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

+ Date of Decision: 02.05.2012

% **W.P.(C) No.6965/2011**

BRIJ MOHAN GUPTA ..... Petitioner
Through: Mr. Sandeep Gupta, Adv.

versus

THE REGISTRAR OF SOCIETIES ..... Respondent
Through: Mr.Rajiv Nanda, ASC with Mr.Brajesh Pandey, Mohd. Aslum Khan, Adv. for R-1.
Mr. K.G. Sharma, Adv. for R-2 to 6.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. The petitioner assails the order dated 04.02.2011 passed by the Registrar of Societies (Registrar, for short) whereby the registration of the society, of whom the petitioner is the Secretary, stands cancelled. The petitioner also seeks a mandamus for restoration of the Society's registration No.62867/2008.

2. The case of the petitioner is that in the year 2000, the petitioner along with other like minded persons, who are followers of "Baba Goga Medi" formed an association and gave it the name "Delhi Dharmik Sewa Sangh Goga Medi Rajasthan", having its office at 16/33, East

Punjabi Bagh, Delhi. After the formation of the said association, steps were taken for getting the same registered under the Societies Registration Act. The President of the society gave affidavits in terms of the guidelines framed by the respondent, Govt. of NCT of Delhi, at the time of formation of the society. The format of the affidavit required to be submitted by the promoter members reads as follows:-

> *"I, ...s/o..... Resident of ..... do hereby solemnly affirm and declare as under:-*
>
> *(1) That I am the President/Secretary of the Society named.....*
> *(2)* ***That the desirous persons of the Society are not related to each other by way of blood relation or otherwise****.*
> *(3) That the name of proposed Society is not identical or reassembles to any other registered/non-registered Society in our locality as per my knowledge.*
> *(4) That if name of this Society is found attracting the provision of Emblems Act of 1950 and/or identical and resembles closely to any other Society which is already registered under Societies Registration Act of 1860 in the NCT of Delhi and other law of land applicable to them then registration granted shall be deemed to have been withdrawn if the Society fail to change the name within the given time do so Registrar of Societies, Delhi.*
>
> ***DEPONENT***
>
> ***VERIFICATION***
>
> *Verified at Delhi, on this the..... day of ..... 200... that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.*
>
> ***DEPONENT****"*
>
> (emphasis supplied)

3. As would be seen from the aforesaid format, the President was required to, *inter alia,* state that the desirous persons of the Society are not related to each other by way of blood relation or otherwise. It is admitted that two of the promoter members, namely, Sh. Chandra Bhan Gupta and Sh. Brij Mohan Gupta, the Petitioner herein, are father and son respectively. The society was duly registered by the Registrar of Societies, Respondent no.1 herein, and the aforesaid registration number was granted to it.

4. It appears that respondents No.2 to 6 made a complaint to the Registrar, complaining that false affidavits had been sworn by the President of the Society to the effect that the desirous members are not related to each other. Acting on the said complaint dated 20.05.2010, the Registrar issued a notice dated 02.06.2010 calling upon the society to show cause as to why their registration should not be cancelled.

5. The Registrar proceeded to cancel the registration of the Society on the ground that a false affidavit had been filed to the effect that the desirous persons of the Society are not related to each other by blood relation, whereas two members, viz. Sh. Chandra Bhan Gupta and Sh. Brij Mohan Gupta – the Petitioner , were related to each other by blood, being father and son. The Registrar invoked Section 21 of the General Clauses Act to cancel the registration of the society. Consequently, the

present petition has been preferred.

6. The submission of the learned counsel for the petitioner is that there is no statutory bar to the desirous members/promoter members being related to each other by blood, or otherwise. He submits that the guidelines framed by the Govt. of NCT of Delhi, and sought to be invoked against the society are non-statutory and non-binding. He further submits that the deponent of the affidavits may be subjected to the consequences which flow from furnishing a false affidavit before a public authority/servant, but that does not mean that the registration of the society is liable to be cancelled. He further submits that, in any event, there is no power in the Registrar to cancel the registration of the society by placing reliance on Section 21 of the General Clauses Act.

7. The petition is opposed by respondents No.2 to 6. It is submitted by learned counsel for the respondents No.2 to 6 that the Society had been in existence since the year 1991, and the said respondents were the office bearers of the said association. According to the said respondents, the petitioner along with others, have played fraud on the Registrar by getting the society registered under the Societies Registration Act.

8. Mr. Nanda, who appears on behalf of the Registrar, has filed the guidelines and legal opinion of the law department. Since the issue is

legal, I have heard learned counsel for the parties and proceed to dispose of the present petition.

9. Having regard to the submissions of the learned counsel, I am of the view that the impugned order is patently illegal and cannot be sustained for various reasons.

10. A perusal of the "Foreword" (spelt by the respondent as "Forward") to the guidelines framed by the GNCTD shows that the basis on which the Govt. framed the said guidelines was that the Registrar of Societies in the Industries Department grants registration to charitable societies. However, a perusal of the Societies Registration Act shows that the said Act does not provide that all societies registered thereunder should, necessarily, be of charitable character.

11. Section 1 of the Act provides that any seven or more persons associated with any literary, scientific or charitable purpose, or for any such purpose as is described in Section 20 of the Act, may, by subscribing their names to a Memorandum of Association and filing the same with the Registrar of Joint Stock Companies, form themselves into a society under the Act.

12. Therefore, the right to form a society is available to any seven or more persons, and there is no embargo under the Act that such persons cannot be related to each other by blood or otherwise.

Persons who may be related by blood can get together to form a society of the kind described in section 20 of the Act.

13. Section 20 of the Act specifies the kind of societies which could be registered under the Act. These are charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

14. From the above, it is clearly seen that charitable societies are only one class of societies which could be registered under the Act. There could be other kinds of societies which could be registered under the Act, such as societies established for the promotion of science, literature or fine arts, or for the diffusion of useful knowledge, the diffusion of political education, the function or maintenance of libraries or reading rooms etc. These societies may, or may not be of charitable character.

15. Even if it were to be accepted for the sake of argument that the societies registered under the Act are primarily charitable societies,

there is nothing to suggest that persons related by blood cannot form a charitable society. The prescription incorporated in the "Affidavit No.1", which forms a part of the guidelines framed by the GNCTD to the effect that "*the desirous persons of the society are not related to each other by way of blood relation or otherwise*", has no statutory or rational basis. The guidelines themselves have no statutory force, as it has not been shown that these guidelines have been framed by reference to any power vested in the GNCTD by virtue of the Act.

16. The said prescription, introduced in the aforesaid circuitous manner, even otherwise, appears to be arbitrary and lacks rationality. It seems to proceed on the assumption that members of the same family who are related by blood cannot ever get together to form a society, which is charitable in character, or which seeks to carry out activities of the kind described in section 20 of the Act. No basis for such an assumption is disclosed by the respondents. There is no nexus between the offending prescription and the avowed object sought to be achieved – i.e. of allowing registration of charitable societies under the Act. The said prescription not only offends Article 14 of the Constitution of India, as it is unreasonable, but also offends the freedom of every citizen of India to form an association or union under Article 19(1)(c) of the Constitution of India. The said freedom can only be curtailed by a law made by the State, by imposing reasonable

restrictions in the interest of the sovereignty and integrity of India or public order or morality (see Article 19(4) of the Constitution of India).

17. As aforesaid, the guidelines are not law made by the State. It is not even claimed in the "Foreword" to the said guidelines that they have been framed by reference to Article 19(4) of the Constitution of India, or that the restriction imposed, as aforesaid, is in the interest of the sovereignty and integrity of India or public order or morality.

18. This being the position, the requirement of the respondent authorities, requiring the President/Secretary of the Society to make a declaration that they are not related to each other by way of blood relation or otherwise, itself cannot be sustained. Since the said requirement itself was bad in law, the infraction of the said requirement by the President/Secretary of the society cannot lead to the consequence of the society losing its existence, even after its registration under the Act. However, the consequence of furnishing a false affidavit to a public authority is a separate matter, and if any consequences are to flow from the furnishing of the said false affidavit by the concerned individual, the same is entirely a different matter.

19. The legal opinion, which forms the basis of the impugned decision, may now be taken note of. The same reads as follows:

> *"1. The administrative Department has sought opinion that in case of submitting false information for obtaining registration under the Societies Registration Act, what kind of action can be taken as the above Act is silent on this*

issue.

2. The matter has been examined in the light of provisions of section 21 of the General Clauses Act. In the absence of any express or implied power, the authority which has the power to register the society is empowered to cancel the registration on the strength of the provisions of section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:

> *"21. Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws.*
>
> *Where by any central Act or regulation, 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".*

3. Hon'ble Supreme Court, in case of Indian National Congress (I) vs. Institute of Social Welfare and Ors., (AIR 2002 SC 1258), has an occasion to examine application of section 21 with regard to power of Election Commission to deregister a political party. It was, inter alia, observed that section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi judicially. Hon'ble Court further observed vide para 34 and 34 of the judgment:

> ***"34. However, there are three exceptions where the Commission can review its order registering a political party. One is where in political party obtained its registration by playing fraud on the Commission, secondly it arises out of sub section (9) of section 29A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the***

Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law.

35. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi judicial authority even if no power of review is conferred upon. In fact, fraud vitiates all actions. In Smith v. East Ellis Rural Distt. Council – (1956) 1 All E.R. 855 it was stated that the effect of fraud would normally be to vitiate all acts and order. In Indian Bank v. AIR 1996 SC 2592, it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also statutory tribunals which do not have power of review. Thus, fraud or forgery practiced by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to deregister such a political party".

4. In view of above discussion, in case of obtaining registration by fraud by submitting false information, the authority which has the power to register the society would be empowered to cancel the registration by invoking Section 21 of the General Clauses Act. If agreed, the administrative Department may be advised accordingly". (emphasis supplied)

20. In my view, though the legal opinion aforesaid correctly records the position in law, the application of the law in the facts of this case appears to be erroneous. When the requirement introduced by the respondent with regard to the desirous persons not being related to each other by way of blood relation, or otherwise, is found to be illegal

and unenforceable, it cannot be said that the submission of the affidavit by the President of the society tantamounts to a fraud. I do not agree that the present case is covered by the exception taken note of by the Supreme Court in the case of ***Indian National Congress (I) v. Institute of Social Welfare and Others***, AIR 2002 SC 1258.

21. Reference, for the present purposes, is made to the judgment of the Supreme Court in ***Shrisht Dhawan v. M/s Shaw Brothers****, AIR 1992 SC 1555*, wherein the Court had the occasion to consider the concept of fraud in public law and fraud on the statute. The Supreme Court observed as under:

> *"But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction can be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja Khawaja v. Secretary of State for Home Deptt., 1983 (1) All E R 765 that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. In Pankaj Bhargava (AIR 1991 SC 1233) (supra) it was observed that* ***fraud in relation to statute must be a colourable transaction to evade the provisions of a statute****. 'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope' [Craies on Statute Law, 7th Edition, p. 79]. Present day concept of fraud on statute has veered round abuse of power or malafide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations.* ***The colour of fraud in public law or administrative law, as it is developing, is assuming different shade. It arises from a deception***

committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. *Even in commercial transactions non-disclosure of every fact does not vitiate the agreement, 'In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain' [Anson's Law of Contract]. In public law the duty is not to deceive. For instance non-disclosure of any reason in the application under Section 21 of the Act about its need after expiry of period or failure to give reason that the premises shall be required by son, daughter or any other family member does not result in misrepresentation or fraud. It is not misrepresentation under Section 21 to state that the premises shall be needed by the landlord after expiry of the lease even though the premises in occupation of the landlord on the date of application or, after expiry of period were or may be sufficient.* ***A non-disclosure of fact which is not required by law to be disclosed does not amount to misrepresentation****."* (emphasis supplied)

22. In light of the aforementioned judgment, the disclosure of incorrect facts by the President of the society in the affidavit – as regards the desirous members of the society not being related by blood, would not amount to committing fraud on the statute, since the disclosure of the desirous persons being related by blood, or otherwise, is not required by the statute, in the first place. In fact, the said requirement is patently illegal. Keeping in view the object and

provisions of the Societies Registration Act, as discussed above, the non disclosure of the desirous members of the society being related by blood or otherwise, could not result in exercise of jurisdiction by the registrar to reject the application to seek registration, or cancel the registration already granted.

23. At this stage itself, I may take note of the recent decision rendered by this Court in ***Supreme Court Bar Association (Regd.) v. The Registrar of Societies & Others***, W.P.(C) No.3260/2010 decided on 12.04.2012. In this decision, reliance was placed on the aforesaid decision of the Supreme Court in ***Indian National Congress*** (supra). The relevant extract from the decision in ***Supreme Court Bar Association*** (supra) reads as follows:

> *"15. I also find merit in the petitioner's submission that there is no power vested in respondent no.1 to dissolve the society by resort to Section 21 of the General Clauses Act. In **Indian National Congress** (supra), the Supreme Court examined the question whether the Election Commission of India has the power to deregister a political party once it has been registered. The Supreme Court held that the Election Commission while discharging its function of granting registration to a political party discharges quasi judicial function and held as follows:-*
>
> > *"37. It was next urged by the learned counsel for the appellants that the view taken by the High Court that by virtue of application of provisions of Section 21 of the General Clauses Act, 1897 the Commission has power to de-register a political party if it is found having violated the undertaking given before the Election Commission, is erroneous. According to him, once it is held that the Commission while exercising its powers under Section 29A*

of the Act acts quasi-judicially and an order registering a political party is a quasi-judicial order, the provision of Section 21 of the General Clauses Act has no application. We find merit in the submission.

38. We have already extensively examined the matter and found that Parliament consciously had not chosen to confer any power on the Election Commission to de-register a political party on the premise it has contravened the provisions of Sub-section (5) of Section 29A. The question which arises for our consideration is whether in the absence of any express or implied power, the Election Commission is empowered to cancel the registration of a political party on the strength of the provisions of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:

> *"21. Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws. Where by any central Act or regulation, 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."*

39. On perusal of Section 21 of the General Clauses Act, we find that the expression 'order' employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the functions exercisable by the Commission under Section 29A is essentially a quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of de-registration/cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially."

16. As to what constitutes exercise of quasi judicial power was also considered by the Supreme Court in the following paragraphs:-

> *"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:*
>
> > *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 subject and (d) the statutory authority is required to act judicially under statute, the decision of the said authority is quasi-judicial.*
>
> *25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.*
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> *26. xx xx xx xx xx xx xx*
>
> *27. xx xx xx xx xx xx xx*
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> *28. Learned counsel for the respondent then contended that a quasi-judicial function is an administrative function which the law requires to be exercised in some respect as if it were judicial and in that view of the matter, the function discharged by the Election Commission under Section 29A of the Act is totally administrative in nature. Learned counsel in support of his argument relied upon the following passage from Wade and Forsyth's Administrative Law:*
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> > *"A quasi-judicial function is an administrative function which the law requires to be exercised in some respect as if it were judicial. A typical example is a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a public inquiry. The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which*

require the minister to act fairly towards the objections and not (for example) to take fresh evidence without disclosing it to them. A quasi-judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure."

29. We do not find any merit in the submission. At the outset, it must be borne in mind that 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 the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions. The afore-quoted passage from Administrative Law by Wade & Forsyth is wholly inapplicable to the present case. Rather, it goes against the argument of learned counsel for the respondent. The afore-quoted passage shows that where an authority whose decision is dictated by policy and expediency exercise administratively although it may be exercising functions in some respects as if it were judicial, which is not the case here."

17. In the present case, it would be seen that the ROS is obliged to ensure compliance of Sections 2, 3 and 20 of the Act while granting registration to a society. The ROS, therefore, exercises quasi judicial function while granting registration to a society. The said 'order' is neither an executive order nor a legislative order. By resort to Section 21 of the General Clauses Act, he cannot undo that registration."

24. The Court also took notice of Section 13 of the Act, which prescribes the method of dissolution of a society registered under the Act. The dissolution has to be voluntary in asmuch, as, 3/5th of the members of the society may determine to dissolve the same, whereupon it shall stand dissolved forthwith, or at the time when agreed upon. In the present case, the said procedure has,

admittedly, not been adopted. The Court dealt with the said aspect in para 18 of its decision in ***Supreme Court Bar Association*** (supra) as follows:

> *"18. There is yet another aspect which needs to be considered. Once the Act provides a procedure for dissolution of the society registered under the Act, it is only that procedure which can be invoked, and no other procedure can be adopted. If a thing is prescribed to be done in a particular way, it can be done in only that way, and by no other way. (See* ***Patna Improvement Trust V. Smt. Lakshmi Devi****, 812 SCR [1963] Supp. and* ***State of Bihar & Anr. V. J.A.C. Saldanha & Ors****, (1980) 1 SCC 554). Therefore, the ROS cannot invent other methods or reasons to suspend or dissolve a society registered under the Act*".

25. I am, therefore, of the view that section 21 of the General Clauses Act could not have been invoked in the facts of the present case by the Registrar to cancel the registration of the society. The *inter se* disputes between the petitioner and respondent nos.2 to 6 with regard to management and control of the society in question cannot be decided in these proceedings. It shall be open to the parties to raise all such issues in appropriate civil proceedings, and in accordance with the law. As above noted, this Court has not gone into the issue of illegality, if any, committed by the deponent of the affidavit, namely, the President of the society in the present case. The said issue may be raised and decided on its own merits, in appropriate proceedings, if and when raised.

26. In view of the aforesaid, the petition is allowed and the impugned order is set aside. Parties are left to bear their respective costs.

VIPIN SANGHI, J

MAY 02, 2012
'anb'/sr