

Participant Code: 039

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**BEFORE THE HON'BLE  
SUPREME COURT OF INDIGO**

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CIVIL APPEAL NO \_ OF 2017  
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIGO

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**IN THE MATTER OF  
SOCIETY FOR CRICKET CONTROL IN INDIGO**

**V.**

**MR. DEV & OTHERS**

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**WRITTEN SUBMISSION FOR THE APPELLANT**

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**LIST OF ABBREVIATIONS**

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1. &: And
2. AIR: All India Reporter
3. Art: Article
4. BOD: Board of Directors
5. Cl.: Clause
6. Corp.: Corporation
7. Edn.: Edition
8. G.O: Government Order
9. Hon'ble: Honorable
10. HC: High Court
11. IPL: Indigo Premier League
12. No: Number
13. Ors: Others
14. pg: Page
15. Pvt.: Private
16. SC: Supreme Court
17. SCC: Supreme Court Cases
18. SCCI: Society for Cricket Control in Indigo (SCCI)
19. SCR: Supreme Court Reports
20. Sec.: Section
21. Supp.: Supplementary
22. u/s: Under Section
23. u/a: Under Article
24. UOI: Union of India
25. US: United States
26. USA: United States of America
27. V.: Versus
28. viz.: Namely
29. vol.: Volume

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**STATEMENT OF JURISDICTION**

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**The Appellant, Society for Cricket Control in Indigo (SCCI), hereby submits to the jurisdiction of the Hon'ble Supreme Court of Indigo, The Memorandum for the Appellant, Under Article 136 (Special Leave Petition) Of the Constitution of Indigo,**

**1950**

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## STATEMENT OF FACTS

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1. Indigo is a federal country with 30 states. Society for Cricket Control in Indigo (SCCI) is established in Indigo to control the sports of Cricket. It was registered in 1940 under Societies Registration Act, 1860. It fell into the Tamil Pradesh State territory. SCCI was registered under Trumbay Public Trust Act 1952, in 1998 the operation of the Act, in so far as it applied to the State of Tamil Pradesh was repealed by the Tamil Pradesh Societies Registration Act, 1975.

2. SCCI is a self-funded organization, generating revenue annually. The SCCI started Indigo Premier League (IPL) a domestic cricket tournament, in the 20-20 over format. Unfortunately, corruption made inroads into the great entertaining sport in the form of Match Fixing. Middlemen, players and owners involved, were apprehended and prosecuted, further players involved were banned for lifetime. Subsequently, a former Cricketer of Indigo, Mr. Dev filed a PIL in the High Court of Maha Pradesh. The SCCI appeared before Hon'ble High Court and filed its counter affidavit denying the contentions and claims of the petitioner Mr. Dev.

3. The Hon'ble High Court passed orders constituting a Commission headed by Former Judge, Mr. Yodha to look into the affairs, study the bye-laws of the SCCI and suggest reforms to bring out proper functioning of SCCI. Yodha committee submitted its report with a number of suggestions tantamount to a total revamping of management of SCCI. The SCCI vehemently objected to a major portion of the report and contended that it is not possible to accept all suggestions as it affects its autonomy and fundamental rights.

4. However, the Hon'ble High Court did not accept the contentions of SCCI. The Court froze the accounts of the Society. Aggrieved by the orders of the High Court, the SCCI filed a special leave petition in Supreme Court of Indigo. The Hon'ble Supreme court has granted leave and the civil appeal filed by the society is ordered to be placed before a constitutional bench of five judges, the matter stands posted for the final hearing.

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**STATEMENT OF ISSUES**

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- I. Whether the Special Leave Petition filed by the SCCI is maintainable?**
- II. Whether the SCCI is a State under Article 12 of the Constitution of Indigo?**
- III. Whether the SCCI is amenable to the writ jurisdiction of the High Court?**
- IV. Whether the Orders of the High Court amount to Judicial legislation?**

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## SUMMARY OF ARGUMENTS

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### **I. The Special Leave Petition Filed By The SCCI Is Maintainable**

The Appellant submits that the petition poses substantial questions of law which warrants the application of mind by the Hon'ble Supreme Court. Henceforward, on the various grounds set forth under the arguments, the application has to be entertained by the Hon'ble Supreme Court and the order of the High Court of Maha Pradesh has to be set aside.

### **II. The SCCI Does Not Come Under the Definition of State Under Article 12**

As the SCCI's monopoly in the field of cricket is not state-conferred or state protected and they are not financially, functionally and administratively controlled by the government nor do they have deep and pervasive control over the society as it an autonomous body functioning within its own MOA and Bye-laws. Therefore, it is humbly submitted before the Hon'ble court that the SCCI does not fall within the scope of 'State' under Art. 12 of the Constitution.

### **III. The SCCI Is Not Amenable to The Writ Jurisdiction of The HC Under Article 226**

The PIL filed by Mr. Dev has no locus standi as he lacks sufficient interest in the matter and further the grounds on which he has filed the PIL are groundless and baseless. Thus, since there are no valid grounds and no legal rights have been infringed of the public, the PIL is not maintainable. Further, as the SCCI does not discharge public function, it is humbly submitted before the Hon'ble court that the SCCI is not amenable to the writ jurisdiction of the HC.

### **IV. Orders of The High Court Amounts to Judicial Legislation**

The court could not have validly passed the order as it has been held in numerous decisions of the Supreme court that there is a broad separation of powers in the Constitution and it is not for one organ to encroach into the domain of the other. It is humbly submitted that the orders of the Court amount to judicial legislation and run contrary to the basic tenets of the constitution.



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## ARGUMENTS ADVANCED

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### I. THE SPECIAL LEAVE PETITION FILED BY THE SCCI IS MAINTAINABLE

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1. The Appellant humbly submits that the petition poses substantial questions of law which warrants the application of mind by the Supreme Court. The Appellant, though an autonomous body, has the *locus standi* to appear before the Court claiming the protection of its fundamental rights as the rights of the appellants are interlinked with the rights of other parties claiming under the Appellant. The High Court of Maha Pradesh has assumed excessive jurisdiction as its order amounts to judicial legislation which is against the basic tenets of the Constitution. A denial of a right to the Appellant would in effect stultify the rights of the parties claiming under the Appellant. The order passed under the guise to freeze the accounts of the society and for appointment of an administrator, by in fact concerns itself only with the enforcement of fundamental rights. Therefore, on various grounds set forth under, the application has to be entertained by the Hon'ble Supreme Court and the order of the High Court has to be set aside.

#### **1.1 The SLP is maintainable as there exists a substantial question of law**

2. It is humbly submitted that the special leave petition filed by the Appellant against the order of the Hon'ble High Court of Maha Pradesh is maintainable under Article 136 of the Constitution of Indigo.<sup>1</sup> It is a well-settled proposition that the jurisdiction of the Supreme Court under Article 136 can be invoked only when there is a substantial question of law.

3. The jurisdiction conferred under Article 136 on the Supreme Court is corrective one and not a restrictive one.<sup>2</sup> A duty enjoined upon the Supreme Court is to exercise its power by setting

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<sup>1</sup> Constitution of Indigo, Para Materia to Constitution of India (Hereinafter referred as Constitution)

<sup>2</sup> Haryana State Industrial Corporation V Cork Manufacturing Co. (2007) 8 SCC 359

right the illegality in the judgements. It is well settled that illegality must not be allowed to be perpetrated and failure by the Supreme Court to interfere with the same would amount to allowing the illegality to be perpetuated.<sup>3</sup> Further, when there is uncertainty as to the state of law, it is eminently proper for this court to grant leave in such a matter and settle legal proposition.<sup>4</sup>

4. It is humbly submitted that the interference by Supreme Court under Article 136 is called for where the High Court has rendered an incorrect decision on a point of law.<sup>5</sup> In the case under consideration, the High Court has passed an erroneous order which amounts to judicial legislation which is in contravention of basic principles of the Constitution of Indigo.

5. It has been held by the Supreme Court<sup>6</sup> that a petition under Article 136 is maintainable if there exists any violation of fundamental right or provisions of the constitution.

6. In the instant case, the order of the Hon'ble High Court of Maha Pradesh is in violation of Article 19(1) (g). The interim order of the High Court could not be complied with by SCCI due to the impossibility of performance. Freezing of accounts of the society as a consequence amounts to a violation of Article 19 (1) (g) as it hinders the right of the society to carry on occupation, trade or business. Thus, relying upon the judicial precedents, it is humbly submitted that SLP is maintainable.

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## **II. THE SCCI DOES NOT COME UNDER THE DEFINITION OF STATE**

### **UNDER ARTICLE 12**

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7. In *Zee Telefilms Ltd and Anr v. Union of India and Ors*<sup>7</sup> case in 2005 Apex Court elaborately discussed the position of BCCI as an instrumentality of State under Article 12. Court squarely

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<sup>3</sup> Pawan Kumar v. State of Haryana (2003) 11 SCC 241

<sup>4</sup> Commercial Central Excise Sand Customs V M/s. Venus Castings Pvt. Ltd. AIR 2000 SC 1568

<sup>5</sup> Western India Plywood v. Shri. P. Ashokan (1997) 7 SCC 638

<sup>6</sup> T B Ibrahim V Regional Transport Authority AIR 1953 SC 79

<sup>7</sup> Zee Telefilms Ltd and Anr v. Union of India and Ors AIR 2005 SC 2677

applied the test in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*<sup>8</sup> and held that since BCCI is not financially, functionally and administratively controlled by government cumulatively and so it cannot be held as a State and thus writ petition under Article 12 is not maintainable.

### **2.1 The monopoly status is not state-conferred or state protected**

8. In *Zee Telefilms Ltd and Anr vs. Union of India and Ors*<sup>9</sup> it was held that BCCI's monopoly in the field of cricket is not state-conferred or state protected. It was also held that there was no deep and pervasive state control. Control, if any, is only regulatory in nature. Thus, mere regulatory control whether under statute or otherwise would not serve to make a body a State.

9. In *Ajay Jadeja v. Union of India*<sup>10</sup>, it was held that BCCI is not an 'authority or instrumentality of the State' within Article 12 of the constitution because it does not perform any public duty and has no monopoly status and does not execute any sovereign function. SCCI is not performing any public duty in which the petitioner may have an interest.

10. In *A.C. Muthiah v. Board of Control for Cricket in India*<sup>11</sup> the Supreme Court reaffirmed the decision in *Zee Telefilms Case* and it was held categorically that BCCI is a "private autonomous body and its actions have to be judged only like any other similar authority exercising public functions". The Court also rejected the claim that every entity regulating the fundamental rights under Article 19 (1) (g) is a 'State' within the meaning of Article 12. It was held that the functions of the Board do not amount to public functions.

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<sup>8</sup> *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* (2002) 5 SCC 111

<sup>9</sup> *Ibid*

<sup>10</sup> *Ajay Jadeja v. Union of India* 95 (2002) DLT 14

<sup>11</sup> *A.C. Muthiah v. Board of Control for Cricket in India* (2011) 6 SCC 617

## **2.2 Test of Instrumentality is failed**

11. In *Zee Telefilms Ltd and Anr vs. Union of India and Ors* the control exercised by the Government was not persuasive but merely regulatory in nature. And mere regulatory control, whether under a statute or otherwise would not serve to make a body a State.

12. Cumulatively the SCCI is not financially, functionally or administratively dominated by or under the control of the Government. The limited control is purely regulatory control and nothing more. Even though the SCCI discharges a few duties akin to the State, violation of such duty will only allow citizens to file a writ petition under Article 226 or by the ordinary course of law.

13. The five-point test to define what “other authority” is within Article 12 is precisely laid down in *R.D. Shetty v. International Airport Authority of India*<sup>12</sup>. (i) Entire share capital is owned or managed by State (ii) Enjoys monopoly status which is state conferred or state protected (iii) Department of Government is transferred to Corporation (iv) Functional character governmental in essence (v) Deep and pervasive State control.

14. In this instant case, the none of these tests are satisfied as for (i), The SCCI is self-funded organization<sup>13</sup> (ii) The monopoly status that the SCCI has is not state conferred or state protected (2.1) for, (iii) Here the SCCI was registered under the Societies Registration Act, 1860<sup>14</sup> there was no transfer from a department of the govt. to a corporation. (iv) The functional character of the SCCI is to organize and promote the sport of cricket for entertainment purposes and generating revenue through franchisees, sponsors and advertisements<sup>15</sup> and thus is not governmental in nature. (v) As shown earlier the state control if any is regulatory and there is no deep and pervasive control of the Govt. over the SCCI as it is an autonomous body. Thus,

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<sup>12</sup> R D Shetty v. International Airport Authority of India 1979 AIR 1628

<sup>13</sup> Factsheet Para 3

<sup>14</sup> Factsheet Para 2

<sup>15</sup> Factsheet Para 3

the SCCI doesn't fall within the scope of "Other Authority" under Article 12 and thus it isn't a State and is outside the ambit of Article 12.

15. "Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the parameters laid down by this Court in Pradeep Kumar Biswas's case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions even then as per the judgment of this Court in Pradeep Kumar Biswas (supra) that by itself would not suffice for bringing the Board within the net of "other authorities" for the purpose of Article 12." <sup>16</sup> Thus Arguendo, even if some duties of the SCCI are of public nature, it would still keep it outside the scope of "other authorities" for the purpose of Article 12 relying on the aforementioned stance of this Court in the aforementioned case of Pradeep Kumar Biswas.

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### **III. THE SCCI IS NOT AMENABLE TO THE WRIT JURISDICTION OF THE HC UNDER ARTICLE 226**

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16. The PIL filed by Mr. Dev before the high court of Maha Pradesh is not maintainable as he has no locus standi to file the PIL and further the contentions raised by him are groundless as appropriate actions have been taken in regards to corruption and further the writ jurisdiction is not amenable to the SCCI as they don't discharge public duty.

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<sup>16</sup> Zee Telefilms Ltd and Anr vs. Union of India and Ors AIR 2005 SC 2677 (para 25)

### **3.1 Mr. Dev does not have Locus Standi to file the PIL**

17. In the case of *S.P. Gupta v. Union of India*<sup>17</sup>, the Court stated, “but we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others.”

18. The Hon’ble Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of the newly developed doctrine of Public Interest Litigation. It has also hastened to sound a red alert and a note of severe warning that courts should not allow their process to be abused.<sup>18</sup>

19. The Supreme Court has observed that any member of public having ‘sufficient interest’ may maintain petition by the way of PIL.<sup>19</sup> It is a settled principle that a PIL can only be filed by a person who has a genuine interest in the matter.<sup>20</sup>

20. It has been clarified in the context of *locus standi* an applicant may ordinarily fall in any of these categories: (i) ‘persons aggrieved’ (ii) ‘stranger’ (iii) ‘busybody or meddling interloper’. Persons in the last category usually interfere in things that do not concern them. they masquerade as crusaders for justice. They pretend to act in the name of pro bono public, though they have no interest of the public or even their own to protect<sup>21</sup>

Where a person is a stranger/unknown to the parties and has no interest in the outcome of the litigation, he can hardly claim locus standi to file such petition.<sup>22</sup>

21. Here Mr Dev is a stranger and lacks sufficient and genuine interest in the matter, further the grounds on which he is seeking directions of the court are baseless and lack any

<sup>17</sup> *S.P. Gupta v. Union of India* AIR (1982) SC 149

<sup>18</sup> *Janata Dal v. H.S Chowdhary and Ors.* 1991(3) SCC 756

<sup>19</sup> *Guruvayur Deavswom Managing Committee v. C.K. Rajan & Ors.* AIR 2004 SC561

<sup>20</sup> *Subhash Kumar v. State of Bihar* AIR 1991 SC 420

<sup>21</sup> *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Basheer Ahmed and Ors.* (1976) 1 SCC 671

<sup>22</sup> *Kishore Samrite v. State of U.P.* (2013) 2 SCC 398

infringement of a fundamental or any such legal right conferred upon him by the Constitution of Indigo

22. In regards to the allegation of corruption in regards to match-fixing and betting, it is evident that actions are being taken as per criminal law and by the concerned authorities & the Police as middlemen, players and also owners were apprehended and prosecuted. Further, the players who were involved in match fixing were banned for lifetime.<sup>23</sup> Thus since actions are being taken and matters related to corruption are being dealt with, Mr. Dev is not facing any infringement of a legal right or is the public at large.

23. In regards to the corruption in the election to the Board of Directors of the SCCI, it is to be kept in mind that Mr. Nivasan who was the chairman of the BOD of SCCI was only 'alleged' to have abetted in match fixing through his son in law Mr. Lalit, who was an owner of one of the teams which took part in the IPL.<sup>24</sup> The filing the PIL on the basis of an allegation is frivolous and certainly deprives the petitioner of locus standi.

24. The contention by Mr. Dev, that there exists nepotism in the selection for the Indigo Cricket team is baseless and is not legally sound as, at the very concept of nepotism isn't violative of any constitutional rights or even any such legal rights and the SCCI aren't prohibited by any Statutory provision to select a player to the Indigo Cricket who happens to be a son of a grandson of any member of the BOD.

25. The possible rights, in violation of those not selected to the Indigo cricket team due to nepotism, are *rights in personam* and not *rights in rem* and thus, aren't enforceable through the PIL.

26. Thus, since the very basic idea of a public interest litigation, is a public-spirited individual, invoking the writ jurisdiction, for the enforcement of constitutional rights of another person or

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<sup>23</sup> Factsheet Para 5

<sup>24</sup> Factsheet Para 5

group of people, involving the public interest at large. Here no such rights are violated for them to be enforced.

27. Thus, since all the grounds on which the PIL is filed don't stand and are baseless, and Mr. Dev lacks any specific and genuine interest in the subject matter. Further, since the SCCI is an autonomous body and no statute is governing its working,<sup>25</sup> and here it isn't in violation of any constitutional rights or legal rights. Thus, it is humbly submitted that the PIL is not maintainable as the petitioner Mr. Dev has no locus standi.

### **3.2 The SCCI doesn't perform public functions nor discharges public duties**

28. In *G. Bassi Reddy v. International Crops Research Institute & Anr*<sup>26</sup> it held, "Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. A service voluntarily undertaken cannot be said to be a public duty."

29. It further held, "While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities."

30. In *K.K. Saksena Vs. International Commission on Irrigation and Drainage & Ors*<sup>27</sup>

*"The activities cannot be stated to be remotely connected with the activities of the State. On a scrutiny of the constitution and by-laws, it is difficult to hold that the respondent-society has obligation to discharge certain activities which are statutory or of public character. The concept of public duty cannot be construed in a vacuum. A private society, in certain cases, may be amenable to the writ jurisdiction if the writ court is satisfied that it is necessary to compel such society or association to enforce any statutory obligation or such obligations of public nature casting positive public*

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<sup>25</sup> Factsheet Para 7

<sup>26</sup> *G. Bassi Reddy v. International Crops Research Institute & Anr* (2003) 4 SCC 225

<sup>27</sup> *K.K. Saksena Vs. International Commission on Irrigation and Drainage & Ors* 2014 (14) SCALE 384



*obligation upon it. It is clear that the impugned action does not involve public law element and no 'public law rights' have accrued in favour of the appellant which are infringed.”*

31. The SCCI hosting the international cricket matches is a voluntary activity undertaken by the SCCI and it isn't prohibited by the government or any such Constitutional provision to do the same.

32. In regards to the selection of players, there is a clear laid down working within the SCCI and the internal working of the SCCI in regards to the selection of players isn't questionable by the public, as such selection is done by the selection committee. The very idea that a selection committee has been formulated and the players are selected in line with the selection procedure as laid down in the bye-laws of the SCCI.

33. The SCCI is an autonomous body, that was registered under the Societies Registration Act, 1860. But after the Tamil Pradesh Societies Registration Act, 1975 was enacted, by virtue of S.31 of the said Act, the applicability of Societies Registration Act would be repealed and every society registered under that Act would be deemed to be registered under Tamil Pradesh Societies Registration Act. and Sec.5 of the Tamil Pradesh Societies Registration Act (Hereinafter the Act) lays down that for societies to be formed, a memorandum of association(MOA) is to be filled. Sec.6 of the Act, speaks of the requirements of the MOA and clearly states it must include “The rules and regulations of the society” and the SCCI has their own bye-laws as well.<sup>28</sup>

34. The allegation that the selection of the players representing team Indigo, is a public duty cannot be considered as discharging public duty or any such public function at large, arguing without conceding that a player who hasn't been selected to the team can file a civil suit in his own capacity against the SCCI, but in the instant case, there is no such duty owed to the general

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<sup>28</sup> Factsheet Para 8

public in regards to the selection of the team, further this impugned action does not involve public law element and no 'public law rights' have accrued in favour of the respondent which are infringed.

35. The SCCI and its activities cannot be stated to be intrinsically public in nature or closely related to those performable by the State in its sovereign capacity. The activities undertaken by SCCI, an autonomous body, do not actually partake the nature of public duty or State action and there was an absence of the public element. The duties discharged do not have a positive application of public nature.

36. Thus on the aforementioned grounds, firstly the petitioner of the PIL Mr. Dev not having locus standi to file the same, and secondly there being no such public law element or any such public duty or function that the SCCI discharges.

37. Therefore, it is humbly submitted by the counsel on the behalf of the Appellants, that the SCCI is not amenable to the writ jurisdiction of the High Court under Article 226.

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#### **IV. ORDERS OF THE HIGH COURT AMOUNT TO JUDICIAL LEGISLATION**

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38. It is humbly submitted that the High Court's orders freezing the accounts of SCCI and appointing an administrator<sup>29</sup> amount to judicial legislation and could not have been validly passed by the court as it has been held in several decisions of the Supreme Court that there is a broad separation of powers in the Constitution, and it is not for one organ of the state to encroach into the domain of another. Further, the orders also infringe upon the fundamental rights of the society.

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<sup>29</sup> Factsheet Para 9

39. P. N. Bhagwati.J while delivering the judgement in *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*<sup>30</sup>, said that separation of powers also comes under the basic structure of the constitution.

*“The learned Attorney-General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:*

*(1) Supremacy of the Constitution;*

*(2) Republican and Democratic form of Government.*

*(3) Secular character of the Constitution;*

*(4) Separation of powers between the Legislature, the executive and the judiciary;*

*(5) Federal character of the Constitution.*

*The above structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.”*

40. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain vide *Indian Drugs & Pharmaceuticals Ltd. vs. The Workman of Indian Drugs & Pharmaceuticals Ltd.*<sup>31</sup>

<sup>30</sup> His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala (1973) 4 SCC 225

<sup>31</sup> Indian Drugs & Pharmaceuticals Ltd. vs. The Workman of Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408

*“Under our Constitution, the Legislature, Executive and Judiciary all have their own broad spheres of operation as they are three distinct organs of the State Government. It is against the constitutional scheme for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be chaos.”*

41. In *Indira Gandhi Nehru v. Raj Narain*<sup>32</sup>, where the dispute regarding P.M. election was pending before the Supreme Court, opined that adjudication of a specific dispute is a judicial function which parliament, even under constitutional amending power, cannot exercise i.e. the parliament does not have the jurisdiction to perform a function which the other organ is responsible for otherwise there will be chaos as there will be overlapping of the jurisdictions of the three organs of the state.

42. Similarly, in *Asif Hameed vs. State of Jammu and Kashmir*<sup>33</sup>, a three-judge bench of this Hon’ble court observed:

*“Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another.”*

43. The theory of separation of powers first propounded by the French thinker Montesquieu<sup>34</sup> broadly holds that:

*“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judicial power be not separated*

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<sup>32</sup> *Indira Gandhi Nehru v. Raj Narain* AIR 1975 SC 2299

<sup>33</sup> *Asif Hameed vs. State of Jammu and Kashmir* AIR 1989 SC 1899

<sup>34</sup> MONTESQUIEU, THE SPIRIT OF LAWS (1750)

*from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge, would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals. "*

44. As the doctrine of separation of powers is not codified in the constitution, there is a necessity that each pillar of the State must respect the powers and responsibilities of other organs of the government rather than transgress into each other's territories. Thus, it is very clear that the Court has a very limited role and in the exercise of that, it is not open to doing judicial legislation.

45. Now, the orders of the High Court implementing the recommendations of the Yodha commission is clear case of Judiciary taking over the Legislative functions. It may be noted that SCCI was registered under the Societies Registration Act, 1860. But after the Tamil Pradesh Societies Registration Act, 1975 was enacted, by virtue of S.31 of the said Act, the applicability of Societies Registration Act would be repealed and every society registered under that Act would be deemed to be registered under Tamil Pradesh Societies Registration Act.

46. A society registered under the Tamil Pradesh Societies Registration Act, 1975 has to frame its rules, and the society can amend its rules by following the prescribed procedure. The Court cannot amend its rules? It may be stated that S.25 of the Tamil Pradesh Societies Registration Act, 1975 provides for the powers of the Registrar to inquire into the affairs of a registered society. S.27(A) of the same Act provides for the appointment of an administrator by the state government. Reading of the said provisions shows that if there is any complaint about the

constitution or functioning of the society, a complaint can be made to the Registrar or the district collector about the same and request the Registrar to hold an enquiry in that connection. Hence if there was any complaint about the constitution or functioning or financial condition of SCCI, there is a remedy prescribed in the Act itself. The court or the committee appointed by it cannot take over the said function of the Registrar and cannot pass orders in that connection. Further, the court cannot appoint an administrator at its discretion as it is the function of the state government. Under S. 27 of the Tamil Pradesh Societies Registration Act, the Registrar can cancel the registration of a society, if any unlawful activity is being carried out by the society and has been found out by an enquiry.

47. In *G. Veerappa Pillai v. Raman & Raman Ltd.*<sup>35</sup>, it was settled that the High Court cannot take over the function of statutory authority under any Act. Similarly, in many other decisions of the Supreme Court it is stated that if the statute empowers a certain authority to perform a certain function, that authority alone can perform that function, and the court cannot usurp that power vide *State of UP v Section Officer Brotherhood and Another*<sup>36</sup>.

48. The SCCI is governed by statutory enactments and rules framed thereunder. It is wholly illegal and invalid for any Court or local commission appointed by a Court to pass orders or directions contrary to the statute or rules/ bye-laws made thereunder. It may also be noted that this direction of the High Court impinges on the jurisdiction and powers of individual State Legislatures granted under the Constitution. In this regard, it may be noted that List II entry 32 and 33 of the 7th Schedule of the Constitution reads as under:

*“32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.*

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<sup>35</sup> *G. Veerappa Pillai v. Raman & Raman Ltd.* AIR 1952 SC 192

<sup>36</sup> *State of UP v Section Officer Brotherhood and Another* 2004 8 SCC 286

*33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.”*

49. Therefore, it is respectfully submitted before this hon'ble court that the orders of the high court amount to Judicial Legislation and it would set a dangerous precedent for forthcoming cases. Further, SCCI is governed by statutory enactments and the courts do not have jurisdiction on the said issue.

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**PRAYER**

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Wherefore in the light of the facts stated, issues raised, authorities cited and arguments advanced, it is most humbly prayed before this Honorable Court that it may be pleased to set aside the orders of the High Court of Maha Pradesh

And/or pass any other writ, order or direction which the court may deem fit in the ends of equity, justice, expediency and good conscience in favour of the Appellant. All of which is respectfully submitted.

Place:

S/d\_\_\_\_\_

Date:

(Counsel for Appellant)