

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.242 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 3384 of 1997

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Sulabh International Social Service Organization, New Pataliputra Colony, PS Pataliputra Colony, District Patna through its Chairman, Sriram Chandra Jha, son of late Awadh Lal Jha, having office at New Pataliputra Colony, P.S. Pataliputra Colony, Town and District Patna. Petitioner / Appellant

Versus

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

For the Appellant/s : Mr. P.K. Shahi, Sr. Advocate with
Mr. Shashi Bhushan Kumar, Advocate.

For the Respondent/s : Mr. Dharendra Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 04-09-2017

Heard Mr. P.K. Shahi, learned Senior Counsel for the appellant, and Mr. Dharendra Kumar, learned counsel appearing for the State.

2. The present Letters Patent Appeal has arisen out of the judgment dated 05.10.2015 passed by a learned Single Judge of this Court in CWJC No. 3384 of 1997. By the impugned judgment, the learned Single Judge has refused to set aside the order / communication dated 28.09.1996 (Annexure-1 to the Writ Application) and the order vide Memo No. 1991 dated 24.06.1996 (Annexure-2 to the Writ Application) issued under the signature of the Secretary to the Inspector General of Registration, Bihar and Inspector General of Registration, Bihar, Patna (respondent no. 2) respectively.



3. By Annexure-1 the Secretary to the Inspector General of Registration has communicated to the petitioner that the Inspector General of Registration has rejected the letters sent by the petitioner. Reference has been made to the letter no. SISO/B/217-196-27 dated 24.04.1996. Respondent no. 2 vide his letter no. 1991 dated 24.06.1996 communicated to the Chairman, Sulabh International that upon analysis of the provisions relating to 'Associate Members' contained in the bye-laws of Sulabh International (hereinafter referred to as the Society / Organization / petitioner), the registration department has found those provisions contrary to the principles of law and equality, as such the same has been withdrawn.

4. The facts as appearing from the records would show that the petitioner Organization was earlier registered under Societies Registration Act, 1860 and Rules framed thereunder as 'Sulabh International Social Services Organization' sometime in the year 1971. The Organization claimed itself to be a Social Service Organization engaged in social services on voluntary basis. The Organization was renamed, thereafter and while it was working in the name and style of 'Sulabh International' after change of name in the year 1981, a resolution came to be passed in the Special General Body Meeting of the Organization on 05.03.1989, which was later on approved by the General Body on 05.04.1989. The said resolution proposed to incorporate a concept of Associate Membership by amending the bye-laws of the Organization. The provisions relating to Associate Members which was sought to be incorporated in the bye-laws are quoted hereunder for a ready reference:-

"Associate Member:- (i) 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.



(ii) The Executive Committee or any other functionary of the Sulabh International, which has been so authorized by the Committee, may accept his/her voluntary services as associate member subject to the terms and conditions given herein below:-

A: The prescribed application form must be duly filled in by the applicant and should be accompanied with an admission fee of Rs.10/- only, refundable in the event of non-acceptance of membership.

B: Annual subscription of Rs.10/- only shall be payable by the members.

C: No one can claim admission to the society, Sulabh International, as a matter of right on payment of prescribed subscription or admission fee.

D: The option to grant or refuse admission lies with the executive body of the society.

E: After all the formalities are completed, the applicant shall be issued a letter of acceptance of his/her voluntary social services along with an Identity Card (which shall be prescribed by the Committee). The applicant shall be enrolled as an associate member of the Sulabh International and his/her voluntary services may be utilized in any capacity anywhere in the interest of the organization. Any Associate Member, devoting substantial time for the work of the International, the 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 International even if any associate member of the International devotes substantial time for the fulfillment of the object of the society.

F: In case, the applicant's voluntary social services are accepted by the appropriate authority, he should also fulfil any other conditions which may be prescribed by such authority, including any security deposit.

G: The applicant shall undertake to abide by the code of conduct, if any, prescribed by the Executive Committee.

H: 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.

(iii) The cadre of associate members shall be distinct and separate from that of the members of the society, Sulabh International.

(iv) 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.”

5. It is the case of the Organization that the aforesaid amendments in the bye-laws were sent to the Inspector General of Registration, Bihar, Patna for approval in accordance with the provisions of the Societies Registration Act and the rules framed thereunder. Admittedly, by a letter / communication dated 11.04.1989, as contained in Annexure-3 to the Writ Application, the Organization was informed about the approval of the bye-laws by taking the amended provisions on the record. Up to this stage, there was no dispute. The dispute arose subsequently when the General Body of the Organization in its meeting held on 02.09.1994 passed a resolution for changing its name from ‘Sulabh International’ to ‘Sulabh International Social Services Organization’ and the said resolution of the General Body was sent for approval / taken on record by the Inspector General of Registration.

6. The records would further show that by a letter dated 03.02.1995 the Chairman of the Organization requested the Inspector



General of Registration, Bihar, Patna to approve the resolution of the General Body with respect to change of name and a certificate to this effect be made available. A copy of the resolution said to have been taken in the General Body Meeting held on 02.09.1994 and affirmed in the General Body Special Meeting held on 04.10.1994 was enclosed with the said request letter dated 03.02.1995 (Annexure-5 to the Writ Application). On receipt of this letter, the Assistant Inspector General of Registration vide his letter no. 1621 dated 27.04.1996 called upon the Chairman of the Organization to make available the number of the Members of the Organization and a certified photocopy of the Members Register so that further action may be taken under Section 12(A) of the Societies Registration Act in accordance with law. It was also made clear that until the name is not changed in accordance with law, the same should not be used in public as a registered organization. A copy of the letter no. 1621 dated 27.04.1996 is placed as Annexure-6 to the Writ Application.

7. It appears that on receipt of Annexure-6 to the Writ Application, the Organization sent a reply vide its letter dated 27.05.1996 stating that incorporation of Associate Members is not illegal but a short time may be granted to obtain opinion of a legal expert in the matter. The Inspector General of Registration, Bihar vide his letter no. 1882 dated 08.06.1996 granted one week's time to the Organization to submit its response and the legal opinion. Admittedly, the Organization could not submit any legal opinion on this issue. Thereafter, the Inspector General of Registration issued letter no. 1991 dated 24.06.1996 which is the impugned order. By this letter, it was communicated that the bye-laws provisions relating to Associate Membership are against the principle of equality before law and hence the same were deleted with effect from the date of the letter. The Inspector General of Registration, Bihar, Patna thereafter



vide his letter no. 2242 dated 23.07.1996 (Annexure-8 to the Writ Application) issued a certificate to the Organization. A reading of the certificate, as contained in Annexure-8 to the Writ Application, would show that the resolution dated 02.09.1994 was taken on record with the deletion of Clauses 2(i), (ii), (iii) & (iv) from the bye-laws of the Organization as per the letter no. 1991 dated 24.06.1996. This letter no. 2242 dated 23.07.1996 has not been challenged by the petitioner-appellant.

Submissions of the Petitioner-Appellant

8. The whole grievance of the petitioner-appellant is that the Inspector General of Registration, Bihar, Patna has wrongly exercised his power by taking away the provisions relating to Associate Membership as contained in the bye-laws of the Organization. The submission of the petitioner-appellant is that the provision relating to Associate Membership was brought into existence by a valid resolution of the General Body taken on 05.03.1989 and affirmed on 05.04.1989. The said resolution was sent to the Inspector General of Registration, Bihar, who had taken the same on the record and approved the amended bye-laws, therefore, at this stage when the Organization sought to change its name through a valid resolution taken once again on 02.09.1994, the Inspector General of Registration had no reason to look into the provision of the Associate Membership as contained in the bye-laws of the Organization.

9. The submissions made on behalf of the petitioner-appellant before the Writ Court were once again pressed for consideration before us. The appellant has also filed a written note of argument which we have perused. We would, therefore, deal with those submissions hereunder.

Submission I – No Power of Review

9.1 Learned Senior Counsel appearing on behalf of the



petitioner-appellant submits that in absence of any proposal for amendment in the bye-laws of a society like the appellant, the Inspector General of Registration cannot exercise power whereby and whereunder he can take away certain provisions of the bye-laws. The submission, in other words, is that the Inspector General of Registration, Bihar has no power to review his earlier order and because there is no power of review vested in him, the whole exercise taken by the Inspector General of Registration, Bihar is without jurisdiction.

9.2 In order to consider the plea taken by the learned senior counsel on behalf of the appellant, the Writ Court has relied upon the stand taken by the Inspector General of Registration, Bihar in his counter affidavit. On a perusal of the said counter affidavit, it is apparent that the Inspector General of Registration has vehemently opposed the stand taken by the petitioner. The submission on behalf of the Inspector General of Registration is that the word 'employee' in the original bye-laws was substituted by 'social worker', which has not been defined in the bye-laws. In 1981 the Organization created a new class of members in Associate Members which was a camouflage.

9.3 It is the stand of the Inspector General of Registration, Bihar (Respondent no. 2) that the bye laws in respect of associate members is heavily loaded in favour of the society. It is contended that member by whatever name designated cannot be deprived of right to vote. In a subtle step by step move the society subverted and perversely controlled a class of persons as associate members, who for all purposes and intent, in most of the cases are, nothing but employees.

9.4 It has been submitted by the society that they had to create a special category of members since many wanted to render



voluntary services without liability. What is meant by liability has not been explained. It was only when Labour Department asked the petitioners society to follow Labour Legislations that the society began manipulating and manoeuvring things in its favour and created a special class of members which is not provided for anywhere in the Act. Not only the provisions of the bye-laws relating to such class of members are thoroughly discriminatory and have been boxed into a corner as silent observers, the society is filing Form 'H' showing that no employment is provided by it and persons working in the society are its 'associate members'.

9.5 Respondent no. 2 has taken a stand that a plain reading of the form 'H' submitted by the society reveals that the services of the associate members are not at the disposal of the society whereas para e, f, g, h of associate members clause clearly establishes that the services of the associate members are not only at the disposal of the society but also at the mercy of the organization. The provisions of associate members or Sulabh Volunteers are well disguised method of denying the nexus of employer and employee in majority of cases. The bye-laws framed in respect of associate members are totally discriminatory, puts them in a position of historical disadvantage. It also denies the right to approach a court for redressal of their grievances, if any. The society seems to be running a monopolistic organization with the list of its members never exceeding fifteen members, this number was inserted by amendment in 1980 and bulk of its so called associate members, who otherwise may be fulfilling or willing to fulfil the criteria of membership, have been kept away from the joining the membership of the society. Initially the bye-laws provided for membership up to hundred.

9.6 The fact of the matter is that the Sulabh International



Social Services Organization has enrolled many persons to carry out the work of organization on payment of salaries and to camouflage this, organization has brought them under the ambit of associate members.

9.7 It is further contended by Respondent no. 2 that any person who has been enrolled on subscription are members of the society and has to have a voting right. To debar associate members from the voting rights out rightly, even after payment of subscription, is not in consonance with the provisions of the Act. Furthermore to abridge the associate members from agitating their grievances in a court of law also impinges their constitutional right. The word “termination” itself indicates temporary employment in the guise of associate members.

9.8 According to the stand taken by Respondent no. 2, the perusal of the appropriate portion of bye-laws noted above would make it clear that the society has reserved the right to impose conditions and code of conduct for volunteers without giving them any say and right of participation in the functioning of the society. So much so that the associate members are barred from courts of the country for redressal of their grievances. The provisions is autocratic and not in tune with the constitutional right and it clearly shows that all associate members are in majority of cases are not volunteers but employees of Sulabh International working at the mercy of the society. The society seems to have scant regard for laws of land.

9.9 As regards the above ground, we find from the impugned order that the learned Single Judge has considered the submission in detail in Paragraph 20 of the impugned order. Having discussed a number of case laws which were cited at the Bar and upon distinguishing the judgments on their applicability in the facts of the



present case, the learned Single Judge has rightly come to a conclusion that Rules 12 and 13 of the Societies Registration Act especially confers power upon the Inspector General of Registration; if the society is engaging itself in activities which are subversive to the object of the society, the Inspector General of Registration has got power to examine the affairs of the society or to enquire into any complaint received against any society; the Inspector General of Registration can, following the principles of natural justice, take action for cancellation of registration.

9.10 We are in agreement with the learned Single Judge that it amounts to denying the rights emanating from common laws as also the rights and benefits of labour legislation. The findings of the learned Single Judge are without any challenge in the Letters Patent Appeal before us. We agree with the view taken by learned Single Judge that Inspector General of Registration has sufficient power to examine the matter and if it is found that any provision of bye-laws is against the aims and object of the Society, he certainly have power to stripe off those provisions which are inconsistent and incoherent to the Act and the bye-laws. Thus, the submission of the learned Senior Counsel that the Inspector General, Registration has no power of review is not acceptable to us.

9.11 The learned Single Judge has discussed in detail the judgment of the Hon'ble Supreme Court rendered in the case of **SC Bar Association & Ors. Vs. B.D. Kaushik**, reported in (2011) 13 SCC 774, judgment in the case of **NAWARD Vs. State of Bihar**, reported in 2010 Law Suits Patna 381 and the judgment in the case of **State of U.P. & Anr. Vs. C.O.D. Chheoki Employees Co-operative Society Ltd. & Ors.**, reported in (1997) 3 SCC 681. The learned Single Judge has discussed the factual background of those cases and the context in which the judgments have been rendered by



the Hon'ble Supreme Court. A catena of decisions have been taken note of by the learned Single Judge in the impugned order to say that "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." (Emphasis supplied) We agree with the learned Single Judge that the judgments relied upon on behalf of the petitioner were rendered in a totally different facts situation and are not supporting the case of the present petitioner – appellant.

Submission II – Scope of Sections 12A & 12B of the Act

10. Learned Senior Counsel representing the appellant submits that the Organization had filed its resolution regarding change of name, therefore, the Inspector General of Registration should have restricted his exercise only to the limited extent for which the application was filed. According to the learned Senior Counsel, Section 12 of the Act provides the power to the Governing Body of a Society to alter, extend or abridge such purpose or other purpose or to amalgamate such society either wholly or partially with any other society. The Governing Body would submit written or printed proposition to the Members of the Society / Organization and may call Special Meeting for consideration. Section 12A of the Act provides for change of name of society and this change can be effected by any Member but not less than 3/5th of the Members of the Society but subject to the provisions of Section 12B of the Act. Section 12B of the Act provides for notice in writing with respect to every change of name signed by the Secretary and by seven Members of the Society which should be sent to the Registrar. It further provides that if the proposed name is identical or nearby resembles 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 the society. Section 13 of the Act deals with dissolution of societies and adjustment of their affairs. Learned Senior Counsel would, therefore, submit that on receipt of intimation regarding change of name the only power of the Inspector General, Registration was to see that proposed name is not in any manner similar to the name of another society. There is no further power. He has to record the change if there is no violation of Section 12B. Thus, according to him, the questions raised by the respondent no. 2 were against the law. Section 12A, 12B & 13 of the Act are quoted here-under for a ready reference:-

“12A. Change of name.- Any number not less than three-fifths of the members of any society registered under section 3 may, subject to the provisions of section 12B, change its name.”

“12B. Notice of change in name.- (1) Notice in writing of every change of name signed by the Secretary and any seven members of the society changing its name shall be sent to the Registrar.

(2) If the proposed name is identical with that by which any other existing society has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2) the Registrar shall if he is satisfied that the provisions of this Act in respect of change of name have been completed with, register the change of name and the change of name shall have effect from the date of the such registration.”

“13. Provision for dissolution of societies and adjustment of their affairs.- Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and if not, then as the



governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court or original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite.

Assent required.- Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose:

Government consent.- Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of the Government of the State of registration.”

10.1 In the present case, the society submitted its resolution for change of name of the society. The Assistant Inspector General of Registration called for the certified Xerox copy of the Register of Members in order to proceed further in accordance with Section 12(A) of the Act. Instead of furnishing the Register of Members as called for, the Organization, namely, ‘Sulabh International’ took time to submit its legal opinion on the subject.

10.2 In these circumstances, when the Organization was not providing the documents required for, the Inspector General of Registration was not supposed to remain a mute spectator with his eyes closed. While exercising his powers U/S 12A of the Act, Inspector General of Registration was well within his powers to examine the list of “Members” in order to ascertain the validity of the Resolution. In course of examining validity of a Resolution he can always go into the nature of Membership and voting rights conferred or not conferred upon a Member. Further, the Inspector General of Registration has power under Rules 12 and 13 of the Bihar Societies



Registration Rules, 1965 to form his opinion as to whether the society was engaging itself in activities which are subversive to the objects of the society. **Rules 12 and 13 of the Bihar Societies Registration Rules, 1965** read thus:

“12. The Inspector-General of Registration may in his discretion institute 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 society and administration of the Act specially when there is a suspicion that the society is engaging itself in act 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 of papers called for from the registered society shall be produced before Inspector-General of Registration or any officer authorized by the Inspector-General of Registration to enable him to examine the affairs of the society and 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 not 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.”

10.3 In our opinion, in the process of granting approval to the resolution for change of name if the Inspector General of Registration has looked into the provisions of the bye-laws of the Society or Organization and noticed that the concept of Associate Membership was introduced in the year 1991 with an intention to bring the entire work force of the Society / Organization on the roll as Associate Members and thereby depriving them benefits of labour legislation and other privileges as also taking away their rights to agitate their claims before a competent court of law, the Inspector



General of Registration rightly travelled to the extent it was permissible by virtue of Rules 12 and 13 of the Societies Registration Rules, 1965. In his counter affidavit he has brought home this point by enclosing Form ‘H’ being filed by the appellant, showing that there are no ‘workers’, to avoid liabilities under Labour Legislations. Form ‘H’ and the declaration of the appellant as per Annexure-‘A’ to the Counter Affidavit of the Inspector General of Registration (Respondent no. 2) is re-produced here-under for a ready reference:-

“(Regn. No. 73 of 1970-71)

PROFORMA – H

Return on employment and employee compensation. For the quarter ending December, 1996.

- 1. Name of the Institution / establishment. Sulabh International Social Service Organisation.
- 2. Address South Gandhi Maidan, Patna – 800 001.
- 3. Number of days worked during the month. 26 days.
- 4. Normal working hours 7 hours (but the time spent on the work is not at the disposal or under the order of Sulabh)
- 5. Rest intervals (hours) Normally one hour, but the voluntary Social Workers may avail of themselves for more than one hour at per their convenience.
- 6. Employment and earnings of hired workers. Neither any employment is provided nor is any worker hired.

Category of workers.	No. of employment at the end of the month.	No. of man-days worked during the month	Emoluments paid in cash before deduction.	Money value of concessions in kind.	Ex gratia each payment.	Contribution to social security funds.
1	2	3	4	5	6	7
No. category of workers. All are voluntary social workers.	Employment is not provided.					

8. Number of unpaid helpers. Nil.

N.B:- Ex-gratia each payments include profit-sharing bonus as may be paid to workers quarterly, annually or over any other period and other ad hoc cash payment, if any.

Sd/-
(Ram Chandra Jha)
Chairman.”

10.4 The submission of the learned Senior Counsel that the



Inspector General of Registration should have restricted himself and would not have looked into the provisions of the bye-laws, which were very much available on the record before him, is liable to be rejected. The Inspector General of Registration has rightly exercised his powers U/S 12A inasmuch as he has taken on record the resolution changing name of the Organization but by deleting the provision of the bye-laws relating to Associate Member, from prospective effect. The submission of learned Senior Counsel that deletion is with retrospective effect has been denied by the Inspector General of Registration in his counter-affidavit.

Submission III – Petitioner Organisation is not an ‘Industry’

11. The learned Senior Counsel has submitted before us that the petitioner Organization is not an ‘Industry’ as has been held by this Court and the matter relating to its status as an ‘Industry’ has not been interfered with up to the Hon’ble Supreme Court of India, therefore, according to the learned Senior Counsel, the learned Single Judge has wrongly held that the entire work force has been deprived of the benefits of labour laws by taking them on the roll of Associate Members. The submission on this point would also fail the moment we look into the order dated 9th February, 1990 passed by Hon’ble Division Bench of this Court in CWJC No. 3408 of 1989. In the said case, a Reference U/S 10 of the Industrial Disputes Act came to be decided by the Industrial Tribunal which came to be challenged in the aforesaid Writ Petition. The main issue raised in the said case was that the demand was not raised by a workman claiming to be such but was raised by an individual a Senior Advocate claiming himself ‘Adhyaksh’ of Bhartiya Sulabh Sauchalaya Karamchari Sangh. The Court found that the so-called union was entirely spurious, the self styled union was working with mala fide reasons and hence no reference should have been made. Thus on holding the above, the



entire reference and consequential award were declared a nullity.

11.1 The second point whether petitioner was an 'Industry' or not, the Hon'ble Court found that this issue had become academic since if it was held to be an 'Industry', the initiation of proceeding itself being bad, no award could be made. In Paragraph '7', the Hon'ble court proceeded to observe as under:-

“..... I, however, would like to express opinion succinctly in regard to this point also. Undoubtedly, the law has completely been crystalised by the decision of the Supreme Court reported in AIR 1978 SC 548 (Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others) relating to types of establishments that come within the definition set out in section 2(j) of the Act. The definition in Section 2(j) of the Act of the word 'industry' has been given a wide meaning embracing within its ambit a large number of organizations which would come within the nature of the institution set out but it is essential in every cause where the question is raised whether an establishment is an industry within the meaning of section 2(j) of the Act that certain relevant factual data have to be found. If an establishment is undoubtedly an industry established for the purpose of business, trade, undertaking manufacture or calling of employers and it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workman, that being an establishment of undoubted has in regard to its character of being an industry then much ado is not required for applying the provisions of the Industrial Disputes Act in all its aspect. The problem arises only when an establishment by the very nature of its creation, extent and its purpose for which it was established cannot ex facie be described as an industry then it can only be brought into the ambit of the definition of section 2(j) of the Act on the basis of ascertainable facts brought about by detailed inquiry in an award proceeding or at the level of the State Government making the reference. The onus would lie on the so called workmen to bring on the record, cogent and relevant materials to show that not only they are the members of such establishment but also that the organization is in fact functioning in the manner which brings it within the definition of 'Industry'. In the instant



case, apart from the bye laws and the audit report of the management and four witnesses examined by the workmen, nothing has been brought on the record to show the manner in which really the petitioner-establishment is functioning.”

11.2 After taking note of the claim of the petitioner that it is a voluntary organization of social workers, the purpose for which the establishment has been set-out and the large number of volunteers who are paid small sums of money, the Hon’ble Division Bench further observed thus:-

“..... It is true that in every case of industry, the element of profit and loss need not be there yet as I read the aforesaid decision of the Supreme Court, the definition cannot be extended to a purely voluntary organization like the petitioner-establishment which is working for public good and in the interest of the weaker section of the society unless relevant facts are proved. In my view, it is incorrect to say on the basis of the aims and objects of the organization that these cannot be accomplished by voluntary workers. The aims and objects of any establishment are always extensive and goes even beyond the actual work that the establishment undertakes. The ipse dixit of four workmen all of whom claim to be no longer in service of the establishment and the aims and objects can hardly justify the inference that the establishment is an industry. Much more than this was needed to be proved.”

11.3 A Civil Appeal preferred vide Civil Appeal no. 2527 of 1991 filed by the Bhartiya Sulabh Sauchalaya Karamchari Sangh was not pressed and the same was withdrawn!

11.4 A bare perusal of the Division Bench judgment, the relevant part of which has been quoted here-in-above, would go a long way to show that the judgment is not a judgment-in-rem. It is a ‘judgment-in-personem’. It is only a judgment in the facts of that case and learned Senior Counsel has taken this plea by misconstruing the judgment of the Division Bench. At least on three occasions the



Hon'ble Division Bench has indicated the lack of facts and evidences in the said case to prove that the establishment of the petitioner was not an "industry". The Court has noted that in the said case apart from bye-laws, and the audit report and deposition of four witnesses there was no record to show the functioning of the establishment.

11.5 Thus, even this contention of the appellant would fail. This should not be construed as an opinion that the petitioner-appellant is an "industry" as defined under the Industrial Dispute Act, 1947. We are only saying that the Division bench judgment of this Court, on which reliance has been placed on behalf of the appellant, cannot be used to canvass that there is a pronouncement of a court, holding that it is not an "industry". In our opinion, this issue is still open and may be examined by a competent court on the basis of materials available on record to show the functioning of the establishment of the appellant.

Exemption from provisions of Bihar Shops & Establishment Act, 1953

11.6 Further submission of the appellant is that the establishment of Sulabh International Patna, situated in the State of Bihar, has been granted exemptions from all the provisions of the Bihar Shops and Establishment Act, 1953. Thus, according to the learned Senior Counsel, the view taken by the Inspector General, Registration and the learned Single Judge that the amendments in the bye-laws brought by resolution dated 05.03.1989 were to circumvent the labour legislations is not well founded, hence, bad. We have considered this aspect as well. In 1982, the Sulabh International was granted exemptions from the provisions of Bihar Shops and Establishment Act and for its establishment in the State of Bihar but this has a limited effect. The exemptions are not from the several labour legislations such as Minimum Wages Act, Payment of Wages Act, Bonus Act, etc. Apparently, the tone and tenor of the argument of



learned Senior Counsel for the appellant suggests that whole emphasis is on protecting the appellant from compliances under Labour Laws, the amendments vide resolution dated 05.03.1989 in the bye-laws were thus purposely introduced to circumvent Labour Laws. We are, therefore, unable to accept the submission of the learned Senior Counsel. Over the period, Sulabh International has changed its name and has grown many fold outside the State of Bihar as well. The entry in Schedule 'I' of the Bihar Shops and Establishment Act, 1953 has remained as it is in old name, however, we need not go into that aspect as we hold that exemptions under the Act of 1953 cannot be used as a shield to sustain the deleted bye-laws.

11.7 There is no positive submission that these Associate Members, who are rendering their services to the Organization on full time or part time basis, are being paid as per the provisions of the labour laws, rather a kind of negative submission has been made that the same cannot be looked into and the learned Single Judge has committed an error by taking note of the same.

11.8 We are afraid as to how the petitioner Organization, which claims itself being engaged in social services, can bind its own Associate Members, who are engaged in rendering services to the Organization in the name of Social Service under so many rigours imposed on them by the amended bye-laws which were introduced by virtue of the resolution of the General Body of the Organization taken on 05.03.1989 and subsequently confirmed by the Special General Body on 05.04.1989.

11.9 We could have appreciated if the petitioner Organization would have come out with a submission that the finding of the learned Single Judge that the entire work force of the petitioner Organization has been brought on the roll as Associate Members in order to deprive them the benefits of labour legislation is a wrong



finding of fact but this is not the case of the appellant before this Court. The fallacy of the argument of the learned Senior Counsel may also be noticed from the fact that when this Court put a straight question as to whether or not the provisions of the legislation like Payment of Gratuity Act would apply to this Organization, the answer was only in the nature of an evasive reply.

11.10 In our opinion, 'Whether the appellant Organization is an Industry or not' may be a subject-matter of adjudication in an appropriate proceeding before an appropriate forum. This issue has, however, no role to play in arriving on a conclusion by this Court that the entire work force of the petitioner Organization was brought on the roll of Associate Membership, in an attempt to deprive them of the benefits of the labour legislation. A labour beneficial legislation applies where there is a relationship of 'employer and employee' which may be established by bringing cogent evidence/(s) in a duly constituted proceeding before the authority vested with powers to adjudicate the claims, if any, raised by a person. The bye-laws prohibited an Associate Member from raising any plea in this regard before a court of law, therefore, such provision of bye-laws have been rightly stripped off. We, therefore, hold and declare that the learned Single Judge has rightly taken note of the facts culled out from the records and the materials placed with the counter affidavit of the Inspector General of Registration before the Court.

Submission IV – Power of Review to be exercised within a reasonable time

12. The learned Single Judge has considered one more aspect of the matter which was raised in course of hearing of the Writ Application, i.e., the submission of the learned Senior Counsel for the petitioner Organization advanced in the Writ Court was that the power of review or revision should be exercised within a reasonable time. In Paragraph 30 of the impugned judgment, the learned Single Judge has



rejected the said contention in the following words:-

“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.”

13. In the facts of the present case where the provisions in respect of the Associate Members have been held to be unreasonable and subversive to the aim and object of the Appellant Organization and the entire work force has been placed on the roll of Associate Member with heavily loaded conditions against them, the exercise of power by the Inspector General of Registration cannot be held to be bad on the ground of delay.

14. We have considered the entire materials and submissions available on the record and come to a conclusion that the judgment of the learned Single Judge in the present case is a well discussed and reasoned judgment which needs no interference.

15. The Letters Patent Appeal is thus dismissed.

(Rajeev Ranjan Prasad, J)

I agree.

Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

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