

**BEFORE HON'BLE MR. JUSTICE M.M. KUMAR (RETD.)  
FORMER CHIEF JUSTICE, HIGH COURT OF J&K,  
OMBUDSMAN-CUM-ETHICS OFFICER  
DELHI & DISTRICT CRICKET ASSOCIATION (DDCA)**

**1. IN THE MATTER OF:**

Naveen Jindal ..... Complainant  
Versus  
Shashi Khanna & Anr. .... Respondent

**2. AND IN THE MATTER OF:**

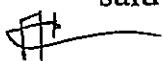
Gurpreet Sareen ..... Complainant  
Versus  
Shashi Khanna & Anr. .... Respondent

**ORDER  
(DATED 13.05.2024)**

1. On 03.11.2023, Mr. Naveen Jindal filed a complaint, invoking the jurisdiction of the Ombudsman under Article 42(1)(a) of the Articles of Association of the DDCA, alleging that the Respondent - Mrs. Shashi Khanna, Vice President of DDCA has attained the age of 70 years on 26.09.2023 and by virtue of Article 17(4)(b) of the Articles of Association of the DDCA she stands disqualified to hold the said post. However, she continues to occupy and use the office cabin of the Vice President and attend meetings of the DDCA, and refuses to step down.
2. On 07.11.2023, Mr. Gurpreet Sareen also filed a complaint alleging violation of Article 8(5)(b) of the Article of Association of DDCA by Mrs. Shashi Khanna as she continues to hold and attend the office of the Vice President and as such, she is misusing the privileges associated with the said office, despite attaining the age of 70 years on 26.09.2023.
3. Subsequently, Mr. Gautam Dutta, Ld. Counsel for the Complainant filed certain documents on 21.11.2023 to substantiate the date of birth of the Respondent-Shashi Khanna.
4. After hearing the Ld. Counsel for the Complainant, Notice was issued to the Respondent- Mrs. Shashi Khanna vide Order dated 02.12.2023, and she was directed to file her reply. Further, DDCA was also directed to file the status report.
5. A detailed Reply-cum-Status Report was filed by DDCA on 15.12.2024, wherein a preliminary issue regarding the maintainability of the present complaint(s) was raised and jurisdiction of the Ombudsman has also been questioned. However, on behalf of Mrs. Shashi Khanna a request for filing reply was made by her Counsel, Mr. Amaya Nair. Accordingly,

*(Signature)*

- time was granted and it was clarified that if by 22.12.2023 pleadings were not completed, the arguments shall be heard on 23.12.2023.
6. At the hearing on 23.12.2023, Mr. Sameer Dewan, Ld. Counsel for the Respondent- Mrs. Shashi Khanna, applied for an adjournment and the Ombudsman showed inclination to reject the request. Then he was allowed to seek instructions, '*as to whether she would continue participation in the proceedings of DDCA or she would discontinue till the final order is passed*'. Thereafter, Mr. Sameer Dewan, Ld. Counsel reported instructions that Mrs. Shashi Khanna undertook not participate as Vice President either in the meeting of AGM or Apex Council or any other meeting in her capacity as Vice President. It was also informed that the Respondent - Mrs. Shashi Khanna did not participate in the meeting of the Apex Council held on 03.12.2023. However, as a Member (J-450), she would participate because there is no age bar of 70 years as far as Members are concerned. The aforesaid statement was taken on record vide Order dated 23.12.2023, and the Respondent No. 1 was directed to abide by the aforesaid undertaking till further orders. Further, additional time was granted to file reply on behalf of Respondent- Mrs. Shashi Khanna. The aforesaid undertaking operates even today.
  7. On 20.01.2024, the Respondent- Mrs. Shashi Khanna filed the respective Reply in both the Complaint(s) to inter alia raise the preliminary issue of maintainability of the complaints. Further, it has been averred that the Respondent- Mrs. Shashi Khanna has filed an Application in C.A. No. 4235/2014 before the Hon'ble Supreme Court to seek a clarification regarding the same issue, as raised in the present complaints, and that the Hon'ble Supreme Court had taken cognizance of the aforesaid Application for Clarification. Therefore, it was prayed for the present complaints to be adjourned sine die, pending decision of the Hon'ble Supreme Court.
  8. In view of the aforesaid, it was deemed appropriate to first decide the preliminary issue of maintainability of the present Complaint(s) before me. Accordingly, the matter was listed on 05.02.2024 for hearing.
  9. At the outset, Mr. Gautam Dutta, Ld. Counsel for the Complainants submitted that he did not wish to file any rejoinder to the preliminary issue raised by the DDCA and the Respondent- Mrs. Shashi Khanna. He requested to address arguments without filing a rejoinder.
  10. I heard Mr. Saurabh Chadda, Ld. Counsel for the DDCA, Mr. Sameer Dewan, Ld. Counsel for the Respondent- Mrs. Shashi Khanna, and Mr. Gautam Dutta, Ld. Counsel for the Complainants, and the order was reserved.
  11. After hearing the arguments of the parties, they were granted liberty to file their respective written submissions on or before 12.02.2024. The said timeline was extended by one week vide email dated 24.02.2024.



However, no written submissions have been filed by any party till date. Hence, the Order is being passed based on the oral arguments advanced by the parties.

**SUBMISSIONS ON BEHALF OF THE DDCA**

12. Mr. Saurabh Chadda, Ld. Counsel for DDCA submitted that the complainant has raised issues related to disqualification of a Director; calling of a Special Annual General Meeting (SGM); holding of elections; and appointment to the post of Vice President. All of the aforesaid prayers fall within the sole jurisdiction of the National Company Law Tribunal (hereinafter referred to as 'NCLT') under the Companies Act, 2013 (hereinafter referred to as the "Companies Act"). Further, as per Section 6 of the Companies Act, the Companies Act overrides anything contrary contained in the Memorandum of Association and Articles of Association of a company. Hence, the present Complaint is not maintainable before the Ombudsman.
- 12.1. To buttress his arguments, Mr. Chadda relied upon the (i) Judgement dated 21.09.2020 passed by the Hon'ble High Court of Delhi in FAO No. 92/2020'; and (ii) Judgment dated 23.11.2023 passed by the Hon'ble High Court of Delhi in W.P. (C) No. 17415/2022 titled as 'H R Sharma Vs. Delhi and District Cricket Association & Ors.'; and (iii) judgment of the Hon'ble Supreme Court in *Zuari Cement Ltd vs Regional Director, Employees State Insurance Corporation, Hyderabad Ors, (2015) 7 SCC 690*, and submitted that Section 241 to 245 of the Companies Act provide the remedy to redress the grievance raised in the present complaint(s), and by virtue of Section 430 of the Companies Act only the NCLT has the power to pass any order on such issues. Hence, the present complaints are not maintainable, and the Complainants ought to be directed to approach the NCLT.
13. Mr. Chadda also submitted that Mr. Siddharth Sahib Singh, Hony. Secretary of DDCA has filed an Application being Interlocutory Application No. 223744/2023 in Civil Appeal No. 4235 of 2014 before the Hon'ble Supreme Court seeking the same relief, as prayed in the present complaints. Hence, the present complaints ought not to proceed further, till the decision of the Hon'ble Supreme Court.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT- MRS. SHASHI KHANNA**


14. Mr. Sameer Dewan, Ld. Counsel on behalf of the Respondent – Mrs. Shashi Khanna adopted the same arguments as raised by Mr. Saurabh Chadda.



15. He further submitted that the Respondent- Mrs. Shashi Khanna had filed Application for Impleadment and Application for Clarification in C.A. No. 4235/2014 before the Hon'ble Supreme Court to seek a clarification regarding the same issue, as raised in the present complaints. Further, the Hon'ble Supreme Court vide Order dated 08.01.2024 has taken cognizance of the aforesaid Applications, and directed the Respondent to supply a copy of the said Applications to the Ld. Amicus Curiae. Therefore, he submitted that the present complaints ought to be adjourned.

### **SUBMISSIONS ON BEHALF OF THE COMPLAINANTS**

16. Mr. Gautam Dutta, Ld. Counsel for the Complainants submitted as follows:-
- 16.1. The Hon'ble Supreme Court vide Judgment and Order dated 09.08.2018 passed in "*Board for Control of Cricket in India and another versus Cricket Association of Bihar and others*" reported in "(2018) 9 SCC 624" approved the draft constitution of BCCI under Article 142 of the Constitution of India, and directed *inter alia* each of the member associations to register their respective constitutions on similar lines within 30 days after the BCCI Constitution is registered.
- 16.2. DDCA is affiliated to BCCI, and the constitution of BCCI must be followed by all the State Associations including DDCA. Hence, the DDCA is bound by its Articles of Association, and cannot contend anything contrary to the Articles of Association. He also submitted that the office of the Ombudsman is a creation of the aforesaid judgment. Hence, the Ombudsman has to follow and is bound to enforce the said constitution i.e. the Articles of Association.
- 16.3. The objective and rationale of including the age-related disqualification in the Articles of Association has been discussed by the Hon'ble Supreme Court in the Judgment dated 18.07.2016 passed in "*Board for Control of Cricket in India and Anr. versus Cricket Association of Bihar and others*" reported in "(2016) 8 SCC 535" wherein while accepting various recommendations made by Justice Lodha Committee Report dated 18.12.2015, the Hon'ble Supreme Court mentioned that an office-bearer shall be disqualified from contesting or holding the post if he has completed the age of 70 years.
- 16.4. Further, in the aforesaid Judgement dated 18.07.2016, it has been observed that the Ombudsman is provided with vast powers to decide disputes inter alia within the associations.
- 16.5. According to Mr. Dutta none of the judgments cited by the Ld. Counsel for DDCA deals with the jurisdiction and/or has considered the dispute resolution process of the Ombudsman under the Articles of Association. Further, in all the cited judgments, there was an order passed by the

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Ombudsman and thereafter the respective orders were challenged before the Hon'ble High Court under Article 226 of the Constitution. Hence, the judgments are not applicable to the present issue.

- 16.6. Mr. Dutta submitted that Section 430 of the Companies Act only bars the jurisdiction of the civil courts. Since, the office of the Ombudsman is not a civil court or civil proceedings, the bar would not be applicable on the present proceedings. Hence, the Ombudsman is empowered to deal with the present complaints.
- 16.7. Lastly, he submitted that the pendency of the Applications before the Hon'ble Supreme Court would have no bearing on the present proceedings.

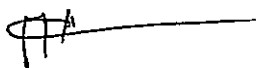
### **FINDINGS & CONCLUSIONS**

17. Before going into the question as to whether the Ombudsman has the jurisdiction to entertain and try the present complaints and grant reliefs prayed for, it is necessary to capture the prayers made in the present Complaint(s). The following prayer(s) have been sought by Mr. Naveen Jindal:-

*“(A) Pass an order, directing that by virtue of the Hon'ble Apex Court Judgements dt.09.08.2018 and Judgement dt.14.09.2022, the Model Constitution of BCCI approved by the Hon'ble Supreme Court mandated to be followed on similar lines by all affiliated units of BCCI, the provisions of the Articles of Association of DDCA, Ms. Shashi Khanna having her date of Birth as 26.09.1953 as declared by her in her application before ROC while applying for DIN, stands disqualified and must demit office of Vice President of DDCA "immediately" having attained the age of 70 years on 26.09.2023;*

*(B) Pass an order, specifically restraining Ms. Shashi Khanna from officiating as the Vice President of DDCA and restraining her further from occupying, using the office cabin of the Vice President at the DDCA office premises or any other office bearer or Director of DDCA and restrain her further from attending any meeting of the Apex Council, Committee, Sub- Committee etc. or involve herself in the decision making of the affairs of DDCA in any manner, whatsoever; and*

*(C) Pass an order, specifically directing the Hony. Secretary of DDCA to immediately comply with Article 17(9)(a) and convene a Special General Body Meeting (SGM) of the Members of DDCA to hold election for the post of Vice*



*President having fallen vacant due to the disqualification of Ms. Shashi Khanna by virtue of Article 17(3)(b) of the Articles of Association of DDCA; and*

...”

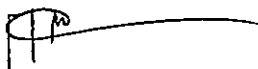
17.1. The following prayer(s) have been sought by Mr. Gurpreet Sareen:-

- “1- *You are requested to direct DDCA to immediately stop this illegality by Mrs Shashi Khanna.*
- 2- *Punish the guilty for not adhering to the SC judgement.*”

18. When I closely examined the order dated 23.12.2023, it becomes patent that the aforesaid prayers were virtually answered by the undertaking given by the Respondent-Shashi Khanna, which has been recorded by the Ombudsman vide Order dated 23.12.2023, which is set out below verbatim:-

“... ”

4. *At this stage, I granted time to Mr. Sameer Dewan to seek instructions from Respondent No. 1 as to whether she would continue participation in the proceedings of the DDCA or till the final order is passed, she will discontinue her participation, as Vice President, in the AGM or Apex Council meetings of DDCA. Accordingly, time is granted to re-convene the meeting at 12 o' clock.*
5. *On the resumed meeting, Mr. Sameer Dewan, learned counsel for the Respondent No. 1 has reported instructions that Mrs. Shashi Khanna will not participate as Vice President either in the meeting of AGM or Apex Council or any other meeting in her capacity as Vice President. He has also stated that as abundant caution, his client i.e. Mrs. Shashi Khanna did not participate in the meeting of the Apex Council held on 03.12.2023. However, as a Member (J-450), she would participate because there is no age bar of 70 years as far as Members are concerned. The statement made by Mr. Sameer Dewan is taken on record and Respondent No. 1 shall abide by it till further orders. Further, Mr. Sameer Dewan is granted time to file reply on behalf of Respondent, No. 1 on or before 15.01.2024, with copy in advance to the counsel for other parties.*
6. *Mr. Chadda has contended that the maintainability issue must be decided before taking up the case on merits and he is ready with his arguments today. However, I deem it appropriate that*



*the said issue will be dealt with after reply is filed by Respondent No. 1.*


...”

19. I have further been informed that in compliance with the aforesaid undertaking, the Respondent – Mrs. Shashi Khanna did not take part in or attend the Annual General Meeting of DDCA held on 27.12.2023 or subsequent thereto.
20. It is pertinent to mention that the aforesaid Complaint(s) were filed on 03.11.2023 and 07.11.2023, respectively. However, prior to the filing of the present Complaint(s), on 23.10.2023, the Hony. Secretary of DDCA i.e. Mr. Siddharth Sahib Singh has filed an Application being Interlocutory Application No. 223744/2023 in Civil Appeal No. 4235 of 2014 before the Hon’ble Supreme Court in Civil Appeal No. 4235 of 2014, wherein *inter alia* the following prayers have been sought:-

“...  
*E. Pass an order directing the Vice-President and any other members having attained the age of retirement to demit office forthwith and direct the DDCA to fill up the positions of such retirees as per the Articles of Association;*  
...”
21. The aforesaid prayer before the Hon’ble Supreme Court is similar to the prayer(s) sought by the Complainant(s) herein.
22. The matter does not end there. Thereafter, the Respondent- Mrs. Shashi Khanna herself filed Application for Impleadment and Application for Clarification in C.A. No. 4235/2014 before the Hon’ble Supreme Court to seek a clarification regarding the same issue, as raised in the present complaints.
23. Furthermore, I have been informed that the Hon’ble Supreme Court vide Order dated 08.01.2024 has taken cognizance of the aforesaid Applications, and directed the parties to supply a copy of the said Applications to the Ld. Amicus Curiae.
24. The aforesaid aspect has not been disputed by the Ld. Counsel for the Complainants. However, he has submitted that pendency of the aforesaid Applications would not be a bar to the present proceedings before the Ombudsman.

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25. It is true that the pendency of the aforesaid Applications before the Hon'ble Supreme Court would not be a bar to exercise or refuse to exercise jurisdiction in the present proceedings. However, it has to be borne in mind that the Application filed by Mr. Siddharth Sahib Singh was prior in time to the present complaint(s). Further, the prayer(s) sought in the present complaint(s) is the same as Prayer E (reproduced above) sought by Mr. Singh before the Hon'ble Supreme Court. Subsequently, the Hon'ble Supreme Court has taken cognizance of the aforesaid Application(s) as well. Therefore, it would not be proper and appropriate for the Ombudsman to take view on the issue pending consideration before the Hon'ble Supreme Court. Another reason which persuades me to defer the decision is the undertaking given to the Ombudsman on 23.12.2023, which virtually and substantively answers the prayers made in the complaints, as already noticed above in this order.
26. A similar scenario had arisen before the erstwhile Ombudsman in *H.R. Sharma (supra.)*, wherein during the pendency of the proceedings a petition was filed before the Hon'ble High Court of Delhi seeking overlapping prayers. The Ombudsman vide Order dated 22.03.2023 had adjourned the proceedings *sine die* subject to the orders passed by the Hon'ble High Court of Delhi.
27. Hence, in light of the pendency of the same issues, as raised in the present complaint(s), before the Hon'ble Supreme Court and its cognizance having been taken vide Order dated 08.01.2024, and to avoid parallel proceedings, it is deemed appropriate that the present complaint(s) are adjourned *sine die*, subject to the orders passed by the Hon'ble Supreme Court of India.
28. It is needless to add that in the meantime, the Respondent-Shashi Khanna will be bound by her statement made on 23.12.2023 that she will not participate as Vice President either in the meeting of AGM or Apex Council or any other meeting in her capacity as Vice President.
29. Order is pronounced today in the presence of the counsel of the parties, by virtual meeting.

 23.05.2024

**JUSTICE M.M. KUMAR (RETD.)  
FORMER CHIEF JUSTICE, HIGH COURT OF J&K  
OMBUDSMAN-CUM-ETHICS OFFICER (DDCA)**