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

Date of Decision: 3.5.2018.

+ W.P.(C) 9032/2014 & Crl. M.A. No.11269/2015
S.K. TEWARI

..... Petitioner
Through Mr. Anunaya Mehta and Mr. Akshay
Deep Singhal, Advs.

versus

UNION OF INDIA & ANR

..... Respondents
Through Mr. Sivanadaraaja, Ms. Shalini Kaul
and Mr. Chaman Lal Choudhary,
Advs. for R-2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1 This is the second round of litigation initiated by the petitioner. The petitioner is the Secretary of a society known as the Chess Association of India.

2 In the first round, the petitioner had filed a writ petition in this Court via his son i.e. Mr. Anupam Shekhar. The said writ petition is numbered as: W.P. (C) 1812/2014. This Court declined to entertain the petition as it became clear that the petitioner herein was using his son as a front. The Court expressed its *prima facie* view in this regard in the order dated 19.03.2014. The writ petition was ultimately dismissed as withdrawn vide order dated 20.03.2014.

3 With this brief preface, what is required to be examined is as to whether this Court is the appropriate and convenient forum for adjudicating the issue raised in the present petition. The reason that this poser is formulated is on account of the fact that there is a parallel litigation which is pending in the Madras High Court which, according to me, would have impact on the instant proceedings. There is no dispute that the petitioner's organization i.e. U.P. Chess Association of India is arrayed as petitioner No.3 in W.P.(C) No.15254 of 2011 which is pending adjudication before the Madras High Court.

4 In this case, the petitioner's principal grievance is that respondent No. 2 i.e. All India Chess Federation (AICF), is being provided grant in aid by respondent No. 1/Union of India (UOI) despite the fact that it has not been conferred with the legal status of a voluntary registered body.

4.1 In sum, the petitioner's contention is that for respondent No. 1 to be recognized as a National Sports Federation (in short 'NSF') under the National Sports Development Code of India, 2011, it should have the legal status of voluntary registered body. Thus, the petitioner's emphasis is on the fact that respondent No. 2 has not had its bye-laws approved by the Registrar of Societies, Chennai.

5 This charge, the petitioner seeks to level and establish by referring to the responses received against the applications filed under the Right to Information Act, 2005 to both respondent No. 1/UOI and the CPIO of Registrar of Societies, Chennai.

5.1 In this behalf, reliance is placed on application dated 08.03.2013 of petitioner and reply dated 03.05.2013 issued by CPIO, ACIF. Insofar as the

application dated 08.03.2013 is concerned, it was dispatched by respondent No. 1/UOI to respondent No. 2 for appropriate response. It is the petitioner's case that thereafter respondent No. 2 vide its letter dated 03.05.2013 had communicated that bye-laws, as approved by the Registrar of Societies, were not available.

5.2 Likewise, it appears, in response to the RTI application filed with the Registrar of Societies, Chennai, a response was received whereby the copy of the bye-laws which was provided to the petitioner was the one which was framed in 1958.

5.3 Thus, in a nutshell, the case of the petitioner is that respondent No. 2 could not have been recognized as a NSF based on the bye-laws of 1958 as they were framed when the Societies Registration Act, 1950 was in vogue. According to the petitioner, after the enactment of Tamil Nadu Societies Registration Act, 1975 ("1975 Act"), fresh bye-laws had to be filed with the Registrar of Societies, Chennai and based on the said bye-laws, respondent No. 2 could have been given the status of a NSF.

6 The immediate benefit of respondent No. 2 being recognized as a NSF is that it gets grant-in-aid from respondent No. 1/UOI to promote chess in India. The petitioner appears to be aggrieved by this, and if respondent No. 2 is to be believed, for the reason that he is the General Secretary of an association known as UP Chess Association which seeks to compete with respondent No. 2. Thus, respondent No. 2 in its counter affidavit has, while resisting the writ petition, adverted to the following:-

- (i) The petitioner is the General Secretary of UP Chess Association which was earlier affiliated to respondent No. 2.
- (ii) The petitioner is associates, S.L. Harsh and PT Ummer Khoya were in

control and management of respondent No. 2 between 1989 to 2004.

(iii) Since, S.L. Harsh and PT Ummer Khoya had committed acts of misfeasance and/or malfeasance, they were suspended by respondent No. 2.

(iii)(a) The Division Bench of the Madras High Court had commented on their actions.

(iv) Given this background, fresh elections were held and a new management took over the reins of respondent No. 2. The new management discovered that the bye-laws on the record of the Registrar of Societies, Chennai, were not in conformity with the 1975 Act and, therefore, corrective measures were taken. Towards this end, balance-sheets of respondent No. 2 for the period spanning between 1979 and 2005 were filed along with the fresh bye-laws as approved in 2005.

(v) In the meanwhile, on account of mismanagement of affairs of respondent No. 2, the District Registrar of Societies, Chennai had initiated actions for declaring respondent No. 2 as defunct.

(vi) Despite the corrective measures sought to be taken by respondent No. 2, the District Registrar of Societies declared respondent No. 2 as a defunct organization.

(vii) Aggrieved by the same, respondent No. 2 filed an appeal with the Inspector General of Registration, Chennai.

(viii) Inspector General of Registration, Chennai, vide order dated 25.04.2006, set aside the order declaring respondent No. 2 as a defunct association and, instead, directed its management to ensure that the bye-laws are brought in conformity with the 1975 Act and the Rules framed therein within a period of three months.

(ix) Respondent No. 2 complied with the said directions, whereupon, the

Government of Tamil Nadu issued a G.O. Rt. No.513 dated 10.08.2010. This G.O., in effect, conforms to the order of the Inspector General of Registration dated 25.04.2006.

(x) The petitioner via his association, i.e., UP Chess Association, instituted a petition in the Madras High Court which is numbered as W.P.(C) No.15254/2011, whereby, a challenge is laid to G.O. Rt. No.513. However, the attempt to obtain interim orders in the said petition was repelled by the Madras High Court.

6 In sum, the stand taken by respondent No. 2 is that fresh bye-laws were framed in 2005 which were filed with the District Registrar of Societies, Chennai, and since, the District Registrar, Chennai proceeded to declare respondent No. 2 as a defunct association the issue was agitated before the Inspector General of Registration, Chennai, who vide his order dated 25.04.2006, has reversed the said order and allowed the petitioner to amend its bye-laws.

6.1 Respondent No. 2 has taken the stand before me that the bye-laws have been amended.

6.2 Learned counsel for the petitioner, when queried, stated that the original bye-laws were not found on record. At which point, I did query the counsel further and asked him as to whether the Registrar of Societies, Chennai, had been made party to the present proceedings. As is obvious from the title of proceedings, the Registrar of Societies, Chennai has not been made party to the present proceedings.

7 Given these circumstances, what attains criticality is the following: the order of the Inspector General of Registration, dated 25.04.2006; GO Rt. No. 513, dated 10.08.2010; and the stand taken by the petitioner in Madras

High Court in W.P. (C) No.15254/2012.

8 Therefore, in the first instance, it would be necessary to advert to those parts of the order of the appellate authority (i.e. Inspector General of Registration) which seem to indicate that, when, the appeal was adjudicated upon, bye-laws had been filed and that the copy of the bye-laws available on record, though, were inconsistent with the provisions of the 1975 Act. This aspect comes through upon the perusal of the emphasised parts of the following extract of order dated 25.04.2006:-

“3. Pursuant to the notice u/s 44(2), the Society' submitted a representation dated 19.10.05 to the District Registrar explaining the circumstances, for not filing the required returns then and there and enclosing the following returns for filing.

a. Income and Expenditure account statement, Balance sheet and Auditors report and minutes of the General Body meeting from the year 1979 - 1.980 onwards.

b. Form VI, recording the addresses and occupations of the members for the years 1981 to 2005.

c. Form-VII, informing the changes in the Management Committee for the years 1981 -2005onwards

d. Declaration that the Society is carrying on its operation for the years 1978 to 2005.

e. Copy of the bye-laws.

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8. **Lapses on the part of Society:**

The appellant Society, registered under the erstwhile Societies Registration Act, 1960 and deemed to have been registered under TNSR Act 1975 is bound to follow the provisions of the TNSR Act has not adhered to the provisions of the Act and Rules as mentioned hereunder:

1 *The Society has not filed any returns required under the Act till declaring the Society defunct.*

- 2 *The bye-laws are inconsistent to the provisions of the Act.*
3. *According to the Rule 2 of the society the term of Executive Committee Members is 2 years. However, the Executive Committee had been changed once in 4 years which is not only against the bye-law, but also total violation of sec. 15(4).of the TNSR Act, 1975.*
4. *The change of Committee Members as well as admission and removal of member of the Society have not been filed then and there.*

However, all these lapses are not impediment to restore the appellant Society.

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“10. From the above facts, I am of the strong conclusion, that the society is functioning. Hence, the appeal deserves to be allowed. As such the appeal of the Society is allowed and the name of the Society is restored to the register of Societies. In respect of lapses of the Society in adhering to the provisions of the TNSR Act 1975 the following direction is given to the Society.

a. The bye-law should be amended in total conformity with provisions of the Act & Rules within a period of three months.”

(emphasis is mine)

Stand taken in the writ petition filed in the Madras High Court

- 9 *Relevant extracts of the G.O. Rt. No.513 are as follows:*

“It has filed Form VII with District Registrar on 06.02.2006 instead of 10.07.1981, 21.07.1985, 16.08.1989, 23.06.1993, 07.11.1997, 18.12.2001, 24.12.2005. It has also filed Form V with the District Registrar on 06.02.2006 instead of 31.07.2005. Further it has filed amendment to bye-law with the District Registrar on 06.02.2006 instead of 08.12.1996.

2 *The Inspector General of Registration has recommended that the above said association may be exempted from the provision of Rules 17 (2), 22, 15 and 26 of the Tamil Nadu Societies Registration Rules, 1978. The Government accept the recommendation of the Inspector General of Registration, Chennai.*

3 *In exercise of the powers conferred by sub-section (1) of Section 54 of the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27 of 1975), the Governor of Tamil Nadu hereby exempts the All India Chess Federation, Chennai (Regd. No.125/1958) from the provisions of Rules 17 (2), 22, 15 & 26 of the Tamil Nadu Societies Registration Act, 1978 for having filed belatedly the documents specified in sub-section (2) of Section 15, sub-section (2) of Section 16, sub-section (1) of Section 13 & Section 27 of the said Act for the years 1979-80, 1980-81, 1983-84, 1984-85, 1985-86, 1992-93, 1995-96, 1996-97, 1997-98, 1999-2000, 2000-01, 2011-02, 2002-03, 2003-04 along with Form VII, Form V and amendment to bye-law with the District Registrar on 06.02.2006. ”*

10 Likewise, ground ‘H’ of the writ petition filed in the Madras High Court being relevant is extracted hereinafter:-

“H. The impugned order is liable to be set aside in as much as, the 4th respondent, AICF was working as an unregistered society after 1960 and after the enactment of Tamilnadu Societies Registration Act in 1978 it failed to get itself to be registered and regulated under the State Act and it was notified as a defunct society in July 2005 and the same was subsequently confirmed. The attempt was made by certain office bearers to mischievously to revive this society by filing all records belonging to 5th respondent Calicut

registered Society (825/91), on 6.2.2006 and finally in April, 2006 the IG of Registration, Tamil Nadu wrongly restored this defunct society which has been challenged and the Writ Petition No.46649 of 2006 is pending. It is clear that the 4th Respondent and the IG, Registration in order to circumvent the challenge and get over the illegalities have devised the present questionable tactics by the recommendation for exemption which is mischievous and motivated. It is only to get over the legal challenge that is pending before this Hon'ble Court that the record of 45 years that included the records of the 5th Respondent for a substantial portion of the period, were collectively filed on 05.02.2006 with an application under S. 49 requesting condoning delay. Compounding such illegal and malafide application instead of a Condonation, the authorities have acted one step further by recommending grant of an exemption u/s 54 which was granted by the impugned order. The impugned order is thus replete with malafide actions, abuse of statutory power and a naked attempt to overreach the powers of this Hon'ble Court by seeking to pass orders that would have a direct effect upon pending proceedings and is therefore liable to be set aside."

11 A combined reading of the aforesaid documents, i.e., the order of the Inspector General of Registration, Chennai, GO Rt. No. 513 and ground 'H' taken in the writ petition would show that much would turn on whether or not the Madras High Court was to grant relief to the petitioner herein. As is evident from the aforesaid extracts and the stand of respondent No. 2 that the bye-laws filed in 2005 will be tested in those proceedings. What emanates from the extracts, which have been culled out is that amendment to bye-laws has been allowed which *prima facie* establishes that bye-laws are

on record. The petitioner before this Court disputes this aspect of the matter. Clearly, in my view, this Court having co-equal jurisdiction ought not to entertain this writ petition as there is possibility of a potential conflict. Therefore, in my view, apart from anything else, the more convenient forum for the petitioner would be the Madras High Court. Needless to say, I have not touched upon the aspect pertaining to locus and the merits of the case set up by the petitioner in this case.

10 Therefore, this writ petition is closed with liberty to the petitioner to file its action before the Madras High Court in the manner known to law.

RAJIV SHAKDHER, J

MAY 03, 2018

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