

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Anjuman-I-Islam is pointed out to show the term of appointment is 3 years, they take a stand that rules of Muslim Sports Club are different and its office bearers can be appointed for 5 years. No document is produced on record to show this '5 year term' Rule.

45. Reliance is placed by the Learned Advocate for the Respondent Nos. 2 and 3 on the letter bearing Ref. No.926 dated 21.12.2018 which shows that it was addressed by the Hon. Gen. Secretary of Anjuman-I-Islam to Respondent No.1 Nadeem Memon thereby informing him that he was re-appointed as Joint Secretary of Muslim Sports Club by the President of Anjuman-I-Islam. From this letter at the most, it can be said that the respondent no.1 was nominated as Joint Secretary on 21.12.2018, however, no supporting document is coming forward from respondents to show that the respondent no.1 was nominated as Secretary as mentioned in Annexure-B to the complaint at the time of election in October, 2019 and that moreover, this change was approved by the MCA.

46. All the documents produced by the Respondents show that Respondent No. 1 is the Joint Secretary and not Secretary of Muslim Sports Club. To get over the document (Undertaking) at Annexure B to the Complaint, a mere statement is made in the Affidavits that the word 'Joint' remained to be mentioned and only 'Secretary' was mentioned. The stand now taken in the affidavit-in-reply dated 25.2.2022 and further affidavit-in-reply dated 2.3.2022 filed by Dr. Zahir I. Kazi on behalf of Respondent Nos.2 and 3,

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does not appear to be genuine as in the Undertaking given at the time of election of member of the Apex Council of MCA in October 2019, respondent no.1 is shown as Secretary of Muslim Sports Club and correcting that fact in the affidavit in reply dated 2.3.2022 by respondent nos.2 and 3, raises a doubt as to whether the respondent no.1 was really Secretary or even Joint Secretary of Muslim Sports Club at the relevant time. There is no substance in the arguments advanced by learned advocate for respondent nos.2 and 3 that what post the respondent no.1 was holding at the time of election is immaterial as any office bearer of the Muslim Sports Club can stand for election, otherwise, in the undertaking Annexure-B to the complaint, only mention would have been that the respondent no.1 was an office bearer of Muslim Sports Club. In my view, the reason that prompted respondent nos.2 and 3 to mention in the Undertaking that the respondent no.1 was Secretary of Muslim Sports Club, appears a little dubious. Moreover, as Respondent Nos. 2 and 3 claim that they themselves nominated Respondent No. 1 to the post of Jt. Secretary from the year 2013 onwards, surely he could not have stated in the undertaking that Respondent No. 1 is the Secretary of Muslim Sports Club.

47. Thereafter, the respondent no. 1 in his affidavit-in-reply dated 25.2.2022 in paragraph 21 thereof, has raised an issue taking preliminary objection that in terms of Article 41(1)(b) of the Constitution of MCA, the Ombudsman has no jurisdiction to entertain, hear or decide the present complaint. It is stated that if at all this matter has to be agitated, it should be agitated before the

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Apex Council as per the Constitution of MCA and not before the Ombudsman.

48. In order to decide the issue of jurisdiction, it is necessary to refer to the Resolution recently passed by the Apex Council in relation to rule 41(1)(b) of the Rules of the MCA. The President of the MCA by his letter dated 28th January, 2022 requested the Ombudsman to forward all the complaints pending as well as future received under Rule 41(1)(b) of the MCA Constitution to the Apex Council for due process. It is stated in the said letter that the Apex Council shall follow the process laid down in the MCA Constitution and refer the complaint to the Ombudsman. To the said letter, a letter dated 20th January, 2022 was annexed which was addressed to Dr. Vijay Patil, President, MCA thereby informing the Resolutions passed by the Apex Council to the aforesaid effect. The said letter reads as under:

“Resolved That the Apex Council requests the President to represent before the Ethics Officer cum Ombudsman that the Hon’ble Ombudsman is considering the complaints under regulation 41(1)(b) without the complaint being first processed by the Apex Council as required by the said regulation. The President should request the Hon’ble Ombudsman to follow the regulation more scrupulously. It is worth noting that the Ombudsman appointed by the BCCI is following the same policy by referring the matter to the Apex Council first before deciding”.

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The said letter further reads as under:

“Further Resolved that the Apex Council should intervene before the Ombudsman in the pending matters concerning regulation 41(1)(b) that the Apex Council must be allowed to process the complaint first before the same is presented to the Ethics Officer-cum-Ombudsman for decisions”.

49. In order to decide the point of jurisdiction of the Ombudsman under Rule 41(1)(b) in relation to the present complaint, it is necessary to reproduce the said Rule 41(1)(b), which reads thus:

“41. GRIEVANCE REDRESSAL

(1) The types of disputes/differences that form the Ombudsman’s ambit and the procedures for redressal are:

a.

b. Detriment caused by Member or Administrator-

If any Member or any Administrator of the MCA commits any act of Indiscipline or misconduct or acts in any manner which may or likely to be detrimental to the interest of the MCA or the game of cricket or endanger the harmony or affect the reputation or interest of the MCA or refuses or neglects to comply with any of the provisions of the Memorandum and/or the Rules and Regulations of the MCA and/or the Rules of conduct framed by the Association, the Apex Council, on receipt of any complaint shall issue a Show Cause Notice calling for explanation and on receipt of the

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same and/or in case of no cause or insufficient cause being shown refer the same to the Ombudsman.

Procedure: The Ombudsman shall, after providing opportunity of hearing to the parties concerned, pass an appropriate order."

I would like to state that till today, no complaint under 41(1)(b) has been decided by me.

50. However, on bare perusal of the aforesaid Rule 41(1)(b) of the Rules of the Constitution of the MCA, it is clear that if the complaints are first received by the Apex Council, those complaints can be gone into by the Apex Council as per the procedure prescribed under Rule 41(1)(b), however, in the present case, the aforesaid complaint is filed directly before the Ombudsman and there is no procedure prescribed in the Constitution of the MCA stating that complaints which are directly received by the Ombudsman, shall be referred to the Apex Council and thereafter, the Apex Council can look into the same as per Rule 41(1)(b), therefore, Rule 41(1)(b) cannot be said to be applicable to the present case. Moreover, in the instant case there is no complaint of any alleged act which may be or is likely to be detrimental by respondent no.1 during his tenure as member of the Apex Council of the MCA but what is involved, is a false representation relied upon by the respondent No.1-Nadeem Memon and signed by Respondent Nos.2 and 3 and submitted by either respondent no.1 or Respondent Nos.2 and 3, at the time of respondent no.1 filing nomination or declaration at the time of contesting for election as a member of the Apex Council of MCA



in the month of October, 2019. Therefore, in my opinion, the provisions of Rule 41(1)(b) of the Rules and Regulations of the MCA do not apply to the present case and the Ombudsman certainly has jurisdiction to look into and to decide the present complaint. In my considered opinion, Rule 41(1)(b) does not provide that the complaints which are directly received by the Ombudsman, should be sent to the Apex Council.

51. In view of the aforesaid discussion, in my opinion, the complaint filed by the complainant deserves to be allowed. The respondent no.1-Nadim Memon is declared to not have been found eligible to be the member of the Apex Council on the basis of the electoral form i.e. Undertaking Annexure-B to the Complaint showing respondent no.1 as the Secretary of Muslim Sports Club, as it is invalid and further no supporting document to the effect that respondent no.1 was the Secretary of Muslim Sports Club as stated in the undertaking relied upon by respondent no.1 to contest the election for the post of member of the Apex Council of MCA was produced. Nor was any document produced to show that Respondent no. 1 was nominated by respondent nos.2 or 3 as a Secretary of the Muslim Sports Club to contest said election when electoral form was submitted in Annexure-B to the MCA. There is a total misrepresentation and falsehood stated in the undertaking which was relied upon by the respondent no.1 to contest the election for the post of member of the Apex Council of MCA.

52. In view of the above facts, the respondent no. 1-Nadeem Memon is disqualified from continuing as a Councillor or

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functioning as a member of the Apex Council of MCA and he shall relinquish interest as Councillor / member of the Apex Council of MCA with immediate effect. Ordered accordingly.

53. Complaint No. 9 of 2021 is allowed and is disposed of accordingly.



[V.K.TAHILRAMANI]
FORMER CHIEF JUSTICE,
ETHICS OFFICER-CUM-OMBUDSMAN,
MUMBAI CRICKET ASSOCIATION, MUMBAI