

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WA.NO. 395 OF 2014 () IN WP(C).25818/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 25818/2013 OF
HIGH COURT OF KERALA DATED 16-01-2014

APPELLANT(S)/PETITIONERS:

1. KURIACHAN CHACKO
MANAGING PARTNER, M/S.LIS, PALACKAL COURT
M.G.ROAD, ERNAKULAM 682 035.

2. ACHAMMA CHACKO
W/O.P.V.CHACKO, AGED 63 YEARS
PARTNER, M/S.LIS, PALACKAL COURT
M.G.ROAD, ERNAKULAM 682 035.

3. LINU JOY
W/O.JOY, AGED 42 YEARS
PARTNER, M/S.LIS, PALACKAL COURT
M.G.ROAD, ERNAKULAM 682 035.

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S)/RESPONDENT:

REGISTRAR OF FIRMS
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION
THIRUVANANTHAPURAM - 695 001.

BY SENIOR GOVERNMENT PLEADER SHRI P.I. DAVIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
16.07.2014, THE COURT ON 29-07-2015 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. No.395 of 2014

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Dated this the 29th day of July, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 16.01.2014 in W.P(C) No.25818 of 2013 by which judgment the Writ Petition filed by the petitioners-appellants has been dismissed.

2. Brief facts giving rise to the Writ Petition are: Petitioners are partners of a registered firm, M/s.LIS constituted on 11.11.2002 by a deed of partnership which deed was registered with the Registrar of Firms on 26.11.2002. Duration of the Firm was mentioned as five years and statement under Section 58(1) of the Indian Partnership Act, (hereinafter referred to as “the Act”) was submitted and registered by the Registrar of Firms.

The deed of partnership contained a clause, i.e., clause 12 that duration of the Firm shall be five years and it can be further extended if decided by the partners unanimously. Petitioners claimed that a resolution dated 30.10.2006 was passed by which clause 12 of the partnership deed was amended in which resolution, the duration of the Firm was provided as minimum of thirty years and the Firm shall not be dissolved in the event of death of any of the partners and continue the business with the legal representatives of the deceased partner. Petitioners however did not send any notice to the Registrar about the above resolution and they sent notice to the Registrar only by letter dated 09.09.2013 praying that the change in the duration of the partnership be noted in the records. Copy of the resolution dated 30.10.2006 and an affidavit to that effect was also sent along with the letter. The Registrar by letter dated 23.09.2013 replied to the petitioners that

since the tenure of the Firm registered on 26.11.2002 was five years which expired in 2007, the tenure cannot be extended. Petitioners filed the Writ Petition for the following reliefs:

“a) A writ or other order in the nature of mandamus directing the respondent to register Exhibit P3 resolution in the Register of Firms in respect of petitioners' firm M/s.LIS and incorporate the changes in such registers as required by law and

b) any other relief that the Honourable High Court of Kerala may deem fit to grant on the facts and circumstances of the case.”

3. A statement was filed in the Writ Petition by the Registrar of Firms where it was mentioned that petitioners' Firm was registered on 26.11.2002 with duration of five years as mentioned at the time of Registration, tenure of the firm expired on 25.11.2007 and request for further extension for 30 years was submitted for the first time in the year 2013, after a lapse of six years. Partnership constituted for a fixed period of five years having come to an end after the

expiry of five years, Exhibit P5 proceedings of the Registrar refusing to note the change was justified.

4. Learned Single Judge by judgment dated 16.01.2014 dismissed the Writ Petition. Learned Single Judge took the view that by the time petitioners submitted Ext.P4 bringing change of tenure of the firm to the respondent, the Firm stood automatically dissolved and lost the characteristic of registered firm. Learned Single Judge also rejected the contention of the learned counsel for the petitioners that the situation contemplated under Section 58(1)(f) regarding the tenure of the Firm is also taken care of by Section 63 which argument according to the learned Single Judge does not appear to be palatable. Reason given by the learned Single Judge for rejecting the argument was that the situation contemplated under Section 63 is in respect of affairs of the registered firms. Against the judgment of the learned Single Judge, this Writ Appeal

has been filed.

5. Shri R.Surendran, learned counsel for the petitioners in support of the appeal contends that resolution dated 30.10.2006 was passed amending the tenure of 5 years of the Firm to a minimum of 30 years. There was no occasion for the Firm being dissolved under Section 42 of the Act. It is submitted that Rule 4(2) of the Kerala Partnership (Registration of Firms) Rules, 1959 which mandate intimation and notice under Sections 61, 62, 63(1) and 63(2) be given within 15 days from the date of occurrence having been struck down by a learned Single Judge of this Court in **Balanarayanan v. Registrar of Firms** (1983 KLT 441), there was no requirement of submitting intimation within 15 days and non-submission of the said information was not an impediment in continuance of the Firm. It is submitted that Section 63(1)(a) of the Act contemplates filing notice for change in the constitution of registered firms

which also includes change in tenure of the firm.

6. The word “constitution” is wide enough to cover any change within the meaning of Section 58(1)(f). The word 'constitution' used in Section 63 cannot be read only as a constitution regarding partners only. It is submitted that the Registrar committed error in refusing to record the change regarding tenure of the firm in the register of Firms. Petitioners are entitled to the direction as prayed for in the Writ Petition.

7. Shri P.I. Davis, learned Senior Government Pleader appearing for the respondent refuted the submissions of the learned counsel for the petitioners and contended that the Registrar of Firms repelled the request to register the change after six years of dissolution of the Firm. It is submitted that tenure of the firm as registered with the Registrar being only five years, by virtue of Section 42, the Firm stood automatically dissolved after expiry of five years. The

Firm having been dissolved there was no occasion for entering the change. It is submitted that as per Rule 4 (2), petitioners were liable to send notice/intimation within 15 days from the date of resolution extending the tenure of the Firm. It is submitted that judgment of the learned Single Judge in **Balanarayanan's case** (supra) does not lay down the correct law. It is submitted that under Section 71 of the Act, State is fully empowered to make Rules regulating filing of documents before the Registrar. It is submitted that regulation of filing of documents also includes regulating the period in which the documents have to be filed. It is submitted that the view taken by the learned Single Judge in **Balanarayanan's case** (supra) that the State has no jurisdiction to frame Rules providing time limit for giving notice is not in accordance with law.

8. We have heard learned counsel for the parties and perused the records. Learned counsel for the parties

placed reliance on various judgments of this Court and Apex Court which shall be referred to while considering the submissions in detail.

9. From the submissions made by the learned counsel for the parties, following are the Issues arising for consideration in this appeal:

I. Whether the word 'constitution' used in Section 63(1) refers to only constitution of partners of the firm or the word 'constitution' shall embrace in itself all relevant aspects of the matters referred to in Section 58(1) including duration of the firm?

II. Whether the partners are entitled to send notice under Section 63 of the Act for noting the change regarding extension of tenure of the Firm?

III. Whether petitioners' Firm stood automatically dissolved on 25.11.2007 by virtue of Section 42 of the Act?

IV. Whether the State Government in exercise of its power under Section 71 of the Act was competent to frame Rule 4(2) providing for 15 days' time for sending intimation/notice from the occurrence of the event?

V. Whether Rule 4(2) was beyond the rule making power of the State Government as held in Balanarayanan's case (supra)?

VI. Whether Balanarayanan's case laid down the correct law?

VII. Whether petitioners are entitled to any relief in the Writ Petition?

ISSUE NOS.I & II

10. The above Issues being interconnected are taken together. For answering the above Issues, scheme of the Act and certain provisions which are relevant are to be noted: Section 4 is the definition clause which is to the following effect:

"4. Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name".

Section 17 relates to rights and duties of partners which is relevant for the present case is quoted below:

“17. RIGHTS AND DUTIES OF PARTNERS AFTER A CHANGE IN THE FIRM. Subject to contract between the partners, -

(a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) AFTER THE EXPIRY OF THE TERM OF THE FIRM. where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, and so far as they may be consistent with the incidents of partnership-at-will; and

(c) WHERE ADDITIONAL UNDERTAKINGS ARE CARRIED OUT. where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Section 42 deals with dissolution of firm which is relevant and is quoted below:

“42. DISSOLUTION ON THE HAPPENING OF CERTAIN CONTINGENCIES. Subject to contract between the partners a firm is dissolved (a) if constituted for a fixed term, by the expiry of that term; (b) if constituted to carry out one or more adventures or undertakings, by the completion

thereof; (c) by the death of a partner; and (d) by the adjudication of a partner as an insolvent.”

Chapter VII of the Act deals with registration of firms.

Section 58 provides for application for registration which is quoted as below:

“58. APPLICATION FOR REGISTRATION. (1)

Subject to the provisions of sub-section of sub-section (1A), the registration of a firm effected by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee and a true copy of the deed of partnership stating :

- (a) the firm-name,*
- (aa) the nature of business of the firm;*
- (b) the place or principal place of business of the firm,*
- (c) the names of any other places where the firm carries on business,*
- (d) the date when each partner joined the firm,*
- (e) the names in full and permanent addresses of the partners, and*
- (f) the duration of the firm. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf. (1A) The statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the*

firm :

Provided that in the case of any firm carrying on business on or before the date of commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984, such statement shall be sent or delivered to the Registrar within a period of one year from such date.

(2) Each person signing the statement shall also verify it in the manner prescribed.”

Section 59 provides that the Registrar if satisfied with the provisions of Section 58 have been duly complied with, he shall record an entry in the statement in the register and shall file the statement. Section 60 provides for recording of alteration in firm name and principal place of business which is quoted as below:

“60. RECORDING OF ALTERATIONS IN FIRM-NAME, NATURE OF BUSINESS AND PRINCIPAL PLACE OF BUSINESS. (1) *When an alteration is made in the firm name or in the nature of business of a firm or in the location of the principal place of business of a registered firm, a statement shall be sent to the Registrar, within a period of 90 days from the date of making such alteration, accompanied by the prescribed fee, specifying the alteration and signed and verified in the manner required under section 58(2) When the Registrar is satisfied that the provisions of sub-*

section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.”

Similarly, Section 61 relates to noting of closing, opening of branches which is quoted below:

“61. NOTING OF CLOSING AND OPENING OF BRANCHES. *When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm shall send intimation thereof to the Registrar, within a period of 90 days from the date of such discontinuance or, as the case may be, from the date on which the firm begins to carry on business at such place. The Registrar shall then make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.”*

Section 62 relates to noting of changes in names and address of partners which is to the following effect:

“62. NOTING OF CHANGES IN NAMES AND ADDRESSES OF PARTNERS. *When any partner in a registered firm alters his name or permanent address, an intimation of the alteration' shall be sent, within a period of 90 days from the date of making such alteration, by any*

partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61”

Section 63 which is relevant for the present case is quoted below:

“63(1) RECORDING OF CHANGES IN AND DISSOLUTION OF A FIRM. *When a change occurs in the constitution of a registered firm, every incoming, continuing or outgoing partner, and when a registered firm is dissolved, every person who was a partner immediately before the dissolution, or the agent of every such partner or person specially authorised in this behalf shall, within a period of 90 days from the date of such change or dissolution, given notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall a record of the notice in the entry relating to the firm in the Registrar of Firms and shall file the notice along with statement relating to the firm filed under section 59.”*

The key words which are up for interpretation in the present case are “when a change occurs in the constitution of a registered firm”, what is meant by 'constitution' of registered firms” in Section 63(1) is to be answered. The word 'constitution' is a noun which has been defined in P.Ramanatha Iyar's Law Lexicon, 3rd

Edition in the following manner:

“Constitution.- Form in which a State is organised; principles regulating the relations of State authorities to each other and to the governed; an ordinance.

The system or body of fundamental principles according to which a Nation, State or body politics is constituted and governed; the action of constituting; compositions; to set up; to establish.”

Black's Law Dictionary, 9th Edn. defines the word 'constitution' in the following manner:

“Constitution.-1. The fundamental and organic law of a Nation or State that establishes the institution and apparatus of Government, defines the scope of Governmental sovereign powers, and guarantees individual civil rights and civil liberties.

2. The written instrument embodying this fundamental law, together with any formal amendments.”

The word constitution has been also used in Section 17 of the Act. Section 17 deals with “rights and duties of partners”. In the above context it is to be noted that where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the

reconstituted firm remain the same. As per the definition for firm given in Section 4 as noted above, partners called collectively is the firm. Thus composition of partners in a firm shall obviously included in the phrase 'constitution of firm'. But whether the word constitution of a firm will stop only with composition partners or is a word of wider import is the question to be answered. The popular and dictionary meaning of the word constitution as noted above, is a wider meaning which includes set of rules which constitute nation, body politics. The two meaning of the word 'constitution' capable of comprehension under Section 63(1) are (1) constitution of registered firms as composition of partners only and (2) constitution of registered firm may embrace all relevant rules constituting the registered firm.

11. In Section 17(b) constitution of a firm for a fixed term is contemplated when the words used are

“where a firm constituted for a fixed term, constitution of firm thus may relate to also to the term whereas Section 17(c) indicates that a firm may be constituted to carry out one or more undertakings since Section 17(c) uses the words 'where a firm constituted to carry out one or more adventures or undertakings'. Thus apart from the partners who constitute the firm tenure and adventures and undertakings of a firm is also referred to in the context of constitution of the firm.

12. If Section 63(1) intended only about change in composition, i.e., partners of the firm, the more appropriate word to be used in Section 63(1) was 'partners' in place of constitution, whereas in Section 62 immediately preceding Section 63 the word “partners” have been used in reference of alteration of name or permanent address of a partner, thus if the Legislature intended under Section 63(1) about the change in partners only the same word, i.e., partners” could have

been used. But use of a different expression, i.e., 'constitution' in Section 63(1) was with different meaning.

13. Section 58(1) refers to a statement which is to be filed for registration of firm, the statement requires ingredients (a) to (f) as enumerated in Section 58(1). Sections 60 to 63 relate to certain intimation/notice for effecting changes in different entries of the register of the firm. Section 60 refers to recording of alteration of firm name, principal place of business which refers to entries (a) and (b) in Section 58(1). Section 61 relates to noting of closing and opening of branches which refers to the relevant entry 58(1)(c). Section 62 deals with noting of changes in names and address of partners which relates to entry 58(1)(e).

14. In the event Section 63 be interpreted to mean changes only in the names of partners, the said provision may be confined to entry 58(1)(e). Thus if a notice

for change recording duration of firm cannot be as per Section 63(1), there is no other provision in the Act under which notice of change of duration of firm can be given. When all entries under Section 58(1) are capable of change and changes are required to be recorded by the Registrar, we fail to see as to why the change cannot be permitted with regard to entry in clause (f) of Section 58(1). Reading of the word 'constitution' in a wider sense shall advance the object and purpose of the Act since in that event notice of change regarding clauses (a) to (f) of Section 58(1) are permitted.

15. The Golden rule of statutory interpretation is to take the ordinary or popular meaning of the words in a statute. The Apex Court in **Kanai Lal Sur v. Paramnidhi Sadhukhan** (AIR 1957 SC 907) laid down the following:

“The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two

constructions that the question of giving effect to the policy or object of the Act can legitimately arise.”

Venkitarama Aiyer, J., explaining the principle of construction observed in **State of Madras v. Ganon Dunkerly & Co.** (AIR 1958 SC 560) thus:

“The ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law, acquired a definite and precise sense and that, accordingly, the legislature must be taken to have intended that they should be understood in that sense. In interpreting an expression used in a legal sense, therefore, we have only to ascertain the precise connotation which it possess in law.”

The Apex Court in **Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate** (AIR 1958 SC 353) held thus:

“The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.”

In **New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar** (AIR 1963 SC 1207) it is held thus:

“It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature.”

16. Thus interpreting the word 'constitution' in Section 63(1) confining to the composition of partners only shall not make the provisions of Section 63 fulfilling the object i.e., permitting the recording of changes with regard to all the entries under Section 58 (1). As noted above, Sections 60 to 62 does not cover all the entries of the statements which are mandatory for registration of a firm and in event Section 63 is confined only to changes in the name of partners, i.e., composition of partners, entry (f) in Section 58(1) shall remain not capable of change which cannot be the intend of the Legislature since all entries in the statement which are filed along with the Registrar for

registration are capable of change.

17. As noted above, Rules have been framed by the State Government, the Kerala Partnership (Registration of Firms) Rules, 1959 for giving effect to provisions of the Act. Rule 11 deals with filing of documents which is relevant is as follows:

*“11. **Filing of documents.**- (a) The Registrar shall examine every statement, intimation, notice or other document received by him which is required by the Act to be registered, recorded or filed and if he finds any such statement, intimation, notice or other document to be defective or incomplete in any of the particulars required by the Act or these Rules, he shall return it to party or firm tendering it, for due rectification or completion and until such statement, intimation, notice or other document is so rectified or completed, he shall not register, record or file the same.....”*

The rule required that the Registrar shall examine every statement, intimation, notice or other document received by him which is required by the Act to be registered, recorded or filed. Thus every notice or intimation regarding statement which is required to be

registered has to be scrutinised by the Registrar. Rule 11(a) clearly indicate that statement pertaining to Section 58(1)(f) which is required to be registered also can be send by intimation/notice. To effectuate the right of partners or their agents for effecting changes Section 63 has to be interpreted in the manner that constitution of registered firms shall include all necessary statements constituting the firm including composition of partners. The tenure of the firm, as noted above is already referred to in Section 17(b).

18. In view of the above discussion we are of the view that the word 'constitution' of registered firm used in Section 63(1) has to be given wider meaning to contain not only changes pertaining to partners composing the firm rather changes pertaining to the duration of the firm has also to be included.

19. It is also relevant to note that in Section 63(1) the first sentence that “when a change occurs in the

constitution of a registered firm, every incoming, continuing or outgoing partner and when a registered firm is dissolved, any person who was a partner immediately before the dissolution or the agent of every such partner or person specially authorised in this behalf may give notice to the Registrar....". Thus in the first sentence the words "continuing or outgoing partners" and in the second sentence the words "any person who was a partner immediately before the dissolution or agent of any such partner or person specially authorised in this regard are the words which have been used in the context of the words "may give notice to the Registrar". Thus the use of those words, incoming, continuing or outgoing partner before the words change occurs in the constitution of the firm does not necessarily mean that change in the constitution of firm only refers to incoming, continuing or outgoing partner. The words incoming, continuing or outgoing

partners have been used for enumerating the persons who are entitled to give notice to the Registrar. Thus constitution of a registered firm shall include all necessary rules i.e., the statements which are required to be filed along with registration and the constitution of the firm shall include all ingredients as mentioned in Section 58(1) and shall not only confined to partners of the firm.

20. With regard to interpretation of Section 63, the learned Single Judge while rejecting the submission that Section 63 also takes the care of tenure of the firm, repelled the said argument by stating the following:

“....The contention of the learned counsel that the situation contemplated under Section 58(f) regarding the tenure of the firm, is also taken care of by Section 63, does not appear to be palatable to this Court. This is for the obvious reason that the situation contemplated under Section is in respect of the affairs of the registered firms...”

Thus the view taken by the learned Single Judge is that the situation contemplated under Section 63 is in

respect of affairs of the registered firm. Learned Single Judge took the view that since dissolution of the firm was automatic by virtue of Section 42 and the amendment dated 30.06.2006 was not brought to the notice of the Registrar when the registered firm was in existence, hence Section 63 did not cover the tenure of the firm. Thus the learned Single Judge does not lay down any proposition that notice regarding change of tenure of firm cannot be given under Section 63 of the Act rather the proposition laid down by the learned Single Judge is that said notice can be given only with regard to registered firms. Thus for the reason as stated above, observations of the learned Single Judge that the situation contemplated under Section 58(1)(f) is not taken care of by Section 63, cannot be accepted.

21. It is also relevant to note that all the changes in the statement which is registered under Section 58 are required to be effected, so that any person who

inspect the register of the firm maintained by the Registrar and statements which are submitted from time to time could know about the exact state of affairs of the firm. Section 66 of the Act empowers any person to inspect the Register of firms and all statements, notice and intimation. The above provision also makes it clear that statement pertaining to tenure is also a relevant factor which any person may require to inspect and if it is held that the Act does not contain any provision for recording change in the statement of the tenure of the firm it clearly shall not advance the object of the Act where any person is entitled to inspect the state of affairs of a firm including the tenure and change if any in the tenure of the firm. Thus for giving effect to the purpose and object of the Act it has to be held that Section 63 envisages change in constitution of the registered firm which shall include not only composition of the firm i.e., partners of the firm but

other relevant statements envisaged in Section 58(1)(f).

Issue Nos.I and II are answered as above.

ISSUE NO.III

22. As noted above, clause 12 of the deed of partnership, Exhibit P1 is as follows:

“Clause No.12. The duration of the Firm shall be for five years, and it can be further extended if decided by the partners unanimously.”

Section 42 of the Act on which reliance has been placed by the learned counsel for the respondent provides that “subject to contract between the partners a firm is dissolved” if constituted for a fixed term, by the expiry of that term. Thus dissolution by the expiry of the fixed term is subject to contract between the partners. As noted above, clause 12 contains a contract between the partners that although duration of the firm shall be 5 years, it can be further extended to be decided by the partners unanimously. Thus Section 42 shall apply for dissolution of firm after the expiry of five years only if

there is no extension of the tenure decided by the partners unanimously. In the present case petitioner's case in the Writ Petition is that they have passed resolution on 30.10.2006 when all the partners were present and have resolved to extend the tenure for the firm for a minimum of 30 years. Copy of the minutes was sent by the petitioners along with letter dated 09.09.2013. Taking resolution dated 30.10.2006 read with clause 12 of the deed of partnership it is clear that dissolution of the firm shall take place after a period of fixed term only when there is no contract to the contrary. In the present case there is a contract between the partners that tenure of five years can be extended if decided by the partners unanimously. Petitioners also claim that resolution dated 30.10.2006 was passed extending the tenure of the firm to a minimum of 30 years. For argument sake if it is assumed that resolution was passed on 30.10.2006, resolution

read with clause 12 of the partnership deed and Section 42 of the Act shall not result in dissolution of the firm. Whether the resolution dated 30.10.2006 was passed or not is a different issue. The Registrar while refusing to register the change by his letter dated 23.09.2013 has not stated that resolution dated 30.10.2006 cannot be accepted. Rather it was observed that tenure having expired in 2007, tenure cannot be extended. There is no occasion of extension of the tenure by the Registrar. Extension of the tenure is with the partners when they unanimously decided to extend the term as per clause 12. Thus on the basis of the letter dated 09.09.2013 submitted by the petitioners along with the resolution dated 30.10.2006 it cannot be said that the firm stood dissolved on 25.11.2007 by virtue of Section 42 of the Act.

23. Learned Single Judge took the view that by the time petitioners approached the Registrar by

submitting Ext.P4 resolution, to incorporate the alleged amendment, the event of dissolution has already taken place in the year 2007. It was further held that “contract to the contrary” as envisaged by Section 42 of the Act is not established on the strength of any acceptable evidence. Learned Single Judge had not noticed clause 12 of the partnership deed which itself contain a provision that duration of the firm of five years can be further extended if decided by the partners unanimously. Thus contract to the contrary as mentioned in Section 42 of the Act is there in clause 12 of the partnership deed. In the event for argument sake if it is accepted that resolution was passed on 30.10.2006, there shall be no automatic dissolution of the firm on 25.11.2007 in view of clause 12 of the partnership deed and resolution dated 30.10.2006. As noted above, the Registrar while refusing to register the change has not recorded any finding that the resolution

dated 30.10.2006 is not acceptable or believable. Issue No.III is answered as above.

ISSUES IV, V and VI

24. These Issues being interconnected are taken together. Section 71 of the Act empowers the State Government to make rules. Section 71 of the Act is quoted as below:

*“71. **Power to make rule.-** (1) The State Government may by notification in the Official Gazette make rules prescribing the fees which shall accompany documents sent to the Registrar of firms, or which shall be payable for the inspection of documents in the custody of the Registrar of firms, or for copies from the Register of firms:*

Provided that such fees shall not exceed the maximum fees specified in Schedule 1.

(2) The State Government may also make rules.-

- (a) prescribing the form of statement submitted under Section 58, and of the verification thereof;*
- (b) requiring statements, intimations and notices under Sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;*
- (c) prescribing the form of the Register of firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be*

- amended or notes made therein;*
- (d) regulating the procedure of the Registrar when disputes arise;*
 - (e) regulating the filing of documents received by the Registrar;*
 - (f) prescribing conditions for the inspection of original documents;*
 - (g) regulating the grant of copies;*
 - (h) regulating the elimination of registers and documents;*
 - (i) providing for the maintenance and form of an index to the Register of firms; and*
 - (j) generally, to carry out the purposes of this chapter.*

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) Every rule made by the State Government under this section shall be subject to the condition of previous publication.

(4) Every rule made by the State Government under this section shall be laid, as soon as it is made, before the State Legislature.”

25. In exercise of power under Section 71 of the Act, the Rules, namely, the Kerala Partnership (Registration of Firms) Rules, 1959 (hereinafter referred to as 'the 1959 Rules') has been framed. Rule 4, which is relevant for the present cases is as follows:

“4. Form of intimations and notices under Sections 61, 62 and 63.- (1) *intimations and notices under Sections 61, 62, 63(1) and 63(2) of the Act, shall respectively be in forms III, IV, V and VI annexed to these Rules together with the fees specified in those forms with such variations as circumstances may require.*

(2) Every statement, intimation or notice relating to a firm, under Sections 60, 61, 62, 63(1) or 63(2) of the Act, shall be sent or given to the registrar together with the maximum fee prescribed in the Schedule to the Act, within 15 days from the date of occurrence of the event referred to in such statement, intimation or notice.”

26. Sub-rule (2) of Rule 4 provides that every statement, intimation or notice relating to a firm under Sections 60, 61, 62, 63(1) or 63(2) of the Act shall be sent or given to the Registrar **within 15 days from the date of occurrence of the event**. Rule 4(2) of the 1959 Rules came up for consideration before the learned Single Judge in ***Balanarayanan v. Registrar of Firms*** (1983 KLT 441). In the above case by mutual consent the firm was dissolved with effect from 1.4.1975 and a deed of dissolution also was executed on

8.3.1976. Public notice of dissolution of the partnership was published in the newspapers and Kerala Gazette dated 23.3.1976. Notice of dissolution sent by one partnership was sent back to him on 20.3.1976 noticing certain defects. The first petitioner, after coming to know about the return of notice, sent an application along with notice praying for condonation of delay. By memo dated 19.1.1988, the application was returned by the Registrar in which a defect was noticed that notice was not filed within 15 days from the date of occurrence of the event as contemplated in Rule 4(2) of the 1959 Rules. The order of the Registrar was challenged in the Writ Petition by the petitioner. In the Writ Petition it was prayed that Rule 4(2) be declared as void and illegal. It was contended before the learned Single Judge that time limit prescribed in sub-rule (2) of Rule 4 of the 1959 Rules is ultra vires as the Act does not make any provision for time as has been done in Sub-Rule (2) of

Rule 4. The learned Single Judge, after noticing Rule 4 and Section 71, made the following observation:

“10..... Admittedly, we are concerned here only with clause (b). Under clause (b) of sub-s.(2) of S.71, the State Government has been authorised to frame rules requiring statements, intimations and notices under S.60, 61, 62 and 63 to be in the prescribed form, and prescribing the form thereof. It is significant to note that the rule making authority under this clause is confined only to prescribing the form and the manner in which the statements, intimations and notices have to be sent. Clause (e) only confers powers on the rule making authority to regulate the filing of the documents received by the Registrar. A careful reading of S.71(1) and (2) will clearly show that no power has been conferred on the State Government under this section to make any rule prescribing time limit for filing statements, intimations and notices under S.60, 61, 62 and 63 of the Act. There is also nothing in S.63 either expressly or impliedly showing or indicating that the notice contemplated thereunder regarding changes in the Constitution of partnership of the registered firm or the dissolution of a firm should be given within a prescribed time. There can be no doubt therefore that sub-rule 2 of R.4 is ultra vires of the Act and beyond the powers conferred on the State Government.”

27. The learned Single Judge also relied on a Division Bench judgment of the Andhra Pradesh High

Court in ***Rajasthan Trading Co. v. Registrar of Firms*** (AIR 1975 AP 232) and held that Rule 4(2) of the 1959 Rules is ultra vires the power of the State Government under Section 71(2) of the Act. The Rule was struck down.

28. Learned counsel for the petitioner, relying on the said judgment, has submitted that there being no time limit for sending information of change, the information sent by the petitioner for change of tenure ought not to have been rejected.

29. The question to be answered by us is as to whether Rule 4(2) of the 1959 Rules framed by the State is beyond the rule making power as delegated to the State Government under Section 71?

30. Sub-section (2) of Section 71 of the Act empowers the State to make Rules. Section 71(2)(a) to (c) empowers the State Government to make Rules prescribing the form of statement submitted under

Section 58, requiring statements, intimations and notices under Sections 60, 61, 62 and 63 and further prescribing the form of the Register of firms, and the mode in which entries relating to firms are to be made therein and the mode in which such entries are to be amended or notes made therein. Sub-Section (2)(e) and (j) of Section 71 of the Act, which are relevant for the present case is as follows:

- “(e) regulating the filing of documents received by the Registrar;*
- (j) generally, to carry out the purposes of this chapter.”*

31. As noted above, Sub-Section (2)(e) of Section 71 relates to regulating the filing of documents received by the Registrar. The documents referred to in Sub-Section (2)(e) are nothing but statements, intimations and notices as contemplated under Sections 58 and 60 to 63. The documents referred to aforesaid are open to inspection by Section 66 of the Act. Section 66 relates to inspection of Register and filed documents. All

statements, notices and intimations filed under Sections 58 and 60 to 63 are referred to as documents, which are open for inspection under Section 66 of the Act. Thus, Sub-Section (2)(e) of Section 71 clearly relates to regulating the filing of documents.

32. Whether rule making power for regulating the filing of documents can fix a period of time for filing the documents is the question, which is to be answered in this case.

33. The word 'regulate' is defined in P.Ramanatha Aiyar's Law Lexicon (3rd Edition) is as follows:

***“Regulate.** To regulate means to adjust by rule, method, of established mode; to direct by rule of restriction; to subject to governing principles or laws.*

To correct by control; to control, govern or direct by rules or regulations; to adjust in respect of time, quantity, etc. with reference to standard or purpose.”

34. In Black's Law Dictionary the word 'regulation' is defined as follows:

***“regulation.** The act or process of controlling by rule or*

restriction< the federal regulation of the airline industry>”

35. The learned Single Judge in ***Balanarayanan's case*** (supra) relied on a judgment of the Andhra Pradesh High Court. Hence, it is relevant to refer to the said judgment first. In ***Rajasthan Trading Co.'s case*** (supra), the Division Bench of the Andhra Pradesh High Court was considering the validity of Rule 4(2) of the 1959 Rules. It was held that Section 63(1) itself does not prescribe any limitation as to the period within which notice should be filed. The Division Bench, however, considered only Section 71(2)(b) and (c) for considering as to whether Rule 4(2) is within the rule making power of the State, which is clear from paragraph 9 of the judgment. Paragraph 9 of the judgment is quoted as below:

“9. Clause (b) of Sub-section (2) of Section [71](#) only empowers the State Government to make rules prescribing the form in which the various statements, intimations and notices required under Sections [60](#), [61](#), [62](#) and [63](#) should be sent. Under Sub-clause (c) rules prescribing the form of the

Register of Firms and the mode in which entries relating to the firms are to be made therein, can be framed by the State Government. The 'Form' in which such notices or intimations should be sent, or the 'mode' in which entries are to be made in the register, cannot take in, the time-factor for doing the thing. According to Stroud's Judicial Dictionary the words 'manner and form' refer only 'to the mode in which the thing is to be done, and do not introduce anything from the Act referred to, as to the thing which is to be done or the time for doing it.' In our opinion, Section [71\(2\)](#) of the Act does not empower the State Government to prescribe the minimum period of limitation for the submission of the intimations or notices under the Act But Rule 4 (2) framed in exercise of the power under Section [71\(2\)](#) specifically states that every statement, intimation or notice relating to a firm under Sections [60](#), [61](#), [62](#), [63\(1\)](#) or [63\(2\)](#) of the Act shall be sent or given to the Registrar together with the prescribed fee within 15 days from the date of such occurrence referred to in such statement, intimation or notice. As already noticed. Section [63\(1\)](#) of the Act prescribes no such period of limitation nor does it authorise the rule-making authority to prescribe. That apart, in Section [63\(1\)](#) itself permissive words are employed by the Legislature that a person may send intimation to the Registrar about the change in the constitution of the firm. The consequence of non-compliance with the provisions of the section are not found in the section itself or in the rules. Further, if the notice sent after the prescribed period of 15 days about the change is rejected, that would result in

defeating the manifest purpose of the legislation, namely, to have the names of the persons entered in the Register of Firms. We are, therefore, of the opinion, that Rule 4 (2) of the Andhra Pradesh Partnership Rules is beyond the rule-making power of the State Government.”

From the entire judgment it does not appear that the Division Bench adverted to Sub-Section (2)(e) of Section 71 of the Act, which provided for regulating the filing of documents. The observation made in paragraph 9 of the judgment that Rule 4(2) does not fall in the ambit of Section 71(2)(b) and (c) may be correct. But the judgment having not considered Section 71(2)(e), we are of the view that the said judgment cannot be considered to be an authority on the rule making power delegated to the State under Section 71(2)(e) of the Act. Thus, the said judgment cannot be relied on for any interpretation of Section 71(2)(e).

36. The Andhra Pradesh High Court has relied on a judgment of the Supreme Court in ***Sales Tax Officer, Ponkunnam and another v. K.I.Abraham*** (AIR 1967

SC 1823). It is relevant to notice the aforesaid judgment of the Apex Court. The Apex Court in the above case had occasion to consider the validity of Rule 6 of the Central Sales Tax Act, 1957 in context of Section 8(4) of the Central Sales Tax Act, 1956.

37. Paragraph 4 of the judgment is relevant, which reads as under:

"4. The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority, or

(b) if the goods are sold to the Government not being a registered dealer a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

4. Section 13 states :

"(1) The Central Government may, by notification in the Official Gazette, make rules providing for

(a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the

certificate of registration may be given;

(b) the period of turnover, the manner in which the turnover in relation to the sale of any goods under this Act shall be determined, and the deductions which may be made in the process of such determination;

(c) the cases and circumstances in which, and the conditions subject to which, any registration granted under this Act may be cancelled;

(d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act;

3.The State Government may make rules. not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purpose of this Act.

(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purpose, namely :-

(e) the authority from whom. the conditions subject to which and the fees subject to payment of which any form of declaration prescribed under sub-section (4) of Section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;

(f) in the case of an undivided Hindu family, association, club, society, firm or company or in the case of a person who carries on business as a guardian or trustee or otherwise on behalf of another person, the furnishing of a declaration stating the name of the person who shall be deemed to be the manager in relation to the business of the dealer in the State and the form in which such declaration may be given;

(g) the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished."

38. Paragraph 5 of the judgment mentioned about Rule 6 of the Central Sales Tax (Kerala) Rules, 1957, which reads as under:

"5. Rule 6 of the Central Sales Tax (Kerala) Rules, 1957 read as follows :

"6. (1) Every dealer registered under Section 7 of the Act and every dealer liable to pay under the Act shall submit a return of all his transactions including those in the course of export of the goods out of the territory of India in Form II together with connected declaration forms so as to reach the assessing authority on or before the 20th of each month showing the turnover for the preceding month and the amount or amount collected by way of tax together with proof for the payment of tax due thereon under the Act.

Provided that in cases of delayed receipt of declaration forms, the dealer may submit the declaration forms at any time before the assessment is made :

Provided further that the delay in submitting the declaration forms shall not exceed three months from the date of sale in question :

Provided also that all declaration forms pending submission by, dealers on 2nd May, 1960 shall be submitted not later than 16th February, 1961."

The first proviso to Rule 6 was inserted by notification dated January 3, 1958, the second by notification dated April 26, 1960 and the third by notification dated January 16, 1961."

39. The Revenue contended before the Apex Court that the assessee had not filed the declaration in form 'C' before February 16, 1961 according to the third

proviso to Rule 6(1) and in view of the breach of the Rule the assessee was not entitled to take advantage of the lower rate of assessment under Section 8(1) of the Act. It was contended on behalf of the assessee that the third proviso to Rule 6(1) was ultra vires Section 8(4) read with Section 13(4)(e) of the Act. It used the phrase “in the prescribed manner”. The Apex Court in the said context held that the phrase “in the prescribed manner” occurring in Section 8(4) only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. It was held that the phrase “in the prescribed manner” in Section 8(4) does not take in the time element. The following was laid down in paragraph 6 of the judgment:

“6. It was contended on behalf of the appellants that the assesses had not filed the declarations in form 'C' before

February 16, 1961 according to the third proviso to Rule 6 (I) and in view of the breach of this Rule the assessee was not entitled to take advantage of the lower rate of assessment under S. 8 (1) of the Act. The opposite view-point was put forward on behalf of the assessee and it was argued that the third proviso to Rule 6 (1) was ultra vires of S.8 (4) read with S. 13 (4) (e) of the Act. The decision of the question at issue therefore depends on the construction of the phrase "in the prescribed manner" in S. 8 (4) read with S. 13 (4) (c) of the Act. In our opinion, the phrase "in the prescribed manner" occurring in S. 8 (4) of the Act only confers power on the rule-making authority to prescribe a rule stating what particulars are to be mentioned in the prescribed form, the nature and value of the goods sold, the parties to whom they are sold, and to which authority the form is to be furnished. But the phrase "in the prescribed manner" in S. 8 (4) does not take in the time-element. In other words, the section does not authorise the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. The view that we have taken is supported by the language of S. 13 (4) (g) of the Act which states that the State Government may make rules for "the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished." This makes it clear that the Legislature was conscious of the fact that the expression "in the manner" would denote only the mode in which an act was to be done, and if any time-limit

was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute....."

40. In the above premise the Apex Court held the following in paragraph 7 of the judgment:

"7.For the reasons expressed, we hold that the third proviso to Rule 6 (1) is ultra vires of S. 8 (4) read with S. 13 (3) and (4) of the Act. It follows therefore that the assessee was not bound to furnish declarations in Form 'C' before February 16, 1961 in the present case. In the absence of any such time limit it was the duty of the assessee to furnish the declarations in form C within a reasonable time, and in the present case it is the admitted position that the assessee did furnish the declarations on March 8, 1961 before the order of assessment was made by the Sales-tax Officer. We are accordingly of the opinion that the assessee has furnished the declarations in Form C in the present case within a reasonable time and there has been a compliance with the requirements of S. 8 (4) (a) of the Act. It follows that the High Court was right in quashing the order of assessment made by the Sales-tax Officer and directing him to make a fresh order of assessment after taking into consideration the declaration forms furnished by the assessee on March 8, 1961."

41. From the above it is clear that the Apex Court

in the above case was considering the rule making power of the State in the context of “in the prescribed manner”. The judgment of the Apex Court was on a specific requirement in the rule and specific rule making power delegated to the State. In the above context, the Apex Court had no occasion to consider the rule making power entrusted to the State Government “regulating the filing of documents”. Thus, the above judgment of the Apex Court was on the statutory provisions, which were under consideration and is not applicable with regard to provisions of Section 71(2)(e) of the Act, which falls for consideration in the present case.

42. We, thus are of the view that the learned Single Judge in **Balanarayanan's case** (supra) committed error in relying on the Division Bench judgment of the Andhra Pradesh High court in **Rajasthan Trading Co.'s case** (supra), in which judgment Section 71(2)(e) did not fall for consideration.

The learned Single Judge held that although in paragraph 5 has noted that clause (e) only confers powers on the rule making authority to regulate the filing of the documents received by the Registrar, a careful reading of Section 71(1) and (2) will clearly show that no power has been vested on the State Government to make any rule prescribing time limit for filing statements, intimations and notices under Sections 60, 61, 62 and 63 of the Act. There is nothing in Section 63 either expressly or impliedly showing or indicating that the notice contemplated thereunder regarding changes in the constitution of partnership of a registered firm or the dissolution of a firm should be given within a prescribed time. The learned Single Judge did not advert as to what is the ambit and content of the word 'regulating' under Section 71(2)(e) of the Act by which provisions the State Government is empowered to frame Rules regulating the filing of documents.

43. Registration of a firm, statement entered under Section 58 and the changes as communicated by Sections 60 to 63 are all open to inspection under Section 66. The provisions to open inspection of all the above is in public interest, both in the interest of firm as well as to the general public trading with the firm. Any person desirous to know about the entries regarding the firm, its constitution, its tenure can inspect the records of the registers of the Registrar of the firm and find the details. The requirement of sending information of changes immediately after occurrence is also in public interest, since the trading public is entitled to know as and when any change is made in the entries as mentioned in Section 58 of the Act. The provisions of Rule 4(2) providing authorised person to send intimation of change within 15 days of the occurrence, has been made to give effect to the purpose and object of the Act. The word 'regulating' used in Section 71(2)(e) is wide

enough to contain any provision for regulating the filing of documents. The word 'regulating' filing of documents can very well also contain time for filing documents. Time and manner of filing of documents are part of the concept of regulation. Thus the rule making power given under Section 71(2)(e) can very well envisage in itself provisions pertaining to time in the Rule regulating the filing of documents during which the intimation notices of change have to be given to the Registrar.

44. The word 'regulation' came up for consideration before the Apex Court in ***K.Ramanathan v. State of Tamil Nadu*** [(1985) SCC 116]. The Apex Court in the above case had occasion to consider Section 3(2)(d) of the Essential Commodities Act, 1955. Section 3(2) has been quoted in paragraph 9 of the judgment, which is quoted as below:

“9. In order to appreciate the contentions advanced, it would be convenient to set out the relevant statutory provisions. Sub-s. (1) of S. 3 of the Act is in these terms :

"3(1) Powers to control production, supply, distribution etc. of essential commodities - If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, (or for securing any essential commodity for the defence of India or the efficient conduct of military operations) it may, by order, provide for regulating or prohibiting the production, supply and distribution, thereof and trade and commerce therein."

Sub-s. (2) of S. 3 of the Act, insofar as material, lays down :

- "3. (2) Without prejudice to the generality of the powers conferred by sub-s. (1), an order made thereunder may provide
- (a) to (c)
 - (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity,"

S. 5 of the Act provides :

"5. Delegation of Powers - The Central Government may, by notified order, direct that (the power to make orders or issue notifications under S. 3) shall in relation to such matters, and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -

- (a) such officer or authority subordinate to the Central Government, or
- (b) such State Government or such officer or authority subordinate to a State Government.

as may be specified in the direction."

45. Section 3(2)(d) empowers issuance of order by the Central Government (or its delegatee State

Government) to regulate by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity. The State of Tamil Nadu in exercise of such power has issued an order, the Tamil Nadu Paddy (Restriction on Movement) Order, 1982. Sub-Clause (1-A) to Clause 3 of the Order was inserted on 11.5.1983 by which there was prohibition of transportation movement of paddy outside the places notified under Clause 3 of the Tamil Nadu Paddy and Rice (Restriction of Rates) Order, 1974. Sub-Clause (1-A) was subsequently again amended on 20.6.1983. Paragraph 5 of the judgment in ***K.Ramanathan's case*** (supra) notices both the amendments in Sub-Clause (1-A), which is to the following effect:

“5. On May 11, 1983, the State Government in the Food and Cooperation Department issued G.O.Ms. No. 293 introducing sub-cl. (1A) to Cl. 3 of the Order. The newly

inserted Cl. (1A) is as follows :

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the places notified under Clause 3 of the Tamil Nadu Paddy and Rice (Restriction of Rates) Order, 1974 by road / rail or otherwise."

Thereafter, on June 20, 1983, the State Government in the Food and Cooperation Department by G.O.Ms. No. 413 made a further amendment to the newly introduced sub-cl. (1A) of Cl. 3. The amended Cl. (1A) of Cl. 3 is as follows :

"No person shall transport, move or otherwise carry or prepare or attempt to transport, move or otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the Thanjavur District, Chidambaram and Kattumannarkoil Taluks in South Arcot District and Musiri, Kulithalai, Lalgudi and Tiruchirapalli Taluks in Tiruchirapalli District."

46. The submission, which was placed before the Apex Court on behalf of the appellant was that under the power given to the State Government to 'regulate' cannot be utilised to prohibit the trade. In the above context the Apex Court had occasion to consider the ambit and scope of the word 'regulation'. The Apex Court held in the said case that the word 'regulation' is a word of broad import, having a broad meaning, and is

very comprehensive in scope. The following was observed in paragraph 18 of the judgment:

“18.The word 'regulation' cannot have any rigid or inflexible meaning as to exclude 'prohibition'. The word 'regulate' is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some Courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in Corpus Juris Secundum, vol. 76 at p. 611 :

"Regulate" is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations.

"Regulate" is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict."

See also : Webster's Third New International Dictionary, Vol. II, p. 1913 and Shorter Oxford Dictionary, Vol. II, 3rd edn., p. 1784."

47. The Apex Court further held that the power to regulate carries with it full power over the thing subject

to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. The following was observed in paragraph 9 of the judgment:

“19.....At the same time, the power to regulate carries with it full power over the things subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy.”

48. Thus, the word 'regulation' as occurring in Section 71(2)(e) of the Act has to be interpreted in the

light of purpose and object of the legislation. After registration of a firm and registering the entries of a statement as enumerated in Section 58(1), the Act provides for recording of alteration and changes with regard to different subject matters as enumerated in Sections 58(1) and 60 to 63. The legislative intend is that the changes in the entry with regard to principal place of business, names of other places, where the firm carries on business, name of partners, their addresses duration of the firm should be incorporated in the changes after the changes take place. Sections 60 to 63 empower the authorised officer to give notice of the changes to the Registrar, who is mandatorily required to record the change in the entry recorded in the register of firms. The object is to make it known to entire world about the changes in the firm register. Section 66, as noted above, opens all the documents including the statements and notices filed by the firm

regarding changes for inspection. The provision of Section 66 providing inspection to all the documents is with the intend and object that public, who is trading with the firm should know all the details. In the Rules, if a provision is made that the said intimation is to be given in a particular time, the said rule has to be read as the rule effectuating the purpose and object of the Act. As observed above, Section 71(2)(e), which empowers the State Government to frame rule regulating the filing of documents, all facets of regulation including a time frame is permissible.

49. We are of the considered opinion that Rule 4 (2) cannot be said to be beyond the rule making power of the State and the judgment of the learned Single Judge in ***Balanarayanan's case*** (supra) cannot be held to be a good law. Thus, the judgment of the learned Single Judge in ***Balanarayanan's case*** (supra) is overruled. Issues IV to VI are answered in the above

manner.

ISSUE No.VII

50. This Issue relates to the question as to what reliefs the petitioners are entitled to in the present case. We have held that the judgment in ***Balanarayanan's case*** (supra) does not lay down the correct law. However, in view of the fact that the said decision is taken by us overruling the judgment as on date, all actions taken by the firms and Registrars of firms in accordance with the law laid down by the learned Single Judge in ***Balanarayanan's case*** (supra) had to be saved and overruling of the judgment shall have no effect on the concluded transactions. In the present case the petitioners had sent the representation for recording the change on 9.9.2013 and the Registrar has rejected the request on 23.9.2013, which is to the following effect:

“As per the reference above when the register was

examined, it is seen that the firm M/s.LIS was registered on 26.11.2002 with a tenure of 5 years. Since the tenure of the firm expired in 2007, it is informed that the tenure cannot be extended.”

51. Thus, the Registrar did not consider the application of the petitioners on merit as to whether it was required to be registered or not. We are of the view that the Registrar of firms may reconsider the petitioner's request sent by Exhibit P4 letter dated 9.9.2013 and take appropriate decision. We make it clear that in this Writ Petition we have not expressed any concluded opinion regarding the resolution dated 30.10.2006 as claimed by the petitioners or on the correctness or otherwise of the resolution dated 30.10.2006 and it is for the Registrar to consider all the aspects of the matter and take a fresh decision.

In the result, the Writ Appeal is allowed and the judgment of the learned Single Judge dated 16.01.2014

is set aside. Exhibit P5 letter dated 23.09.2013 of the Registrar of Firms is set aside. The Registrar of Firms may take a fresh decision on the application dated 09.09.2013 submitted by the petitioners.

The parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

vsv/vgs