

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1055 of 2020

1. Ramawtar Agrawal, S/o Begraj Agrawal, Aged About 65 Years, Secretary, Modern Medical Institute Society, Having Its Registered Office at Lalpur, Raipur, District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Commerce and Industries Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur, District : Raipur, Chhattisgarh
2. Registrar, Firms and Societies, Chhattisgarh, Indrawati Bhawan, Nawa Raipur, District : Raipur, Chhattisgarh
3. Dr. Harak Jain, S/o B.L. Jain, Aged About 66 Years, R/o Gandhi Chowk, Raipur, District : Raipur, Chhattisgarh
4. Assistant Registrar, Firms and Societies, O-5, Anupam Nagar, Raipur, District : Raipur, Chhattisgarh

-----Respondents

For Petitioner	: Mr. Manoj Paranjpe, Advocate
For State	: Mr. V. R. Tiwari, Addl. Adv. General
For Respondent No. 3	: Mr. Priyank Rathi, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30.06.2020

1. The present writ petition has been filed assailing the impugned order dated 12.02.2020 rejecting the appeal preferred by the petitioner before the Special Secretary and have also sought for quashment of the order dated 02.08.2014 passed by the Registrar and the order dated 26.12.2007 passed by the Assistant Registrar.
2. The facts in brief is that the petitioner is a society registered under the

Chhattisgarh Society Registration Adhiniyam, 1973 (hereinafter referred as Act, 1973). The society was registered as early as in the year 1989 bearing Registration No. 21530. Down the line, the petitioner's society had intended to amend the constitution of the society and for which appropriate amendments were proposed/placed before the General Body Meeting of the petitioner's society on 18.11.2007 and thereafter the General Body Meeting having approved the same and the matter was forwarded to the Registrar for its approval and the Registrar also gave his/her approval on 26.12.2007 (Annexure P-5).

3. The private respondent namely, Dr. Harak Jain ie., respondent no. 3 in the present writ petition not happy with the amendment proposed or approved by the authorities had challenged the same before the State Government u/s 40 of the said Act of 1973 and the State Government vide its order dated 03.10.2008 had rejected his objections. Thereafter, the order passed by the State Government was subjected to challenge in WP(C) No. 6292 of 2008, which finally stood allowed vide order dated 03.04.2013 and the matter stood remitted back to the State Government for deciding the appeal on merit afresh considering the objections raised, by the Respondent No. 3 herein.
4. Pursuant to the order passed by the High Court dated 03.04.2013, the appeal of the respondent no. 3 stood revived to its original number before the State Government, which still stands pending before the same authority. However, the respondent no. 3 after the order having been passed by the High Court on 03.04.2013 instead

of approaching the State Government where his appeal stands revived, approached the Registrar showing the order of the High Court. The Registrar taking it as a command of the High Court vide Annexure P-8 allowed the application of the respondent no. 3 and has set-aside the amendment brought to the constitution of the society, earlier approved by himself in the year 2007.

5. This order was subjected to challenge before the Special Secretary and who also vide order dated 12.02.2020 has rejected the appeal of the petitioner, even though the earlier appeal was pending before him after the matter was remitted back to him, leading to the filing of the present writ petition.
6. So far as the aforesaid factual matrix of the case is concerned, this aspect has not been disputed or questioned or objected to by any of the respondents. At this juncture, it would be relevant to refer to the Order passed by the High Court in WP(C) No. 6292 of 2008 decided on 03.04.2013. The operative part of the said order reads as under:

“6. Section 10 of the Act, 1973 provides for amendments of memorandum or regulation or bye-laws of registered society. Sub-section (2) of Section 10 clearly states that every proposal for such amendment shall be forwarded to the Registrar in such form together with such fee as may be prescribed and if the Registrar is satisfied that the amendment is not contrary to this Act or the rules made thereunder, he may, if he thinks fit, register the amendment. The Registrar has power under Section 11 to amend memorandum or regulations etc. of a society and, as such, if the contention of the respondent No. 5 is accepted that the proposal was made by the Registrar, the said power could have been exercised only under Section 11 of the Act, 1973. It is a case where proposal for amendment was made by the registered society and after examination and verification, the Assistant Registrar exercising his power on behalf of the Registrar approved the proposal and registered the amendment under Section 10 (2) of the Act, 1973.

7. In view of the above, the order dated 3-10-2008 passed by the Special Secretary, Government of Chhattisgarh, Department of Commerce &

Industries is set aside. The matter is remitted back to the State Government for consideration on merit in appeal against the order dated 3-10-2008, as early as possible preferably within a period of three months."

7. From the aforesaid judgment of the High Court dated 03.04.2013 what clearly reflects is that, the High Court had set-aside the order passed by the Special Secretary on 03.10.2008 and had remitted back the matter to the State Government for deciding the appeal on merits within a period of three months. It appears that the said appeal has not been further pursued, processed or decided till date and as such the matter still stands pending consideration before the Special Secretary of the State Government ie., Chhattisgarh Department of Commerce and Industry. Meanwhile, the respondent no. 3 has filed an application, challenging the amendment made to the constitution in the year 2007 by approaching the Registrar, who had marked the matter to the Assistant Registrar for adjudication. The Assistant Registrar then decided the matter on 02.08.2019 (Annexure P-13) exercising the powers of Registrar set-aside the amendments made which was initially approved by the same authority vide order dated 26.12.2007. Thereby creating a situation where the same authority exercising the appellate jurisdiction has revoked its own order which otherwise would not had been permissible under law.
8. Moreover, it does not appear to be a matter where the Registrar or the Assistant Registrar has taken a decision on the pending appeal before the Special Secretary, as it has been categorically stated at the Bar that the said appeal is an altogether different proceeding which is still pending. What have been decided by the Registrar and which has been affirmed by the Special Secretary subsequently

arises out of altogether fresh proceeding inspite of the earlier appeal pending consideration with the Special Secretary upon the earlier appeal being remanded back to him by the High Court.

9. From the undisputed facts narrated /reflected from the preceding paragraphs, it clearly indicates that the two orders passed by the Registrar and the Special Authority are in proceedings which has been drawn altogether afresh at a time when the High Court itself remitted back the appeal of the petitioner by respondent no. 3 to the State Government vide its order dated 03.04.2013. The matter having been remitted back by the High Court at the first instance and the appeal of the respondent no. 3 pending before the authorities since then the action on the part of the respondent no. 3 in approaching the Registrar by way of a fresh proceeding was totally uncalled for. The Registrar or Assistant Registrar entertaining the application and also deciding the same and which has been affirmed by the Special Secretary also, is contrary to the adjudicatory mechanism under the provisions of law, particularly the provision of Act of 1973. The petitioner cannot be permitted to, on one hand pursue the appeal, which stands pending before the Special Secretary and at the same time initiate a fresh proceeding before the Registrar/Assistant Registrar.

10. Another aspect which needs consideration is the amendment to the constitution was initially approved by the Registrar itself vide its order dated 26.12.2007. The Registrar thereafter now has literally sat over the same order exercising appellate powers, to consider as to whether his approval earlier granted was proper, legal and justified,

this again would give rise to an ambiguous situation.

11. For all the aforesaid reasons, this court has no hesitation in reaching to the conclusion that the finding and the order passed by on 12.02.2020 passed by the respondent no. 1 to be bad in law. So also the order passed by the Registrar on 02.08.2019 (Annexure P-13) also to be bad in law and the same deserves to be and is accordingly set-aside.
12. The right of the respondent no. 3 stands reserved to pursue the appeal pending before the respondent no. 1 on being remanded back by the High Court on 03.04.2013 for a fresh consideration on merits. The respondent no. 3 also would be at liberty to approach before the respondent no. 3 for intimating him about the order passed by this Court.
13. Considering the fact that the matter stands remanded back to the respondent no. 1 since 2013 it is expected that the respondent no. 1 shall decide the appeal pending before him at the earliest, preferably within a period of ninety days from the date of receipt of copy of this Order.
14. The writ petition, therefore, stands allowed and the impugned order stands quashed. It is made clear that this Court has not expressed any opinion on the merits of the case. The respondent no. 1 would take a decision on the pending appeal without being in-any-manner influenced by the order passed this Court today, he would be deciding the appeal strictly in-accordance with the order of the High court dated 03.04.2013 passed in WP(C) No. 6292 of 2008.

15. With the aforesaid observation and direction the present writ petition stands allowed and disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Rahul