IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.284 of 2022(O&M)
Reserved on:17.02.2023
Pronounced on.17.03.2023

Dr. Ambedkar Cooperative House Building Society Ltd. and others
...Petitioners
Vs

State of Punjab and others ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mansur Ali, Advocate
Mr. Imran A. Ali, Advocate
for the petitioners.

Mr. Deepanjay Sharma, DAG, Punjab.

Mr. Ranjit Singh Kalra, Advocate
Mr. Randeep Singh Samagh, Advocate
Ms. Gagandeep Sekhon, Advocate
for respondent No.5.

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JAISHREE THAKUR J.

1. Petitioners herein knocked doors of the Court by invoking Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing order dated 16.12.2021 (Annexure P-17) passed by respondent No.1 and order dated 16.11.2021 (Annexure P-15) passed by respondent No.2 whereby letter dated 24.06.2013 (Annexure P-3) issued by respondent No.3 granting approval to the petitioner No.1-Society for its conversion to a Self Supporting Cooperative House Building Society Ltd. has been withdrawn as well as order dated 18.11.2021 (Annexure P-16) passed by Assistant Registrar, Cooperative Societies Mohali.

2. Brief facts, which are enumerated in the writ petition, are that petitioner No.1-Dr. Ambedkar Cooperative House Building Society Ltd., Mohali (hereinafter referred to as the Society) was registered under the Punjab

Cooperative Societies Act, 1961. The Society is stated to be totally self-financed as there is no aid received from the Central or State Government. On 26.11.2012, the Managing Committee of the Society decided to convene a meeting of the General Body of the Society for 29.12.2012 to consider the conversion of the Society into Self-Supporting Cooperative Society under Punjab Self Supporting Cooperative Societies Act, 2006 (in short Act of 2006). A thirty days notice was affixed on the notice board along with the agenda on 26.11.2012 for holding the General Body meeting on 29.12.2012. Notices were sent to the members through courier, giving clear 15 days notice, in terms of Rule 80 of the Punjab Cooperative Societies Rules, 1963. The General Body meeting was held on 29.12.2021 wherein all members unanimously resolved to get the Society converted into a Self Supporting Cooperative House Building Society and in this regard, President of the Society was authorized to file application along with all requisite documents to the Registrar, Cooperative Societies, Punjab. On 08.01.2013, application was submitted to the Registrar, Cooperative Societies, Punjab by the Society against Diary No.874 dated 16.01.2013.

3. Vide letter dated 06.03.2013, an objection was raised by the office of Registrar, Cooperative Societies, Punjab that provisions of Section 5 (2) of the Act of 2006 are not complied with, which was duly replied to by the Society and it was brought to the notice of the Registrar that a General Body meeting was convened on 29.12.2012 for which a 30 days' notice was affixed on the notice board along with agenda and in any case, provisions of Section 5 (2) are directory in nature and not mandatory. Moreover, Section 47 of the Act of 2006 protects the action of the Cooperative Society in case there is any procedural defect. Satisfied with the explanation/reply given by the Society, the Registrar, Cooperative Societies, Punjab, after scrutinizing the documents, vide order dated

24.06.2013, granted approval for conversion of the petitioner-Society into a Self Supporting Cooperative Society.

4. After the aforesaid approval granted by the Registrar, a certificate of registration dated 01.07.2013 (Annexure P-4) was issued by the Assistant Registrar, Cooperative Societies, SAS Nagar, Mohali. Consequent upon issuance of a new registration certificate, the old registration certificate of the Society was sent to the Assistant Registrar, Cooperative Societies, Mohali for cancellation, who cancelled the same and name of the Society was deleted from the Register maintained for the said purpose. Thereafter, election to the Managing Committee of the Society was held on 19.03.2019. After election, certain unsuccessful members who fought the election made complaints that election had been held without appointment of a Returning Officer by the Registrar, Cooperative Societies, Punjab. The Registrar, Cooperative Societies, Punjab got an enquiry conducted into the affairs of the Society as per Section 54 of the Act of 2006 and vide order dated 03.06.2020 a direction was issued that a General Body meeting of the Society should be convened under the supervision of the Assistant Registrar, Cooperative Societies, Mohali in which all the record of the Society should be taken duly certified by the Managing Committee and complete report of the Society should be presented in the General Body meeting.

5. On 06.06.2020, i.e. after three days of the passing of the order dated 03.06.2020 by the Registrar, Cooperative Societies, Punjab, a complaint was made to the Cooperation and Jails Minister, Punjab by 45 members of the Society including 29 members, who were enrolled after the conversion of the Society under the Act of 2006 alleging that provisions of Section 5(2) of the Act of 2006 were not followed while getting the Society converted into a Self Supporting Cooperative Society. Vide note dated 12.06.2020, it was observed by the

concerned Minister that the Society was converted into a Self Supporting Cooperative Society on 01.07.2013 on the basis of bogus documents and therefore, ordered for conducting an enquiry and to submit a report to his office within 15 days. In view of the note of the Cooperation Minister, Punjab, Registrar, Cooperative Societies, Punjab vide letter dated 15.06.2020 asked for a report from the Deputy Registrar, Cooperative Societies, Mohali, who submitted his report dated 29.06.2020 with a finding that when application along with requisite documents for conversion of the Society into a Self Supporting Cooperative Society was submitted, office of Registrar, Cooperative Societies, Punjab raised certain objections vide letter dated 06.03.2013. However, in the interregnum when the matter was pending before the Registrar, another representation dated 25.06.2020, though addressed to the Deputy Registrar, Cooperative Societies, Mohali-cum-Enquiry Officer, was submitted in the office of Registrar, Cooperative Societies, Punjab. After receipt of the representation dated 25.06.2020, the Registrar, Cooperative Societies, Punjab asked the Deputy Registrar, Cooperative Societies, Mohali vide letter dated 10.07.2020 to give self explanatory report as to which complainant was present in the General Body meeting held on 29.12.2012 and what procedure was adopted to convey the members holding of the said General Body meeting along with agenda. The Deputy Registrar, Cooperative Societies, Mohali gave his report dated 20.07.2020 mentioning therein that agenda for holding the General Body meeting was sent to all the members of the Society through courier and a copy of the same was also affixed on the notice board of the Society. It was further mentioned that no member signed twice and the complainants had not given their membership in the complaint, therefore, it could not be verified whether they had attended the General Body meeting or not. However, the quorum for the meeting was complete. After considering the report of the Deputy Registrar, Registrar, Cooperative Societies, Punjab sent his comments to the Cooperation Minister, Punjab in compliance of note dated 12.06.2020, communicating that no substance was found in complaints dated 06.06.2020 and 25.06.2020 and therefore, said complaints were filed.

6. Thereafter, a writ petition bearing CWP No.19539 of 2021 titled as *Sukhminder Kaur and others Vs. State of Punjab and others* was filed before this Court by 45 members of the Society with the prayer that their representation dated 25.06.2020 and legal notice dated 18.07.2021 be decided in a time bound manner. The said writ petition was disposed of by this Court vide order dated 27.09.2021 with a direction to decide the aforesaid representation and legal notice by passing a speaking order preferably within a period of one month. In the meantime, upon transfer, a new incumbent joined as Registrar, Cooperative Societies, Punjab, who in view of the order dated 27.09.2021 passed by this Court, again directed the Deputy Registrar, Cooperative Societies, Mohali to give his report to the representation dated 25.06.2020. The Deputy Registrar called the office bearers of the Society to produce record and file their reply. The Society filed its reply dated 18.10.2021 as well as supplementary reply dated 21.10.2021 and produced the entire record. Thereafter, the Deputy Register submitted his report vide letter dated 25.10.2021. After consideration of the detailed report submitted by the Deputy Registrar and examining the record of the Society, the Registrar, Cooperative Societies, Punjab found that before conversion of the Society from Punjab Cooperative Societies Act, 1961 to Punjab Self Supporting Cooperative Societies Act, 2006, there were major discrepancies in sending notice under Section 5 (2) of 2006 Act and sending agenda to the members of the General Body meeting and therefore, there is violation of Rule 80

of the Punjab Cooperative Societies Rules, 1963. As a consequence thereto, the Registrar Cooperative Societies, Punjab withdrew letter dated 24.06.2013 whereby approval for conversion of the Society into a Self-Supporting Society was granted. Pursuant to the passing of order dated 16.11.2021, the Assistant Registrar, Cooperative Societies, Mohali vide its order dated 18.11.2021 cancelled the registration of the petitioner-Society. Against the said order, revision petition was filed under Section 69 of the Punjab Cooperative Societies Act, 1961 before the Financial Commissioner, Cooperation, Punjab, which was dismissed on 16.12.2021 holding that there was violation of Section 5(2) of the Act of 2006, while granting approval for conversion of the Society into Self Supporting Cooperative Society. Aggrieved against the orders dated 16.11.2021, 18.11.2021 and 16.12.2021, the instant writ petition has been filed by the petitioner-Society.

7. Learned counsel appearing for the petitioners would contend that on 26.11.2012, a meeting of the Managing Committee was convened wherein a decision was taken for conducting a General Body meeting on 29.12.2012. On the same day i.e. 26.11.2012, a notice was affixed on the notice board of the Society along with the agenda for holding the General Body meeting on 29.12.2012 and therefore, there was compliance of Section 5 (2) of the Act of 2006. Moreover, the provisions of Section 5(2) of the Act of 2006 are directory in nature not mandatory and therefore, the approval granted by the Registrar, Cooperative Societies, Punjab for converting the petitioner-Society into Self-Supporting Society cannot be held to be illegal, as Section 47 of the Act of 2006 provides protection to the Society if there is any defect in the procedure. It was argued that in the absence of any provisions of review under the Act of 2006, a successor (Registrar, Cooperative Societies, Punjab) cannot withdraw the order

passed by his predecessor, therefore, order dated 16.11.2021 passed by the Registrar, Cooperative Societies, Punjab withdrawing the approval granted by the erstwhile incumbent for converting the petitioner-Society into a Self Supporting Cooperative Society is *per se* illegal and arbitrary. It was further argued that before withdrawing the order of approval dated 24.06.2013 for conversion of the petitioner-Society into Self Supporting Cooperative Society, no show cause notice had been issued and therefore, there is violation of principles of natural justice. Even copy of the inquiry report had not been supplied to the Society to enable it to put forth its defence. As per Section 53 of the Act of 2006, it is mandatory by the Registrar to communicate the report of inquiry to the concerned Self Supporting Cooperative Society within a period of sixty days from the date of the completion of the inquiry, which has not been complied with. Further as per Section 54 of the Act of 2006, findings of the said inquiry report are to be brought to the notice of General Body for taking necessary action. It was also argued that approval for conversion of the Society was granted on 24.06.2013 whereas the alleged complaint was made after a period of 7 years on the basis of which order withdrawing the same has been passed, therefore, the complaint itself ought to have been rejected on the ground of delay and latches. It is argued that once a Society is registered under the Act of 2006, there is no provision to challenge the same. Moreover, a successor in office, in the absence of any provision under the Act of 2006, cannot withdraw the order passed by the predecessor on the basis of a complaint, which was made after 7 years of passing of the order granting approval to the Society for conversion into Self Supporting Cooperative Society. In support of his arguments, learned counsel appearing for the petitioners relied upon a judgment passed by the Hon'ble Supreme Court in **Harbhajan Singh Vs. Karam Singh and others AIR 1996 SC 641** and a judgment passed by the Andhra Pradesh High Court in **V. Bikshapathi Vs. Deputy Registrar of Cooperative Societies, Bhognir Division, Nalgonda District and others** passed in W.P. No.14208 of 2007 on 5.7.2007, reported as 2007 (5) Andh LD 681.

8. Per contra, learned counsel appearing for respondent No.5 would submit that there was non-compliance of Section 5(2) of the Act of 2006 at the very first instance, for which objections were also raised by the office of Registrar, Cooperative Societies, Punjab and despite aforesaid objections, order was passed granting approval for conversion of the petitioner-Society into Self Supporting Cooperative Society in a faulty manner and therefore, vide order dated 16.11.2021 passed by the Registrar, Cooperative Societies, Punjab by taking into consideration the illegalities and non-compliance of provisions of the Act of 2006 while seeking conversion of the Society into Self Supporting Cooperative Society, the order dated 24.06.2013 granting approval for said conversion was rightly withdrawn. There is a clear-cut finding that provisions of Section 5 (2) of the Act of 2006 were not complied with. It was further argued that the petitioner-Society misrepresented before the Registrar, Cooperative Societies, Punjab and obtained the approval for conversion of the Society into Self Supporting Cooperative Society in a fraudulent manner. He referred to various instances in support of his contention, which are as under:-

(a) The quorum of meeting of the Managing Committee that was convened on 26.11.2012 wherein a decision was taken to convert the petitioner-Society from Cooperative Society to Self Supporting Cooperative Society was incomplete, as only three members attended/signed the same.

(b) Notices issued to the members regarding holding of a General Body Meeting to be convened on 29.12.2012 did not disclose the agenda item. It was only mentioned therein that agenda would be pasted on the notice board, meaning thereby, members were unaware of the agenda to be discussed in the General Body meeting.

(c) Notices to convene General Body meeting on 29.12.2012 were issued on 11.12.2012, meaning thereby, clear 30 days' notice had not expired before a resolution had been passed in the General Body meeting for conversion of the society to a Self Supporting Cooperative Society, which is not in consonance with the mandate of Section 5 (2) of the Act of 2006.

(d) Application submitting before the Registrar, Cooperative Societies, Punjab for conversion of the society into Self Supporting Cooperative Society itself was not supported by relevant documents, especially audit report of the Society for the prevalent year.

9. It was further argued that the petitioner-Society had misrepresented that it had not received government aid while obtaining approval for its conversion to the Self Supporting Cooperative Society. The land was allotted to it on concessional price and therefore, it is factually incorrect that no government aid was received by the Society. It was further argued that till today, the petitioner-Society is referring itself as the Cooperative House Building Society and not the Self Supporting Cooperative Society and therefore, a decision obtained on the basis of fraud and misrepresentation can be withdrawn/rectified at any time and rule of delay would not be applicable. Reference is also made to

order dated 29.11.2022 (Annexure A-1) whereby the Registrar, Cooperative Societies, Punjab has ordered for a special audit to be conducted on the petitioner-Society by the Chief Auditor, Cooperative Societies, Punjab from the last audit of the Society till date under Chapter-VII, Section 48(6) & (8) of the Punjab Cooperative Societies, Act, 1961. The aforesaid order had been passed on the representation submitted by the members of the Society levelling allegations of mismanagement of funds, allotment of flats by the management to its relatives, non-payment of dues to GMADA as per instalment schedule intentionally etc. It was also contended that special audit can only be ordered if there is a *prima facie* case of fraud or misappropriation or embezzlement of funds and therefore, after taking into consideration all the facts and records and as per suggestion given by the Additional Registrar (Distribution), Cooperative Societies, Punjab and Deputy Registrar (Enforcement) Cooperative Societies, Punjab, special audit has been ordered to be conducted by the Registrar, Cooperative Societies, Punjab. Further, reference is also made to letter dated 16.12.2022 (Annexure A-2) addressed by GMADA to the President of the petitioner-Society wherein it is mentioned that according to the report of the field staff of GMADA, 112 flats were constructed on the spot whereas allotment letter was issued for construction of 90 flats on site and on the date of personal hearing, a statement was made that documents related to the Society were not brought and therefore, unilateral action was initiated against the Society.

10. The gist of the argument is that an error committed by the authority can be rectified at any time and defence of limitation cannot be taken, much less, if the authority/Court/Tribunal is convinced that the order was secured by fraud or misrepresentation then it always has the power to recall its own order. In support of his argument, he relied upon the judgment rendered by the Division

Bench of this Court in **Ved Pal Mor Vs. State of Haryana 1999 (1) PLR 273** to contend that rule of delay does not govern administrative action. Whenever an authority finds that an error has been committed, it has the undoubted jurisdiction and discretion to rectify the mistake. Further reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in **United India Insurance Co. Ltd. Vs. Rajendra Singh and others etc. (2000) 3 SCC 581** wherein it has been held that no Court or Tribunal can be regarded as powerless to recall its own orders if it is convinced that the order was secured by fraud or misrepresentation.

11. It was further argued that in the absence of specific provision in the Act of 2006 regarding review of its order by an authority, provisions of General Clauses Act, 1897 would be applicable. Reference had been made to Section 21 of the General Clauses Act, 1897 which is *para materia* to Section 19 of the Punjab General Clauses Act, 1898 to contend that where a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued. The import of the argument is that if any authority has been conferred power to issue any notification, order, rules or bye-laws, then said authority has the inherent power to add, amend, vary or rescind the same. Reliance has been placed upon the judgment passed by the Hon'ble Supreme in **State of Haryana Vs. Baldev Spinner Private Limited (2009) 13 SCC 319** wherein it has been held that General Clauses Act, 1897 will come into force when the rule does not contain specific provision for rescinding or withdrawing an order and further on **Epuru Sudhakar and another Vs. Government of A.P. and others (2006) 8 SCC 161** to contend that if the State Government comes to the conclusion that the order has been passed by way of manifest mistake or

misrepresentation or fraud, the same can be rescinded or cancelled by invoking the provisions of General Clauses Act, 1897. It was further contended that in **Wali Deen and others Vs. Registrar, Cooperative Societies, Haryana and others 2012 (5) RCR (Civil) 270,** Division Bench of this Court held that the power to constitute a common cadre of all or specified class of employees includes the power to alter the cadres, while referring to Section 19 of the Punjab General Clauses Act, 1898. To the similar effect is the judgment passed by this Court in **Rajesh Vs. State of Haryana and others** passed in CWP No.18094 of 2015 decided on 13.10.2015, which stands upheld in LPA No.1762 of 2015 decided on 20.09.2016 titled as *Rajesh Vs. State of Haryana and others.*

12. In rebuttal, learned counsel appearing for the petitioners would submit that no fraud or misrepresentation was exercised while obtaining approval for conversion of the petitioner-Society from Cooperative House Building Society to Self Supporting Cooperative Society. Certain objections were raised by the Registrar with regard to Section 5 of the Act of 2006 and it was only after the said objections were removed, approval was granted. Even the members, who made complaints included those members as well, who attended the General Body meeting for conversion and therefore, it is factually incorrect that they had no knowledge about conversion. The Registrar, Cooperative Societies, Punjab had no power to review its own order as no such power has been conferred upon him by the Act of 2006. Eventually, there is no fraud committed by the petitioner-Society and at the most, if there was any procedural defect, Section 47 of the Act of 2006 comes to the rescue of the petitioner Society. Furthermore, in case of any dispute, remedy is before the Arbitration Council under Section 58 of the Act of 2006. It was further stated that principle of construction as embodied under Section 21 of the General Clauses Act, 1897 would not apply when the Act of

2006 does not have provision of review. The order passed by the Registrar on 24.06.2013 is a quasi-judicial act and therefore, the same cannot be reviewed by the same authority. He relied upon judgment passed by the Hon'ble Supreme Court in **Harbhajan Singh Vs. Karam Singh and others AIR 1996 SC 641** wherein it has been held that subsequent order passed by the Director, whereby the order passed by him under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 had been reviewed, is ultra vires and without jurisdiction, in the absence of any power of review granted to the State Government under the said Act. In a judgment passed by Division Bench of the Madhya Pradesh High Court in **Julious Prasad Vs. State of M.P. and others 2009 (3) RCR (Civil) 917,** it has been that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred upon it by the Statute. In **Ghaurul Hasan and others Vs. State of Rajasthan and another AIR 1967 SC 107,** it has been held by the Hon'ble Supreme Court that orders mentioned in General Clauses Act, 1897 are not orders of the kind contemplated in Section 5 of the Citizenship Act and therefore, subsequent orders cancelling registration of petitioners as citizen were set aside, being wholly illegal. Reference has also been made to judgment passed by Division Bench of Madhya Pradesh High Court in **Thakur Vishweshwarsharan Singh Vs. State Transport Appellate Tribunal, Gwalior and others AIR 1981 (Madhya Pradesh) 121** to emphasize the arguments raised.

13. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case as well as the case laws cited. Substantial questions of law, which require consideration by this Court, are formulated as under:-

(i) Whether order dated 24.06.2013 passed by the Registrar, Cooperative Societies, Punjab was under the administrative or quasi-judicial capacity and whether the same can be withdrawn by the same authority by exercising its ancillary and incidental powers while invoking Section 21 of the General Clauses Act, 1897?

(ii) Whether the complaints/legal notice made by certain members of the petitioner-Society, which laid foundation of passing of the order dated 16.11.2021 is barred by delay and latches?

(iii) Whether the impugned order dated 16.11.2021 whereby the approval granted for conversion of the petitioner-Society into Self Supporting Cooperative Society vide order dated 24.06.2013 has been withdrawn on the basis of non-compliance of provisions of Section 5 (2) & (4) of the Act of 2006 is without jurisdiction in the absence of any provision for review provided under the Act of 2006?

(iv) Whether High Court under Article 226 of the Constitution of India can interfere where setting aside of an illegal order gives rise to another illegal order or allow to perpetuate a wrong order/illegality?

14. **(i) Whether order dated 24.06.2013 passed by the Registrar, Cooperative Societies, Punjab was under the administrative or quasi-judicial capacity and whether the same can be withdrawn by the same authority by exercising its ancillary and incidental powers while invoking Section 21 of the General Clauses Act, 1897?**

The argument of learned counsel appearing for respondent No.5 that in absence of any specific provision for review under the Act of 2006, Section 21 of the General Clauses Act, 1897 would be applicable, which is *para materia* of Section 19 of the Punjab General Clauses Act, 1898, was rebutted by counsel appearing for the petitioners by contending that the order passed by the Registrar, Cooperative Societies, Punjab under the Act of 2006 was not of kind as contemplated under Section 21 of the General Clauses Act, 1897. The power conferred under Section 21 of the General Clauses Act, 1897 is to rescind an order that must be in the nature of a notification, rules or bye laws etc. Now the question which needs to be answered is whether the order dated 24.06.2013 passed by Registrar, Cooperative Societies, Punjab granting approval for conversion of the petitioner-Society into Self Supporting Cooperative Society was his administrative function or quasi-judicial? In ***Indian National Congress (I) Vs. Institute of Social Welfare (2002) 5 SCC 685***, the issue before the Hon'ble Supreme Court was whether in the absence of any express power and provision of review in the Representation of People Act, 1950, the Election Commission had jurisdiction to review/revoke its order of registration of a party by invoking Section 21 of the General Clauses Act, 1897. While dealing with the said issue, the Hon'ble Supreme Court also dealt with the distinction between an administrative and quasi-judicial function, while holding that *what distinguishes an administrative act from quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where* ***law requires that an authority before arriving at decision must make an enquiry, such a requirement of law makes the authority a***

quasi-judicial authority…..Another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In para 24 of this judgment, the Hon'ble Supreme Court held as under:-

> ***24.*** *The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions, are these:*
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> > *"Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial."*

The Hon'ble Supreme Court after considering all the aspects rendered a finding that where there is a statutory authority and order passed by it was in exercise of quasi-judicial power and jurisdiction, the same cannot be reviewed by invoking Section 21 of the General Clauses Act, 1897 in the absence of any express power and provision in the Statute under which the power is exercised and order passed.

In **Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. Vs. Commissioner of Income Tax, Gwalior (2018) 4 SCC 494,** again the issue before the Hon'ble Supreme Court was whether a registration certificate issued under Section 12A of the Income Tax Act, 1961 can be withdrawn in the absence of any express provision in the said Act to do so, and the applicability of Section 21 of the General Clauses Act, 1897 in such a situation. While considering the scope and applicability of Section 21 of the General Clauses Act, 1897, it has been held that an order which can be modified or rescinded by applying Section 21 of the said Act, has to be either executive or legislative in nature and the order passed while exercising the quasi-judicial authority can be withdrawn only when there is express power vested in it by the Statute. The relevant paragraphs of the said judgment are reproduced below:-

> *"16. The main questions, that arise for consideration in this appeal, are four:*
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> *16.1. (i) First, whether the CIT has express power to cancel/withdraw/recall the registration certificate once granted by him under Section 12-A of the Act and, if so, under which provision of the Act?*
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> *16.2. (ii) Second, when the CIT grants registration certificate under Section 12-A of the Act to the assessee, whether grant of certificate is his quasi-judicial function and, if so, its effect on exercise of his power of cancellation of such grant of registration certificate?*
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> *16.3. (iii) Third, whether Section 21 of the General Clauses Act, 1897 can be applied to support the order of cancellation of the registration certificate granted by the CIT under Section 12-A of the Act, in case, if it is held that there is no express power of cancellation of registration certificate available to the CIT under Section 12-A of the Act? and*
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> *16.4. (iv) Fourth, what is the effect of the amendment made in Section 12-AA introducing sub-clause (3) therein by Finance (No. 2) Act, 2004 w.e.f. 1-10-2004 conferring express power on the CIT to cancel the registration certificate granted to the assessee under Section 12-A of the Act.*
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> *17. In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12-A till 1-10-2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section*

12-A of the Act. Second, the order passed under Section 12-A by the CIT is a quasi-judicial order and being quasi-judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

18. Indeed, the functions exercisable by the CIT under Section 12-A are neither legislative and nor executive but as mentioned above they are essentially quasi-judicial in nature.

19. Third, an order of the CIT passed under Section 12-A does not fall in the category of "orders" mentioned in Section 21 of the General Clauses Act, 1897. The expression "order" employed in Section 21 would show that such "order" must be in the nature of a "notification", "rules" and "bye laws", etc. [See Indian National Congress (I) v. Institute of Social Welfare [Indian National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685] .]

20. In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12-A of the Act, is neither legislative nor an executive order but it is a "quasi-judicial order". It is for this reason, Section 21 has no application in this case.

21. The general power, under Section 21 of the General Clauses Act, 1897, to rescind a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See Interpretation of Statutes, Ninth Edn., by G.P. Singh, p. 893.)"

Now by applying the principles as laid down in the aforesaid judgments, it has to be seen whether order dated 24.06.2013 passed by the Registrar Cooperative Societies, Punjab is a quasi-judicial function or administrative one. In the opinion of this Court, order dated 24.06.2013 passed by the Registrar, Cooperative Societies, Punjab was in the capacity of a quasi-judicial authority, as the said order had been passed while exercising power conferred upon it by the Statute i.e. the Act of 2006 and not by any policy or instructions. It acted judicially, as before granting approval, an inquiry was made as enshrined under the Act of 2006 and certain objections were also raised. It is bound to act only as per the provisions of the Act of 2006 and thus, the order passed cannot be said to be a kind of contemplated under Section 21 of the General Clauses Act, 1897 i.e. administrative/executive or legislative in nature based on policy/ instructions. The order passed by the Registrar, Cooperative Societies, Punjab is not in the nature of notification, rules or bye-laws which can be modified or rescinded by applying Section 21 of the General Clauses Act, 1897. Therefore, this Court has no hesitation in holding that order dated 24.06.2013 was passed by the Registrar, Cooperative Societies, Punjab as a quasi-judicial authority and it is well settled law that a quasi-judicial decision cannot be withdrawn/revoked/reviewed in the absence of any specific provisions provided under the relevant Statute to do so, by invoking the provisions of Section 21 of the General Clauses Act, 1897.

In view of the aforesaid finding, judgment relied upon by the counsel appearing for respondent No.5 in *Baldev Spinners Pvt. Ltd.'s case* (supra) would not be applicable, as in the said case the question before the Court was whether the eligibility certificate issued under sub-rule (5) of

Rule 28-A of the Haryana General Sales Tax Rules, 1975 could be withdrawn on the grounds other than those specified in clause (a) of sub-rule 8 of Rule 28A of the Rules *ibid*, which also included certificate obtained by fraud, deceit and misrepresentation, misstatement or concealment of material facts and the Hon'ble Supreme Court upheld the withdrawal of eligibility certificate on the ground that since the applicant suppressed the fact that the unit which was to be set up was on agricultural land for which CLU was required, there was concealment and misrepresentation of material fact, which is not *prima facie* the case at hand. Similarly, the judgment passed by Division Bench of this Court in *Wali Deen's case* (supra) where an order passed by the Registrar withdrawing/deleting certain classes of employees from the common cadre was upheld by holding that inherent power to constitute a common cadre of all or specific class of employees is the power to alter and therefore, by the same procedure, any class of employees can be added or deleted from the common cadre. In the said judgment while discussing the scope of Section 21 of the General Clauses Act, 1897, it was specifically held that an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Since this Court has held that the order passed by the Registrar, Cooperative Societies, Punjab was quasi-judicial in nature, the judgment relied upon by the counsel appearing for respondent No.5 is not applicable to the facts of the present case, as purely an administrative decision was in question in that case.

(ii) Whether the complaints/legal notice made by certain members of the petitioner-Society, which laid foundation of passing of the order dated 16.11.2021 is barred by delay and latches?

Admittedly, the certificate for conversion of the petitioner-Society into Self Supporting Cooperative Society was granted on 01.07.2013 and no member challenged the same at that point in time on the ground of non-compliance of Section 5(2) & 4 of the Act of 2006. Elections of the Managing Committee of the petitioner-Society were held on 19.03.2019 and it was then, that first complaint was filed levelling allegations of not conducting the elections as per procedure and certain other allegations regarding audit and giving possession of flats without obtaining the completion certificate etc. It is pertinent to mention here that there was no allegation of irregularities committed by the petitioner-Society while obtaining the conversion certificate. A detailed enquiry was conducted by the Deputy Registrar, Cooperative Societies, Punjab and upon the report submitted by him, Registrar, Cooperative Societies, SAS Nagar, Mohali vide order dated 03.06.2020 directed a General Body meeting of the petitioner-Society to be convened under the supervision of the Assistant Registrar, Cooperative Societies, SAS Nagar, Mohali. However, on 06.06.2020, a complaint was made to the Hon'ble Minister Cooperation and Jails, Punjab by 45 members of the petitioner- Society, out of which 29 members were enrolled after conversion of the petitioner-Society, wherein first time the issue with regard to conversion of the petitioner-Society into Self Supporting Cooperative Society on the basis of forged documents and in connivance with officers, cropped up. Upon the said complaint, vide note dated 12.06.2020, an enquiry was ordered to be held by the Minister. Meaning thereby, the complaint with regard to non-compliance of Section 5 (2) & 4 of the Act of 2006 was given by members of the petitioner-Society after almost 7 years of its conversion into the Self Supporting

Cooperative Society. Another complaint levelling similar allegations was given on 25.06.2020 in the office of the Registrar, Cooperative Societies, Punjab, upon which report was called by the Registrar, Cooperative Societies, Punjab from the Deputy Registrar Cooperative Societies, SAS Nagar, Mohali. Thereafter, a Civil Writ Petition No.19539 of 2021 titled as *Sukhminder Kaur and others Vs. State of Punjab and others* had been filed, which was disposed of by this Court with a direction to the respondent authorities to duly consider the representation dated 25.06.2010 and legal notice dated 18.07.2021 and decide the same by passing a speaking order within a period of one month from the date of passing of the said order. In pursuance to the aforesaid order passed by this Court, a detailed report was submitted by the Deputy Registrar, Cooperative Societies, SAS Nagar, Mohali on 25.10.2021, which laid foundation of passing of impugned order dated 16.11.2021.

Against the argument raised by counsel appearing for the petitioners that the complaint made by members of the petitioner-Society is barred by limitation as being filed after 7 years of conversion of the petitioner-Society into Self Supporting Cooperative Society, learned counsel appearing for respondent No.5 had argued that limitation does not come into play if there is an element of fraud. In support of his arguments, he relied upon the judgment rendered by Division Bench of this Court in *Ved Pal Mor's case* (supra), which, in the opinion of this Court, is not applicable as the said judgment held that rule of delay does not govern the administrative action, which can be invoked to correct and rectify the mistake, especially keeping in view the finding rendered by this Court that the action of the Registrar, Cooperative Societies, Punjab was quasi-judicial and not administrative one. Similarly, reliance placed upon the judgment rendered by the Hon'ble Supreme Court in *United India Insurance Co. Ltd.'s case* (supra), would also be of no help to the counsel appearing for respondent No.5 as in the impugned order, the finding rendered by the Registrar, Cooperative Societies, Punjab is that there was violation of Rule 5 (2) and (4) of the Act of 2006 and Rule 80 of the Punjab Cooperative Societies Rules, 1963 and *prima facie* there is no finding that there was fraud or misrepresentation on behalf of the petitioner-Society.

The judgment relied upon by counsel appearing for the petitioners in *Chairman, U.P. Jal Nigam and another Vs. Jaswant Singh and another (2006) 11 SCC 464,* is also not applicable as in the said case the Hon'ble Supreme Court held that delay cannot be ignored on the part of the claimants merely because some others have got the similar relief, as the litigant who is guilty of long delay and was not vigilant enough cannot get the relief by applying the principle of acquiescence and waiver, whereas the facts of the instant case are quite distinguishable.

However, still the question which needs to be answered is whether an order, which is illegal on the face of it, can be upheld by citing delay and latches? In the judgment rendered by the Hon'ble Supreme Court in ***Dehri Rohtas Light Rly Co. Ltd. Vs. District Board Bhojpur AIR 1993 SC 802,*** the District Board demanded a cess from a railway company for the period 1953 to 1967, which was *prima face ultra vires.* The railway company filed a suit challenging the demand, which was dismissed in 1971 and the appeal filed was also dismissed. Thereafter, the company filed a writ petition challenging the demand and despite the question of laches which was raised, the Hon'ble Supreme Court condoned the delay while holding that the test is not the physical running of time and where the circumstances justifying the conduct attributable to laches or negligence exist, the illegality which is manifest cannot be sustained on the sole ground of laches. In the judgment rendered by Hon'ble Supreme Court in ***Tukaram Kana Joshi Vs. Maharashtra Industrial Development Corpn. (2013) 1 SCC 353***, it has been held:-

> *"12. ...Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factor, continuity of cause of action etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petitioner is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience."*

In ***Shri Vallabh Glass Works Ltd. Vs. UOI (1984) 3 SCC 362,*** the Hon'ble Supreme Court held as under:-

> *9.....It is not disputed that the High Courts have power, for the purpose of enforcement of fundamental rights and statutory rights, to make consequential orders for repayment of money realised by Government without the authority of law under Article 226 of the Constitution. This is an alternative remedy provided by the Constitution in addition to but not in supersession of the ordinary remedy by way of suit in the absence of any provision which would bar such a suit either expressly or by necessary implication. While there are different periods of limitation prescribed for the institution*

of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. ***Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc.*** *In the instant case, the appellants had in fact approached the High Court on September 28, 1976 itself by filing Special Civil Application No. 1365 of 1976 for directing repayment of the excess duty paid by them. But no relief could be granted in that petition in view of the provisions of Article 226 of the Constitution as it stood then and the petition had to be withdrawn. Hence even granting that on the date of making each payment of excise duty in excess of the proper duty payable under law, the appellants should be deemed to have discovered the mistake, all such excess payments made on and after September 28, 1973 which would fall within the period of three years prior to the date on which Special Civil Application No. 1365 of 1976 was filed should have been ordered to be refunded under Article 226 of the Constitution. But the High Court declined to do so on grounds of estoppel and acquiescence. While we do agree that the appellants should not be* *granted any relief in respect of payment made between October 1, 1963 and September 27, 1973 which would fall beyond three years from the date of the first writ petition filed in this case we do not find it proper and just to negative the claim of the appellants in respect of excess payments made after September 28, 1973. In the instant case the appellants had made excess payments on being assessed by the Department and such payments cannot be treated as voluntary payments precluding them from recovering them. (See Sales Tax Officer v. Kanhaiya Lal Mukundlal Saraf [AIR 1959 SC 135 : (1959) SCR 1350 : 9 STC 747]. We do not also find that the conduct of the appellants is of such a nature as would disentitle them to claim refund of excess payments made in respect of goods other than wired glass."*

Now the question needs to be answered is whether the case at hand is a fit case to use the discretionary power of this Court under Article 226 of the Constitution of India to ignore the delay, as there is no rigid formula for the same and every case is to be decided on its own merit on the basis of facts and circumstances, touching the conduct of the parties, the change in situation and the prejudice which is likely to be caused to the opposite party or to the general public etc**.** The order dated 24.06.2013 granting approval for conversion of the petitioner-Society into a Self Supporting Cooperative Society is founded in contravention to provisions of Section 5 (2) of the Act of 2006 (detailed finding rendered while answering Question No.(iii)) and therefore, an order obtained in contravention to statutory provision or against the public policy cannot be allowed to sustain merely on the technicality of delay and laches. Such an order is liable to be set aside. In the opinion of this Court, members of the petitioner-Society raised the issue qua obtaining the approval for conversion in contravention to statutory provisions after a passage of time and thereafter, they made various representations and ultimately, approached this Court in CWP No.19539 of 2021 and in pursuance to order dated 27.09.2021 passed therein, an enquiry was conducted by the Deputy Registrar, Cooperative Societies, SAS Nagar on the basis of which the impugned order dated 16.11.2021 had been passed and further upheld in the revision petition preferred against the same. Therefore, delay as alleged by the counsel for the petitioner-Society cannot be held to be fatal, keeping in view the aforesaid mitigating factor, continuity of cause of action etc. and most importantly, the issuance of a certificate *de hors* following rules and procedure shocks the judicial conscience of this Court.

(iii) Whether the impugned order dated 16.11.2021 whereby the approval granted for conversion of the petitioner-Society into Self Supporting Cooperative Society vide order dated 24.06.2013 has been withdrawn on the basis of non-compliance of provisions of Section 5 (2) & (4) of the Act of 2006 is without jurisdiction in the absence of any provision for review provided under the Act of 2006?

(v) Whether High Court under Article 226 of the Constitution of India can interfere where setting aside of an illegal order gives rise to another illegal order or allow to perpetuate a wrong order/illegality?

Since both the aforesaid substantial questions of law are inter-connected, they are being dealt with together. It is admitted case of the parties that upon submission of the application by the petitioner-Society for its conversion into Self Supporting Cooperative Society, the Registrar Cooperative Societies, Punjab had observed that the application did not comply with Section 5 (2) of the Act of 2006 and therefore, the documents relating to conversion of the petitioner-Society were not in accordance with law. Even vide letter dated 21.05.2013, it was again pointed out that points regarding number of members of the petitioner-Society and the balance sheet dated 31.03.2012, which is audited, did not match with the one attached with the income tax return and a verification report on the said points was directed to be sent soon. Thereafter, vide order dated 24.06.2013, approval for conversion of the petitioner-Society into Self Supporting Cooperative Society was granted by the Registrar, Cooperative Societies, Punjab. Election of the petitioner-Society was conducted on 19.03.2019 and it was thereafter that the dispute started as has already been mentioned in detail hereinabove, which ultimately resulted into passing of the impugned order dated 16.11.2021, concluding para of which is reproduced as under:-

> *"After considering the detailed report based on the facts made by the Deputy Registrar of Cooperative Societies, Mohali and examining the record, it is found that before conversion of the society from Punjab Cooperative Societies Act, 1961 to Punjab Self Supporting Cooperative Societies Act, 2006, special resolution which had to be passed under Section 5 (2) in which 30 days' notice had to be given was not given and thus there is violation of Section 5 (2) of the 2006 Act. In the agenda notices sent to the members for the general body meeting, the issues which were to be considered in the general body meeting were not mentioned and only the timing of the meeting was mentioned, which is violation of Rule 80 of the Punjab Cooperative Societies Rules, 1963. According to the report*

of the Deputy Registrar, Mohali, while converting the Dr. Ambedkar Cooperative House Building Society under the Punjab Self Supporting Cooperative Societies Act, 2006, rules have been violated. Therefore, I Arun Sekhri, Registrar Cooperative Societies, Punjab withdraw letter No:RCS/Housing/N.H.1/Self Supporting/3478 dated 24.06.2013 issued by this office keeping in view the interests."

It would be apt to notice Section 5 (2) of the Punjab Self Supporting Cooperative Societies Act, 2006, which is as under:-

"5 (2) An application for conversion shall be submitted to the Registrar by hand or by registered post by the duly authorized person of such primary cooperative society, along with the special resolution passed in this regard by giving thirty days notice."

A perusal of the proceeding book attached as Annexure R-5/9 with the written statement filed by respondent No.5 would reflect that a meeting of the Managing Committee was held on 26.11.2012 wherein it was unanimously resolved that general body meeting of the petitioner-Society will be held on 29.12.2012 and the agenda No.3 therein among other agendas, was to consider conversion of the Dr. Ambedkar Cooperative House Building Society Limited. Further, a perusal of the notice dated 11.12.2012 (Annexure R-5/10) sent by the petitioner-Society to one S. Sarla Rani Verma (R-306) would reflect that intimation was sent that general meeting of the petitioner-Society will be held on 29.12.2012 at 11:00 O'clock in the morning at the site of the Society in Sector 76, Mohali with a Note given at the end that Agenda will be pasted on notice board. From a reading of the aforesaid proceedings book as well as the notice dated 11.12.2012, it is crystal clear that no agenda was attached with the said notice and it was merely mentioned that agenda will be pasted on the notice board. The notice was sent on 11.12.2012 for the general meeting, which was convened for 29.12.2012 and therefore, condition as enshrined under Section 5 (2) of the Act of 2006 for giving a 30 days' notice was not complied with and thus, there is violation of the same, on the basis of which the impugned order had been passed.

Learned counsel appearing for the petitioners raised an argument that even if there was any violation of Section 5 (2) of the Act of 2006, Section 47 of the Act of 2006 would come to the rescue of the petitioner-Society which provides that no act of self-supporting cooperative society shall be deemed to be invalid by reason only of the existence of any defect in the procedure. Section 47 of the Act of 2006 is reproduced as under:-

> *"47. **Acts of a self-supporting cooperative society not to be invalidated by certain defects.** No act of self-supporting co-operative society or Board or of an officer shall be deemed to be invalid by reason only of the existence of any defect in the procedure or in the constitution of such society or of the Board or in the appointment or election of an officer."*

The term 'procedural defect' is not defined in the Act of 2006. A bare reading of Section 47 aforesaid would manifest that acts of a self-supporting co-operative society are not to be invalidated by **certain defects.** It talks about certain defects in the procedure, though it does not specify what kinds of defects but mentions about defects in the constitution of such society or of the Board in the appointment or election of an officer. However, the question that arises for consideration is whether the procedure which is mandatory in nature can be flouted at the whims of a society, like in the case at hand where an application for conversion under Section 5 (2) of the Act of 2006 is mandatorily to be submitted along with the special resolution passed in this regard by giving thirty days' notice, under the garb of so-called immunity provided to the society under Section 47 *ibid* and whether the immunity provided to society under Section 47 *ibid* is absolute? In the judgment rendered in ***Sharif-Ud Din Vs. Abdul Gani Lone (1980) 1 SCC 403,*** the issue for consideration before the Hon'ble Supreme Court was; whether the copies of election petition, which were required to be attested by the petitioner as true copies under Section 89(3) of the Jammu and Kashmir Representation of the People Act, 1957 was a mandatory requirement and failure to comply with the same rendered the petition as liable to be dismissed under Section 94(1) of the said Act. The Hon'ble Supreme Court while holding the said requirement as mandatory, interpreted the 'mandatory' and 'directory' rule as under:-

> *"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted.* ***If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory.*** *But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one.* ***Where, however, a provision of law prescribes that a***

certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one*. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened.* ***Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.”***

In **State of Haryana v. Raghubir Dayal (1995) 1 SCC 133**, the Hon'ble Supreme Court has observed as under:-

“5. The use of the word ‘shall’ is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word ‘shall’ prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word ‘shall’, therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. ***The meaning has to be ascribed to the word ‘shall’ as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory.*** *However, if by holding them to be*

mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

Therefore, we have to see the provisions of Section 5 (2) of the Act of 2006 from the prism of the aforesaid test as to whether non-compliance of the provision of Section 5(2) of the Act of 2006, would render the entire proceedings invalid or not. If for the sake of arguments, this Court accepts the contention of the counsel appearing for the petitioners that non-compliance of Section 5 (2) would not invalidate the acts of the Society, then in that eventuality, the whole objective and the intent of the legislature would be defeated, as such, an absolute immunity to the society would render the entire exercise provided under the statute for conversion of a society into a self-supporting cooperative society as futile and serious consequence would flow therefrom. In the opinion of this Court, such an interpretation to Section 47 of the Act of 2006 would defeat and frustrate the legislation and thus, this Court holds that provisions of Section 5 (2) of the Act of 2006 are mandatory in nature, which ought to have been complied with by the petitioner-society in letter and spirit, which admittedly has not been done even after raising objections by the Registrar, Cooperative Societies, Punjab.

Now coming to the issue whether the impugned order dated 16.11.2021 withdrawing its earlier order dated 24.06.2013 passed by the Registrar, Cooperative Societies, Punjab is without jurisdiction as there is no power of review provided under the Act of 2006 and if so, whether order dated 24.06.2013 granting approval for conversion of society without compliance of mandatory provisions of Section 5 (2) of the Act of 2006 can be allowed to be perpetuated. Admittedly, there is no power of review provided under the Act of 2006 with the Registrar, Cooperative Societies, Punjab. However, the issue again to be decided is whether withdrawing of order dated 24.06.2013 by passing subsequent order dated 16.11.2021 by the Registrar, Cooperative Societies, Punjab is a procedural review or review on merit. The Hon'ble Supreme Court in ***Grindlays Bank Ltd.*** **v.** ***Central Govt. Industrial Tribunal*** [1980 Supp SCC 420:1981 SCC (L&S) 309] highlighted the distinction between procedural review and review on merit when it observed:

> *"13. Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in* ***Patel Narshi Thakershi case [(1971) 3 SCC 844 : AIR 1970 SC 1273]*** *held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."*

Applying these principles, it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate, if commits a procedural illegality which goes to the root of the matter, it would invalidate the proceeding itself and consequently the order passed therein. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. The impugned order dated 16.11.2021 passed by the Registrar Cooperative Societies, Punjab withdrawing its earlier order dated 24.06.2013 has been passed after an enquiry was made by the Deputy Registrar in pursuance to order passed by this Court and upon coming to know the fact that the order dated 24.06.2013 was passed in a proceedings which was itself vitiated by an error of procedure or mistake i.e. non-compliance of Section 5 (2) of the Act of 2006 despite raising certain objections, which went to the root of matter and invalidated the entire proceedings.

Be that as it may, there is another aspect to the matter. Apparently, the order dated 24.06.2013 is wrong and illegal on the face of it, being in the teeth of Section 5(2) of the Act of 2006 and thus, can such an illegality be allowed to be perpetuated merely on the ground that there is no power of review provided under the Act of 2006 and the answer is in negative. The Hon'ble Supreme Court in ***Chandra Singh Vs. State of Rajasthan and another (2003) 6 SCC 545*** has held that issuance of a writ of certiorari is a discretionary remedy. The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. Such a relief can be denied, *inter alia*, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one. Similarly, in ***Dove Investments Pvt. Ltd. And others Vs. Gujarat Industrial Investments Corporation Ltd. and another (2006) 2 SCC 619,*** the Hon'ble Supreme Court refused to interfere with the order passed by the High Court while applying the same principle. In the said case, appellant-company refused to register remaining shares against the security for loan of Rs.4.5 crores on the ground that the same were presented two months after the period specified in Section 108 of the Companies Act, 1956, though the appellant-company had already registered 3 lakh shares. Therefore, the Hon'ble Supreme Court refused to interfere with the order passed by the High Court as the appellant-company had already waived off the right of refusal by already registering 3 lakh shares and setting aside of the order of the High Court would have caused revival of an illegal order. In ***State of Uttranchal Vs. Ajit Singh Bhola (2004) 6 SCC 800,*** the Hon'ble Supreme Court refused to set aside the interim order passed by the High Court though it appeared illegal as it had virtually allowed the appeal on the ground that setting aside of the interim order would revive the illegal order passed by the DM, purporting to allot the entire demised premises for the residence-cum-office of the DG, Police during the pendency of appeal against decree of eviction in respect of only one part of the premises.

In the case at hand as well, if this Court sets aside the order dated 16.11.2021 passed by the Registrar, Cooperative Societies, Punjab whereby it has withdrawn its earlier order 24.06.2013 granting approval to the society for conversion into a self-supporting society, it would cause revival of an illegal order. Thus, this Court either has to set aside both the orders dated 16.11.2021 and 24.06.2013 in view of the findings as rendered above or chose not to interfere with the order dated 16.11.2021 as it would tantamount to revival of order dated 24.06.2013, which is patently illegal being in the teeth of Section 5 (2) of the Act of 2006.

15. As an ultimate dispensation, this Court is not inclined to interfere with the orders dated 16.11.2021 and 16.12.2021, as setting aside of the same would revive another illegal order i.e. order dated 24.06.2013. Consequent, the writ petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

March 17, 2023
Pankaj*

Whether speaking/reasoned Yes/No
Whether reportable Yes/No