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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Date of Decision: 12.04.2012

% W.P.(C) 3260/2010

SUPREME COURT BAR ASSOCIATION (REGD.) Petitioner
Through: Mr. Amit Anand Tiwari, Advocate.

versus

THE REGISTRAR OF SOCIETIES & ORS. Respondents
Through: Mr. Najmi Waziri, GNCTD with Mr.
Pachnanda, Advocate for R-1.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (Oral)

1. The petitioner, Supreme Court Bar Association (SCBA), a registered society under the Societies Registration Act has preferred this writ petition under Article 226 of the Constitution of India to assail the order dated 30.04.2010 passed by the Registrar of Societies (ROS). By this order, the ROS suspended the registration of the petitioner's society w.e.f. 19.01.2010 till further orders. He further directed that the petitioner society may apply, upto 31.07.2010, for restoration of its

registration, after a validly elected governing body takes over the management of its affairs, as per the SCBA Rules and the requirements of the Societies Registration Act (for short 'the Act'). He also directed that the election process should be held as per the list of voters existing prior to 19.01.2010. It has further been ordered that if the elections are held on the basis of any voter list/rules altered after 19.01.2010, such elections would not be considered valid for restoration of the registration. The Office Administrator i.e. the Head of the permanent staff of the petitioner society has been directed to take necessary steps and have the General Body meeting convened in terms of Section 4 of the Act and the Rules before the closure of the Supreme Court for summer vacations so as to afford adequate opportunity to all the members. The Office Administrator has been advised to take further action as per the guidance and directions of the General Body.

2. The background in which this order has been come to be passed may firstly be stated. The validly elected Executive Committee of the SCBA held its meeting on 19.01.2010. Apart from the President, the Vice President and the Honorary Secretary, various other office bearers and members were present, in all numbering 17. In this meeting, the Executive Committee passed a unanimous resolution dissolving itself with effect from the date of the said resolution. It was also resolved

that an Interim Board be constituted of three eminent senior advocates of the Supreme Court, namely, Sh. K.K.Venugopal, Shri P.P.Rao, Sh. P.S.Parekh, to take care of the administration in place of the Executive Committee. The Executive Committee further resolved that the elections of the petitioner society be held as early as possible, preferably in March, 2010. Following the said resolution passed by the Executive Committee, according to the petitioner, the said resolution was placed before the General Body and a ballot was held on 25.01.2010. In that process, 672 votes were issued. 606 votes were cast in favour of the resolution, whereas 52 votes were cast against the resolution. 7 votes were invalid, 7 ballots were not polled and, therefore, the number of available ballots was 665. According to the petitioner, the said resolution passed by the Executive Committee was overwhelmingly approved by the General Body.

3. The petitioner submits that Respondent no.2, Sh. A.P.Sharma, Advocate who claims himself to be the President of Forum for Integrity, Transparency & Accountability in Legal Profession made a few complaints to the ROS, inter alia, on 21.01.2010, claiming that the aforesaid resolution passed by the Executive Committee, as approved by the General Body, were illegal. On the basis of the said complaints made by respondent no.2, respondent no.1 issued a show cause notice dated 22.02.2010 requiring the petitioner society to show cause as to

why it should not be dissolved and the certificate issued to it be not withdrawn *“as there is no legal Governing Body”* in existence in the society. This notice was responded to on 09.03.2010 by the petitioner society.

4. On 11.03.2010, another show cause notice was issued by respondent no.1 to the petitioner society. Respondent no.1 in its show cause notice stated that on 12.02.2009 the General Body of the SCBA proposed and approved the vote of No Confidence against the Executive Committee meaning thereby, *“the Governing Body of the Society stands dissolved as such the society lost its legal entity and rendered itself liable for dissolution.”*

5. It was also stated that the Registrar had not received any reply to the show cause notice dated 22.02.2010. The Registrar also made reference to Section 4 of the Societies Registration Act that every registered society under the Act is obliged to submit the list of Governing Body annually. He also observed that without such compliance the society cannot exist under the provisions of the Act. Once again the petitioner was called upon to show cause as to why it should not be dissolved.

6. A reply was sent to the show cause notice by the petitioner on 23.03.2010. A final show cause notice was issued by respondent no.1 on 09.04.2010. The respondent no.1 called upon the petitioner to

show cause as to why “*the registration of the society should not be cancelled under the General Clause Act, 1897.*” The final show cause notice was also responded to by the petitioner on 27.04.2010, received by hand against acknowledgement on 29.04.2010. The same was also sent by registered post.

7. The first submission of learned counsel for the petitioner is that under the scheme of the Societies Registration Act, there is no power vested in the ROS to, on its own, deregister a registered society or to cancel its registration. It is submitted that reliance placed on Section 21 of the General Clauses Act by the ROC is wholly misplaced. In this regard, reliance is placed on the decision of the Supreme Court in ***Indian National Congress V. Institute of Social Welfare and Others***, (2002) 5 SCC 685. Learned counsel submits that under the scheme of the Act, the ROS registers the societies which are formed in accordance with the provisions of the said Act. The ROS, therefore, performs a quasi judicial function while registering a society, since it has the obligation to ensure compliance of the statutory requirements contained in Sections 2 and 3 of the Act. The dissolution of the society is governed by Section 13 of the Act which shows that the dissolution has to be voluntary inasmuch, as, 3/5th of the members of the society may determine to dissolve the same, whereupon it shall stand dissolved forthwith, or at the time when agreed upon. Learned counsel

for the petitioner submits that the response to the show cause notice was sent at the same address as indicated by respondent no.1 in his final show cause notice dated 09.04.2010 which was stated as:

“OFFICE OF THE COMMISSIONER OF INDUSTRIES,
GOVT. OF NCT OF DELHI
419, UDYOG SADAN, PATPARGANJ, DELHI.”

8. The case of the Petitioner is that despite the aforesaid replies, without taking them into account, the impugned order has been passed without authority or jurisdiction, and by ignoring the submissions of the Petitioner.

9. Respondent no.1 has filed its counter affidavit through Shri R.P. Kukreti, Deputy Commissioner of Industries (Firms and Societies). The stand taken by the respondent in the counter affidavit is that the said reply of the Petitioner to the show case notices were marked to the Office of the Commissioner of Industries, GNCT, and the same was received in the office of the ROS after the scheduled hearing of 30.04.2010. The ROS proceeded to pass the impugned order on 30.04.2010, as aforesaid.

10. Having heard learned counsel for the parties and perused the impugned order and the judgment relied upon by the petitioner, I am inclined to allow this writ petition and quash the impugned order dated 30.04.2010. Firstly, I may observe that there is absolutely no basis for respondent no.1 to conclude that merely because the Executive

Committee of the petitioner society stood dissolved, it tantamounted to the society itself losing its legal entity, or that the petitioner society rendered itself liable for dissolution. Such a conclusion is wholly unsupported by law and not borne out from any legal provision. A society is vested with a legal personality by Section 6 of the Act. Therefore, it continues in perpetuity unless it is dissolved in terms of Section 13 of the Act. There is no provision in the Act to suggest that a society whose Executive Committee/Governing body is dissolved, would itself cease to exist or would be liable to be dissolved. Every time the tenure of an existing Executive Committee of a society comes to an end, the Executive Committee is bound to be dissolved and to be substituted by a newly elected Executive Committee. Though normally, there may be little or no time lag between the dissolution of an outgoing Executive Committee and the formation of an Incoming Executive Committee, it is not uncommon for a variety of reasons, to find that there is a hiatus between the dissolution of an outgoing Executive Committee, and the Constitution of an incoming Executive Committee. Merely because that happens, is no ground to consider the society as becoming liable to face suspension or dissolution.

11. Moreover, in the present case, the resolution passed by the Executive Committee to dissolve itself also provided for constitution of an Interim Board. This Interim Board was to manage the affairs of the

Society till the conduct of the fresh elections, which were expected to be held in March 2010.

12. Section 4 of the Act casts a duty on the persons concerned to file an annual return before the ROS containing the names, addresses and occupation of the members of the Executive Committee. But the law does not provide for any contingency- much less for the suspension or dissolution of the society because of failure to comply with Section 4. The conclusion drawn by the ROS, that if a return is not filed in terms of Section 4 of the Act, the society is liable to be suspended or dissolved, or that its existence becomes illegal is, to say the least, outrageous and unfounded. The Act does not vest any control or supervisory or disciplinary power or jurisdiction in the ROS to take action against a society registered under the Act. The disputes in relation to a society registered under the Act would, necessarily, have to be taken before, and resolved by the Civil Court. This is also evident from Sections 13 and 14 of the Act, which provide for resolution of issues dealt with therein by the Court.

13. Learned counsel for the petitioner informs that the elections were, in fact, held on 07.05.2010 when the fresh Executive Committee was constituted. The petitioner has placed on record the circular dated 08.05.2010 in this regard.

14. Moreover, the General Body had overwhelmingly approved the resolution passed by the Executive Committee in its meeting held on 25.01.2010. The General Body of a society is supreme. Once the General Body had decided that the affairs of the petitioner society should be managed, in the interregnum, by an Interim Board, there was no cause for any grievance either with respondent no.2 or with respondent no.1.

15. I also find merit in the petitioner's submission that there is no power vested in respondent no.1 to dissolve the society by resort to Section 21 of the General Clauses Act. In ***Indian National Congress*** (supra), the Supreme Court examined the question whether the Election Commission of India has the power to deregister a political party once it has been registered. The Supreme Court held that the Election Commission while discharging its function of granting registration to a political party discharges quasi judicial function and held as follows:-

“37. It was next urged by the learned counsel for the appellants that the view taken by the High Court that by virtue of application of provisions of Section 21 of the General Clauses Act, 1897 the Commission has power to de-register a political party if it is found having violated the undertaking given before the Election Commission, is erroneous. According to him, once it is held that the Commission while exercising its powers under Section 29A of the Act acts quasi-judicially and an order registering a political party is a quasi-judicial order, the

provision of Section 21 of the General Clauses Act has no application. We find merit in the submission.

38. We have already extensively examined the matter and found that Parliament consciously had not chosen to confer any power on the Election Commission to de-register a political party on the premise it has contravened the provisions of Sub-section (5) of Section 29A. The question which arises for our consideration is whether in the absence of any express or implied power, the Election Commission is empowered to cancel the registration of a political party on the strength of the provisions of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:

"21. Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws. Where by any central Act or regulation, a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

39. On perusal of Section 21 of the General Clauses Act, we find that the expression 'order' employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the functions exercisable by the Commission under Section 29A is essentially a quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of de-registration/cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially."

16. As to what constitutes exercise of quasi judicial power was also considered by the Supreme Court in the following paragraphs:-

“24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid decisions are these:

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no *lis* or two contending parties and the contest is between the authority and subject and (d) the statutory authority is required to act judicially under statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a *lis* or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a *lis* before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.

26. xx xx xx xx xx xx xx

27. xx xx xx xx xx xx xx

28. Learned counsel for the respondent then contended that a quasi-judicial function is an administrative function which the law requires to be exercised in some respect as if it were judicial and in that view of the matter, the function discharged by the Election Commission under Section 29A of the Act is totally administrative in nature. Learned counsel in support of his argument relied upon the following passage from *Wade and Forsyth's Administrative Law*:

"A quasi-judicial function is an administrative function which the law requires to be exercised in some respect as if it were judicial. A typical example is a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a

public inquiry. The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objections and not (for example) to take fresh evidence without disclosing it to them. A quasi-judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure."

29. We do not find any merit in the submission. At the outset, it must be borne in mind that another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions. The afore-quoted passage from *Administrative Law* by Wade & Forsyth is wholly inapplicable to the present case. Rather, it goes against the argument of learned counsel for the respondent. The afore-quoted passage shows that where an authority whose decision is dictated by policy and expediency exercise administratively although it may be exercising functions in some respects as if it were judicial, which is not the case here."

17. In the present case, it would be seen that the ROS is obliged to ensure compliance of Sections 2, 3 and 20 of the Act while granting registration to a society. The ROS, therefore, exercises quasi judicial function while granting registration to a society. The said 'order' is neither an executive order nor a legislative order. By resort to Section 21 of the General Clauses Act, he cannot undo that registration.

18. There is yet another aspect which needs to be considered. Once the Act provides a procedure for dissolution of the society registered under the Act, it is only that procedure which can be invoked, and no

other procedure can be adopted. If a thing is prescribed to be done in a particular way, it can be done in only that way, and by no other way. (See **Patna Improvement Trust V. Smt. Lakshmi Devi**, 812 SCR [1963] Supp. and **State of Bihar & Anr. V. J.A.C. Saldanha & Ors**, (1980) 1 SCC 554). Therefore, the ROS cannot invent other methods or reasons to suspend or dissolve a society registered under the Act.

19. The impugned order is also liable to be set aside as it breaches the principles of natural justice. Admittedly, the replies given by the petitioner have not been taken into consideration, even though they had been duly submitted in the office of respondent no.1. If respondent no.1 did not receive the said replies in his hand, as claimed by him, before passing the impugned order, the petitioner cannot be made to suffer, as the said replies had been submitted well before the passing of the impugned order and at the correct address. The petitioner had specifically placed reliance on the aforesaid decision in **Indian National Congress**(supra) in their replies, which has been ignored by respondent no.1.

20. A perusal of the impugned order shows that the ROS has also gone into disputes with regard to registration of members and the list of voters of the petitioner society. This aspect was also clearly beyond his jurisdiction. A dispute with regard to the membership, and the right of a particular member to vote at the elections is a dispute which

arises between a society and its members. Such a dispute cannot be resolved by the Registrar. This is clearly beyond his jurisdiction.

21. I find that the ROS has, in this particular case, acted with unexplained motivation and personal interest. His conduct is patently illegal and unprecedented.

22. I, therefore, allow this petition with costs of Rs.20,000/-, to be recovered specifically from the concerned ROS who had passed the impugned order.

APRIL 12, 2012

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VIPIN SANGHI, J