

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: March 12, 2012
Judgment Pronounced on: March 14, 2012

+ WP(C) 1345/2012

CHHATRAVAS CHANDRA ARYA VIDYA MANDIR ...Petitioner
Represented by: Mr.Sandeep Sethi, Senior Advocate
instructed by Mr.P.S.Bindra, Advocate

versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Represented by: Mr.S.D.Salwan, Addl.Standing
Counsel with Mr.Neeraj Choudhary,
Advocate for GNCT of Delhi.

WP(C) 1346/2012

CHANDRAVATI CHAUDHARY SMARAK TRUST ...Petitioner
Represented by: Mr.Maninder Singh, Senior Advocate
instructed by Mr.Viraj Datar,
Mr.Satvik Varma, Mr.Chetan Lokur
and Ms.Upasna Vats, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Mr.S.D.Salwan, Addl.Standing
Counsel with Mr.Neeraj Choudhary,
Advocate for GNCT of Delhi.

WP(C) 1347/2012

ARYA ANATHALAYA ...Petitioner
Represented by: Mr.Rajiv Nayar, Senior Advocate
instructed by Mr.Amit Mahajan,
Advocate.

versus
GOVT. OF NCT OF DELHI & ANR. Respondents
Represented by: Mr.S.D.Salwan, Addl.Standing
Counsel with Mr.Neeraj Choudhary,
Advocate for GNCT of Delhi.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Sub section (1) of Section 3 of The Commissions of Inquiry Act 1952, confers power on the appropriate Government to appoint a Commission of Inquiry '*into any definite matter of public interest.*'

2. The Act does not define the expression '*definite matter of public interest*', but the expression has been the subject matter of judicial interpretation on several occasion, and one finds that the expression has taken various shapes and dimensions. In the year 1954, Plantation Inquiry Commission was appointed to inquire into the economic conditions and problems of the tea, coffee and rubber industries. In the same year, Hindu Religious and Charitable Trusts came up for inquiry by Neeladari Rao Commission. In the year 1956, Vivian Bose Commission, Chagla Commission and Tendolkar Commission were appointed, to inquire into the affairs of M/s.Allen Berry & Company, Mundhra Group of Companies and Dalmia-Jain Group of Companies respectively. Argument, that conduct of individual persons or companies cannot be a matter of public importance and far less a definite matter of public importance was repelled by the Courts, holding that there was no warrant for the proposition that a

definite matter of public importance must necessarily mean only some matter involving the public benefit or advantage in the abstract. It was opined that quite conceivably, the conduct of an individual person or company or a group of individual persons may assume a proportion which may prejudicially affect public well being, as to make such conduct a definite matter of public importance.

3. Exploration of how various kinds of institutions live their 'lives' is a matter of public interest; the connection they make with people whom they serve, and for whom they exist, and their connection with social capital requires attention, especially when the institutions are engaged in activities which are a source of human development.

4. Social organizations, founded on charity, but receiving governmental help need a scrutiny on the subject: Whether these institutions achieve what they are supposed to achieve.

5. If events, unexpected, occur in social institutions, they affect the present and can direct or misdirect the future. Therefore, society's concern for its institutions has to be consistently on the move and if contemporary issues throw up problems, they require an examination of the problem, to find a solution thereto.

6. The running of orphanages and children homes would therefore be a matter of public importance, and if in the working of orphanages and/or children homes an evil is suspected to exist, it must be exposed, so that it may be rooted out. And if it does not exist, the public needs to be satisfied that there is no substance in the prevalent rumours and suspicions, by which the public has been disturbed.

7. The Commissions of Inquiry Act 1952, is a piece of legislation to achieve the social object aforesaid. The inquiry under the Act has no accuser and no accused. There is no '*lis*'. No judgment is therefore pronounced. The inquisitorial inquiry is a mission in finding facts, only to instruct the mind of the Government in taking remedial measures. The report is not effective *proprio vigore*. The aim of the task is to collect facts and materials on the subject referred and submit a report containing recommendations.

8. It is true that the proceedings, open to public, suffer from the draw back of there being no charge, no prosecutor and no defence; but public interest and public good, to bring into gaze the truth on matters of public importance, far outweigh these deficiencies. The facts found at the inquiry facilitate rectification, and prevents reoccurrence of such lapses, by eradicating the evil found, and helps in establishing a moral public order in the future.

9. Since reputations of persons and institutions are brought into public gaze, when their affairs are investigated by a Commission appointed under the Commissions of Inquiry Act 1952, it is but natural that law would enjoin upon those who exercise power under the Act to ensure that the vast power conferred, in public interest, is exercised under strict conditions and in accordance with the purpose of the Act. An action taken in good faith, but without complying with the conditions to be observed or the procedures to be followed, cannot stand judicial scrutiny in a democratic set-up, for the reason, reaching the right conclusion by fluke and proclaiming that I am right does not inspire confidence in a democratic set-up. People would be more assured if those who rule over their

destiny reach right conclusions, not by fluke, but by a process of reason, informed by the law.

10. We have at hand three captioned writ petitions filed by three writ petitioners, which are societies registered under the Societies Registration Act and are engaged in the public activity of looking after destitute children and for which the petitioners have established schools and residential complexes, laying a challenge to a notification dated February 25, 2012 which reads as under:-

“Whereas incidents of abuse of children and death in mysterious circumstances in an unregistered Children Home namely Arya Anathalaya, 1488, Pataudi House, Daryaganj, New Delhi-110002 has come to the notice of the Government;

And Whereas the preliminary inquiry got conducted by the Government revealed the vulnerable situation of children in the aforesaid Children Home;

Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act, 1954, read with Ministry of Home Affairs, Government of India notification No.SO 2524 dated the 20th August, 1966, the Government of National Capital Territory of Delhi, hereby constitutes a Commission of Inquiry consisting of Smt.Janak Juneja (Retd. IAS) and Smt.Geeta Sagar (Retd. IAS) under the Chairmanship of Smt. Janak Juneja (Retd. IAS) to conduct an inquiry into the following Homes/Institutions and to submit report within one month, namely:-

- (i) Arya Bal Griha, 1488, Pataudi House, Daryaganj, New Delhi-110002.
- (ii) Arya Kanya Sadan, 1488, Pataudi House, Daryaganj, New Delhi-110002.

(iii) Chhatravas Chandra Arya Vidya Mandir, Desraj Campus, C-Block, East of Kailash, New Delhi-110065.

(iv) Chandra Arya Griha, Chandravati Chaudhari Smarak Trust, Desraj Campus, C-Block, East of Kailash, New Delhi-110065.

(v) Arya Anathalaya, 1488 Pataudi House, Daryaganj, New Delhi-110002.

The terms of reference of the aforesaid Commission shall be as follows:-

(i) To go into the recent incidents of child abuse and related events in the Arya Anathalaya, Daryaganj, Delhi.

(ii) To study the Management structure of the above 5 institutions and the supervisory mechanisms in existence.

(iii) To find out lapses, if any, in the day-to-day functioning as well as overall management, superintendence, direction and control of all the above institutions including identifying persons responsible for such lapses.

(iv) To examine the adherence to various rules and regulations governing institutions for children in need of care and protection including the Juvenile Justice (Care and Protection of Children) Act, 2000 and Delhi Juvenile Justice Rules, 2009.

(v) To make recommendations to streamline the functioning of institutions meant for children in need of care and protection and also to prevent recurrence of such incidents in future."

11. The challenge to the notification is that, firstly there was no material before the Hon'ble Lt.Governor of Delhi, on basis whereof the decision was taken, to conduct an inquiry

and submit a report qua the three writ petitioners i.e. Chhatravas Chandra Arya Vidya Mandir, Chandravati Chaudhry Smarak Trust and Arya Anathalaya; secondly, the three institutions being registered under The Women's and Children's (Licensing) Act 1956 and an inquiry already ordered under the said Act pertaining to the unfortunate incidents which took place, victims whereof purportedly were being looked after by Arya Bal Griha and Arya Kanya Sadan, it was a colourable exercise of power to order the setting up of a Commission under the Commissions of Inquiry Act 1952 to enquire into the affairs of the three petitioners, and lastly, which submission is not to be found in the pleadings, but took birth with reference to the record produced by the respondents, that there is a complete non-application of mind by the Hon'ble Lt.Governor, when he signed the file in question and recorded on the file that he did so on telephonic conversation, without looking into the file or the record.

12. On December 24, 2011, the duty in-charge at PS Jama Masjid received telephonic information from LNJP Hospital that a girl named 'K' aged 11 years was admitted at the hospital by Ms.Subhadra, the caretaker of an orphanage operating from 1488, Pataudi House, Jama Masjid. The young unfortunate girl died. As per post-mortem report, there was evidence that the unfortunate young girl was subjected to vaginal and anal sexual abuse. After a few days, the incident was reported by the Press and various newspapers published reports of the same.

13. The Government, rightly, took cognizance of the incident and justifiably caused an informal inquiry to be made. Certain further incidents came to light, which were sufficient to

raise an eyebrow with respect to the trauma, physical, sexual and mental faced by the inmates of Arya Bal Griha and Arya Kanya Sadan.

14. Deviating a little, we note at this stage that petitioner's Chhatravas Chandra Arya Vidya Mandir, Chandravati Chaudhry Smarak Trust and Arya Anathalaya are societies registered under the Societies Registration Act. They are engaged in activities to help and serve destitute women and children. The premises wherefrom Chhatravas Chandra Arya Vidya Mandir and Chandravati Chaudhry Smarak Trust carry on their activities is at 'C' Block, East of Kailash, New Delhi. Arya Anathalaya owns the premises bearing Municipal No.1488 Pataudi House, Daryaganj, wherefrom, in two separate buildings, Arya Bal Griha and Arya Kanya Sadan, which are also societies registered under the Societies Registration Act, carry on the public charitable activity of housing male and female orphan children and destitute children.

15. The incidents which came to light, pertaining to the destitute children, concerned the destitute children residing at 1488 Pataudi House, Daryaganj, and were under the care of either Arya Bal Griha or Arya Kanya Sadan.

16. As is pleaded in WP(C) No.1347/2012, Arya Anathalaya has sponsored a school within the precincts of 1488 Pataudi House, Daryaganj where the destitute children, who are residents of either Arya Bal Griha or Arya Kanya Sadan study. In other words, the female destitute children are residents of Arya Kanya Sadan and the male destitute children are residents of Arya Bal Griha. The residential complexes in

which these children reside, though managed by Arya Bal Griha and Arya Kanya Sadan, are owned by Arya Anathalaya.

17. Pertaining to the incidents in question, even the Chairperson of the Child Welfare Committee caused an inquiry to be made and submitted a report to the Government of NCT Delhi, which brings out issues pertaining to the running of the two destitute children homes at 1488 Pataudi House, Daryaganj and we only note that the issues do require an exploration into the affairs of the institutes operating from 1488 Pataudi House, Daryaganj. The record produced before us would reveal that two reports dated January 30, 2012 and February 13, 2012 were submitted by the Child Welfare Committee, and addition thereto, two reports were furnished by the concerned officer of PS Jama Masjid to the Government of NCT Delhi which on February 13, 2012 took a decision to appoint an Administrator of Arya Anathalaya, Daryaganj.

18. Record reveals that on February 14, 2012 a newspaper report, published in the Times of India, in which the Government of NCT Delhi was shown in poor light with respect to organizations catering to destitute women and children not being subjected to a proper Governmental control. This was not to the liking of the Government, evidenced by noting on the note-sheet, at Page 5/N of the file, which note is dated February 14, 2012. With reference to the newspaper report, it stands recorded that the department needs to rebut the newspaper report.

19. The file is silent on what transpired after February 15, 2012 till February 21, 2012, because after the noting of even date, the next noting, at page 7/N of the file, is dated February 21, 2012 in which it is recorded as under:-

“Sub: Regarding incident of child abuse in the matter of Orphanage Home, Arya Anathalaya, Daryaganj, New Delhi.

It was reported in the newspaper dated: 24.12.2011 about an abuse and death of a minor girl aged 11 years of Orphanage Arya Anathalaya, Daryaganj. This matter was also reported by the SHO, Police Station, Jama Masjid, Delhi on 21.01.2012 in which it was informed that MLC No.204146/11 of deceased child mentioned that the patient brought to the casualty at 4.01 p.m. on 24.11.2011 from an Orphanage Arya Anathalya, Delhi. The Attendant accompanying the girl gave history of vomiting and loose motions. Dead body was preserved in the mortuary of MAMC and proceedings u/s 174 Cr.P.C. were conducted. The findings of the post-mortem suggested that the deceased was a victim of repeated vaginal and anal sexual abuse. Thereafter the Child Welfare Committee, Mayur Vihar (established by Dept. of WCD u/s 29 of Juvenile Justice (Care & Protection of Children) Act, 2000) had conducted repeated enquiries into the matter and have suggested some steps to be taken.

Although this Institution has been reportedly doing well in the past years but the recent incidents show a decline in the supervision and management. Hence, the complete fact finding enquiry may be held by persons having sound experience in Administration and Child Protection. Such an Enquiry Committee may enquire into all the Homes run by this NGO:-

1. Arya Bal Griha, 1488, Pataudi House, Daryaganj, New Delhi-02.
2. Arya Kanya Sadan, 1488, Pataudi House, Daryaganj, New Delhi-02.
3. Chhatravas Chandra Arya Vidhya Mandir, Desraj Campus, C Block, East of Kailash, New Delhi-65.
4. Chandra Ashraya Griha, Chandravati Chaudhari Smarak Trust, Desraj Campus, C Block East of Kailash, New Delhi-65.

5. Arya Orphanage, 1488, Pataudi House, Daryaganj, New Delhi-02.

The Enquiry Committee may also suggest remedial measures in this regard.”

20. The file would reveal, that corresponding to the note dated February 21, 2012, is a draft order (page 16) of the file which reads as under:-

“Government of NCT of Delhi is hereby constitutes a Committee consisting of Sh._____ and Ms._____ to conduct a fact finding inquiry into the following Homes/Institutions and submit their detailed report within 3 weeks:-

1. Arya Bal Griha, 1488, Pataudi House, Daryaganj, New Delhi-02.
2. Arya Kanya Sadan, 1488, Pataudi House, Daryaganj, New Delhi-02.
3. Chhatravas Chandra Arya Vidhya Mandir, Desraj Campus, C-Block, East of Kailash, New Delhi-65.
4. Chandra Ashraya Griha Chandravati Chaudhari Smarak Trust, Desraj Campus, C-Block, East of Kailash, New Delhi-65.
5. Arya Orphanage, 1488, Pataudi House, Daryaganj, New Delhi-02.

The terms of reference of the aforesaid Committee shall be as follows:-

1. To go into the recent incidents of child abuse and related events in the Arya Anathalaya, Daryaganj, Delhi.
2. To study the Management structure of the above 5 institutions and the supervisory mechanisms in existence.
3. To find out lapses, if any, in the day-to-day functioning as well as overall management, superintendence, direction and control of all the above institutions including identifying persons responsible for such lapses.
4. To examine adherence to various rules and regulations governing institutions for children in

- need of care and protection including the Juvenile Justice (Care & Protection of Children) Act, 2000 and Delhi Juvenile Justice Rules, 2009.
5. To make recommendations to streamline the functioning of institutions meant for children in need of care and protection and also to prevent recurrence of such incidents in future.”

21. Highlighting that the noting at page 7/N, dated February 21, 2012, envisages, and thus recommends an inquiry committee to be constituted and this is to be reflected in the draft order pertaining to the note, contents whereof have been noted in the preceding paragraph, at page 8/N of the note-sheet is a note signed by the Director, Department of Social Welfare, Government of NCT Delhi that the proposed committee should have a term of reference, being:-

- “(1) To go into the recent incidents of child abuse and related events in the Arya Anathalaya, Daryaganj, Delhi.
- (2) To study the Management structure of the above 5 institutions and the supervisory mechanisms in existence.
- (3) To find out lapses, if any, in the day-to-day functioning as well as overall management, superintendence, direction and control of all the above institutions including identifying persons responsible for such lapses.
- (4) To examine the adherence to various rules and regulations governing institutions for children in need of care and protection including the Juvenile Justice (Care and Protection of Children) Act, 2000 and Delhi Juvenile Justice Rules, 2009.
- (5) To make recommendations to streamline the functioning of institutions meant for children in

need of care and protection and also to prevent recurrence of such incidents in future.”

22. Surprisingly enough, below the note afore-noted, signed by the Director, Department of Social Welfare, Government of NCT Delhi, is a handwritten note recording as under:-

“Draft Order setting up of Commission under Commission of Inquiries Act 1952 is placed for approval.”

23. The same has been signed by an Officer whose designation is not recorded and is dated February 24, 2012. The next note is dated February 24, 2012 by the Assistant Legal Adviser, who, with reference to the draft order, has written that the administrative department may ensure that the factual position contained in the draft order is correct.

24. Now, the draft order, which we find in the file, is at page No.16 and it is the same typed draft, contents whereof have been noted by us in paragraph 20 above, but with cuttings and insertions by hand. The word ‘**Committee**’, in the draft order has been scored off and replaced with the word ‘**Commission**’ and the preamble paragraph, re-written as under:-

“Government of NCT of Delhi is hereby constitutes a Commission consisting of Smt.Geeta Sagar (Retd. IAS), Smt. Janak Juneja (Retd. IAS) and Shri Rajiv Kale, DWC under the chairmanship of Smt.Geeta Sagar to conduct an inquiry into the following homes/institutions and report within three weeks under the Commission of Inquiries Act 1962.”

25. It hardly needs to be emphasized, for the reason this would be evident to a reader of our present decision, that the notings on the file which were heading towards a direction of an inquiry committee being constituted, have all of a sudden, taken a turn, to a Commission of Inquiry being appointed under the Commission of Inquiries Act 1952, and there is no discernible reason till said stage as to why this change in direction was felt necessary. We hasten to add, that as would be noted by us herein after, the discernible reason emerges from the next note penned on the file on the same day i.e. February 24, 2012.

26. Beneath the note dated February 24, 2012 penned by the Assistant Legal Adviser, is a note signed, probably by the Chief Secretary or the Special Secretary, Government of NCT Delhi, to the effect that the Hon'ble Chief Minister has desired that the order constituting a Commission of Inquiry should be issued immediately to find the facts and set at rest the debate in the media.

27. Now, a Commission of Inquiry is not necessary, to set at rest the debate in the media.

28. Overlooking the afore-noted expression for the moment in the note, and proceeding on the assumption that an overzealous officer has used inappropriate expression while penning the note, what disturbs us is the next note penned, in his own hand by the Hon'ble Lt.Governor of Delhi on February 27, 2012. The Hon'ble Lt.Governor has written, in his own hand, using a black pen, as under:-

"I had telephonically approved the proposal after CS has spoken to me on 25/2/2012."

29. During arguments, we had reconfirmed from learned counsel for the respondent as to whether the Hon'ble Lt.Governor had correctly put the date as 27/2/2012 while penning, in his own hand, the note aforesaid; and the response was that the date is correct.

30. The date February 27, 2012 on which the Hon'ble Lt.Governor has penned his note aforesaid even otherwise appears to be the correct date, for the reason immediately thereafter, there is a note that the notification No.F.No.61(390)/DD(CPU)/DWCD/2012/5321 dated 25.02.2012 placed at page No.28 of the file be sent for publication. At page No.28 of the file exists a covering letter addressed to the Manager, Government of India Press requesting that the notification dated 25.02.2012 be published.

31. We have highlighted herein above the public interest in the exploration of how various institutes serve public interest and the connection they make with the people they serve and for whom they exist. We have highlighted, that if in the working of orphanages or children's home, an evil is suspected to exist, it must be exposed so that it is rooted out, and in the alternative, if there is no substance in the prevalent rumours and suspicion, by which the public is disturbed, the same needs to be dispelled. Simultaneously, we have highlighted the importance of inquisitorial inquiries, but have also highlighted the negative side thereof. We have highlighted, that if a power exists, it must be strictly exercised, for the purpose for which it exists, and the manner of exercise must inspire confidence with reference to the procedure followed.

32. The perusal of the file produced before us has left us sad. The actions taken appear nothing less than a kind of escapism and not confronting the reality; the actions appear to be taking refuge behind the law. We say so for the reason, the notings on the file which were showing that the Government was moving in a direction to appoint a Committee to investigate the affairs of the Arya Anathalaya, without any material on record, proceeded to embrace Chhatravas Chandra Arya Vidya Mandir and Chandra Ashraya Griha i.e. the institution being managed by Chandravati Chaudhary Smarak Trust. All of a sudden appearance of the name of these two organizations, in the note dated February 21, 2012 was responded to by Sh.Sushil Dutt Salwan, learned counsel for the respondents, as being the result of the personal knowledge of the officers of the Social Welfare Department of the Government of NCT Delhi that these two organizations were the sister concerns of Arya Bal Griha, Arya Kanya Sadan and Arya Anathalaya. Learned counsel conceded that there was no material in the file to so link the five organizations and indeed none was shown to us.

33. We revert back, once again, to the note dated February 24, 2012, written by either the Special Secretary or the Chief Secretary, Government of NCT Delhi; the designation not being clear for the reason the signatures are illegible and beneath the signatures the officer concerned has not noted his designation. But we can make out that the note is either by the Chief Secretary or the Special Secretary, because the said two designations are written as the authority to whom the file was marked after the Assistant Legal Adviser had penned his note of even date. The reference in the note that the Hon'ble

Chief Minister has desired that a Commission of Inquiry be issued immediately to find the truth and set at rest the debate in the media, leads us in the direction, that media reports damaging the image of the Government was more a matter of concern for the Government and not the working at the children's home operating from 1488 Pataudi House, Daryaganj.

34. Now, we are confronted with a situation that the notification is dated February 25, 2012 and the written approval thereto on the file by the Competent Authority i.e. the Hon'ble Lt.Governor of Delhi is dated February 27, 2012, in which the Hon'ble Lt.Governor records that he had telephonically approved the proposal after the CS had spoken to him on February 25, 2012.

35. The Hon'ble Lt.Governor has noted and recorded: 'I had telephonically approved the proposal after CS had spoken to me on 25.2.2012'. Therefore, the note in question records approval to a proposal and not the approval to a notification.

36. Learned counsel for the respondent was at pains to argue that law permits telephonic approvals and in respect of which plea, no authority was cited.

37. In a case of extreme emergency, where necessity commands, applying the Doctrine of Necessity, it could be urged that telephonic approval was the need of the hour and hence such procedure, of obtaining approval, was resorted to. But, even this would be in matters pertaining to administrative action. In the instant case, what was the extreme emergency which compelled the Hon'ble Lt.Governor to grant an approval over the telephone? None is forthcoming on record. The file, which commenced its movement on January 30, 2012, was

moving at a snail's pace, till it gained momentum on February 24, 2012, and there is nothing on record that such unexpected events overtook the Government that it was compelled to seek telephonic approval from the Lt.Governor, without the Hon'ble Lt.Governor having the benefit of perusing the material on basis whereof he was granting the approval.

38. That apart, as already highlighted by us herein above, the approval recorded, in writing by the Hon'ble Lt.Governor is to a proposal and not the notification.

39. The facts noted herein above, which emanate from the file produced before us, have left us sad and we speak no more.

40. With respect to the legal issues confronting us, the inevitable conclusion has to be: that there is a complete non-application of mind and as a matter of fact we find that the Appropriate Authority i.e. the Lt.Governor, Delhi has not even granted an approval to the notification in question. The notification is dated February 25, 2012. On February 27, 2012 the Lt.Governor has recorded that on February 25, 2012, after speaking to the Chief Secretary, he had approved the proposal, and this would mean that the verbal approval granted by the Lt.Governor was to agree in principle that a Commission of Inquiry be appointed. It was expected that thereafter, a proper note was penned on the file, making a reference to the proposed notification, seeking thereon the approval of the Hon'ble Lt.Governor; who was expected to study the file, apprise himself of the material available in the file and take the necessary decision. Had the Hon'ble Lt.Governor done so, perhaps he may have realized that the only material, wanting a Commission of Inquiry to be

constituted, pertained to Arya Bal Griha, Arya Kanya Sadan and Arya Anathalaya, for the reason the said three organizations are operating from the precincts of the same building complex and their activities are inter-linked, like an umbilical cord which binds the unborn child to the mother's womb. The Arya Bal Griha and Arya Kanya Sadan are the residential complexes where orphaned and destitute boys and girls reside and Arya Anathalaya is the body which owns the buildings and has established a school where these children learn their three R's. Had the Hon'ble Lt.Governor, cared to apprise himself of the material in the file, he may have asked a question as to what was the link between Chhatravas Chandra Arya Vidya Mandir, Chandravati Chaudhary Smarak Trust and the said three organizations. May be, there may have been material to satisfy the Hon'ble Lt.Governor or may be not. He would then have taken an informed decision.

41. What to talk of an informed decision, we find no decision in the file where the Hon'ble Lt.Governor has accorded approval to the notification in question. It must be remembered that every power, granted in public interest, is under the strict conditions under which the power has to be exercised, and even if there is good faith which motivates the exercise of power, if it is found that the strict conditions under which the power is granted are not complied with or followed, it would be a case of the act being only ultra vires and not vitiated with any malice or any other vice of bad faith.

42. In the instant case, a panicky Government, when confronted with the reality, has acted with escapism to take refuge behind the law and we highlight once again the concern of the Hon'ble Chief Minister of Delhi which oozes from the

note dated February 24, 2012 that setting up a Commission of Inquiry would set at rest the debate in the media.

43. Confronted with the situation aforesaid and cognizant of the situation which exists at 1488 Pataudi House, Daryaganj, in respect whereof we find sufficient material of public concern, necessitating an inquiry to be held with respect to the unfortunate incidents which took place within the precincts of the building therein, our dilemma is whether to strike down the notification in its whole or to strike it down qua only petitioner Chandravati Chaudhary Smarak Trust and Chhatravas Chandra Arya Vidya Mandir.

44. We take cue from the observations in the decision reported as 1942 (1) All.E.R. 142 Crofter Hand Woven Harris Tweed Co. v. Veitch: 'Sometimes Courts are confronted with cases where the purposes sought to be achieved are mixed, some relevant and some alien to the purpose. The Courts have, on occasions, resolved the difficulty by finding out the dominant purpose which impelled the action and where the power itself is condition by a purpose, have proceeded to invalidate the exercise of the power when the irrelevant purpose is proved to have entered the mind of the authority.' Meaning thereby, the Courts have selectively struck down the offending parts, while retaining the rest.

45. There is another principle of law. A Court would legitimately refuse to issue a writ of certiorari or mandamus where procedural irregularities are found, which can be undone by a corrective action as has been observed by Professor S.A.DeSmith in his book '*Judicial Review of Administrative Action*' 2nd Edition page 582.

46. We do not highlight the nature of the material available in the file pertaining to the affairs at 1488 Pataudi House, Daryaganj for the reason it may unnecessary cause prejudice, but would record that the material shows a sufficient public interest on a matter of public importance requiring an inquiry into the affairs of the three institutions which are carrying on activities from the said building, for the reason the report to be submitted, if finds that a problem exists of an institutional character, would certainly bring out remedial actions to be taken and would instruct the mind of the Government to do the needful.

47. We reject the argument that since an inquiry has been ordered by the Government under the Women's and Children's (Licensing) Act 1956 with respect to the unfortunate incidents which took place at Arya Anathalaya, a parallel inquiry on the same issue would be a colourable exercise of power, for the reason the scope of the two inquiries is distinct. We need not note the plethora of case law where Courts have upheld a Commission of Inquiry to be set up notwithstanding police or CBI investigation on the same issues, holding that the factual matrix may be the same, but the scope of the investigation/inquiries by the two bodies is different.

48. Accordingly, we allow WP(C) No.1345/2012 and WP(C) No.1346/2012 and in the notification dated February 25, 2012 quash the following:-

(iii) Chhatravas Chandra Arya Vidya Mandir, Desraj Campus, C-Block, East of Kailash, New Delhi-110065.

(iv) Chandra Arya Griha, Chandravati Chaudhary Samarak Trust, Desraj Campus, C-Block, East of Kailash, New Delhi-110065.

49. WP(C)No.1347/2012 is dismissed.
50. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 14, 2012
dk