Arbitration CAS 2014/A/3828 Indian Hockey Federation (IHF) v. International Hockey Federation (FIH) & Hockey India, award of 17 September 2015

Panel: Judge Conny Jörneklint (Sweden), President; Ms Sangeeta Mandal (India); Mr Hans Nater (Switzerland)

Hockey
Governance (membership)
Principle of autonomy of an association to accept or refuse applications for membership
Autonomy of an association regarding the outcome of a set of state proceedings over which it had no control

1. **One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance and their membership. However, this autonomy is not absolute. In light of the principle recognised by CAS jurisprudence regarding the general distinction between procedural and substantive rules, generally, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred. On the other hand, it is a general principle that laws, regulations and rules of a substantive nature that were in force at the time when the facts occurred must be applied. What is more, even a procedural rule should not be applied retrospectively where its application would entail a violation of general principles of fairness and of good faith. However, the application of those principles should be examined in light of the principles which underlie that general proposition such as fairness and good faith. In this respect, if there is substantive changes to the rules of an association such as the membership rules, the principles of fairness and good faith might not be necessarily breached in the special circumstances of a case if (i) the substantive changes are necessary in order to deal with a new issue and (ii) the changes are neutral in their effect. If the principles of fairness and good faith are not breached, if no issue of legitimate expectation arises, if the decision in issue does not appear to have been made arbitrarily, then there are no grounds on which to infringe upon an association's right to autonomy. The principle of autonomy should not be limited by formal breaches, which carry no substantive unfairness.**

2. **The Swiss legal principles which allow an association to regulate its own membership are determinative in the sense that an international sport federation is not required to wait for the outcome of a set of proceedings before a state court regarding a membership issue over which it had no control. Specifically, it would be contrary to an international federation's right to autonomy to oblige it to wait until a national government had decided which body was to be the national sports federation, before making any decision. Moreover, no rule impose on an association a duty to safeguard the procedural fairness of proceedings over which it had no control and to which it was not a party.**

I. PARTIES

1. The Indian Hockey Federation (the "IHF" or "Appellant") has been involved in the national and international governance of hockey for many years and seeks recognition as the Indian member of the International Hockey Federation.

2. The International Hockey Federation (the "FIH" or "First Respondent") is the international federation of the Olympic sport of field hockey and its members are the 132 national governing bodies of the sport in the countries where the sport is played, plus the five continental hockey federations. It is officially recognized by the International Olympic Committee.

3. Hockey India (the "Second Respondent") was formed on 20 May 2009 and was recognized by the FIH Congress in November 2014 as the representative federation for India in the FIH.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written and oral submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

a) The IHF, the IWHF and the IHC

5. The IHF was formed and registered as a society in India in 1925, with the purpose of regulating hockey (or, at least, men's hockey) in India. It became a member of the FIH in 1927. In around 2000/2001, the IHF and the Indian Women's Hockey Federation ("IWHF") created a new entity, known as the Indian Hockey Confederation ("IHC"), of which the IHF and the IWHF were the two constituent members.

6. The FIH says that in 2008 it discovered that the IHC did not govern either men's or women's hockey, but was merely a facade behind which the IHF continued to govern men's hockey and the IWHF continued to govern women's hockey.

7. The IHF says that on 12 August 2010, the IWHF was merged into the IHF, with all its assets and liabilities transferring to the IHF, and was dissolved shortly afterwards. From that time, says the IHF, the IHF has been fulfilling all the functions of the IHC. The IHC itself was apparently *"dissolved in around 2011"*. The IHF describes itself as *"its successor organisation (as the entity within which all the functions, assets and liabilities of the IHC's two members are now concentrated)"*.

8. The entitlement of the IHF to describe itself as the successor to the IHC, or at least what the consequences are of such an argument, are disputed by the FIH.

b) Hockey India

9. On 28 April 2008, the Indian Olympic Association ("IOA") temporarily suspended its recognition of the IHF. The IHF has challenged this decision in Indian courts.

10. On 18 July 2008, officials of the FI and the IOA met in Hyderabad, India, and discussed, among other things, the formation of a new national governing body for hockey in India. The IHF states that the IHC was not informed of that meeting. However, the list of attendees on behalf of the IOA includes *"Mrs Amrit Bose, Secretary General, IHC"*, so it would appear that the IHC had at least some notice of the meeting. Material parts of the meeting minutes, relied on by the IHF in the instant case, include the following:

President FIH directed that in keeping with the regulations and requirement of the FIH that there will be only one body in a country to manage the affairs of Men and Women Hockey, FIH had directed the NOC of India to set up "Hockey India" as a parent body to look after the affairs of men and women Hockey in India.

Ad Hoc Committee will take up the proposal of President FIH and approach IOA to take up the matter of recognition at its next Annual General Meeting.

11. On 24 July 2008, the FIH wrote to the IOA, stating, among other things:

We therefore confirm the directive contained in the Minutes of the meeting that the Indian Olympic Association will set up HOCKEY INDIA as the sole governing body for women's and men's hockey in India.

12. On 10 October 2008, the IOA's General Assembly made a resolution which stated, in part, that the:

Secretary General apprised the House about the discussions and decisions taken in the Special Council Meeting held on 28th April, 2008 in connection with Hockey. He further explained that FIH wanted IOA to intervene and take appropriate decision in order to promote Hockey in the Country and to retain the 2010 Hockey World Cup which was allotted to Delhi, India. He further reiterated that FIH had mentioned in their letter that in case appropriate action was not taken, FIH was considering to withdraw the allotment of World Cup Hockey.

13. On 29 November 2008, the FIH resolved that Hockey India should take over from the IHC as FIH member for India *"subject to finalisation of their* [i.e. Hockey India's] *Statutes"*.

14. On 5 May 2009, the FIH wrote to the IOA saying:

We appreciate Indian Olympic Association forming a Nine Member Committee with the power and authority derived from IOA General Assembly to sort out the complications arising from two different Hockey Federations, which are independently managing Men and Women sections of Hockey in India, which is contrary to the provisions of the FIH Constitution and the Olympic Charter. The mandate of "One Sport – One Body" has to be followed. Accordingly, time for immediate and concrete action is required.

We have requested you on many occasions in the past to create one new body to look after the affairs of Hockey for both Men and Women in your country. We requested IOA to immediately take action to ensure that the Men's Hockey World Cup 2010 allotted to India is not put to any jeopardy and the mandate, as suggested hereinabove, be adhered to.

We reiterated that in case no positive concrete action is taken, the participation of the Indian teams in all international Hockey events, under the aegis of FIH, will not be permitted. We request IOA to give directions forthwith and grant affiliations to one body of Men and Women, so that there is no void in respect of Hockey activities in India.

Please ensure compliance within 15 days and confirm the same to us.

15. On 20 May 2009, Hockey India was formally established. In June 2009 it was recognized by the FIH as its member for India, in place of the IHC. It continues to act as the FIH member for India.

16. On or around 10 May 2009, the IOA disaffiliated the IHF and the IWHF. The IHF expanded its challenge of the IOA's temporary suspension on 28 April 2008 to include a challenge to the 10 May 2009 disaffiliation.

17. On 21 May 2010, the High Court of Delhi quashed the IOA's decisions (and the Ministry of Youth and Sporting Affairs ("MYAS's") consequent decision of 10/11 August 2009 to withdraw recognition of the IHF).

18. The High Court of Delhi's decision did not alter the fact that Hockey India was the FIH's member for India.

19. With reliance on a statement of case dated 9 June 2011, the IHF brought a complaint before the Judicial Committee of the FIH (the "Judicial Committee Proceedings"). The gist of the IHF's case was that the IHC (which was the FIH's member at the relevant time) had not been given notice of the termination of its membership nor of Hockey India's application for membership, and accordingly had not been able to make representations.

20. Further, the IHF argued that Hockey India did not qualify for membership. The IHF argued that Hockey India did not govern hockey in India and therefore could not declare an exclusive right to govern hockey (as a result of the High Court of Delhi's order dated 21 May 2010, which effectively reinstated the IHF as the governing body in India).

21. The requirements to govern hockey and to declare an exclusive right to govern (the interpretation of which was disputed by the parties and is discussed below) were found in Article 6 of the FIH's statutes in force at that time (the "Old Statutes").

22. In addition, the IHF had argued that Hockey India could not qualify for membership since it did not exist as a legal entity at the time of the purported transfer.

23. The FIH sought to have the Judicial Committee Proceedings summarily dismissed. That application was heard on 13 and 14 December 2011 by a panel comprising Gordon Nurse,

George Bennett and Paul Litjens (the "JCP Panel"). The JCP Panel handed down its decision on 5 January 2012, rejecting the FIH's application for summary dismissal of the IHF's claim.

24. On 1 March 2012, the JCP Panel gave directions for the remainder of the Judicial Committee Proceedings. The proceedings have not progressed any further since March 2012. As noted below, however, it is the continuation of those proceedings which the IHF seeks as its relief in this appeal.

25. On 1 June 2012, the FIH wrote to the IHF and Hockey India stating that:

…whatever the outcome of the proceedings currently before the Judicial Commission, moving forward the FIH Congress will still have to decide which body currently meets the criteria for membership set out in Articles 6.1 and 6.3 of the FIH Statutes (the 'Membership Criteria').

26. The reasons relied on by the FIH for considering the Judicial Committee Proceedings moot were, in summary, as follows:

a. Even if the FIH had been wrong to withdraw FIH membership from the IHC, IHC had in fact never been qualified to be a member and was dissolved in 2010.

b. Membership could not be automatically transferred from the IHC to the IHF.

c. Even if membership could be somehow transferred to the IHF, the IHF could only be the member for so long as it met the membership criteria.

d. Equally, even if the FIH had not been wrong to grant FIH membership to Hockey India, Hockey India could only be the member for so long as it met the membership criteria.

27. Accordingly, the matter was to be considered by the FIH Congress at its meeting in Kuala Lumpur on 3 November 2012.

28. Also on 1 June 2012, the FIH wrote to the IOA, informing the IOA that the IHF and Hockey India had been invited to explain why they met the FIH's membership criteria. The letter also asked the IOA to confirm which body (out of the IHF and Hockey India) it endorsed as the central authority responsible for all matters relating to hockey, for the purposes of Article 6.3(d) of the Old Statutes. In doing so, the FIH suggested criteria which the IOA's committee could refer to. It stated, in part, as follows:

2. The special committee [of the IOA] will need to assess the parties' competing claims to such confirmation and endorsement by reference to a clear set of objective criteria. In that regard:

2.1 The FIH would respectfully suggest that the criteria used should include:

(a) the strength and integrity of the body's governance structures, including whether it adheres (both in principle and in practice) to the Basic Universal Principles of Good Governance of the Olympic and Sports Movement)...including (without limitation) in relation to gender equity/non-discrimination, regular and properly organised meetings of members, democratic election of officers, and so on;

(b) the size of the mandate that the body enjoys from male and female players and other participants in the sport in India, as reflected by (for example) the number of members it has in each different membership category, and the number of participants those members represent;

(c) the nature and scope of the body's activities to date in organising men's and women's hockey at the national level (whether directly and/or through its own state members), including promoting good governance amongst its members, issuing and enforcing regulations applicable to national competitions, organising national (and/or state and/or regional) competitions and training camps, organising courses and/or camps for training and licensing of coaches/officials, and so on; and

(d) the efforts the body is currently making, and its future plans and ideas, to promote and develop the sport in India moving forward.

2.2 Please note carefully: the criteria used must not include current recognition (or lack thereof) by the FIH, or any matters that are a consequence of that recognition (e.g., the fact that Hockey India has been responsible since 2009 for entering teams representing India into international hockey events). Instead, for purposes of deciding whom to confirm and endorse as 'the central authority responsible for all matters relating to Hockey', as required under Article 6.3(d) of the FIH Statutes, the Indian Olympic Association should disregard such factors, i.e., the Indian Olympic Association should disregard (and place no weight on) the fact that Hockey India is currently recognised as a member of the FIH while the IHF is not.

29. The IOA appointed a committee of three individuals (the "IOA Special Committee"), namely Mr G.S. Mander, Mr M.P. Baishya and Dr S.M. Bali.

30. On 22 July 2012, the IHF filed submissions to the IOA Special Committee without prejudice to the IHF's objections to that committee being biased.

31. On 5 September 2012, the IOA Special Committee issued its decision recommending that Hockey India be confirmed and endorsed. The IHF challenged this decision before the Delhi High Court which granted a stay on 25 September 2012 preserving the status quo.

32. The FIH resolved not to put the IHF's and Hockey India's competing claims before the FIH Congress in November 2012. At that meeting, however, the FIH Congress apparently approved a revised procedure for resolving competing claims. These new rules are set out below (the "New Statutes").

33. On 11 March 2013, the FIH wrote to Hockey India and the IHF stating that it (the FIH) would seek to apply the New Statutes to the parties' competing claims. The FIH said it would appoint a committee to consider the competing claims and make a recommendation, which would then be submitted to the next Congress meeting. The FIH informed the parties that Mr Denis Oswald would chair the independent committee (the "Oswald Committee").

34. On 14 March 2013, the FIH wrote to Mr Oswald to formally appoint him to chair the Oswald Committee. That letter, after setting out the background to the appointment, set out the relevant criteria to be used by the Oswald Committee. These criteria comprised relevant parts of the New Statutes and the additional criteria which had been set out in the FIH's 1 June 2012 letter to the IOA (set out above).

35. On 30 October 2013, the Oswald Committee wrote to the IHF and Hockey India requesting submissions by 22 November 2013. On 22 November 2013, the IHF filed a letter challenging the Oswald Committee process on the grounds that (a) the dispute was *sub judice* before the Indian courts and (b) Article 2.4(d) was not in fact engaged because there was no vacancy. The letter stated that:

Without prejudice to the submissions above, this is to place on record that the IHF has filed an Application for Directions before the Hon'ble Supreme Court of India in Civil Appeal No. 3225 of 2011, inter alia praying for orders restraining Hockey India from participating in any proceedings instituted pursuant to directions passed by the FIH including these proceedings, unless and until the Hon'ble Supreme Court is pleased to set aside the judgment and order dated May 21, 2010 passed by the Hon'ble Delhi High Court in WP(C) No.3713 of 2008 and order dated August 5, 2010 passed by the MYAS withdrawing provisional recognition granted to Hockey India. Such application is likely to be taken up before the Hon'ble Supreme Court in the next few weeks.

36. On 28 February 2014, MYAS recognised Hockey India as the National Sports Federation for Indian hockey.

37. On 27 March 2014, the Oswald Committee rejected the IHF's challenge and provided its assessment of the competing claims, though it was constrained in this exercise to the extent that the IHF had not filed any substantive submissions. It recommended that the FIH Congress recognise Hockey India as its sole member for India.

38. On 30 September 2014, the FIH wrote to Hockey India and the IHF inviting them both to send up to two representatives to the FIH Congress on 1 November 2014 to present their cases before any decision was made about the competing claims.

39. On 1 November 2014, the FIH Congress unanimously approved Hockey India as the FIH member for India. The IHF did not attend the meeting to put its case before the FIH Congress.

c) Ongoing proceedings in India

40. Various sets of proceedings in India have been referred to above. Their current statuses, as the Panel understands, are as follows:

a. Civil Appeal No 3225 of 2011. Hockey India had challenged the quashing order dated 21 May 2010. On 19 September 2015, the Indian Supreme Court dismissed Hockey India's challenge. Hockey India says the basis of the dismissal was that the issue was now moot since MYAS had subsequent conducted fresh proceedings and issued a fresh decision to recognise Hockey India on 28 February 2014. The IHF disagrees, noting that the Supreme Court has not set aside the 21 May 2010 order and submitting that, therefore, the 21 May 2010 order is affirmed.

b. Writ Petition (Civil) No 270 of 2010. Hockey India has challenged the withdrawal by MYAS of the provisional recognition it had previously granted to Hockey India. This

matter was joined with the above appeal. Again, Hockey India says the Supreme Court recognised this issue as now moot due to MYAS's fresh decision to recognise Hockey India on 28 February 2014. The IHF disagrees and says it could still challenge the 28 February 2014 decision.

c. Writ Petition (Civil) No 6091 of 2012. In these proceedings, the IHF challenged the decision of the IOA Special Committee and obtained a stay. The IHF apparently seeks to have this matter heard alongside the above appeal.

d. Writ Petition (Civil) No 363 of 2014. In this case, the IHF challenged MYAS's decision to recognise Hockey India on 28 February 2014. Hockey India says the Supreme Court dismissed this petition on the basis that it was not an appropriate case for adjudication under Article 32 of the Constitution of India. The IHF says that it is still open to seek other remedies available to it, including pursuant to the writ jurisdiction of the High Court of Delhi and/or by bringing a civil suit to enforce its rights against MYAS.

d) The Statutes

41. The key parts of the Old Statutes are as follows:

6.1 Requirements for membership

(a) An NA of a country may be or remain affiliated to the FIH only if it governs Hockey for both men and women in that country.

(b) The activities of the Members of the FIH shall be solely and exclusively concerned with the Hockey in their own country but the Executive Board may make special and temporary allowance in this regard in respect of new small NAs.

(d) Every Member must declare:

(i) Its opposition to any discrimination on the grounds of race, gender, politics, religion or creed; and

(ii) That it has the exclusive right to govern Hockey in its own country.

6.3 Application for Membership

(d) An attestation, endorsement, and confirmation by its NOC that the NA has been accepted as a member of the NOC and is the central authority responsible for all matters relating to Hockey in the country concerned. If a NOC has not yet been formed in the country, or if formed but not yet recognized by the IOC, the endorsement shall be given by the highest national authority in sport. An NA automatically ceases to be a member of the FIH if it ceases to be a member of its NOC;

6.7 Transfer

(a) Membership is not transferable.

(b) If a Member ceases to be qualified to remain a member or is dissolved, ceases to exist or suspends operations and another body is created or comes into existence in place of that Member which satisfies the provisions of Articles 6.1 and 6.3, that other body may make application to become a Member.

42. The key parts of the New Statutes are as follows:

> *2.3 Criteria for membership*
>
> *To be and to remain a Member, an NA must satisfy (both at the time it applies for membership and at all times after it has been admitted as a Member) all of the following requirements:*
>
> *(a) It must be concerned solely and exclusively with the administration, organisation and playing of Hockey and not with any other sport (provided that the Executive Board may make special and temporary exceptions from this requirement in respect of new small NAs).*
>
> *(b) It must claim the exclusive right to govern both men's and women's Hockey in its Country, i.e., it must not recognise any other body's claim to govern either men's or women's Hockey in its Country (other than by exercise of powers delegated to that other body by the NA).*
>
> *(c) …*
>
> *2.4 Applications for membership and transfers of membership*
>
> *(a) Only Congress may admit an NA as a full Member. Applications for membership may be made as follows:*
>
> *(i) …*
>
> *(b) If membership for particular Country is vacant, and more than one body applies to be admitted as a Member for that Country, or in other circumstances where there are competing claims to be entitled to membership for a particular Country and the Executive Board deems it appropriate to apply this clause, the competing claims shall be resolved as follows:*
>
> *(i) The Executive Board will specify the criteria by which the competing claims are to be assessed.*
>
> *(ii) The Executive Board will appoint appropriate persons to a committee to consider the respective claims of the competing bodies, in accordance with a fair and impartial process, and then to make a written recommendation as to which of those bodies, in the committee's view, best meets the criteria and so should be the FIH's Member for that Country.*
>
> *(iii) The Executive Board will submit that recommendation to the next meeting of Congress for decision. However, if it sees fit the Executive Board may admit/treat the recommended body as a provisional Member pending that meeting, strictly without prejudice to the powers of Congress pursuant to sub-clause (iv), below.*
>
> *(iv) At its next meeting, Congress will consider the competing claims, together with the committee's recommendation, and will give each claimant an equal opportunity to be heard by Congress, before deciding which claim to accept.*
>
> *(v) The decision of Congress shall be final. The rejected claimant may challenge that decision exclusively by appeal to the CAS in accordance with Article 11.3(b)(i) of these Statutes.*

B. The Appealed Decision

43. The Appellant appeals the decision of the FIH Congress dated 1 November 2014 recognising Hockey India as the member of the FIH for India (the "Appealed Decision"). The Appealed Decision was notified to the parties on 7 November 2014.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

44. On 28 November 2014, the Appellant filed its Statement of Appeal against the FIH in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code") with the Court of Arbitration for Sport (the "CAS"). Within its Statement of Appeal, the Appellant nominated Ms Sangeeta Mandal as arbitrator. In addition, the Appellant named Hockey India as an interested parties. Moreover, the Appellant filed a request to stay the execution of the Appealed Decision.

45. On 2 December 2014, Hockey India was invited to participate in this appeal in accordance with Articles R54 and R41.3 of the Code.

46. On 3 December 2014, the Appellant filed a further submission in support of its request to stay the execution of the Appealed Decision.

47. On 12 December 2014, the FIH filed its response to the Appellant's request for a stay. In the same letter, the FIH nominated Mr Hans Nater as arbitrator.

48. On 22 December 2014, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

49. On 10 January 2015, Hockey India confirmed its desire to participate in this appeal as an interested party.

50. On 13 January 2015, upon agreement of all parties, Hockey India was permitted to participate in this appeal as an interested party.

51. On 19 January 2015, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the Panel in this appeal as follows:

President: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden

Arbitrators: Mrs. Sangeeta Mandal, attorney-at-law in Delhi, India

Dr. Hans Nater, attorney-at-law in Zurich, Switzerland

52. On 30 January 2015, the Panel denied the Appellant's request to stay the execution of the Appealed Decision.

53. On 30 January 2015, Hockey India filed its Answer in accordance with Article R55 of the Code.

54. On 13 February 2015, the FIH filed its Answer in accordance with Article R55 of the Code.

55. On 27 April 2015, Mr. Tom Asquith was appointed *ad hoc* clerk for this appeal.

56. On 30 April 2015, the FIH signed and returned the Order of Procedure in this appeal; the Appellant and Hockey India signed and returned the Order of Procedure on 6 May 2015. No objections from any party were noted.

57. On 11 May 2015, an oral hearing was conducted at 4 New Square Chambers in London, United Kingdom. The Panel was assisted by Mr Asquith and Mr Brent J. Nowicki, counsel to the CAS, and was joined by the following participants:

For the Appellant:

- Mr Paul Harris, QC
- Mr Daniel Lowen
- Ms Stephanie Bonnello

For the FIH:

- Mr Jonathan Taylor
- Mr Kelly Fairweather
- Ms Michelle Riondel
- Ms Daisy Dier
- Mr Ross Wenzel

For the Hockey India:

- Mr Adam Lewis, QC
- Ms Shyel Trehan
- Mr Narinder Dhruv Batra
- Ms Elena Norman

58. At the beginning of the hearing, the parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The IHF's Submissions

59. The IHF categorised its submissions under four "Grounds", as follows:

a. Ground 1: The FIH applied the incorrect Statutes.

b. Ground 2: The FIH should have awaited the outcome of Indian proceedings.

c. Ground 3: The FIH wrongly applied the Article 2.4(d) procedure.

d. Ground 4: The IHF should be recognised as the Member for India.

60. The IHF's submissions under these Grounds are summarized as follows:

a) Ground 1: The FIH applied the incorrect Statutes

61. In relation to this ground, the Appellant placed weight on the case of CAS 2002/O/410 *Gibraltar Football Association v UEFA*. As this case was also the point of emphasis by the Respondent, the Panel will discuss this case at the outset in some detail.

62. In *Gibraltar*, the Gibraltar Football Association ("GFA") applied for membership of UEFA under statutes which provided that *"Membership of UEFA is open to national football associations situated in the continent of Europe which are responsible for the organisation and implementation of football-related matters in their particular territory"* (the "Old Rule").

63. That rule was later amended by the UEFA Congress on 11 October 2001 to allow as members only associations in countries which were recognised as independent States by the United Nations (the "New Rule").

64. The CAS Panel in *Gibraltar* reminded itself of the general distinction between procedural and substantive rules.

> *8. The CAS has already considered in the past that in the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred. On the other hand, it is a general principle that laws, regulations and rules of a substantive nature that were in force at the time when the facts occurred must be applied. Such principles were set out in particular in the CAS award S. vs. FINA, CAS 2000/A/274, sections 72-73 (see, in Digest of CAS Awards II, op. cit., p. 405):*
>
> *"Under Swiss law, the prohibition against the retroactive application of law is well-established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred (…). This general principle is, however, subject to several exceptions, including an exception for laws or rules that are procedural in nature. In the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts at issue occurred (…)".*
>
> *9. In the present instance, while the third sentence of Article 2 of the Regulations governing the implementation of the UEFA Statutes sets out the formal conditions which an application for UEFA membership has to meet, it is quite another question whether Article 5 paragraph 1 of the UEFA Statutes is to be seen as merely procedural.*
>
> *10. This provision sets out the substantive conditions that any applicant will need to fulfil in order to become a member. For this first reason, in accordance with the general principle of non-retroactivity of laws and rules, the Panel may have to consider that the New Rule may not apply to the GFA's application.*

11. Even if the New Rule was to be regarded as a rule dealing only with procedural aspects, the Panel is of the opinion that its application in this matter would entail a violation of general principles of law which are widely recognised, particularly the principles of fairness and of good faith. In particular, the Panel refers to the principle of venire contra factum proprium. This principle provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party (see, AEK Athens and SK Slavia Prague vs. UEFA, CAS 98/200, in Digest of CAS Awards II, op. cit., pp. 38 and seq.; S. vs. FINA, CAS 2000/A/274, section 37, in Digest of CAS Awards II, op. cit., p. 400; Art. 2 of the Swiss Civil Code).

65. The CAS Panel in *Gibraltar* found as a fact that *"one of the main purposes for the amendment proposal made by the UEFA Executive Committee was to prevent the GFA's application from succeeding"* (paragraph 16). It concluded, at paragraph 17:

To apply the New Rule to the Claimant's case under these circumstances would be unfair and contrary to the above mentioned general principles of law. It were the actions of UEFA itself which created legitimate expectations that the GFA's application would be processed under the Old Rule, with adequate speed or at least upon receipt of and in compliance with the advice of the Expert Panel that UEFA had appointed specifically for that purpose.

66. The IHF made the following submissions relating to *Gibraltar*:

a. The FIH was wrong to apply the New Statutes in circumstances where the dispute about membership had arisen before their introduction.

b. The FIH's breach was all the more serious in circumstances where it was clear that the amendment to the Old Statutes had been made in order to address the dispute with the IHF. In particular, "declare" (see Article 6.1(d)(ii) of the Old Statutes) had been amended to "claim" (see Article 2.3(b) of the New Statutes) in respect of the exclusive right to govern hockey in India.

c. The IHF's position was even more deserving than the GFA's in *Gibraltar*, because (i) it had not merely been a candidate for FIH membership, but it had in fact been the incumbent member (since it had succeeded to the IHC) and (ii) the FIH had conducted itself since November 2008 so as to contrive that Hockey India prevail as the member for India.

d. There was a *lis pendens* in that the issue at hand remained before the JCP Panel.

e. While accepting the applicability of Swiss law in the instant case (referring to paragraph 27 in *Gibraltar*) the IHF noted paragraph 30 of *Gibraltar*, which set out various limits to the principle of freedom of association. While acknowledging that it was not part of the ratio of the case, it drew the Panel's attention to the words in paragraph 34 of *Gibraltar*, where it was stated that *"The above legal considerations lead to the general conclusion that, under Swiss law, an association does not remain entitled, under any circumstances, to accept or refuse a new member at its sole discretion"*.

67. The IHF took the Panel through the background to the instant case in considerable detail in support of its submission that the FIH had contrived for Hockey India to prevail over the IHF. The IHF characterised the FIH's conduct as a campaign against the IHF.

68. In particular, the IHF relied on:

a. The meeting minutes from the FIH's and IOA's meeting in Hyderabad on 18 July 2008, which said that the *"FIH had **directed** the NOC of India to set up "Hockey India" as a parent body to look after the affairs of men and women Hockey in India"* [Emphasis added].

b. The reference to these minutes in the FIH's letter to the IOA dated 24 July 2008.

c. The FIH's threat made in relation to the potential withdrawal of the 2010 Hockey World Cup, which had been allotted to Delhi, India, found in the resolution of the IOA's General Assembly dated 10 October 2008.

d. The FIH Congress' election of Hockey India as the FIH member for India on 29 November 2008, which continued to be challenged before the JCP Panel.

e. The FIH's threat in its letter to the IOA dated 5 May 2009, which was particularly extraordinary given Hockey India did not at that time exist.

f. The FIH's efforts to set up the IOA Special Committee, the actions of which had been described as wholly illegal two years previously. The IOA Special Committee had not been independent and had been asked to apply new criteria which were not in force at the time the Judicial Commission Proceedings were commenced.

g. The FIH's efforts to have the dispute determined by the Oswald Committee, which had also been asked to apply criteria which had not been in force at the material time. In relation to the Oswald Committee, the IHF further:

i. Said that the letter from the FIH dated 14 March 2013 included criteria which were additional to what was in Article 2.4 of the New Statutes and showed the FIH purporting to tell an independent committee which criteria to apply. Article 2.3 of the New Statutes contained a substantive change. It now referred to claiming the exclusive right to govern both men's and women's hockey in its country: "declare" had been changed to "claim". These words had completely different meanings. The IHF provided as an example the fact that an individual himself could "claim" an exclusive right (even though he did not have such a right) but could not "declare" one (because he did not have it). The rule change, it was argued, was because Hockey India could not begin to say it could declare the exclusive right to govern hockey in India, but it could claim it. "Claim" just meant the body claiming did not recognise any other body's claim.

ii. Complained about the creation of the Oswald Committee. The IHF had no issue with Mr Oswald as an individual but his appointment was not demonstrably fair to an objective observer. It had been flawed right from the start.

iii. Referred to a letter from the FIH to Hockey India and the IHF dated 11 March 2013. The IHF noted the words *"Following consultation with Mr Oswald, the FIH will advise you of the names of two persons nominated to sit with him on that committee"*. What was said during consultations with Mr Oswald, asked the IHF rhetorically.

iv. Submitted that the Oswald Committee had applied the New Statutes. It had also taken into account the additional criteria in the FIH's letter. All that the Panel needed to know, said the IHF, was that the Oswald Committee applied the new substantive criteria and Article 2.3 about claiming to be the exclusive governing body, not being the exclusive body.

b) Ground 2: The FIH should have awaited the outcome of Indian proceedings

69. In its written case, the IHF made two main points under Ground 2. First, the IHF said that the matter of which governing body in fact governed in a certain country was highly relevant to the decision FIH should make as to recognition.

70. Secondly, the IHF said that the FIH knew or should have known that its decision would impact on the Indian proceedings, thus interfering with the parties' right to a fair hearing. It relied on Article 17 of the pre-2013 FIH Statutes and Article 6 of the European Convention on Human Rights.

71. The IHF did not materially expand on these points in his oral submissions.

c) Ground 3: The FIH wrongly applied the Article 2.4(d) procedure

72. The IHF's case was that Article 2.4(d) applies only in circumstances where membership is vacant and that FIH membership is (and was at all material times) not vacant. It submitted that the IHC was the last recognised member for India, had not been validly recognised and the IHF was the successor to the IHC.

73. For the IHC/IHF to be derecognised, said the IHF, (assuming the New Statutes were to be applied, contrary to the IHF's primary case under Ground 1), the procedures set out in Article 2.6 of the New Statutes should be engaged.

74. Had the FIH followed proper procedures, the IHF would have had an opportunity to appeal any suspension/expulsion decision.

75. On any view, had the FIH not behaved as it did in 2008/2009 (i.e. undertaking the purported derecognition of the IHC) then the membership would indisputably not be vacant. The FIH should not be allowed to rely on its own wrong or circumvent the Judicial Committee Proceedings.

76. In its oral submissions, the IHF emphasized that the FIH had acted on the *view* that there had been a vacancy, without actually making a decision to that effect.

d) Ground 4: The IHF should be recognised as the Member for India

77. In its written submissions, the IHF said that the Panel should now determine the position, as to which of the IHF and the FIH should be recognised as the FIH member. The IHF's submission of the witness statement of Mr Ashok Mathur (the Secretary General of the IHF) dated 22 December 2014 supports the IHF in this regard.

78. However, in oral submissions, the IHF indicated that while in theory the Panel could decide the matter *de novo*, the appropriate way forward was to recognise that the issue was before the JCP Panel. The matter should be remitted to the JCP Panel and be decided pursuant to the Old Statutes.

e) Relief sought

79. The relief sought by the IHF is as follows:

For the reasons set out above, the Court is invited to quash the Decision and either:

a. order that the IHF be recognised as the FIH Member for India, or

b. remit the matter to the FIH on appropriate terms.

The IHF further invites the Court to order that all costs in this matter, including the IHF's legal fees, be borne by the FIH.

B. The FIH's submissions

a) Ground 1: The FIH applied the incorrect Statutes

80. The FIH said that its 2013 Statutes did not vary in substance to its previous rules. The only material change was to the procedure. Such a change was permitted pursuant to CAS 2000/A/274.

81. As a matter of fact, contended the FIH, the procedural change was effected not in order to prejudice IHF but instead to prevent a circularity arising from 1) the rule asking the country's National Olympic Committee ("NOC") to choose between the competing claims (see Article 6.3(d) of the Old Statutes) and 2) the Olympic Charter which required the NOC to recognise whichever national body was recognised by the international federation. The procedural change related to all competing claims to FIH membership, not just those relating to India.

82. In 2012, the FIH Statutes did not have criteria for dealing with competing claims, so it was not the case that criteria were being changed. Instead, the FIH was proposing criteria were there had been none. There had been nothing in the Old Statutes about how such claims were to be resolved. The FIH went through the relevant criteria (set out above from the 1 June 2012 letter) saying they were not unfair. For example, in paragraph 2(1)(c) of that letter the

FIH had deliberately used the word "national" in order to be fair to the IHF since they were unable to be involved regionally or internationally.

83. The IHF was wrong to say that the issue of IHC's dissolution was a live issue in the Judicial Committee Proceedings. There was nothing in those proceedings in which it was said that, despite the IHC's dissolution, the IHF somehow succeeded to its right. Further, in July 2012, the IHF had not disagreed that the dissolution had led to a vacancy.

84. The FIH refuted the IHF's assertion that the IHF had not participated before the IOA, referring to IHF's submissions dated 22 July 2012. These were the IHF's representations for the IOA's Special Committee filed without prejudice to the IHF's objections to that committee. The IHF had not objected to the criteria used, which had been designed to be fair to the IHF.

85. The IOA Special Committee's decision showed the committee discussing the submissions on each point and coming to a conclusion; it had endorsed Hockey India, but, nevertheless, the matter had progressed to the FIH Congress because the decision was theirs to take.

86. The FIH then discussed the Judicial Committee Proceedings. It queried why they were so important. It said that at best a vacancy had arisen meaning the IHF could reapply. But it said that 3 December 2012 had been the last time the FIH had heard from the IHF in relation to those proceedings. Since then, the IHF had done nothing to pursue the Judicial Committee Proceedings. They were now moot.

87. He said that after the IOA had stated its preference for Hockey India, before the matter went before the FIH Congress, the IHF went to the Supreme Court in India saying the IOA Special Committee was biased and that in 2012 they had not followed the relevant rules and so should not make a decision.

88. The FIH then focused the Panel on the IHF's petition against the IOA dated 24 September 2012. It drew the Panel's attention to the Prayer in the IHF's petition which said (among other things) that the IHF wanted an independent committee making the decision but wanted the decision to be recognised under government guidelines. The FIH noted, first, these decisions were superseded in 2014 by MYAS' decision to recognise Hockey India, and second, the reference to government guidelines should be the other way around. In other words, MYAS took its lead from the FIH.

89. The FIH said that the FIH Congress had used completely different rules, which had been radically rewritten. But it denied that these changes were made in order to disadvantage the IHF. It referred us to CAS 2005/A/971 to explain why Article 2.4(d) had had to be imported. The FIH pointed the Panel to paragraph 7.25 of the *RBF* case which, making reference to Rule 29 of the Olympic Charter, stated that *"The recognition of the national federations lies exclusively within the jurisdiction of the international federation"*.

90. The FIH said the Oswald Committee used exactly the same criteria as had been suggested to the IOA Special Committee. As to the IHF's complaints about the appointment of the Oswald Committee, the FIH noted that:

a. First, the Oswald Committee had as its remit the resolution of competing claims by two parties, of which the FIH was not one.

b. Secondly, at paragraph 4 of a letter dated 11 March 2013, the IHF had been given a chance to object to the Oswald Committee's composition but had not done so. That letter had stated that *"If you believe there is any basis to dispute the independence and impartiality of Mr Oswald in relation to this matter, please advice me within seven days of the date of this letter of the grounds for that belief, so that it can be considered"*. The FIH referred also to a letter from the FIH dated 28 March 2013, which gave the IHF an opportunity to object to the other two persons nominated to sit with Mr Oswald on the Oswald Committee. No objection had been made by the IHF.

91. The FIH said the Oswald Committee had followed a very fair process. The IHF did not object on the basis of bias to the Indian Supreme Court, but on the basis of Indian government guidelines. The Court declined the IHF's application, since the government guidelines were not relevant.

92. The change from the IOA to an independent committee was a change in procedure. The FIH said there was no change to the Old Statutes because they did not say anything about criteria. The argument made by the IHF which sought to distinguish between having and claiming the exclusive right to govern was one made by the IHF before the Judicial Committee. The FIH's response had been that this was not a change, and had always been how this requirement had operated. In any event, it was not possible to have in place an impossible requirement. The FIH took us to (an admittedly *obiter*) part of the Judicial Commission's judgment of 5 January 2012 (Tab 11 of the IHF's exhibits) which did not find any material difference in meaning between "declare" and "claim".

93. The FIH said there was a difference between retrospective rules about conduct and retrospective rules about membership. For example, when the rules were changed to say the governing bodies had to govern both men's and women's hockey, no one disputed that it was possible to make such a change. The FIH accepted that no rule could be changed in bad faith. No case had been pleaded by the IHF about competition law personality rights, and none should be allowed in at this stage. In this case the procedure had had to be changed, otherwise it was circular, and it applied to everyone. It did not target the IHF unfairly, not least because the result was what the IHF had asked the Court for previously.

94. Relevant to the issue of motivation, the FIH pointed the Panel to the judgment of the High Court of Delhi dated 21 May 2010, where it was stated at paragraph 64:

That the FIH was left confused wondering whether the IHC represents Indian hockey at all is evident from its advisory note dated 7th May 2008 where it says "it is not our wish or intention that the IHC should cease to be a member of the FIH".

95. The FIH also referred the Panel to an advisory note from the Secretary General of the FIH dated 7 May 2008, stating, among other things:

16. Of course it is not our wish or intention that the IHC should cease to be a member of the FIH, with all the consequences that would follow, but it is our obligation to ensure that the Statutes are observed, not just in words but also in commitment and action.

17. For the IHC to remain a member of the FIH, urgent steps are required to properly constitute it as the sole governing body for hockey, men and women, in India with proper governance principles and structure and a clear commitment from all parties involved in the Confederation to achieve this objection.

96. The FIH relied on these documents as contemporaneous evidence of the fact that there was no campaign to get rid of the IHF. In fact, the FIH had done its utmost to provide the IHF with the procedures it had asked for.

b) Ground 2: The FIH should have awaited the outcome of Indian proceedings

97. The FIH said that it was wrong for the IHF to say that a decision by MYAS as to whether to recognise a sports body was "highly relevant" to the issue of FIH membership. That would be contrary to the fundamental principle of autonomy enshrined in both Article 2.2(b)(iv) of the FIH Statutes and Fundamental Principle #5 and Rule 16.1.15 of the Olympic Charter.

98. Thought it was not previously the case, MYAS in January 2011 had made it clear that recognition by the FIH was a pre-condition to recognition by MYAS under the Indian Government Guidelines.

99. The FIH said the IHF did not argue in 2012, when the FIH said the FIH Congress would decide between the completing claims at a meeting in November 2012, that the FIH Congress should wait until the dispute about recognition had been resolved by the Indian courts. It only did this (by way of application to the Indian Supreme Court) in 2014 when the FIH referred the competing claims to the Oswald Committee. The Indian Supreme Court declined relief.

100. The FIH said that the IHF's case on this point was the inverse of the reality. It was not relevant for the purposes of FIH membership which of the parties was India's National Sports Federation for hockey. Instead, the reverse was true; it was relevant for the purposes of which entity was the National Sports Federation which of the parties was the FIH member. Accordingly, in its letter dated 28 February 2014 MYAS had noted that *"HI has the recognition of FIH, the international body for the sport of Hockey"*.

101. The FIH said that if it was wrong about this point, the Indian Supreme Court would have granted the IHF an injunction when it applied for one (see its letter dated 22 November 2013, referred to above).

c) Ground 3: The FIH wrongly applied the Article 2.4(d) procedure

102. The FIH argued that as a matter of construction, Article 2.4(d) did not require there to be a vacancy for it to be engaged.

103. The FIH had applied the new membership criteria in 2000 to all members retrospectively. That was why the IHC had become the relevant regulator for the FIH's purposes. No one had said that that was illegal. The IHF and IWHR became the IHC. The IHC was the member from 2000 to 2008.

104. In 2008, the FIH Congress said the membership would be taken away from IHC. But it was the IHF which filed the 2011 proceedings. The IHF had argued that it had succeeded to the IHC, but it had omitted the fact that the IHC had been dissolved.

105. Article 6.7(a) of the Old Statutes provided that *"Membership is not transferable"*. There was indeed a live argument about that point, said the FIH, but no argument about Article 6.7(b). The IHF said during the hearing before the Nurse Commission (on 13/14 December 2011) that the IHC was dissolved. On dissolution no other body can succeed to the membership. That put an end to the matter. The Panel notes here that the IHF, in its responsive oral submissions, took issue with the argument that Article 6.7(b) was not a live matter in the Judicial Committee Proceedings. In that regard, the IHF pointed the Panel to paragraphs 33 and 53 to 58 of the JCP Panel's decision of 5 January 2012.

d) Ground 4: The IHF should be recognised as the Member for India

106. The FIH said that the IHF in its oral submissions now said that this issue should return to the Judicial Committee for a decision, not CAS. The FIH sought to correct the IHF's submission that the FIH had relied on an allegation of corruption saying this was not the case.

e) Relief sought

107. The FIH concluded by saying that there was no basis for suggesting the Appealed Decision was wrong and that the IHF should pay the FIH's costs.

C. Hockey India's submissions

a) Ground 1: The FIH applied the incorrect Statutes

108. Hockey India made detailed submissions on the *Gibraltar* case. It said this case was very different. In *Gibraltar,* there had been territories such as the Faroe Islands and England which were involved in football but did not constitute UN countries. The problem was first that the UEFA had led Gibraltar on under different rules and secondly UEFA kept in other countries which had breached new rules. In the present case, it was impossible to find any substantive vice.

109. If anybody had been deprived of something, Hockey India said, it was the IHC, not the IHF.

110. As to the argument that the IHF had stepped into the IHC's shoes, that was neither factually nor legally true, said Hockey India. A Swiss law association could not be forced to accept by succession the membership of another body. Nor was there any evidence of any completion of any merger.

111. Was there a substantive vice in the creation of the IHC, asked Hockey India rhetorically. There was not, it submitted. The FIH said there needed to be a reorganisation of the IHF, it did not say it could not remain the domestic regulator for Indian hockey.

112. The reality, contended Hockey India, was that Hockey India had been running hockey in India for several years and this case was IHF's effort to remove Hockey India.

113. Hockey India said Ground 1 was really the only substantive unfairness alleged by the IHF. It was therefore necessary to look at the rules. It compared the old Article 6.1 and the new Article 2.3. It said there was no difference between declaring and claiming a right.

114. Hockey India compared the old Article 6.3 and the new Article 2.4 "applications". This related to procedure, it said. Article 2.4(d) was added to deal with the new situation where two bodies competed for membership. There was no actual difference in what determined a member.

115. The IHF should not say that Dennis Oswald was not impartial and not independent without having grounds to say so. The IHF had carefully caveated this point but that was what it came down to. There had been a perfectly valid way of choosing the Oswald Committee but the IHF had not chosen to participate.

116. Returning to *Gibraltar*, Hockey India considered the differences between that case and the instant case.

117. First, in *Gibraltar*, there were not two different bodies looking to govern. The sole question was whether Gibraltar satisfied the criteria. This case was about two competing bodies, and therefore entirely different. Gibraltar clearly satisfied the old criteria in *Gibraltar*. That was not the case here with the IHF. In *Gibraltar*, there was plainly a substantive change to the admissions criteria. Here the change was procedural because it was about how to solve the problem when you have two competing claims.

118. In *Gibraltar*, UEFA had set up a legitimate expectation of membership, which was not the case here. This was not a rule change designed to exclude someone. It was a procedural mechanism to decide between two parties.

119. Hockey India, in contrast, did satisfy the rules in advance. So, at best, the IHF had an opportunity to make its case, but did not.

120. Secondly, in *Gibraltar*, the rule change was never going to be retrospective for all, only for some. It would deprive only Gibraltar because the Faroe Islands, England and others kept

their membership. So if you change a substantive requirement for the future, then you can also change it for those applying.

121. But the real point, said Hockey India, was that there was no substantive unfairness at any stage. There was no basis to attack the FIH Congress' decision.

b) Ground 2: The FIH should have awaited the outcome of Indian proceedings

122. Hockey India said there was no substantive unfairness in what the FIH had done. It was said the FIH should wait due to an *alibi pendens*, but nothing was pending when the litigation was not taking place. In any event, the *lis pendens* was a red herring because that *"lis"* did not affect the decision makers from reaching their decision. That was because the Indian proceedings only related to how the IOA and MYAS took decisions for their own purposes – it was inward facing litigation. So, for example, the MYAS decision was about recognition of their guidelines. None of their decisions were about the FIH's membership. Even before the Supreme Court, the point was clearly moot. The 2014 litigation had been recent but the Supreme Court said they would not look at that. There was no challenge to that decision. It was threatened, but there were no proceedings.

123. So, said Hockey India, the Indian litigation had never been about the same *lis*, hence there had been no injunction. The IHF's claim for membership of the FIH was not before the Indian courts. The FIH is not a party to the Indian proceedings despite the IHF's efforts to add them.

124. The CAS had also refused a stay. So it was never true to say that Oswald Committee could influence the Indian Court, because the *lis* in each forum was different.

125. The Judicial Committee proceedings related to the removal of the IHC's membership. There was no question of its membership being restored since it was now dissolved. The IHF has not pursued these proceedings, because they related to the IHC.

126. Therefore there had been no substantive vice against the IHF. First, it had had nothing taken away from it. Secondly, it had had complaints against MYAS and the IOA, but not against the FIH.

c) Ground 3: The FIH wrongly applied the Article 2.4(d) procedure

127. Hockey India submitted that the words used in Article 2.4(d) were clearly not confined to the situation where there was a vacancy. Article 2.4(d) applied also where there were competing claims and no vacancy.

d) Ground 4: The IHF should be recognised as the Member for India

128. As for considering this matter *de novo*, Hockey India understood the IHF to have abandoned that possibility. Plainly, it said, the Panel could not submit its own opinion for the FIH's. In the circumstances, it is unnecessary for the Panel to set out Hockey India's written case in

relation to this ground, save to note that it argued that it, not the IHF, was the appropriate entity to be the FIH member for India.

e) Relief sought

129. Hockey India asked for the IHF's appeal to be dismissed and Hockey India to be awarded its costs.

V. ADMISSIBILITY

130. Article R49 of the CAS Code 2013 ("the Code") provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

131. The IHF says it was notified of the Appealed Decision on 7 November 2014. It filed its appeal on 28 November 2014 and is therefore in time.

VI. JURISDICTION

132. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

133. The CAS has jurisdiction pursuant to Article 11.3 of the New Statutes.

VII. APPLICABLE LAW

134. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

135. The parties are agreed that Swiss law applies to issues between them.

VIII. MERITS

136. For the purposes of this part of the Award, it is helpful to consider the Grounds in order.

A. Ground 1: did the FIH apply the wrong statutes?

a) The Gibraltar case

137. In our view, the salient principles to be derived from *Gibraltar* are as follows:

i. Generally, *"laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred"* (paragraph 8).

ii. *"On the other hand, it is a general principle that laws, regulations and rules of a substantive nature that were in force at the time when the facts occurred must be applied"* (paragraph 8).

iii. Even a procedural rule should not be applied retrospectively where *"its application…would entail a violation of general principles of fairness and of good faith"* (paragraph 11).

b) Swiss law of autonomy

138. Article 23 of the Federal Constitution of the Swiss Confederation ("Freedom of Associations") reads:

Freedom of association is guaranteed

Every person has the right to form, join or belong to an association and to participate in the activities of an association.

No person may be compelled to join or to belong to an association.

139. The contents of this constitutional right is designed to protect the association – within certain boundaries – from all kinds of state interference (including interference by state courts with the association life (CAS 2010/A/2083, at 61; CAS 2010/A/386, at 5.3.4).

140. Article 64 of the Swiss Civil Code reads:

"The general meeting of members is the supreme governing body of the association […]".

141. Article 75 of the Swiss Civil Code reads:

"Any member who has not consented to a resolution which infringes the law or the articles of an association is entitled by law to challenge such a solution in court within one month of learning thereof".

142. Swiss law gives the members of an association a very broad autonomy, including in choosing who else to admit to membership of the association. The right of a Swiss association to regulate and determine its own affairs is considered essential for the association (BGE 97 II 108). The autonomy of Swiss associations is particularly evident with regard to determining the composition of their membership. With respect to the exclusion of members, for example, the Swiss Civil Code has granted associations *"a freedom that almost reaches arbitrariness"* (HEINI/PORTMANN, Das schweizerische Vereinsrecht, p. 153, para 336).

143. One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions. However, this autonomy is not absolute (CAS 2011/O/2422, at 55).

c) Were the Old Statutes changed when they became the New Statutes?

144. The Panel is of the view that the Old Statutes did change when they became the New Statutes. The main changes were as follows.

145. First, criteria were introduced to deal with the situation arising when two bodies competed for one membership (see Article 2.4(d)). These criteria themselves provided for the specification by the Executive Board of further criteria by which competing claims were to be assessed (see Article 2.4(d)(i)). As noted above, these were provided by the FIH to the Oswald Committee in its letter dated 14 March 2013.

146. Secondly, the requirement for a member to "declare" it had the exclusive right to govern hockey in the relevant country was, as a matter of language, amended to "claim". As to whether this linguistic change has a semantic effect, however, our view is that it does not. In our view, the words "declare" and "claim", found in the context of Article 6.1(d)(ii) of the Old Statutes and Article 2.3(b) of the New Statutes respectively, do not have materially different meanings.

147. The IHF contended that 1) it was possible for an entity to claim an exclusive right to govern hockey in a particular country, even when it did not have that right, but 2) it could not declare that it had the exclusive right to govern hockey in a particular country, unless it in fact had that right. Whilst the Panel agrees with 1) in his argument, the Panel does not agree with 2). This is because Article 6.1(d)(ii) of the Old Statutes appears concerned with the stated intention of the potential member, rather than its objective characteristics. If the IHF was right, and Article 6.1(d)(ii) was intended only to be capable of fulfilment by an entity which did in fact have an exclusive right to govern hockey in its own country, then the provision would simply say *"Every Member must have the exclusive right to govern hockey in its own country"*. There would be no need for the word "declare".

d) Were the changes procedural or substantive?

148. The Panel is of the view that the first change (introducing criteria to deal with competing bodies) was a substantive change. That change itself led to the possibility of further changes since Article 2.4(d)(i) stipulated that the FIH would specify further criteria in the event of competing claims.

149. For the reasons set out above, the Panel does not consider the amendment of Article 6.1(d)(ii) of the Old Statutes to Article 2.3(b) of the New Statutes to be a substantive change.

e) Were the changes unfair?

150. In the Panel's view, the changes were not unfair. The changes were neutral in their effect. They did not favour the IHF over Hockey India or Hockey India over the IHF. The Panel notes that the New Statutes do not appear to have been challenged upon being brought into force (whether by the IHF or any other entity).

151. In the Panel's view, neither the IHF nor Hockey India would have been able to satisfy the Old Statutes. Further, the Old Statutes did not cater for the situation faced by the FIH where there were competing claims. Accordingly, the FIH was compelled to amend the Old Statutes. The mere fact of their being amended does not evidence unfairness. Their content is also not unfair.

f) Conclusions

152. The IHF repeatedly urged on the Panel that the fairness or otherwise of the changes was irrelevant. It submitted that if there were substantive changes (and the Panel has found there were), then the Old Statutes should be applied.

153. The IHF's submission has considerable force, particularly in light of the principle summarised at paragraph 8 of *Gibraltar* that "it is a general principle that laws, regulations and rules of a substantive nature that were in force at the time when the facts occurred must be applied". However, it is necessary to consider the principles which underlie that general proposition, such as fairness and good faith. In the Panel's view, those principles are not breached in the special circumstances of this case because:

a. The substantive changes to the FIH's statutes were necessary in order to deal with the fact that there were competing claims. The Old Statutes did not cater for such a situation. Whilst the Panel agrees with the IHF that it does not mean that there was no change, it is relevant to the nature of the change.

b. The changes were neutral in that they did not favour one party over another.

154. If the principles of fairness and good faith (among others) are not breached, if (by way of example) no issue of legitimate expectation arises (as it did in *Gibraltar*), if the decision in issue

does not appear to have been made arbitrarily, then there are no grounds on which to infringe upon an association's right to autonomy. As Hockey India said, there was in this case no substantive unfairness.

155. As paragraphs 29 and 30 of *Gibraltar* make clear, the starting point is that an association has autonomy to accept or refuse applications for membership. That principle of autonomy may be limited, but it is not limited, in our view by formal breaches, which carry no substantive unfairness.

156. For obvious reasons, it is more likely that a substantive rule change will lead to substantive unfairness than a procedural rule change, which explains the general principles set out in paragraph 8 of *Gibraltar*. However, in this case the Panel majority is of the view that the substantive change to the membership rules was not substantively unfair.

157. As to the issue of improper motivation or bad faith, the Panel majority is of the view that even if there was a wish on the FIH's part to have Hockey India, rather than the IHF, as its member, that wish does not make the changes to the rules substantively unfair. This is because, as the Panel has found above, the changes were a) necessary and b) neutral in their effect.

B. Ground 2: should the FIH have awaited the outcome of Indian proceedings?

158. In our view, the Swiss legal principles which allow an association to regulate its own membership are determinative of this point. The FIH was not required to wait for the outcome of a set of proceedings over which it had no control.

159. Specifically, with regard to the two arguments made in the IHF's written case (and not developed orally), the Panel notes as follows. First, it would be contrary to the FIH's right to autonomy to oblige it to wait until the Indian government had decided which body was to be the National Sports Federation, before making any decision.

160. Secondly, the Panel does not see how the FIH was under an obligation not to make a decision about its own membership, in case such a decision should influence an Indian court's decision, thus imperilling the IHF's right to a fair hearing in that Indian court. It was not explained to the Panel how either Article 17 of the Old Statutes (which relates to procedural fairness) or Article 6 of the European Convention on Human Rights could begin to impose on the FIH a duty to safeguard the procedural fairness of proceedings over which it had no control and to which it was not a party. Nor was it explained to the Panel how the IHF would be prejudiced in an Indian court by the FIH's decision.

161. Accordingly, the Panel rejects the IHF's submissions under Ground 2.

C. Ground 3: did the FIH wrongly apply the Article 2.4(d) procedure?

162. Under this heading, the Panel discusses the following issues:

a. Whether, as a matter of construction, there must be a vacancy before the Article 2.4(d) procedure can be engaged.

b. Whether there was in fact a vacancy or, at least, whether the IHF was right to say there was an outstanding dispute as to whether there was a vacancy.

c. Whether in the circumstances the FIH had acted in such a way that the CAS Panel should intervene.

163. The Panel shall address them in turn.

Whether, as a matter of construction, there must be a vacancy before the Article 2.4(d) procedure can be engaged.

164. The introductory part of Article 2.4(d) can be broken down into four sections as follows:

a. *"...membership for a particular Country is vacant"* (A)

b. *"and more than one body applies to be admitted as a Member for that Country"* (B)

c. *"or in other circumstances where there are competing claims to be entitled to membership for a particular Country and the Executive Board deems it appropriate to apply this clause"* (C)

d. *"the competing claims shall be resolved as follows"* (D).

165. The IHF's case is that the Article should be read such that section A is a separate condition to sections B and C. That is to say, if A and (B or C) are fulfilled, then D.

166. The FIH's case is that the Article should be read such that section A is read conjunctively with section B and that section C is an independent condition. That is to say, if (A and B) or C, then D.

167. The Panel prefers the FIH's analysis for the following reasons.

168. First, if the IHF's case was correct, it is unclear what the words *"other circumstances where there are competing claims"* in section C would refer to if section B already catered for the situation where *"more than one body applies"*. If, as the IHF would contend, section B is read independently of section A, there are no limits to section B's application. Section C would be redundant. The Panel prefers to find an interpretation of the Article which does not make part of it redundant.

169. Secondly, if the IHF's case was correct, there would be no mechanism for resolving competing claims where membership for a particular country was not vacant. In the Panel's view, the Article should be read so as to allow the FIH the chance to choose one entity over another, even where the latter is already a member. This construction is more commercially sensible because it encourages competition and higher standards among those who want to be members of the FIH.

170. Thirdly, the FIH's reading accords with the language used in the introduction to Article 2.4(d). The words "a particular Country" are found in both sections A and C, whereas section B refers to "that Country". This shows that section B refers back to section A, whereas section C does not. The important consequence is that the Country referred to in section B is defined in section A, which is to say that it must be a Country for which membership is vacant for section B to be applied. Because section C, by contrast, does not refer back to section A by using the words "that Country" it is more reasonably to be read independently of section A.

Whether there was in fact a vacancy or, at least, whether the IHF was right to say there was an outstanding dispute as to whether there was a vacancy.

171. In light of the conclusion reached above, this issue is academic, because the Panel is of the view that there does not need to be a vacancy before Article 2.4(d) is applied by the FIH.

172. In any event, the focus on the parties' submissions on this point was not on the substance of the issue but rather on whether or not the issue had been decided or not previously. On this point, the Panel agrees with the IHF that the IHF's arguments that the IHF had succeeded to the IHC's membership of the FIH, made before the Judicial Committee on 13 and 14 December 2011, do not appear to have been rejected by that tribunal (see paragraphs 22, 28, 53 to 59 of the Judicial Committee's decision of 5 January 2012). That is not to say that the Judicial Committee accepted the IHF's arguments; it simply determined, in the context of the FIH's summary dismissal application that it could not be said that the IHF's arguments had no real prospect of success.

173. Like the Judicial Committee tribunal (see paragraph 22 of its 5 January 2012 decision) the Panel has received no documentary evidence on the substance of this point.

174. In the circumstances, the Panel does not think it helpful or necessary to form a concluded view on whether, as contended by the IHF, 1) the IHC was not validly derecognised and 2) the IHF was somehow successfully its successor for the purposes of FIH membership.

D. Ground 4: should the IHF be recognised as the FIH Member for India?

175. In the event, Ground 4 was not pursued by the IHF. The IHF in its oral submissions did not seek to persuade us to decide the matter *de novo*, but instead encouraged us to the remit the matter to the JCP Panel on terms that that panel adjudicate the parties' competing claims pursuant to the Old Statutes.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Indian Hockey Federation on 28 November 2014 is dismissed.

2. The decision of the International Hockey Federation Congress dated 1 November 2014 is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.