

INTERNATIONAL COURT OF APPEAL (I.C.A.)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE :

**Appeal lodged by
the Motorsports Association of India (MAI),
against the decision of the World Motor Sport Council
dated 25 June 2008**

Hearing of Tuesday, 29 July 2008 in Paris

PRELIMINARY

It is not the place of the Court to interfere in the legislative or executive powers of the FIA, or to substitute itself for them on account of the principle of the separation of powers. However, the Court does have the obligation to say whether these powers have correctly been exercised (see for example, Article 23 of the FIA Statutes).

For this reason, the Court does not find it necessary to give any view as to the merits or otherwise of transferring the Sporting Power from the MAI to FMSCI, as this is not within the competence of the Court in this case.

SUMMARY OF THE FACTUAL BACKGROUND OF THE APPEAL

The FIA's Statutes provide that only one organisation per country may hold the Sporting Power (Article 4, FIA Statutes). For a number of years, disputes have existed between MAI and FMSCI regarding which of them should hold the Sporting Power in India. Each of them has held the Sporting Power at different stages.

Without reciting the full history of the disputes as presented to the Court, it suffices to record that the FIA considered that the disputes in question should be resolved by mutual agreement between the two entities.

On 26 October 2005, the WMSC met in Rome to discuss the Sporting Power in India among other matters, and the minutes reflect that:

Mr Léon reminded the World Motor Sport Council that the General Assembly had agreed to strike the FMSCI from the FIA rolls in 2004 unless they complied with three conditions, namely: to write to the Indian government to inform it that they had no objections to the Motorsport Association of India organising motorsport events in India; to withdraw any pending lawsuits; and to strictly adhere to the FIA International Sporting Code. He had visited India at the beginning of October this year to hold a round of “last chance” meetings between the FMSCI and the MAI to agree on how the FMSCI should fulfil these conditions. He proposed that, as this issue had been ongoing for six years and in the light of the General Assembly’s decision to expel the FMSCI unless it fulfilled these conditions, the World Motor Sport Council ask the General Assembly for a mandate to expel the FMSCI at any date in the future if this deemed appropriate, rather than having to wait for the following General Assembly. This was agreed.¹ [*sic*]

The next day, as a result of the WMSC deliberations, the FIA General Assembly, during its annual meeting, adopted a resolution pursuant to Article 16.2 of the FIA Statutes, mandating the WMSC as follows:

¹ Minutes of the WMSC Meeting of 26 October 2005 in Rome.

The General Assembly accepted by a large majority that, in accordance with Article 16.2 of the Statutes, the mandate be given to the World Motor Sport Council to decide on appropriate action, if the MAI and the FMSCI did not conclude a formal agreement.²

At its meeting of 5 July 2006, the WMSC considered the India situation in detail (as it had done a number of times before), and at that time reached the conclusion that the interests of the sport in India would be best served by an effective merger between MAI and FMSCI, on conditions to be agreed between them. The WMSC declared that, if they failed to merge, the FIA would review the position of motor sports in India. It was specified that this review might include the selection of one of the two parties to hold the Sporting Power, but might also involve a third solution, as the situation then existing (i.e. the ongoing dispute) could not be allowed to continue. By April 2007, a resolution had yet to be achieved and the FIA President appointed Mr. Alan Donnelly to mediate between the two parties, and to help them to find a solution to the long standing disputes.

On 26 March 2008, the WMSC considered a report by Mr. Donnelly regarding the status of the settlement negotiations between the parties. At that stage, a proposal was under discussion to amend the statutes of FMSCI and to merge MAI into the altered FMSCI entity. As there appeared to be further delays in negotiations, having considered Mr. Donnelly's report, the WMSC concluded that a reasonable period should be allowed for minor amendments to the then existing draft of the amended FMSCI statutes, after which the Sporting Power should transfer to the altered FMSCI entity, regardless of whether MAI agreed.

After further considerable and commendable efforts by Mr Donnelly, MAI and FMSCI still failed to produce an agreement and/or merger between MAI and FMSCI, Mr Donnelly prepared a report to the WMSC dated 23 June 2008 stating that, in view of the 2005 mandate to the WMSC by the General Assembly:

[...] in order to help secure the future development of Motor Sport in India, it is recommended under the terms of the remit given to the World Motor Sport Council by the General Assembly held in Rome that from the 1st July 2008 the ASN status for India should be transferred to the FMSCI.

And this decision should be communicated to the General Assembly at its meeting in 2008.³

This report was distributed to the members of the WMSC only on the evening before the WMSC meeting of 25 June 2008. No item regarding the situation in India or Sporting Power of India appeared on the formal agenda of that meeting (the original agenda having been circulated on 11 June and a supplemental agenda having been circulated on 20 June 2008). Nor was a relevant

² Minutes of the FIA General Assembly of 27 October 2005.

³ Report of Mr. Alan Donnelly to the WMSC dated 23 June 2008.

agenda item added on the day of the meeting. However, the members of the WMSC considered the report under the agenda item “Any other business”. The MAI was not notified in advance of this meeting that this report would be considered, and was not invited to the meeting (although Mr. Hoosein, the President of the MAI, was present in his capacity as a member of the World Motor Sport Council).

THE CONTESTED DECISION

Having considered Mr Donnelly’s report dated 23 June 2008, the WMSC issued a Decision, dated 25 June 2008, to transfer the Sporting Power in India from MAI to FMSCI.

Twenty four (of a possible twenty five) members of the WMSC were present. Thirteen members voted in favour of the proposition to transfer the Sporting Power to FMSCI. This was deemed to be a sufficient majority to carry the proposal and the WMSC declared the Decision adopted.

The President then informed Mr Hoosein, who is the MAI President, that if MAI felt the correct procedures had not been followed, he would be prepared to send the question to the Court, and Mr Hoosein stated MAI would appeal.

The above Decision by the WMSC was communicated to the MAI by letter of 26 June 2008. The operative part of that letter provided as follows:

By virtue of the mandate that has been entrusted to the FIA General Assembly of 28 October 2005 in pursuance of Article 16.2 of the FIA Statutes, and further to the resolutions adopted during its meeting of 26 March 2008, and having taken into consideration the latest information communicated before the meeting as to the state of negotiations between the two organisations FMSCI and MAI, the World Motor Sport Council has decided to transfer the sporting power in India from the MAI to the FMSCI, effective from 1 July 2008.⁴

There appears to be some dispute as to whether this letter accurately records the decision taken by the WMSC. The MAI had requested a copy of the transcript of the meeting from FIA, which had responded that no transcript had been prepared. The Court does not intend to explore this issue further as its decision will rest on other grounds.

⁴ Letter from Mr. de Coninck, Secretary General of the FIA to Mr. Hoosein, President of the MAI dated 26 June 2008.

ARGUMENTS OF THE PARTIES

The MAI challenges the validity of the WMSC Decision on a number of grounds. These may be grouped together for convenience under the following headings.

- (i) the MAI was not given sufficient notice of the decision and/or sufficient opportunity to be heard;
- (ii) the WMSC did not have a valid mandate from the General Assembly to transfer the Sporting Power;
- (iii) if the WMSC did have a valid mandate, any decision taken by the WMSC to transfer the Sporting Power would have to be taken by an “absolute majority”, which was not obtained in this case;
- (iv) the WMSC decision is vitiated by error as, in the MAI’s submission, the note submitted by Mr Donnelly on which the Decision was based contains substantive inaccuracies.

To these and other grounds of appeal, FMSCI and FIA filed a general denial and opposition. Each of these grounds is considered below.

FIRST GROUND OF APPEAL – NOTICE OF DECISION AND OPPORTUNITY TO BE HEARD – ARGUMENTS OF THE PARTIES

The MAI argues that it was not given sufficient notice of the decision and/or a sufficient opportunity to be heard in advance of the Decision being taken by WMSC.

It is common ground that the status of the Sporting Power in India was not on the two agendas for the WMSC meeting on 25 June 2008, which were circulated on or about 11 and 20 June 2008. The MAI was not given formal notice of the possibility of a vote and formal decision regarding its right to hold the Sporting Power. Rather, Mr Donnelly’s report dated 23 June 2008 was circulated among the WMSC members attending the meeting, including the President of the MAI who was and is also a WMSC member, the night before and brought before the WMSC meeting the next day as “Any other business”.

The MAI argues that the contested Decision was tantamount to a striking off or expulsion from the FIA, as its holding of the Sporting Power was the fact that qualified it to be and remain an FIA member. This being so, MAI argues that the procedural safeguards set out in the FIA Statutes for members facing expulsion (notably in Article 27(d)) ought to have applied to the MAI in this case.

The FIA denies that the removal of the Sporting Power amounts to a striking off or expulsion, as opportunities to become an affiliate member of the FIA remain. This being so, the procedural safeguards relating to expulsion of members in Article 27(d) do not apply in this case.

The MAI argues that, in any event, natural justice and its rights of defence require that it be given sufficient notice of any upcoming vote and possible decision regarding the removal from the MAI of the Sporting Power.

The FIA denies any such breach of the MAI's rights of defence, as it states that Mr. Hoosein was present at the hearing (albeit in a different capacity) and did not object to the inclusion of Mr. Donnelly's report in the supplemental dossier for the WMSC meeting. The FIA also submitted that it was common practice to add items for discussion on the day of WMSC meetings and that, in effect, the Sporting Power of India issue had become a standing agenda item.

FIRST GROUND OF APPEAL - FINDINGS OF THE COURT

The Court finds that, as a matter of law, the removal of the Sporting Power is not tantamount to expulsion from the FIA. Whilst in a particular case the removal of the Sporting Power could require a member organisation to make adjustments in order to satisfy the criteria for some other category of membership, the procedural safeguards set out in the Statutes were intended to relate to formal cases of striking off or expulsion only. Therefore the FIA was not required to apply the procedure set out in Article 27(d) of the Statutes in this case.

However, the Court finds that the MAI does enjoy certain rights of defence and was not given sufficient notice of the vote leading to the contested Decision and was not formally invited to present arguments before a vote was taken. The MAI's rights of defence were therefore breached.

While it is clear that Mr. Hoosein was present in his capacity as a member of the World Motor Sport Council, and that he had received a copy of Mr. Donnelly's report the evening before the meeting, it was not demonstrated to the Court that the MAI itself was invited or that it was formally made aware that a definitive vote on whether to transfer the Sporting Power to FMSCI would occur on this date (as opposed to Mr. Donnelly's report being considered and/or the matter simply being discussed again by the WMSC).

While the FIA has shown great patience in relation to this dispute, in light of the long history of this matter there appeared to be no particular urgency or other justification for not offering the MAI sufficient notice to allow it the opportunity to be formally present, to take advice and to make submissions. This could have been achieved by including the matter on the agenda of a later meeting of the WMSC, or by

notifying the MAI through other means in sufficient time to allow its rights of defence to be protected.

SECOND GROUND OF APPEAL – VALIDITY OF THE WMSC’S MANDATE - ARGUMENTS OF THE PARTIES

The MAI argues that the WMSC did not have a valid mandate from the General Assembly to transfer the Sporting Power from MAI to FMSCI. In particular, it argues that only the General Assembly has the ability to transfer the Sporting Power from one entity to another. While the WMSC may be entrusted with certain tasks (including, for example, advising the General Assembly on how to deal with the Sporting Power), the final decision rests with the General Assembly alone and may not be delegated to the WMSC.

In addition, the MAI argues that any mandate given to the WMSC in this case was limited in time, as it could not be regarded as a permanent delegation of the General Assembly’s prerogatives, and was limited in substance in that it was specifically given for the purpose of examining whether the FMSCI should be stricken from the FIA’s rolls (and not whether the Sporting Power should be moved from MAI to FMSCI).

The FIA argued that the General Assembly was entitled to give, and had validly given, a mandate to the WMSC under Article 16(2) of the FIA’s Statutes to ‘decide on appropriate action’ in relation to the Sporting Power in India at the meeting of the General Assembly in Rome on 28 October 2005. It was on the basis of that continuing mandate that the WMSC had the power to take the contested Decision.

SECOND GROUND OF APPEAL – FINDINGS OF THE COURT

The Court takes note of Article 3(b), Article 4, first, second and fourth paragraphs, Article 5, Article 9(10), and Article 27(e) of the FIA Statutes, all of which confirm that it is the General Assembly which has the authority to grant or remove the Sporting Power.

No specific ability to delegate the authority to transfer the Sporting Power to the WMSC is noted in the FIA Statutes. Nor does Article 16(2) of the Statutes (the Article cited as the basis of the WMSC’s authority in this case) specifically envisage such a delegation. The Court concludes that it is not necessary in this case to issue a formal ruling on whether such a delegation of authority could be legally valid under the Statutes as, even if such a delegation were possible, the Court believes, in view of the nature of the subject matter, that such a delegation would have to be limited and specific, which it was not in this case.

The Court finds that the decision of the General Assembly to delegate to the WMSC the power to ‘decide on appropriate action’ in relation to the Sporting Power of India issue, if valid at all, cannot be regarded as an open-ended authorisation to assume all of the functions of the General Assembly in relation to the issue, including to take actions normally specifically reserved to the General Assembly and which had not been in contemplation at the time of the purported delegation (such as in this case, the removal of the Sporting Power from the MAI).

THIRD AND FOURTH GROUNDS OF APPEAL

In light of the Court’s findings in relation to the first and second Grounds of Appeal set out above, the Court does not deem it necessary to address the third and fourth Grounds of Appeal.

FINDINGS OF THE COURT

On those grounds, the FIA International Court of Appeal hereby:

- (1) Declares the WMSC’s 25 June 2008 decision to transfer the Sporting Power in India from MAI to the FMSCI effective 1 July 2008, to be null and void.
- (2) Orders the FIA to pay the costs of this appeal in accordance with Article 190 of the International Sporting Code and Article 24 of the Rules of the International Court of Appeal.

Paris, 29 July 2008

The PRESIDENT