

Team Code- 28

BEFORE THE HON'BLE SUPREME COURT OF INDIGO

**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF
INDIGO**

SOCIETY FOR CONTROL OF CRICKET IN INDIGO.....APPELLANT

V.

MR. DEV AND OTHERS.....RESPONDENT

**BEFORE SUBMISSION TO HON'BLE CHIEF JUSTICE AND HIS
COMPANION JUDGES OF
THE HON'BLE SUPREME COURT OF
INDIGO**

MEMORIAL ON BEHALF OF THE APPELLANT

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Prayer 15

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¶	Paragraph
A.I.R.	All India Reporter
All.	Allahabad
Anr.	Another
Co	Company
AWC	Allahabad Weekly Cases
v.	Versus
DW	Defence Witness
Ed.	Edition
SLP	Special Leave Petition
I.C.	Indian Cases
Ltd	Limited
ILR	Indian Law Review
P.	Page No.
LJ	Law Journal

US	United States
S/o	Son of
r/w	Read With
Raj.	Rajasthan
S.C.	Supreme Court
S.C.C.	Supreme Court Cases
S.C.J.	Supreme Court Journal
S.C.R.	Supreme Court Reporter
Sec.	Section
u/s	Under Section
Ors	Others
AC	Appeal Cases

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STATEMENT OF JURISDICTION

The Hon'ble Supreme Court of Indigo has jurisdiction to hear the instant matter under Article 136 of the Constitution of Indigo.

Article 136 of the Constitution of Indigo reads as:

“136. Special leave to appeal by the Supreme Court

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”

STATEMENT OF FACTS

1. Society for Cricket Control in Indigo (SCCI) was established in Indigo to control the sport of Cricket. It was registered under the Societies Registration Act, 1860 and with its Head Office situated in Erupadi in Maha Pradesh (MP), it was also registered as a trust under The Trumbay Public Trust Act 1952 which was in force in the State of MP.
2. In 1956, Erupadi became part of Tamil Pradesh (TP) where the 1952 Act was applicable as well. TP subsequently passed the Tamil Pradesh Societies Registration Act 1975. In 1998, the application of the 1952 Act to TP was repealed. SCCI hosts international, test, and domestic matches. It is self-funded and has absolute power to select players for Indigo cricket team and fix their remuneration.
3. A former Cricketer of Indigo, Mr. Dev filed a PIL in the High Court (HC) of Maha Pradesh alleging that the top management of SCCI had involved in corruption, match fixing and betting which affected the quality of the game. SCCI denied allegations and contended that since it was an autonomous body, no writ petition was maintainable.
4. The HC formed the Yodha Committee to give recommendations to improve the functioning of the SCCI. The Yodha Committee report if given effect would be tantamount to total revamping of management of SCCI. SCCI accepted some but objected to major portion of the report and contended that it is impossible to accept all suggestions as it affects its autonomy and rights guaranteed under the Constitution.
5. The HC issued interim directions to SCCI to conduct elections to its BOD as per the recommendations of Yodha Commission, within two months. However, SCCI was unable to comply with the same. The High Court ordered the freezing of the accounts and appointment of an Administrator. SCCI filed an SLP contending that the orders of the HC amounted to judicial legislation and were unconstitutional to which leave was granted by the Supreme Court. Issue placed before a Constitutional Bench.

STATEMENT OF ISSUES

ISSUE 1

WHETHER MR. DEV HAS LOCUS STANDI TO FILE A PUBLIC INTEREST LITIGATION

Issue 2

**WHETHER THE JUDGEMENT PASSED BY THE HIGH COURT AMOUNTED TO
JUDICIAL LEGISLATION**

ISSUE 3

**WHETHER THE WRIT OF MANDAMUS CAN BE ISSUED AGAINST THE SOCIETY FOR CRICKET
CONTROL OF INDIGO**

SUMMARY OF ARGUMENTS

ISSUE1: WHETHER MR. DEV HAS LOCUS STANDI TO FILE A PUBLIC INTEREST LITIGATION

It is humbly submitted before the Hon'ble Court that Mr. Dev did not have locus standi to file a Public Interest Litigation on the grounds that the Society for Cricket Control of Indigo (*hereinafter referred to as the "SCCI"*) is an autonomous body and accordingly, has been excluded from the ambit of a Public Interest Litigation (*hereinafter referred to as "PIL"*) on the grounds of its autonomy. Further, there has been no substantial legal right violation of any parties by the actions of the SCCI and Mr. Dev does not have sufficient grounds to file the PIL.

ISSUE 2: WHETHER THE JUDGEMENT PASSED BY THE HIGH COURT AMOUNTED TO JUDICIAL LEGISLATION

It is humbly submitted before the Hon'ble Court that the decision given by the High Court of Maha Pradesh amounts to judicial legislation. The Yodha Committee recommendations aimed at totally revamping the SCCI. Enforcing the recommendations upon the SCCI by the High Court falls within the ambit of an Executive function and not a Judicial function. It is contended that the High Court has exceeded its authority and committed injustice upon the SCCI. Accordingly, the order of the High Court should be set aside.

ISSUE 3: WHETHER THE WRIT OF MANDAMUS CAN BE ISSUED AGAINST THE SOCIETY FOR CRICKET CONTROL OF INDIGO

It is humbly submitted before the Hon'ble Court that the SCCI does not constitute State or an "instrumentality of State" under Article 12 of the Constitution. Further, the SCCI does not perform a public function. Since the SCCI is recognized as the representative of Indigo Cricket by the International Cricket Council (a private body) and not the Government of Indigo itself, the SCCI cannot be regarded to be performing a public function. It is thus, submitted that the SCCI performs a private function and is not amenable to writ jurisdiction.

ARGUMENTS ADVANCED**Issue 1****WHETHER MR. DEV HAS LOCUS STANDI TO FILE A PUBLIC INTEREST****LITIGATION**

1. It is humbly contended before the Hon'ble Court that the Society for Cricket Control of Indigo (*hereinafter referred to as "SCCI"*) is an autonomous body governed by its own bye laws. Accordingly, Mr. Dev does not have the *locus standi* to file a Public Interest Litigation against the SCCI and the same should not be held maintainable.

1.1 SCCI is an Autonomous Body

2. It is humbly contended before the Hon'ble Court that there are no legislations governing SCCI. It has been registered as a Society under the Societies Registration Act, 1860¹², after which, it was registered as a trust under the Trumbay Public Trust Act, 1950.³ However, after the States Reorganisation, it became part of the State of Tamil Pradesh and application of Trumbay Public Trusts Act to Tamil Pradesh was repealed in 1998.⁴ Hence, if SCCI is to be considered a public trust, then it is to be an autonomous body since there are no laws governing non-religious public trusts in the State of Tamil Pradesh.

¹ Societies Registration Act, 1860 (Act No. 21 of 1860)

² Paragraph 2, Moot Proposition

³ Paragraph 2, Moot Proposition

⁴ Paragraph 2, Moot Proposition

3. *Arguendo*, a purposive interpretation of the repealing laws and the new laws reflect that it is an autonomous body –
4. A purposive interpretation of a Statute is permissible in the State of Indigo⁵ which includes an interpretation of the Statement of Objects and Reasons when required.⁶ The inclusion of the same has been an accepted practice, including in decisions passed by Constitution benches.⁷
5. The Karnataka Societies Registration Act, 1960⁸ in turn is applicable to all societies registered in the State of Tamil Pradesh. It includes under its purview all bodies registered under the Societies Registration Act, 1860.⁹ Accordingly, the current law governing SCCI is the Karnataka Societies Registration Act, 1960.
6. The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997¹⁰ applicable in the State of Tamil Pradesh provides that the Charitable Institution and Trusts registered under the Karnataka Societies Registration Act, 1960 which are not under the management of the Government *shall continue to be autonomous*.¹¹

⁵ *Tirath Singh v. Bachittar Singh*, AIR 1955 SC 830; *District Mining Officer and Ors. v. Tata Iron and Steel Co. and Anr.* AIR 2001 SC 3134

⁶ *Shashikant Laxman Kale and Anr. v. Union of India & Anr.* AIR 1990 SC 2114; *Gurudev datta Vksks Maryadit & Ors v. State of Maharashtra & Ors.* AIR 2001 SC 1980; *A. Thangal Kunju Musaliar v. M. Venkitachalam Potti and Anr.* AIR 1956 SC 246; *State of West Bengal v. Union of India* AIR 1963 SC 1241; *Pannalal Binjraj v. Union of India* AIR 1957 SC 397

⁷ *Kerala State Electricity Board v. Indian Aluminium Co.* 1976 AIR 1031

⁸ Karnataka Societies Registration Act, 1960 (Act No. 17 of 1960)

⁹ Part 1, Clause 2 and 3: Objects and Reasons, Karnataka Societies Registration Act, 1960.

¹⁰ Karnataka Societies Registration Act, 1997 (Act No. 33 of 2001)

¹¹ Clause 2, Statement of Objects and Reasons, Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997.

In the instant case this is the classification SCCI falls under and hence, it is contended that the Statement of Objects and Reasons must be taken into consideration which reveal that SCCI is an autonomous body.

1.2 A Public Interest Litigation cannot be filed against an Autonomous Body

7. An Autonomous body is a self-governing body, independent, and subject to its own laws. They may be governed by a law superior but the control over its internal administration is held by the body itself.¹² The governing body, in case of a society, has been defined in the Societies Registrations Act, 1860 as the governors, council, directors, committee, trustees, or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.¹³
8. It is contended that the actions of SCCI being that of an autonomous body, should only be judged like any other similar society or body and cannot be judged like an instrumentality of State or other authority exercising public functions.¹⁴ The public policy of a society must be in consonance with the statute under which it is registered or is being governed and not public policy as indicated in the constitution.¹⁵
9. The Supreme Court, in the case of *Vizagapatam Dock Labour Board v. Stevedores Association, Vishakhapatnam and Ors.*¹⁶ held that the board being an autonomous body, has complete authority over the wages of dock workers. SCCI in the present case is a

¹² *Raj Rani and Ors. v. Delhi Administration and Ors.* AIR 1977 SC 1900; *Goa State Co-operative Bank Ltd. v. Pedne Taluka Prathamik Shikshak Pat Saunstha Ltd. and Ors.* AIR 1997 SC 1801

¹³ Section 16 - Societies Registration Act, 1860.

¹⁴ *Board of Control for Cricket, India and Anr. v. Netaji Cricket Club and Ors* AIR 2005 SC 5 92; *A.C. Muthiah v. Board of Control for Cricket in India and Anr* (2011) 6 SCC 617

¹⁵ *Zoroastrian Cooperative Housing Society Ltd. v. District Registrar, Cooperative Societies (Urban)* (2005) 5 SCC

¹⁶ *Vizagapatam Dock Labour Board v. Stevedores Association, Vishakhapatnam and Ors.* AIR 1970 SC 1626

self-funded organisation,¹⁷ which are specifically exempt from external control if considered to be an autonomous body.¹⁸

- 10.** As mentioned in the bye laws of the SCCI, only members have a right to file a complaint against the functioning of the SCCI.¹⁹ Since it has been previously established that the SCCI is an autonomous body governed by its own bye laws, Mr. Dev, not being a member of the SCCI, does not have the *locus standi* to file a Public Interest Litigation against the same.

1.3: PUBLIC INTEREST AND LEGAL RIGHTS HAVE NOT BEEN VIOLATED

- 11.** Public Interest Litigations are filed for the general public interest in which some legal wrong or legal injury is caused to the petitioners (or represented persons).²⁰ Therefore, their legal rights should be affected to be able to file the same.²¹ It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question.²²

- 12.** In the case at hand it is contended that no legal right of any class of people have been violated. SCCI is a private body registered as a society, and should not be discriminated upon only because of the popularity enjoyed by the sport in the nation.²³ Any such differentiation dependent upon popularity, finances and public opinion of the body

¹⁷ Moot Proposition, Paragraph 3.

¹⁸ Jyoti Kumar Malviya S/o Shri J.N. Malviya v. IFCO 2006 7 AWC 6717 All.

¹⁹ Moot Proposition, Paragraph 7

²⁰ *S.P Gupta v. Union of India* AIR 1982 SC 149

²¹ Justice Banerjee, Bhagabati and Banerjee, Bhaskar, "Judicial Control of Administrative Action", 2nd Edn. 2012.

²² Blacks Law Dictionary, 6th Edn.

²³ *Zee Telefilms Ltd. v. Union of India*, AIR 2005 SC 2677

concerned would violate Article 14 of the Constitution, as any discrimination to be valid must be based on hard facts and not mere surmises.²⁴ As Mr. Dev or the Cricket players do not form a class in themselves, it is, thus, submitted to the Hon'ble Court that Mr. Dev had no *locus standi* to file the Public Interest Litigation against SCCI and thereby the PIL should not be treated as maintainable.

²⁴ *State of Kerala v. Kumari T.P. Roshana and Anr.* (1979) 1 SCC 572

Issue 2**WHETHER THE JUDGEMENT PASSED BY THE HIGH COURT AMOUNTED TO JUDICIAL LEGISLATION**

13. The recommendations passed by the Yodha Committee are of such nature that application of the same would be tantamount to total revamping of management of SCCI.²⁵ Accordingly, it is contended that the enforcement the same amounts to judicial legislation.

14. Under the Constitution of Indigo, the Legislature, Executive and Judiciary have their own broad spheres of operation.²⁶ In *State of Bihar v. Bal Mukund Shah*,²⁷ separation of Powers has been held to be part of the Basic Features of the Constitution²⁸. It is not proper for any of these three organs of the State to encroach upon the domain of another.²⁹ Accordingly, it is contended that the High Court has exercised Executive Functions [1] and it does not have the authority to do complete justice as in the case of the Supreme Court [2].

2.1: THE HIGH COURT EXERCISED EXECUTIVE FUNCTIONS

²⁵ Moot Proposition – Paragraph 8.

²⁶ *Ram Jawaya v. State of Punjab* AIR 1955 SC 549; *Kartar Singh v. State of Punjab* AIR 1967 SC 1643

²⁷ *State of Bihar v. Bal Mukund Shah* (2000) 4 SCC 640; *State of West Bengal & Ors. v. Committee for protection of Democratic Rights, West Bengal & Ors.* AIR 2010 SC 1476

²⁸ *Kesavananda Bharati and Ors. v. State of Kerala and Anr.* (1973) 4 SCC 225

²⁹ *Divisional Manager, Aravalli Golf Club and Anr. v. Chander Hass and Anr* (2008) 1 SCC 683

15. In the case at hand, the High Court of Maha Pradesh ordered for the appointment of an administrator and froze the accounts of the society.³⁰ However, the power to appoint an administrator has been specifically vested with the Tamil Pradesh State Government.³¹
16. In *Veerappa Pillai v. Raman and Raman Ltd. & Ors.*³², the Supreme Court struck down a decision of the High Court to grant a permit since the authority to grant it lay specifically with the Regional Transport Authority. It has similarly been held in numerous cases that when a body has been specifically vested with the power to take certain decisions by a statute, the Court cannot usurp the same.³³
17. The administration of SCCI therefore, falls under the purview of the administrative authorities, who have expertise in the concerned field while the Court does not.³⁴ The principle of *judicis est jus dicere, non jus dare* or ‘it is the duty of the judge to administer justice, not to make law’ is applicable in the instant case. It is well established that the role of the judiciary is limited to application and interpretation, and not creation of law.³⁵

2.2: THE HIGH COURT LACKED AUTHORITY TO DO COMPLETE JUSTICE

18. In the case at hand, the High Court sought to enforce recommendations given by the Committee formed by it and headed by Mr. Yodha.³⁶ It is contended that the High Court

³⁰ Moot Proposition, Paragraph 9.

³¹ Section 27 A - Karnataka Societies Registration Act, 1960.

³² *Veerappa Pillai v. Raman and Raman Ltd. & Ors.* AIR 1952 SC 192

³³ *State of Uttar Pradesh v. Section Officer Brotherhood and Anr.* (2004) 8 SCC 286; *State of Uttar Pradesh and Anr. v Raja ram Jaiswal and Anr.* (1985) 2 SCC 131; *Ragupathy v. State of Uttar Pradesh* (1998) 4 SCC 364

³⁴ *Tata Cellular v. Union of India* AIR 1996 SC 11

³⁵ *Pravasi Bhalai Sangathan v. Union of India*, AIR 2014 SC 1591; *Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82

³⁶ Paragraph 8, Moot Proposition.

does not have the power to enforce the recommendations passed by the committee since it does not have the authority to do complete justice.

19. Article 142 empowers the Supreme Court to pass any order which it deems necessary to do complete justice.³⁷ This power is conversely absent in case of High Courts, which limits its power to a certain extent.³⁸

20. The Supreme Court in *Damodar S. Prabhu v. Sayed Babalal H*³⁹ held that framing guidelines may amount to judicial law making, thereby breaching the perimeters of its jurisdiction, however, in order to do complete justice, the court would be justified in framing such guidelines in cases where there is complete legislative vacuum. A similar line of reasoning has been found in other cases as well.⁴⁰

21. The framing and subsequent enforcement of such measures therefore, amounts to judicial legislation which is especially impermissible considering the lack of authority to do complete justice as enjoyed by the Supreme Court.

2.3: THERE WAS A NEED FOR EXERCISING JUDICIAL RESTRAINT

22. It is contended that the High Court in the instant case has passed a decision beyond its powers and has hence failed to exercise Judicial Restraint. The task of the Courts is

³⁷ *E.K. Chandrasenan v. State of Kerala* AIR 1995 SC 1066

³⁸ *State of Punjab v. Surinder Kumar* (1992) 1 SCC 489

³⁹ *Damodar S. Prabhu v. Sayed Babalal H* AIR 2010 SC 1907

⁴⁰ *Vineet Narain v. Union of India* AIR 1998 SC 889; *Vishaka & Ors. v. State of Rajasthan and Ors.* AIR 1997 SC 3011

limited to ensuring that powers are lawfully exercised by those to whom they are entrusted, not to take powers into their own hands and exercise them afresh.⁴¹

23. This is important since there is no restraint upon the exercise of judicial review of the Court, it must apply brakes to its self -motive, which has been described in Judicial Parlance as Judicial Restraint.⁴² Considering the same, courts have, in the past stayed from delivering certain pervasive judgements in order to prevent it from becoming a case of judicial legislation.⁴³

24. The role of the Judiciary is limited to Judicial Review of laws and does not hold the power to legislate.⁴⁴ In fact, it cannot even issue directions to the Executive to enact a legislation or a rule to meet a particular objective.⁴⁵ The judiciary can, therefore, perform an advisory function at the most.⁴⁶ The same is especially pertinent in cases such as the one at hand where legal issues are intertwined with those involving determination of policy and a plethora of technical issues.⁴⁷

25. Considering that a Constitution Bench is faced in the case at hand, judgements delivered by a greater or co-equal bench are binding on the same.⁴⁸ The Supreme Court should not

⁴¹ *R v. Secretary of State for the Home Department, ex p Fire Brigades Union* (1995) 2 AC 513

⁴² *Madhu Kishwar v. State of Bihar* (1996) 5 SCC 125; *Asif Hameed v. State of Jammu and Kashmir* AIR 1989 SC 1899; *Trop v. Dulles* (1958) 356 US 86

⁴³ *Southern Technologies Ltd. v. Joint Commnr. of Income Tax, Coimbatore* (2010) 2 SCC 548; *Commissioner of Income Tax, Indore v. Pawan Kumar Laddha* (2010) 13 SCC 294; *Bachan Singh v. State of Punjab* AIR 1980 SC 898; *Suresh Seth v. Commr., Indore Municipal Corpn.* AIR 2006 SC 767

⁴⁴ *Union of India v. Deoki Nandan Aggarwal* AIR 1992 SC 96; *District Mining Officer v. Tata Iron and Steel Co.* (2001) 7 SCC 358; *Chandigarh Administration v. Manpreet Singh* AIR 1992 SC 435

⁴⁵ *State of Himachal Pradesh v. A Parent of a Student of Medical College, Shimla* AIR 1985 SC 910; *Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh* AIR 1971 SC 2399; *Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294; *Supreme Court Employees' Welfare Assn. v. Union of India* (1989) 4 SCC 187; *Bal Ram Bali v. Union of India* (2007) 6 SCC 805; *U.P. State Road Transport Corporation and Anr. v Mohammed Ismail and Ors.* (1991) 3 SCC 239

⁴⁶ *Mullikarjuna Rao v. State of Andhra Pradesh* AIR 1990 SC 1251

⁴⁷ *Tata Iron & Steel Co. Ltd. etc. v. Union of India and Ors.* AIR 1996 SC 2462

⁴⁸ *Central Board of Dawoodi Bohra Community v. State of Maharashtra* (2005) 2 SCC 673

hesitate to interfere in cases where the decision of the Lower Court will lead to a miscarriage of justice.⁴⁹

Accordingly, it is contended that the order passed by the High Court should be kept aside as it was *per in curium* and beyond its powers. It was held in *State of U.P. v. Synthetics & Chemicals*⁵⁰ that a decision is said to be *per incuriam* if it overlooks a statutory provision or earlier binding judicial precedent and is hence liable to be set aside as void. It is hence contended that the decision passed by the High Court in the instant case is *per incuriam* in nature and must be set aside.

⁴⁹ *State of Maharashtra v. Champalal Punjaji Shah* AIR 1981 SC 1675

⁵⁰ (1991) 4 SCC 139; *M.P. Housing Board v. BSS Parihar* (2015) 7 SCC 263

Issue 3**Whether the Writ of Mandamus can be issued against the Society for Cricket Control of Indigo?**

27. It is humbly submitted before the Hon'ble Court that a writ of mandamus cannot lie against the SCCI since it does not constitute State or an instrumentality of State under Article 12 of the Constitution of India [1] and it does not perform a public function. [2]

3.1 SCCI DOES NOT CONSTITUTE STATE UNDER ARTICLE 12 OF THE CONSTITUTION

28. It is contended that the nature of the SCCI is different from the nature of "State" as defined under Article 12 of the Constitution.⁵¹ Owing to this difference between the nature of the SCCI and that of a State, the SCCI cannot be amenable to writ jurisdiction.

3.1.1 THE REGISTRATION OF THE SCCI AS A SOCIETY DOES NOT PRIMA FACIE MAKE IT A "STATE" UNDER ARTICLE 12

29. SCCI is an autonomous body governed by its own bye laws.⁵² It has been held that a society registered under the Societies Registration Act, 1860 does not qualify as a State under Article 12 *prima facie* and is not amenable to writ jurisdiction.⁵³

30. Where a body does not receive any financial assistance from the Government, is not controlled by the Government and has not been recognized under its guidelines, it is not

⁵¹ Article 12, Constitution of India, 1950

⁵² Moot Proposition, Paragraph 7

⁵³ *Narinder Batra v. Union of India*, (2009) ILR 4 Delhi 280

a statutory body, but it is in the nature of “a private club registered under the Societies Registration Act”.⁵⁴ A Society registered under the Societies Registration Act, 1860 cannot be equated with the Government of Indigo or any State nor can it be said to be a local authority and therefore the only possibility for it to fall within the definition of 'State' is under the ambit of ‘other authorities’.⁵⁵ It will be subsequently proved that the SCCI does not fall within the category of “instrumentality of State” either and should be totally exclusive of writ jurisdiction.

3.1.2. THE SCCI DOES NOT CONSTITUTE AN INSTRUMENTALITY OF STATE
UNDER ARTICLE 12

31. It is contended before this Hon’ble Supreme Court that the SCCI is a self-funded organisation governed by its own bye-laws created by the Society on its creation⁵⁶. It generates up to 10,000 crores in revenue and its management consists of businessmen, politicians and actors⁵⁷.

32. As previously submitted, the SCCI cannot be *prima facie* regarded as “State”. The Supreme Court has held in numerous instances that only where a body is financially, administratively and functionally dominated by the Government will it be regarded as State.⁵⁸ Where the control that the Government has over a body is merely regulatory in

⁵⁴ *Zee Telefilms Ltd. v. Union of India*, AIR 2005 SC 2677; *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, *Ramana Dayaram Shetty v. The International Airport Authority of India*, AIR (1979) SC 1628

⁵⁵ *Ajay Hasia v. Khalid Mujib Sehravardi* AIR 1981 SC 487

⁵⁶ Moot Proposition, Paragraph 3 & 4

⁵⁷ Moot Proposition, Paragraph 3 & 4

⁵⁸ *Zee Telefilms Ltd. v. Union of India*, AIR 2005 SC 2677, *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, *Ramana Dayaram Shetty v. The International Airport Authority of India*, AIR (1979) SC 1628

nature and does not amount to deep and pervasive State Control, the body will not be regarded as State.⁵⁹ It has been held that where a body does not depend on the Government for funding, the body has not been created by a Statute, and the monopoly enjoyed by the body is not State conferred, it is not regarded as State under Article 12.⁶⁰

33. It is submitted before the Hon'ble Court that since the SCCI is a self-funded organization registered under the Societies Registration Act, 1860 and enjoys absolute authority to make decisions with respect to selection of cricket players to the Indigo Cricket Team free from Government intervention, the SCCI cannot qualify as an "instrumentality of State" under Article 12, and thereby will not come within the purview of State. Accordingly, is not amenable to writ jurisdiction under Article 32.

3.1.3 THE SCCI DOES NOT PERFORM PUBLIC FUNCTIONS

34. It is contended that it does not perform a public function and is not amenable to Article 226.⁶¹

The International Cricket Council (*hereinafter referred to as the "ICC"*) is the Apex Body for controlling cricket in the world and is a private organisation.⁶² It is governed by its own bye laws, rules and regulations. "Full Members" are the governing bodies for cricket of a country recognised by the ICC, or nations associated for cricket purposes

⁵⁹ *KK Saxena v. International Commission on Irrigation and Drainage*, Civil Appeal No. 11499 of 2014 (Arising out of SLP (C) No. 30348 of 2011)

⁶⁰ *Ramana Dayaram Shetty v. The International Airport Authority of India*, AIR (1979) SC 1628

⁶¹ Article 226 – Constitution of India, 1950.

⁶² Constitution of the International Cricket Council, available on the following link http://static.icc-cricket.com/ugc/documents/DOC_0DE4A511BFC4D86810C333CA12DBECFE_1288260213828_45.pdf (Last Accessed on 14th March, 2017)

from which representative teams are qualified to play official Test matches.⁶³ SCCI being the sole body in the territory of Indigo, it alone has the authority to select players to the National Cricket Team representing Indigo in International matches.⁶⁴

35. Therefore, the powers of the SCCI are similar to the powers of a Full Member of the ICC due to which similar rules should apply. It is essentially the ICC which recognises SCCI as the representative authority in Indigo and not the State of Indigo itself.

36. It has been held that a cricket association is a voluntary association with its origin not in statute and wholly unconnected to the State.⁶⁵ Thus, any functions carried out by such a Cricket Board will be a private and not a public in nature.⁶⁶ As per the Public Function Doctrine⁶⁷ recognized internationally, a public function is when a private person performs actions traditionally reserved for State, thereby constituting State action.⁶⁸ However, the SCCI is not performing a function reserved for State. Instead, it performs a function wholly unconnected from the State in the capacity of a voluntary association.

37. Hence it is submitted that the functions performed by the SCCI will constitute private and not public functions since it is not performing any Governmental or state like function. Accordingly, it will not be amenable to writ jurisdiction under Article 226 and the same shall not lie against the SCCI.

⁶³ Article 2.2 (a) of the Constitution of the International Cricket Council- available on http://static.icc-cricket.com/ugc/documents/DOC_0DE4A511BFC4D86810C333CA12DBECFE_1288260213828_45.pdf (Last Accessed on 14th March, 2017)

⁶⁴ Moot Proposition, Paragraph 3 & 4

⁶⁵ *Cronje v. United Cricket Board of South Africa*, 22 Indus L.J. (Juta) 2577 (2001)

⁶⁶ *Cronje v. United Cricket Board of South Africa*, 22 Indus L.J. (Juta) 2577 (2001)

⁶⁷ 42 USCS § 1983

⁶⁸ *Ramana Dayaram Shetty v. International Airport Authority of India and Ors.* (1979) 3 SCC 489 *New York v. United States* 326 US 572

PRAYER

Wherefore in the light of the Issues Raised, Argument Advanced and Authorities Cited, the

Supreme Court may be pleased to:

1. **DECLARE** that Mr. Dev did not have *locus standi* to file a Public Interest Litigation u/a 226.
2. **DECLARE** that the decision passed by the High Court amounted to Judicial Legislation and set aside the same.
3. **DECLARE** that a writ of *mandamus* cannot be issued against the SCCI.

AND/OR

Pass any other order, direction or relief that it deems fit in the interest of *Justice, Equity and Good Conscience*.

For this act of kindness, the Appellants shall duty bound forever

pray.

Sd/-

(Counsel for the Petitioners)