BEFORE THE SUPREME COURT APPOINTED COMMITTEE

Mr. Justice R.M. Lodha, Former Chief Justice of India – Chairman

Mr. Justice Ashok Bhan, Former Judge, Supreme Court of India –Member

Mr. Justice R.V. Raveendran, Former Judge, Supreme Court of India –Member

While disposing of Civil Appeal No. 4235 of 2014, Board of Control for Cricket in India Versus Cricket Association of Bihar & others and two other appeals on 22nd January 2015, the Hon'ble Supreme Court constituted this Committee. The role and reach of the Committee are defined in paragraph 110(II) (III) (IV) and (VI)[1]. One of the tasks given to the Committee is to

[1] 110. In the result we pass the following order:

(I) ……..

(II) The quantum of punishment to be imposed on Mr. Gurunath Meiyappan and Mr. Raj Kundra as also their respective franchisees/teams/owners of the teams shall be determined by a Committee comprising the following:

i) Hon'ble Mr. Justice R. M. Lodha, former Chief Justice of India- Chairman.
ii) Hon'ble Mr. Justice Ashok Bhan, former Judge, Supreme Court of India – Member.
iii) Hon'ble Mr. Justice R.V. Raveendram, former Judge, Supreme Court of India – Member.

The Committee shall, before taking a final view on the quantum of punishment to be awarded, issue notice to all those likely to be affected and provide to them a hearing in the matter. The order passed by the Committee shall be final and binding upon BCCI and the parties concerned subject to the right of the aggrieved party seeking redress in appropriate judicial proceedings in accordance with law.

(III) The three-member Committee constituted in terms of Para (II) above, shall also examine the role of Mr. Sundar Raman with or without further investigation, into his activities, and if found guilty, impose a suitable punishment upon him on behalf of BCCI.

Investigating team constituted by this Court under Shri B.B. Mishra shall for that purpose be available to the newly constituted Committee to carry out all such investigations as may be considered necessary, with all such powers as were vested in it in terms of our order dated 16th May, 2014.

(IV) The three-member Committee is also requested to examine and make suitable recommendations to the BCCI for such reforms in its practices and procedures and such amendments in the memorandum of Association, Rules and Regulations as may be

determine and award punishment to Mr. Gurunath Meiyappan and Mr. Raj Kundra as also their respective franchisees/teams/owners of the teams. This order is confined to the task given to the Committee in para 110(II) of the judgment.

It is not necessary to set out the proceedings in detail relating to this order. Suffice, however, to state here that within one week of its constitution, the Committee held its preliminary meeting and then after summoning the necessary records, materials and the addresses of Mr. Gurunath Meiyappan, Mr. Raj Kundra, The India Cement Limited (for short 'ICL') and Jaipur IPL Cricket Limited (for short 'JIPL') from the BCCI, the Committee issued notices to them to appear before it. The noticees were also informed that they may address the Committee through their advocates, if they so desired.

On 11th March 2015, Mr. K.V. Vishwanathan, learned Senior Advocate appeared and argued on behalf of Mr. Gurunath Meiyappan. On the next day i.e. 12th March 2015, Mr. Kavin Gulati, learned Senior Advocate appeared for Mr. Raj Kundra and concluded his arguments.

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considered necessary and proper on matters set out by us in Para number 109 of this order.

(V) ……..

(VI) The Committee shall be free to fix their fees which shall be paid by the BCCI who shall, in addition, bear all incidental expenses such as travel, hotel, transport and secretarial services, necessary for the Committee to conclude its proceedings. The fees will be paid by the BCCI to the members at such intervals and in such manner as the Committee may decide. The venue of the proceedings shall be at the discretion of the Committee."

Although ICL and JIPL appeared through their authorized representatives and Senior Advocates on 11th and 12th March 2015 respectively but on their behalf adjournments were sought which was granted.

Mr. C.S. Vaidyanathan, learned Senior Advocate appeared and argued on behalf of ICL on 6th April 2015 while Mr. Ashok Desai, learned Senior Advocate commenced and concluded his arguments for JIPL on 7th April 2015.

As prayed by the learned Senior Advocates, opportunity was also given to the above four Noticees for filing written submissions which they did.

We intend to deal with the submissions of the learned Senior Advocates advanced on behalf of each Noticee separately. Before we do that, it is important to notice at the outset some of the relevant observations made and findings recorded by the Hon'ble Supreme Court in its Judgment and order of 22nd January 2015.

For the present purposes, reference to two questions framed by the Hon'ble Supreme Court is enough. Question No. 2 was framed to the effect whether Mr. Gurunath Meiyappan and Mr. Raj Kundra were “team officials” of their respective IPL teams – Chennai Superkings and Rajasthan Royals? If so, whether allegations of betting leveled against them stand proved? The basis of the findings recorded by the Hon'ble Supreme Court on this question is the Reports submitted by the Probe Committee headed by Mr. Justice Mukul Mudgal, Former Chief Justice of Punjab and Haryana High Court. The Hon'ble Supreme Court found no fault with the findings recorded by the Probe

Committee that Mr. Gurunath Meiyappan was Team Official of Chennai Superkings (CSK). In this regard the Court noted the admission of ICL before it that Mr. Gurunath Meiyappan was a Team Official within the meaning of that expression of the relevant Rules. The Court also found no reason to disagree with conclusion of the Probe Committee that Mr. Gurunath Meiyappan had indulged in betting. The Court firmly held that the allegations of betting made against Mr. Gurunath Meiyappan stood established on preponderance of probabilities.

As regards Mr. Raj Kundra, the Supreme Court observed that the finding recorded by the Probe Committee about his having part ownership and accreditation as Team Official of the Rajasthan Royals (RR) was not disputed by JIPL.The Court noted that on the basis of investigation and enquiry, the Probe Committee came to the conclusion in its Final Report dated 1st November 2014 that Mr. Raj Kundra was "Team Official", "Player Support Personnel" and "Participant" within the meaning of relevant Rules and he had indulged in betting. As a matter of fact, there was no serious challenge to the merits of the findings recorded by the Probe Committee against Mr. Raj Kundra. Pertinently, it has been observed by the Supreme Court that the Probe Committee had conducted the proceedings in consonance with the principles of natural justice and the findings of the Probe Committee that Mr. Raj Kundra was Team Official of Rajasthan Royals and that he had indulged in betting cannot be faulted.

Following Question no. 2, the Hon’ble Supreme Court framed Question No. 3 to the effect that if Question No.2 is answered in the affirmative, what consequential action in nature of punishment is permissible under the relevant Rules and Regulations, and against whom? The discussion and consideration by the Hon'ble Supreme Court on Question No. 3 depict extensive analysis of the provisions contained in the IPL Operational Rules (hereafter referred to as “Operational Rules”), Anti Corruption Code for Participants (for short, “Anti Corruption Code”) and Code of Conduct for Players and Team Officials (for short, “Code of Conduct”) and Franchise Agreement which we shall refer to in the course of discussion, wherever necessary. However, it may be noted here that the Hon'ble Supreme Court while considering the provisions of the Operational Rules did observe that each franchisee in terms of rule 1.1 of Section 4 is under an obligation to ensure that its Team Official complies with the Regulations and in particular Article 2 of the Anti Corruption Code. The Court further observed that those sanctions were not limited to Mr. Gurunath Meiyappan and Mr. Raj Kundra alone but may extend to suspension of the team or the Franchisee from the league also.

We shall refer to the important observations made and findings recorded by the Hon'ble Supreme Court on Question Nos. 2 and 3 and so also Question No. 7, particularly in paragraphs 12, 13, 33, 45, 49, 50, 55, 57, 58, 106 and 110 of the judgment at appropriate places.

With this brief background, now it is time to consider the arguments advanced on behalf of the Noticees.

Gurunath Meiyappan

In light of the extensive arguments advanced by Mr. K.V. Vishwanathan, learned Senior Advocate (his written submissions amplify the same) on behalf of Mr. Gurunath Meiyappan, principally three issues arise for our consideration:

1. Whether Operational Rules and Code of Conduct are inapplicable in the facts and circumstances of the case and the disciplinary action against the Noticee can be taken only under the Anti Corruption Code?
2. If the answer to issue No. 1 is in the negative, whether applying the more drastic rule is against Article 14 of the Constitution of India and principles of equality?
3. Having regard to the misconduct found against Mr. Gurunath Meiyappan, what should be the punishment?

Re: Issue 1

Elaborating this aspect, Mr. K.V. Vishwanathan submitted that the Anti Corruption Code was made effective from October 2012. The Code of Conduct and Operational Rules came later, February and March 2013, respectively. In so far as offence of betting is concerned, it is dealt with by the Anti Corruption

Code. Section 6, rule 2.1 of the Operational Rules is an ouster clause which states that if Anti Corruption Code for participants is applicable than the provisions of the Operational Rules would not apply. He highlighted that the ouster clause in Rule 2.1, Section 6 was based on the well established legal principle of "*generalia specialibus non derogant*". In this regard he also relied upon the decision of the Supreme Court in the case of Ashoka Marketing[2].

Learned Senior Advocate argued that Article 2.2 of the Anti Corruption Code deals with the act of betting and makes it an offence by providing a certain penalty and once the provision is made in the Anti Corruption Code, the other Codes with residuary or general provisions would not apply. It is his submission that the word "or" in Section 6, rule 2.1 of the Operational Rules connotes that it has been used disjunctively and that also makes Operational Rules inapplicable.

According to Mr. K.V. Vishwanathan, the Code of Conduct which became effective from February 2013 is also not applicable. In this regard he referred to second para of the Note under Article 2.2.10 and submitted that misconduct of betting has to be considered under the Anti Corruption Code and not under the Code of Conduct. Without prejudice to the above, learned Senior Counsel submitted that if at all sanction under Article 7 of the Code of Conduct is to be imposed, then it could only be for Level 2 offence and not under Article

[2] Ashoka Marketing Limited vs Punjab National Bank, (1990) 4 SCC 406

2.4.4 which is intended for Level 4 offences. Learned Senior Counsel referred to "catch all" residual clauses of Level 1-Level 4 offences as set out in Article 2 of the Code of Conduct and submitted that all levels of offences have "catch all" residual clauses viz. Articles 2.1.8, 2.2.11, 2.3.3 and 2.4.4. The only difference in the Note appended to Article 2.2.10 and "catch all" clause of other levels is the substitution of the words "overwhelming serious" with words "minor", "serious" and "very serious" for Levels 1, 2 and 3 respectively. The "catch all" clause in all these levels of offences is preceded by well defined offences. These defined offences have specific genus. This genus could be used in determining the true purport of the words in the "catch all" clauses using the rule of *ejusdem generis*. In this regard he relied upon, (one) Statutory Interpretation Rupert Cross (page 116), (two) Francis Bennion in his Statutory Construction (Page 830-31) and (three) the decision of Supreme Court in Siddeshwari Cotton Mills[3].

Relying upon Article 1.1.2 of the Anti Corruption Code and the findings of the Probe Committee which were affirmed by the Supreme Court, Mr. K.V. Vishwanathan submitted that Mr. Gurunath Meiyappan was liable only under Articles 2.2.1 and 2.2.2 of the Anti Corruption Code. According to him Article 2.2.3 of the Anti Corruption Code mentioned in the Probe Committee's

[3] Siddeshwari Cotton Mills (P) Ltd. vs Union of India, (1989) 2 SCC 458

conclusion was a typographical error or in any case this provision has no application at all.

Despite the forceful arguments about applicability of the Anti Corruption Code alone and ouster of the Operational Rules and the Code of Conduct, in the fact situation, we find serious difficulty in accepting the same for more than one reason. In the first place the Supreme Court's analysis of the Operational Rules, Code of Conduct and Anti Corruption Code and the remarks while analyzing these Rules and Codes leave no manner of doubt that disciplinary action against Mr. Gurunath Meiyappan is not confined to the Anti Corruption Code alone. On consideration of Section 1,rule1; Section 2, rules 1, 2.1 and 14; and Section 6, rules 1.1, 1.2 and 4.2 of the Operational Rules, the Hon'ble Supreme Court observed that these provisions make every Franchisee, Player, Team Official and/or Match Official amenable to the said Rules. Then in para 49 of the judgment, it is remarked that in terms of rule 4 of section 6, BCCI can impose any one of the sanctions enumerated thereunder which includes suspension of the player or other person subject to the Operational Rules from playing or involving in matches for a specified period and suspension of the team or franchisee from the league. In para 50 of the judgment, it is observed that **once Gurunath Meiyappan is accepted as Team Official, his conduct which has adversely affected the image of BCCI and the League (IPL) as also the game (Cricket) and brought each one of them to disrepute could result in imposition of one or more of the sanctions stipulated under Rule 4 of**

Section 6 (emphasis supplied by us). These weighty observations by the Hon'ble Supreme Court having regard to the width and scope of Section 6 rule 4 of the Operational Rules and also keeping in view the provisions of the Code of Conduct and the Anti Corruption Code, render the argument of Mr. K.V. Vishwanathan about inapplicability of the Operational Rules unacceptable. We are not impressed by the argument of Mr. K.V. Vishwanathan that notwithstanding the Supreme Court's analysis of the provisions of the Operational Rules, Anti Corruption Code and Code of Conduct and the observations made in this regard, it is only the Anti Corruption Code which is applicable.

Second, Section 2, rule14 of the Operational Rules, omitting the unnecessary part, reads: **Each person subject to these Operational Rules shall not…….. act in any way which would or might reasonably be anticipated to have an adverse affect on the image or reputation of ……the BCCI, the league and/or the game…….**

A breach stated in Section 2, rule 14 or similar breach is not covered by the Anti Corruption Code at all. By entering into franchise agreement, the Franchisee assumed the obligations set out in the Operational Rules and as a result of this, all those persons representing the Franchisee also assumed obligations under the Operational Rules. In view of the categorical finding recorded by the Hon'ble Supreme Court that Gurunath Meiyappan was "Team Official", no doubt is left that he is bound by the Operational Rules. By

committing breach of obligation under Section 2, rule14 and by indulging in an act which had an adverse affect on the image of the BCCI, IPL and game of cricket, Mr. Gurunath Meiyappan rendered himself liable to disciplinary action and imposition of sanctions stipulated in rule 4, Section 6 of the Operational Rules.

The argument of Mr. K.V. Vishwanathan, learned Senior Counsel, relying upon legal principle of *generalia specialibus non derogants* on the basis that the Anti Corruption Code was made effective from October 2012 while the Code of Conduct and Operational Rules came later does not have merit. The legal principle *generalia specialibus non derogants* has been explained long back by Lord Philimore[4]. It is stated: *"It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held*

[4] Nicolle vs Nicolle, (1922) 1 AC 284

indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so." The above statement of law by Lord Philimore has been accepted by our Supreme Court in T.J. Joseph[5] and R.S. Raghunath[6].

When a question arises whether prior particular law stands repealed by subsequent general law that the legal principle *generalia specialibus non derogants* ordinarily comes into play. In the present case, as a matter of fact the situation is quite different. There is no argument raised before us that Anti Corruption Code stands repealed by the later Operational Rules. As a matter of fact by virtue of Section 6, rules 1.1 and 1.2 of the Operational Rules, the Anti Corruption Code becomes part of the IPL Regulations. In this situation, the legal maxim *generalia specialibus non derogants,* in our view, has no application. For these reasons the judgment of the Supreme Court in Ashoka Marketing heavily relied upon by the learned Senior Counsel also has no application. Rather Section 6, rule 1.1 states that the provisions of the regulations listed in rule 1.2 of this Section (being the IPL Regulations) **together with these Operational Rules** shall apply to the League and bind any such person subject to the Operational Rules. It is, thus, clear that Section 6 rule 2.1 of the Operational Rules is not an ouster clause and the proposition that the special excludes general does not apply in the present situation.

[5] Municipal Council, Palai vs T.J. Joseph, AIR 1963 SC 561

[6] R.S. Raghunath vs State of Karnataka, AIR 1992 SC 81

If the general law by its own terms recognizes the existence or continuance of special law on the subject, no question of inconsistency with or repeal of the special law can arise. From the scheme of the Operational Rules, when seen carefully, it is clear that the Operational Rules, Anti Corruption Code and Code of Conduct are not mutually exclusive, rather together they form IPL Regulations. If a person bound by the Operational Rules indulges in an act which is prohibited thereunder, such breach is an offence or misconduct and liable to imposition of sanction under Section 6, rule 4 of the Operational Rules. Seen thus, the misconduct which has adversely affected the image of BCCI, IPL and the game of cricket is liable to action under the Operational Rules for breach of Section 2, rule 14 and also the provisions under Anti Corruption Code (for having indulged in betting) and the Code of Conduct (for acting against the spirit of game).

A careful reading of Article 2.2.10 of the Code of Conduct would show that the offence covered by this Article is an attempt to manipulate a Match for inappropriate strategic or tactical reasons. This is further made clear by first para of Note under it which says that this provision is intended to prevent the manipulation of Matches for inappropriate strategic or tactical reasons. The argument that Para 2 of the Note under Article 2.2.10 excludes the applicability of the Code of Conduct for the offences of betting is misplaced because manipulation of a match is the basis for an offence under Article 2.2.10. This Article by itself does not refer to betting. Para 2 of the Note under Article 2.2.10

is clarificatory in nature. It states that Article 2.2.10 is not intended to cover any corrupt or fraudulent acts (including any use of inside information and/or related betting activity). The idea behind paragraph 2 of Note is to lay down in clear terms that Article 2.2.10 merely makes an attempt to manipulate a Match for inappropriate strategic or tactical reasons an offence and it is not intended to include the corrupt or fraudulent acts and such corrupt or fraudulent acts must be dealt with according to procedures set out in the Anti Corruption Code. This does not mean that acting against the spirit of game and bringing it to disrepute, a conduct of overwhelmingly serious nature, otherwise covered by Article 2.4.4 of the Code of Conduct cannot be dealt with thereunder.

Certain provisions of the Code of Conduct in this regard are quite informative. Article 1.1 stipulates that all Players and Team Officials are automatically bound by and required to comply with all the provisions of the Code of Conduct. As per Article 1.2, all Players and Team Officials shall continue to be bound by and required to comply the Code of Conduct until three months after the termination of contract or other arrangement with an IPL franchisee. Article 1.3 is important. The relevant portion of this Article reads: "It is acknowledged that …….Team officials may also be subject to other rules of the relevant Franchisee, the ICC and/or National Cricket Federations that discipline and/or conduct and **that the same conduct of ……..Team officials may implicate not only the Code of conduct but also such other rules that may apply."** It would be, thus, seen that Article 1.3 of the Code of Conduct

leaves no manner of doubt that a misconduct or offence committed by the Team Official may be punishable under the Code of Conduct and so also under other relevant Rules such as the Operational Rules and Anti Corruption Code.

Article 2 of the Code of Conduct states that the conduct described in Article 2.1-2.5, if committed by a Player or Team Official, shall amount to an offence by such Player or Team Official under the Code of Conduct. Articles 2.1-2.4 prescribe Level 1, Level 2, Level 3, Level 4 offences respectively, Each one of them has residuary clause (Articles 2.1.8, 2.2.11, 2.3.3 and 2.4.4) which provides that an incident not adequately or squarely covered by any of the specific offences in that Level which is contrary to the spirit of game or brings the game to disrepute. In light of the arguments advanced by the learned Senior Counsel, two questions arise, (one) Is rule of *ejusdem generis* attracted in as much as the residuary provisions are confined to offences preceding them? and (two) Are offences contemplated under Article 2 related to on-field activities only? Answer to both these questions, in our opinion, is in the negative. It is so, firstly, because none of the Level 1 to Level 4 offences has any specific or limited genus. Level 1 offences include breach of the IPL clothing regulations and so also public criticism of, or inappropriate comment in relation to an incident occurring in a match. Level 2 offences include serious dissent at an Umpire's decision during a match to any attempt and also manipulate a Match for inappropriate strategic or tactical reasons. Level 3 offences are intimidation of an Umpire or Match Referee whether by language or gestures during a match

and threat of assault on another player, Team Official or any other person. Level 4 offences include threat of assault on an Umpire or Match Referee during a match and also any act of violence on the field of play during a Match. It is essential for application of *ejusdem generis* rule that enumerated things before the general words must constitute a distinct genus or category which is completely missing in the above provisions. Secondly, if the context of the enactment does not require restricted meaning, the general words must be given their plain and ordinary meaning, which is in accord with the object of the enactment.

The 'Introduction' to the Code of Conduct states clearly that Cricket is a game that owes much of its unique appeal to the fact that it is played not only within laws, but also within the spirit of the game. Any action seen as abusing this spirit causes injury to the game itself. It further says that Code of Conduct is adopted and implemented as part of BCCI's continuing efforts to maintain the public image, popularity and integrity of the League by, *inter-alia*, providing an effective means to deter any participant from conducting themselves improperly on and **off the field of play**.

If the Code of Conduct was applicable only to incidents or acts of omissions on the field, then the introduction of the Code of Conduct would not have expressly provided that the Code of Conduct was meant to deter any participant from conducting themselves improperly on and off the field. Moreover a provision in Article 2.2 requiring every Player and Team Official to

be bound by the Code of Conduct for three months after the termination of this contract also suggests that Code is applicable to off-field conduct and incidents.

Therefore, the proper way of interpretation of Articles 2.1, 2.2, 2.3 and 2.4 relating to four levels of offences is that while the offences stipulated under Articles 2.1.1 to 2.1.7, 2.2.1 to 2.2.10, 2.3.1 and 2.3.2, and 2.4.1 to 2.4.3 relate to on-field incidents/acts/omissions, Articles 2.1.8, 2.2.11, 2.3.3 and 2.4.4 are intended to cover not only incidents/acts/omissions on-field which do not specifically fall under the enumerated offences, but also acts off-field which are not specified as offences but which bring the game into disrepute and, therefore, offences.

The above interpretation also finds support from Article 2.5 of the Code of Conduct. This article makes failure to meet the minimum over rate in a match an offence. Obviously an offence such as this can be committed on-field only and not off-field. It is for this reason Article 2.5 does not have any catch-all provision.

Pertinently, the Hon'ble Supreme Court in paragraph 57 of the judgment while dealing with permissible action under the Code of Conduct has noted different Levels of offences stipulated under Article 2.1 to 2.5 and held that if such offences are committed by the Players or Team Officials, sanctions against them can be imposed. Then it referred to offence stipulated under Article 2.4.4. Following this, in paragraph 58 of the judgment it is held that the Team Official who is found guilty of betting is certainly acting against the spirit of game and

bringing disrepute to it. The discussion in paragraphs 57 and 58 of the judgment leaves no room for any doubt or debate about the applicability of Article 2.4.4 of the Code of Conduct to the fact situation.

Insofar as Anti Corruption Code is concerned, Mr. K.V. Vishwanathan is right in his submission that betting is a specific offence thereunder. He is also right in his submission that reference to Article 2.2.3 by the Probe Committee in its Report is a typographical error. However, he is not right in submitting that Gurunath Meiyappan could be punished under Anti Corruption Code alone. No doubt, Anti Corruption Code applies to Gurunath Meiyappan as it has been found by the Probe Committee (and affirmed by the Supreme Court) but we must add here – indeed assert here – that the Operational Rules and Code of Conduct are also applicable.

It is important to bear in mind the background of the Anti Corruption Code. Recognising that public confidence in the authenticity and integrity of the sporting contest is vital and if that confidence is undermined, then the very essence of cricket will be shaken to the core, BCCI adopted the Anti Corruption Code (Article 1.1.2) for protection of essence of cricket. BCCI being alive to the position that technological advances in betting has threatened the integrity of cricket and increased the potential for development of corrupt practices brought

Anti Corruption Code and made it clear in Article 1.2 that its provisions be interpreted and applied by reference to the fundamental sporting imperatives[7].

Article 1.7 of the Anti Corruption Code also negates the argument of Mr. K.V. Vishwanathan that Gurunath Meiyappan could be punished under Anti Corruption Code alone. **This provision recognizes that the conduct prohibited under the Anti Corruption Code may also be breach of other applicable laws or regulations. It states that the Anti Corruption Code is intended to supplement such laws or regulations and not intended or**

[7] 1.1.1 All cricket matches are to be contested on a level playing-field, with the outcome to be determined solely by the respective merits of the competing teams and to remain uncertain until the cricket match is completed. This is the essential characteristic that gives sport its unique appeal.

1.1.2 Public confidence in the authenticity and integrity of the sporting contest is therefore vital. If that confidence is undermined, then the very essence of cricked will be shaken to the core. It is the determination to protect that essence of cricket that has led the Board of Control for Cricket in India to adopt this *Anti-Corruption Code*.

1.1.3 Advancing technology and increasing popularity have led to a substantial increase in the amount, and the sophistication, of betting on cricket matches. The development of new betting products, including spread-betting and betting exchanges, as well as internet and phone accounts that allow people to place a bet at any time and from any place, even after a cricket match has started, have all increased the potential for the development of corrupt betting practices. That in turn, increases the risk that attempts will be made to involve participants in such practices. Even where that risk is more theoretical than practical, its consequence is to create a perception that the integrity of the sport is under threat.

1.1.4 Furthermore, the nature of this type of misconduct is such that it is carried out under cover and in secret, thereby creating significant challenges for the BCCI in the enforcement of rules of conduct. As a consequence, the BCCI needs to be empowered to seek information form and share information with competent authorities and other relevant third parties, and to require *Participants* to cooperate fully with all investigations and requests for information.

1.1.5 The *BCCI* is committed to taking every step in its power to prevent corrupt betting practices undermining the integrity of the sport of cricket, including any efforts to influence improperly the outcome or any other aspect of any *Match or Event*.

applied, to prejudice or undermine in any way the application of such laws and regulations.

In view of the above discussion, we do not subscribe to the view of the learned Senior Counsel for Gurunath Meiyappan that disciplinary action against him can be taken only under the Anti Corruption Code and not under the Code of Conduct and Operational Rules. We answer issue No. 1 in the negative.

Re: Issue No. 2

Mr. K.V. Vishwanathan, learned Senior Counsel submitted that where an act or omission was a misconduct or offence under multiple laws or rules, the delinquent can be punished under one of them which is advantageous to him. The application of the more 'drastic' of the rules is violative of Article 14 and principles of equality. In support of his argument, he placed reliance upon the cases of Dhirendranath Das[8] and Dayanand Chakrawarty[9].

It is the argument of the learned Senior Counsel that even assuming that the Operational Rules, Code of Conduct and Anti Corruption Code co-exist, the one which is advantageous to the delinquent shall be applied. The Anti Corruption Code being a special regulation dealing with the act of betting and makes it an offence by providing a certain penalty, would be advantageous and

[8] State of Orissa vs Dhirendranath Das, AIR 1961 SC 1715

[9] State of UP vs Dayanand Chakrawarty, (2013) 7 SCC 595

the other rules/regulations which co-exist with residuary or general provisions should not be applied.

Mr. K.V. Vishwanathan also argued that even if the offence of betting was directly made punishable under the Operational Rules, Code of Conduct and Anti Corruption Code, and the delinquent is to be simultaneously prosecuted for contraventions thereof, the delinquent shall not be liable to be punished for the same offence more than once under the different rules. The same would be violative of Article 20(2) of the Constitution of India and the principles analogous to Section 26 of the General Clauses Act.

The above submissions of the learned Senior Counsel are founded on fundamental erroneous assumption that the Anti Corruption Code, Operational Rules and Code of Conduct are mutually exclusive. The scheme of these Codes and Rules is otherwise, they occupy different spheres and supplement each other, particularly in a situation such as this where the delinquent has also been held guilty of misconduct of affecting the image of BCCI, IPL and the game of cricket and brought each one of them to disrepute and also being against the spirit of the game, besides the offence of betting.

Article 2 of the Anti Corruption Code provides punishment for betting. Breach of Section 2, rule14 of the Operational Rules is not covered by the Anti Corruption Code. Article 1.7 of the Anti Corruption Code also recognizes that its provisions supplement other laws and regulations where the conduct

prohibited under it may also be breach of other applicable laws or regulations. An offence of betting simplicitor (Article 2.2.1), betting through others (Article 2.2.2) and fixing a match/event which is subject of a bet (Article 2.2.3) would attract punishment under Article 6 of the Anti Corruption Code. If the misconduct involving betting is established to have an adverse effect or bring into disrepute BCCI, IPL or game of cricket, the action under the Operational Rules can be taken and Section 6, rule 4 would apply. When the conduct of a Player or Team Official is established to be contrary to the spirit of game and such conduct has also brought disrepute to the game, the Code of Conduct would also be attracted.

The decision of the Supreme Court in Dhirendranath Das (supra) which holds that application of the more 'drastic' of the rules is violative of Article 14 has no application here having regard to three distinct offences/breaches found against the delinquent by the Hon'ble Supreme Court in its judgment. Then for the reasons stated in paragraph 107 of the judgment this Committee has been entrusted to take a final view on the quantum of punishment to be awarded after issuing notice to the delinquent and providing him hearing in the matter. Dhirendranath Das was a case where disciplinary inquiry against the delinquent could have been held under either of the two Rules viz. Tribunal Rules or Service Rules. The inquiry was held under Tribunal Rules which was less advantageous and more drastic than the Service Rules. In this background the

Supreme Court while applying Article 14 held that if two sets of rules were in operation at the material time when the enquiry was directed, the enquiry under the Tribunal Rules which is more drastic and prejudicial to the interest of the delinquent was discriminatory and violative of Article 14. In the present matter as noted above there is no choice for disciplinary procedure as two procedures for selection are not available. There is no question of one procedure being prejudicial or drastic to the other.

In what we have discussed above, the reliance upon the decision in Dayanand Chakrawarty (supra) is also misplaced.

We answer Issue No. 2 accordingly.

Re: Issue No. 3

Dealing with the penalty aspect, Mr. K.V. Vishwanathan, learned Senior Counsel submitted that assuming for argument sake (without admitting) that the Anti Corruption Code, the Operational Rules and the Code of Conduct would operate, in the facts of the present case, since the finding is of only betting and Gurunath Meiyappan has been specifically absolved of match-fixing charges, a penalty of ineligibility for two years would meet the ends of justice. He highlighted the following mitigating circumstances:

(i) Suffered imprisonment from 26th May, 2013 to 4th June, 2013;

(ii) Facing criminal charges before the Magistrate on the same set of allegations;

(iii) First offence, with unblemished antecedents in the previous 6 IPL seasons;

(iv) Involved in charitable work of the family company AVM Group;

(v) No gain from alleged transaction, in fact he has suffered a loss of Rs. 60 lacs due to his alleged acts;

(vi) Cooperated with the Probe Committee (headed by Justice Mudgal) and the Investigation Team (headed by Mr. B.B. Mishra, IPS);

(vii) Suspended from 26th May, 2013;

(viii) Vast adverse media coverage resulted in untold mental agony to him and the family persons; and

(ix) Young, 40 years of age with passion for the game.

Learned Senior Counsel would also submit that imposition of any penalty on Gurunath Meiyappan is bound to curtail his fundamental rights under Article 19 and, therefore, principles of the doctrine of proportionality may be kept in mind while imposing the penalty. He relied upon the decision of the Supreme Court in Teri Oat Estates[10].

It needs no emphasis that while imposing sanction on the delinquent, the factual matrix and the relative seriousness of the offence including all relevant factors that aggravate/mitigate the nature of the offence have to be kept in mind. The imposition of sanction obviously

[10] Teri Oat Estates (P) Ltd. vs UT, Chandigarh, (2004) 2 SCC 130

has to be proportionate to the proved misconduct and the Committee shall definitely keep that in mind.

We find that against Mr. Gurunath Meiyappan, there are many factors which aggravate the nature of offence / misconduct. These are:

(one): He formed an integral part of CSK and most persons viewed him as a face of the team;

(two) : He has knowledge of or was in a position to easily access sensitive information, team strategies, knowledge about match conditions etc. which knowledge was outside the purview of an ordinary person following the game of cricket.

(three) : He was in regular touch with bookies and punters;

(four) : Several calls were traced between him and a certain Vindoo Dara Singh (a punter in close proximity with several other bookies);

(five) : He would regularly place bets in IPL matches both in favour of his team CSK and against his team;

(six) : Such bets were even placed during the course of IPL match;

Note: All the above are conclusions recorded by the Probe Committee in its report of 9th February, 2014.

(seven) : He has been held to be 'Team Official' within the meaning of expression under the rules and for the purposes of disciplinary action, this position is not disputed;

(eight) : The sums of money involved in betting by him are quite substantial; and

(nine) : Lack of remorse.

Having noticed the aggravating factors, we must now take into consideration the mitigating circumstances as pointed out by Mr. K.V.

Vishwanathan. Do the circumstances highlighted by the learned Senior Counsel mitigate the gravity of proved misconduct? We do not think so.

The fact that Gurunath Meiyappan formed integral part of CSK and most persons viewed him as the face of the team (and in any case he was Team Official of CSK), he ought not to have indulged in corrupt betting practices. By regularly placing bets in IPL matches (even during the course of IPL match), he acted in gross violation of the Anti Corruption Code (Article 2.2.1 and 2.2.2). Instead of discharging his responsibility as Team Official in a befitting manner, he acted exactly opposite to the fundamental sporting imperatives.

While adopting Anti Corruption Code, the BCCI had in mind the advancing technology and increasing popularity which led to a substantial increase in the amount and the sophistication, of betting on cricket matches. In order to curb the development of corrupt betting practices, the Anti Corruption Code was brought into force by the BCCI. If a Team Official who is representing a Franchisee or Team regularly indulges in betting in IPL matches and even during the course of IPL match, the proved misconduct is surely of a grave nature as his acts and actions have affected the image of the game (and BCCI and the League) and brought each one of them to disrepute. His actions were also against the spirit of game.

On a careful consideration of the circumstances pointed out by Mr. K.V. Vishwanathan, we do not find them individually or collectively mitigating the

gravity of offence. Facing criminal charges and his judicial custody for a period of about 10 days rather shows the seriousness of the misconduct committed by him.

His habit of regularly placing bets in IPL matches renders the argument of his being first offender and unblemished antecedents in previous IPL tournaments of no worth.

That he suffered loss of Rs. 60 lacs in bets shows that he engaged himself in heavy bets. It is his bad luck that he did not make money out of these bets. Any agony suffered by him because of media coverage or any hardship that may have been caused to him is too small in comparison to the huge injury he caused to the reputation and image of the game, IPL and BCCI. If the reputation, image and spirit of the sport are lost, what remains?

Being 40 years of age, he is not young but middle-aged. It is difficult to accept that he has passion for the game. Any person who has true passion for the game would not be involved in the betting. Rather any sport loving person would act in conformity with the fundamental sporting imperatives. Non-adherence to these imperatives has shaken the very essence of cricket.

There is nothing to indicate that his participation in the investigation or inquiry by the Probe Committee was voluntary. On the other hand, he is guilty

of not reporting exchanges with a known bookie. Charitable work, if any, by the family business is hardly a mitigating factor.

It is evident from the decision of the Supreme Court that the offence of betting committed by Team Official who is in position of owner is very serious and such act would certainly be against the spirit of the game and bring the game to disrepute punishable under Article 2.4.4 of the Code for which the penalty provided is imposition of suspension for a period ranging from one year to lifetime.

Every Participant (Team Official is a Participant) is subject to the Operational Rules and is bound by the IPL Regulations as listed in Section 6 rule 2.2 and the Laws of Cricket. Each person subject to the Operational Rules (the Team Official is one of such persons) is mandated not to act or omit to act in a way which could or has an adverse affect on the image of the BCCI, the IPL and/or the game of cricket or otherwise bringing any of them into disrepute. Gurunath Meiyappan is not only found to have indulged in betting but his act is also found by the Supreme Court to have an adverse effect on the image of the BCCI, IPL and game of cricket and brought each one of them to disrepute. There is, thus, clear breach of Section 2, rule 14 of the Operational Rules.

Gurunath Meiyappan has been found guilty of (i) betting (Article 2.2.1 and 2.2.2 of the Anti Corruption Code) (ii) his conduct having affected the image of the BCCI and the League and also the game and having brought each

one of them to disrepute (Section 2, rule 4 of the Operational Rules) and (iii) of acting against the spirit of game and bringing it to disrepute (Article 2.4.4 of the Code of Conduct).

As the offences for which he is being punished are found to be distinct and different, Section 6, rule 2.1 of the Operational Rules will not apply. The Committee, accordingly, imposes following sanctions on Mr. Gurunath Meiyappan:

(i) He is declared ineligible from participation in the sport of cricket as explained in the Anti Corruption Code for the maximum period of 5 years under Article 2.2.1.

(ii) He is suspended for life from the activities as explained in Article 7.5 under Level 4 (first offence) of Article 2.4 of the Code of conduct.

(iii) He is suspended for life from being involved in any type of cricket matches under Section 6, rule 4.2(b) read with (j) of the Operational Rules.

The above sanctions shall run concurrently and commence from the date of this order.

Raj Kundra

Mr. Kavin Gulati, learned senior counsel appearing for Mr. Raj Kundra at the outset stated the obvious that the findings of the Hon'ble Supreme Court in

its judgment dated 22nd January 2015 are final and there is no intention to go behind the judgment.

Learned senior counsel would submit that in terms of the said judgment, the Rules/Codes relevant for or applicable to the case of Noticee are the Operational Rules, the Anti Corruption Code and the Code of Conduct. However, the Operational Rules make it evident that the same are intended to be umbrella rules incorporating the provisions of the various Regulations referred to in Section 6, rule 1.2 (which includes the Anti Corruption Code and the Code of Conduct). Mr. Kavin Gulati submitted the reading both parts of Section 6, rule 2.1 together, it is clear whether action is taken under the Operational Rules or any of the other Regulations mentioned in Section 6, rule 1.2, action is liable to be taken in case of misconduct under one of the Rules/Regulations only and not all of them cumulatively.

With reference to the First Report dated 9th February 2014 of the Probe Committee and the Final Report dated 1st November 2014 of the said Committee, learned Senior Counsel submitted that sanctions were imposable against Raj Kundra only under the Anti Corruption Code and not under the Operational Rules or the Code of Conduct. In this regard, he placed reliance upon Article 2.2.10 of the Code of Conduct and Section 6, rule 2.1 of the Operational Rules.

As regards Code of Conduct, Mr. Kavin Gulati submitted that the residuary provision for each category of offences (Level 1 to Level 4) are required to be interpreted *ejusdem generis* with the other offences under the same category and would be applicable only to such actions as would take place in relation to or pertaining to the field of play. It is his submission that act of Raj Kundra does not fall within the actions in relation to the field of play qua game of cricket and therefore such action would not be covered under the Code of Conduct.

The above submissions of Mr. Kavin Gulati on behalf of Mr. Raj Kundra must not detain us for long as all of them have been already considered by us while discussing the matter of Mr. Gurunath Meiyappan which may be treated as part of discussion for Mr. Raj Kundra as well. It is, however, necessary to notice the proved misconduct against him.

From the First Report dated 9th February 2014 of the Probe Committee, it is apparent that the allegations of betting and spot –fixing in IPL made against Mr.Raj Kundra and his wife Ms. Shilpa Shetty required further investigation. In the First Report, the Probe Committee did observe that the allegations of betting, if proved, would constitute a serious infraction of the provisions of the Operational Rules, the Anti Corruption Code and the Code of Conduct.

In its Final Report of 1st November 2014, the Probe Committee came to the firm conclusion that Raj Kundra had indulged in betting in violation of the BCCI Regulations and Anti Corruption Code. While recording this finding, the Probe Committee also came to the conclusion that Raj Kundra was a 'Team Official', 'Player Support Personnel' and 'Participant' within the meaning of the relevant Rules. The Probe Committee further noted that he was in touch with the bookies about betting and, thus, by not reporting contact with the bookie, he violated the Rules/Codes.

In the course of hearing before the Hon'ble Supreme Court the position that Raj Kundra was duly accredited Team Official in terms of the Operational Rules and also Player Support Personnel and Participant in terms of the Anti Corruption Code was not disputed at all. There was no serious challenge to the findings recorded by the Probe Committee.

While finding no fault with the findings of the Probe Committee in the Final Report being in consonance with the principles of natural justice, the Supreme Court in paragraph 50 of the judgment has categorically held that misconduct of betting by Raj Kundra as Team Official has adversely affected the image of the BCCI, IPL and also the game of cricket and brought each one of them to disrepute.

In paragraph 58 of the judgment, the Supreme Court has held that the Team Official who is found guilty of betting is certainly acting against the spirit of the game and bringing disrepute to it.

The misconduct established against Raj Kundra as Team Official is, thus, three-fold, (one) Betting, (two) His actions have adversely affected the image of the BCCI, IPL and the game of cricket and brought each one of them to disrepute, and (three) He acted against the spirit of the game and brought disrepute to it. Each one of the above is a distinct offence/misconduct and liable to action and imposition of sanction under the different provisions.

Mr. Kavin Gulati, Learned Senior Counsel submitted that the following facts of general application across the applicable Rules/ Codes deserve to be considered while adjudicating upon the proportionate sanction/punishment to be imposed upon the Noticee - Raj Kundra:

(i) He has been accused or found guilty of misconduct under BCCI Rules/Regulations/ Code for the first time;

(ii) The only misconduct against him is of betting and there was not even allegation of match fixing or influencing the outcome of the game;

(iii) The alleged offence is an individual action and not in any manner concerned with his status as co-owner;

(iv) He has cooperated at all stages with all investigations into the matter and he willingly appeared before the Probe Committee (headed by Justice Mudgal) and also before the Investigation Team;

(v) The First Report of the Probe Committee dated 9th February 2014 records the fact that Delhi Police informed it (Probe Committee) that noticee was placing bets of petty values in the region of Rs. 1 lakh with his friends, and that as per Delhi Police, he being UK citizen believed betting to be legal in India;

(vi) In the Final Report dated 1st November 2014, the Probe Committee recorded that the 'known punter' with whom noticee allegedly placed bets was his friend; and

(vii) The noticee is a person of relatively young age, being still in his late thirties. At the time of alleged betting, he was in mid –thirties.

While highlighting the above facts, Mr. Kavin Gulati also submitted that none of the aggravating factors under Article 6.1.1 of the Anti Corruption Code is present and rather most of the mitigating factors under Article 6.1.2 of the Anti Corruption Code are present.

Learned senior counsel argued that having regard to the above relevant facts, in the absence of aggravating factors and the presence of most of the mitigating factors, the noticee may be awarded the least possible sentence applicable to such cases in terms of suspension (taking into account the fact that he has already undergone suspension for almost two years) or financial penalty.

In this personal presentation Raj Kundra stated that he (alongwith his family) has made substantial investments in the IPL franchise purely out of love for the game of cricket and not for any financial gain or benefit. He also expressed his willingness to surrender his shares in the franchise. We may

observe that while insisting that he was not involved in betting at all, Raj Kundra hesitantly and reluctantly expressed the regret.

We have carefully considered the above submissions. As part owner (having 11.74% of share holding by his family and investment vehicle)/Team Official, Raj Kundra was required to conduct himself in conformity with the Rules / Regulations and Codes framed by the BCCI. Being UK citizen he had heavy responsibility on him to ensure that his acts and actions were not in conflict with the laws of a foreign country. Betting is a crime punishable under the Indian Penal Code. Besides that it is an offence/corrupt practice under the BCCI's Rules, Regulations and Codes. With so much of information available online it is very difficult to accept that as UK citizen he believed betting to be legal in India. Suggestion by Delhi Police to his effect, if any, hardly merits acceptance.

It is no secret that some of the players of Rajasthan Royals, of which he was Team Official, were found enmeshed in a web of match-fixing. This is not unusual because when a part owner (Team Official) indulges in corrupt practices (betting being such practice and involves more than one person), the unsavory individuals and bad elements become bold enough to involve vulnerable elements including players to all sorts of corruption. The findings by the Hon'ble Supreme Court that his acts of betting as a Team Official have affected the image of BCCI, IPL and the game of cricket and brought each one

of them to disrepute and involvement in betting by a Team Official is against the spirit of game reflect the grave nature of misconduct he has been found to be involved with.

We do not think that facts pointed out by Mr. Kavin Gulati or in his presentation by Mr. Raj Kundra, in any manner militate against the gravity of misconduct committed by him. The proved misconduct by the Team Officials of CSK and Rajasthan Royals have damaged the faith of the public in the IPL, BCCI and the game of cricket so much so that any untoward incident in any game is now attributed to corruption in cricket.

Though Mr. Raj Kundra has been found guilty of misconduct under the BCCI's Rules, Regulations and Codes for the first time but his very first misconduct has affected the image of the BCCI, IPL and game of cricket and brought disrepute to each one of them. In India, Cricket is not any other game or sporting activity; it is passion for millions of people. It is really hard to measure the harm these acts of Team Officials have caused to the sport generally and the game of cricket in particular. We are not persuaded by the submission made on behalf of Mr.Raj Kundra that the offence held to be proved against him is an individual action and not in any manner concerned with this status as co-owner/ Team Official. The observations of the Hon'ble Supreme Court in paras 45, 50 and 106 of the judgment dated 22nd January 2015 clearly negate this argument.

It is not true that there was no allegation of match –fixing against Mr. Raj Kundra. As a matter of fact, in its First Report dated 9th February 2014, the Probe Committee observed that the allegations of betting and match-fixing against Raj Kundra and his wife required further investigation. After further investigation, the Probe Committee found that Raj Kundra has been placing bets through a known punter and he also introduced that punter to another bookie. That allegation of match-fixing was not finally established does not alter the gravity of offence because his actions (of betting) as Team Official have brought disrepute not only to the game but also to the IPL and BCCI. The gravity of offence is further compounded by his being constantly in touch with the bookies and not reporting his contacts with them. Moreover, he was involved so much in betting that he introduced a known punter to another bookie.

The argument that Raj Kundra cooperated at all stages with all investigations into the matter and he willingly appeared before the Probe Committee is not borne out from the record. The Probe Committee on the other hand found that the investigation against him was abruptly and without reason stopped by the Rajasthan police upon receiving the case papers from Delhi Police. No reason is discernible as to why investigation into a crime as serious as this was not taken to logical conclusion.

The period of suspension already undergone is hardly a mitigating factor. He is a middle aged person-well educated and well informed- if he had true love for game, he would not have indulged in corrupt practice of betting and remained in touch with known punter and bookie and would have surely refrained from acting contrary to the sporting imperatives and against the spirit of the game and bringing the game to disrepute.

On totality of all relevant factors and after weighing them carefully, the Committee imposes following sanctions on Mr. Raj Kundra:

(i) He is declared ineligible from participation in the sport of cricket as explained in Anti Corrupton Code for the maximum period of 5 years under Article 2.2.1.

(ii) He is suspended for life from activities as explained in Article 7.5 under Level 4 (first offence) of Article 2.4 of the Code of Conduct.

(iii) He is suspended for life from being involved with the BCCI in any type of cricket matches under Section 6, rule 4.2(b) read with (j) of the Operational Rules

The above sanctions shall run concurrently and commence from the date of this order.

The India Cements Limited ("ICL")

Mr. C.S. Vaidyanathan, learned Senior Counsel, at the outset took us through some portions of the judgment dated 22nd January 2015 and submitted that there was no finding of any misconduct or wrongdoing committed by the ICL nor the Supreme Court has recorded the finding of "failure to ensure" against it. He would submit that failure to ensure cannot be an absolute responsibility and ought to be seen whether the offences alleged against Mr. Gurunath Meiyappan have been committed with the support or acquiescence of the franchisee.

Learned Senior Counsel submitted that Anti Corruption Code has no application insofar as Franchisee is concerned. The Franchisee is amenable to action under the Operational Rules only. But the Franchisee cannot be punished on a mere balance of probabilities and the penalties that may be imposed on the Franchisee under the Operational Rules being severe in nature, there has to be standard of proof beyond reasonable doubt. To bring home this point, learned Senior Counsel referred to Article 6.1 of the Anti Corruption Code which says that standard of proof in all cases shall be determined on a sliding scale from, at a minimum, a mere balance of probability (for the lease serious offences) up to proof beyond a reasonable doubt (for the most serious offences).

Elaborating the argument further, Mr. C.S. Vaidyanathan submitted that if any penalty was to be imposed merely on the basis of preponderance of probabilities then the penalty awarded cannot be any serious penalty such as

suspension of the franchisee, which is the highest or maximum penalty that could be awarded under the Operational Rules. To award the highest or maximum penalty the offence alleged has to be proved beyond reasonable doubt as the "sliding scale" principle applies. He would submit that there was no finding of any direct involvement by the ICL in the betting activities of its Team Official Mr. Gurunath Meiyappan nor there was any finding of ICL in any manner aiding or indirectly being complicit in the betting activities of Mr. Gurunath Miyappan. Further, Mr. Gurunath Meiyappan has not indulged in betting while in discharge of his duties as a Team official or while under the control of ICL.

According to learned Senior Counsel, Operational Rules impose penalties forbidding the doing or omission to do something and therefore, the provisions being punitive, any punishment could be imposed only if the state provides that such penalty can be imposed. In the absence of any penalty being contemplated in the absence of any specific finding against the ICL under the Operational Rules, no penalty can be imposed.

In the alternative, he highlighted the following mitigating factors:

(a) ICL has long history of contribution to cricket and cricketers;

(b) There are no previous antecedents in regard to ICL giving room to any suspicion against its Team Official Mr. Gurunath Meiyappan;

(c) If ICL is suspended, the entire IPL league as well as all the stakeholders including players and fans, especially those of CSK would stand to lose. The entire league format becomes unviable with the reduction of teams to less than light; and

(d) ICL has suffered immense loss of value already and the market capitalization has fallen and the share prices have fallen tremendously since the IPL 2013 events unfolded.

Mr. C.S. Vaidyanathan has also referred to few authorities of the Hon'ble Supreme Court and testimonials of former Indian Test Captains.

We are in agreement with the submission of learned Senior Counsel that the Anti Corruption Code and Code of Conduct have no application insofar as Franchisee is concerned. The only applicable provisions are contained in the Operational Rules. To appreciate the submissions advanced on behalf of the ICL, it is necessary to have a look at the consideration of the matter by the Hon'ble Supreme Court on the aspect of action against Franchisees in its judgment of 22nd January, 2015.

In paragraph 47 of the judgment while dealing with Question No. 3[11], the Hon'ble Supreme Court began discussion by saying, "**what possible action is**

[11] Question No. 3

If question No. 2 is answered in the affirmative, what consequential action in the nature of punishment is permissible under the relevant Rules and Regulations and against whom?

permissible against Mr. Gurunath Meiyappan and Raj Kundra and **their teams and Franchisees** is what logically falls for our consideration in the face of our answer to question no. 2" (emphasis supplied by us). The Court also noted in this paragraph of the judgment that even the franchise agreement between the BCCI and the franchisees contain provision that provide for action in situations like the one at hand.

That the Franchisees are subject to the Operational Rules has not been disputed before us. The Hon'ble Supreme Court has said so in paragraph 49 of the judgment as well. Apart from that, with reference to Operational Rules vis-à-vis franchisee, the Court has made the following observations, (one) In terms of Section 2 rule 1, participation or other involvement with the league is deemed to constitute an acceptance by each person subject to the Operational Rules of an agreement with an obligation owed to BCCI to be bound by the regulations; (two) In term of Section 2 rule 14 each person subject to these Rules is restrained from acting or omitting to act in any way that would or might reasonably be anticipated to have an adverse effect…… on the reputation ……BCCI, the league and/or the game or which would otherwise bring any of the forgoing into disrepute; (three) Each franchisee is in terms of Section 4, rule 1.1 under an obligation to ensure that each of its team official complies with the regulations, and in particular Article 2 of the Anti Corruption Code; and (four) In terms of Section 6, rule 4 BCCI can impose any one of the sanctions

enumerated therein which includes……suspension of team or franchisee form the league.

Following the above observations, the Hon'ble Supreme Court in paragraph 50 of the judgment has recorded the findings to the following effect:

> *"The upshot of the above discussion is that once Mr. Gurunath Meiyappan and Mr. Raj Kundra are accepted as team officials, their misconduct which has adversely affected the image of the BCCI and the league as also the game and brought each one of them to disrepute can result in imposition of one or more of the sanctions stipulated under Tule 6.4 (supra). It is noteworthy that those sanctions are not limited to Gurunath Meiyappan and Raj Kundra along but may extend to suspension of the team or the franchisee from the league also."*

Then in paragraph 106 of the judgment, while dealing with Question No. 7[12], with regard to Franchisees, the Hon'ble Supreme Court reitereated its finding in the earlier part of the judgment that action under the Rules could also be taken against the franchisees concerned.

In view of the observations made and findings recorded by the Hon'ble Supreme Court as noted above, we find it difficult to accept the submission of Mr. C.S. Vaidyanathan, learned Senior Counsel that there is no finding recorded in the judgment about any misconduct or wrongdoing committed by the ICL.

[12] Question No. 7

What orders and directions need be passed in the light of the discussions and answers to question 1 to 5 above?

The findings recorded in paragraphs 50 and 106 read with the observations made in paras 12, 13 and 43 leave no manner of doubt that for the misconduct of betting committed by Mr. Gurunath Meiyappan apart from the action being taken against him under the Rules, will result the action being taken against he Franchisee under section 6 rule 4 of the Operational Rules. It is for this reason that in paragraph 110 (II) of the judgment, the Hon'ble Supreme Court left quantum of punishment to be imposed upon the two individuals (who were Team Officials) and their respective franchisee/teams/owners to be determined by this Committee.

The fact that the Committee has been given authority by the Hon'ble Supreme Court to determine the quantum of punishment against the franchisee/teams/owners as well is indicative of the position that there is a finding of wrongdoing recorded against the franchisees. The Committee has not been given any mandate to first determine the wrong committed by the franchisees and then quantify the punishment. It is only after the Hon'ble Supreme Court recorded the findings of misconduct and wrongdoing by the two Team Officials and their franchisee that this Committee has been entrusted with the task of determination of quantum of punishment.

Apart from the consideration of the matter in paragraphs 49, 50 and 106 of the judgment, it is pertinent to note here again that the Hon'ble Supreme Court in its judgment has considered the various Reports of the Probe

Committee. While noticing the findings of the Probe Committee in its Report of 9th February 2014to the effect that for the acts of betting by Mr. Meiyappan, which is further accentuated by the position he held in CSK, which was held by Mr. Meiyappan with the implicit approval of the franchisee owner India Cements. The Supreme Court supplying emphasis to the following finding by the Probe Committee:

"The Committee is also of the opinion that the franchisee owner of CSK is responsible for failing to ensure Mr. Meiyappan (Team Official) has complied with the BCCI Anti Corruption Code, IPL Operational Rules, IPL Regulations and hence the franchisees actions are in violation of Section 4.1.1 of the IPL Operational Rules and Clause 11.3 of the franchise agreement."

The Hon'ble Supreme Court has accepted the findings arrived at by the Probe Committee and while doing so it rejected the argument that the Probe Committee was only fact finding body and rather said in clear terms that the Probe Committee in fact was a High Powered Committee set up under Article 142 for finding out whether there was any truth in the allegations that owners of IPL teams and franchisees were in a big way including in sporting frauds thereby discrediting the game and cheating the public of their confidence in its purity.

Moreover, Mr. Gurunath Meiyappan was in the position of owner. He is the son in law of Mr. N. Srinivasan, Managing Director of ICL, which is the Franchisee of the team CSK and Mr. Gurunath Meiyappan was considered to be the face of the owner, due to his actions. Therefore, offences of such persons who are the face (representative) of the owner would have to be considered as acts of the owner for the purpose of the Operational Rules, with reference to IPL League Matches, and consequently, the actions of such person which bring the game, BCCI and League into disrepute.

Section 4, rule 1.1 of the Operational Rules puts strict obligation on each Franchisee that its Team Officials complies with the Regulations. This provision incorporates strict liability principle. The reason for this is not far to seek. BCCI is the body responsible for the operation of the League. While giving right to the Franchisees to participate in the League, certain obligations including Section 4, rule 1.1 have been cast on them. This is to ensure that cricket is played not only within the laws, but also within the spirit of game and nothing is done by its representatives (Team Officials), players etc. on the field or off the field which is contrary to the spirit of the game or which adversely affects the reputation of the game. If the Franchisees fail in their obligations, then Section 6, rule 4 of the Operational Rules empowers the BCCI to order sanction against the erring Franchisee. The provision provides an effective means to deter the Franchisees from being complacent and to ensure strict

observance of their obligations enumerated in Section 4 of the Operational Rules.

We are not impressed by the argument of the learned Senior Counsel that strict liability principle is not accepted as a sound principle and in any case that principle may not be applied here. In our view, strict liability principle is well accepted principle if the object of such law is deterrent, As a matter of fact this issue is not of much significance before us in view of the finding of the Hon'ble Supreme Court, as regards Franchisees' liability, contained in paragraphs 49, 50 and 106 of the judgment read with the findings of the Probe Committee which have been considered in paragraphs 12 and 13 and accepted in paragraph 43. In view of these findings, there is no merit in the argument of the learned Senior Counsel that there is no finding of failure to ensure.

It is not necessary to deal with the argument of the learned Senior Counsel pertaining to the 'standard of proof', 'the sliding scale principle' and the 'gradation of offences' in detail. Suffice it to say that the question of proof becomes relevant only at the time of determination of offence/misconduct. This has already been done by the Hon'ble Supreme Court. The aspect relating to standard of proof has no relevance at the stage of determination of quantum of punishment.

Although Operational Rules do not provide for mitigating or aggravating circumstances to be considered but if we consider mitigating factors as

suggested by Mr. C.S. Vaidyanathan then we shall have to consider aggravating factors also. Before we undertake this exercise, it must be immediately stated that breach of Regulations by an accredited Team Official is very serious offence. If gradation of offences relating to breaches of Section 4 is to be made, the breach of Regulations by an accredited Team Official would fall in the most serious category.

To emphasize the importance of the ICL's duty in taking action against its erring accredited Team official (or for that matter, somebody who is its integral part) is the most mild statement. Not only that no urgent action was taken by the ICL against Mr. Gurunath Meiyappan but as a matter fact no action is shown to have been taken by the ICL against him. The order of suspension passed by the BCCI against Mr. Gurunath Meiyappan after his arrest is not an action by the ICL against its Team Official.

The plea by the ICL regarding long history of contribution to the cricket and cricketers cannot be accepted in view of the fact that due to the act of Gurunath Meiyappan, Team Official of CSK who happened to be the son-in-law of Shri N. Srinivasan, Managing Director of ICL and the then BCCI President, the purity of the game has been affected and the contribution, if any, made by the franchisee has also been wasted because millions of people who are true lovers of the game feel cheated. Moreover disrepute has been brought to the

game of cricket, the BCCI and the IPL to such an extent that now doubts abound in the public consciousness about whether games are clean or not.

Having regard to the findings recorded by the Hon'ble Supreme Court and on taking into consideration all relevant facts and circumstances as noted and discussed above, the Committee proposes to impose sanction on ICL (Franchisee) under Section 6,rule 4.2(c)[13] of the Operational Rules by suspending it from the League for a period of two years. We order accordingly. The period of suspension shall commence from the date of this order.

Jaipur IPL Cricket Pvt. Ltd. ("JIPL")

Mr. Ashok Desai, learned Senior Counsel, appearing for JIPL at the outset explained genesis of JIPL and position of Mr. Raj Kundra. According to him JIPL is wholly owned by a holding company EM Sporting Holdings Limited ("EMSH"). The shares of holding company are held by investment vehicles of four different persons, one of them being Mr. Raj Kundra and his family having 11.74% of the shares. Mr. Raj Kundra was, however not part of initial promoters of EMSH. The Board of JIPL comprises of two directors, both having professional management background. JIPL also has the benefit of Mr. Rahul Dravid as its team mentor. Moreover, share holders Agreement of EMSH provides for a mechanism to deal with any infraction by a shareholder which

[13] Section 6
4. Sanctions
4.2…….
(c) Suspend a Team or Franchisee from the League;

has duly been acted upon in the case of Mr. Raj Kundra. It was submitted that Mr. Raj Kundra was not a part of management of JIPL and he was not involved in day-to-day affairs of JIPL which has even been declared by him in his statement on 7th June 2013 when allegation of betting came to the fore.

With this background of the affairs of JIPL, Mr. Ashok Desai learned senior Counsel argued that there are no findings recorded by the Supreme Court of wrong doing by JIPL whatsoever nor there is an iota of finding in the Probe Committee Reports against JIPL. Findings, if any, are against Mr. Raj Kundra who has taken such action in his personal capacity. Learned Senior Counsel submitted that no case is made out for imposition of vicarious liability upon JIPL for acts done in personal capacity by Mr. Raj Kundra, it is settled law that there is no vicarious liability in criminal law save and except if there is a special provision in the statute. Mr. Raj Kundra actions cannot be considered as that of JIPL.

While asserting that Anti Corruption Code and Code of Conduct are not applicable to JIPL, learned Senior Counsel with reference to the Operational Rules submitted that Section 4, rule 1.1 is directory. The use of word 'shall' therein does not mean that the provision is obligatory or mandatory. He relied upon the decision of the Supreme Court in Azad Bharat Finance Co.[14]. He submitted that a strict interpretation of "shall ensure" cannot be adopted. He

[14] State of Madhya Pradesh vs Azad Bharat Finance Co. and Anr., AIR 1967 SC 276

would submit that the word “shall” must not be given interpretation which leads to hardship and injustice, presumably not intended. Apart from Azad Bharat Finance Co. (Supra), learned Senior Counsel also placed reliance upon Tirath Singh[15].

Mr. Ashok Desai argued that IPL season is of about 2 month duration. The players and player support personnel report to the Franchise a few days before the IPL tournament begins. The Franchisee has no relation, no connection with all such people for the rest of the year. Even during the tournament, it would not be possible to control any individual and the actions that are taken by him in his personal capacity and therefore, it would be incorrect to interpret the obligation under Section 4, rule 1.1 to be an obligation of strict compliance.

Moreover, the learned Senior Counsel submitted that primary obligation of familiarizing and following the IPL Regulations was on the respective Team Official. Insofar as JIPL is concerned, it has done all that can be reasonably expected (in terms of the best practices within IPL and those followed by various Cricket Boards).

[15] Tirath Singh vs Bachittar Singh & Ors; AIR 1955 SC 830

As required by all the franchisees, JIPL had ensured that all its players attended the ACSU (Anti Corruption Unit of ICD) briefing and education programme on anti corruption issues.

Mr. Ashok Desai, learned Senior Counsel submitted that JIPL has zero tolerance policy to corruption and corrupt practices. This is evidenced by: 1. Suspension of three players as soon as allegations were made against them. JIPL filed a complaint with Delhi Police against three players for breach of trust and causing loss to franchise; 2. Declaring that Mr. Raj Kundra's shareholding in the parent entity of JIPL ("EMSH") would be forfeited in case he is found guilty.

Learned Senior Counsel, thus, emphasized that JIPL has acted duly, ensured and taken all steps to ensure adequate compliance of the provisions of the IPL Regulations.

Without prejudice to the above submissions, Mr. Ashok Desai argued that JIPL is not liable under the doctrine of proportionality. There is no clarity on number of instances of betting by Mr. Raj Kundra nor is there any clarity on the amounts involved in such instance of betting. He submitted that penalty has to be proportionate to the offence. In this regard reliance was placed on the Ranjit Thakur case[16]. Learned Senior Counsel also highlighted the several mitigating

[16] Ranjit Thakur vs Union of India, (1987) SC 611

factors and submitted that even if there is any minimal liability on JIPL, having regard to these factors, no sanction/penalty should be imposed. The factors relied up by him are the following:

a. There is no direct finding, evidence or factual assertion which even remotely seeks to implicate JIPL or any of its officers or management.
b. The punishment if any has to be proportionate to the offence (or deemed offence, as may be inferred in this matter).
c. There was no act or omission by the franchise which would have an adverse impact on reputation.
d. The franchise has done whatever it was required to do by the BCCI in respect of the regulations.
e. The franchise was not aware that Mr. Kundra was responsible for such an infraction of the regulations.
f. The Probe Committee finds that his actions were purely of an individual nature and did not involve any other person from JIPL.
g. The Probe Committee does not find that he "influenced any outcome" or was involved in "spot fixing" of any kind.
h. Mr. Raj Kundra has been implicated for the first time and has already been suspended for the last 2 years.
i. Mr. Raj Kundra had promised to forfeit his shares and indeed has done so recently following the judgment.
j. Betting is an activity which is widely prevalent globally and thus in itself (unless accompanied by influencing the outcome of a match) is not a severe offence. In fact Justice Mudgal himself who headed the Probe Committee, in his book on Sports Law and some news interviews has stated so and recommended that betting should be legalized.
k. There has been no benefit to the franchise by this act of betting by Mr. Raj Kundra. In fact JIPL itself has suffered huge monetary losses in terms of lost sponsorships and eroded reputation.
l. There is no allegation even in any ACSU report that JIPL did not comply fully with its directives. The ACSU reports point out general omissions by all franchises. JIPL did no more and no less than any other franchise to "ensure" that its officials comply with the regulations.
m. JIPL has been highly celebrated as a "nursery" for players. The Rajasthan Royals have scouted and nurtured talent in the country and the world. They have provided players a platform to showcase their

talents and strengthen the team with the objective of winning matches for Rajasthan Royals.

n. Players contracted with the Team would also lose heavily if the team is suspended.
o. JIPL has cooperated at all stages with the investigations regarding the players as well. In fact it became a co-complainant in the investigation against the players since their actions had caused it huge losses and was a breach of contract and their duty towards the franchise.

Although learned Senior Counsel for JIPL took up the position that position of JIPL is different from ICL and made his submissions as noted above, in our opinion the position of JIPL and ICL is not at all different in view of the findings recorded by the Hon'ble Supreme Court with regard to these Franchisees for determination of the quantum of punishment against them by this Committee.

In paragraph 34 of the judgment while dealing with the Probe Committee's First Report dated 9th February, 2014, the Hon'ble Supreme Court has noted that findings recorded in that Report about Mr. Raj Kundra's part ownership and accreditation as a Team Official of RR was not disputed. Again in paragraph 35, the Hon'ble Supreme Court has referred to the concurring report submitted by Mr. Nilay Dutta, supplying emphasis to the following part, "There are materials on record which justify an appropriate investigation to ascertain the culpability of Mr. Raj Kundra and his wife Ms. Shilpa Shetty in placing bets as owner of the franchisee in IPL. Any such culpability on the part of Kundras would fasten liability on the franchisee, Jaipur IPL Cricket Private

Limited and it would be incumbent to ascertain such liability of the franchisee for purposes of appropriate sanctions under the Operational Rules and/or the Franchise Agreement."

Then in paragraph 36 of the judgment, the Hon'ble Supreme Court noted that the Committee has on the basis of further investigation and enquiry came to the conclusion that Mr. Raj Kundra was a 'team official', a 'player support personnel and 'participant'.

In light of the admitted position before the Hon'ble Supreme Court that Mr. Raj Kundra was part owner and accredited Team Official of RR, we find that genesis of JIPL and the position of Mr. Raj Kundra narrated by Mr. Ashok Desai in his submissions do not cut much ice. Mr. Raj Kundra was indeed part owner and also Team Official and therefore, for the purpose of the Operational Rules, with reference to IPL League Matches, Mr. Raj Kundra's actions that brought the game, the BCCI and the League into disrepute have to be considered actions of the Franchisee. We do not think JIPL can shrink its responsibility by terming the acts done by Mr. Raj Kudra as having been done in his personal capacity.

If those who indulge in corrupt practices forbidden by the rules of the game are integral part of the Franchisee in view of their accreditation/ part ownership/ close relationship and also being Team Official, the argument that these acts were personal and as a consequence of them if image of the game, the

BCCI and the League got affected, the Franchisee cannot be held responsible does not merit acceptance. Such a technical approach is legally unsustainable because of the very nature of relationship between the Franchisee and the wrongdoer. Moreover, the argument overlooks Section 2, rule 14 and Section 4, rule 1.1, breaches of which make the Franchisee directly responsible.

In any case, in view of the findings recorded by the Hon'ble Supreme Court in paragraphs 49, 50 and 106 of the judgment (which we have extensively considered while considering the case of ICL) and finally mandate in paragraph 110(II) that quantum of punishment to be imposed on Mr. Gurunath Meiyappan and Mr. Raj Kundra as also their respective franchisees/teams/owners of the teams shall be determined by this Committee leave no manner of doubt that wrongdoing by JIPL under the Operational Rules has already been determined. This answers Mr. Ashok Desai's other arguments as well viz., (i) that there are no findings recorded by the Supreme Court of wrongdoing by the JIPL; and (ii) that section 4, rule 1.1 is only directory and not mandatory.

If the culpability of the two Franchisees(JIPL is one of them) were not found established by the Hon'ble Supreme Court, it would not have mandated the Committee to determine the quantum of punishment to be imposed on them.

We do not intend to burden the discussion by repeating the reasons which we have given while considering the matter pertaining to ICL. Those reasons may be treated as part of the discussion here as well.

Now, we turn to the mitigating factors highlighted by the learned Senior Counsel and his submission that even if there is any minimal liability on JIPL, having regard to these factors, no penalty/sanction should be imposed.

Most of the factors highlighted by Mr. Ashok Desai are not mitigating factors at all. Factors (a), (c), (d), (e), (f) and (h) are basically arguments to show that JIPL has not indulged in any wrongdoing. They already stand repelled in view of our discussion in the preceding paragraphs. Factors (b) and (j) are too general. Obviously penalty has to be proportionate to the offence. As regards factor (k) that JIPL itself has suffered huge monetary loss in terms of lost sponsorship and eroded reputation, suffice it to say that such loss is too small in comparison to the loss caused to the reputation of the game, the BCCI and the League.

The general omissions by all Franchisees found in ACSU reports deserve serious attention by the BCCI but insofar as JIPL is concerned, its omissions are grave in as much as its part owner and Team Official has been found to have indulged in betting and that has affected the image of the game (and the BCCI and the League) and brought each one of them to disrepute.

JIPL claims that it is highly celebrated as a “nursery” for players. But the fact remains that 3 RR players were arrested and charged with spot –fixing in 2013 IPL season. The Committee can also take notice of the fact that there has been allegations of approach to one of its players for corrupt practices in

2015 IPL season as well. This shows that all is not well with JIPL in handling ACC issues.

It is true that Mr. Raj Kundra has relinquished his shares somewhere in the month of March but it is too late. No urgent action was taken by JIPL against Raj Kundra where his acts of betting became known.

Once it is accepted that cricket is bigger than individuals or body of individuals than financial loss that may be caused to few players or franchisees may not be of significant consideration while taking disciplinary action or for imposition of punishment for wrongdoing. BCCI which is managing the game of cricket in the country has to give an important place to the disciplinary role (this role is being discharged by this Committee in the present matter as mandated by the Hon'ble Supreme Court) so that purity of game remains a central element. We feel that our decision must reflect a kind of institutionally firm view for upholding the paramountcy of the game.

On consideration of all relevant aspects of the matter, the Committee imposes sanction on JIPL (Franchisee) under Section 6, rule 4.2(c) of the

Operational Rules by suspending it from the League for a period of two years.

The period of suspension shall commence from the date of this order.

Justice R.V. Raveendran	**Justice Ashok Bhan**	**Justice R.M. Lodha**
Former Judge, Supreme Court	**Former Judge, Supreme Court**	**Former Chief Justice of India**
Member	**Member**	**Chairman**