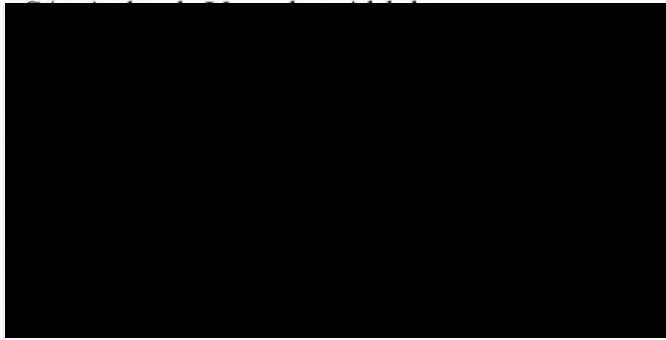


BEFORE FORMER CHIEF JUSTICE V.K.TAHILRAMANI,
ETHICS OFFICER-CUM-OMBUDSMAN
MUMBAI CRICKET ASSOCIATION, MUMBAI

COMPLAINT NO. 7 OF 2021

In Re:

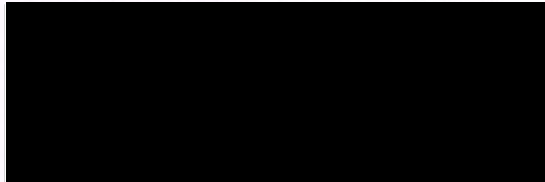
Complaint dated 14/10/2021,
Mr. Vikas Ankush Aklekar



... Complainant

Vs.

Mr. Unmesh Khanvilkar,



... Respondent

....
APPEARANCES:

Mr. Abhishek Bhat Advocate for the Complainant
Mrs. Manjula Rao Advocate for the Respondent

....

ORDER
(27.12.2021)

1. Heard both the learned counsel for the Respondents on 3.12.2021 and 6.12.2021 at length and the matter was closed for

order. The Petitioner and the Respondent were also present at the time of hearing.

2. Perused the Complaint dated 14.10.2021 filed by Mr. Vikas Ankush Aklekar who is a member of the Mumbai Cricket Association (for short "MCA").

3. It is contended by the Complainant that as per the provisions of the Constitution of MCA, i.e. Memorandum of Association (for short "MOA") the Respondent had conflict of interest with MCA as his sister Ms. Chaitra Khanvilkar was appointed as Mumbai Women's Team Trainer when the Respondent is already a Member of the Apex Council of the MCA. It is further contended that the Respondent has not filed his personal declaration as required under Rule 38 (2) of the MOA about the conflict of interest. Rule 38(2) comes under Chapter Eight and it relates to Transparency and Conflict of Interest. Rule 38(2) reads as under:

"Within a period of 15 days of taking any office under the MCA, every individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a Conflict of Interest, and the same shall be uploaded on the website of the MCA. The failure to issue a complete disclosure, or any partial or total suppression thereof would render the individual open to disciplinary action which may include termination and removal without benefits. It is clarified that a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency."

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4. It is further contended by the Complainant that the Respondent came to be appointed as Joint Secretary since 17th June, 2015 and has been the Joint Secretary of the MCA till 3rd October, 2019. During this period he has been signing documents as the Joint Secretary of the MCA or authorised signatory. After the elections were held on 4th October 2019, the Respondent is holding the post of member of Apex Council till today. Thus it is contended that the Respondent is holding the post of MCA since more than six years and therefore, he is not eligible to hold any post of the MCA as per the provisions under Rule 6(2) of the Constitution of the MCA.

5. Rules 6(2), 6(3) and 6(4) of the Constitution of the MCA which are relevant, read as under:

“6. ELECTION & TERM OF OFFICE BEARERS:

(1)

(2) The Term of office of an Office Bearer of the Association shall be 3 years. Their position shall be Honorary.

(3) No person shall be an Office Bearer in any state association regardless of post for more than 3 terms in all.

(4) An Office Bearer who has held any post for two consecutive terms either in any State Association or in the BCCI (or combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the Cooling off period, such an office bearer shall not be a member of the Governing council or of any Committee whatsoever of any State Association or of the BCCI.”



6. Mr. Bhat, the learned counsel for the complainant submitted that the Respondent had conflict of interest with MCA, hence, action be taken as per the provisions of Rule 39(2)(b) of the Constitution of the MCA as the Respondents sister Ms. Chaitra Khanvilkar (Chaitra Dalvi) was appointed as Mumbai Women's Team Trainer when the Respondent-Unmesh Khanvilkar was a member of the Apex Council of the MCA.

7. Mr. Bhat has placed reliance on the Agreement executed on 12th July 2018 (Exhibit A) between MCA and YOS Healthcare Pvt. Ltd. (hereinafter referred to as "YOS") to show that the Respondent Unmesh Khanvilkar signed the said Agreement as Joint Honorary Secretary and Mr. C.S. Naik as Chief Executive Officer, on behalf of the MCA. Mr. Bhat stated that this shows that even on 12th July 2018, the Respondent was Jt. Hon. Secretary of MCA. Mr. Bhat further pointed out that on 12th July 2018, admittedly the Committee of Administrators was in charge of MCA.

8. Mr. Bhat further relied on the Agreement dated 10th July 2019 entered into and executed between MCA and YOS for a period of one year from 1st August, 2019. Mr. Bhat submitted that after the signing of agreement by the Respondent with YOS, it is through YOS that Ms. Chaitra Khanvilkar that is the sister of the Respondent was appointed as a trainer for the women's Cricket Team in MCA. It is also contended that prior to that Ms. Chaitra Khanvilkar was appointed on 26th June 2014, 9th July 2015, 10th July 2017 and thereafter on 27th August 2021 and 5th October 2021 as Mumbai Women's Team Trainer for MCA and as of today also she continues as Women's Team Trainer with MCA. He further stated that Ms. Chaitra Khanvilkar was appointed as trainer for MCA Women's

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Team for the year 2018-2019 and 2019-2020 through YOS. Ms. Chaitra Khanvilkar was appointed through YOS as Trainer for MCA for Senior Women's Mumbai for one day League 2018-2019 and thereafter Trainer for MCA Mumbai Senior Women Team One Day 2019-2020.

9. Mr. Bhat has also placed reliance on the Memorandum of Agreement dated 10th July, 2017 (Exhibit-B) entered into between MCA and the Respondent's sister Chaitra Khanvilkar which was for a period from 21st July, 2017 to 31st March, 2018. By this agreement Ms. Chaitra Khanvilkar was appointed as Trainer for the under 19 Girls Team. The trainer that is Ms. Chaitra Khanvilkar was to get an amount of Rs.40,000/- per month as and by way of fees and was also entitled to avail other facilities as mentioned therein. This Agreement was signed by Respondent-Unmesh Khanvilkar on behalf of the MCA in his capacity as Jt. Honorary Secretary and it was an agreement entered into by the Respondent on behalf of MCA with his sister Chaitra Khanvilkar who has also signed the agreement. Mr. Bhat submitted that this is clearly an agreement of employment, especially as it mentions the Term/period of employment, the remuneration and the post for which the remuneration is being given, thus, it is a contractual arrangement. Thereafter the Respondent has signed an agreement with YOS on 12-7-2018 as Jt. Hon. Secretary & on 10.7.2019 as authorised signatory. It is through YOS that Ms. Chaitra Khanvilkar was appointed as a trainer for MCA for the Senior Women's team for 2018 to 2019 and 2019 to 2020. Mr. Bhat submitted that all this is clearly in contravention of the provisions of Rule 38(1)(i) of the

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Constitution of the MCA. Rule 38(1)(i) of the Constitution of the MCA stipulates that:

“38.CONFLICT OF INTEREST: (1)A conflict of interest may take any of the following forms as far as any individual associated with the MCA is concerned:

- (i) ***Direct or Indirect Interest: When the MCA, a Member, the IPL or a Franchisee enter into contractual arrangements with entities in which the individual concerned or his/her relative, partner or close associate has an interest. This is to include cases where family members, partners or close associates are in position that may, or may be seen to compromise an individual’s participation, performance and discharge of roles”.***

10. Mr. Bhat relied on the illustration 1 of Rule 38(1)(i) of the Constitution of the MCA. Rule 38 (1)(i) is already reproduced in para 9 above. Illustration 1 to Rule 38(1)(i) reads thus:

“Illustration 1: A is an Office Bearer of the MCA when it enters into a broadcast contract with a company where A’s son B is employed. A is hit by Direct Conflict of Interest”.

11. Mr. Bhat has also relied on the provisions of Rule 38(1)(v) which reads as under:

“38(1)(v) Position of influence:When the individual occupies a post that calls for decisions of governance, management or selection to be made, and where a friend, relative or close affiliate is in the zone of consideration or subject to such decision-making, control or management. Also, when the individual holds any stake, voting rights or power to influence the

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decisions of a franchisee / club / team that participates in the commercial league(s) under MCA”.

12. Mr. Bhat submitted that according to the Respondent Ms. Chaitra Khanvilkar that is the sister of the Respondent, being a Trainer of MCA, is a Team Support Staff. Team support staff would fall under Clause 4(y) and (gg) of the Memorandum of Association.

13. Mr. Bhat submitted that Ms. Chaitra Khanvilkar even as of today is continued as a Mumbai Women's Team Trainer for MCA, however, after elections when the Respondent was appointed as Apex Council Member on 4th October 2019, Ms. Chaitra Khanvilkar was Trainer for Senior Women's Mumbai for one day League 2018-2019 and thereafter Trainer for Mumbai Senior Women Team One Day 2019-2020 and despite the said fact, the Respondent has not made a declaration in writing as required under Rule 38(2) regarding any existing or potential event that may be deemed to cause a conflict of interest and which declaration also has to be mandatorily uploaded on the website of MCA, which is also not done. The words used are “shall disclose in writing” and “shall upload on website”. These mandatory requirements are obviously in the interest of “Transparency”, which is what Chapter Eight of the MOA is about. The Respondent should have complied with the mandatory requirements after he was elected as Apex Council Member on 4th October 2019, when, there is a clear-cut case of conflict of interest.

Attention was also drawn by Mr. Bhat to Explanation to Rule 38 which states the illustrations which refer to a President/Secretary/Vice President may be read as illustrations

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referring to any other Office Bearer, and also to the members of the Apex Council, the Governing Council and the Committees.

14. Mr. Bhat reiterated that the Respondent was Jt. Hon. Secretary of MCA or Apex Council member of MCA from 17.6.2015 till today, which period is more than six years, hence, now there has to be a cooling off period. He further submitted that though when the Respondent was appointed Jt. Hon. Secretary of MCA on 17.6.2015, the term was only for 2 years, however, even thereafter the Respondent continued as Jt. Hon. Secretary which is seen from the MOU dated 12-7-2018 between YOS and MCA, where the Respondent has signed as Jt. Hon. Secretary. On 12-7-2018 the Committee of Administrators was in charge of MCA. Mr. Bhat stated that as the Committee of Administrators relinquished their office on 14th September 2018, the day to day administration of MCA became difficult, hence, the MCA preferred Notice of Motion (L) No. 686 of 2018 in Writ Petition 1286 of 2018 before the High Court of Bombay, with the prayer that appropriate Order be passed to constitute an ad hoc committee of **five" eligible" members of the managing committee of MCA** along with its CEO Mr. C. S. Naik to take over charge of MCA with immediate effect with powers to take administrative & financial decisions and the Committee to continue till the Apex Council stands elected. This Notice of Motion was decided **on 6th November 2018**. It is seen from para 8 of the order dated 6th November 2018 that the Counsel for MCA suggested that **Dr. Unmesh Khanvilkar (present Respondent) the then Jt. Hon. Secretary** and Mr. C. S. Naik CEO may be appointed as authorised signatories to sign cheques, operate bank accounts so as to enable the ad-hoc committee to defray the monthly expenditure as mentioned in the chart.

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15. Para 11 of the order dated 6th November 2018 reads as under:

“Mr. Khandeparkar has invited my attention to the order dated 6.4.2018 passed by this Court whereby the Ad-hoc Committee was appointed until Committee of Administrators would take charge. He would submit that ad-hoc committee may be appointed on the same line.”

Relevant part of the order dated 6.4.2018 mentioned above is reflected in para 2 of the order dated 6th November 2018, which reads as under:

*..... “Until the Committee of Administrators would assume charge, the following persons viz. (A) Adv. Ashish Shelar (President) (B) **Prof. Dr. Unmesh Khanvilkar (Jt. Hon. Secretary)** (C) Mr. Navin Shetty (Committee member) (D) Mr. Shahalam Shaikh (Committee member), (E) Mr. Ganesh Iyer (Committee member) and (F) Mr. Arman Mallick (Committee member) were appointed to look after the management and administration of Mumbai Cricket Association including all work concerning the smooth running of the 11th Indian Premier League tournament”*

It is submitted that from the orders of the Hon’ble High Court dated 6.4.2018 and 6.11.2018, it becomes clear that even on 6.4.2018 and 6.11.2018 the Respondent continued to be Jt. Hon. Secretary and on 6.11.2018, the Respondent was an eligible member of the Managing Committee. The Respondent was an eligible member at that time, as he had not on that date exceeded the maximum period for which he could hold **any post** in MCA.

Mr. Bhat further submitted that the words “Any post” are significant because regarding the Term of Office Bearers as it stood

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in 2018 and even now the MOA states that “An Office Bearer who has held ANY POST for two consecutive terms either in any State Association or in the BCCI (or combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the Cooling off period, such an office bearer shall not be a member of the Governing council or of any Committee whatsoever of any State Association or of the BCCI”

16. Mr. Bhat further submitted that a Councillor is also an Office Bearer. If the total period during which the Respondent was and is Office Bearer or member of Apex Council is counted, it comes to more than 6 years and therefore, the Respondent cannot continue any further unless the cooling off period is observed.

Mr. Bhat also referred to the Memorandum of Association as amended on 8-10-2003, especially Rule 16 (b) (i) and Rule 18 thereof. Rule 16(b) (i) states that the President, Vice Presidents, Hon Treasurer and two Jt, Hon Secretaries shall be elected at an Annual General Meeting. They shall hold office for two years **and remain in office until their successors are elected**. Rule 18 which deals with Tenure of Office, reads as under :

“All office bearers and members of the Committee shall save as otherwise provided hold office for two years and shall remain in office until their successors are elected.”

17. It was submitted that it is not disputed that after the elections on 17-6-2015, when the respondent became the Jt. Hon. Secretary, the elections were held only on 4-10-2019 and the respondent was appointed as a member of the Apex Council on 4-10-2019. Thus, from 17-6-2015 to 4-10-2019 the respondent was an office bearer

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for a period of 4 years 3 months and 10 days. Thereafter, from 4-10-2019 he is an Apex Council member till today. Thus, since 17-6-2015 till now, the respondent is holding some post or the other in MCA, which comes to a period of over 6 years.

18. Mr. Bhat has therefore, prayed that since the Respondent being the member of the Apex Council and is holding a position as a Councillor or Office Bearer for more than 6 years, the necessary order / direction be passed holding that the Respondent is not eligible to be Member of Apex Council any longer and he is not eligible for the membership of the Apex Council of the MCA unless the cooling off period is observed and further he is in conflict of interest with MCA.

19. The Respondent filed Reply dated 2nd December, 2021. In the said Reply, the Respondent denied all the allegations made in the complaint. In para 3 of the said Reply, it is contended that the Respondent was elected as a Secretary (Jt. Hon, Secretary) of Mumbai Cricket Association on 17th June, 2015 and he held the said position till 6.4.2018. By an order dated 6.4.2018 passed by the Hon'ble High Court in WP (L) No. 752 of 2018, Hon'ble Shri. Justice (Retd.) Hemant Gokhale and Hon'ble Shri. Justice (Retd.) V.M. Kanade came to be appointed as Administrators of the MCA. The administrators took charge on 11.4.2018 and they were in charge till 14th September, 2018. It is the case of the Respondent that by an order dated 6th November, 2018 passed by the Hon'ble High Court of Bombay in Notice of Motion (L) 686 of 2018, the Respondent was authorised to act as a signatory to sign all the bank



documents and to conduct day to day administrative activities along with Mr. C.S. Naik (CEO, MCA).

In relation to the above contention of Mrs. Rao that the Respondent was Jt. Hon. Secretary only till 6-4- 2018, it is seen that it is a matter of record that on 12th July 2018, the Respondent had signed an agreement on behalf of MCA as Jt. Hon. Secretary. Thus even on 12th July 2018, the Respondent was Jt. Hon. Secretary. Moreover, from the orders of the Hon'ble High Court dated 6.4.2018 and 6.11.2018, it becomes clear that even on 6.4.2018 and 6.11.2018 the Respondent continued to be Jt. Hon. Secretary and on 6.11.2018, the Respondent was an eligible member of the Managing Committee. The Respondent was an eligible member at that time, as he had not on that date exceeded the maximum period for which he could hold **any post** in MCA.

20. On the point of personal declaration by the Respondent, it is the case of the Respondent in the reply that in the year 2014 when Ms. Chaitra Khanvilkar the sister of the Respondent was appointed Trainer by MCA on 26-6-2014, the Respondent was not elected member and/or holding any post with the MCA, hence learned Counsel Mrs. Rao submitted that there was no question of the Respondent filing a Declaration at that time. As far as the personal declaration by the Respondent about the conflict of interest, it is the case of the Respondent that since there was no procedure being adopted by the MCA for any personal declaration about conflict of interest prior to 22nd November, 2020, hence, the Respondent was not asked to file any declaration. It is the case of the Respondent in the reply that the said declaration was required to be submitted only

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after 27.11.2020. This is a totally incorrect stand and I shall deal with it a little later.

21. So far as the appointment by MCA of Ms. Chaitra Khanvilkar the sister of the Respondent as a Trainer of Mumbai Women's under 19 Team is concerned, Mrs. Rao, the learned Counsel for the Respondent submitted that she was selected by MCA by Dr. P. V. Shetty and the Respondent had no role in appointment of his sister Ms. Chaitra Khanvilkar. In support of this submission Annexure 5 of the reply was relied upon and more specifically Item no. 1 clause F on internal page 3 of Annexure 5. Annexure 5 is the minutes of the Managing Committee held on Wednesday 24th June 2015. It shows that distribution of work was proposed by the Chairman, Dr. P. V. Shetty was put in charge of Junior Cricket & Women's Cricket, Women's Wing Committee and other committees and the Respondent was put in charge of committees including Senior Cricket, Registration of Players Committee, **Cricket Improvement Committee** along with many other committees. Thus Mrs. Rao submitted that the Respondent had nothing to do with any selection relating to any Women's Cricket Team.

22. In relation to the above submission, I have noticed from the very same minutes of the Managing Committee held on 24-6-2015 that some Committees had to be looked after by both the Jt. Secretaries, i.e. Dr. Shetty and the Respondent. Though as per the minutes responsibility of convenorship of the Committees were divided between the two Jt. Secretaries, namely Dr. Shetty and the Respondent, it is also important to highlight that in the said minutes it is also mentioned that **the Office bearers shall be ex officio**



members of all committees. In such case the Jt. Secretaries which included the respondent had an influential role in all the Committees. One such committee was the Coaching Committee. Item no. 2 and Item No. 4 (G) of the very same Minutes dated 24-6-2015 are also relevant, they are as under:

“Item No. 2. To finalise the appointment of sub-committees for the Year 2015-2016 & 2016-2017.

The Chairman authorised Vice Presidents, Hon. Treasurer and Jt. Hon. Secretaries to discuss and finalise the appointments of sub committees at the earliest and same to be get approved in the next Managing Committee.

4(G) The Chairman brought to the notice of the members that the Womens Cricket was neglected by the Association. Therefore the CIC should review the improvement of Womens Cricket”.

Thus, even though it is the contention of the Respondent that he had nothing to do with women's cricket, however, from the earlier para it is clear and an admitted fact that the Respondent was in charge of the Cricket Improvement Committee (CIC) and from Clause 4(G) of the Minutes of the Managing Committee dated 24th June 2015 reproduced above, the CIC was tasked with reviewing the improvement of Women's Cricket. In such case the Respondent was definitely closely concerned with the MCA Women's Cricket Team and thus, as far as Women's Cricket is concerned, the Respondent was definitely in a 'Position of influence' and in a post that called for decisions on selections as visualised under Rule 38 (v) of Chapter Eight of the Memorandum of Association. The said chapter deals with Transparency and Conflict of Interest.

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23. It is the further case of the Respondent in Reply that as per the performance analysis of Mrs. Chaitra Khanvilkar, she might have been considered and approved for appointment as a Trainer. Thus, it is contended that she is appointed as she is meritorious and not because the Respondent is part of MCA.

24. It is contended in the reply that during the period from 11-4-2018 to 14-9-2018, the Respondent had to act as per the directions and approval of the Committee of Administrators. Further, the Agreement with YOS dated 12.7.2018 was signed by the Respondent on behalf of the MCA with the approval of the learned Committee of Administrators. I have already noted that the said Agreement dated 12.7.2018 with YOS was signed by the Respondent as Jt. Hon. Secretary of MCA. This was during the time that Committee of Administrators were in charge, yet, the Respondent signed as Jt. Hon. Secretary of MCA. It is further contended by Mrs. Rao that moreover, the Respondent was duly authorised by the order of the Hon'ble High Court Bombay dated 6th November 2018 to be the signatory to the bank accounts and the Respondent acted as such as per the directions issued by the Hon'ble High Court of Bombay.

25. It is further contended in para 4(iv) of the reply that the agreements dated 12.7.2018 between MCA and YOS which was signed by the Respondent as Jt. Hon Secretary and the agreement dated 10.7.2019 between MCA and YOS was signed by the Respondent after the meeting was held on 12.7.2018 in the presence of Mr. Wadekar. Amongst 34 individual applications received by the MCA from Physios and Trainers and one proposal received from

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YOS, YOS was found the best, hence YOS was selected to provide services of support staff for the post of Physio and Trainers. Mrs. Rao pointed out that in the said agreement with YOS, there is no mention about the name of Ms. Chaitra Khanvilkar or any reference to her.

26. Para 5 of the reply, deals with para 1 (e) of the Complaint, wherein the amount of Rs. 36,27,250/- is wrongly mentioned, however, it is clear that para 1 (e) deals with Agreements between MCA and YOS dated 12th July 2018 and 10th July 2019. In relation to this it is contended on behalf of the Respondent that the agreement dated 12.7.2018 was signed by Shri. C.S. Naik the CEO and the Respondent as authorised signatory and it is only after the approval by the Committee of Administrators. The Respondent had merely signed the said agreement in the capacity as authorised signatory as per the order of the Hon'ble High Court of Bombay.

27. The above argument on behalf of the Respondent is totally misleading at least as far as Agreement dated 12.7.2018 is concerned. At the time when the agreement 12.7.2018 was signed by the Respondent, the only Order of the High Court of Bombay touching this issue was the order dated 6-4-2018. This order was passed in WP (L) No, 752 of 2018. Para 3 of the said order is relevant. It states as under:

"3. The Committee of Administrators shall take charge within a period of one week from today, Until the Committee of Administrators assumes charge, the following persons viz, (A) Adv. Ashish Shelar (President) (B) Prof Dr, Unmesh Khanvilkar (Jt. Hon. Secretary), (C))..... (D)..... (E).....and (F)..... shall continue to look

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after the management and administration of MCA..... During this interim period Adv. Ashish Shelar and Prof. Dr. Unmesh Khanvilkar may also sign cheques and / or operate the bank accounts on behalf of MCA for routine payments.....

(Emphasis supplied) ”.

I have noted that it is an admitted fact that the Committee of Administrators took charge on 11th April 2018. Thereafter, the order of the High Court dated 6-4-2018 empowering the Respondent and others came to an end. Hence, it is wrong to say that the agreement dated 12.7.2018 was signed by the Respondent as per the order of the High Court.

28. In para 6 of the reply, it is stated that the YOS is an independent and separate body which supplies Physio Therapists/Trainers. It is contended in para 7 of the reply that the agreement dated 10.7.2019 is signed by CEO Shri. Naik and the Respondent as an authorised signatory with YOS wherein the name of Ms. Chaitra Khanvilkar was not mentioned nor any reference is made therein to her. It is further contended that the Respondent had no clue that YOS had employed Ms. Chaitra Khanvilkar when he signed the said agreement nor was he aware of the agreement or in which capacity Ms. Chaitra Khanvilkar was connected to YOS.

29. In para 8 of the reply, it is contended that the appointment letter dated 27.8.2021 of Chaitra Khanvilkar was signed by Hon, Secretary Sanjay Naik and Hon. Jt. Secretary Shahalam Shaikh and not by the Respondent. In para 14 of the reply, it is contended that the complaint as has been filed, under the provisions of Rule 41 of the Constitution of the MCA and the said Rule is not at all applicable

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to the Respondent as he does not fall in any Rules of 41(1) (a to d) nor any action of the Respondent could be construed as a conflict of interest due to the appointment of his sister Ms. Chaitra Khanvilkar as a trainer in MCA. It is contended in para 14 of the reply that the Respondent has not committed any act of indiscipline or misconduct or any act in any manner which may be likely to be detrimental to the interest of the MCA or the game of the Cricket.

30. In para 15 of the reply, it is contended that since no trainers or physios were found suitable by Dr. Kinjal Suratwala, YOS approached the MCA with a proposal to manage physios and trainers and as YOS was found suitable by the Committee, the agreement came to be signed between MCA and YOS.

31. In para 16 of the reply, it is contended that in the meeting dated 17.7.2021 (the date seems to be incorrectly stated and the correct date should be 13.9.2021 as seen from Annexure 6 to the reply), the Respondent informed that the list of support staff was shared with him on 7th September 2021 and it was observed that Ms, Chaitra Khanvilkar has been appointed as Trainer of Senior Women team, and as an Apex Council member he was not aware of the appointment. since the Apex Council had not approved the said appointment, the Respondent would like to recuse himself if Ms. Chaitra Khanvilkar's matter is to be discussed.

32. It is further the case of the Respondent that since the appointment letter dated 27.8.2021 was already issued to his sister Ms. Chaitra Khanvilkar and the Respondent was not party to the said letter, there is no conflict of interest of the Respondent with the

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appointment of Mrs. Chaitra Khanvilkar as per Rule 38 of the Constitution of the MCA.

33. It is further contended in the reply, that since the Respondent's sister Ms. Chaitra Khanvilkar was appointed in 2014-2015 that is, prior to the Respondent holding any post in MCA, therefore, no fault can be found with the Respondent regarding the said appointment. In the reply, lastly it is contended that since the Respondent cannot be said to have acted in any manner which could be construed as "conflict of interest" as he had no authority or power to influence the appointing authorities formed under the Memorandum of Association, in relation to appointment of his sister Ms. Chaitra Khanvilkar as Trainer with MCA, it is therefore, prayed that no case has been made out against the Respondent by the Complainant.

34. Mrs. Rao, the learned counsel for the Respondent reiterated the contentions made in the reply on behalf of the Respondent. She submitted that the allegations and accusations made in the complaint against the Respondent are baseless and without any substance and are made only with a view to defame the Respondent. She further submitted that in August, 2018 Ms. Chaitra Khanvilkar was invited to join YOS after considering her qualifications and the Respondent had nothing to do with the same. So far as the appointment of Ms. Chaitra Khanvilkar by YOS and thereafter by the MCA, Mrs. Rao submitted that the Respondent was not aware of the appointment of Ms. Chaitra Khanvilkar till 7-9-2021. She submitted that as far as the appointment of Ms. Chaitra Khanvilkar for the Season 2021 is concerned, it was made by Mr. Sanjay Naik, Secretary and Mr. Shahalam Shaikh (Joint Secretary) as per letter dated 27.8.2021




issued by the MCA. She submitted that the allegations made against the Respondent are false and the Respondent acted as per the directions of the Hon'ble Administrators and further as per the directions issued by the Hon'ble High Court of Bombay.

35. Mrs. Rao further pointed out that in the urgent meeting jointly held on 13.9.2021 by the Apex Council and Finance and Tender Committee, the Respondent specifically informed the Committee Members that the list of trainers was only shared on 7.9.2021 and it was then that he came to know that his Sister Ms. Chaitra Khanvilkar has been appointed as a Women's Team Trainer. The Respondent further informed to the Committee that if the name of Ms. Chaitra Khanvilkar is to be discussed, the Respondent would like to recuse himself from the proceedings in the said meeting. Mrs. Rao relied upon the Minutes of the Meeting held on 13.9.2021 (Annexure 6 to the Reply) to show that the Respondent was not at all concerned with the appointment of Ms. Chaitra Khanvilkar as trainer of Senior Women Team. However, in relation to the above submission, it is noticed by me that Ms Chaitra Khanvilkar's name was not discussed in that meeting and on behalf of the Respondent, no Minutes of any Apex Council meeting or any other meeting could be pointed out, where the issue relating to the Appointment of Ms. Chaitra Khanvilkar came up for discussion and the Respondent recused himself.

36. Mrs. Rao further contended that the first appointment of Ms. Chaitra Khanvilkar was on 26.6.2014 and her last appointment was on 27.8.2021 and the Respondent was not at all concerned with her first appointment as the Respondent, at that time was not office

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bearer or councillor of the MCA and therefore, there was no occasion for him to give any declaration of conflict of interest. Moreover, the appointment of Ms. Chaitra Khanvilkar as support staff was not made by the Apex Council. She further submitted that as per the Report of the Cricket Improvement Committee (CIC) YOS was to provide the support staff and first preference was to be given to the existing support staff. The term of the existing support staff expired on 31.3.2018. Mrs. Rao thereafter submitted that there is no conflict of interest of the Respondent with the MCA as alleged and the Respondent was never associated in any manner or part of any Committee when Ms. Chaitra Khanvilkar was appointed as a Trainer for Women's Team. It is submitted that since the sister of the Respondent i.e. Ms. Chaitra Khanvilkar was appointed as she was having requisite qualifications i.e. she was M.P.Ed in the year 2013, She obtained Diploma in Physical Fitness – Revised 2018 on 11th June 2020. She is also awarded Certificate of Accreditation Level Two Strength and Conditioning Coach by the Australian Strength and Conditioning Association. Mrs. Chaitra Khanvilkar is an Associate Coach within the ASCA Professional Coach Accreditation Scheme. She got Certificate as Certified Power-lifting Instructor on 1st September, 2020 by the International Sports Sciences Association, Mrs. Rao therefore, submitted that Mrs. Chaitra Khanvilkar was appointed as Trainer on the basis of her qualifications and not on account of influence of the Respondent. Mrs. Rao submitted that there is no conflict of interest of the Respondent with the MCA, and hence, appropriate orders be passed holding that the Respondent is not in conflict of interest with the MCA. 

37. The learned counsel Mr. Abhishek Bhat for the complainant in reply, submitted that the Respondent himself raised a grievance regarding support staff (which includes Trainers) which is reflected in the Report of the Cricket Improvement Committee held on 6th July 2018. The said Report is at Annexure 8 Colly to the reply filed by the Respondent. The report shows that the Respondent raised grievance that the support staff left the association in the middle of the season or do not attend the academy regularly and yet expect full salary. The Respondent then introduced the topic of M/s. YOS Sports and stated that YOS has given a proposal to manage all physios and trainers, thereafter an agreement dated 12.7.2018 was signed by the MCA with YOS, which was signed by the Respondent as Jt. Hon. Secretary. The period of the Agreement was from 21st July 2017 to 31st March 2018, which was renewed thereafter. Thereafter, through YOS Ms. Chaitra Khanvilkar was appointed as trainer for MCA Women's Team for the period from 2018-2019 and 2019 to 2020. Mr. Bhat submitted that this clearly shows that the Respondent had used his position to influence in the selection process of Ms. Chaitra Khanvilkar as a Trainer. Thus, it is a case of direct conflict of interest, regarding which there was no transparency by the Respondent as the Respondent had not made the necessary Declaration under Rule 38(2) of the MOA.

38. In relation to the above contention of Mr. Bhat regarding conflict of interest and that no declaration as required by the MOA of MCA being made by the Respondent, it is extremely important to note that Ms. Chaitra Khanvilkar was appointed by MCA on 22.6.2014 as Trainer of Mumbai Women's under 19 team for season 2014-2015. Ms. Chaitra Khanvilkar was again appointed by MCA

as Trainer of Mumbai Women's under 19 Team on 9-7-2015. This was for season 2015-2016. Thereafter, Ms. Chaitra Khanvilkar was again appointed by MCA as Trainer vide Memorandum of Understanding dated 10th July 2017. This MOU was for the period from 21st July 2017 to 31st March 2018 to train the under 19 years girls, who are likely to represent MCA in Cricket tournaments/Leagues/Series. **This MOU dated 10.7.2018 appointing Ms. Chaitra Khanvilkar as trainer was signed by Ms. Chaitra Khanvilkar and on behalf of MCA by Respondent as Jt. Hon. Secretary.** Again, MCA on 27-8-2021 appointed Ms. Chaitra Khanvilkar as trainer for Mumbai Senior Women's Team for the season 2021-2022. All the above were direct appointments of Ms. Chaitra Khanvilkar as Trainer by MCA for its Women Cricket Teams. Thus consistently from 2014 till 2018 and even thereafter, every year Ms. Chaitra Khanvilkar was appointed as Trainer by MCA. The Respondent cannot claim to not have knowledge of this fact, and more especially at least till 2018, especially as the Respondent was signatory as Jt. Hon. Secretary on behalf of MCA to the MOU dated 10-7-2017, whereby Ms. Chaitra Khanvilkar was appointed as Trainer for the period from 21st July 2017 to 31st March 2018 to train the under 19 years girls, who are likely to represent MCA in Cricket tournaments/Leagues/Series. Thus, when the Respondent was elected as Apex Council Member on 4th October 2019, he knew that there is a possibility, if not certainty of his sister Ms. Chaitra Khanvilkar being appointed again as Trainer with MCA. In such case the Respondent should have filed his Declaration as required under Rule 38 (2) of the Memorandum of Association of MCA dated 30-9-2019. Rule 38 (2) for easy reference is reproduced below:

“38. CONFLICT OF INTEREST

(2) Within a period of 15 days of taking any office under the MCA, every Individual shall disclose in writing to the Apex Council any existing or potential event that may be deemed to cause a Conflict of Interest and the same shall be uploaded on the website of the MCA. The failure to issue a complete disclosure, or any partial or total suppression thereof would render the Individual open to disciplinary action which may include termination and removal without benefits. It is clarified that a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency”.

39. It is the case of the Respondent that his sister Ms. Chaitra Khanvilkar was not appointed as Trainer with MCA because of his influence, but his sister Ms. Chaitra Khanvilkar was highly qualified, hence, she was appointed as trainer by MCA from time to time. The issue here, is not about qualifications but of **Transparency**. The Respondent was duty bound to declare about this Conflict of Interest within 15 days of taking Office under the MCA and the same has also to be uploaded on the website of the MCA. This is necessary, so that the members of MCA and the general public should be aware of the conflict of interest. The conflict to be declared can be an existing one or potential event that may be deemed to cause a conflict of interest. The Respondent was well aware that MCA had been appointing his sister Ms. Chaitra Khanvilkar as a trainer as he himself was a signatory to one such agreement in 2017. The period for which she was appointed was 21st July 2017 to 31st March 2018, hence, in 2019, there was not just a remote possibility but definitely a strong possibility that she would

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be appointed as Trainer in 2019 or 2020, in such case a declaration was necessary as mandated under Rule 38(2). It is clarified in Rule 38 (2) that “a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency.”

40. It may also be stated that in the intervening period from 2018 to 2021 Ms. Chaitra Khanvilkar was in fact appointed as Trainer for MCA but through YOS. Regarding MCA signing agreement with YOS and thereafter, the sister of the Respondent being appointed as Trainer by MCA, through YOS, there are some interesting aspects, which I would like to refer to. For this, I would like to refer to the Report of the Cricket Improvement Committee meeting held on 6th July 2018 which has been annexed at Annexure 8 Colly by the Respondent to his reply. Relevant portions thereof read as under:

***“Item No. 1: To consider the proposal of M/s. YOS Sports regarding providing Physios, trainers.*”**

Prof. Dr. Unmesh Khanvilkar informed the members that the Association appoints Physios and Trainers for all its teams every year. However there have been many cases where the staff have left the Association in the middle of the season and the Association struggles to find a good replacement. Also the said staff do not attend the academy on daily basis but expect the full salary. He stated that as per new terms laid down by the Committee of Administrators, the physios and the trainers have to attend the academy on a daily basis. He further stated that applications were called for physios and trainers for the current season and the same were sent to Dr. Kinjal Suratwala for his evaluation. Dr. Kinjal Suratwala did not find any suitable candidate.

He stated that M/s. YOS Sports have approached the Association with a proposal to manage all the physios

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*and trainers throughout the year. They will also train the said physios and trainers. The first preference will be given to the existing Physios and trainers. **The Committee of Administrators have requested the Cricket Improvement Committee to consider the said proposal and give their recommendations**".*

I have noticed that there is nothing on record to show that the Committee of Administrators were informed at any time by the Respondent about the sister of the Respondent being Trainer with MCA from the year 2014 to 2018 and since YOS was providing Physios and Trainers and preference would be given to existing Physios and Trainers, hence, there was a strong possibility that Ms. Chaitra Khanvilkar would be appointed as Trainer through YOS.

It is to be noted that in the Report of the meeting held on 6th July 2018, the Respondent is shown as Jt. Hon. Secretary. The Report shows that thereafter YOS made a presentation before the Cricket Improvement Committee, wherein it was stated by YOS that "First preference will be given to the existing physios and trainers". They will also look at the qualification and experience before making appointments.

On enquiry by a member with YOS about their experience, the reply was that the Company was one year old and has already done a camp for Jharkhand Cricket Association.

Thereafter, the committee members were satisfied with the offerings of YOS and recommended to appoint YOS for one year.

It is pertinent to note that the Respondent had introduced YOS in the meeting on 6th July 2018 and also participated in the decision

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of recommending YOS. In fact, the appointment of YOS was finalised on 12-7-2018, wherein the Respondent is one of the signatories as Managing Committee Members as seen from running page 63 of Annexure 8 of the reply of the Respondent.

The Committee of Administrators had requested the Cricket Improvement Committee to consider the said proposal and give their recommendation, which is seen from the Report of the Cricket Improvement Committee dated 6th July 2018. The meeting of the Cricket Improvement Committee was held on 12-7-2018. Though the Respondent was not part of the Cricket Improvement Committee, the Respondent along with some other members of the Managing Committee were specially invited and their views including that of the Respondent were considered. This is reflected in the Minutes of the Cricket Improvement Committee which was held on 12-7-2018. The minutes further reflect that 34 applications from individuals were received from Physios and Trainers and one Proposal from YOS and YOS was found to be the best and the contract of YOS was finalised at Rupees One Crore, Seventeen Lakhs and Fifteen Thousand only. It comes to mind that if the Respondent had introduced YOS to the Committee on 6-7-2018 in relation to providing Physios and Trainers for MCA and that every year since the year 2014 till 2018, the respondent's sister was being appointed as trainer with MCA, then in the meeting on 12-7-2018, he could have recused himself, when his views were sought on YOS by the Committee because there was every possibility of his sister Ms. Chaitra Khanvilkar being appointed as Trainer by YOS. This is especially so, as Ms. Chaitra Khanvilkar was already among the existing physios and trainers and a statement was already made by

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the respondent and YOS before that Committee that the existing Physios and Trainers were going to be given first preference.

41. One point which jars about the Respondent introducing YOS, is that YOS was introduced by him to the Committee on the ground that there are many cases where the staff left middle of the season and it is difficult to find a good replacement and that the staff do not attend on a daily basis but they expect full salary. He stated that for the current season, applications were called from physios and trainers and none were found suitable. However, immediately thereafter, the Respondent tells the Committee that first preference will be given to existing physios and trainers. This is not in consonance with the earlier part of his statement that there was a problem with the earlier physios and Trainers as they left in the middle of the season or did not attend daily but expected a full salary. If there was a problem with the existing Physios and Trainers, then why should first preference be given to them? Be that as it may, I will not dwell on these issues much, but one point, I wish to emphasize is that, the Respondent took the initiative to introduce YOS and it is through YOS that the Respondent's sister Ms. Chaitra Khanvilkar was appointed as a Trainer with MCA for the women's team for two years in a row that is for Senior Women's Mumbai Team for one day League 2018-2019 and thereafter Trainer for Mumbai Senior Women's Team One Day 2019-2020.

42. It is already reflected above that, from the year 2014 to 2018 Respondent's sister Ms. Chaitra Khanvilkar was being directly appointed as Trainer by MCA and despite the said fact the Respondent on being elected as Councillor has not made a declaration in writing as required under Rule 38(2) regarding any

existing or potential event that may be deemed to cause a conflict of interest. The Respondent has contended that he was not aware of the appointment of his sister as Trainer with MCA between 2018 and 2020, which one finds hard to believe, however, admittedly at least, he knew of the fact of the appointment of his sister as Trainer in MCA for the year 2017-2018 (as the respondent had himself signed the agreement) hence, in 2019, when the respondent was elected, the respondent was aware of a potential conflict of interest. Interestingly, the Respondent has not denied knowledge of the appointment of his sister by MCA as Trainer in 2014 or 2015 or 2017. Looking to continuous appointments of Ms. Chaitra Khanvilkar every year as Trainer with MCA from 2014 to 2018, it can be said with certainty that there was a potential event that may be deemed to cause a Conflict of Interest when the Respondent became an Apex Council Member in 2019. In such case the Respondent should have made a disclosure of the same as stipulated by Rule 38(2) of the MOA. Rule 38 (2) further states that "The failure to issue a complete disclosure, or any partial or total suppression thereof would render the individual open to disciplinary action which may include termination and removal without benefits. It is clarified in Rule 38 (2) that a declaration does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency."

43. For the Season 2021, Ms. Chaitra Khanvilkar came to be appointed by MCA on 27.8.2021 as a Trainer of Senior Women Team. This is also clear from the Minutes of the urgent joint Meeting of the Apex Council dated 13th September, 2021, (Annexure-6 to the Reply) which shows that Chaitra Khanvilkar



was already appointed as a Trainer prior to 7.9.2021 and during the course of the proceedings of the said meeting dated 13-9-2021, the Respondent informed that the list of support staff was shared with him on 7th September 2021 and it was observed that Ms. Chaitra Khanvilkar has been appointed as Trainer of Senior Women team, and as an Apex Council member he was not aware of the appointment, since the Apex Council had not approved the said appointment, the Respondent would like to recuse himself, if Chaitra Khanvilkar's matter is to be discussed. It is noticed that in that meeting the issue of appointment of Ms. Chaitra Khanvilkar did not come up for discussion as is seen from the very same minutes. Moreover, on behalf of the Respondent, no minutes of any Apex Council meeting or any other meeting could be pointed out, where the issue relating to appointment of Ms. Chaitra Khanvilkar came up for discussion and the Respondent got himself recused.

44. Mrs. Rao had submitted that the sister of Respondent Ms. Chaitra Khanvilkar came to be initially appointed in the year 2014 and the Respondent became the Joint Secretary in the year 2015, therefore, there was **no occasion for the Respondent to declare the conflict of interest** immediately thereafter or even after he became the member of the Apex Council, **as the Respondent was not asked to file the same**. In my opinion this submission is not acceptable, as the Respondent was having knowledge that his sister Mrs. Chaitra Khanvilkar was initially appointed in the year 2014 as Trainer. It is extremely important to note that Ms. Chaitra Khanvilkar was appointed by MCA on 22.6.2014 as Trainer of Mumbai women's under 19 team for season 2014-2015. Ms. Chaitra Khanvilkar was again appointed by MCA as Trainer of Mumbai

Women's under 19 Team on 9-7-2015. This was for season 2015-2016. Thereafter, Ms. Chaitra Khanvilkar was again appointed by MCA as Trainer vide Memorandum of Understanding dated 10th July 2017. This MOU was for the period from 21st July 2017 to 31st March 2018 to train the under 19 years girls, who are likely to represent MCA in Cricket tournaments/Leagues/Series. This MOU was signed by Ms. Chaitra Khanvilkar and on behalf of MCA by Respondent as Jt. Hon. Secretary. All the above were direct appointments of Ms. Chaitra Khanvilkar as Trainer by MCA for its Women Cricket Teams. Again, MCA on 27-8-2021 appointed Ms. Chaitra Khanvilkar as trainer for Mumbai Senior Women's Team for the season 2021-2022. Thus consistently from 2014 till 2018 and even thereafter, every year Ms. Chaitra Khanvilkar was appointed as Trainer by MCA. The Respondent cannot claim to not have knowledge of this fact, especially till 2018, as the Respondent was signatory as Jt. Hon. Secretary on behalf of MCA to the MOU dated 10-7-2017, whereby Ms. Chaitra Khanvilkar was appointed as Trainer for the period from 21st July 2017 to 31st March 2018 to train the under 19 years girls, who are likely to represent MCA in Cricket tournaments/Leagues /Series. Thus, when the Respondent was elected as Apex Council Member on 4th October 2019, he knew that there is a possibility if not certainty of his sister Ms. Chaitra Khanvilkar being appointed again as Trainer with MCA. In such case the Respondent within 15 days of taking office as Councillor should have filed his Declaration as required under Rule 38 (2) of the Memorandum of Association of MCA dated 30-9-2019. The Respondent does not have to wait for someone to tell him to file such declaration but he just has to follow the Memorandum of Association of the MCA that is the Constitution of MCA strictly.

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The Memorandum of Association clearly mandates that a Declaration shall be made within 15 days of taking office about existing or potential conflict of interest. This Declaration has also to be uploaded on the website. Thus, it is a case of direct conflict of interest, regarding which there was no transparency by the Respondent.

45. It is pertinent to note that from the year 2014 to 2018 every year Ms. Chaitra Khanvilkar the sister of the Respondent was being appointed as Trainer by the MCA for the Women's Team. The Respondent has not denied this fact. The Respondents's denial of knowledge is only relating to the appointment of his sister Ms. Chaitra Khanvilkar as Trainer by MCA for the Women's Team in August 2021, or at the most, assuming in his favour, after 1st April 2018. As the Respondent himself, had signed the agreement dated 10-7-2017 as Jt. Secretary of MCA, appointing his sister Ms. Chaitra Khanvilkar as Trainer for MCA for the Women's Team, which MOU was for a period from 21st July to 31st March 2018, the Respondent cannot now claim ignorance of the same. This fact of the Respondent signing the said MOU is sufficient to hold that the Respondent was well aware that his sister Ms. Chaitra Khanvilkar was appointed as Trainer by the MCA for the period from 21st July 2017 to 31st March 2018 and hence, in 2019 there was strong possibility if not certainty that his sister Ms. Chaitra Khanvilkar would be appointed by MCA as Trainer for the Womens Team. When Ms. Chaitra Khanvilkar was appointed by MCA as trainer by the MOU dated 10.7.2017 signed by the Respondent, obviously, it would be on the basis of her past record of appointments by MCA as trainer since 2014, hence, the Respondent cannot feign any

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ignorance of the same. This fact clearly leads to the only conclusion that though the Respondent is in conflict of interest with the MCA or the game of Cricket, he failed to declare the conflict of interest within 15 days of becoming an Apex Council Member in 2019. In 2019, when the Respondent became an Apex Council Member, there was a strong possibility of his sister Ms. Chaitra Khanvilkar being appointed as Trainer by MCA. More so, because the Respondent's sister Ms. Chaitra Khanvilkar being appointed by MCA as Trainer for the Womens' Team every year from 2014 to 2018, she would in the year 2019 certainly be in the zone of consideration as Trainer for the Womans' Team. Moreover, the Respondent after becoming an Apex Council member would be said to occupy a post that calls for decisions of governance or selection to be made, hence, he would be said to be in a position of influence as visualised under Rule 38 (1)(v) of the MOA. The Respondent can certainly be said to occupy a post that calls for decisions of governance, in view of Clause 14 (1) of the MOA which states that "There shall be an Apex Council for the MCA which shall be primarily responsible for the governance of the affairs of the Association". Thus, in view of all these facts it is a clear case of conflict of interest. Moreover, it is clear that the conflict of interest of the Respondent is not tractable and falls under Rule 39(3) of the Constitution of the MCA. This is so, because there is no full disclosure of the interest involved by the Respondent in October 2019 when he became an Apex Council Member. In fact, there was not even a partial disclosure at that time or any time thereafter and the so called recusal which is being relied upon by the respondent came in the year 2021, to be precise on 13th September 2021. A person cannot violate the Constitution and after the issue regarding the violation is over, thereafter say that now as the conflict



does not exist, there is no question of taking any action against him or that even if there was a conflict of interest, it is tractable. If a full disclosure had been made by the Respondent within 15 days of being becoming an Apex Council member and he ensured that it was put up on the website of MCA, the conflict would have been permissible or excusable as there would be transparency, however, as it was not done, the dispute cannot be said to be tractable. Thus, it has to be declared that there is a conflict of interest and the same is not tractable.

46. Also all facts relating to appointment of Ms. Chaitra Khanvilkar sister of the Respondent as a Trainer with MCA through YOS indicate that the Respondent had used his position to influence in the selection process of YOS and that of his ^{sister} Ms. Chaitra Khanvilkar as a Trainer through YOS. Thus, this also constitutes a case of conflict of interest, regarding which there was no transparency by the Respondent. I hasten to add that in this entire matter, no fault is found with Ms. Chaitra Khanvilkar, but, it is the conduct of the Respondent which is found faulty and not excusable, especially regarding not maintaining transparency and not filing the necessary Declaration and not following the mandatory requirements under Rule 38(2) of the MOA. b

47. The second grievance of the Complainant against the Respondent is that, the Respondent is disqualified from continuing as a Councillor as the Respondent has to now compulsorily undergo a cooling off period. In relation to this, it was contended by Mrs. Rao that the disqualification of not continuing for more than 2 terms without a cooling off period would not apply to the Respondent, 87

because such disqualification would apply to Office Bearers only and though the Respondent was an Office Bearer earlier, at present he is not an office bearer but a member of the Apex Council. On going through the Memorandum of Association, it is seen that the provisions relating to cooling off period for Office Bearer and Councillor is similar. The provision relating to cooling off period of an Office Bearer is stated in Rule 6 (4) which is as under:

“6. Election and term of Office Bearers

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*(4) An Office Bearer who has held **any post** for two consecutive terms either in any State Association or in the BCCI (or combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the cooling off period, such an Office Bearer shall not be a member of the Governing Council or of any Committee whatsoever of any State Association or of the BCCI. (Emphasis supplied)”.*

48. As far as cooling off period of a member of the Apex Council is concerned, it is provided in Clause 14 (4) which is as under:

*“14(4) Each of the elected Councillors shall have a term of three years in Office, subject to a maximum of three terms on the Apex Council. A Councillor who has held **any post** for two consecutive terms either in any State Association or in the BCCI (or combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the cooling off period, such a Councillor shall not be a member of the Governing*

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Council or of any Committee whatsoever of the MCA or of the BCCI or of any other State Association. The expression "Councillor" should not be permitted to be circumvented by being a member of any other Committee or of the Governing Council in MCA or in BCCI or any other State Association as the case may be. (Emphasis supplied)".

49. The words "Any Post" in Rule 6(4) and Rule 14(4) are important, it means that an Office Bearer or Councillor who has held **any post** for two consecutive terms shall not be eligible to contest any further election without a cooling off period. As far as a Councillor is concerned, Rule 14(2) is also relevant. Rule 14(2) states that "The Apex Council shall comprise of 17 Councillors of whom 5 shall be the elected Office Bearers as per Rule 6" Therefore, the term Councillor would also cover the post of Office Bearer. Under Rule 6 the Jt. Secretary is also an Office Bearer. Prior to becoming a Councillor, the Respondent was the Jt. Secretary. He was admittedly earlier an Office Bearer, hence now, he cannot continue in Office for more than 6 years.

50. Moreover, in my opinion, the term '**Any Post**' cannot be given a restricted meaning and has to be read in the wide sense of the term. It has to be read and understood keeping in mind the reasons stated in the "Lodha Committee Report" (chaired by the Hon'ble Justice R. M. Lodha former Chief Justice of India) and the decisions of the Supreme Court accepting the reforms in the administration of cricket as suggested in the Lodha Committee report. In making the recommendations the Lodha Committee was mainly guided by the need to ensure that vested interests do not emerge out of the indefinite continuation in office of one or more

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individuals. In relation to this aspect the Supreme Court has observed that the recommendations can be construed as an effort to ensure a dispersal of authority so that control over BCCI and the State Associations is not concentrated in the hands of one or a limited group of persons. If the words 'any post' is used in the narrow sense, it would lead to disastrous results which are not in consonance with the letter and spirit of the Lodha Committee Report or the Supreme Court decisions accepting the recommendations in the said Report. For example: a person will be elected as Councillor in MCA for two terms each of a duration of 3 years, thereafter, the person will become a managing Committee Member and say that during this period he is observing the cooling off period as Councillor. After that, the said person can again stand for elections and be appointed Councillor for one more term, after which period he can become Office Bearer or Committee member for 2 terms of 3 years each, i.e. another 6 years. Thus, the said person would continuously be holding a post in MCA for 18 years. This kind of results have to be avoided at all cost, if the Supreme Court order is to be adhered to.

51. The above reasoning deals with the contention of the Respondent that the 'Cooling off period' is not attracted in his case and brings out the fallacy of his contention. So far as the existing office bearers of the BCCI and the State Associations are concerned, the Hon'ble Supreme Court (Coram: Hon'ble T. S. Thakur CJ, Hon'ble A. M. Khanvilkar and Hon'ble D. Y. Chandrachud, JJ.) has observed in paragraphs 17 & 18 of the order dated 2.1.2017 passed in *Civil Appeal No. 4235 of 2014 (Board of Cricket Control of India Vs. Cricket Association of Bihar and others)* along with Civil



Appeal No. 4236 of 2014 with Civil Appeal No. 1155 of 2015, as under:

“17. Among the recommendations of the Committee that have been accepted by this Court are the following disqualifications for being an office bearer of BCCI and of the State Associations :

A person shall be disqualified from being an Office Bearer if he or she :

(a) is not a citizen of India;

(b) has attained the age of 70 years;

(c) is declared to be insolvent, or of unsound mind;

(d) is a Minister or Government Servant;

(e) holds any office or post in a sports or athletic association or federation apart from cricket;

(f) has been an Office Bearer of the BCCI for a cumulative

period of 9 years;

(g) has been charged by a Court of Law for having committed any criminal offence.

*18. The Committee has in its status report dated 14 November 2016 drawn the attention of the court to the fact that several office bearers both of BCCI and the State Associations continue to hold posts although they stand disqualified in terms of the above norms which have been accepted by this Court. Persons who have a vested interest in continuing in their positions inspite of the norms noted above have ensured that the writ of the court is obstructed and impeded. We need to emphasise that the turf of the cricket field is not a personal turf or fiefdom. **We must hence order and direct that no person shall hereafter continue to be or be entitled for appointment as office bearer of BCCI or a State Association in breach of the above norms. All existing office bearers of BCCI and of the State Associations who do not fulfill the above norms shall with effect from the date of this Order stand disqualified”.***

(Emphasis supplied)

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52. No doubt the present Constitution of MCA was brought into force w.e.f. 30.9.2019 when the General Body of then MCA allowed to bring the present Constitution in existence. However, much prior to that the Hon'ble Supreme Court decided Civil Appeal No. 4235 of 2014 (*Board of Control for Cricket in India Ors. Vs. Cricket Association of Bihar & Ors. vide judgement dated 16th July 2016 (Principal Judgement)*) and gave directions to BCCI and the State Associations to follow the recommendations in the Lodha Committee Report which were accepted by the Supreme Court. The State Associations did not agree to implement some of the recommendations of the Lodha Committee. This was brought to the notice of the Hon'ble Supreme Court by the Learned Senior Counsel appearing on behalf of the BCCI, which is reflected in the order dated 21ST October 2016 of the Supreme Court in Civil Appeal No. 4235 of 2014 (*Board of Control for Cricket in India Ors. Vs. Cricket Association of Bihar & Ors.*). The Supreme Court in view of the statement made, issued additional directions on 21st October 2016, which are as under:

"BCCI shall forthwith cease and desist from making any disbursement of funds for any purpose whatsoever to any state association until and unless the state association concerned adopts a resolution undertaking to implement the recommendations of the Committee as accepted by this Court in its judgement dated 18th July 2016."

One of the recommendations was regarding person holding **any post** in the Association not continuing beyond a certain period. On going through the present Constitution of the MCA, particularly,

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Rule 6(3) it is clear that no person shall be an Office Bearer in any state association **regardless of post** for more than three terms in all. Even though the present Constitution of the MCA came into effect w.e.f. 30.9.2019, in view of the various decisions of the Supreme Court in Civil Appeal No. 4235 of 2014 ***Board of Control for Cricket in India & Ors. Vs. Cricket Association of Bihar & Ors.*** which are also reproduced in the earlier paras, a member of the Governing Council or any other Committee or an office bearer of the Association including Councillor, cannot continue more than 6 years consecutively unless 3 years cooling off period has expired and during the said 3 years cooling off period, such person shall not hold any office, or shall not be member of any Governing Council or any other Committee of the BCCI or any State Association.

53. Even though the Constitution of the MCA came into force w.e.f. 30.9.2019, as per the observation of the Supreme Court in para 18 of the judgment in Civil Appeal No. 4235 of 2014 dated 2.1.2017 (***Board of Control for Cricket in India Ors. Vs. Cricket Association of Bihar & Ors.***)(supra), that the cooling off period will come into operation upon a person holding **any post** for two consecutive terms of the total period exceeding six years. It is specifically stated in para 25 of the said Order, which is the operative part of the Order, as under:

“25. For the above reasons, we order and direct as follows:

(i) All of the office bearers of BCCI and its affiliated State Associations who fail to meet the norms recommended by the Committee and accepted by this Court shall forthwith demit and cease to hold office

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One of the norms stated is that the person has been an Office Bearer of BCCI for a cumulative period of nine years. That the term BCCI would also apply to State Associations affiliated to BCCI was clarified by the Supreme Court, in its later judgement dated **9-8-2018** in the very same Civil Appeal No. 4235 of 2014 ***Board of Control for Cricket in India & Ors. Vs. Cricket Association of Bihar & Ors.*** reported in **(2018) 9 SCC 624** (Coram: Hon'ble Shri Dipak Misra CJ, Hon'ble Justice A. M. Khanvilkar and Hon'ble Justice D. Y. Chandrachud). In this judgement, the point regarding the said period of nine years was clarified by the Supreme Court in para 37 by observing thus:

37. The cooling – off period shall read as follows:

“An office bearer who has held any post for two consecutive terms either in a state association or in the BCCI (or a combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the cooling off period, such an office bearer shall not be a member of the governing council or of any committee whatsoever of the BCCI or of a state association”.

54. In paragraphs 36 and 37 of the judgment dated 9th August, 2018 in ***Civil Appeal No. 4235 of 2014 (supra)***, on the point of cooling off period, the Hon'ble Supreme Court has observed thus:

“36. However, in our view, it would be appropriate to direct that a cooling off period of three years would apply after an individual holds two successive terms in office either in BCCI or any other State Association or a combination of the two. For instance an office Bearer has held office for two consecutive terms in any post in a State Association, such an individual must face a cooling off period of three years, Likewise, if an individual has held any post as an Office Bearer of


By

BCCI for a total period of six years in succession, the individual must have a cooling off period of three years before seeking election again either to BCCI or the State Association.....This would ensure that after a period of six years involving two consecutive terms a cooling off period would be attracted. Allowing an individual to act as an office-bearer for six years in continuation is a sufficiently long period for experience and knowledge gained to be deployed in the interest of the game without at the same time resulting in a monopoly of power.

37. The cooling off period shall read as follows:

An office bearer who has held any post for two consecutive terms either in a state association or in the BCCI (or a combination of both) shall not be eligible to contest any further election without completing a cooling off period of three years. During the cooling off period, such an office bearer shall not be a member of the governing council or of any committee whatsoever of the BCCI or of a state association.

The above principle shall govern Clause 6 (4) as well as Clause 14 (4) of the draft Constitution. The above principle will ensure that the cooling – off period will come into operation upon a person holding any post for two consecutive terms not exceeding six years.”

55. The Supreme Court in para 32 of the very same Judgment dated 9-8-2018 in Civil Appeal No. 4235 of 2014, has further observed that “Understood from the above perspective, the requirements that the term of office of an office bearer should be three years; and that an individual should not hold office in the BCCI or a State Association for a period in excess of nine years (regardless of the post held) with a similar stipulation of nine years for the state associations is manifestly in public interest. Both the stipulations are valuable safeguards to ensure against the concentration of power.” 

56. The Supreme Court in the very same judgment dated 9th August, 2018 in Civil Appeal No. 4235 of 2014(*supra*), in para 31 of the judgment has held that:

“Dispersal of authority is a necessary safeguard to ensure against the perpetuation of power centres. Individuals who administer the game of cricket must realise that the game is perched far above their personal interests. Important as experience in administration is, it is far-fetched to assume – and far more difficult for the court to accept – that experience rests on the shoulders of a closed group of a few individuals. In fact, opportunities to a wide body of talent encourage a dispersal of experience and democratisation of authority.”

57. Thereafter the Supreme Court in para 35 and 36 of the above referred judgment, dated 9-8-2018 in Civil Appeal No. 4235 of 2014 has held that:

“35. Having carefully evaluated the submissions which have been urged before us, we are of the view that a cooling off period should be observed. A cooling off period has several features which are of utmost importance : (i) it is a safeguard against the development of vested personal interests; (ii) it ensures against the concentration of power in a few hands; (iii) it facilitates a dispersal of authority; and (iv) it encourages the generation of a wider body of experienced administrators. Cooling off must be accepted as a means to prevent a few individuals from regarding the administration of cricket as a personal turf. The game will be better off without cricketing oligopolies”.

SV

The Supreme Court in para 36 of the very same judgment dated 9-8-2018 in Civil Appeal No. 4235 of 2014 (supra) has observed as under:

*“However, in our view, it would be appropriate to direct that a cooling off period of three years would apply after an individual holds two successive terms in office either in the BCCI, or in any state association or a combination of the two. **For instance, if an office bearer has held office for two consecutive terms in any post in a state association, such an individual must face a cooling off period of three years.** Likewise, if an individual has held any post as an office bearer of the BCCI for a total period of six years in succession, the individual must have a cooling off period of three years before seeking election again either to the BCCI or to a state association. The cooling off period would apply also in a situation where an individual holds a post for one term in a state association followed by a post in the BCCI successively or vice versa. **This would ensure that after a period of six years involving two consecutive terms, a cooling off period would be attracted.** Allowing an individual to act as an office bearer for six years in continuation, is a sufficiently long period for experience and knowledge gained to be deployed in the interest of the game without at the same time resulting in a monopoly of power.”*

(Emphasis supplied)

The above wording used by the Hon'ble Supreme Court, which has been highlighted, clearly shows that after a period of 6 years, a cooling off period would be attracted. The Respondent has also completed a period of 6 years involving two consecutive terms, hence, in view of the above decision of the Supreme Court, the Respondent has to now face a cooling off period. *by*

58. The Hon'ble Supreme Court in the very same decision dated 9.8.2018 in para 38 in Civil Appeal No. 4235 of 2014 (*supra*) clarified about the cooling off period as follows:

"38. We accordingly clarify that the position as approved by the Court in the present order shall be to the following effect:

- (i) The term for all posts of office bearers in BCCI and in state associations shall be three years;*
- (ii)*
- (iii)*
- (iv) There shall be a cooling off period of three years after an individual has held the post of an office bearer for two consecutive terms either in a state association or in the BCCI or a combination of both and;*
- (v) "*

59. In this connection useful reference can also be made to the Memorandum of Association as amended on 8-10-2003, especially Rule 16 (b) (i) and Rule 18. Rule 16(b) (i) states that the President, Vice Presidents, Hon Treasurer and two Jt. Hon. Secretaries shall be elected at an Annual General Meeting. They shall hold office for two years **and remain in office until their successors are elected.** Rule 18 which deals with Tenure of Office reads as under:

"Rule 18. All office bearers and members of the Committee shall save as otherwise provided hold office for two years and shall remain in office until their successors are elected."

It is an admitted fact that the respondent was elected on 17.6.2015 as Joint Secretary of MCA, thereafter elections were held only on 4.10.2019 and on 4.10.2019 the Respondent was elected as

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a member of the Apex Council. In view of the earlier MOA, the Respondent continued to be Jt. Secretary till 4.10.2019. Thereafter on 4.10.2018, he became member of the Apex Council, which post he holds till today. The period of both posts taken together is more than 6 years, hence, the Respondent has to now face a cooling off period.

60. On behalf of the respondent, it was submitted that the High Court by Order dated 6.4.2018 appointed the Respondent from 6.4.2018 till 11.4.2018 to look after the administration of MCA and be the signatory to the bank accounts and later on he was acting as signatory to the bank documents and was looking after day to day administration as per order of the Hon'ble High Court of Bombay from 6.11.2018 till 4.10.2019, hence, this period cannot be taken into account. This contention finds a detailed answer in the submissions of Mr. Bhat in para 14 and 15 above, in which I find much merit, but briefly it can be stated here that though when the Respondent was appointed Jt. Hon. Secretary of MCA on 24.6.2015 the term was only for 2 years, however, even thereafter, the Respondent continued as Jt. Hon. Secretary which is seen from the MOU dated 12-7-2018 between YOS and MCA, where the Respondent has signed as Jt. Hon. Secretary. At that time the Committee of Administrators was in charge of MCA. The Respondent must have continued as Jt. Secretary even after two years from 17.6.2015, in view of the earlier MOA amended till 2003. Moreover, from the orders of the Hon'ble High Court dated 6.4.2018 and 6.11.2018, it becomes clear that even on 6.4.2018 and 6.11.2018 the Respondent continued to be Jt. Hon. Secretary and on 6.11.2018, the Respondent was an eligible member of the Managing Committee. The Respondent was an eligible member at that time, as he had not on that date exceeded the



maximum period for which he could hold **any post** in MCA, hence, he was appointed as authorised signatory. Had the respondent not been an eligible member of the Managing Committee on 6.11.2018, the Respondent would not have been appointed as authorised signatory by the High Court by Order dated 6.11.2018.

61. It is observed that it is not disputed that after the elections on 17-6-2015, when the Respondent became the Jt. Hon. Secretary, the elections were held only on 4-10-2019 and the Respondent was appointed as a member of the Apex Council on 4-10-2019. In view of the earlier MOA it can be said that from 17-6-2015 to 4-10-2019 the Respondent was an office bearer. This comes to a period of 4 years 3 months and 17 days. Thereafter, from 4-10-2019 he is an Apex Council member till today. Thus, since 17-6-2015 till now, the Respondent is consecutively holding two posts in MCA for a period of more than six years.

62. In view of the above, I find much force in the contention that the Respondent is disqualified from continuing as Councillor in view of Rule 14 (3) and 14 (4) of the MOA as he is a member of the Apex Council and is holding a position as a Councillor or Office Bearer for more than 6 years. Hence, necessary order/direction has to be passed holding that the Respondent is disqualified from continuing as Councillor. If the total period is counted from 17.6.2015 during which the Respondent was office bearer or councillor, it comes to more than six years, in such case, the cooling of period has to necessarily follow.

63. Mrs. Rao, the learned counsel for the Respondent has submitted that an Apex Council Member cannot be said to be an



office bearer and hence, the Respondent at present being an Apex Council Member cannot now be considered to be an Office Bearer. Mrs. Rao submitted that the Respondent was an office bearer for the initial period and thereafter from 4-10-2019 he has become a Councillor, so as of now, the disqualification of being in office for 6 years only would not apply to the Respondent. In support of this contention, the learned counsel for the Respondent has placed reliance on the order dated 20-9-2019 of the Hon'ble Supreme Court in I.A. No. 94179 of 2019 in Civil Appeal No. 4235 of 2014 (**Board of Control for Cricket & Ors. Vs. Cricket Association of Bihar and Ors.**) and contended that the Hon'ble Supreme Court observed therein that "Disqualification shall be confined only to those who had held the post of "Office Bearers" of the Cricket Association". The learned Counsel for the Respondent therefore, submitted that since the Respondent is an Apex Council Member, he cannot be disqualified from the post of the Councillor of the Apex Council as the Respondent is now not an Office Bearer. It is seen that the Hon'ble Supreme Court in the Interim Application No. 94179 of 2019 was considering the case for the election of Assistant Secretary in the Tamil Nadu Cricket Association, and there is no such post of Assistant Secretary in MCA, whereas, the case at hand, relates to Office bearer and Councillor of the Apex Council of MCA, therefore, the reliance placed by the learned counsel for the Respondent on the ratio of the aforesaid decision in Interim Application, is misplaced. Moreover, despite repeated query by me, the Learned Counsel for the Respondent was not able to answer, what was the exact disqualification being referred to by the Hon'ble Supreme Court in the said I.A. It is to be noted that the word used in the Order is "disqualification" and not "disqualifications" and

that there are at least seven different disqualifications. However, despite time being given, Mrs. Rao the Learned Counsel for the Respondent was not able to show which disqualification was being referred to by the Supreme Court. It is also to be noted that the order pertained to the Tamil Nadu Cricket Association and the Memorandum of the Tamil Nadu Cricket Association and the MCA is not exactly the same. Hence, I am of the opinion that this Order cannot be made applicable to the case of the Respondent.

64. So far as the submission of Mrs. Rao that an Office Bearer cannot be said to be Councillor is concerned, I would like to refer to Rule 14(2). Rule 14(2) of the Constitution of the MCA stipulates that "the Apex Council shall comprise of 17 Councillors of whom 5 shall be the elected Office Bearers as per Rule 6 and out of remaining 12, 9 shall be ordinary elected members, 2, one each male and female nominated member by Cricket Player's Association and 1 nominated member by Accountant General of Maharashtra. This means that the term "Councillor" includes Ordinary member, nominated members and the Office Bearers as per the Constitution of the MCA, therefore, the said submission of learned counsel Mrs. Rao that Office Bearer cannot be said to be a Councillor, is incorrect.


65. In view of the extensive observations made by me in the foregoing paras, it is clear that the Respondent is disqualified from continuing as Councillor.

66. On going through the contents of the Complaint, I am of the opinion, that the Complaint is very much tenable. Hence, on both



the counts i.e. (1) As the Respondent has held 2 consecutive posts in MCA that is as Jt. Secretary and as member of the Apex Council for more than six years which is in contravention of Rule 14(4) which says that a Councillor who has held **any post** for two consecutive terms either in a State Association or in BCCI (or combination of both), shall not be eligible to be a member or councillor of the Apex Council without completing a cooling off period of three years, and (2) That though there was a potential, if not existing conflict of interest of the Respondent in relation to appointment of Ms. Chaitra Khanvilkar who is the sister of the Respondent, as a Trainer for MCA when the Respondent became an Apex Council member on 4.10.2019 and yet the Respondent did not declare the same within 15 days as mandated by Rule 38 (2) of the MOA of MCA, in such case the Respondent is duty bound to get relinquished from his duty as a Member of the Apex Council with immediate effect. As quoted above in this order, the Hon'ble Supreme Court, in para 18 in the decision dated 2.1.2017 in Civil Appeal No. 4235 of 2014 (**Board of Control for Cricket in India and others Vs. Cricket Association of Bihar & Ors.**)(supra) has held that *"we must hence order and direct that no person shall hereafter continue to be or be entitled for appointment as office bearer of BCCI or a State Association in breach of the above norms. All existing office bearers of BCCI and of the State Associations who do not fulfil the above norms shall with effect from the date of this Order stand disqualified"*.

67. In view of the above decision of the Supreme Court and the other judgments and orders of the Hon'ble Supreme Court reflected above, it is declared that the Respondent- Mr. Unmesh Khanvilkar



is disqualified from continuing as a Councillor or Member of the Apex Council of the MCA since as on today, the Respondent has completed a period of more than six years in two consecutive posts in MCA and hence, the Respondent should face the cooling off period of three years with immediate effect.

68. After considering all the relevant factors, especially in view of the reasoning in para 45 above, it is further declared that the conflict of interest of the Respondent with the MCA is not tractable. Therefore, on both these counts, it is held and declared that the Respondent is disqualified from continuing as a Councillor, hence, the Respondent has to cease to be a member of the Apex Council of the MCA and he shall relinquish interest as Councillor or member of the Apex Council of the MCA with immediate effect. Ordered accordingly.

69. In view of the above, this Complaint is allowed and is disposed of.

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