

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeal lodged by
the Motorsports Association of India (MAI)
against a decision of the FIA General Assembly
of 7 November 2008**

Hearing of Friday 6 February 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr. Philippe ROBERTI DE WINGHE (Belgium), who was elected President, Mr. Erich SEDELMAYER (Austria), Mr. Vassilis KOUSSIS (Greece), and Mr. John J. CASSIDY (United States), met in Paris on Friday 6 February 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal filed by the Motorsports Association of India (MAI) against a decision taken by the FIA General Assembly at its meeting of 7 November 2008 to transfer the Sporting Power in India from the MAI to the Federation of Motor Sports Clubs of India (FMSCI), heard presentations and considered arguments presented by the MAI, the Fédération Internationale Automobile (FIA), and the FMSCI.

Attending the above hearing were:

for the MAI:	Mr. Nazir Hoosein (President) Mr. Georges Benelli (Legal Representative) Mrs. Annie Dutasta-Amieil (Legal Representative)
for the FIA:	Mr. Pierre de Coninck (Secretary General FIA Sport) Mr. Sébastien Bernard (Head of Legal Department)
for the FMSCI:	Mr. G.E. Vahanvati (Legal representative) Mr. Jai Munim (Legal representative) Mr. Y.N. Bhardwaj (Legal representative)

The parties presented oral arguments at the hearing, which took place in accordance with the applicable rules, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised by anyone. During the hearing, the adversarial principle was respected.

PROCEDURE AND FORMS OF ORDER SOUGHT BY THE PARTIES

1. The MAI lodged the present appeal with the Court's Secretariat on 14 November 2008.
2. The MAI claims that the Court should declare null and void the decision of the FIA General Assembly of 7 November 2008 to transfer the Sporting Power in India from the MAI to the FMSCI (the "Contested Decision").
3. The FIA, in its submission of 20 January 2009, claims that the Court should
 - dismiss the appeal as unfounded;
 - confirm the Contested Decision in its entirety;
 - condemn the MAI to the maximum sanction for introducing a frivolous appeal pursuant to Article 16 of the ICA Rules of Procedure.
4. The FMSCI, in its intervention of 28 January 2009, claims that the Court should
 - dismiss the appeal as unfounded;
 - order the MAI to pay the costs.

REMINDER OF THE FACTS

5. 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 the MAI and the FMSCI regarding which of them should hold the Sporting Power in India. Each of them has held the Sporting Power at different stages.
6. 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. However, in response to delays in reaching such an agreement, the FIA General Assembly on 27 October 2005 adopted a resolution pursuant to Article 16.2 of the FIA Statutes mandating the World Motor Sport Council (WMSC) to decide on appropriate action if the MAI and the FMSCI did not conclude a formal agreement.
7. The WMSC, on the basis of a report prepared by Mr. Alan Donnelly (who had been appointed by the FIA President to mediate between the two parties), decided on 25 June 2008 to transfer the Sporting Power in India from the MAI to the FMSCI.

8. This decision was appealed by the MAI before this Court. Following a hearing on 29 July 2008, the Court declared the WMSC's decision of 25 June 2008 to be null and void for the reasons set out in its judgment of 29 July 2008.
9. The WMSC thereafter reconsidered the matter on 7 October 2008, and decided to propose to the General Assembly, scheduled on 7 November 2008, the transfer of the Sporting Power in India from the MAI to the FMSCI.
10. The MAI petitioned the Paris *Tribunal de Grande Instance* to issue an order requiring the FIA to withdraw the item concerning the Sporting Power in India from the Agenda of the General Assembly of 7 November 2008. The *Tribunal de Grande Instance*, in its ruling of 6 November 2008, rejected the MAI's request.
11. At its meeting on 7 November 2008, the FIA General Assembly adopted the Contested Decision to transfer the Sporting Power in India from the MAI to the FMSCI.

ADMISSIBILITY AND JURISDICTION

12. The Court recognizes that the appeal was filed in a timely manner, that the appeal is admissible and that the Court has jurisdiction in the matter.

PRELIMINARY

A - The Counsel to the International Court of Appeal

13. Each of the parties has applied to the Court asking the panel of judges, for the purposes of this case, to assume the function of the Counsel to the Court responsible for verifying the regularity of the proceedings and for ensuring the respect of the rights of the parties (as set out in Article 6, ICA Rules of Procedure). The Court considered the matter and granted this request at the hearing.

B - Application for Leave to Intervene by the FMSCI

14. By letter of 5 January 2009, the FMSCI notified the Court of its application to intervene in the present case.
15. The MAI, in its letter of 19 January 2009, contests the right of FMSCI to intervene.

16. The FIA, in its written submission of 20 January 2009, states that it has no objections to the FMSCI's request to intervene.
17. On 22 January 2009, and after having considered the written submissions of the parties on this issue, the President of the Hearing directed, on a provisional basis, that the FMSCI may be heard pursuant to Article 20 of the ICA Rules of Procedure, on the grounds that the FMSCI is directly affected by the outcome of this case. All parties were informed of this provisional decision by the Court's Secretariat on 22 January 2009, and the FMSCI was thus invited to attend the hearing.

a) Arguments of the parties

18. In its application, the FMSCI argues that it has a right to intervene in this case in light of the important effects that the outcome of the case may have on its interests. It points out that it was previously permitted to intervene by this Court in the hearing of 29 July 2008, where the issue of Sporting Power in India was examined.
19. The MAI contests the FMSCI's right to intervene on the grounds that this dispute exclusively involves the MAI and the FIA, since the MAI requests the quashing of a decision of the FIA based on a purported violation of Article 10, paragraph 1 of the FIA Statutes.
20. Secondly, the MAI argues that neither the FIA Statutes nor the ICA Rules of Procedure provide for third party interventions, and that both exclude the possibility of a voluntary intervention. It submits that Article 19 of the ICA Rules of Procedure, which specifies the time limits within which documents must be submitted, only provides for a memorandum of appeal and a defence to be presented to the Court. The MAI further claims that, if a voluntary memorandum were accepted, the appellant should be authorized to submit a response to that voluntary memorandum.
21. The MAI, moreover, refers to paragraph 5 of Article 21 of the ICA Rules of Procedure, which stipulates that competitors in Major FIA Championships, who could be affected by the decision to be taken, can intervene in a procedure before the Court. Given that the FMSCI is not a competitor in a Major FIA Championship, it cannot be heard by the Court.
22. The FIA argues that the FMSCI, which currently holds the Sporting Power in India, has a direct interest in the outcome of this litigation and should therefore be heard as an interested party.

b) Findings of the Court

23. In light of the foregoing, and as no additional arguments were raised by the parties at the hearing, the Court confirmed the provisional direction of the

President of the Hearing and granted the FMSCI leave to intervene in the present case pursuant to Article 20 of the ICA Rules of Procedure, on the grounds that the FMSCI is directly and significantly affected by the outcome of this case.

24. With respect to the other parties' right to submit a response to the FMSCI's intervention, the Court notes that additional rounds of written pleadings are not foreseen by the ICA Rules of Procedure and that all parties had a full opportunity during the hearing to respond orally to the FMSCI's submissions. The MAI's and FIA's rights to respond to the submissions made by FMSCI were therefore be respected.

C – Request by the MAI to Submit a Supplementary Memorandum

25. By letter of 5 February 2009, the MAI expressed its intention to request the Court's permission, pursuant to Article 20 of the ICA Rules of Procedure, to file a supplementary memorandum in response to the FIA's memorandum in defence. This request was duly made at the hearing on the 6 February 2009.

a) Arguments of the parties

26. In its letter of 5 February and at the hearing, the MAI expressed its view that the FIA's defence contains arguments which are in the MAI's favour; that the MAI should have the opportunity to point out those arguments; and that the (FIA's) rights of defence require that the FIA should have a subsequent opportunity to respond in writing to the MAI's arguments.
27. The FIA, at the hearing, opposed the acceptance of the MAI's supplementary memorandum, this memorandum being presented for the first time to the Court and to the parties at the hearing.

b) Findings of the Court

28. After interrupting the hearing for a brief deliberation, the Court denied the MAI's request to submit a supplementary memorandum, on the grounds that (i) the last paragraph of Article 19 of the ICA Rules of Procedure does not permit the parties to produce further evidence after the exchange of grounds of appeal and memoranda in response; and (ii) the MAI has not indicated any "exceptional circumstances", as required by Article 20 of the ICA Rules of Procedure. Furthermore, the Court noted that an important part of the justification relied on by the MAI relates to the protection of the FIA's rights of defence (i.e. a concern that the FIA should have an opportunity to see the MAI's arguments in writing). However, the FIA has not raised such an argument and indeed objects to the submission of the MAI's supplementary memorandum. The Court recalled, though, that the MAI would have the opportunity to respond orally to the FIA's memorandum during the hearing and to raise any arguments that it believed to be

pertinent, including arguments that would indicate that the FIA's submission contained points which support the MAI's position.

ON THE SUBSTANCE

First Plea – The Contested Decision Violated Article 10 of the FIA Statutes

29. The Statutes of the FIA provide under Article 10 that:

The Agenda of the General Assembly shall be sent to Member Clubs, Associations and Federations 35 days before the date fixed for the meeting. It must be accompanied by a report stating the proposals which will be submitted to the General Assembly for approval. The Agenda must mention clearly, opposite each item, which of the Clubs, Associations or Federations are entitled to express their vote on the question.

In order to be placed on the Agenda of an Ordinary General Assembly, an item must reach the Secretariat of the FIA 6 weeks at least before the date fixed for the meeting, except for proposals which the President might consider to be particularly interesting and urgent, subject to the agreement of the majority of Members.

The proposals to be placed on the Agenda must be sufficiently detailed to permit a prior study of the matter.

Any proposal concerning amendments to the Statutes must necessarily be placed on the original Agenda and be sent to all Members 35 days before the meeting. No proposal of that nature can be added to the Agenda during the meeting of the General Assembly.

30. Given that the General Assembly took place on 7 November 2008, the Agenda thus should have been circulated by 3 October 2008.

31. The original Agenda, dated 1 October 2008, was circulated by the FIA's Secretariat to all FIA Members. It included an item 6 in the following terms: 'The Sporting Power in India', but was not accompanied by a report relating to the Sporting Power in India. The covering letter, dated 1 October 2008, indicated that 'the complete dossier of the General Assembly will be sent to you in the third week of October'.

32. On 7 October 2008, the WMSC decided to propose to the General Assembly, to be held on 7 November 2008, that it transfer the Sporting Power in India from the MAI to the FMSCI. The FIA's Secretariat notified the MAI and the FMSCI of the decision of the WMSC by letter of 9 October 2008.

33. On 21 October 2008, an Agenda was again circulated, this time including the report on the Sporting Power in India and the WMSC proposal to transfer the Sporting Power to FMSCI.

a) *Arguments of the parties*

34. The MAI claims that the Contested Decision was not lawfully taken, as the FIA violated Article 10, paragraph 1 of the FIA Statutes when it failed to circulate the required report relating to Item 6 (Sporting Power in India) on the Agenda by the due date of 3 October 2008. It alleges that the FIA also violated paragraph 2 of Article 10, given that it did not send the aforementioned WMSC proposal to the Secretariat of the FIA six weeks before the date of the General Assembly, nor did the President of the FIA seek the agreement of the majority of the Members of the General Assembly to add the proposal after expiry of the deadline, as required by Article 10.
35. Moreover, the MAI questions whether the Agenda of the General Assembly dated 1 October 2008 was circulated in time, as it was only received by Mr. Hoosein of the MAI on 13 October 2008. According to the MAI, a DHL document bearing the date of 9 October 2008 suggests that the Agenda dated 1 October 2008 was not sent until 9 October 2008.
36. The MAI also called into question the validity of the General Assembly as a whole, on the basis that it had not been convened in due time in violation of Article 8, last paragraph, of the FIA Statutes, which requires notices convening General Assemblies to be sent 2 months before the date fixed for the meeting. However, the MAI withdrew this argument during the hearing, following the production at the request of the Court of a convening notice bearing the date of 22 August 2008 by Mr. de Coninck (the FIA Secretary General for Sport).
37. The MAI further argues that the order issued by the Paris *Tribunal de Grande Instance* on 6 November 2008 recognizes that “the procedure which took place prior to the discussions that will occur on 7 November 2008 at the General Assembly of the Fédération Internationale de l’Automobile was unlawful.”
38. The FIA does not dispute that the dossier dated 1 October did not contain the report relating to Item 6 and that this report was not submitted to the FIA Secretariat six weeks before the General Assembly. However, it claims that the dossier was sent by ordinary post on 1 October 2008 and draws attention to the fact that it was impossible to include the report in the dispatch of 1 October or to send it to the Secretariat six weeks in advance, for the simple reason that it did not yet exist, given that the WMSC proposal to transfer the Sporting Power in India was formally adopted at the WMSC only on 7 October 2008. After the WMSC had duly adopted the proposal, an official notification was sent to the MAI and the FSMCI on 9 October 2008, and then to all the Members of the General Assembly with the dispatching of the full dossier on 21 October 2008.
39. The FIA further argues that paragraph 4 of Article 10 of the FIA Statutes suggests that the obligation to place an item on the original Agenda and to send it 35 days before the meeting applies only to proposals concerning amendments

to the Statutes. Without a similar formulation for proposals relating to decisions concerning the exercise of the Sporting Power in a country, there can be no such obligation upon to the FIA.

40. The FIA also claims that, even if it is considered that there had been a breach of Article 10, this does not invalidate the decision taken by the General Assembly on 7 November 2008 on the Sporting Power in India, as no right of defence has been violated.
41. Furthermore, the FIA argues that the MAI, by calling into question the FIA's compliance with the deadlines for sending documents, in substance alleges that the FIA did not give the Members of the General Assembly sufficient information on the content of the recommendation issued by the WMSC to allow them to take an informed decision, and that this lack of information renders the vote at the General Assembly unlawful. The FIA rejects this argument and states that the issue of the Sporting Power in India has been recurrently discussed by Members of the General Assembly over the past ten years – the question of Sporting Power in India having been examined and debated by the annual General Assembly on at least seven occasion between 1999 and 2008.
42. In addition or in the alternative, the FIA argues that the MAI, by calling into question the FIA's compliance with the deadlines for sending documents, in substance, alleges that the MAI itself did not have sufficient prior knowledge of the upcoming debate to allow it to exercise its rights of defence, for example by having an adequate opportunity to prepare for the General Assembly. The FIA also rejects this argument and claims that MAI had full knowledge of all of the issues under debate long in advance of any relevant deadline, as the same issues had been discussed repeatedly over the past ten years (and indeed the MAI attended and argued its case, together with its legal representative, on precisely the issues at hand at the WMSC meeting of 7 October 2008).
43. The FIA, moreover, refers to the judgment of the Paris *Tribunal de Grande Instance*, of 6 November 2008, in which the judge concluded that there were no imminent damages to the MAI because he considered that both the Members of the General Assembly and the MAI were perfectly aware of the issues that would be discussed at the General Assembly and the documents contained in the dossier.
44. The FMSCI supports the FIA's view as set out above, and submits that on a true and proper construction of Article 10, the first paragraph has to be reasonably considered and cannot compel performance of an impossibility, namely the circulation of a report in relation to a meeting which was to take place subsequent to the circulation of the Agenda.
45. The FMSCI further emphasizes that the true purpose underlying Article 10 and, in general, measures pertaining to circulation of agendas and supporting papers,

is to give due notice to the concerned parties and to enable them to prepare for the meeting. As held by the Paris *Tribunal de Grande Instance*, the FMSCI contends that the MAI was in no way prejudiced with regard to preparing its case and defending itself, since it had full knowledge of all relevant facts – these facts having been debated by the MAI on numerous previous dates including 27 October 2005, March 2007, 27 August 2008, 4 September 2008 and 7 October 2008.

b) Findings of the Court

46. During the hearing, the MAI accepted that the original Agenda of the General Assembly, as well as the proposals relating to modifications of the Statutes, were sent by mail on 1 October 2008. It thus appears that these documents were indeed sent before the expiry of the 35-day period set out in Article 10 of the FIA Statutes, which expired on 3 October 2008.
47. The Court notes that the objectives underlying the first and second paragraphs of Article 10 are clearly that the voting Members of the FIA be duly informed of the content of the proposals on the Agenda; that they be allowed adequate time to consider the proposals; and that the rights of defense of any affected parties be respected.
48. Article 10 states that reports on proposals concerning amendments to the Statutes must necessarily be sent at the same time as the original Agenda. However, it does not expressly indicate that reports concerning other proposals to be put before the General Assembly must necessarily and always be sent at the same time as the original Agenda. Even if an implied obligation to that effect were to exist, the Court finds that in this case the breach of such an obligation could only lead to the annulment of the contested decision if it led to a prejudice or violation of the rights of defense.
49. The Court finds that, in the present case, the shorter time-frame did not cause the Members of the FIA to be insufficiently informed of the contents and the reach of the proposal to transfer the Sporting Power in India, given that this matter was recurrently examined and debated by the General Assembly for numerous years since 1999 – namely at the General Assembly meetings of 8 October 1999, 28 June 2000, 6 October 2000, 2 October 2002, 16 October 2003, 28 October 2003 and 28 October 2005. The General Assembly of 28 October 2005, in particular, debated the issue at length and even mandated the WMSC to “decide on appropriate measures” to resolve the question at hand.
50. In addition, the Court, for the reasons set forth below, finds that in the present case the rights of defense of the parties were not breached by the fact that the report was sent later than the original Agenda.
51. With respect to the cited judgment of the Paris *Tribunal de Grande Instance*, the Court notes that, as was highlighted by the parties during the hearing, this

judgment does not constitute a ruling on the substance, but merely ruled on the question of imminent damages to the MAI.

52. In light of the above, the Court dismisses the First Plea on the grounds that, regardless of whether there was an obligation to send the report at the same time as the original Agenda, the principles and objectives underlying Article 10 of the FIA Statutes were respected and obtained in the present instance.

Second Plea – The Contested Decision Violated the Rights of the Defence Vested in MAI

a) Arguments of the parties

53. The MAI argues that the report accompanying the Agenda for the General Assembly was partial and thus misled the Presidents of the FIA Clubs who were to vote on the issue of Sporting Power in India and failed to respect the rights of the defence vested in MAI. It claims that the report only contained documents unhelpful to the MAI and failed to include any information in the MAI's defence, such as a letter of 22 September 2008 by Mr. Hoosein (the MAI's President), rebutting the claims made in the report by the FIA's mediator, Mr. Donnelly.

54. Moreover, the MAI argues that, as the Agenda accompanied by the relevant report was only received by Mr. Hoosein on 23 October 2008, there was no time for him, in light of his other professional commitments, to prepare a statement in defence to the attention of the Presidents of the FIA Clubs who were called on to vote on the issue. Therefore, the Contested Decision violated the rights of the defence vested in MAI.

55. The FIA contends that the report in question, which was sent to the MAI on 9 October 2008, and which followed the WMSC meeting of 7 October 2008 at which the MAI had presented a full oral defence of its position, only contained documents which had already been previously communicated to the MAI at least five times (first during the WMSC meeting of 25 June 2008), including in the context of hearing before this Court on 29 July 2008. The MAI therefore can not legitimately claim that it did not have enough time to familiarise itself with the dossier. In addition, the FIA states that it can in no way be held responsible for the unavailability of the MAI's president, Mr. Hoosein, during the period between 27 October and the date of the General Assembly.

56. The FIA also refers to the judgment of the *Paris Tribunal de Grande Instance* of 6 November 2008, which holds that the possibility for the MAI to prepare and defend its case does not appear to have been affected by the sending of the relevant information within a shorter time period.

57. The FIA claims that the MAI had ample opportunity to defend itself, as it was summoned to appear on three occasions before the competent bodies of the FIA in 2008, in order to present arguments in its defence in an adversarial hearing, which it did with the assistance of a lawyer.
58. The FMSCI supports the FIA's view and holds that the MAI had ample opportunity to defend its case on numerous occasions during the long standing dispute.

b) Findings of the Court

59. In light of the chronology of this case, the Court observes that the MAI was made aware of every significant element of the report in question on several prior occasions – including in advance of the WMSC meeting of 25 June 2008, in the context of the ICA hearing of 29 July 2008, and in advance of the WMSC meeting of 7 October 2008. The argument that the MAI and its President, Mr. Hoosein, did not have enough time to prepare a defense can therefore not be accepted.
60. In addition, the Court notes that the MAI had several occasions to defend its position, both orally and in writing, as it was summoned on these three aforementioned occasions and at the General Assembly of 7 November 2008 to present its arguments, which it did with the assistance of a lawyer.
61. In so far as Mr. Hoosein's letter of 22 September 2008 is concerned, the Court concludes that it was not compulsory for the FIA to include this letter in the report, as the documents produced sufficed to allow the Members of the General Assembly to take an informed decision. Moreover, it appears that the letter of 22 September 2008 was originally addressed to the WMSC meeting of 7 October 2008, where it was duly presented, and was therefore presumably taken into account on that occasion prior to the WMSC formulating its proposal. In addition, the MAI being represented at the General Assembly, it had the possibility to circulate this document at the meeting, which it did not deem necessary to do.
62. The Court therefore dismisses the claim that the rights of defense of the MAI were breached.

Third Plea – FIA's Argument that MAI Appeal Is 'Frivolous'

63. The FIA asks the Court to impose upon the MAI the maximum sanction foreseen under Article 16 of the ICA Rules of Procedure for introducing a frivolous appeal. It argues that the MAI's repeated actions are an attempt to disrupt the functioning of the FIA's governing bodies, with the sole objective of postponing

the decision to transfer the Sporting Power, on the basis of fallacious technicalities.

b) Findings of the Court

64. The Court considers that the appeal by MAI is by no means frivolous in nature, considering, firstly, the significant importance of the outcome of this case for the MAI; secondly, the MAI's right, as a Member of the FIA, to interpret the Statutes and to make use of its right to recourse before this Court; and lastly, the fact that the MAI's arguments before the Court are adequately motivated.

On those grounds,

THE FIA INTERNATIONAL COURT OF APPEAL

Hereby:

- 1. Dismisses the appeal;**
- 2. Confirms the decision of the General Assembly of 7 November 2008 to transfer the Sporting Power in India from the MAI to the FMSCI;**
- 3. Orders MAI to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 6 February 2009

The President