

**Before Ombudsman, Bihar Cricket Association
Raghwendra Kumar Singh (Retd. District Judge)
Incharge Ombudsman, Bihar Cricket Association**

BCA/Ombudsman/05 of 2021

Sunil Rana S/o Krisha Bihari Singh, R/o 279, Sapna Cinema Road, Laxmi Charan's Hata, Darwari Niwas, Shiv Ganj, Ara, District Bhojpur, claiming himself to be presently holding the post of Honorary Secretary, Bhojpur District Cricket Association, Ara.....Petitioner

Versus

- 1. Bihar Cricket Association, Shail Raj Complex, Buddha Marg, P.S. Kotwali, Patna-800001.**
- 2. Sri Rakesh Kumar Tiwari, President, Bihar Cricket Association, Patna**
- 3. Chief Executive Officer (CEO) Bihar Cricket Association, Patna**
- 4. Kumar Arvind, Joint Secretary, Bihar Cricket Association, 1st and 2nd Floor, Shail Raj Complex, Buddha Marg, P.S. Kotwali, Patna-800001.....Respondents**

05/07/2022

The petition filed on behalf of the aforesaid petitioner Sri Sunil Rana, numbered as the aforesaid case Ombud 05 of 2021 was filed by Sri Dhananjay Kumar Tiwari, Advocate along with vakalatnama executed by the petitioner in favour of said Advocate, on 19.06.2021 and web copy of said petition, was sent by said advocate from his Email ID dhnanjaykumartiwary3055@gmail.com on 14.06.2021, with assertion that the Respondent No.4 Sri Kumar Arvind has in fact made concealment of facts and misrepresented in his affidavit filed before the then Electoral Officer of the Bihar Cricket Association(BCA) at the time of the filing of his nomination for the post of Joint-Secretary by not disclosing the fact that he has been an Office Bearer of the Bhojpur Cricket Association from the year 2008-2019 till the filing of his said nomination papers for the post of Joint-Secretary of the Bihar Cricket Association (BCA) in the last election of the BCA which was held in the year 2019 and thus, concealed the fact that he has been Office Bearer of the Bhojpur District Cricket Association, and thus, he fraudulently and dishonestly got him elected as Joint-Secretary of

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R. Singh

the BCA without going through the cooling period of three years and on the aforesaid premises prayed for issuance of necessary order or orders as may appear to be fit and proper to the effect of the removal of Respondent No. 4 from the post of the Joint Secretary of the BCA.

After issuance of notice the respondent no. 4 Shri Kumar Arvind filed his counter affidavit stating the same as his preliminary counter affidavit dated 09.08.2021 carving leave to file detail counter affidavit if required by this forum with further assertion that the same is filed as preliminary objection to the petition of the petitioner Shri Sunil Rana.

In the said preliminary objection Shri Kumar Arvind has submitted that the petitioner Shri Sunil Rana has come before this forum claiming himself to be Honorary Secretary of Bhojpur District Cricket Association (DCA) but the Honorary Secretary of Bhojpur DCA is Shri Vineet Kumar Rai and this fact is also supported from the website of the BCA from which he has downloaded the link and the details of the same goes to show that the present Secretary of Bhojpur DCA is said Shri Vineet Kumar Rai and copy of the said downloaded document has been annexed as Annexure No. R-4A to the said counter affidavit but the same is marked as Annexure 1 filed with the said counter affidavit and it shows that Mr. Manoj Kumar Pandey, Dr. Sushil Kumar Rungta, Mr. Vinit Kumar Rai, Mr. Alok Kumar and Mr. Vivek Kumar are Hony President, Hony Vice-President, Hony Secretary, Hony Joint Secretary and Hony Treasurer respectively of Bhojpur DCA and on that basis it has been claimed by the respondent no. 4 Mr. Kumar Arvind that the petitioner has not come with the clean hands and it is a settled principle of law that the petitioner claiming rights has to come with clean hands and clean mind and has to disclose all necessary facts with regard to the case and thus the preliminary objection be decided at first in the interest of justice. It has also been averred by said Mr. Kumar Arvind that as a matter of fact that the petitioner has himself brought on record certain documents attached to his petition and in that course the petitioner has relied on Annexure 3 of his said petition and from perusal of the same it would transpire that the same is copy of the minutes of the proceedings dated 02.08.2018 of the AGM of Bhojpur DCA and from the said minutes it would transpire that Shri Manoj Kumar was the Secretary of Bhojpur DCA at that time. It has also been claimed by Mr. Kumar Arvind in said counter affidavit that Shri Rana is a fake person and he has no locus and it is wrongly stated averments in his petition and the allegation made in the same against respondent no. 4 is also incorrect. It has also been stated in the said counter affidavit

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Risingh

that it is settled principle of law that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final as held by Hon'ble Supreme Court in case of Dalip Singh Vs. State of U.P. and others, (2010) 2 SCC 114. In the counter affidavit Mr. Kumar Arvind has also submitted that the Hon'ble Supreme Court in cases of Ramjas Foundation and Others Vs. Union of India and Others, 1993 Suppl. (2) SCC 20; Nooruddin Vs. (Dr.) K. L. Anand, (1995) 1 SCC 242; Ramniklal N. Bhutta and another Vs. State of Maharashtra and Others, (1997) 1 SCC 134 and V. Chandrasekaran and others Vs. The Administrative Officer T. N. Housing Board and Others, (2012) 12 SCC 133 has held that whenever a person approaches a court of equity, invoking its jurisdiction, it is expected that he would approach the said Court not only with the clean hands but also with a clean mind, a clean heart and a clean objectives and one who seeks equity must do equity, is the well accepted principle and has been reiterated in catena of judicial pronouncement and a petition or affidavit containing misleading and/or inaccurate statements, only to achieve an ulterior purpose, amounts to an abuse of the process of the Court. On the aforesaid basis stated in the said counter affidavit it has been submitted by Mr. Kumar Arvind that the petitioner is stranger and the statement in the party position is not verified nor any statement with regard to locus of the petitioner has been stated in the said petition. It has also been submitted in the counter affidavit that the petitioner in respect of his claim about himself to be the Hony Secretary of Bhojpur DCA has not filed any supporting document to prove his said claim. On the basis of aforesaid averments made in the counter affidavit Mr. Kumar Arvind has claimed that the entire petition of the petitioner Mr. Sunil Rana should be dismissed with cost.

After submssion of aforesaid counter affidavit dated 09.08.2021 of Mr. Kumar Arvind the petitioner Sunil Rana filed his reply/rejoinder affidavit dt. 11.08.2021 to counter the aforesaid counter affidavit of Mr. Kumar Arvind.

In the said rejoinder affidavit Mr. Sunil Rana has submitted that the reply dt. 09.08.2021 of Mr. Kumar Arvind as the respondent no. 4 is neither maintainable in law nor in facts and the same has been filed to squeeze/linger the matter causing frustration to interest/welfare of cricket and, therefore, the same is liable to be rejected in limine. It has also been submitted in the rejoinder affidavit that the averments made in the counter affidavit dt. 09.08.2021 of Mr. Kumar Arvind in respect of the petitioner are ipso jure bad and unwarranted allegation and the question raised by the Mr. Kumar Arvind about the locus

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of the petitioner to maintain the petition is nothing but creation of a shrewd litigant brain and for denial of status of the petitioner as Secretary of Bhojpur DCA is based on the information derived from the website of the BCA but the validity, genuineness and authenticity of said website is subject to decision of the Hon'ble High Court where the matter is pending for its adjudication. It has further been averred in the rejoinder affidavit dt. 11.08.2021 of Mr. Sunil Rana that disputes from all the corners in Bihar Cricket Association (BCA) have been cropped up since last 3-4 years in matters of recognition of District Units of BCA, legality of Office Bearers, genuineness of website (biharcricketassociation.com or biharcricketassociation.in), validity of voter lists, etc. and all the aforesaid disputes or matters for decision are pending in the competent court of law, and there are about altogether 40 such cases pending for adjudication before the different courts of law and, therefore, the question of petitioner's status cannot be raised at this juncture of time. In the rejoinder affidavit in respect of the petitioner's status as Secretary of Bhojpur DCA the petitioner has averred that after coming into force of Justice Lodha Committee Report a fresh election was held in Bhojpur DCA on 22.08.2020 whereby the petitioner was declared elected as Hony Secretary of Bhojpur DCA; beside it, the petitioner has been associated with the association since quite a good considerable time as would be revealed from various documents like certificate, granted by Electoral Officer (dt. 05.08.2018 purported to be under signature of Vijay Kumar, Electoral Officer Bhojpur DCA, Arrah in which it has been written that "this is to certify that the election of Bhojpur District Cricket Association Arrah held at Hotel Aditya Inn, Arrah on the 5th August, 2018 from 01 p.m. to 05 p.m. as per schedule. The following candidates are declared winner:- President-Kumar Arvind-uncontested; Vice-President-Sushil Kumar Rungta-48 votes; Honorary Secretary-Manoj Kumar-uncontested; Honorary Treasurer-Vinit Kumar Rai-53 votes; Joint Secretary-Sunil Rana-43 votes"), letter dt. 17.05.2019 issued by the then President of the Association (wherein it has been mentioned that Bhojpur-under suspension-to be represented by Mr. Sunil Kumar Rana, Joint Secretary), resolution dt. 25.05.2019 (showing Sunil Rana as representative of Bhojpur District) and 29.09.2019 (bearing signature of Sunil Rana at serial no. 5 as attendee) passed by the BCA in its General Body Meeting, the copies of which have been filed as Annexure 6, 6A, 6B and 6C to the rejoinder affidavit. In respect of the same it has also been averred in the rejoinder affidavit that almost in all the District Units of the BCA there are two groups and can well be said to be disputed and their recognitions are.

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Shilpa

subjected to domain of either competent court of law or before the Committee of Management; and, therefore, no prudent man, in view of the aforesaid position of disputes in the District Units of the BCA and such disputes being under adjudication, could declare that the group led by the petitioner in Bhojpur DCA is ingenuine and illegal; and beside it, the Hon'ble High Court of Judicature at Patna in its judgment reported in 1996 (1) PLJR 893, has ruled out not to weigh that the question of maintainability while adjudicating the point of injunction/restraintment, and even if, for argument sake, it is assumed that the petitioner is not the Secretary of Bhojpur DCA, even then he is well entitled to maintain his aforesaid petition in respect of position of the respondent no. 4 Mr. Kumar Arvind as Joint Secretary of the BCA because he is Secretary of Extreme Eleven Cricket Club, Bhojpur, affiliated to the Bhojpur DCA and in support of same he has filed Annexure 7A to the rejoinder affidavit being names of the Clubs affiliated to the Bhojpur DCA for the Session 2017-2018 issued by Shri Manoj Kumar, the then Hony Secretary, Bhojpur DCA, Arrah.

In the rejoinder affidavit, it has been averred by the petitioner that Mr. Kumar Arvind in his aforesaid counter affidavit dt. 09.08.2021 has not even whisper a word to counter the averments made in the petition/complaint of the petitioner about his status in the Bhojpur DCA before his election as Joint Secretary of BCA in the year 2019, and, therefore, in view of the provisions made under Order VIII Rule 3 of the Code of Civil Procedure, 1908, the averments made in the petition/complaint of the the petitioner about status of respondent no. 4 Mr. Kumar Arvind in Bhojpur DCA before his election as Joint Secretary of BCA in year 2019 should be treated as admitted to him and consequently the same required no proof in view of Section 58 of the Evidence Act. In the rejoinder affidavit dt. 11.08.2021 the petitioner has further submitted that the illegal occupancy of the post of Joint Secretary of BCA by the respondent no. 4 Mr. Kumar Arvind is also evident from the fact that he was put under suspension by the Bihar Cricket Association passed by order dt. 09.04.2019 of the BCA (the respondent no. 1 in the present matter) and said suspension was removed though illegally only after said election of 2019 of BCA, meaning thereby that at the time of filing his nomination in said 2019 election of BCA Mr. Kumar Arvind as Office Bearer of Bhojpur DCA was under suspension, and, therefore, contesting election for the post of the Joint Secretary of BCA in said 2019 election and thereafter holding said post of Joint Secretary of BCA by the respondent no. 4 Shri Kumar Arvind is ipso facto bad and on this score also, beside the pleading made in the original petition of the petitioner, the respondent no. 4 Mr.

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Rajesh

Kumar Arvind should be restrained immediately from discharging the function of Joint Secretary of BCA for welfare and interest of cricket.

On the aforesaid averments made in the rejoinder affidavit dt. 11.08.2021 the petitioner has prayed that the preliminary objection made by respondent no. 4 Mr. Kumar Arvind through his aforesaid counter affidavit dt. 09.08.2021 being quite foreign to law be rejected out rightly, and/or such other order or orders, as deems fit in the aforesaid circumstances may be passed by the forum.

It is pertinent to mention that on 11.08.2021 a supplementary counter affidavit dt. 11.08.2021 of Mr. Kumar Arvind was also filed and in the said supplementary counter affidavit it has been averred that he has already filed the reply wherein few preliminary objections have been raised but due to inadvertance few more objection in the nature of preliminary objection, which goes to root of the case, could not be brought on record in the present case and, therefore, he as respondent no. 4 of the present case is raising following preliminary objections before filing reply on merit with prayer to adjudicate the preliminary objections made in the counter affidavit-cum-reply of him dt. 09.08.2021 and also in the present supplementary counter affidavit dt. 11.08.2021 and the supplementary preliminary objections are as follows:-

"1. The present case is also not maintainable on the ground of non-joinder of necessary party. The petitioner has made Bihar Cricket Association as Respondent No. 1. Bihar Cricket Association is juries(sic. 'juris') person in law but has to be represented through a living person/post. But in the present case only Bihar Cricket Association has been made party respondent.

2. That it will be relevant to mention herein that the Bihar Cricket Association was initially registered under Societies Registration Act in the year 1935 and its headquarter was at Jamshedpur. After the bifurcation of erstwhile State of Bihar in present State of Bihar and Jharkhand, a dispute arose in the then BCA which resulted in fresh registration of present BCA under Societies of Registration Act and affiliation of the then BCA as Full member with BCCI was also remained with Jharkhand. Accordingly present BCA was registered afresh in the year 2001-02 and it was granted Associate Membership by the BCCI in the year 2008. Since thereafter the authorities of BCA started fighting with each other to take control over the BCA. The fighting among the stakeholders of BCA reached before Hon'ble Supreme Court and on the direction of Hon'ble Apex Court the election in BCA took place

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in the year 2015.

3. That in the meantime recommendations of Justice Lodha Committee was implemented in the year 2016 and since thereafter again BCA divided in groups and fighting to take control of BCA started. The BCCI sent 3-men Supervisory Committee which took control of BCA. BCA also received part payment of Rs. 10 crore towards subsidy from the BCCI.

4. That finally the Supreme Court Appointed Committee of Administrator took control of BCCI and under its supervision recommendations of Lodha Committee was implemented in the BCCI and its members including BCA. Accordingly elections were held in the members of BCCI and thereafter in BCCI. Election of BCA was held on 29.09.2019.

5 That after much effort validly constituted Committee of Management(COM) of BCA came in existence. The COM of BCA was functioning to the satisfaction of all concern which also attracted the authorities of BCCI and BCA was awarded with organizing entire womens T-20 international tournament.

6. That though the members of COM were busy in uplifting the game of cricket but the Respondent No. 2 indulged himself in hatching conspiracy to take complete control of BCA. In furtherance of his conspiracy he removed the Honorary Secretary of BCA by misleading the members of BCA, made appointments of his own men on heavy salary on various posts without the knowledge of the members of COM, Allowed his own men to hold Bihar Cricket League without the mandatory permission of BCCI. Respondent No. 2 has also started in interfering in the internal affairs of the members of BCA and planting his own men in the COM of the member associations of BCA. The Respondent No. 2 is in habit of manipulating the decisions taken in the meetings. The Learned Vice-President of BCA has also warned the Respondent No. 2 in this respect but of no avail.

Copy of the email sent by the Vice-President of BCA is attached herewith and marked as Annexure-R 4/B to this supplementary counter affidavit.

7. That from bare perusal of Annexure -R-4/B, it would be evident that in fact the action and the entire control of Bihar Cricket Association is in the hands of the President and not in the hands of Respondent No. 4 and thus under this background the allegations

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R. Singh

leveled in the interlocutory application is not only vague but also false.

8. That the members of COM including this deponent tried to tolerate all the illegalities committed by the Respondent No. 2 in the interest of BCA and to cover-up the reputation of BCA. But is now high time to continue with the illegalities committed by the Respondent No. 2.

9. That this respondent dares to call upon the Respondent No. 2 to demonstrate none of his action in consonance with the Constitution of BCA. The Constitution of BCA clearly provides that BCA may sue or be sued in the name of Honorary Secretary but in all the cases Mr. Rakesh kumar Tiwary becomes party either in his individual capacity or by post of President.

10. That it is respectfully submitted that there is nothing on record to substantiate the fact that the respondent No. 4 has been working in contravention to Rule-9 of the Bihar Cricket Association. It is to submit even the documents attached to the main application taking into consideration then still no case of disqualification is made out against the present respondent No. 4. It is to submit that the respondent No. 4 has brought on record few facts in para-6, 7, 8 of the present supplementary preliminary objection in order to show with regard to working of current Bihar cricket Association which is also in contravention of the BCA rules.

11. That it is respectfully submitted that a similar issue with regard to challenge of the appointment of the respondent number four is pending before the Hon'ble Patna High Court bearing C.W.J.C. No. 25002 of 2019 (Sanjay Kumar Singh versus the Electoral Officer, BCA and others) and the Hon'ble Patna High Court is seized of the matter and thus under such background the present case be decided after the disposal of this writ application."

After filing of aforesaid supplementary counter affidavit dt. 11.08.2021 by the respondent no. 4 Mr. Kumar Arvind a counter affidavit dt. 13.08.2021 in reply to the averments made in petition of the petitioner dt. 14.06.2021, which hard copy was filed on 19.06.2021 before this forum, was filed.

In the said counter affidavit dt. 13.08.2021 the respondent no. 4 Mr. Kumar Arvind has made para wise reply of the petitioner's petition dt. 14.06.2021.

In the said counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in reply to para 1 of the petitioner's petition dt. 14.06.2021, wherein it has been averred that the aforesaid

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petition is directed for issuance of necessary order or orders as this forum may deem fit and proper to the effect of removal of respondent no. 4 from his post/chair who has been occupying the seat (Joint Secretary of the Association) illegally, arbitrarily and fraudulently in as much retainment of the said post by virtue of the last election result is ab initio void and futile for simple reason that the same is based upon concealment of material facts, placed by him to the effect that he has never been Office Bearer of the District Cricket Association, Bhojpur for more than 6 years; has stated that the statement made in paragraph no. 1 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the statement with regard to concealment of the facts is totally incorrect. In fact the entire case is false and would be evident from the word used "District Cricket Association, Bhojpur" and there is no such association in Bhojpur for cricket.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of statements made in para 2 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the instant matter as apparently appearing at its face is a matter of concealment of facts and misrepresentation, committed by respondent no. 4 before the then Electoral Officer of the Association; the declaration made by him through his affidavit to the effect that he has never an Office Bearer for the cumulative period of 6 years is palpably false, fabricated and a misrepresentation, whereas the fact is that he has been the Office Bearer of the said Association from the year 2008-2019, i.e. till the date of the last BCA election; the relevant document annexed therewith with the petitioner's petition dt. 14.06.2021 cries to suggest so; it has been stated by Mr. Kumar Arvind that the statements made in paragraph no. 2 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. The statement made that respondent no. 4 had been in the office where from 2008 to 2019 is the vague, incorrect and false.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of statements made by the petitioner in para 3 of his petition dt. 14.06.2021, wherein it has been stated that briefly speaking, it is relevant to state here that corrupt practices at mass level in the field of cricket was widely spread all across the country; for some reasons or others, the matter went before the Hon'ble Supreme Court; the Apex Court, considering need of time entertained the matter and pass an elaborative and reasoned order making so many reforms in its affairs; in this contest (sic. 'context') Hon'ble Justice Lodha was appointed Chairman

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of the Committee constituted by it to look into such affairs; the Committee examined the matter at length, visualised almost each and every aspect of the matter and submitted its reports to the Hon'ble Supreme Court and then the Hon'ble Supreme Court, by and large accepted the recommendation of the said Justice Lodha Committee and in this way several important reforms were made; it has been stated by Mr. Kumar Arvind that the statement made in paragraph 3 of the application filed by the petitioner dt. 14.06.2021 it is submitted and stated that the statement made is the explanation to the formation of Lodha Committee, hence needs no comment.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made in para 4 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that one of the such reform, just in order to bring transparency and honesty in cricketing activities, is the bar for an individual to retain the post of Office Bearer for an indefinite period, the person who retains such posts for a continuous period of 6 years has been restricted to contest such election unless he goes to a cooling period of 3 years, and this restriction can well be said to be a restriction imposed by the Hon'ble Supreme Court; the Committee of Administrators (COA) of BCCI, appointed by the Hon'ble Supreme Court once again clarified the said 6 years cumulative period and 3 years cooling period when the concerned people sought for; and this clarification (a photocopy of which attached to the petition as Annexure 1) clearly speaks reiterating the same position in this regard; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 4 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the said clarification is with regard to cooling of period and it is not applicable to the case of the present respondent no. 4.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made in para 5 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the respondent no. 4 knowing it very well that he is debarred from contesting such election as per the mandate of the Hon'ble Supreme Court and the BCA rules as well filled up his nomination paper along with an affidavit declaring thereunder that he is retaining the post of President of said Association only from the year 2018, whereas in fact he has been the Office Bearer of the said Association from the year 2008 till 2019 continuously and as such committed fraud upon the Association for receiving wrongful

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gains by concealing the very material fact; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 5 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the said fact is incorrect. There is no document attached to substantiate this paragraph. It is to submit that the present petition is not the Member as defined under Rule 3 of the Bihar Cricket Association and the dispute has been brought under Rule 45 of Bihar Cricket Association. It is to submit that the procedure laid down under Rule 45 need to be followed and adhered by all parties. The respondent no. 4 will substantiate and elaborate on this point at the time of hearing of the present case.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made in para 6 of the petitioner's petition dt. 14.06.2021, wherein it has been pleaded that the respondent no. 4 knowing it very well that he is debarred from contesting such election as per the mandate of the Hon'ble Supreme Court filed his nomination along with an affidavit concealing the material fact that he has been an Office Bearer of District Cricket Association from the year 2007-08 till the date of filing of his said nomination paper; the affiliation form of his association dt. 31.03.2011 for the session 2010-2011 as also for the session 2017-2018 apparently demonstrate the fact that he has been retaining such post from year 2010; not only that the Hindi News Paper cutting of year 2008 exhibiting prize distribution in a cricket tournament in presence of a Police Officer by him in the capacity of Vice-President of District Cricket Association, Bhojpur clearly demonstrates that he has been Office Bearer of the said Association from the year 2008 till the date of 2019 BCA elections, i.e. from the last continuous 11 years (photocopies of said affiliation forms along with paper cutting annexed to the petition have been marked as Annexure 2, 2A and 2B); it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 6 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the application for which has been filed by the petitioner is denied and the paper publication/paper cutting has no evidenciary value. It is to submit that there is no affiliation from 2011 to 2016. It is to submit even from 2017-18, the year is counted the respondent no. 4 is not eligible. It is to submit that similar issue is also pending before the Hon'ble Apex Court with regard to appointment of BCCI President and thus it would be apt for this Hon'ble Ombudsman to keep the present matter after the disposal of the said case before the Hon'ble Apex Court. It

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R. Singh

is to submit that in the mean time, the procedure under rule 45 of the BCA be followed in accordance with law.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made by the petitioner in para 7 of his petition dt. 14.06.2021, wherein it has been pleaded that the Annual General Meeting (AGM) of the Association mandatorily meant for one of the purposes is to conduct the elction of the Association, was held on 02.08.2018 whereunder the proceeding and the minutes of the 2000 Annual General Meeting, held on 23.04.2000 was confirmed; and the same goes to mean beyond all shadows of doubt that no Annual General Meeting was held in between 2000 to 2018 as the Annual General Meeting held in the year 2018 (Annexure 3) confirms the minutes/proceeding of the AGM held in year 2000; rule 15 of the BCA rule clearly demonstrates that election and its follow up affairs of the Office Bearers of the Association can only be declared and regulated by the decision, arrived at in the AGM; therefore, as per submission of the petitioner, as no AGM were held after the AGM held in the year 2000 of Bhojpur DCA till AGM dt. 02.08.2018 of said Bhojpur DCA, the election of the Office Bearers of said DCA could not be held in between the period of year 2008-2018; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 7 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that acceptance of any resolution is not the proof and the petitioner has to bring on record a specific document to show that there is a breach and this Hon'ble Ombudsman must ask petitioner to discharge its burden in order to show that there is conflict or there is any violation of rule as described in present application otherwise the entire proceeding should be dismissed at the threshold for want of documents. It has also been stated by Mr. Kumar Arvind that as regards to this paragraph of the petitioner's petition dt. 14.06.2021, it is submitted and stated that the statement in this paragraph is denied. It does not prove that person is being working on the post of many years. It is to submit that in fact rule 15 says resolution being moved shall be decided on a show off by hands or by a secret ballots. There is no link with regard to the fact that the person has been for the period from 2000-2018. It is to submit that as the same time, this Hon'ble Ombudsman may appreciate this point that the entire BCA was defunct and pursuant to Lodha Committee, the BCA started to operate and subsequently rules have been framed.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of pleading

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Risingh

made in para 8 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that respondent no. 4 has been associated with the DCA from long before, i.e. from the year 2007-08 till 2019 (just before the last BCA election); sometime he acted as President, sometime as Vice-President, sometime as Secretary and sometime as the President of a Club, e.g. he also acted as President of a Club in the year 2015-16, 2016-17 and 2017-18 (a photocopy of the letter dt. 21.07.2019 of the Hony Secretary of Bhojpur DCA addressed to Mr. Rabi Shankar Prasad Singh, Hony Secretary BCA attaching voter list of Bhojpur DCA, Arrah for the year 2015-16, 2016-17 has been filed making the same as Annexure 4 of the petitioner's petition at its Page 27-29 to show that Shri Kumar Arvind was President of Student Eleven Cricket Club (blue) for the session 2015-16, 2016-17); it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 8 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the letter attached in this paragraph shows that the respondent no. 4 has been associated from 2015-16. This does not mean that the respondent no. 4 has been associated from 2007-2019. It is to submit that it is vague allegation which need to pass the test of discharge of burden of proof which the present petitioner has completely failed in the present case.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of pleading made in para 9 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the respondent no. 4, in the aforesaid way submitted his nomination paper illegally and fraudly before the Electoral Officer with an affidavit in his support making statement on oath to the effect that he does not come within the ambit of the restriction clause enshrined in rule 5 of the BCA rules and regulations i.e. to the effect that he has never been an Office Bearer for the said cumulative period of 6 years which is palpably false and fabricated and the nomination paper of the respondent no. 4 and the affidavit in support of it for contesting the election for the post of the Joint Secretary of BCA held in the year 2019 or in the custody of the respondent's authority and the same could be produced only by respondent's authorities; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 9 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement in this paragraph is denied. It is to submit that Rule 5 does apply to the case of the respondent no. 4. It is to submit that the clarification given by the Hon'ble Apex Court if seen, will also show that the case of the petitioner does not fall under the category of

cooling off. It is also to submit that there is no violation of any provisions of rules in relation of the BCA. It is to submit that respondent no. 4 carve leave to reply to the content in this paragraph since there is no affidavit of respondent no. 4 has been brought before the Hon'ble Ombudsman by the petitioner.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in relation to pleading made in para 10 of the petitioner's petition dated 14.06.2021, wherein it has been stated by the petitioner that the petitioner carves leave of this Hon'ble Court to submit that election result of respondent no. 4 is ipso facto ipso jure liable to be demolished upon the sole ground of concealment of facts made in his nomination paper against the mandate enshrined in Rule 9(4) and (5) of the said BCA rules in as much as may be held liable for a criminal prosecution on account of the fact that a fraud has been committed; such an act of respondent no. 4 makes his election result wholly redundant and void; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 10 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that there is no concealment of fact. It is also to submit that Rule 9(4) or Rule 9(5) of the BCA rules does not apply in the case of the petitioner as it discusses about cooling off of two consecutive terms in the BCA or in the BCCI. The respondent no. 4 will reply to the same at the time of hearing with regard to interpretation of Rule 9. It is also to submit that so far as the allegation of fraud is being alleged, the same should be proved with authentic documents and it will not be proved based on assumption or presumption or based on the paper publication. In fact, the petitioner who has no locus has filed the present case and has concealed the material facts on oath and has wrongly stated with regard to post need to be prosecuted for perjury who has played fraud before this Hon'ble Ombudsman which is evident from the affidavit to the reply dt. 11.08.2021.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of pleading made in para 11 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the moment petitioner got aware about the aforesaid deed of concealment and fraud made by respondent no. 4 he is filing the present application to unseat the respondent no. 4 from the post of Joint Secretary BCA as he has been occupying the same illegally and fraudulently; It has been stated by the respondent no. 4 Mr. Kumar Arvind that the statement made in paragraph no. 11 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement in this paragraph is denied. It is to submit that there is no illegality

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or any forgery has been proved and the Rules which has been quoted in the preceding paragraph does not apply to the case of the present respondent no. 4.

In counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in relation to pleadings made in paras no. 12, 13 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the post of Joint Secretary BCA occupied by the respondent no. 4 is against the Justice Lodha Committee Report duly approved by the Hon'ble Supreme Court and the BCA rules and as such he deserves to be removed from said post in the light of the provisions made under Rule 9(4) and (5) of the BCA Rules as his case comes under disqualification mentioned in said Rule 9(4) and (5) and said disqualification is duly proved by the documents filed by the petitioner as Annexures to his petition, especially Annexure 2, 3 and 4 of his (petitioner's) application, and the restrictive clause of contesting election after holding a post for continuous 6 years and then a 3 years cooling off period has time and again been reiterated and held to be right, proper and genuine by the Apex Court to maintain transparency in affairs of cricket and a copy of the Supreme Court judgment given in this regard being Civil Appeal No. 4235 of 2014, Board of Control for Cricket In India and Ors. Vs. Cricket Association of Bihar and Ors. and other connected appeals has been filed with the petition as Annexure 5 to it; Mr. Kumar Arvind has stated that the statement made in paragraph no. 12, 13 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statements made in these paragraphs is denied. It is to submit that there is an incorrect interpretation of Justice Lodha Committee Report. It is also to submit that Rule 9(4) and Rule 9(5) does not apply to the case of the present petitioner.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind, it has also been stated that the present case has been filed under Rule 45 of the BCA Rules and Regulations and there is a procedure prescribed for taking the action with regard to any infirmity or allegation. The Rule has been prescribed which need to be followed in all such related matters and no person including the complainant has the right to by-pass such Rules. If any such Rule is being violated or being sur-passed then the Ombudsman has the authority to remind to the parties to proceed in accordance with law.

In the said counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind it has also been stated that the respondent no. 4 has been appointed as Joint Secretary on 29.09.2019 and thus under this background the challenge to his appointment is after 1 year and 9 months. It is also to submit that the present case is a case of non-joinder of party by which Secretary

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has not been made as a respondent and thus the case must be dismissed for non-joinder of necessary parties, the Bhojpur DCA is also not a party, the BCA with proper nomenclature is a party. It has also been submitted in the aforesaid counter affidavit dt. 13.08.2021 that the order of the appointment of the respondent no. 4 and the election process is not being challenged by which the respondent no. 4 has been appointed and thus under this background without relief being sought by the petitioner, the Ombudsman ought not to proceed in the manner in which the petitioner has filed the present petition which is devoid of merits and thus need to be dismissed with costs for wasting the valuable time of the Ombudsman.

Here it is pertinent to mention that on 05.03.2022 an application was filed purported to be made under Section 151 of the CPC, 1908 to bring a necessary document i.e. the certificate granted by the Electoral Officer of the Bhojpur DCA declaring the petitioner Sunil Rana to be Secretary of Bhojpur DCA for 2020-21, 2021-22, 2022-23 as the same could not be annexed with the petition/rejoinder dt. 11.08.2021 filed by the petitioner though a specific pleading to that effect has been made in paragraph no. 6 of said rejoinder dt. 11.08.2021 as the said certificate has been inadvertently been left to be annexed with the said rejoinder and a photocopy of said certificate has been filed with the aforesaid petition dt. 05.03.2022 with prayer to treat and include the same to be a part of Annexure 6 series as detailed in paragraph no. 6 of the said rejoinder dt. 11.08.2021 and marked as Annexure 6D as none of the parties are going to be prejudiced in either way nor such insertion is going to affect the merit of the case afresh as nothing new is sought for to be added as non-inclusion of the same as part of Annexures to the rejoinder dt. 11.08.2021 of the petitioner was a mistake committed by none else but by the counsel for the petitioner and the same occurred inadvertently/and by way of a mistake done by said counsel.

In the para 6 of the rejoinder affidavit dt. 11.08.2021 of the petitioner his election as Secretary of Bhojpur DCA in the election said to be held on 22.08.2020 in the said DCA and grant of certificate to the effect that he was elected as Secretary of said DCA by the Electoral Officer of the said election has specifically been pleaded with averments to the effect that photocopy of said certificate granted by the Electoral Officer declaring the petitioner to be the Hony Secretary of Bhojpur DCA along with other documents are being attached with the said rejoinder, it can be easily inferred that the copy of said certificate due to inadvertence could not be filed as an Annexure to the said rejoinder and on that score the

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counsel Shri Manish Jha, Advocate for the respondent no. 4 did not object to take the same on the record on 05.03.2022, on which date the counsel for the respondent no. 4 was also informed that he may controvert the same on the next date, which was fixed as 06.03.2022.

It is also pertinent to mention that the respondent nos. 1 to 3 have not filed any reply to the petitioner's petition dt. 14.06.2021 even after giving several opportunities to them for that purpose though on their behalf Shri Navjot Yesu, Advocate had been appearing in this matter.

On 13.08.2021 a counter affidavit dt. 13.08.2021 of the respondent no. 4 Mr. Kumar Arvind as a reply to the petitioner's re-joinder affidavit dt. 11.08.2021, which was filed as reply to the counter affidavit of Mr. Kumar Arvind dt. 09.08.2021 stated to be a preliminary objection to the petitioner's main petition dt. 14.06.2021, was also filed.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 1 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that the reply dt. 09.08.2021 filed by respondent no. 4 is neither maintainable in law nor in facts and as such is liable to be rejected in limine; it has just been filed to squeeze/linger the matter causing frustration to the interest/welfare of cricket; It has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. Further even the Code of Civil Procedure, 1908 mandates with regard to timeline for filing the WS/counter affidavit which is 90 days under Order VIII Rule I and under this background, the statement made by the petitioner in para 1 of his re-joinder affidavit dt. 11.08.2021 is untenable. The petitioner has cleared his locus on 11.08.2021 and for the first time he has stated that he is associated with Club of Ara.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 2 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that the reply dt. 09.08.2021, filed by respondent no. 4 containing irrelevant and unwarranted allegation is ipso jure bad and as such is unsustainable in law; admittedly, the reply dt. 09.08.2021 does not even whisper a word to counter the averments, made in the application/complaint; the pleading, as such made in the application/complaint stands admitted in view of the provision, made under Order VIII Rule 3 of the Code of Civil Procedure, 1908 and if it is so the admitted facts require no proof in term of Section 58 of the Evidence Act; It has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is further to submit that the

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petitioner has not giving the details with regard to locus and thus under this background the pleadings or the statement made with regard to admission of the allegation is totally denied.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 3 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that there are certain norms to raise such preliminary objection as also certain rationale to reserve right to file additional detailed counter affidavit; the relief prayed for, as such to file additional detailed counter affidavit, in the facts and circumstances is untenable in law; it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. The respondent no. 4 has categorically stated that the locus of the petitioner has not been stated in the plaint/complaint and thus under that background, the respondent no. 4 had not answered at the preliminary stage.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 4 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that the question of locus of the applicant to maintain the application is nothing but creation of a shrewd litigant brain like respondent no. 4; the basis of denial of petitioner's status is stated to be that of information, derived from the website; the validity, genuineness and authenticity of the said website is subject to the decision of the Hon'ble High Court where the matter is pending for its adjudication; it has been stated by the Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to submit that there is no such details which has been given to the Hon'ble Ombudsman with regard to pendency of the matter before the Hon'ble Patna High Court and thus is denied. It is to submit that the document which has been downloaded from the website is of the Bihar Cricket Association which is respondent no. 1 and the same website also communicate to the Board of Cricket Control in India. Thus, under such background the statement made in this paragraph is false and misleading. It is to state that the said website is official website of BCA which is approved in AGM of BCA dt. 31.01.2020 and thus the entire statement is incorrect.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 5 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that it would not be out of place to mention here that disputes from all the corners in Bihar Cricket Association has been cropped up since the last 3-4 years, whether there is matter of recognition of district units,

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legality of elected Office Bearers, genuineness of website (biharcricketassociation.com or biharcricketassociation.in), validity of voter list etc. and all are the subject matter of decision of the competent court of law; there are altogether 40 like wise cases, pending for adjudication before the different courts of law; the challenge and question of petitioner's status, as such cannot be raised at this juncture of time; It has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to submit that there is no confusion with regard to the website and Board of Cricket Control in India has approved biharcricketassociation.com and thus under such background, the statement made that the present complainant is so called secretary or secretary of Bhojpur District Cricket Association is totally false and incorrect and a case of perjury be initiated against him by the Hon'ble Ombudsman. The issue of maintainability or jurisdiction or the locus out (sic. 'ought') to be challenged at the first instance and the Hon'ble Ombudsman is the first forum and thus the present issue is important to be decided before proceeding in the matter by the Hon'ble Ombudsman. It is further to submit that the general body meeting dated 31.1.2020 zero (sic. '31.01.2020') will further make it clear that the issue with regard to website has been raised by Mr Manoj Kumar, Bhojpur district cricket Association and the same has been clarified it is further to submit that the enquiry committee has also been found in the general body meeting (copy of the resolution passed by the Bihar cricket Association in general body meeting dated 31.01.2020 is annexed hereto and marked as annexure number R-4/C to the present application).

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 6 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that after coming into force of the Justice Lodha Committee report, a fresh election was held in the District Bhojpur on 22.08.2020 whereby petitioner was declared elected as a Honorary Secretary of the Bhojpur District Cricket Association; in fact, petitioner has been associated with association since quite a good considerable time as would be revealed from various documents like certificate, granted by Electoral Officer, letter dated 17.05.2019, issued by the then President of the Association, resolution dated 25.05.2019 and 29.09.2019, passed by Bihar Cricket Association (a photo copy of the documents like certificate, granted by Electoral Officer declaring petitioner to be the Honorary Secretary of the Bhojpur District Cricket Association, letter dated 17.05.2019, issued by the then President of the Association,

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resolution dated 25.05.2019 and 29.09.2019, passed by Bihar Cricket Association are attached herewith and marked as **Annexure – 6, 6A, 6B and 6C** respectively); it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to clarify that the election which has been stated to be of the district Bhojpur dated 05.8.2018 although in the affidavit it has been stated as “22.08.2020” as the election process marked as Annexure-6 to the rejoinder and subsequent communication is of the year 2019. The present petition has been filed before the Ombudsman in the year of 2021 and the locus of the complainant out (sic. 'ought') to be stated of the year 2021 which is completely silent in the present rejoinder too which goes to the root of the matter that the present complainant has no locus to file the present complaint. It is also to clarify that the present complainant has not stated about the entire fulcrum of the matter which occurred subsequent to the so-called election dated 5.8.2018, it is also to state that the President, Bihar Cricket Association on 10.8.2018 has categorically observed to the Presidnet/Honary Secretary, Bhojpur District Cricket Association with regard to the election process which has taken place on 05.08.2018 and decided that the election of Bhojpur District Cricket Association has been held in defiance of the order of stay of committee of management and also directed by the Hon'ble Ombudsman and till the committee of management of Bihar cricket Association arrived at the decision, the approval of the election was not given (copy of the letter dated 10.8.2018 issued by the President, Bihar Cricket Association is annexed hereto and marked as Annexure No. R/4D to the present application).

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 7 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that as a matter of fact almost all the district units of Bihar Cricket Association are running with two groups and can well be said to be disputed; their recognitions are subjected to the domain of either competent court of law or before the committee of the management; no prudent man, as such is in position to declare the group, laid (sic. 'led') by petitioner to be ingenuine and illegal; it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to be stated and clarified that this statement is totally false and incorrect as much water has flown under the bridge which would be evident from the email in reply to the letter dated 19.08.2019 by then President, Bihar Cricket Association to the Electoral Officer, Bihar Cricket Association, Patna in which it was categorically observed with regard to Bhojpur wherein it was stated

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there was General Body Meeting on 08.02.2017 in which decided that there will be election on 03.03.2017. It was further observed that on 03.03.2017 there was election conducted in which, Kumar Arvind was appointed as president and Manoj Kumar was appointed as Secretary and the same was communicated to the Bihar Cricket Association and BCA has uploaded the said names in the website which is recognised and further it was stated that there is no other group in Bhojpur which is recognised by the Bihar Cricket Association and the suspension is automatically revoked in terms of rule 45(7) of the BCA Rules. It was further observed that the committee appointed having presidentship of Kumar Arvind is correct and true (copy of the reply given by the President, Bihar Cricket Association to the Electoral Officer, Bihar Cricket Association, Patna dated 18.08.2019 is annexed hereto and marked as Annexure No. R-4/E to the present case).

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 8 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that Patna High Court has ruled out not to weigh the question of maintainability while adjudicating the point of injunction/restraintment as would be revealed from the judgment reported in 1996 Volume – 1 PLJR Page No. 893; even for the argument shake, petitioner is assumed not to be the Secretary of the Association, he is well entitled to maintain the application in view of the fact that he is Secretary of a club namely Extreme Eleven Cricket Club; the Bihar Cricket Association Rules clearly makes petitioner entitled to maintain such application/complaint as would be revealed from Rule 3 of the Association; petitioner happens to be Secretary of a Cricket Club namely Extreme Eleven Cricket Club, Bhojpur (a photo copy of the Extract of the said BCA Rules and document showing association with the club are attached herewith and marked as **Annexure-7 and 7A** respectively); it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is palpably false and also without any merit. This fact is evident from the registration form of Extreme Eleven cricket club of the year 2019-20 and 2020-2021 in which the name of the President and Secretary of the said club is written at the bottom. The club has filled up the form through Secretary and the President to the Bhojpur District Cricket Association and thus the statement made by the petitioner that he associated with a club called Extreme Eleven Cricket Club is totally false and there is no association with the said club from 2019 onwards. It is also to point out that the Rule – 3 of the Bihar Cricket Association mandates with regard to the membership and the fact of the

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matter is that the present petitioner does not come in any category. It is to submit that in Rule-3(C) of the BCA Rules clearly prescribes that if the dispute is pending with regard to any particular dispute, that the district shall be represented by the recognised Association subject to any order of the court or the solution of the BCA as the case may be. In the present case, there is no dispute as evident from the preceding paragraph and the district is being represented by set of persons who are duly appointed by Bihar Cricket Association and the present petitioner is nowhere associated with any club 2019-20 till today and thus under this background the locus of this person is false and in fact an incorrect statement has been made throughout the present counter affidavit. It is to submit that this complainant who has brought this present petitioner is a nobody to any club or to Bhojpur District Cricket Association. It is also to point out that from bare perusal of Annexure-7 to the present rejoinder will further make it clear that the document which has been attached is of the session 2017-18 and the present complainant is nowhere associated with extreme 11 cricket club 2019-21 i.e. at the time of filing of the present application before the Hon'ble Ombudsman (copy of the application form filled up by the Secretary and President of Extreme Eleven Cricket Club of the year 2019-20 and 20-21 is annexed hereto and marked as Annexue No. R-4/F to the present case).

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 9 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that in any view of the matter, the question remains as to whether respondent no. 4 has been occupying the post of Joint Secretary or not?; the counter affidavit does not whisper even a word in its response and as such his illegal occupancy stands admitted; a deliberate attempt to evade the pleading of the petitioner proves the same beyond all shadows of doubt; it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to submit that the person alleges certain fact has to discharge his burden and then only the burden shift on the other side to prove it. It is to submit that in the present case there is no document to show that the present respondent no. 4 has filed in incorrect affidavit. It is to submit that in fact the said affidavit has also not been brought before this Hon'ble Ombudsman. It is to submit that the entire case of the petitioner lies in the narrow compass based on the paper reports and also based on assumption which need to be rejected by this Hon'ble Ombudsman at the threshold.

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In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 10 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that petitioner craves leave of this hon'ble court to submit that the illegal occupancy of the seat by respondent no. 4 is again evident from the fact that he was put under suspension by the Bihar Cricket Association vide order dated 09.04.2019, passed by respondent no. 1 and his suspension was revoked though illegally only after the said 2019 BCA Election, meaning thereby that he was under suspension at the time of filing of nomination to contest the last 2019 election; contesting election and holding the post by respondent no. 4, besides the pleading made in the original application, is once again ipso facto bad on this score also (a photo copy of the order dated 09.04.2019 passed by respondent no. 1 and photo copy of the resolution passed by the present committee of respondent no. 1 are attached herewith and marked as **Annexure – 8 and 8A** respectively; it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to submit that the letter dated 09.04.2019 by which the membership status of the Bhojpur District Cricket Association has been suspended and subsequently attached as Annexure-8/A has to pass the test of rule 45(7) of the BCA Rules of Bihar Cricket Association which categorically says that the suspension "shall" cease if no action is taken within three months. It is to submit that the Pres (sic. 'President'), Bihar Cricket Association and the reply to the Electoral Officer, Bihar Cricket Association has replied which is attached in the preceding paragraphs clarified that the suspension had already over due to efflux of time. It is to submit that subsequent agenda been passed will have no impact as the rule precedes the decision of any Association. In fact, the decision has been communicated when the reply was given by the President, Bihar Cricket Association to the Electoral Officer to the reply dated 18.08.2019.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 11 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that the adversery have miserably failed to counter/rebut the pleading of the petitioner and as such is reiterated that the avernments, made by the petitioner stands admitted in term of Order VIII rule 5 of the Civil Procedure 1908 as also the same is proved too in view of section 58 of the Evidence Act; even otherwise this Hon'ble Court has ample power of jurisdiction to entertain and decide the matter in absence of pleady (sic. 'pleading') of respondent no. 4 as enshrined under Order

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VII, Rule (5) (2) of the Code of Civil Procedure 1908; it has been stated by Mr. Kumar Arvind that the statement made in this paragraph is denied. It is to submit that CPC mandates that 90 days' time (if explanation given) should be given to give a reply and the present case, the said period is still not over and under this background, the respondent No. 4 although denies the stand of the present petitioner and further craves leave to reply if required by this Hon'ble Ombudsman.

In the said counter affidavit dt. 13.08.2021 purported to be filed as reply to the petitioner's re-joinder affidavit dt. 11.08.2021, in respect of para 12 of said re-joinder affidavit dt. 11.08.2021, wherein it has been stated that from the narrations, it is manifestly apparent that petitioner has not approached this Hon'ble court with a dirty hand rather his hand is crystal clear and as such the allegation leveled, is baseless and without foundation; and para 13 of said re-joinder affidavit dt. 11.08.2021 of the petitioner, wherein it has been stated that the welfare and the interest of cricket cries and demands to put a check upon the activities of respondent no. 4 immediately failing which the illegality would be allowed to perpetuate and its interest would be frustrated; it has been stated by Mr. Kumar Arvind that the statement made in paragraph No. 12, 13 of the rejoinder filed by the petitioner dated 11.08.2021, it is submitted and stated that the statement made in this paragraph is denied. It is also to submit that there is no document to show that the respondent No. 4 has illegally been appointed as Joint Secretary. It is to submit that there is no sheet of paper brought barring few paper cutting which has no evidentiary value in the eye of law, there is no document to show that the petitioner has been working in contravention to the rules barring few assumptions which the petitioner is asking this Hon'ble Ombudsman to believe. It is to submit that vague allegation being made by the petitioner and there is no document to substantiate the said fact or allegation and under this background, the statement made with regard to the legality of the appointment of respondent No. 4 be not be accepted by this Hon'ble Ombudsman.

In the said counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind purported to be made in reply of the petitioner's re-joinder dt. 11.08.2021 it has also been stated that so far the statement made in paragraph No. - 5, 8, 9 of the supplementary preliminary objection being filed by the respondent no. 4 is concerned, the same has no relevance to the dispute of the matter and thus the present respondent No. 4 will not press at the time of hearing of the application.

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Before entering on the merit of the allegation about non-eligibility of respondent no. 4 Shri Kumar Arvind to contest election for the post of Joint-Secretary, BCA said to be held in September, 2019 and holding the said post after said election in BCA it is appropriate to decide the questions raised by the respondent no. 4 about the locus of the petitioner Shri Sunil Rana to file the petition and also about non observance of procedure mentioned in Rule 45 of the BCA Rules and Regulations in the present matter.

Question on the locus of the petitioner Mr. Sunil Rana

The petitioner Mr. Sunil Rana in his original petition dt. 14.06.2021 has claimed himself to be Secretary of Bhojpur DCA and this claim of him has been strongly refuted by the respondent Mr. Kumar Arvind asserting that as per BCA record displayed on its website the Secretary of Bhojpur DCA at the time of filing the petition and also at present was/is Mr. Vineet Kumar Rai and in support of his assertion said Mr. Kumar Arvind has filed Annexure No. R-4-A to his counter affidavit dated 09.08.2021 stating the same as his preliminary objection and it has been asserted that the said Annexure is hard copy of the document downloaded from the website of the BCA and that Annexure show the name of Hony Secretary of Bhojpur DCA as Mr. Vinit Kumar Rai and on that score it has been asserted by Mr. Kumar Arvind that the petitioner has not come with clean hands and clean mind and from the Annexure 3 of the petition of the petitioner being the copy of the minutes of the proceeding of the AGM of Bhojpur DCA dt. 02.08.2018 it would transpire that at that time Sri Manoj Kumar was the Secretary of Bhojpur DCA. In the reply of the aforesaid preliminary objection of Mr. Kumar Arvind the petitioner filed his re-joinder affidavit dt. 11.08.2021 in which he claimed that there are disputes almost in every DCA affiliated to BCA which cropped up in last 3-4 years and in that respect there are almost 30 cases are pending for adjudication before the different courts of law and there was also disputes about the genuineness of the website of BCA whether it is 'biharcricketassociation.com' or 'biharcricketassociation.in'. In the said re-joinder affidavit the petitioner has asserted that after coming into force of Justice Lodha Committee Report a fresh election was held on 22.08.2020 in Bhojpur DCA and in the said election he was declared elected as Hony Secretary of Bhojpur DCA, and beside it, he has been associated with the association since quite a good considerable time which would be revealed from various document like certificate granted by Electoral Officer, letter dt. 17.05.2019 issued by the then President of the Association, resolution dt. 20.05.2019 and 29.09.2019 passed by Bihar Cricket

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Association and in support of this he has relied on certificate dt. 05.08.2018 purported to be issued by Vijay Kumar as Electoral Officer, Bhojpur DCA, Arrah mentioning therein that on the election of Bhojpur District Cricket Association Arrah held at Hotel Aditya Inn, Arrah on 5th August, 2018 from 01 pm to 05 pm Kumar Arvind, Sushil Kumar Rungta, Manoj Kumar, Vinit Kumar Rai and Sunil Rana were elected as President, Vice-President, Hony Secretary, Hony Treasurer and Joint Secretary respectively (Annexure 6), copy of letter purported to be from Gopal Bohra, the then President of the BCA to Ombudsman, BCA being Ref. BCA/OMB/BRL/AGM/2019 dt. 17.05.2019 purported to be in compliance of file No. BCA/20/19/MZ dt. 13.04.2019 wherein it has been mentioned that in compliance of the above captioned order passed by Ombudsman he, as President of BCA, have been authorized to identify the representatives of such districts whose cases are pending either before Ombudsman of BCA or the COM (Committee of Management) of BCA or before any forum have been considered for allowing them to attend and participate in the upcoming AGM of BCA on 25.05.2019 at Pawapuri, Nalanda and in that course without going on the merit all the 13 cases pending for adjudication he identifies the persons named therein as representatives of such 13 DCAs only for the purpose of the attending the AGM of the BCA dt. 25.05.2019 and the same will not affect the pending litigation in any way and at serial no. 13 for Bhojpur DCA it has been mentioned that the same is under suspension to be represented by Mr. Sunil Rana, Joint Secretary (Annexure 6A), copy of the list of the persons attended the AGM of BCA held on 25 May 2019 at Hotel Abhinandan, Pawapuri, Nalanda with the signature of the attendees and in the column of district Bhojpur there is signature of Sunil Rana (Annexure 6B), copy of the persons with their respective signatures who attended the General Body Meeting of BCA on 29.09.2019 at Lumbini Hall of Hotel Maurya and at serial no. 5 of the attendees there is signature of Sunil Rana (Annexure 6C), copy of extract of Rules and Regulations of BCA (concerning Rule 1 (1A) (v) (i) (ii) (iii) (iv) defining Member, Full Member, Associate Member and Former International Player Member as Annexure 7), copy of list of Clubs affiliated to Bhojpur DCA for Session 2017-18 with the names of President and Secretary of each of such Clubs purported to be issued by Manoj Kumar on 21.07.2019 as Secretary of Bhojpur DCA, Arrah and at the serial no. 17 of the same for Extreme Eleven Cricket Club there is name Sri Rohit Singh as its President and Sri Sunil Rana as its Secretary (Annexure 7A) and on the score of Annexure 7A it has been claimed by the petitioner in the said re-joinder affidavit dt. 11.08.2021 that even for the

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arguments shake the petitioner is assumed to be not Secretary of Bhojpur DCA he is still as Secretary of the Said Extreme Eleven Cricket Club is entitled to maintain his petition, and Annexure 8 being a letter bearing Ref. BCA/SUS-BDCA2/2018-19 dt. 09.04.2019 purported to be issued by Rabi Shankar Prasad Singh as the then Hony Secretary of BCA to Mr. Manoj Kumar the then Hony Secretary of Bhojpur DCA mentioning therein that the reply to the show cause notice no. BCA/SC-BDCA1/HTM/2018-19 dt. 23.03.2019 served to the four Office Bearers of the Bhojpur district was considered by the Committee of Management of BCA in its meeting dt. 07.04.2019; and the COM found the reply not satisfactory, unreasonable and thus unacceptable; and therefore, the COM decided to suspend the membership status of the Bhojpur DCA with immediate effect, Annexure 8A being extract of copy of the minutes of the resolution purported to be passed by the present COM of the BCA constituted and held after 2019 election of BCA mentioning at Agenda No. 8 being the agenda to discuss and confirm the withdrawal of suspension of Bhojpur DCA and Madhubani DCA as per the Rules and Regulations that the house discussed over the case of suspension of Madhubani and Bhojpur DCAs and after considering legal status of the matter as per the Constitution of the BCA regarding expiry of three months of suspension the suspension of both the district associations are withdrawn/revoked with immediate effect, and on these scores it has been pleaded in the re-joinder affidavit dt. 11.08.2021 by the petitioner that when the respondent filed his nomination for the post of Joint Secretary of BCA in the election of BCA held on 29.09.2019, the Bhojpur DCA was under suspension and as thus the respondent Kumar Arvind was not eligible for contesting the said election of BCA for the post of Joint Secretary of BCA and as such Mr. Kumar Arvind election as Joint Secretary of BCA held on 29.09.2019 is ipso facto bad on this score also beside the ground mentioned in his main petition for ineligibility of Mr. Kumar Arvind for contesting the post of Joint Secretary of BCA in that election of BCA held on 29.09.2019. In the said re-joinder affidavit dt. 11.08.2021 of the petitioner there is a copy of an application dt. 22.12.2019 purported to be given by Sunil Rana as Joint Secretary of Bhojpur DCA to the Electoral Officer BCA praying therein that at the time of the nomination of Mr. Kumar Arvind he has made objection that said Mr. Kumar Arvind has filed his nomination for the post of Joint Secretary on furnishment of false information by him as regards to his eligibility as per the recommendation of Hon'ble Justice Lodha Committee Report and as such the applicant (Sunil Rana) should be given copy of the

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affidavit of said Mr. Kumar Arvind filed by him with his nomination paper.

In reply to the re-joinder affidavit dt. 11.08.2021 of the petitioner, the respondent no. 4 Mr. Kumar Arvind in his counter affidavit dt. 13.08.2021 has stated that the petitioner in his said re-joinder affidavit has not given the detail of the cases regarding disputes in several DCAs pending for adjudication in different forums and as regards to controversy regarding genuineness of the website of BCA between 'biharcriccketassociation.com' and 'biharcriccketassociation.in' raised by the petitioner in his said re-joinder affidavit dt. 11.08.2021 it has been stated by respondent no. 4 in his said counter affidavit dt. 13.08.2021 that through the website 'biharcriccketassociation.com' the BCA communicate to the BCCI and only this website was also approved in the AGM of BCA dt. 31.01.2020 when the matter in this regard was raised in the said AGM of BCA dt. 31.01.2020 by Mr. Manoj Kumar of Bhojpur DCA and in support of the same copy of the minutes of the AGM dt. 31.01.2020 of BCA has been attached by him in his counter affidavit dt. 13.08.2021. In the counter affidavit dt. 13.08.2021 the respondent no. 4 has stated that in the re-joinder affidavit dt. 11.08.2021 the petitioner has claimed that he was elected as Hony Secretary of Bhojpur DCA in the election held for that district on 22.08.2020 but he has annexed the certificate purported to be issued by Sri Vijay Kumar claiming himself to be Electoral Officer of Bhojpur DCA mentioning therein that the election for said DCA was held on 05.08.2018 in which Kumar Arvind, Sushil Kumar Rungta, Manoj Kumar, Vinit Kumar Rai and Sunil Rana were elected as President, Vice-President, Hony Secretary, Hony Treasurer and Joint Secretary respectively as Annexure 6 to the re-joinder affidavit dt. 11.08.2021 of the petitioner and as regards to the purported election held on 05.08.2018 in Bhojpur DCA the President BCA through his letter dt. 10.08.2018 to President/Hony Secretary of Bhojpur DCA had already communicated that as said election held on 05.08.2018 was held in defiance of order of stay of COM of BCA and also direction of Ombudsman approval of the said election dt. 05.08.2018 was not given till the COM of BCA take decision in this regard and in support of the same the respondent no. 4 has filed copy of said letter dt. 10.08.2018 to his said counter affidavit dt. 13.08.2021 as Annexure R/4D (but actually it has been filed marking the same as Annexure 4C at Page 13 to the said counter affidavit dt. 13.08.2021 of respondent no. 4.

In the counter affidavit dt. 13.08.2021 it has been averred by respondent no. 4 that from the letter dt. 19.08.2019 of Mr. Gopal Bohara, the then President of BCA sent by him

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to the Electoral Officer, BCA, Patna in reply to the email dt. 18.08.2019 of said Electoral Officer in regard to validity and recognition of 13 DCAs including Bhojpur DCA it was stated by the then President of BCA in respect of Bhojpur DCA that in that district there is no rival group and there was every thing smooth till 20th July, 2018 on which date Ombudsman sent a complaint of one Pramod Kumar Singh to BCA and during consideration of said complaint he (President BCA) by his letter dt. 28th July, 2018 he (President BCA) put a hold on the election of said district and in reply to said letter of him (President BCA) it was stated that once election process had been initiated the same cannot be put on hold and BCA has also no authority to interfere in the matter of DCA and it was also mentioned in the said reply that if no interim order had been passed by Ombudsman there was no occasion to hold the election on the ground of the pendency of said complaint for consideration; even then in defiance of aforesaid direction to put the election on hold, the election was conducted in that district but said election was not recognised by him as President BCA and the matter was referred to COM of BCA about which communication was sent said district by his (President BCA) letter dt. 10th August, 2018; it has also been mentioned in the said letter of the then President BCA sent by him to the said Electoral Officer BCA that from perusal of the documents concerning said district it transpired that in that district it was decided on 08th February, 2017 in the meeting of the Executive Committee of said district to hold election on 03rd March, 2017 in that district and in pursuance of the same for aforesaid proposed election in that district Electoral Officer was appointed on 09th February, 2017 and beside it the Secretary and the Electoral Officer of that district also sent notices to the concerned members of that district and accordingly election was held in that district on 03rd March, 2017 in which Arvind Kumar and Manoj Kumar were elected as President, Hony. Secretary of said DCA about which information was sent to BCA and accordingly the names of the elected office-bearers of that DCA was uploaded on the official website of BCA; it has also been averred in the aforesaid letter of Mr. Bohra as President of BCA to the Electoral Officer BCA that a zonal meeting was held on 06th September, 2017 by Hony. Secretary BCA and it is claim of Bhojpur DCA that in that zonal meeting Secretary BCA orally directed to hold election in Bhojpur DCA and in pursuance of the same in the meeting of Executive Committee of said DCA dt. 17.09.2017 it was decided that there would be SGM and AGM on 02.09.2018 and election would be held in that DCA 05.09.2018 and for that purpose Electoral Officer was also appointed for that DCA; but

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Hony. Secretary BCA after holding that there is dispute among Bhojpur DCA constitute a three men committee of that district to select players for upcoming tournaments but it was claimed by said DCA no such communication was received in that DCA and said DCA also sent a team of players of that DCA to the tournament conducted by BCA resulting into failure of that tournament followed by show cause notice issued to four office-bearers of said DCA on 29.03.2019 and then suspension of said DCA on 09.04.2019 mentioning decision of COM of BCA dt. 07.04.2019 by Hony. Secretary BCA, which was challenged by said DCA before Ombudsman to also made several comments/opinions on the aforesaid show cause notice and suspension letter; but the meeting of the COM of BCA held on 07.04.2019 was presided over by him (Mr. Gopal Bohra as President BCA) and in the said meeting of the COM no decision as regards to suspension of Bhojpur DCA was taken and moreover as per provisions of Rule 45.7 of BCA Rules & Regulations if no decision is taken within 90 days commencing from the date of suspension after following procedures provided in that rule the suspension should be treated revoked automatically after completion of said 90 days; and in the aforesaid circumstances there was no other group in Bhojpur DCA on the date 19.08.2019 when said Mr. Gopal Bohra as President BCA sent the aforesaid letter to the Electoral Officer, BCA, and even if there were other groups in said DCA the same had not been recognised by BCA (said letter dt. 19.08.2019 of Mr. Gopal Bohra as President has been marked as Annexure R-4-E to the aforesaid counter affidavit 13.08.2021 of Kumar Arvind but the same does not contain any initial or signature of Mr. Gopal Bohra) and on the basis of said letter of Mr. Gopal Bohra it has been claimed by respondent no. 4 Mr. Kumar Arvind that he was elected as President of Bhojpur DCA in the election held on 03.03.2017 in the said DCA and the same was also recognised by BCA and as such he contested for the post of Joint-Secretary BCA in the BCA election held on 29.09.2019 as President Bhojpur DCA and also elected as Joint-Secretary BCA in that election.

In the counter affidavit dt. 13.08.2021 with regard to claim of the petitioner Mr. Sunil Rana that he is associated with Extreme Eleven Club affiliated to Bhojpur DCA it has been stated by the respondent no. 4 Mr. Kumar Arvind that from the registration of the said club for the year 2019-2020 and 2020-2021 showing the name of the President and Secretary of said club written at the bottom of the said registration form filled through Secretary and President of Bhojpur DCA clearly belies the aforesaid of the petitioner about his association

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with said club afterwards 2019 as from the registration forms for the aforesaid year 2019-20 and 2020-21 (marked as Annexure R-4-F at pages 41, 42 to the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind) it would transpire that Mr. Pramod Kumar Singh and Shri Rakesh Singh were President and Secretary respectively of said Extreme Eleven Cricket Club in the year 2019-20 and 2020-21 and in this way the petitioner Mr. Sunil Rana was in no manner associated with said Cricket Club.

As already stated above that the petitioner Mr. Sunil Rana has filed a petition on 05.03.2022 under Section 151 of the CPC stating therein that in the re-joinder affidavit dt. 11.08.2021 filed by him in reply to the affidavit dt. 09.08.2021 of the respondent no. 4 stating the same as his preliminary objection it was stated by him (petitioner) that after implementation of Justice Lodha Committee Recommendation a election was held in Bhojpur DCA on 22.08.2020 in which he (petitioner) was elected as Hony. Secretary of said DCA and in that respect certificate of Electoral Officer is being annexed with the said re-joinder affidavit but due to inadvertence of his (petitioner's) counsel the same could not be annexed with the said re-joinder affidavit and as such the same is being filed with the said application dt. 05.03.2022 to be marked as Annexure 6D purporting to be issued by Shri Gopal Sharan Verma as Electoral Officer Bhojpur DCA and Shri Sujay Kumar Rai as Observer BCA to the effect that Sunil Rana Son of Krishna Bihari Singh was elected unanimous as Secretary of Bhojpur DCA for 2020-21, 2021-22, 2022-23.

In the present case the matter is not for adjudication to say that the petitioner Sunil Rana is associated with Extreme Eleven Cricket Club affiliated to Bhojpur DCA or/and Secretary of Bhojpur DCA or not but in the present matter it is only to have seen whether he is associated with cricketing affairs or not and whether he has locus to make the petition to see whether the Recommendation of Justice Lodha Committee approved by the Hon'ble Supreme Court has been followed by the respondent no. 4 Mr. Kumar Arvind by holding the post of Joint-Secretary BCA by adhering to the Recommendation of Justice Lodha Committee as regards to cooling of period for three years after holding any post in the Executive Committee or Governing Council of any Cricket Authority in India and for determination of said locus only prima facie finding is necessary and that too only by preponderance of probability and nothing more and if the claim of the petitioner is tested on aforesaid determination basis it is prima facie clear that he has been associated with Bhojpur DCA and a club affiliated to said DCA since long before from the documents filed by him as

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mentioned above including the letter dt. 17.05.2019 of the then Secretary BCA to the Ombudsman BCA showing Bhojpur DCA under suspension at that time to be represented by Mr. Sunil Rana Joint-Secretary (Annexure 6A to the re-joinder affidavit dt. 11.08.2021 of the petitioner), copies of the minutes of AGM dt. 25th May, 2019 of BCA (Annexure 6B of the aforesaid re-joinder affidavit dt. 11.08.2021) and also the aforesaid Annexure 6D filed with his application dt. 05.03.2022 under Section 151 CPC showing him to be elected as Secretary of Bhojpur DCA for 2020-21,2021-22,2022-23 though the said certificate marked as Annexure 6D mentioned above could have not been recognised by the BCA as his election as Secretary of Bhojpur DCA which is not a question for determination in the present matter and the same are only have to be seen as his locus to file the present petition and no more, and about the authenticity of the affiliation forms purported to be filed on behalf of Extreme Eleven Cricket Club, Ara (Bhojpur) for the year 2019-20,2020-21 submitted by the respondent no. 4 Mr. Kumar Arvind as Annexure R-4-F at pages 41-42 of his counter affidavit dt. 13.08.2021 in reply of the re-joinder affidavit dt. 11.08.2021 of the petitioner Sunil Rana no finding about its genuiness could be given as there are no sign or any mark to denote that the same were actually filed in Bhojpur DCA and the same were accepted as genuine by said DCA. From above it is held that the petitioner Mr. Sunil Rana has been associated with cricketing activities in Bhojpur district for many years and therefore he has locus to make his aforesaid petition questioning the election of the respondent no. 4 Mr. Kumar Arvind as Joint-Secretary in the election held in BCA on 29.09.2019 and thereafter his holding of said post. Moreover if any act is done without authority or in violation of any law the petition questioning the same cannot be dismissed solely on the ground that the petitioner had no locus standi to file the petition (see - M. S. Jayaraj vs. Commissioner of Excise, Kerala, AIR 2000 SC 3206 Para 13). Here the claim of the petition is that the respondent no. 4 Mr. Kumar Arvind being not eligible to contest the election in BCA in 2019 for the post of Joint-Secretary BCA and after the election to hold said post as the same was/is in violation of law of the land declared by Hon'ble Supreme Court by which the recommendation of Hon'ble Justice Lodha Committee, constituted by the Hon'ble Supreme Court itself, was accepted, hence the question of locus of the present petitioner Mr. Sunil Rana to maintain his aforesaid petition is of no value.

Question of non-observance of Rule 45 of BCA Rules and Regulations

Rule 45 reads as follows:

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"45. GRIEVANCE REDRESSAL

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

a. **Member, Association & Franchisee Disputes**

Any disputes between or among the BCA, its Members, Tournament Franchisees, Zones and the Cricket Players' Association shall be automatically referred to the Ombudsman.

Procedure: Both parties would submit their arguments and a hearing would be conducted following the principles of natural justice and exercising all powers of enquiry and hearing as the Ombudsman deems fits before appropriate orders are passed.

b. **Detriment caused by Member or Administrator**

If any Member or any Administrator of the BCA commits any act of indiscipline or misconduct or acts in any manner which may or likely to be detrimental to the interest of the BCA or the game of cricket or endanger the harmony or affect the reputation or interest of the BCA or refuses or neglects to comply with any of the provisions of the Memorandum and/or the Rules and Regulations of the BCA and/or the Rules of conduct framed by the BCA, the Committee of Management, on receipt of any complaint shall issue a Show Cause Notice calling for explanation and on receipt of the same and/or in case of no cause or insufficient cause being shown, refer the same to the Ombudsman.

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

c. **Misconduct or Breach by Others**

In the event of any complaint received from any quarter or based on any report published or circulated or on its own motion, of any act of indiscipline or misconduct or violation of any of the Rules and Regulations by any Player, Umpire, Team Official, Selector or any person associated with the BCA, the Committee of Management shall refer the same within 48 hours to the Chief Manager to make a preliminary enquiry.

Procedure: The CEO shall forthwith make a preliminary inquiry and call for explanations from the concerned person(s) and submit his report to the Committee of Management not later than 15 days from the date of reference being made by the Committee of Management. On receipt of the report, the Committee of Management shall forward the same to the Ombudsman, who shall call for all particulars and unless it decides that there is no prima facie case and accordingly drops the charge, hearing shall commence on the case and the same shall be completed as expeditiously as possible by providing a reasonable opportunity to the parties of

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Relingh

being heard. If, despite due notice, any party fails to submit any cause or submits insufficient cause, the Ombudsman shall after providing reasonable opportunity of hearing to the parties concerned, pass appropriate order. In the event any party refuses and/or fails to appear despite notice, the Ombudsman shall be at liberty to proceed ex-parte on the basis of the available records and evidence.

d. **By the Public against the BCA**

Where a member of the public is aggrieved concerning ticketing and access and facilities at stadia, the same may be brought in the form of a complaint to the Ombudsman.

Procedure: The Ombudsman would adopt the same procedure as laid down in (c) above after referring the complaint to the Chief Manager to solicit a report on the complaint.

- (3) The Place of hearing shall be decided by the Ombudsman from time to time. The Ombudsman shall have the power to impose penalties as provided in the Regulations for Players, Team Officials, Administrators, Managers and Match Officials of the BCA.
- (4) The decision of the Ombudsman shall be final and binding and shall come into force forthwith on being pronounced and delivered.
- (5.) Any Administrator, Player, Match Official, Team Official, Selector or other individual associated with the BCA on being found guilty and expelled by the BCA shall forfeit all their rights and privileges. He or she shall not in future be entitled to hold any position or office or be admitted in any committee or any role on the BCA.
- (6.) A Member of Franchise once expelled, may, on application made after expiry of three years since expulsion, be readmitted by the BCA, provided the same is accepted at a General Body meeting by 3/4th members present and voting.
- (7.) Pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Administrator, Player, Match Official, Team Official, or other individual associated with the BCA (along with their respective privileges and benefits) may be suspended by the Committee of Management until final adjudication. However, the said adjudication ought to be completed within three months, failing which the suspension shall cease."

It has been argued on behalf of respondent no. 4 the allegation made by the petitioner in his petition/complaint comes into purview of Rule 45(1)(b) of Rules and Regulations of BCA and as the procedure prescribed in the said sub-rule and clause (b) has not been followed in the present case, the petition/complaint filed by the petitioner directly to the Ombudsman is not maintainable. Refuting the same the counsel for the petitioner that the said sub-rule (1)(b) of the Rule 45 is only applicable if there is an act of indiscipline or misconduct or acts in any manner which may or likely

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Risingh

to be detrimental to the interest of the BCA or the game of the cricket or endanger the harmony or affect the reputation or interest of the BCA or refuses or neglects to comply with any provisions of the said Rules and Regulations then only the matter would come in purview of said sub-rule (1)(b) but in the present matter the aforesaid acts enumerated in clause (b) be of said sub-rule (1)(b) has/have not been made rather the present matter comes in purview of clause (a) of said sub-rule(1) because the petitioner Mr. Sunil Rana has come in the present matter claiming himself to be the Secretary of Bhojpur DCA and his this claim about his status is not subject matter of the present case and it has only to be prima facie looked into his such claim about his status which he has prima facie proved by the aforesaid Annexure 6D hence the dispute in the present matter is prima facie between Bhojpur DCA and BCA in which the respondent no. 4 Mr. Kumar Arvind holding post of Joint-Secretary after his election on 29.09.2019 for which he was not eligible as he has not observed the cooling of period of three years after his completion of being officer-bearer of Bhojpur DCA for a period of more than continuous six years as per the Recommendation of Hon'ble Justice Lodha Committee approved by the Hon'ble Supreme Court.

In my opinion the aforesaid contention put forth on behalf of the petitioner about the applicability clause (a) of said sub-rule (1) of the Rule 45 appears to be tenable and legal and accordingly I hold that in the present matter clause (a) of said sub-rule (1) of the Rule 45 is applicable.

For the reasons mentioned above the question as regards to maintainability of the complaint/petition of the petitioner is answered in affirmative.

About the question regarding eligibility of Mr. Sunil Rana (respondent no. 4) to contest the election for the post of Joint-Secretary, BCA in the election held in BCA on 29.09.2019 and thereafter holding the said post.

In the counter affidavit dt. 13.08.2021 the respondent no. 4 Mr. Kumar Arvind has made para wise reply of the petitioner's petition/complaint dt. 14.06.2021.

In the said counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in reply to para 1 of the petitioner's petition dt. 14.06.2021, wherein it has been averred that the aforesaid petition is directed for issuance of necessary order or orders as this forum may deem fit and proper to the effect of removal of respondent no. 4 from his post/chair who has been occupying the seat (Joint Secretary of the Association) illegally, arbitrarily and fraudulently in as much retainment of the said post by virtue of the last election result is ab initio void and futile for simple reason that the same is based upon concealment of material facts,

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Ranjan

placed by him to the effect that he has never been Office Bearer of the District Cricket Association, Bhojpur for more than 6 years; has stated that the statement made in paragraph no. 1 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the statement with regard to concealment of the facts is totally incorrect. In fact the entire case is false and would be evident from the word used "District Cricket Association, Bhojpur" and there is no such association in Bhojpur for cricket.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of statements made in para 2 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the instant matter as apparently appearing at its face is a matter of concealment of facts and misrepresentation, committed by respondent no. 4 before the then Electoral Officer of the Association; the declaration made by him through his affidavit to the effect that he has never an Office Bearer for the cumulative period of 6 years is palpably false, fabricated and a misrepresentation, whereas the fact is that he has been the Office Bearer of the said Association from the year 2008-2019, i.e. till the date of the last BCA election; the relevant document annexed therewith with the petitioner's petition dt. 14.06.2021 cries to suggest so; it has been stated by Mr. Kumar Arvind that the statements made in paragraph no. 2 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. The statement made that respondent no. 4 had been in the office where from 2008 to 2019 is the vague, incorrect and false.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of statements made by the petitioner in para 3 of his petition dt. 14.06.2021, wherein it has been stated that briefly speaking, it is relevant to state here that corrupt practices at mass level in the field of cricket was widely spread all across the country; for some reasons or others, the matter went before the Hon'ble Supreme Court; the Apex Court, considering need of time entertained the matter and pass an elaborative and reasoned order making so many reforms in its affairs; in this contest (sic. 'context') Hon'ble Justice Lodha was appointed Chairman of the Committee constituted by it to look into such affairs; the Committee examined the matter at length, visualised almost each and every aspect of the matter and submitted its reports to the Hon'ble Supreme Court and then the Hon'ble Supreme Court, by and large accepted the recommendation of the said Justice Lodha Committee and in this way several important reforms were made; it has been stated by Mr. Kumar Arvind that the statement

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R.K. Singh

made in paragraph 3 of the application filed by the petitioner dt. 14.06.2021 It is submitted and stated that the statement made is the explanation to the formation of Lodha Committee, hence needs no comment.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made in para 4 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that one of the such reform, just in order to bring transparency and honesty in cricketing activities, is the bar for an individual to retain the post of Office Bearer for an indefinite period, the person who retains such posts for a continuous period of 6 years has been restricted to contest such election unless he goes to a cooling period of 3 years, and this restriction can well be said to be a restriction imposed by the Hon'ble Supreme Court; the Committee of Administrators (COA) of BCCI, appointed by the Hon'ble Supreme Court once again clarified the said 6 years cumulative period and 3 years cooling period when the concerned people sought for; and this clarification (a photocopy of which attached to the petition as Annexure 1) clearly speaks reiterating the same position in this regard; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 4 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the said clarification is with regard to cooling of period and it is not applicable to the case of the present respondent no. 4.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made in para 5 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the respondent no. 4 knowing it very well that he is debarred from contesting such election as per the mandate of the Hon'ble Supreme Court and the BCA rules as well filled up his nomination paper along with an affidavit declaring thereunder that he is retaining the post of President of said Association only from the year 2018, whereas in fact he has been the Office Bearer of the said Association from the year 2008 till 2019 continuously and as such committed fraud upon the Association for receiving wrongful gains by concealing the very material fact; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 5 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the said fact is incorrect. There is no document attached to substantiate this paragraph. It is to submit that the present petitioner is not the Member as defined under Rule 3 of the

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Bihar Cricket Association and the dispute has been brought under Rule 45 of Bihar Cricket Association. It is to submit that the procedure laid down under Rule 45 need to be followed and adheared by all parties. The respondent no. 4 will substantiate and elaborate on this point at the time of hearing of the present case.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made in para 6 of the petitioner's petition dt. 14.06.2021, wherein it has been pleaded that the respondent no. 4 knowing it very well that he is debarred from contesting such election as per the mandate of the Hon'ble Supreme Court filed his nomination along with an affidavit concealing the material fact that he has been an Office Bearer of District Cricket Association from the year 2007-08 till the date of filing of his said nomination paper; the affiliation form of his association dt. 31.03.2011 for the session 2010-2011 as also for the session 2017-2018 apparently demonstrate the fact that he has been retaining such post from year 2010; not only that the Hindi News Paper cutting of year 2008 exhibiting prize distribution in a cricket tournament in presence of a Police Officer by him in the capacity of Vice-President of District Cricket Association, Bhojpur clearly demonstrates that he has been Office Bearer of the said Association from the year 2008 till the date of 2019 BCA elections, i.e. from the last continuous 11 years (photocopies of said affiliation forms along with paper cutting annexed to the petition have been marked as Annexure 2, 2A and 2B); it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 6 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the application for which has been filed by the petitioner is denied and the paper publication/paper cutting has no evidenciary value. It is to submit that there is no affiliation from 2011 to 2016. It is to submit even from 2017-18, the year is counted the respondent no. 4 is not eligible. It is to submit that similar issue is also pending before the Hon'ble Apex Court with regard to appointment of BCCI President and thus it would be apt for this Hon'ble Ombudsman to keep the present matter after the disposal of the said case before the Hon'ble Apex Court. It is to submit that in the mean time, the procedure under rule 45 of the BCA be followed in accordance with law.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of the averments made by the petitioner in para 7 of his petition dt. 14.06.2021, wherein it has been pleaded that the Annual General Meeting (AGM) of the Association mandatorily

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meant for one of the purposes is to conduct the election of the Association, was held on 02.08.2018 whereunder the proceeding and the minutes of the 2000 Annual General Meeting, held on 23.04.2000 was confirmed; and the same goes to mean beyond all shadows of doubt that no Annual General Meeting was held in between 2000 to 2018 as the Annual General Meeting held in the year 2018 (Annexure 3) confirms the minutes/proceeding of the AGM held in year 2000; rule 15 of the BCA rule clearly demonstrates that election and its follow up affairs of the Office Bearers of the Association can only be declared and regulated by the decision, arrived at in the AGM; therefore, as per submission of the petitioner, as no AGM were held after the AGM held in the year 2000 of Bhojpur DCA till AGM dt. 02.08.2018 of said Bhojpur DCA, the election of the Office Bearers of said DCA could not be held in between the period of year 2008-2018; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 7 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that acceptance of any resolution is not the proof and the petitioner has to bring on record a specific document to show that there is a breach and this Hon'ble Ombudsman must ask petitioner to discharge its burden in order to show that there is conflict or there is any violation of rule as described in present application otherwise the entire proceeding should be dismissed at the threshold for want of documents. It has also been stated by Mr. Kumar Arvind that as regards to this paragraph of the petitioner's petition dt. 14.06.2021, it is submitted and stated that the statement in this paragraph is denied. It does not prove that person is being working on the post of many years. It is to submit that in fact rule 15 says resolution being moved shall be decided on a show off by hands or by a secret ballots. There is no link with regard to the fact that the person has been for the period from 2000-2018. It is to submit that as the same time, this Hon'ble Ombudsman may appreciate this point that the entire BCA was defunct and pursuant to Lodha Committee, the BCA started to operate and subsequently rules have been framed.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of pleading made in para 8 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that respondent no. 4 has been associated with the DCA from long before, i.e. from the year 2007-08 till 2019 (just before the last BCA election); sometime he acted as President, sometime as Vice-President, sometime as Secretary and sometime as the President of a Club, e.g. he also acted as President of a Club in the year 2015-16, 2016-17 and 2017-18 (a

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photocopy of the letter dt. 21.07.2019 of the Hony Secretary of Bhojpur DCA addressed to Mr. Rabi Shankar Prasad Singh, Hony Secretary BCA attaching voter list of Bhojpur DCA, Arrah for the year 2015-16, 2016-17 has been filed making the same as Annexure 4 of the petitioner's petition at its Page 27-29 to show that Shri Kumar Arvind was President of Student Eleven Cricket Club (blue) for the session 2015-16, 2016-17; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 8 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that the letter attached in this paragraph shows that the respondent no. 4 has been associated from 2015-16. This does not mean that the respondent no. 4 has been associated from 2007-2019. It is to submit that it is vague allegation which need to pass the test of discharge of burden of proof which the present petitioner has completely failed in the present case.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of pleading made in para 9 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the respondent no. 4, in the aforesaid way submitted his nomination paper illegally and fraudly before the Electoral Officer with an affidavit in his support making statement on oath to the effect that he does not come within the ambit of the restriction clause enshrined in rule 5 of the BCA rules and regulations i.e. to the effect that he has never been an Office Bearer for the said cumulative period of 6 years which is palpably false and fabricated and the nomination paper of the respondent no. 4 and the affidavit in support of it for contesting the election for the post of the Joint Secretary of BCA held in the year 2019 or in the custody of the respondent's authority and the same could be produced only by respondent's authorities; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 9 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement in this paragraph is denied. It is to submit that Rule 5 does not apply to the case of the respondent no. 4. It is to submit that the clarification given by the Hon'ble Apex Court if seen, will also show that the case of the petitioner does not fall under the category of cooling off. It is also to submit that there is no violation of any provisions of rules in relation of the BCA. It is to submit that respondent no. 4 carve leave to reply to the content in this paragraph since there is no affidavit of respondent no. 4 has been brought before the Hon'ble Ombudsman by the petitioner.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in relation to pleading

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made in para 10 of the petitioner's petition dated 14.06.2021, wherein it has been stated by the petitioner that the petitioner craves leave of this Hon'ble Court to submit that election result of respondent no. 4 is ipso facto ipso jure liable to be demolished upon the sole ground of concealment of facts made in his nomination paper against the mandate enshrined in Rule 9(4) and (5) of the said BCA rules in as much as may be held liable for a criminal prosecution on account of the fact that a fraud has been committed; such an act of respondent no. 4 makes his election result wholly redundant and void; it has been stated by Mr. Kumar Arvind that the statement made in paragraph no. 10 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement made in this paragraph is denied. It is to submit that there is no concealment of fact. It is also to submit that Rule 9(4) or Rule 9(5) of the BCA rules does not apply in the case of the petitioner as it discusses about cooling off of two consecutive terms in the BCA or in the BCCI. The respondent no. 4 will reply to the same at the time of hearing with regard to interpretation of Rule 9. It is also to submit that so far as the allegation of fraud is being alleged, the same should be proved with authentic documents and it will not be proved based on assumption or presumption or based on the paper publication. In fact, the petitioner who has no locus has filed the present case and has concealed the material facts on oath and has wrongly stated with regard to post need to prosecuted for perjury who has played fraud before this Hon'ble Ombudsman which is evident from the affidavit to the reply dt. 11.08.2021.

In the counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in respect of pleading made in para 11 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the moment petitioner got aware about the aforesaid deed of concealment and fraud made by respondent no. 4 he is filing the present application to unseat the respondent no. 4 from the post of Joint Secretary BCA as he has been occupying the same illegally and fraudulently; It has been stated by the respondent no. 4 Mr. Kumar Arvind that the statement made in paragraph no. 11 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statement in this paragraph is denied. It is to submit that there is no illegality or any forgery has been proved and the Rules which has been quoted in the preceding paragraph does not apply to the case of the present respondent no. 4.

In counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind in relation to pleadings made in paras no. 12, 13 of the petitioner's petition dt. 14.06.2021, wherein it has been stated that the post of Joint Secretary BCA occupied by the respondent no. 4 is against the

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Justice Lodha Committee Report duly approved by the Hon'ble Supreme Court and the BCA rules and as such he deserves to be removed from said post in the light of the provisions made under Rule 9(4) and (5) of the BCA Rules as his case comes under disqualification mentioned in said Rule 9(4) and (5) and said disqualification is duly proved by the documents filed by the petitioner as Annexures to his petition, especially Annexure 2, 3 and 4 of his (petitioner's) application, and the restrictive clause of contesting election after holding a post for continuous 6 years and then a 3 years cooling off period has time and again been reiterated and held to be right, proper and genuine by the Apex Court to maintain transparency in affairs of cricket and a copy of the Supreme Court judgment given in this regard being Civil Appeal No. 4235 of 2014, Board of Control for Cricket In India and Ors. Vs. Cricket Association of Bihar and Ors. and other connected appeals has been filed with the petition as Annexure 5 to it; Mr. Kumar Arvind has stated that the statement made in paragraph no. 12, 13 of the application filed by the petitioner dt. 14.06.2021, it is submitted and stated that the statements made in these paragraphs is denied. It is to submit that there is an incorrect interpretation of Justice Lodha Committee Report. It is also to submit that Rule 9(4) and Rule 9(5) does not apply to the case of the present petitioner.

In the said counter affidavit dt. 13.08.2021 of Mr. Kumar Arvind it has also been stated that the respondent no. 4 has been appointed as Joint Secretary on 29.09.2019 and thus under this background the challenge to his appointment is after 1 year and 9 months.

During course of the hearing the present matter the counsel for the respondent no. 4 conceded that the election of office-bearers in almost each DCA is conducted to the AGM of concerned DCA and Bhojpur DCA is not an exception to that but he argued that the case of the petitioner that the respondent no. 4 Mr. Kumar Arvind has been holding post as office-bearer of Bhojpur DCA continuously for more than eleven years till his election as Joint-Secretary of BCA is only on assumption on the basis of paper-cutting and its comparison with photo of the board of the list of the Superintendent of Police, Bhojpur, copies of the minutes purported to be AGMs of Bhojpur DCA only and the said paper-cutting and its comparison with the board of the list of SP, Bhojpur and the purported minutes mentioned above have no evidenciary value and such as the aforesaid allegation made by the petitioner could have not been proved by him. To counter the same the counsel for the petitioner submitted that there is no specific denial by the respondent no. 4 to the aforesaid allegation and the denial made by him in this regard is only evasive and in view of the settled legal

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principle that evasive denial is of no avail and if there is no specific denial to the allegation made by the petitioner the same would be legally assumed to be admitted as per provisions of Rules 3,4,5 of Order VIII of the CPC,1908 (Act 5 of 1908) and as per provisions of Section 58 of the Evidence Act, 1872 the facts admitted need not be proved, and as such as the respondent no. 4 has made only evasive denial to the allegation about his holding the post as office-bearer of Bhojpur DCA continuously for more than six(6) years at the time of his nomination for the post of Joint-Secretary BCA in the aforesaid election of the year 2019 should be held to be admitted by him and there is no burden on the petitioner to prove the same.

From the perusal of counter affidavit dt. 13.08.2021 filed by the respondent no. 4 Mr. Kumar Arvind in reply to the petitioner's complainant/petition dt.14.06.2021 about the aforesaid allegation it is apparent and evident that there is only evasive denial to the aforesaid allegation made by the petitioner and the respondent no. 4 has not made any whisper about from which year he has been the office-bearer of Bhojpur DCA, though the respondent no. 4 in his counter affidavit dt. 13.08.2021 filed in reply to the rejoinder affidavit of the petitioner in Para 8 of his said counter affidavit dt. 13.08.2021 in reply to the petitioner's rejoinder affidavit dt. 11.08.2021 has stated that on the basis of the letter dt. 19.08.2019 of the then President BCA namely Gopal Bohra to the then Electoral Officer of BCA it can be easily inferred that there was General Body Meeting of Bhojpur DCA on 03.03.2017 (Annexure-R-4-E to the said counter affidavit) in which there was election conduct for said DCA and Kumar Arvind was elected as President and Manoj Kumar was elected as Secretary of said DCA, but the respondent no. 4 has not asserted himself that there was such election on 03.03.2017 as mentioned in the aforesaid letter of the then President BCA. Moreover the said letter dt. 19.08.2019 of the then President BCA does not bear his (the President) his signature and as such no reliance could be placed on that letter, beside it there is no supporting minutes of the alleged AGM dt. 03.03.2017 to be filed by the respondent no. 4 though he has filed affiliation-form of Extreme Eleven Cricket Club Ara (Bhojpur) for the year 2019-20, 2020-2021 and from Annexure 3 of the petitioner's complaint/petition being photo-copy of the minute of the AGM dt. 02.08.2018 held in the Presidentship of Mr. Kumar Arvind as President of Bhojpur DCA confirming the minutes of the AGM dt. 23.04.2000 of said DCA clearly goes to show that if any AGM of said DCA was held on 03.03.2017 then there was no occasion to confirm the minutes of 23.04.2000 in

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the said AGM dt. 02.08.2018 and the aforesaid minutes of the AGM dt. 02.08.2018 also goes to show that there was no AGM in the said DCA between 23.04.2000 and 02.08.2018 and it is admitted to the respondent no. 4 Mr. Kumar Arvind that the election in DCA is conducted in the AGM of concerned DCA and therefore it can be easily inferred on the basis of preponderance of probability that the respondent no. 4 Kumar Arvind has been office-bearers of Bhojpur DCA for more than continuous six(6) years since 02.08.2018 and also when he filed his nomination for the post of Joint-Secretary BCA for the election held in BCA on 29.09.2019 and as such he was not eligible to contest the said election of BCA in 2019 for any post of the office-bearers of BCA.

As regards to the question raised by the respondent no. 4 Mr. Kumar Arvind about non-bringing of his alleged affidavit filed by him in support of his nomination paper for the post of Joint-Secretary BCA in the aforesaid election of the year 2019 by the petitioner in the present matter it can be safely held that the said affidavit could not be into custody of the petitioner and the same would be in custody of BCA and its copy in the custody of respondent no. 4 Mr. Kumar Arvind, and in the present matter the BCA has not filed its reply nor respondent no. 4 has brought the copy of the same. Therefore, in view of the provisions of Section 114, illustration (g) of the Indian Evidence Act, 1872 to the effect that when an evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it, for the non-production of said affidavit by BCA or its copy by the respondent no. 4 an adverse inference is drawn against the respondent BCA and respondent no. 4 Mr. Kumar Arvind to the effect that the same was unfavourable to them and for that non-production the petitioner could not be blamed.

For the reasons mentioned above, it is held that the respondent no. 4 Mr. Kumar Arvind was not eligible to contest the election for the post of Joint-Secretary BCA in the aforesaid election of the year 2019 and thereafter also not eligible to hold the said post.

Question of mis-joinder/non-joinder of necessary party

The respondent no. 4 Mr. Kumar Arvind has pleaded that Bhojpur DCA is a necessary party in the present matter and its non-joinder in the present matter and the respondent no. 1 being a juristic person should be impleaded through its Secretary but the Secretary BCA has not been impleaded in this case and, therefore, as per the respondent no.

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4 the petition dt. 14.06.2021 of the petitioner ought to be dismissed on the aforesaid score.

From the pleading made by the petitioner and the relief(s) sought by him it is apparent that Bhojpur DCA is not a necessary party in the present matter. As regards to the claim of the respondent no. 4 that the respondent no. 1 BCA should be impleaded through its Secretary is of little value in view of the fact that it appeared in the present matter through its authorised advocate Shri Navjot Yesu who has been appearing for the BCA before me since before filing of the present case. Therefore, it is held that there is no defect as regards to the parties as respondents in the present matter.

For the reasons mentioned above, the petition/complaint dt. 14.06.2021 of the petitioner is allowed and it is held that holding of the post of Joint-Secretary BCA by Mr. Kumar Arvind (respondent no. 4) is illegal, null and void.

pr Singh
(Raghwendra Kumar Singh)
In-charge Ombudsman
Bihar Cricket Association

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