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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 02.04.2018

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W.P.(C) 2326/2016

DR P SAMARENDRA

..... Petitioner

Through: Mr Vivek Singh and Mr Tamim Qadri,
Advs.

versus

THE REGISTRAR OF COOPERATIVE SOCIETIES NCT & ANR

..... Respondents

Through: Ms Saahila Lamba, Adv. for R-1
Mr Balraj Singh Malik, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE REKHA PALLI

SIDDHARTH MRIDUL, J. (ORAL)

CM APPL. 9043/2018 (for early hearing of appeal)

With the consent of the learned counsel appearing on behalf of the parties, the matter is taken up for hearing today.

The application is disposed off.

W.P.(C) 2326/2016

1. The issue that arises for adjudication in the present case falls within a very narrow compass. The solitary question which needs to be determined in the present proceedings is whether a notification issued by the Government of NCT of Delhi can be said to have come into force before it is published in the Official Gazette, in accordance with law.

2. The issue elaborated hereinabove is no longer *res integra*. In **B.K. Srinivasan and Ors. vs. State of Karnataka and Ors.** reported as (1987)1

SCC 658, the Hon'ble Supreme Court held as follows in paragraph 18 thereof:-

“18. There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes.

Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'Unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known.

We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary Legislation which is publicly made, delegated or subordinate legislation is often made, unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.

Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication.

There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient. See Narayana Reddy, v. State of Andhra Pradesh : 1969 (1) AWR 77.”

3. In **Collector of Central Excise vs. New Tobacco Co. Etc. Etc.** reported as (1998)8 SCC 250, the Hon’ble Supreme Court held as follows in paragraph 12 thereof:-

“12. We hold that a Central Excise Notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.”

4. In the present writ petition, it has been *inter alia* prayed that the requirement of submitting the proof of residence has no application in the case of the petitioner and that a direction may be issued to the official respondent to process the petitioner’s application for allotment without insisting for the same.

5. It is further observed that the Registrar of Cooperative Societies has declined consideration of the petitioner’s application on the ground that a notification issued by the Government of NCT of Delhi dated 22.04.1997 stipulates the fulfillment of the above-stated condition, which the petitioner did not fulfil when he was granted membership of the Respondent No.2/Society.

6. A perusal of the status report filed on behalf of the official respondent, however, clearly reflects that the said notification on which

the rejection of the petitioner's application was predicated, was not "published" in accordance with law, at the relevant time.

7. In view of the dicta of the decisions of the Hon'ble Supreme Court of India referred to hereinabove, the subject notification could not be made applicable to the petitioner or bind him to furnish the subject information in view of the admitted position that the subject notification had not been "published", in accordance with law. In these circumstances, the order dated 16.07.2012 passed by Respondent No.2/Society on the premise that the petitioner did not fulfil the requirement of Notification dated 22.04.1997 cannot be substantiated.

8. Resultantly, the writ petition is allowed. The Registrar of Cooperative Societies is directed to process the application filed on behalf of the petitioner in accordance with law, without insisting upon the former to furnish the proof of residence.

9. With the above directions, the writ petition is disposed off.

10. It is hoped and expected that the petitioner's application which has been pending for consideration for a long period of time shall be processed expeditiously and preferably within a period of three months from today.

SIDDHARTH MRIDUL, J

REKHA PALLI, J

APRIL 02, 2018

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