

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3384 of 1997

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Sulabh International Social Services Organization, through its Chairman, Sri Ram Chandra Jha, son of late Awadh Lal Jha, Office at New Pataliputra Colony, P.S. Pataliputra Colony, Town and District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Inspector General of Registration, Government of Bihar, New Secretariat Building, Patna.
2. Inspector General of Registration, Government of Bihar, New Secretariat Building, Vikas Bhawan, Patna.
3. Assistant Inspector General of Registration, Government of Bihar, New Secretariat Building, Vikash Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M. L. Verma, Sr. Advocate.

Mr. Syed Alamdar Hussain,

Mr. Shashi Bhushan Kumar,

Mr. Sanjeet Kumar & Mr. Sanjeet Kumar, Advocates.

For the State : Mr. S. Arshad Alam, SC-3

Mr. Fakhruddin Ali Ahmad, AC to SC-3.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 05.10.2015

Heard the parties.

2. In the present writ petition, petitioner is challenging the order dated 29.9.1996 issued under the signature of the Inspector General of Registration, Patna (respondent no.2) as well as his order vide memo no.1991 dated 24.6.1996, contained in Memo No.1991 by which amendment in the bye-laws of the Society for admission of Associate Members which was allowed by the order dated 8.4.1991 has been deleted with retrospective effect.

3. The petitioner is a Social Service Organization engaged in social service on voluntary basis registered under the Societies Registration Act, 1860 (hereinafter referred to as “the



Act"). At the earliest the Sulabh International Social Service Organization (petitioner) was registered under the Act as Sulabh Swachcha Sauchalaya Shikshan Sansthan in the year 1970-71, later on it was renamed as Sulabh Sauchalaya Sansthan in the year 1972, later on Sulabh International in the year 1981 and after renaming it started different social works in various field, later on renamed as Sulabh International Social Services Organization.

4. In the year 1989, the organization in its Special General Body Meeting resolved to make necessary alteration in the bye-laws and vide its resolution dated 5.3.1989 made an amendment in the bye-laws thereby made provision for Associate Members providing the requisite qualification of Associate Member, if any person who has completed 18 years of age may offer his/her full-time or part-time voluntary services for the social work of the Sulabh International on a form prescribed by the executive Committee on payment of admission fee of Rs.10/- and also provided annual subscription for each member for Rs.10/- only. It further provides that the enrolled Associate Member of Sulabh International can be utilized in any capacity any where in the interest of organization. Any associate member devoting substantial time for the work of the Sulabh International, the Sulabh International may pay honorarium to such member which may be decided by the Executive Committee from time to time.



The payment of honorarium shall not be binding on Sulabh International even if any associate member of the Sulabh International devotes substantial time for the fulfillment of the object of the Society. The cadre of associate members shall be distinct and separate from that of the members of Sulabh International. Associate Member, admitted to the Society shall also be as “Sulabh Volunteer” who will continue to be an Associate Member till he/she expresses his/her desire to withdraw his/her social voluntary service or the committee or its authorized representative refuses to acknowledge her/her social voluntary service any further without prior notice/intimation. The decision of Executive Committee shall be final in respect of termination of social service and the same shall not be agitated in any court of law. The associate member shall not have the right to cast vote at the annual General Meeting/Extra ordinary meeting and likewise, the associate member shall not enjoy the right and privileges like a member of the Society, Sulabh International, within the meaning of Section 15 of the Act. The resolution was accepted by the General Body and the same was sent to the Registrar General, Bihar, Patna for its incorporation.

5. The Inspector General of Registration after proper scrutiny, enquiry and verification issued an order vide letter/order dated 11.4.1991, allowed the amendment of the bye-laws



(Annexure-4 to the writ petition) where it has been provided that in view of the resolution of the General Body meeting dated 5.3.1989 and 5.4.1989 the bye-laws was amended and proposed amendment was incorporated in the bye-laws. Subsequently in the General Body meeting dated 4.10.1994 the resolution was passed for changing its name from Sulabh International to Sulabh International Social Services Organization and the same was communicated to the Inspector General of Registration for its approval (Annexure-5 to the writ petition). On receipt of the resolution the Assistant Inspector General of Registration vide letter no.1621 dated 27.4.1996 (Annexure-6) requested for photocopy of the list of members so that proper action could be taken under Section 12 (A) of the Act. In pursuance of the said letter the petitioner sent a reply vide letter dated 27.5.1996 stated that incorporation of associate members are not illegal, but sought short time for submission of opinion of legal expert in the matter. Awaiting to file legal opinion the Inspector General of Registration vide letter no. 2656 dated 28.9.1996 (Annexure-1) rejected the resolution for amendment of bye-laws which was addressed to the Sulabh International General of Society Registration vide letter no. S.I.S. O/B/217-126-27 dated 24.4.1996 attaching a reasoned order vide letter no. 1991 dated 24.6.1996 (Annexure-2) thereby the incorporation of associate member in the bye laws has been treated

to have been deleted from the date of its incorporation.

6. Learned counsel for the petitioner submits that the Inspector General of Registration does not have power and authority under the Act and also under Bihar Societies Registration Rules to delete the provision of bye-laws without any proposal made by the petitioner's Society itself. In absence of any proposal for deletion and amendment of certain clauses of bye-laws the Inspector General of Registration can not exercise any power for obliteration of certain provision of bye-laws. The Inspector General of Registration while passing the order has not mentioned any section or rule empowering him to exercise of power to obliterate the provision of bye-laws in as much as order does not mention the anomaly in making amendment to the bye laws and as such the action of the Registrar General to obliterate the provision of bye-laws retrospectively is not sustainable in law. It has further been submitted, when in the year 1991, in pursuance of the resolution, the bye-laws of the petitioner has been amended thereby incorporated the provision of Associate Member, without there being provision and resolution for annulment, the order is also not sustainable in law, as impugned order deleting the provision for associate member with retrospective effect, is nothing but reviewing the earlier order in absence of any provision empowering the Inspector General of Registration to review its



own order, as power of review is the creation of statute, in absence of the same, no authority has power to review its earlier order and as such the same is not sustainable in law. It has further been stated that there is no bar to make provision for associate member as that provision is prevalent all around the country under the Society Registration Act or any allied Acts, has kept the provision of Associate Member curtailing certain right to the Associate Member, even denying the right of voting never a point of grievance, made the ground to challenge and as such the ground that has been shown in the impugned order that the Associate Member has not been provided the power to vote in the meeting is not sustainable.

7. Learned counsel for the petitioner further submitted that Section 15 of the Act deals with member of Society provides that a member of a Society shall a person who having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations. It does not deals with right of a person who has been admitted under Rule and bye-laws of Society will have right to cast his vote in the meeting but defines disqualified member will not be entitled to cast vote, and disqualified member will be those whose subscription at the time shall have been in arrear for period



excluding three months, except disqualified member, the right to cast vote by member is always subject to the rule and regulation framed by the Society. He has further submitted that the model rule and regulation framed by the State classify the membership in clause 2, provides that a person who attained 21 years of age and have subscribed the aim and object of the Society will be entitled to be its ordinary Members and Associate member, clause 3A provides, subscription amount for a person would be admitted, as an ordinary Member or Associate Member, ordinary member will have to pay Rs.10 as subscription per year whereas Associate Member will have to pay Rs. 5 per years. On the strength of the model rule and regulation it has been submitted that the State of Bihar itself recognizes the ordinary member as well as associate member. A person having been inducted as a Associate Member cannot claim ignorance of its bye-laws. He can not claim that he does have a right apart from right conferred under the bye-laws. It has further been submitted that merely Associate Member does not have a right to cast vote and cannot be a ground to declare the provisions incorporated for associate member to be de hors to the Act and Rule framed thereunder.

8. Learned counsel for the petitioner submitted, similar issue came up for consideration before Hon'ble Supreme Court in the case of Supreme Court **Bar Association and others V. B.D.**



Kaushik, reported in (2011)13 SCC 774 where also the issue was raised about the right of Associate Member to cast vote. Regulation of Supreme Court Bar Council has inserted the provisions of Associate Member but having no right to cast the vote. The claim was made by the associate members that they are paying also subscription merely because they are associate member cannot be deprived to participate in the election of their representative. In that context, as has been claimed by the petitioner, that Hon'ble Supreme Court has taken a view that right to vote is not absolute right. The right to vote in election is neither fundamental right nor a common law right but it is purely a statutory right govern by the Act, Rules and Regulation. He has placed reliance on the judgment of this Court in the case of **Naward Vs. State of Bihar, reported in 2010 Law Suit (Pat) 381**. There also question arose about right to Associate Member in society and the court has said that legislature has recognized Associate Member in the Society. On that strength learned counsel for the petitioner submits that it is not unknown nor it is the first time the clause for Associate Member in bye-laws has inserted, placed reliance on paragraph nos. 8 and 9 of the aforesaid judgment.

9. He has further submitted the Inspector General of Registration has exercised the power review which has not been



conferred under the Act and the ground mentioned for deletion by the impugned order is de hors to the Act, rule and regulation of the Society. He has exercised the power beyond the jurisdiction not vested to him. He has further submitted that as already the provision for associate member was incorporated in 1991, after lapse of five years deleting the said provision amounts to review of its earlier order and submitted that power of review is not inherent but emanating from provision of the statute if the statute does not provide the power of review specifically it can not be understood, has power to review its earlier order. In this connection he has placed reliance on the judgment in the case of **Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others, reported in (2010)9 SCC 437**, paragraph nos. 12 and 13 where it has been held that the power of review is not inherent power rather must be conferred either expressly/specifically or by necessary implication and in the absence of the same the authority does not have a power to review its own power. He has also placed reliance in the case of **Patel Narshi Thakershi and others Vs. Shri Pradyumansinghji Arjunsinghji, reported in AIR 1070 SC 1272, paragraph 4=(1971) 3 SCC 844** on that strength it has been submitted that even if no time has been prescribed for exercise of power does not mean that the authority has power to exercise the power of review as and when he thinks fit but would be presumed,

it should be exercised the power within the reasonable time.

10. In the present case the exercise has been made after such a long period is sufficient to quash the impugned order. In support of his submission he has placed reliance in the case of **State of Punjab and others Vs. Bhatinda District Cooperative Milk Producers Union Ltd., reported in (2007) 11 SCC 363**, paragraph nos. 17 and 18, **Santosh Kumar Shivgonda Patil and others Vs. Balasaheb Tukaram Shevale and others, reported in (2009) 9 SCC 352**, paragraph nos. 10 to 12, emphasis has been given to paragraph 11, on the aforesaid principle learned counsel for the petitioners submits that this Court should interfere in the action of the respondent and quash the impugned order.

11. Learned counsel for the petitioner submits that any order passed by an authority without any source of power provided under the Act is an order in nullity. In the present case Inspector General of Registration without its authority has passed the order thereby deleted the entire provisions of Associate Member. Once the provision for Associate Member has been incorporated later on, without having any power to review, can not delete the provisions suo-moto which is part of the bye-laws. The General Body and Special General Body passed resolutions dated 2.9.1994 and 4.10.1994 respectively for changing the name of the Society and the same was communicated vide letter dated 3.2.1995 about

changing its name and the same was incorporated by his predecessor. At the end while summing up the argument, it has been submitted, the order is not sustainable on account of having no power of review. Last but not the lest the Inspector General does not have any source of power in the statute and the whole action is nullity.

12. Learned counsel for the respondent-State justified the action of the Inspector General and in support of his submission he has relied on paragraph nos. 3, 4, 5, 8, 10, 11 and 12 of the counter affidavit. Further he has submitted that submission of the petitioner that the order passed by the Inspector General of Registration is without any source is completely misconceived, misleading and misplaced argument without examining Rules 12 and 13 of the Bihar Societies Rule, 1965 specifically provides the power to Inspector General of Registration to interfere with the bye-laws if the same is against the aims and objects of Society. The only duty has been cast upon Inspector General for giving hearing before taking any action resulted into passing order which is apparently clear from Rule 13 of Bihar Societies Rule, 1965 and has submitted that in the present case the entire work force including the sweeper have been made Associate Members of the Society with an intention to deprive them of their right to raise grievance before the appropriate forum provided under Common Law

including Labour law. The insertion of Associate Member does not serve the aims and objects of the Society rather it is subversive to the same and as such Inspector General of Registration has rightly exercised the power and passed the impugned order.

13. Before examining the case on merit some material facts emerging from the counter affidavit is to be looked into including examine the provisions of Societies Registration Act and model by-laws.

14. The preamble of the Act provides that whereas it is in the expedient that provision should be made for improving the legal condition of Societies established for the promotion of literature, science or fine arts or for the diffusion and useful knowledge (the diffusion of political education) or for the charitable purposes society can be incorporated. Section 1 of the Act provides that the Societies formed by memorandum of association and registration. Section 2 of the Act enumerated the items should be mentioned in the memorandum of association of Society have been provided. Section 3 of the Act deals with the registration and fees. Section 4 of the Act provides holding of general body meeting annually, if the Rule or Bye-Laws does not have such provision, a list of names of officials of managing body to be filed in the month of January. Section 4A of the Act provides changes in managing body and copy of Rule of Society corrected



up to date to be sent to Inspector General. Section 5 of the Act provides that the property movable and immovable belonging to the Society registered under this Act if not vested in trustees, shall be deemed to be vested for the time being in the governing body of such Society. Section 6 of the Act provides that the Society can lodge a suit against third party and vice-versa the third party can also file a suit against the Registrar Society. Section 12 of the Act provides the power of the governing body of Society is to alter, extend or abridge such purpose or other purposes or to amalgamate such Society either wholly or partially with any other Society the governing body would submit the written or printed proposition to the members of Society, may call special meeting for consideration. Section 12 A of the Act is relevant provision for this case which provides change of name of Society can effected by any member but not less than 3/5 of the members of the Societies but subject to the provisions of Section 12B of the Act. Section 12B of the Act provides notice in writing of every change of name signed by the Secretary and by seven members of the society shall be sent to the Registrar. If the proposed name is identical or nearby resembling with any other existing registered society likely to deceive the public or the members of either society, the Registrar would refuse to register the change of name of Society. Section 13 of the Act deals with the provision for dissolution of societies and

adjustment of their affairs. Section 14 of the Act deals with a dissolution of society. Section 14A of the Act provides the manner of disposal of property of a dissolved society. Section 15 of the Act is also relevant for this case which runs as follows:

“15. Member defined.- For the purposes of this act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations;

Disqualified members.-But in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.”

15. Section 16 of the Act deals with governing body. The governing body of the society shall be the governors, council director, committee, trustee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

16. Section 24 of the Act deals with power of the State Government to make rules with respect to the society. Rule-12 Bihar Societies Registration Rules, 1965 gives power to the Inspector-General of Registration to make inquiries or investigations and take proper steps. Rule 13 provides in case the Inspector General of Registration arrives to a finding of prima

facie case against a society for its cancellation, he would issue a show-cause notice in a registered cover asking the society to show cause within thirty days, not being satisfied with the explanation, the power has been given for its cancellation. For better appreciation it will be relevant to quote Rule 12 and 13 of the Rules, 1965:

“ 12. The Inspector-General of Registration may in his discretion institute such inquiries or investigations in respect of any matter as may in his opinion be necessary for the proper working of the society and administration of the Act specially when there is a suspicion that the society is engaging itself in activities which are subversive to the objects of the society or the office of any registered society has ceased to be in the State of Bihar. Any original documents or other papers called for from the registered society shall be produced before the Inspector General of Registration or any officer authorized by the Inspector-General of Registration to enable him to examine the affairs of the society or to enquire into any complaint received against any society.

13. In case the Inspector-General of Registration is satisfied that there is a prima facie case against a society for its cancellation, he shall issue a show-cause notice in a registered cover asking the society to show cause within thirty days from the date of issue of the notice why the registration of the society should not be cancelled. After consideration of the show-cause and on being satisfied that the charge is proved the Inspector-General of Registration shall, by order in writing, cancel the registration of the society under Section 23.”

17. Model by-laws attached to the Rule clause 2 deals with the membership which provides that all persons who have attained



21 years of age and have subscribed to the aims and objects of the Society subject to the approval of the Council of Promoters will be entitled to be its Ordinary Members and Associate Members on payment of their subscriptions as provided. The decisions of the Council of Promoters in this regard shall be final and binding. Clause 3 A provides the membership and fees for ordinary member Rs.10 per year and Associate Members Rs.5/- per year.

18. Before dealing with the issue some relevant facts attached to the Society require consideration for appropriate decision. The present Society in the first time registered in the year 1971 in the name of Sulabh Swachcha Sauchalaya Shikshan Sansthan and its bye-laws providing for hiring workers on wages and the society was filing the returns of employees. In the year 1980 the name of the Society was changed to Sulabh International. In its bye-laws the Secretary was authorized to appoint any one either on salary or honorarium. Appointment above Rs.450/- per month was subject to approval of the Chairman, later on the Sulabh International further changed its memorandum and bye-laws, the worker employee in the original bye-laws was substituted by social worker without giving any definition in the bye-laws. In 1991 the petitioner by amendment of bye-laws created a class of member is called Associated Members where Associate Member has not been defined under the bye-laws but provided who has completed 18



years of age may offer his/her full time or part time voluntary when the Labour Department asked the present Society to follow the Labour Legislations then manipulation in the bye-laws started. For achieving the goal calculated action by way of amendment was effected. All the members of the working class was shifted and declared Associate Member and Society submitted form H under the signature of Chairman showing the number of employees in the Society as Zero, as entire labour force has been brought under a special class Associate Member fixing the service condition making provision for taking any type of work from them, postulates, the Associate Member may resign or termination of Associate Member by the Executing Committee of the Society and thereby created different heterogeneous classes having no compatibility with other members defined in the bye-laws. On minute scrutiny of amended provisions bye-laws gives clear indication in the garb of creating Associate Member, by novel method entire work force has been made Associate Member without providing any social security of service withdrawing all protection provided under labour legislation. This Court on the principle of tearing veil, finds that under cover of Associate Member entire employees has been made Associate Member stripped off their entire right of their social security. General Member of Society never exceeded 15 but entire labour force are

Associate Members and their numbers are 28, 189.

19. In will be appropriate to address the legal issues raised by the petitioner as the first point that has been raised “there is no power and authority under the Societies Registration Act to delete/ incorporate the provisions of bye-laws and so much so the impugned order does not show under what section or rules the Inspector General of Registration has exercised the power thereby deleting the provisions of bye-laws.

20. Learned counsel for the petitioner has submitted that Section 15 of the Act postulates members whereas the model by-laws have ingrained two classes’ member and associate member. So model by-laws itself provides that in a Society there can be general member and associate member when the Societies Registration Act does not prohibits such classes of members merely because Associate Members have not been granted the right to vote will not make the provision of associate member in the bye-laws to be illegal. As in different Club, Association and society envisage different classes of members including the Associate Member. The Society has right to decide which class of member will have what right and which class of member will enjoy what benefit of Club, society or association and which class member will have a right to vote in the matter of election of its office bearers that will not make any provision to be illegal. Heavy



reliance has been placed on the judgment in the case of (1) **SC Bar Association and others v. B.D. Kaushik, reported in (2011)13 SCC 774**. Before considering the applicability of the judgment it will be required to consider and understand, contour of the judgment, it will be necessary to look into the dispute and foundational facts and its resolution. The fact of this case shows that the Supreme Court Bar Association is registered Society under the Societies Registration Act. Rule 4 provides four classes of members, (i) resident members, (ii) non-resident members, (iii) associate member and (iv) non-active members. In the General Body meeting by majority members a resolution was passed amended Rule 18, thereby inserted the provision that the member, who exercise his right to vote in any High Court or District Court, advocate/Bar Association shall not be eligible to contest for any post of Supreme Court Bar Association or to cast his vote in the election. It further provided that every member before casting his vote shall give declaration that he is not voting in any other election of Advocate Association of High Court, District Bar Association or any Advocate Association of Tribunal. It further provides if any member is found to have violated entail 3 years automatic suspension of membership. The Bar Association inserted the system on the principle of “one-bar-one-vote”. This decision was taken on the background that certain lawyers who were



basically working in the High Court and Judicial Commissioner including working at Kanpur Court or at Gurgaon never practicing in the Supreme Court were enrolled as a member of Supreme Court Bar Association and they surface on the day of casting vote to ensure success of particular candidate. The resolution led to dispute by filing a civil suit, injunction was granted and against that directly Special Leave Petition was filed. Hon'ble Supreme Court dealt with the situation as to whether the resolution taken by the Executive Committee later on General Body Meeting inserting the provision of One-man-one-vote is consonance with the object of Association and consonance with law. No person can be enrolled as an Advocate on the roll of more than one State Bar Counsel but would enroll himself in whose jurisdiction he ordinarily practices giving an example a citizen is entitled to cast his vote at an election of Legislative Assembly or an election of MP only on the constituency his name is appearing. The Supreme Court Bar Association has its avowed object to promote and protect welfare of Advocates, generally practicing in the Supreme Court. The Supreme Court has provided several facilities to Advocates who are practicing in the Supreme Court several such established an adequate library, chamber, consultation rooms for the use of member and other facilities. It was pointed out before Hon'ble Supreme Court that they were enrolled as a member only



for the purposes of casting their votes in that connection the Court was of the view that an Advocate will not have a jurisdiction to cast his vote at two places. In that connection the Court has said that right to vote or to contest the election is neither a fundamental right nor a common right but it is purely a statutory right governed by statute/rule/regulations. Right to contest the election and to vote can always be restricted or abridged, if statute, rules and regulations prescribe so. In paragraph 35 the Court has said that right to vote can hardly be regarded as 'altering or amending the aims and objects' of Supreme Court Bar Association.

21. But the case at hand, facts of this case is quite different to the aforesaid case as in that case all Advocates constitute one class for reasons stated hereinabove were classified in four categories on account of certain reasons but were given all benefits except the right to vote in order to prevent outsiders advocate practicing in different Court surfaces on the day of casting vote. But the facts of present case is quite different, is not applicable to the facts of this case. So this Court is of the view that the reliance of judgment placed by learned counsel for the petitioner is of no relevance.

22. Learned counsel for the petitioner has further relied on the judgment in the case of **State of U.P. and another V. C.O.D. Chheoki Employees Co-operative Society Ltd. and others,**



reported in (1997) 3 SCC 681 for deciding its applicability. Factual background is to be looked into. As it appears that U.P. legislation has made an amendment in the Co-operative Society Act providing reservation to the weaker section of the Society which was tested in the High Court and the same was declared to be ultra vires that came up for consideration before Hon'ble Supreme Court, as in the Co-operative Society Act there was no provision for the reservation in the Managing Committee for the weaker section of the society. The question was raised whether the legislature has power to enact the law providing for nomination of the members of the Scheduled Caste, Scheduled Tribes and women in the matter of election to the Committee of Management to the Co-operative Societies. The Hon'ble Supreme Court placed reliance on the preamble of the Constitution which provides for socio-economic and political justice to all citizens and dignity of person with equality of opportunity. The resistance was made that there can not be any reservation for the scheduled caste and scheduled tribes in an affair of the society. The Court has taken a view that to effectuate preamble of the constitution such amendment has been made which the court approved. In that context in paragraph 16 the Hon'ble Supreme Court has said that no citizen has a fundamental right under Article 19(1)© to become a member of a Co-operative Society. His right is governed by the



provisions of the statute. So the right to become or to continue to be a member of the society is a statutory right on fulfillment of the qualifications prescribed and on admission, he becomes a member. He being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right quo the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and the bye-laws and is subject to its operation. The stream cannot rise higher than the source. This observation was given in different contest and different situation not in the identical fact or similar situation. It is well known principle of law that the binding precedent will be what it is decided not every observation made in course of the judgment by the Court.

23. Learned counsel for the petitioner has relied on the judgment of this Court in the case of **NAWARD Vs. State of Bihar, reported in 2010 Law Suits Patna 381**. In the present case Bank became the associate member for Jagat Sahakari Grih Nirman Samiti Limited and the Society by resolution decided to transfer some property to the petitioner in which a sale deed was executed presented before the District Sub-Registrar, Patna for its



registration. An objection was raised having not sufficient stamp duty and the Court fee stamps affixed on the deed. On that account the document was refused to be accepted and the same was returned. Thereafter it was presented with a prayer to grant relaxation in terms of Section 9A of the Indian Stamp Act which was rejected on the ground that the Bank is associate member not a member. If the bye-laws of the Society does not make any distinction between a member and associate member and puts them at par in respect of all rights and privileges of a member of the society, no third party can treat them as distinct for the purposes of entitlement of any right or privilege as a member of the society. In that context the Court has taken a view that the legislature itself has put an associate member at par with the member of the society for all purposes making distinction by third party between the Associate Member and General Member suffers from illegality and in that context the Court has held that District Sub Registrar was not justified in raising any objection in registration of the sale deed. This judgment is not applicable to the present case as view has been taken in a different facts and circumstances. It is well known principle of law that ratio of any decision would be understood in the background of the facts of the case. The case is an authority for what is actually decided not of the logically followed from it, relevant to rely on the following judgments (1)

Quinn V. Leathem, 1901 AC 495 (2) Bank of India and others V. K. Mohandas and others, 2009 (3) LLJ 609(SC) (3) State of Orissa V. Sudhansu Sekhar Mishra, AIR 1968 SC 647 (4) Ambica Quarry Works Etc. V. State of Gujarat and others, AIR 1987 SC 1073 (5) Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. & others v., AIR 2003 SC 511 (6) Bharat Petroleum Corpn. Ltd. and another V. N.R. Vairamani and another (2004) 8 SCC 579 (7) Sanjay Kumar V. The State of Bihar through the Principal Secretary, Urban Development & Housing Department, Government of Bihar, Patna and others, 2010(2) PLJR 870 (8) AIR INDIA Cabin Cren Association & others V. Union of India and others, 2012 (1) LLJ 305 (9) Sumtibai and others V. Paras Finance Co. Regd. Partnership Firm, AIR 2007 SC 3166 (10) Mosmat Swaran @ Swaran Manraw v. The State of Bihar and another, 2012(2) PLJR 229 (11) Union of India and others V. Dhanwanti Devi and others, (1996)6 SCC 44 (12) Dr. Rajbir Singh Dalal v. Chandbani Devi Lal University Sirsa and another, 2008 LIC 3608, Chauharya Tripathi & Ors.V.LIC & Ors., 2015(7)SCC263. It is proper to quote paragraph nos. 43 to 48 of judgment 2009(3) LLJ 609(SC):

“43. A word about precedents, before we deal with the aforesaid observations. The classic statement of EARL OF HALSBURY, L.C. in Quinn v. Leathem (1901) AC 495, is worth recapitulating first:

“Before discussing Allen v. Flood (1898) AC I and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before that every judgment must be

read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for that it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all.”

44. This Court has in long line of cases followed the aforesaid statement of law. In *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647: 1970-I-LLJ-662, it was observed at p.668 of LLJ:

“.....A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.”

45. In the words of LORD DENNING:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

46. It was highlighted by this Court in *Ambica Quarry Works v. State of Gujarat*, AIR 1987 SC 1073: (1987) 1 SCC 213:

“18..... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

47. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, AIR 2003 SC 511: (2003)2 SCC 111, this Court held that a little difference in facts or additional facts may make a lot of

difference in the precedential value of a decision.

48. This Court in *Bharat Petroleum Corporation Ltd. v. N.R. Vairamani*, (2004) 8 SCC 579, emphasized that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which the reliance is placed. It was further observed that the judgments of Courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a work of difference between conclusions in two cases.”

24. It is also principle of precedent that the Court should not placed reliance on decision without discussion of the fact, and observation must be read in that context and the judgment of Court should not construed as statute. Reliance can be placed on the judgment in the case of **State of Andhra Pradesh V. M. Radha Krishna Murthy**, reported in (2009) 5 SCC 117 and **Union of India and another V. Arulmozhi Iniarasu & other**, reported in 2011(4) PLJR 83 (SC). It will be appropriate to quote paragraph 16 of judgment of M. Radha Krishna Murthy (supra):

16. Unfortunately, in the instant case the High Court has lost sight of the aforesaid aspects and by placing reliance on the aforesaid decision has directed acquittal.

“15. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear

to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. V. Horton* (1951 AC 737 at p.761), Lord MacDermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

25. It will also relevant to quote paragraph 12 of the judgment of Arulmozhi Iniarasu (supra):

"12.Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the



case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. (Ref.: Bharat Petroleum Corpn. Ltd. & Anr. Vs. N.R. Vairamani & Anr.³; Sarva Shramik Sanghatana (KV), Mumbai Vs. State of Maharashtra & Ors.⁴ and Bhuwalka Steel Industries Limited Vs. Bombay Iron & Steel Labour Board & Anr.⁵.)”

26. This Court while exercising the power of judicial review must take into consideration the limits and extend of power has been delineated on many occasion by different courts, in the manner, the power of judicial review is to be exercised as it is neither unqualified nor unlimited, has its own Limitation matter will be considered at the time of admission. The power judicial review to be exercised with great caution and circumspection, interference is permissible only where the exercise of power has led to illegality, irrational and perversity, procedural impropriety or administrative action is vitiated when power has been exercised beyond jurisdiction, oblique purpose or action has led to absurdity or order passed is void on the test of (a) whether a decision making authority exceeded its power (b) committed an error of law (c) committed breach of natural justice (d) reached to absurd the decision which no prudent person would have arrived (e) abused its

power, relevant to rely upon **Heinj India (p) Ltd. V. State of U.P., reported (2012) 5 SCC 443**. It will be relevant to quote paragraph nos. 60 to 64 of the aforesaid judgment:

60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' one is instantly reminded of the classic and oft quoted passage from Council of Civil Service Unions (CCSU) v. Minister for the Civil Service [1984] 3 All ER 935, where Lord Diplock summed up the permissible grounds of judicial review thus: (AC) pp.410 D, F-H and 411 A-B)

"Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience

should be well equipped to answer or else there would be something badly wrong with our judicial system...

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

61. The above principles have been accepted even by this Court in a long line of decisions handed down from time to time. We may, however, refer only to some of those decisions where the development of law on the subject has been extensively examined and the principles applicable clearly enunciated.

62. In *Tata Cellular v. Union of India* (1994) 6 SCC 651, this Court identified the grounds of judicial review of administrative action in the following words : (SCC pp.677-78, para 77)

" 77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to

control by judicial review can be classified as under :

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety."

63. Reference may also be made to the decision of this Court in *State of Punjab v. Gurdial Singh* (1980) 2 SCC 471 where Krishna Iyer, J. noticed the limitations of judicial review and declared that the power vested in the Superior Courts ought to be exercised with great circumspection and that interference may be permissible only where the exercise of the power seems to have been vitiated or is otherwise void on well established grounds. The Court observed:

"8.The court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the executive and judicial circumspection keeps the court lock-jawed save where the power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset."

64. There is almost complete unanimity on the principle that judicial review is not so much concerned with the decision itself as much with the decision-making process. (See *Chief Constable of North Wales Police v. Evans* [1982] 3 All ER 141). As a matter of fact, the juristic basis for such limitation on the exercise of the power of judicial review is that unless the restrictions on the power of the Court are observed, the Courts may themselves under the guise of preventing abuse of power, be guilty of usurping that power".

27. Now on this back ground this Court can safely held that the reliance placed by the petitioner on the aforesaid judgment is

completely out of context and de hors to the facts of the case at hand.

28. In the present case much emphasis has been given that the Inspector General of Registration having no source of power for passing the impugned order makes order nullity, is to be rejected out rightly, in view of the fact that Rules 12 and 13 of the Society Registration Rule specifically confers the power upon the Inspector General, if the Society is engaging itself in activities which are subversive to the objects of the Society, in that circumstances Inspector General of Registration has a power to examine the affairs of the Society or to enquire in to any complaint received against any society, proper enquiry is embarked, following natural justice power of cancellation can be exercised. In such situation looking to the background of the facts that the entire work force has been made as associate member only when the Labour Department resisted to the Society for providing the benefit of labour legislation with a view to deprive them they have been made Associate Member having no say in the matter Society. On examination it is apparently clear that all employees as Associate Member they can be terminated from service having taken away his right to challenge before any Court of Law, so much so denied the benefit of Common Law right and benefit of Labour Legislation. On examination of the provisions dealing the member



and associate member it is clear that Sulabh International volunteers are none other than the entire labour force which is completely apparent from the provisions of associate member. Clause G (ii) makes it very clear that the associate member, admitted to the society shall also be known as “Sulabh Volunteer” who will continue to be an associate member till he/she expresses his/her desire to withdraw his/her voluntary social services, or the Committee or its authorized representative refuses to acknowledge his/her social voluntary services any further without any prior notice/intimation. The decision of the Executive Committee shall be final in respect of the termination of the social services and the same shall not be agitated in any court of law. This provision cannot be allowed to sustain in a democratic society where the constitution mandates socio economy justice to all citizen. Clause (iii) shows that the cadre of associate members shall be distinct and separate from that of the members of the society, Sulabh International. And Clause (iv) provides that the associate member shall not have the right to cast vote at the annual General Meeting/Extra ordinary meeting, and likewise, the associate member shall not enjoy the right and privileges like a member of the society, Sulabh International within the meaning of section 15 of the Societies Registration Act, 1860. This gives a final nail to the coffin. In this manner such provision is completely de hors to



the aims and object of the society and petitioner cannot be allowed to manipulate and maneuver with a view to extinguish right of worker which cannot be said to serve the purpose of the society. This Court is of the view that Inspector General of registration has sufficient power to examine the matter and if it is found that any provision of the bye-laws is against the aims and object of the Society, certainly have a power to strip of those provisions which is inconsistent and in-coherent to the Act and bye-laws.

29. Inspector General Registration does not have power to review its earlier decision on the ground the power of review is not an inherent power but must have been confessed by law either specifically or by necessary implication.

30. The petitioner for the aforesaid principle relied on in the case of **Patel Narshi Thakershi V. Pradyumansinghji Arjunsinghji, reported in (1971) 3 SCC 844** and **Kalabharati Advertising V. Hemand Vimal Nath Narichania and others, reported in (2010) 9 SCC 437**. There is no quarrel on the aforesaid principle but it applies to judicial or quasi judicial exercise of power, not when authority takes administrative action or policy decision.

31. Even presuming the action of Inspector General, registration is quasi judicial. In view of formulation of Rules 12 and 13 of the Registration Rules it can not be said that Inspector

General of Registration has wrongly exercised the power or exceeded his jurisdiction, apparently clear from the width and power of Inspector General coached in the Rules 12 and 13 of the Rule.

32. On examination of statutory provisions and looking to extent of power has been conferred, it is explicitly clear, the Inspector General may hold enquiry or investigation when it is found prima-facie, the Society is engaged itself in activities which are subversive to the object to the Society. The aforesaid Rules provide the ground and the procedural manner for exercise of power. Hence this point raised is not sustainable.

33. Power of review and revision should be exercised within reasonable time.

34. Counsel for the petitioner, for the aforesaid proposition, has relied on the judgment of the Hon'ble Supreme Court in the case of **Santosh Kumar Shivgoonda Patil and others Balasaheb Tukaram Shevale and others, reported in (2009) 9 SCC 352 and State of Punjab and others V. Bhatinda District Co-operative Milk Producers Union Ltd., reported in (2007) 11 SCC 363.**

35. There is no doubt the power has to be exercised within the reason able time but when authorities find the provisions has wrongly been exercised against the basic purpose of object of

Society, and entire working group has been made Associate Member without any right rather all right available to a working group has been taken away. In such situation, the aforesaid judgment cannot be applied to the facts of the present case.

36. This Court does not find any merit in this writ petition and accordingly it is dismissed.

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(Shivaji Pandey, J)