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A5/WRK4

MEMORANDUM CALLING FOR THE UPLIFTING OF THE SUSPENSION OF AZAD CRICKET CLUB FROM PARTICIPATING IN ACTIVITIES ORGANISED UNDER THE AUSPICES OF THE TRANSVAAL CRICKET BOARD

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1 INTERPRETATION

In the interpretation of this memorandum, unless the context otherwise dictates -

- 1.1 "BOARD" -  
shall mean the Transvaal Cricket Board as affiliated to the South African Cricket Board;
- 1.2 "AZAD" -  
shall mean Azad Cricket Club as affiliated to the BOARD and shall include the Club's officials and players;
- 1.3 "RESOLUTION" -  
shall mean the resolution of the Board adopted at the 2nd Council Meeting of the BOARD held at Lenasia, Johannesburg on 1 December 1986 an extract whereof is hereunto

1.4. STADIUM

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annexed marked "A".

2 PREAMBLE

The BOARD has suspended AZAD inasmuch as it has disallowed AZAD from participating in activities of the BOARD on account of the fact that AZAD has withheld payment to the BOARD of affiliation and other fees in the aggregate sum of R810,00 (eight hundred and ten Rand).

3 PURPOSE

The purpose of this memorandum is two-fold -

3.1 Firstly, to place such facts before the BOARD to convince it that AZAD has, albeit prima-facie, a case that warrants attention and that on that account the suspension ought to be "suspended" pending the outcome of an appeal on the said issue, and,

3.2 Secondly, to use the facts herein stated in

support of the appeal by AZAD against the suspension.

4     GROUNDS FOR OBJECTION  

It is AZAD's contention that suspension is not the correct "penalty" in the circumstances for one, or more, or all of the following reasons -

4.1 The BOARD has failed, refused and/or neglected to properly and/or adequately apply its mind to the import of the RESOLUTION in that there is a significant difference between "failing to meet its commitment" and withholding payment;

4.2 The BOARD has failed, refused and/or neglected to give any or sufficient consideration to the reasons for withholding payment by AZAD as communicated to the BOARD;

4.3 The BOARD has acted <sup>o</sup>ulter-vires its functions in the present case in so far as the reasons for withholding monetary contributions is directly related to the question of the integrity of the BOARD.

5 FACTS SUPPORTING GROUNDS FOR OBJECTIONS

5.1 In Limine

5.1.1 The RESOLUTION calls for the payment of all outstanding dues by the 31st day of December 1986. Failure on the part of the BOARD, for whatever reason, to act promptly with the matter led AZAD to believe that its contention that the issue of the finances of the BOARD be cleared up before AZAD would pay its dues was not being challenged by the BOARD;

5.2.2 The statement of the BOARD, a copy annexed hereto marked "B", clearly states "TERMS: ON PRESENTATION OF STATEMENT"

Many clubs affiliated to the BOARD have made "payment" by way of post-dated cheques.

Payment by post-dated cheque is not tantamount to payment "on presentment".

Clubs who have made "payment" by post-dated cheques are therefore in breach of the terms of the

RESOLUTION and ought therefore to have been suspended for, in the financial books of the BOARD, this (like the dues recoverable from AZAD) may only be reflected as "income accrued".

## 5.2 Facts

5.2.1 In the present context, there is an important difference between "failing to meet a commitment" on the one hand and, "withholding payment" on the other.

The former has connotations of inability or indifference.

The latter relates neither to inability nor to indifference, quite contrary, it indicates both an ability and a keen concern and commitment to pay. Payment however is withheld pending the happening of some condition precedent - in the present case, the satisfactory resolution of questions relating to the BOARD's finances.

The RESOLUTION refers to the former case and not the latter.

On this ground alone therefore, the suspension of AZAD ought to be set-aside for AZAD's case falls squarely within the confines of the latter case aforestated - a matter in regard to which the BOARD has failed, refused and/or neglected to properly and/or adequately apply its mind;

5.2.2 AZAD has never reneged on its commitment to meet its financial obligations. But when it does not know EVERYTHING about what is happening to the money that it had made over to the BOARD it has every right, and indeed an obligation to itself, to actively seek and obtain explanations as to how that money was managed and what happened to it BEFORE making any further payment.

By any reckoning, this is a basic right inherent in all systems and ideologies.

In the present case, there are many questions directly related to the administration of the finances of

the BOARD which have not been expediently answered.

While the BOARD has recognised the right of every club to intimate knowledge of the BOARD's finances - it has indicated in its letter addressed to AZAD dated 13 January 1987 that "these queries ... will be dealt with fully at the next Council Meeting of the Board" - it has failed to, refused and/or neglected to give any or sufficient consideration to the reasons for withholding payment by AZAD as communicated to the BOARD as evidenced by the fact that it (the BOARD) has seen fit to impose a suspension on AZAD prior dealing with the said queries.

Should the BOARD have timeously supplied expedient answers to AZAD's queries, it would be probable to assume that AZAD would have paid their dues on time and the question of suspension would not have arisen in the first instance.

This "putting the cart before the horse" is a fallacious approach and as such unacceptable.

5.2.3 Most importantly, AZAD contends that the BOARD has gone beyond its powers in imposing the suspension in question.

It seems to be of no moment to the BOARD that its integrity has been challenged or that that very challenge is inextricably related to the question on which the suspension of AZAD is founded.

As such, the suspension of AZAD is, when drawn to its logical conclusion, no more than "silencing an opponent" who has had the tenacity to question the workings of the BOARD.

It is therefore AZAD's submission that in the present case and given the present facts, the BOARD does not have the power to suspend AZAD.

It is perhaps apposite to make mention of 4 (four) diverse issues that has, to put it mildly, imputations of breach of office.

Firstly, the question of the raffle. There are so many different expositions of what actually



happened that matters need clearing up as a matter of urgency. For instance, the BOARD says that it is waiting for permission from the winners to "print their telephone numbers and addresses" while in the same breath the BOARD contradicts itself by stating that "the winners ...were announced in the press and on Radio Lotus on the very day of the draw".

The protection that the BOARD is purportedly endeavouring to tender to the winners of the raffle is unclear, as is the BOARD's recalcitrant attitude in this regard vis-a-vis its clubs - the very entities that made the raffle possible.

Be that as it may, AZAD records that it needs to know the name of the winners, their addresses, the numbers of the winning tickets with proof of counter-foils as well as the date, time and venue of the draw.

How can the BOARD withhold this information (dealing with public funds) from its clubs and, when one of the clubs withholds payment of

*Which executives members  
of the Board  
of which clubs  
were present  
at the draw*  
*WHO OF DDOE  
&  
WHICH TEAMS  
WHO'S PRESENT*

its dues because of the BOARD's attitude, suspend that club?

This is such a vexing issue to AZAD's that it has resolved that should the BOARD fail, refuse and/or neglect to supply answers to the questions raised above by the close of business on Thursday 12 February, 1987, it (AZAD) will take such legal steps as it may deem meet in the premises for it certainly has no inclination of getting criminally implicated in any matter whatsoever.

Secondly, the issue of the "Stadium Bank Account". By what logic or principle can the BOARD demand money from a club and then suspend that club for failing to pay because that club wants details of a bank account operated by the BOARD.

In this regard AZAD records that the following details are required by it -

the name and number of the account;  
the name of the Bank at which and  
the branch where, the account is



WORKING

DOES AGAINST 12/2

- copy  
replied from  
the club

*Status*

opened; the identity/ies of the signatory/ies; current status of the account with a full breakdown of every deposit and payment, and, in the latter case the identity/ies of the person/s who authorised payments and for what purpose.

*7 WORKING DAYS*

MOST IMPORTANTLY, WHY WAS THE EXISTENCE OF THIS ACCOUNT KEPT A SECRET?

*RE: AZO) REQUEST FOR AUDITORS' CERTIFICATE. ALSO NEED A CERTIFICATE re existence or not of the etc*

The third issue is that of the queries raised in regard to the annual financial statements of the BOARD which has not been settled.

*[Handwritten mark]*

The forth issue is related to the BOARD's obligations to the Johannesburg City Council in regard to the use of the M R Varachia Stadium. What are the BOARD'S obligations for the 1986/87 season? From which account were payments to the Johannesburg City Council made in the past and for what precise purpose?

*7 WORKING DAYS*

6 CONCLUSION

6.1 Lest, this representation be accused of *prolixity* prolixity and in the interests of brevity, it is AZAD's submission that it has made out a sufficient case in support of and substantiating its averment that its suspension is irregular and should, if not set aside, at least be suspended pending the appeal.

6.2 Should the BOARD refuse to uplift AZAD's suspension forthwith, notice is hereby given that in that event a Supreme Court interdict may be sought, with costs, to redress the situation.

AZAD CRICKET CLUB  
JOHANNESBURG

Sunday 1 February 1987.

that club for failing to pay because that club wants details of a bank account operated by the BOARD.

AZAD requires a full debatement of this account with precise details regarding the following matters -

the name and number of the account; the name of the Bank at which and the branch where, the account is opened; the identity/ies of the signatory/ies; current status of the account with a full breakdown of every deposit and payment, and, in the latter case the identity/ies of the person/s who authorised payments and for what purpose.

MOST IMPORTANTLY, WHY WAS THE EXISTENCE OF THIS ACCOUNT KEPT A SECRET?

EQUALLY IMPORTANT IS AN UNEQUIVOCAL ANSWER TO A STRAIGHT-FOWARD QUESTION - WERE THE BOARD'S AUDITORS AWARE OF THIS ACCOUNT OR NOT?

The third issue is that of the queries raised in regard to the

annual financial statements of the BOARD which has not been settled.

The forth issue is related to the BOARD's obligations to the Johannesburg City Council in regard to the use of the STADIUM. What are the BOARD'S obligations for the 1986/87 season? From which account were payments to the Johannesburg City Council made in the past and for what precise purpose?

The queries raised above relates to serious issues of fidelity and should, no must, be resolved expeditiously.

6 CONCLUSION

6.1 Lest this representation be accused of prolixity and in the interests of brevity, it is AZAD's submission that it has made out a sufficient case in support of and substantiating its averment that its suspension is irregular and should, if not set aside, be at least suspended pending an

appeal that AZAD will file.

- 6.2 Should the BOARD refuse to uplift AZAD's suspension forthwith, notice is hereby given that in that event a Supreme Court interdict may be sought, with costs, to redress the situation.

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