

**HIGH COURT OF CHHATTISGARH, BILASPUR****(Judgment Reserved on 11.12.2020)****(Judgment delivered on 04.01.2021)****WPC No. 1721 of 2020**

1. Modern Medical Institute Society Lalpur Through Its Present President Namely Shri Suresh Goel , S/o Late Shri Hari Ram Goel , Aged About 70 Years Having Its Registered Office At Lalpur , Raipur , District Raipur , Chhattisgarh.
2. Shri Suresh Goel S/o Late Shri Hari Ram Goel Aged About 70 Years R/o Shankar Nagar, Raipur , (Founder Member As Well As Elected President of Society), District : Raipur, Chhattisgarh --- **Petitioners**

Versus

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

WPC No. 1789 of 2020

Rajendra Agrawal S/o Late Shri Devkaran Das Agrawal Aged About 65 Years R/o Street No. 2, Near Shiv Mandir , Fafadih, Raipur , District Raipur Chhattisgarh. --- **Petitioner**

Versus

1. State of Chhattisgarh Through Principal Secretary, Government of Chhattisgarh , Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur , District Raipur Chhattisgarh . Pin Code 492 002.
2. Principal Secretary Government of Chhattisgarh, Department of Commerce



And Industries, Mantralaya , Mahanadi Bhawan, Nava Raipur , District Raipur Chhattisgarh. Pin Code 492 002.,

3. Joint Secretary Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya , Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492 002.,
4. Registrar Firms and Societies, Chhattisgarh, Indravati Bhawan Block 1, Third Floor, Nava Raipur , District Raipur Chhattisgarh Pin Code 492 002., District : Raipur, Chhattisgarh
5. President Modern Medical Institute Society Having Its Registered Office At Lalpur , Raipur , District Raipur Chhattisgarh. Pin Code 492 001., District : Raipur, Chhattisgarh
6. Dr. Harak Jain S/o Shri B.L. Jain Aged About 66 Years R/o Gandhi Chowk , Raipur, District Raipur Chhattisgarh. Pin Code 492 001., District : Raipur, Chhattisgarh
--- Respondents

WPC No. 1762 of 2020

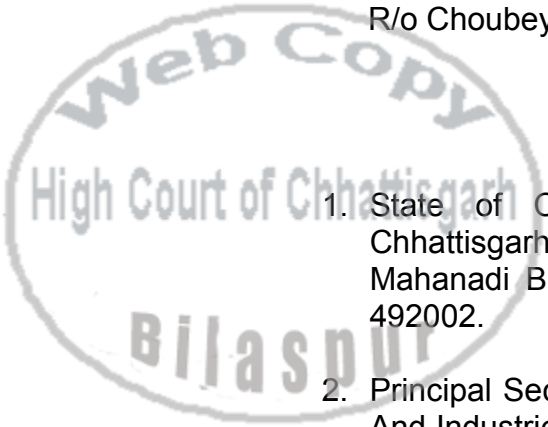
Vijay Chand Bothra S/o Late Shri Sampat Lal Bothra Aged About 67 Years
R/o Choubey Colony, Raipur, District : Raipur, Chhattisgarh

--- Petitioner

Versus

1. State of Chhattisgarh through Principal Secretary, Government of Chhattisgarh, Department of Commerce and Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. PIN Code 492002.
2. Principal Secretary Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492002.
3. Joint Secretary Government Of Chhattisgarh, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh Pin Code 492002., District : Raipur, Chhattisgarh
4. Registrar Firms And Societies, Chhattisgarh, Indravati Bhawan, Block - 1, Third Floor, Nava Raipur, District Raipur Chhattisgarh. Pin Code - 492002., District : Raipur, Chhattisgarh
5. President Modern Medical Institute Society, Having Its Registered Office At Lalpur, Raipur, District Raipur Chhattisgarh. Pin Code 492001., District : Raipur, Chhattisgarh
6. Dr. Harak Jain S/o Shri B.L. Jain Aged About 66 Years R/o Gandhi Chowk, Raipur, District Raipur Chhattisgarh Pin Code 492001., District : Raipur, Chhattisgarh
--- Respondents

WPC No. 1781 of 2020





Nawal Kishore Agrawal S/o Late Shri Bhimsen Agrawal Aged About 66 Years R/o B-2, Samta Colony, Raipur , District : Raipur, Chhattisgarh
--- **Petitioner**

Versus

1. State of Chhattisgarh through Principal Secretary, Government of Chhattisgarh , Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur , District Raipur Chhattisgarh . Pin Code 492 002.,
2. Principal Secretary Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya , Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492 002.
3. Joint Secretary Government Of Chhattisgarh, Department Of Commerce And Industries, Mantralaya , Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492 002.
4. Registrar Firms And Societies, Chhattisgarh, Indravati Bhawan Block 1, Third Floor, Nava Raipur , District Raipur Chhattisgarh Pin Code 492 002.
5. President Modern Medical Institute Society Having Its Registered Office At Lalpur , Raipur , District Raipur Chhattisgarh. Pin Code 492 001.
6. Dr. Harak Jain S/o Shri B.L. Jain Aged About 66 Years R/o Gandhi Chowk , Raipur, District Raipur Chhattisgarh. Pin Code 492 001.,
--- **Respondents**

WPC No. 1770 of 2020

Virendra Goel S/o Late Shri Shyam Lal Goel, Aged About 59 Years R/o Shankar Nagar, Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
--- **Petitioner**

Versus

1. State of Chhattisgarh through Principal Secretary, Government of Chhattisgarh, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492002, District : Raipur, Chhattisgarh
2. Principal Secretary, Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492002, District : Raipur, Chhattisgarh
3. Joint Secretary, Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code- 492002, District : Raipur, Chhattisgarh
4. Registrar, Firms And Societies, Chhattisgarh, Indravati Bhawan, Block-1, Third Floor, Nava Raipur, District Raipur Chhattisgarh. Pin Code- 492002, District : Raipur, Chhattisgarh
5. President, Modern Medical Institute Society, Having Its Registered Office At- Lalpur, Raipur, District Raipur Chhattisgarh. Pin Code- 492001, District :





Raipur, Chhattisgarh

6. Dr. Harak Jain, S/o Shri B.L. Jain, Aged About 66 Years R/o Gandhi Chowk, Raipur, District Raipur Chhattisgarh. Pin Code- 492001, District : Raipur, Chhattisgarh --- **Respondents**

WPC No. 1786 of 2020

Sadaram Agrawal S/o Late Shri Banarasdas Ji Agrawal Aged About 83 Years R/o Mittal Jute Company, Mittal Complex, Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh Through Principal Secretary, Government of Chhattisgarh, Department of Commerce and Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh Pin Code - 492002.
2. Principal Secretary Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code - 492002.
3. Joint Secretary Government of Chhattisgarh, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur, District Raipur Chhattisgarh. Pin Code 492002.
4. Registrar Firms And Societies, Chhattisgarh, Indravati Bhawan, Block - 1, Third Floor, Nava Raipur, District Raipur Chhattisgarh. Pin Code - 492002.,
5. President Modern Medical Institute Society, Having its Registered Office At Lalpur, Raipur, District Raipur Chhattisgarh. Pin Code 492001.
6. Dr. Harak Jain S/o Shri B.L. Jain Aged About 66 Years R/o Gandhi Chowk, Raipur, District Raipur Chhattisgarh Pin Code 492001. --- **Respondents**

WPC No. 1835 of 2020

Gopal Krishna Agrawal S/o Sukhdeo Bhimsariya Aged About 64 Years Resident of Street No. 2, Near Shiv Mandir, Fafadih, Raipur , District Raipur Chhattisgarh., District : Raipur, Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh Through Principal Secretary, Government of Chhattisgarh , Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Nava Raipur , District Raipur Chhattisgarh . Pin Code 492 002., District : Raipur, Chhattisgarh
2. Principal Secretary Government Of Chhattisgarh, Department of Commerce And Industries, Mantralaya , Mahanadi Bhawan, Nava Raipur , District Raipur Chhattisgarh. Pin Code 492 002., District : Raipur, Chhattisgarh
3. Joint Secretary Government of Chhattisgarh, Department of Commerce And



Industries, Mantralaya , Mahanadi Bhawan, Nava Raipur , District Raipur Chhattisgarh. Pin Code 492 002., District : Raipur, Chhattisgarh

4. Registrar Firms And Societies, Chhattisgarh, Indravati Bhawan Block 1, Third Floor, Nava Raipur , District Raipur Chhattisgarh Pin Code 492 002., District : Raipur, Chhattisgarh
5. President Modern Medical Institute Society Having Its Registered Office At Lalpur , Raipur , District Raipur Chhattisgarh. Pin Code 492 001., District : Raipur, Chhattisgarh
6. Dr. Harak Jain S/o Shri B.L. Jain Aged About 66 Years R/o Gandhi Chowk , Raipur, District Raipur Chhattisgarh. Pin Code 492 001., District : Raipur, Chhattisgarh

--- Respondents

For the Petitioners : Mr. Manoj Paranjpe, Mr. Amit Soni, Mr. Abhyuday Singh, Priyanshu Gupta, Mr. Prasoon Agrawal, Mr. Mayank Chandrakar & Mr. Karri Rohan, Advocates.

For the State-Respondents : Mr. Amrito Das, Addl. Advocate General

For Respondent No.3 Harak Jain : Dr. N.K. Shukla, Sr. Advocate with Mr. Arijit Tiwari, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. JUDGMENT/ORDER

1. As the facts and the questions of law involved in all these petitions being similar, they are decided by this common order.
2. The lead petition is WPC No. 1721 of 2020 filed by Modern Medical Institute Society Lalpur and Suresh Goyal. The challenge in this petition is to the order dated 21.07.2020 passed by the Chhattisgarh State Commerce and Industries Department whereby an appeal preferred by respondent No.3 Harak Jain, one of the members of the Society was allowed u/s 40 of the C.G. Societies Registration Act, 1973 (hereinafter referred to as "the Act of 1973"). The different round of litigation which initially started in the year





2007 eventually culminated by the impugned order.

3. The facts giving rise to the present cases are that the Modern Medical Institute Society was registered under the Chhattisgarh Societies Registration Act, 1973. The Society initially comprised of 11 founder members and was constituted with an object of providing medical treatment of super-specialty to the people of the region. With passage of time, two founder-members resigned thereby 9 members remained to continue and during such period several members were admitted to the membership. In the year 2007, one of the founder-member made a complaint that except the 11 founding members, the other members who were admitted to the membership are not valid members and they were admitted contrary to the bye-laws of the Society. On such complaint, the Registrar Firms and Societies, Chhattisgarh, in exercise of power under section 32 of the Act ordered for an enquiry. Thereafter, on the basis of enquiry report in the year 2011 itself, explanation was sought for, from the Society. The reply was submitted by the Society wherein it was contended by the Society that the members who were admitted to the membership of the society contributed huge donations and thereafter accepting the donation during the period from 1989 to 2000, they were made members and further contended that the documents relating to receipts and other applications were not in the possession of the newly added members and were in possession of complainant(s) themselves they being were at the helm of affairs of Society. In support of the proof of acceptance of membership, the list of members sent to Registrar every year by the complainant was relied upon.
4. The Registrar then on such explanation passed an order holding that tenure of elected body of society has expired and directed to hold the election within 45 days among the valid members of the Society. Further it is also observed that the Society is competent to adjudicate the validity of its



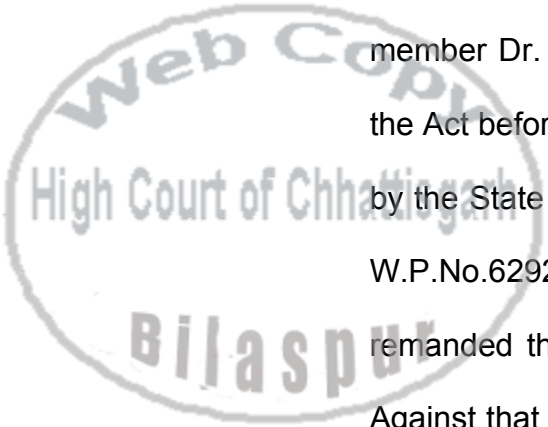


members as the power is vested with the executive body to accept any person with membership, however, since the period of elected body expired, as such, fresh election was ordered. The society though initially filed an appeal against such direction before the appellate authority, however, subsequently agreed to comply with the order of the Registrar. Thereafter, on 18.11.2007 convened a general body meeting and held that all the members who were admitted were valid members and the amendment in the bye-laws of the Society was carried out. The said outcome of the general body meeting was informed to the Registrar, Firms and Societies, which was accepted by the Registrar on 26.11.2007 and the amendment too was also registered and recognized.

5. Being aggrieved by such decision of the Registrar, one of the founding-member Dr. Harak Jain (respondent no.3 herein), filed an appeal u/s 40 of the Act before the State Government. Initially the said appeal was dismissed by the State Government on 03.10.2008, which was subject of challenge in W.P.No.6292 of 2008 and the High Court vide its order passed in 2013 remanded the case to the State Government to decide the appeal afresh. Against that order, the writ appeal bearing W.A. No.264/2013 was preferred which was eventually decided on 28.03.2019 whereby the appeal was dismissed with the following observations :

“2. Although lengthy arguments have been advanced by the appearing parties, we confine ourselves only to the aspect as to whether the order passed by the Assistant Registrar on 26.12.2007 is an order under Section 10(2) of the Adhinyam, 1973 or not for the reason that the State Government has dismissed the appeal as not maintainable holding that the said order of the Assistant Registrar is not amenable to the appellate jurisdiction.

3. The language employed in Section 10(2) of the Adhinyam, 1973 would make it explicit that when the amendment to the





bye-laws of the Society is forwarded to the Registrar and if the Registrar is satisfied that the amendment is not contrary to this Act or the Rules made thereunder, he may, if he thinks fit, register the amendment. Thus, the registration of amendment is not ministerial or mechanical exercise. It is followed by application of mind in the shape of satisfaction of the Registrar to ascertain that the amendment does not violate any provisions of the Act or the Rules made thereunder. If this be the power conferred upon the Registrar with sufficient guidelines to exercise the power, the exercise becomes a quasi judicial exercise of power and any order passed in exercise of that power would be treated as an order so as to make it amenable to the appellate jurisdiction of the State Government under Section 40 of the Adhiniyam, 1973. It is precisely this finding which the learned Single Judge has recorded in the impugned order. Therefore, we are not inclined to interfere with the impugned order. The appellate authority shall decide the appeal on merits strictly within the parameters of Section 10(2) of the Adhiniyam, 1973 without being prejudiced by our reluctance to enter the appeal.

4. The writ appeal is dismissed with the aforesaid observation.”

6. Thereafter, respondent no.3 challenged the amended bye-laws of 26.12.2007 before the Registrar which was set aside by order dated 02.08.2019. The said order touching the amendment of bye-laws was challenged by the Society before the State Government. The State Government by its order dated 12.02.2020 dismissed the appeal. Subsequent thereto, one of the members of the Society filed another writ before this Court bearing No. WPC No.1055/2020. This Court by order dated 30.06.2020 set aside the order of the State Government and remanded the case on the ground that since one appeal is already remanded on the same issue, therefore, the issue with respect to the amendment in the bye-laws is to be decided along-with pending appeal. Thereafter, the impugned order has been passed by the State Government





on 21.07.2020, whereby the membership of the members were nullified and the amendment to the bye-laws of the Society was turned down. Being aggrieved by both the orders, the instant petition bearing WPC No.1721/2020 is filed by Society and one of the founder member. Likewise since few of the members who also wanted to be heard and filed an application for impleadment, their application to become party was dismissed by order dated 15.07.2020, hence another batch of petitions is also preferred, challenging the same.

7. Learned counsel for the petitioners would submit that the Society was registered in the year 1989. Initially, there were 11 members and later new members were inducted apart from the earlier members and the number of members reached to 69. The counsel would submit that while the new members were inducted, the persons who made a complaint were in the executive body and they themselves have accepted the members whereas, all of a sudden, out of them one of the member made a complaint without compliance of section 32, which mandates that either majority of governing body or 1/3rd members of the Society should sign the complaint and must attach affidavit and then only the Registrar can take cognizance. It is stated that the complaint was made in the year 2007 and cognizance was taken by the Registrar u/s 32 of the Act, which is ab-initio void. He would submit that subsequently after the enquiry was conducted, the enquiry report was submitted by the officer wherein certain compliance was directed. It is stated that the Executive Body was authorised to accept the members according to bye-laws but since the executive body was not alive, as such, the Society was directed to decide the membership amongst themselves and thereafter to conduct the election. It is contended that at that time, since the executive body had already lived its life of a fixed tenure, as such, the general body meeting was held and in the said meeting validity of the members were accepted and the amendment to the bye-laws was carried

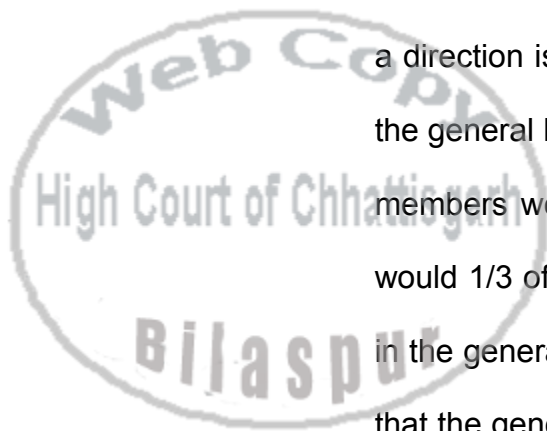




out. He would submit that the complainants who were the members of the Executive Body were in possession of the documents and they did not produce the receipts and other relevant documents during the inspection, therefore, the valid members cannot be punished and apart from this, the Executive Body members themselves have admitted the members.

8. The counsel would submit that even the enquiry report would show that no substance was existing to come a conclusion that no amount was paid by the members as the records itself were not made available during enquiry by the complainant. He would further submit that under the circumstances, the list of members which was found in compliance to the intimation mode u/s 16 of the Act, 1973 would be admissible. It is stated that by accepting the members, the compliance of section 32(4) of the Act, 1973 in respect of a direction issued by the Registrar was done. He would further submit that the general body meeting was held on 18.11.2007 and on that date, the total members were 70 and according to Clause 8 of the bye-laws the quorum would 1/3 of the total members and 1/3rd of 70 would come to 23, whereas in the general body meeting, 24 members were present. He further submits that the general body being the supreme and since the executive body was not existing, the decision of the general body meeting that their members were valid members cannot be turned down and the amendment to bye-laws was validly carried out. He would submit that even in the general body meeting, the petitioner(s) and respondent No.3 participated, for which, the specific pleading exists and no denial is made. Further the membership and participation continued for a considerable long period of about 11 years, therefore, at the fag end, all of a sudden, it cannot be said that the subsequently inducted persons were not valid members.

9. Learned counsel would further submit that after the remand of the case, the appeal was heard by the Joint Secretary whereas the order is passed by





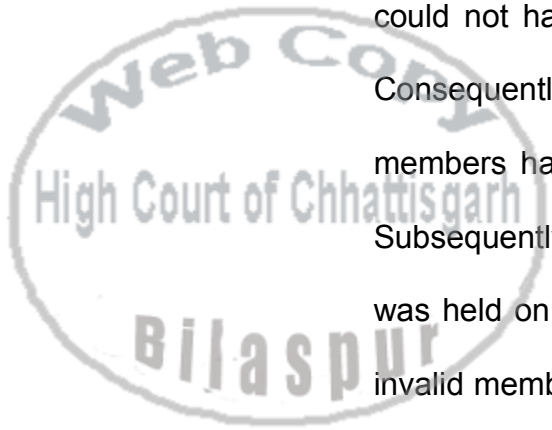
the Principal Secretary. Learned counsel would submit that since the statutory power u/s 40 of the Act, 1973 was being exercised this cannot be termed as institutional hearing as one authority hears the case and another one has passed the order and this cannot be accepted. Counsel would further submit that in the instant case, apart from the Society which is petitioner No.1, one Suresh Goel, petitioner no.2 who is indisputably the founder-member joined this petition and respondent no.3 Harak Jain, who is also founder-member, is arrayed as a party. Therefore, two founder members are disputing the membership of other members. One is supporting the subsequent inducted members whereas respondent no.3 is opposing the same. Therefore, under the circumstances, the members filed application before the Joint Registrar to hear their side. He refers to the documents and would submit that the appeal was fixed for hearing on 16.7.2020, whereas on application for urgent hearing along-with impleadment application heard in their absence. It is contended that hearing was pre-poned to 15.07.2020 behind the back of persons who filed application for impleadment and without hearing, orders of dismissal of application was passed by the Joint Registrar. Therefore, a gross procedural irregularity was committed. He would submit that the application for impleadment by members was necessary as the complainant (respondent no.3) though was aware of the fact that the Registrar has accepted many members to be the valid members, however, without impleading them in appeal filed the appeal before the State Government. Under these circumstances, the private writ petitioners who are the members are also required to be heard while hearing the appeal u/s 40 of the Act, 1973 and has prayed for to set aside the order dated 15.07.2020 (filed as Annexure P-24 in WPC No. 1835 of 2020 and others).

10. Per contra, learned Addl. Advocate General appearing for the State would submit that the petition is not maintainable for the reason that pursuant to



the order dated 21.07.2020, a fresh election has already been conducted and Suresh Goel who has filed on behalf of MMI no longer remains as President. He would submit that the question remains to be answered in this petition is about the valid membership of the members of the Society. He would submit that section 16(3) of the Act of 1973 though may be a prima facie evidence of the members of the Society but the same is not irrebutable and he would submit that initially when the Registrar passed the order on 28.6.2007 whereby it was found that except 11 founder-members, rest of the members are not the valid members and directed to rectify such illegality and held an election, the Society acquiesced to the same. Since the Society accepted the compliance to be made as per the direction of the Registrar, he would submit the Society cannot raise objection that Registrar could not have taken cognizance of complaint u/s 32 of the Act of 1973. Consequently even if the affidavit was not attached to the effect that 1/3rd of members have not complied the statute, the same cannot be highlighted. Subsequently he further submits that the general body meeting of Society was held on 18.11.2007. The members participated in such meeting were invalid members and out of founder members, two were present and though the order passed by the Registrar on 28.06.2007 which invalidated the members the subsequent adding members existed, those members participated in the general body meeting, as such, the other members did not have the legitimacy to hold the general body meeting.

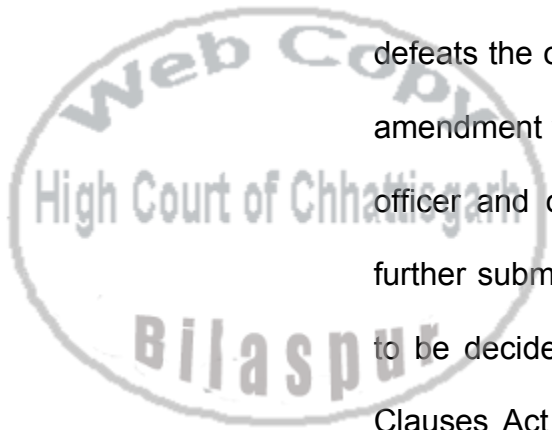
11. He would submit that when the compliance report of the Registrar was accepted u/s 32(4), the same was challenged by one of the members i.e., Harak Jain, respondent no.3, u/s 40 of the Act, 1973. The same having been dismissed, it was challenged in W.P.No.6292 of 2008 which was allowed and the order passed in WP No.6292 of 2008 was further affirmed in writ appeal in the year 2019. He would submit that in the meanwhile, the amendment issue of the bye-laws also travelled from the Registrar as the





acceptance of amendment too was challenged by Harak Jain and the Registrar allowed the appeal filed by Harak Jain whereby the amendment to the bye laws were set aside and directed to continue with old bye-laws. This order of Registrar whereby the amendment to bye-laws were set aside was challenged by the Society before the State Government wherein the State Government upheld the order of Registrar. This was further challenged by the Society in WP No. 1055 of 2020 and the High Court directed to decide the appeal as also the issue raised analogously with earlier appeal and remanded the case to the State Government and eventually the order has been passed on 21.07.2020, which includes the validity of the membership and the amendment.

12. He would submit that the amendment as it reflects would show that it defeats the object of the Society, for which, it was formed and therefore the amendment was rightly set aside. With respect to hearing of appeal by one officer and order passed by another officer learned State counsel would further submit that according to Act of 1973 the appeal under section 40 is to be decided by the State Government and Section 3(C) of the General Clauses Act defines the "State Government", and further according to the State General Clauses Act, "Government" is defined. Under these circumstances, it is contended that the appeal is to be decided by a particular Officer but it has to be decided by the State Government. He refers to a judgment passed by this Court in WPC No. 443 of 2012 and others decided on 15.05.2013 and would submit that giving hearing and decision thereof by the State would fall under the ambit of institutional hearing, which would be different from judicial proceeding and the judgment, therefore, the reliance placed thereon by the petitioner cannot be read as a statute. He submits that in the Government hierarchy in the like nature of cases, the institutional hearing is permissible. With respect to the impleadment, the counsel would submit that the application filed by the





different members were tainted with malafides as was grossly delayed. The counsel further submits that the members were aware of the facts of pending proceedings before the Registrar since 2013, however, moved the impleadment application in the year 2020. Therefore, when the conduct was not fair, they are not entitled to get a relief under article 226, as the actions were not bona fide. He refers to the amendment order and would submit that the amendment which sought for by the petitioner would show that it defeats the objects of the Society and puts a capping on the membership and made it heritable. Therefore, under the circumstances, the amendment was nullified. He would further submit that under the facts the judgment passed by the authority is well merited which do not require any consideration.

13. Dr. N.K. Shukla, learned senior counsel appearing for respondent no.3 Harak Jain would submit that the issue involved in this case is about the validity of membership. He would submit that the decision of the membership is a question of fact and the valid membership is a mixed question of facts and law. He would submit that the members who were not held valid on the date of general body meeting themselves convened a general body meeting and validated their membership. Therefore, no one can adjudge his own case as the validity of membership was decided by the invalid members. He placed reliance of the decision of **Apex Court in secretary, Tamil Nadu Public Service Commission v. A.B. Natarajan AIR SCW 2014 Pg 5746**. He would further submit that the Society and its members carry the doctrine of representation.

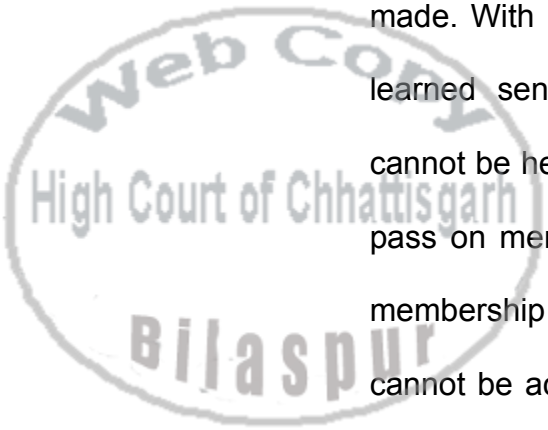
14. He would submit that the petitioners during the enquiry contended that they are in possession of the documents and could not produce but such contention cannot be accepted as section 25 of the Act, 1973 puts a mandate for compliance for maintenance of books of accounts and as per





section 28, if the transaction was more than Rs. 1 Lakh (Rupees one lakh), duly audited account by Chartered Accountant is to be submitted. However during enquiry the duly audited accounts were not produced. He would further submit that after enquiry report was submitted to the Registrar and held that there were invalid members as no documents were filed. The invalid members held a meeting on 18.11.2007 and nullified the same. So the members became judges of their own case. He would further submit that in respect of right of hearing since a Society is an entity of collective body, the individual person did not have any right for hearing. He refers to a decision of the Apex Court in **S. L. Kapoor v. Jagmohan and others AIR 1981 SC 136**. When the Society was represented no individual hearing was required and the substantial compliance has already been made. With respect to the amendment to facilitate hereditary membership, learned senior counsel submits that the subscription and membership cannot be heritable and therefore, the amendment to the bye-laws so as to pass on membership to heirs would be bad in law. He submits that the membership is not a property, so the concept of hereditary to membership cannot be accepted. It has been made in the bye-laws. He would further submit that in view of this, the order dated 21.7.2020 is well merited and do not call for any interference.

- 15.(i) I have heard learned counsel for the parties and perused the documents. The Writ Petition No.WP(C) No.1721 of 2020 is filed by the Society and one of the founder member Suresh Goyal. In this writ petition, two orders have been sought to be quashed. One is order dt. 21.7.2020 (Annexure P-1) wherein two issues are involved one is about invalidation of membership and amended bye laws. Another prayer is made for quashment of order dt.15.07.2020 (Annexure P-30) wherein application preferred by members to be impleaded is challenged.





(ii) In other batch of writ petition bearing No WPC No.1835 of 2020 & others which is filed by the individuals, quashment of order dt.21.07.2020 (Annexure P-1) & Order dt.15.07.2020 is sought. Along-with the prayer, direction is also sought to rehear the appeal by the Principal Secretary, Department of Commerce and Industries and pass a fresh order.

16. Perusal of documents would show that the Society named M.M.I. was constituted in 1989 under the Act of 1973, it continued its function and the first complaint was made on 13.02.2007 (Part of Annexure P-7). The complaint was by signed by 5 members with a caption that it is made u/s 32(2) and enquiry was sought for. It purports that out of 11 members, other members are not valid members according to the bye-laws of the Society. It was further complained that Suresh Goel and the Executive Body members are not valid members, therefore, they be removed. The said document was signed by L.K. Jain, M.K. Dhariwal, P. Gupta, K. Sikariya and Harak Jain.

17. In respect of membership of the Society, the bye-laws which are placed on records show that the executive committee will have right to accept or reject the application of membership. The relevant part of bye-laws of the Society are quoted below:

c) **Membership** : Any person interested to be a member of the Society has to make an application in prescribed form to the Society Executive Committee will decide to give the membership to a particular person. The Executive Committee will have a right to accept or reject the application.

With respect to other requirement of membership, the relevant part of bye-laws are under:

d) **Qualification** : To become a member, one should have the following qualifications:

- i/ Age should not be less than 21 years
- ii/ Should be a citizen of India.
- iii/ One should make the promise to abide by the rules and



regulations of the society

- iv/ He should not be convicted of an offence involving moral turpitude

e-1 Cessation of Membership:

A member shall cease to be a member :

- i/ On death
- ii/ On his becoming insane.
- iii/ If dues are not paid as per society's rule.
- iv/ If he resigns and the resignation is accepted by the executive Committee
- v/ If he is originally convicted of an offence involving moral turpitude.
- vi/ If he is found working against the interest of the institution. This however, will have to be approved in general meeting convened for this purpose, with agenda intimated in advance, by at least 2/3 majority of the members present.

The Executive Committee will have the power to decide regarding the cessation of membership in all above circumstances and its decision shall be final

f. **Succession :**

In case of vacancy in the executive committee due to whatever reason mentioned above shall be filled in by the rest of the Executive Committee members of the Society within a period of three months from the date the vacancy is caused.

18. In respect of members of governing body the Section 27 of the Act of 1973 mandates that annual list of names and other particulars are required to be sent. The relevant part is quoted below :

“27. Annual list of governing body to be filed.- Once in every year on or before the forty-fifth day succeeding the day on which according to the regulations of the society the annual general meeting of the society is held or if the regulations do not provide for an annual general meeting, then within forth-five days of the 31st day of January a list of the full names, permanent addresses and chief occupations and others, if any, with signatures of the governing body shall be filed with the Registrar by the President or Secretary in such form with such



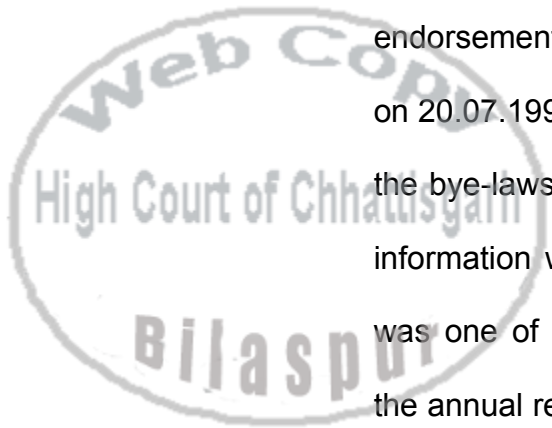


documents together with such fee as may be prescribed:

Provided that the Registrar may, for reasons to be recorded in writing, grant further time not exceeding fifteen days for compliance;

Provided further that if the Society fails to file the list within the prescribed time limit or within the extended time, it may file the same within thirty days from the last day of the prescribed time or extended time, as the case may be, with such late fee as may be prescribed.”

19. The documents attached would show that in compliance of section 27 Annexure P-14 dated 30.12.1997, the list of general body members were sent along-with list of 66 general members of the Society to the Assistant Registrar, Firms and Societies which bears the acknowledgement. The endorsement would show that it was received by the office of the Registrar on 20.07.1998, the compliance appears to have been made was pursuant to the bye-laws Clause 22 of the Society as also the statutory mandate. This information was sent by Mahendra Kumar Dhariwal as the Secretary who was one of the complainants. The subsequent document Annexure P-15, the annual return u/s 27 was sent to Assistant Registrar Firms and Societies by Mehendra Dhariwal on 06.07.1998 which was received at the office of Registrar on 21.07.1998 wherein the list of general body members along with particulars of ordinary members as existed on 30.06.1998 was enclosed whereby the names of General Body and ordinary of 66 members were sent. Likewise, the document Annexure P-16 and other list of members of the year 2000 were sent to the Asst. Registrar whereby the particulars of general body and the list of 66 members were sent. Therefore, the document *prima facie* would show that the Society right from 1997 to 2000 sent the names of persons in the general body as also the list of ordinary members to the Registrar as a statutory compliance. The Document would show that those compliances accepting the members of

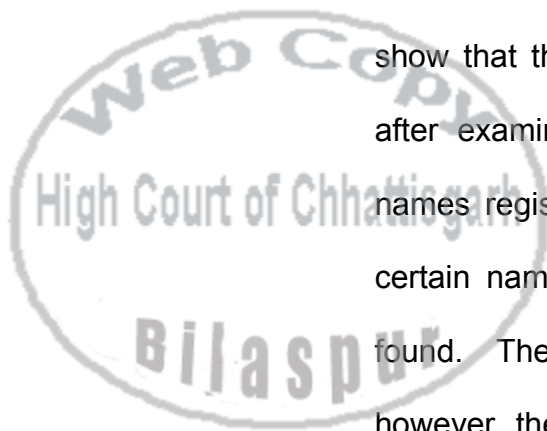




general body and ordinary members were made by one Mahendra Dhariwal in the capacity of the Secretary and respondent no.3, being the founder member have never raised any objection to it before any forum and compliance continued.

20. The series of documents filed would show that for the first time in the year 2007 by 5 members, wherein Mahendra Dhariwal, who had earlier sent the compliance report u/s 27 of the Act of 1973 was also a signatory to complaint. The said complaint was made u/s 32 of the Act. When the complaint was made, the Registrar in exercise of the powers u/s 32 ordered for an enquiry and appointed the inspector in exercise of power under section 32(3) of the Act. After the enquiry, report dated 28.05.2007 was submitted which is filed as Annexure P-18. The reading of report would show that the names of 72 members were reported. The enquiry officer after examination of record stated that in the membership register, 72 names registered and from the year 1989-91 uptill 2007. The deletion of certain names of members because of death and resignations was also found. The officer further recorded that though the names were found, however, the date of admission, the deposit subscription fee, receipt date, the nature of membership was made clear from the records and observed that section 16 of the Act 1973 was not complied with.

21. Further it recorded that application forms for membership were not found; neither the document showing the amount of donations as and when made nor the evidence thereof etc., was furnished. Further it observed that whether the executive body had accepted the membership after acceptance of the subscription fee/donation is also not clear and opined that since the application form from membership were not accepted by the Executive body as such the society failed to prove the validity of the membership were accepted by the Executive Body. With respect to the maintenance of





register of the members, section 16 of the Act 1973 reads as under :

Section 16 of the act, 1973 reads as under:

16. Register of Members.-- (1) The subscribers of the memorandum of association shall be the first members of the society.

(2) Every Society shall maintain at its head office a register of its members and shall enter therein, the following particulars, namely :-

(a) name, address and signature with date of each member;

(b) the date on which the members are admitted;

(c) the date on which the members ceased to be members

(3) The register of members shall be prima facie evidence of the membership of the society and of all matters entered therein :

Provided that no member whose subscription for the time being is in arrear for a period exceeding six months shall be entitled to vote in any proceedings of the society under this Act.

(4) If entries are not made in the register of members within thirty days of the admission of a member or cessation of membership [every office bearer in default shall be punishable with fine which may extend to five hundred rupees].

Reading of section 16 would show that in case of compliance to the extent of requirement u/s 16, register of the members shall be prima facie evidence of membership wherein the details are entered in respect of name, address, signature with date on which members were admitted, the date on which the members ceased to be members are required to be filled up. The enquiry officer, therefore, prima facie exceeded the requirement to form an opinion of invalidity of membership. Sub-section (4) of section 16 would show that in case of entry not made in the register of membership then every office bearer would be subjected to fine. In the report of enquiry officer, the absence of Register of members was subject issue but the opinion on validity of membership was given which is completely foreign to the Legislative requirement of section 16.





22. When these factual aspects are evaluated with reply of the Society filed as Annexure P-19 dated 27.06.2007, the explanation given by the society appears to be plausible wherein they have stated that the documents which have been pointed-out by the enquiry officer are in possession of the executive body inasmuch as during their tenure the persons were accepted as members and since the complaint has been made by them, they would be in a better position to explain. The explanation further reads that if the executive body has not produced or maintained any document despite the fact that the people have donated huge amount and had become the members, which was accepted by the then executive body, it is the executive body which is to be blamed.

23. The documents on record shows that Mahendra Kumar Dhariwal, being Secretary had sent the list of members in compliance of section 27 of the Act 1973 whereby the names of members were sent and when the complaint was made, he was one of the signatories that except the founding members, the memberships of other members are invalid. It appears that when the enquiry was made, the enquiry officer was not supplied with any documents of the receipts. If the complainants were in possession of the documents being the members of the Executive Body and even in case the documents of donation receipts, membership application forms are not maintained the members cannot be held to be at fault.

24. The Supreme Court in ***Ashok Kapil Versus Sana Ullah (dead) and others (1996) 6 SCC 342*** quoting the maxim "*Nullus commodum capere potest de injuria sua propria*" held that "no man can take advantage of his own wrong" and it is one of the salient tenets of equity. Therefore, the issue has to be seen from the angle when there was no dispute was pending among the members what was the conduct of the complainants. The documents would show that while the members were in harmony one of the complainants who





was acting as secretary of the institution sent the names of members to the Registrar in compliance of section 27, i.e., names of members of governing body-along with list of ordinary members which were nearly 69-70 the conduct of the other members would be relevant to draw inference of valid membership. Section 13 of the Indian Evidence Act, 1872 would be relevant to arrive at an answer. For the sake of brevity, Section 13 of the Evidence Act is reproduced below :

“13. Facts relevant when right or custom is in question.--Where the question is as to the existence of any right or custom, the following facts are relevant :--

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.”

Therefore, sending of the names of members by one member of Executive body, not objected by other members would be a fact relevant to draw the inference. Under the circumstances, the complainant cannot be allowed to take advantage by withholding the documents as the adverse inference has to be drawn as against the complainant.

25. While drawing such inference with respect to register of the members, it would be a prima facie evidence of the membership u/s 16(3) of the Act and admission to membership is fortifies the fact that the newly members who were added subsequent to initial incorporation of Society, they continued from the year 1991 to 2007, as such, it would be a prima facie evidence of the valid membership, which cannot be upset on the ground that certain particulars which are not required otherwise than section 16 of the Act, 1973 were not complied. In the result of the aforesaid discussion, it is held that on the date of 2007 when the complaint was made, as many as 69 to 70





members were admitted to the membership of the Society.

26. The document show that the action of the State began on a complaint made by 5 members as per Annexure P-17, the reading of complaint reveals that it was made u/s 32(2) of the Act, 1973. Since the entire action was under section 32 of the Act, 1973, for the sake of convenience, section 32 is reproduced here-in-below:

“32. Enquiry and settlement of disputes.- (1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on the application together with an affidavit in support of its contents of –

(3) The Registrar or the person authorised by him under sub-section (1) shall for the purpose of an enquiry under this section have the following powers, namely :-

(a) he shall at all time have free access to the books, accounts documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession, or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same, if they relate to the head office of the society at any place at the headquarter thereof and if they relate to any branch of the society, at any place in the town wherein such branch thereof is located or in his own office;

(b) he may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof or in his own office and may examine such person on oath; and

(c) (i) he may notwithstanding any regulation or bye-laws specifying the period of notice for a general meeting of the society, require the officers of the society to call a general meeting of the society at such time at the head office of the society or at any other place at the headquarter of the society and to determine such matter as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;



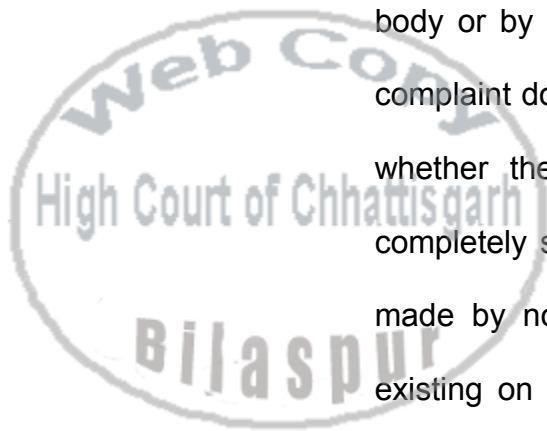


(ii) any meeting called under sub-clause (I) shall have all the powers of a general meeting called under the regulations or bye-laws of the society and its proceedings shall be regulated by such bye-laws.

(4) when an enquiry is made under this section the Registrar shall communicate the result of the enquiry to the society and may issue appropriate directions to the society, which shall be binding on all parties concerned;

27. Reading of subsection (1) would show that the Registrar on his own motion or an application made under sub-section (2) may hold an enquiry into the constitution, working and financial conditions of the Society. When the complaint is made by the members, the necessary statutory mandate under sub-section (2) requires that the application to be supported with an affidavit along-with the fact either by a majority of the members of the governing body or by not less than 1/3rd of the total members of the Society. The complaint do not disclose the fact that the persons who made the complaint whether they were the members of the governing body or not, it is completely silent and on tenure of complaint it shows that it has not been made by not less than 1/3rd others members of the Society as it was existing on that date. The necessary requirement of the affidavit is also missing. Bye-laws of the Society clause 4 says that the executive body of the society consists of 21 members, out of it, 11 would be founder members. The complaint was made by 5 members. So even if they are considered to be part of Executive Body or governing , they cannot be said to be majority members of governing or executive body. The bye-laws of the Society points out that management and regulation of the Society are entrusted to the executive body therefore for all purpose they would fall within the definition of governing body u/s 3(a) of the Act of 1973. Since the complaint by Registrar was u/s 32(2) was initiated at the instance of 5 members, it cannot be said that it fulfilled either requirement of Section 32(2) (a) or (b).

28. Further more the complaint as filed to initiate proceeding u/s 32(2) of the Act





of 1973 was an application simplicitor. To invoke the section 32(2) the requirement is that the complaint should have been supported within within support of affidavit of its contents. The Division Bench of High Court of Madhya Pradesh in **Sharmadham Uchchatar Madhyamik Vidyalaya Sanchalan Samiti Vs. State of M.P.** reported in 2003(2) MPLJ 377 at para 13 held as under :

“13. The scheme of Act of 1973 reveals that the Registrar shall mean Education Officer only for the purpose of Chapter 7 and for other provisions of the Act, Registrar shall mean the Registrar of Societies appointed under sub-section (1) of Section 4 of the Act of 1973. the order passed by the District Education Officer is not under Chapter 7 of the Act of 1973. An appeal under Section 40 can lie only when order is made by the Registrar appointed under sub-section (1) of section 4, therefore, against the order of District Education Officer dated 24.01.2002, Annexure A-6, cannot be said to be under Section 32 of the Act of 1973. The enquiry under Section 32 can be held only on the application together with an affidavit in support of its contents by a majority of the members of the governing body of the Society of by not less than 1/3rd of the total number of the members of the society. Since there was no enquiry under Section 32(1) or 32(2), the Registrar could not have issued any direction to the Society. Thus, the order Annexure A-6 is without authority and jurisdiction.”

Therefore, the cognizance of complaint without any support of affidavit would be against the statute and very inception of it was bad in law. Therefore, in view of the dictum of Division Bench (supra), the reliance placed by the State in *Galib Memorial Education Society Vs. State of Chhattisgarh & others WPC No.2071 of 2011* decided on 26.7.2018, would not be applicable in the instant facts of the case.

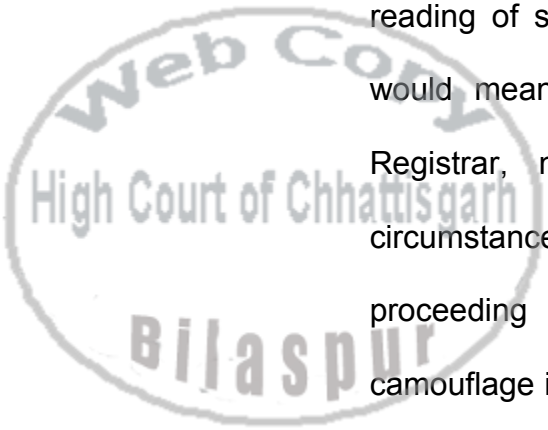
29. The submission of the State that initiation of enquiry was a suo moto action under sub-section (1) of section 32 of the Act, 1973 cannot be appreciated,





as sub-section (1) is in two parts i.e., that the Registrar may on his own motion or an application made under sub-section (2) may start an enquiry. The enquiry on his own motion cannot be amalgamated and subsequently shifted when the Registrar himself has not carried out the inspection or acted independently but started it after receipt of the complaint. The order of Registrar Annexure P-20 dt. 28.06.2007 would show that the enquiry commenced u/s 32(2) of the Act on the basis of complaint received by few of the members. Therefore, the Registrar himself independently has not commenced the enquiry. Had there been the enquiry started under sub-section (1) of section 32, it could have been said that it is a *suo-moto*. If such analogy is accepted then subsection (2) of section 32 which exists in the statute book would lose its mandate. The interpretation on plain reading of section 32(1), the words commencement of enquiry *suo-motu* would mean that the enquiry commenced on the own accord of the Registrar, not on the basis of any complaint made. Under the circumstances, this Court is of the opinion that the very commencement of proceeding under sub-section (2) cannot be subsequently shifted to camouflage it to be under sub-section (1) of Section 32 of the Act, 1973 and such complaint has to stand the test and barrier imposed in Section 32(2). In the result, the commencement of the enquiry itself was bad in law as it fails to stand the test and meet the requirement of statutory mandate.

30. The records further will show that the Registrar on the basis of complaint decided to hold that an enquiry and the Inspector was appointed, who gave his report on 28.05.2007 by Annexure P-18. After completion of the enquiry, 10 points were sorted-out as a result of enquiry and presumption was drawn against section 16(3) of the Act of 1973 in respect of list of membership. In reply to the enquiry report, the petitioners filed their reply by Annexure P-19 and at Clause 4 & 10, it was specifically stated that the complainants were in the executive body till 2000 and the irregularities if any pertain to their





period with respect to the Bank Pass Book, the reply was submitted that the complainants have not handed-over the document about the receipt book to the petitioner-Society. The Registrar thereafter in exercise of power under sub-section (4) of Section 32 communicated the result of enquiry and issued the direction on 28.06.2007, which is filed as Annexure P-20. As per the requirement of sub-section (4) of Section 32, the results of enquiry was reproduced as verbatim and the direction was issued by the Registrar, which reads as under:

दिनांक 27/6/07 का उसने स्पष्टीकरण में समिति द्वारा पूर्व कार्यकारिणी द्वारा रिकार्ड जानकारी दिये जाने का उल्लेख कर उनसे ही स्पष्टीकरण लिये जाने का अनुरोध किया गया है। समिति की पंजीकृत विधानानुसार उक्त कार्यवाही हेतु संस्था की कार्यकारिणी स्वयं सक्षम है। अतः इस संबंध में नियमानुसार कार्यवाही किया जाना सुनिश्चित करें। कंडिका 3 में उल्लेखित राशि पंजीकृत नियमावली में निर्धारित राशि के अनुरूप सभी सदस्यों से लिया गया है अथवा नहीं यह भी सुनिश्चित किया जावे।

उक्त के अलावा निर्वाचन दिनांक 21/12/02 से 3 वर्ष के पश्चात् वर्तमान कार्यकारिणी का कार्यकाल समाप्त हो चुका है। प्रस्तुत स्पष्टीकरण में इसकी स्वीकारोक्ति संस्था द्वारा किया गया है।

अतएव संस्था उपरोक्त दर्शित त्रुटियों की पूर्ति करते हुए वैध सदस्यों के मध्य 45 दिवस के भीतर निर्वाचन संपन्न करावे।

Sd/-

संजीव बख्शी

रजिस्ट्रार

फर्म्स एवं संस्थायें छ0ग0

31. The reading of direction issued by the Registrar would show that the Registrar referred to the reply of the petitioner dated 27.06.2007 and reiterated the fact that in respect of the record, the information be obtained from the erstwhile executive committee. It further records that according to the bye laws in order to settle the same, the executive body of the Society itself is capable, therefore, the contemplated action be taken according to the bye-laws. It further directs that the Society should also ensure the fact

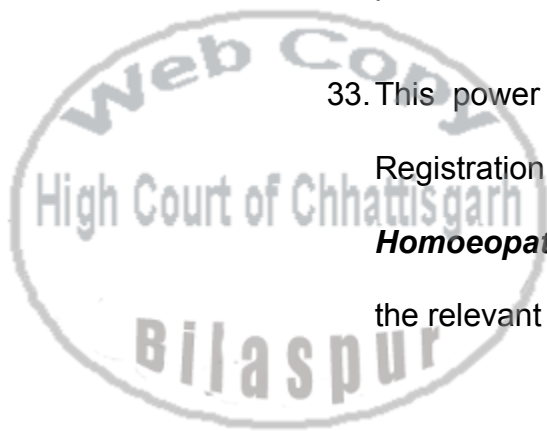


whether the members have contributed donations according to the bye-laws of the Society or not. It also records that after 21.12.2002 as 3 years has passed, the tenure of the executive body has come to an end. Thereafter, the direction was given that after compliance of the rectification of the points as projected in the enquiry, the election be held within a period of 45 days.

32. The direction given by the Registrar would show that it communicated the result of the enquiry and thought it proper to issue certain observation/direction but no action was contemplated except the election, which was required to be held among the valid members. Since the legislature has used the words “may issue the appropriate direction to the Society under sub-section (4), the reading of the direction would show that it is an enabling provision under which appropriate direction was issued.

33. This power of the Registrar relating to Section 32(4) of M.P. Societies Registration Act was considered in a case law reported in **Central Homoeopathic and Biochemic Association, Gwalior 2013 (2) MPLJ 419**, the relevant portion of it i.e., Para 11 reads as under :

“The aforesaid provision deals with the power of the Registrar to conduct enquiry regarding the constitution, working and financial condition of a society. For the purpose of this enquiry, he is equipped with certain powers enumerated in sub-section (3). He has free access to the books, accounts, documents, properties and other relevant material of the society, he may summon any person in whose possession or custody, the aforesaid documents are there. He may summon any person who he has reason to believe as knowledge of the affairs of the society to appear before him. He can examine such person on oath. Thus, various powers for the purpose of enquiry are given to the Registrar under the aforesaid provision. Subsection (4) is amended on 04-09-1998. The first portion of sub-section (4) makes it obligatory on the part of the Registrar to communicate the result of the enquiry to the society. The word “shall” is employed in the first portion of sub-section (4),





whereas the second portion envisages the power of the Registrar to issue appropriate directions to the society. For the purpose of exercising this power, the legislature has chosen to employ the word “may”. A careful reading of sub-section (4) shows that it is obligatory on the part of the Registrar to communicate the result of the enquiry to the Society. However, it is not always necessary or mandatory for the Registrar to pass any appropriate direction to the Society. An element of discretion is there with the Registrar to pass appropriate directions to the Society. For example, if result of the enquiry is in favour of the society and no action is required to be taken on it nor any appropriate directions are required, the Registrar may not issue any such directions. However, if on the basis of enquiry report, any adverse order, directions to comply with the provisions of the Act, cure the defects etc., are to be done, the Registrar is equipped with the power to issue appropriate directions. For this purpose, the legislature has used the words “may issue appropriate directions to the society”. Thus, first portion of Sub-section (4) is mandatory, wherein Registrar is bound to communicate the result of the enquiry whereas the second portion is an enabling provision, wherein the Registrar, if required and as the case may be, may issue appropriate directions to the society.”



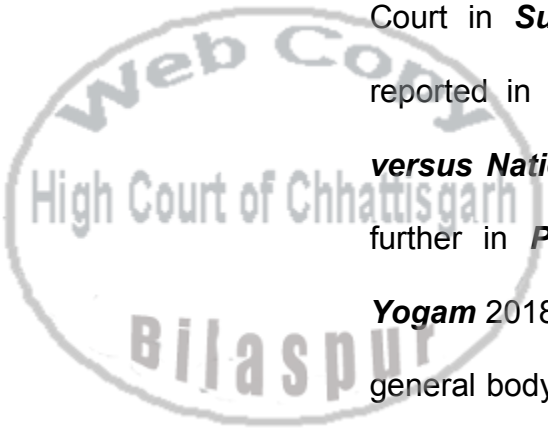
34. In the case in hand, the Registrar has issued the direction on 26.8.2007, which would show that the Society itself was asked to verify their record to decide the validity of the membership. The Society though filed an appeal against such direction, however, subsequently decided to comply with the order and accordingly the General Body meeting was held on 18.11.2007 vide Annexure P-6. The reading of the resolution of the General Body Meeting of 18.11.2007 begins with the word that after completion of the quorum the meeting started. As many as 24 members attended the meeting. According to the bye-laws, Clause 8, to hold the meeting the quorum would be 1/3rd and as has been held earlier that there were 69-70 valid members, the presence of 24 members would meet the 1/3rd to complete the quorum. In such meeting, the following resolution in respect of



the members was passed :

“आज की सामान्य सभा में उपस्थित सभी सदस्य इस बात से आश्वस्त हैं कि वर्तमान में एम.एम.आई. सोसाइटी में कुल वैध सदस्यों की संख्या (सत्तर—seventy) है। इन सभी सदस्यों ने पूर्व में संस्था के संविधान/ज्ञापन एवं नियमावली (Memoremom of Association) में निर्धारित दान की राशि निर्धारित अवधि में एम.एम.आई. को दानस्वरूप दी है।”

35. The general body therefore resolved that 70 valid members are there. The direction given by the Registrar on 28.06.2007 under sub-section (4) of section 32 records the finding that the executive body which was to decide the validity of the membership of members was no longer in existence., under the circumstances, the General Body was the only option to hold a meeting to decide the validity of members even otherwise. The Delhi High Court in **Supreme Court Bar Association v. Registrar of Societies** reported in 2012 SCC OnLine Delhi 6415; further in **Dr. Shikhar Jain versus National Neonatology Forum 2016 SCC OnLine**, Delhi 2300 and further in **P.N.Prem Kumar v. Sree Narayanan Bhaktha Paripalana Yogam** 2018 SCC OnLine Kerala 493 has laid down the principles that the general body of the Society is supreme and if the general body has taken a conscious decision then it would be binding on all the members. The general body i.e., in respect of private Society, the outer agency or any member cannot question the same, therefore, if has approved all the members to be valid members. Further after validation of members in general body meeting, fresh elections were conducted by the Society. As per pleading of petition at, para 36 which has not been rebutted in the return, the election for the executive body was held on 03.02.2008 and Dr. Harak Jain, respondent no.3 himself participated in the said election along-with other members. The pleading is that respondent no.3 only raised the objection in respect of postal ballot provided to some of the members. In the reply to it, respondent no.3, has stated that the participation in election



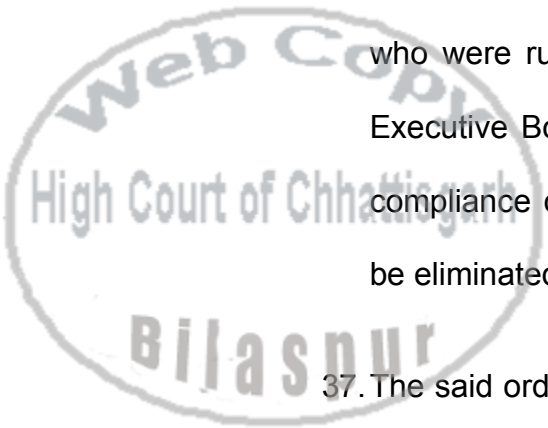


will not be precluded a member from raising voice against the illegal and unconstitutional act of the Society. Therefore, it would show that respondent no.3 acquiesced to the General Body resolution dated 18.11.2007 and having done so, the subsequent validity of the members cannot be questioned by him.

36. The document attached with this petition would show that initially against the order dated 26.12.2007 whereby the members were admitted to membership were challenged before the State Government in appeal by Harak Jain, respondent no.3 under Section 40 of the Act, 1973. The said appeal was decided on 03.10.2008 (Annexure P-9) by the Special Secretary State Government by holding that the order dated 26.12.2007 whereby the members were admitted were valid members. It was held that the persons who were running the Society i.e., the complainant himself was a part of Executive Body and the Society sent the list of names of the members in compliance of section 27 of the Act, 1973, therefore, the members cannot be eliminated from membership of the Society.

37. The said order was challenged in WPC No.6292/2008 wherein this court on 3rd April, 2013 (Annexure P-10) allowed the writ petition and set aside the order of the Special Secretary dated 03.10.2008 . The said order dt. 03.04.2013 was subject of challenge in W.A.No.264/2013 and the Division Bench by order dated 28.3.2019 (Annexure P-11) affirmed the order of the single Bench.

38. Likewise, thereafter, though the Division Bench ordered for decision by the appellate forum u/s 40 of the Act, 1973, the Registrar passed the order on 02.08.2019 (Annexure P-12) on appeal by Respondent no.3 Harak Jain to the amendment to bye laws of the Society, allowed the appeal and set aside the proposal of the amendment. The said order to set aside the amendment to bye-laws was challenged in WP(C) No. 1055 of 2020. This





Court by order dated 30.06.2020 (Annexure P-13) observed that since the High Court has set aside the order passed by the Special Secretary on 03.10.2008 and remitted back the case to the State Government for for deciding the appeal but the said appeal has not been actually been decided and is still pending consideration before the Special Secretary and in the meanwhile, respondent no.3, Harak Jain filed an application challenging the amendment made to the constitution of members by approaching the Registrar and thereafter the matter was delegated to the Assistant Registrar and the Assistant Registrar thereafter decided the same on 02.08.2019 and the Registrar exercising the power set aside the amendment approved by the same authority on 26.12.2007.

39. For the sake of convenience, the relevant part of the order, as discussed above in the foregoing para, passed in WPC No.1055/2020 in paras 7, 8, 9 & 14 are quoted below :

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





had been permissible under law.

8. Moreover, it does not appear to be a matter where the Registrar or the Assistant Registrar has taken a decision on the pending appeal before the Special Secretary, as it has been categorically stated at the Bar that the said appeal is an altogether different proceeding which is still pending. What have been decided by the Registrar and arises out of altogether fresh proceeding in spite of the earlier appeal pending consideration with the Special Secretary upon the earlier appeal being remanded back to him by the High Court.

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

14. The writ petition, therefore, stands allowed and the impugned order stands quashed. It is made clear that this Court has not expressed any opinion on the merits of the case. The respondent no.1 would take a decision on the pending appeal without being in any manner influenced by the order passed this Court today, he would be deciding the appeal strictly in accordance with the order of the High Court.”





40. Thereafter the impugned order was passed by the Principal Secretary, Commerce and Industries Department. Since the appeal was directed to be heard, hearing commenced before the Joint Secretary. Few of the members filed their impleadment application accompanied by application for urgent hearing. The same is filed as Annexure P-23 in WPC No. 1835 of 2020. The said application was filed on 13.07.2020. In the said application, it was written that the main appeal is listed for hearing on 16.07.2020, therefore, the members who had filed their impleadment application i.e., Ravi Agrawal and 14 others may be impleaded and heard. The Joint Secretary by its order dated 15.07.2020 before the date of hearing fixed, dismissed the application vide Annexure P-24 filed in WPC No.1835 of 2020 by holding that the members were never a party to the proceeding, as such, in the appeal, they cannot be heard. It is obvious since the date of hearing was preponed before the rejection of the said application, the petitioners were not present before the Joint Secretary since the case was fixed for 16.07.2020. Therefore, the application was dismissed with a preponed hearing in absence of parties who filed the application for impleadment.

41. The said order filed as Annexure P-24 in W.P(C) No.1835 of 2020 reads as under:

छत्तीसगढ़ शासन
वाणिज्य एवं उद्योग विभाग
मंत्रालय
महानदी भवन, नवा रायपुर, अटल नगर

क्रमांक एफ 4-08/2019/11/6(पार्ट-2)

नवा रायपुर, दिनांक 15/07/2020

प्रति,

डॉ. हरक जैन, गांधी चौक, रायपुर (छ.ग.)

अपीलार्थी

विरुद्ध

1. पंजीयक, फर्म्स एवं संस्थाएँ छ.ग., इंद्रावती भवन, नवा रायपुर (छ.ग.)

2. अध्यक्ष, माडर्न इंस्टीट्यूट, लालपुर, रायपुर, जिला-रायपुर (छ.ग.)

त्तरवादीगण

विषय-प्रकरण में नवीन पक्षकार बनाये जाने हेतु 15 आवेदन क्रमशः 1. श्री रवि



अग्रवाल, 2. श्री विरेन्द्र गोयल, 3. श्री राजेन्द्र अग्रवाल, 4. श्री. चतुर्भुज अग्रवाल, 5. श्री महेश कुमार अग्रवाल, 6. श्री विजय चंद बोथरा, 7. श्री ईश्वर प्रसाद अग्रवाल, 8. श्री श्याम सुंदर जैन, 9. श्री नवल किशोर अग्रवाल, 10. श्री सदाराम अग्रवाल, 11. श्री गोपाल कृष्ण अग्रवाल, 12. श्री गोपाल प्रसाद अग्रवाल, 13. श्री विपिन मिरानी, 14. श्री बाबू भाई पटेल, 15. श्री राकेश कुमार लोढ़ा, (सभी निवासी जिला रायपुर)

संस्था "माडर्न मेडिकल इंस्टीट्यूट सोसायटी" लालपुर, जिला-रायपुर (छ0ग0) पंजीयन क्रमांक 21530, दिनांक 27-02-1989 द्वारा पंजीकृत संस्था है, जिस पर वर्तमान में छत्तीसगढ़ सोसायटी रजिस्ट्रीकरण अधिनियम 1973 (संशोधित 1998) के समस्त प्रावधान प्रभावशील होते हैं।

प्रकरण में दिनांक 13.07.2020 को विषयांकित व्यक्तियों के द्वारा प्रकरण के सुनवाई में सभी को उत्तरवादी पक्षकार बनाये जाने का आवेदन प्रस्तुत किया गया है। जिसके अवलोकन व परीक्षण निम्नानुसार स्थिति पायी गयी है :-

- 1) यह कि विचाराधीन अपील प्रकरण में वर्ष 2008 से सुनवाई प्रचलन में रही है। जिसमें आवेदक गण कभी भी पक्षकार के रूप में शामिल नहीं रहे हैं।
- 2) यह कि विषयांकित व्यक्तियों द्वारा अपील प्रकरण में नया प्रति पक्षकार बनाये जाने हेतु आवेदन किया गया है जबकि प्रचलित प्रकरण छत्तीसगढ़ सोसायटी अधिनियम 1973 की धारा 40 के अंतर्गत पंजीयक के आदेश क्रं. शिका. 354/1686/2007 दिनांक 26.12.2007 के विरुद्ध डॉ. हरक जैन द्वारा प्रस्तुत अपील दिनांक 21.01.2008 के संदर्भ में माननीय उच्च न्यायालय द्वारा प्रकरण क्रं. WP(C) No. 6292/2008 तथा W.A No. 264/2013 एवं W.P.(C) No. 1055/2020 में प्राप्त निर्देशों के परिपालन में प्रचलन में है। विचाराधीन अपील प्रकरण में आवेदकगण कभी पक्षकार के रूप में शामिल नहीं रहे हैं।
- 3) यह कि माननीय उच्च न्यायालय के समक्ष प्रस्तुत न्यायालयीन प्रकरण क्रं. W.P.(C) No. 1055/2020 में पक्षकार के रूप में श्री रामअवतार अग्रवाल सचिव, "माडर्न मेडिकल इंस्टीट्यूट सोसायटी" लालपुर, जिला-रायपुर पिटीशनर एवं उत्तरवादी छत्तीसगढ़ शासन द्वारा सचिव वाणिज्य एवं उद्योग विभाग एवं अन्य पक्षकार है, W.P.(C) No. 6292/2008 में डॉ. हरक जैन विरुद्ध छत्तीसगढ़ शासन तथा अन्य रिट अपील W.A No. 264/2013 में अपीलार्थी "माडर्न मेडिकल इंस्टीट्यूट सोसायटी" लालपुर, जिला-रायपुर विरुद्ध छत्तीसगढ़ शासन एवं अन्य रहे हैं। यह कि सभी आवेदकगण कभी भी उपरोक्त दर्शित न्यायालयीन प्रकरणों में न तो वादी के रूप में और न ही उत्तरवादी के रूप में पक्षकार रहें हैं।
- 4) यह कि आवेदको के द्वारा स्वयं को व्यक्तिगत रूप से पृथक-पृथक पक्षकार बनाये



जाने का आवेदन प्रस्तुत किया गया है, जो उपरोक्त दर्शित न्यायालयीन प्रकरण के संदर्भ में तथा शासन के समक्ष उभय पक्ष अर्थात् डॉ. हरक जैन एवं श्री सुरेश गोयल तथा श्री रामअवतार अग्रवाल द्वारा प्रस्तुत संस्था के संदर्भ प्रस्तुत विभिन्न अपील प्रकरणों में कभी भी पक्षकार नहीं रहे है।

उपरोक्त तथ्यों के आधार पर अपीलार्थी गणों द्वारा दिनांक 13.07.2020 को प्रस्तुत उत्तरवादी के रूप में नवीन पक्षकार बनाये जाने हेतु आवेदन ग्राह्य योग्य नहीं पाये जाने के कारण निरस्त कर निराकृत किया जाता है।

छत्तीसगढ़ के राज्यपाल के नाम से
तथा आदेशानुसार
Sd/-
(अनुराग पाण्डेय)
संयुक्त सचिव
छत्तीसगढ़ शासन
वाणिज्य एवं उद्योग विभाग

42. Likewise, the Society filed an objection to hearing of appeal by the Joint secretary because as per the order of this Court, the Secretary, Commerce and Industries Department was directed to hear the appeal in W.P(C). No.1055 of 2020. The Joint Secretary by its order dated 15.07.2020 held that the Joint Secretary has been delegated to hear the appeal and dismissed the objection. The relevant part of the said order passed on 15.07.2020 is filed as Annexu.P-24 in W.P(C). No.1721 of 2020 reads as under:

प्रकरण में उत्तरवादी क्रं. 2 की ओर से प्रस्तुत आवेदन का एवं अपीलार्थी की ओर से प्रस्तुत उत्तर का अवलोकन किया गया। जिसमें आवेदक द्वारा प्रकरण में सुनवाई की प्रक्रिया संयुक्त सचिव के क्षेत्राधिकार नहीं होने का दर्शित कारण निम्न आधार पर पोषणीय नहीं है।

1) यह कि संदर्भित अपील प्रकरण छत्तीसगढ़ सोसायटी अधिनियम 1973 की धारा 40 के अंतर्गत छत्तीसगढ़ शासन, वाणिज्य एवं उद्योग विभाग के समक्ष प्रस्तुत की गई है। जिस पर सुनवाई की प्रक्रिया निर्धारण का अधिकार शासन के विभाग के भारसाधक सचिव को समस्त अधिकार प्रदत्त होता है।

2) यह कि प्रकरण में छत्तीसगढ़ शासन द्वारा विभाग के भारसाधक सचिव की ओर से पीठासीन अधिकारी सुनवाई हेतु अधिकृत किये गये है। प्रकरण में अंतिम



निर्णय प्रमुख सचिव द्वारा किया जावेगा।

3) यह कि माननीय उच्च न्यायालय के समक्ष प्रस्तुत न्यायालयीन प्रकरण कं. W.P(C) No. 1055/2020 में उत्तरवादी क्रमांक 1 छत्तीसगढ़ शासन द्वारा सचिव वाणिज्य एवं उद्योग विभाग ही पक्षकार है।

4) अतः भारसाधक सचिव, छत्तीसगढ़ शासन, वाणिज्य एवं उद्योग विभाग के प्रमुख सचिव के द्वारा संयुक्त सचिव, वाणिज्य एवं उद्योग विभाग को प्रकरण की सुनवाई हेतु अधिकृत किया गया है।

5) उत्तरवादी कं. 2 के आवेदन पर ही पूर्व में भी अपीलीय पीठासीन अधिकारी विशेष सचिव, वाणिज्य एवं उद्योग विभाग को परिवर्तित कर उनके स्थान पर संयुक्त सचिव, वाणिज्य एवं उद्योग विभाग को अधिकृत किया गया है। अतः प्रकरण में अपीलीय अधिकारी बार-बार परिवर्तन किये जाने का आवेदन स्वीकार योग्य नहीं है।

6) यह कि आवेदन में संस्था के सदस्यों को पक्षकार नहीं बनाये जाने तथा उनका पक्ष प्रभावित होने का कथन किया गया है। इस संबंध में यह उल्लेखनीय है कि प्रकरण माननीय उच्च न्यायालय द्वारा पारित आदेश के परिपालन में की जा रही है। संस्था के अध्यक्ष सचिव के अतिरिक्त अन्य कोई सदस्य उपरोक्त प्रकरणों में पक्षकार नहीं रहे हैं, इसलिए उनका पक्षकार बनाये जाने का कथन ग्राह्य योग्य नहीं है।

उपरोक्त तथ्यों के आधार पर उत्तरवादी कं. 2 द्वारा प्रस्तुत आवेदन के विषय स्वीकृत योग्य नहीं पाये जाने के कारण निरस्त कर निराकृत किया जाता है।

छत्तीसगढ़ के राज्यपाल के नाम से

तथा आदेशानुसार

Sd/-

(अनुराग पाण्डेय)

संयुक्त सचिव

छत्तीसगढ़ शासन

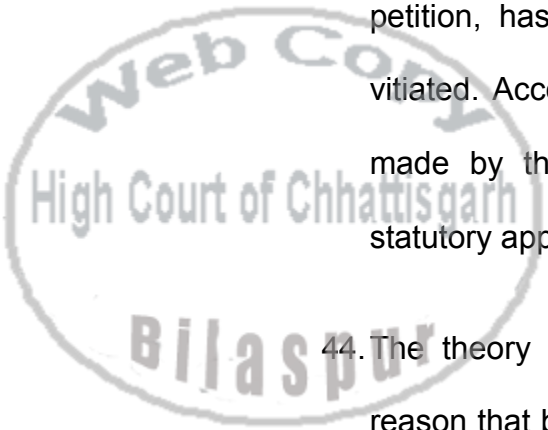
वाणिज्य एवं उद्योग विभाग

43. Thereafter, the impugned order Annexure P-1 has been passed by the Secretary. This is not disputed by the parties that the final arguments were heard by the Joint Secretary, however, the order was passed by the Principal Secretary. The State has advanced the arguments that as per section 40 of the Act of 1973, the appeal would lie to the State Government and even if the case has been heard by the Joint Secretary and the orders



have been passed by the Principal Secretary, it would be covered within the domain of institutional hearing. Making a reference to the State General Clauses Act, it was contended that submit that sub-section (60) of Section 3 defines the State Government and as per the General Clauses Act, therefore, the State in its discretion can hear the appeal and it would be an institutional hearing. Reference is made to judgment dt. 15.05.2015 passed in *WPC No.443/2012 (Om Prakash Agrawal Vs. State of Chhattisgarh)* by this court and would submit that the contents of natural justice will vary with the nature of the enquiry, the object of the proceeding and whether the decision involved is an “institutional decision” or taken up by an officer specially empowered to do it. It is further stated that in case of institutional decision merely because that some officer other than one who heard the petition, has passed the order, would not render the decision illegal or vitiated. According to the considered opinion of this Court, the submission made by the State is misconceived as the Joint Secretary heard the statutory appeal u/s 40 the Act of 1973.

44. The theory that 'the one who decides must hear' is recognized for the reason that bias and ignorance alike preclude fair judgment upon the merits of the case. The draw backs in institutional decisions necessarily place the rule “the one who decides must hear” on a higher standard of procedural fairness. Admittedly the appeal was heard by the Joint Secretary though the order has been passed by the Principal Secretary. It is a case where the statutory appellate power u/s 40 of the Act, 1973 was exercised, it cannot be placed at par alike a representative decision or a decision arrived by a Govt. Department. It is difficult to hold that the purpose of statutory appeal would be achieved by passing an order by the officer who did not hear the parties though the application of mind may be visible. The visibility of the application of mind may be as a result of self-endeavor. It may be a futile exercise without grasping the real issue after hearing the aggrieved. That is





not what the Court the Statutory appeal is intended and intention is perceptible from the order which is always the concern of the Court.

45. When the appellate powers are exercised, the centrality of the Act under which it is exercised has to be kept in mind. Any other attempts would be a misconceived exercise and would be against collective individual rituals of decades. The Supreme Court in ***A.K. Kraipak and others Versus Union of India AIR 1970 SC 150 : 1969 (2) SCC 262*** observed that the dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. Para 13 of the said decision is relevant and quoted below :

“13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. *The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.* The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi judicial power”.





46. In ***Jefferies v. New Zealand Dairy Production & Marketing Board, (1967) 1 AC 551***, the Privy Council emphasized that quasi judicial functions cannot be delegated. One can appoint a person or persons to hear and receive evidence and inform the decision maker of the evidence and only the empty formalities are not permissible.
47. In ***Central Homeopathic and Biochemic Association, Gwalior Vs. State of M.P. And others 2013(2) M.P.L.J. 419***, the Court has drawn the distinction of administrative decision and the quasi-judicial powers and further held that there is no distinction between a quasi judicial and administrative function for the purpose applicability of the principles of natural justice. Para 16 & 17 are relevant and quoted below :

16. The nature of powers given to the Registrar under section 32 shows that he can summon relevant documents, record evidence on oath and therefore this nature of power is not purely administrative in nature. More so when he is given further power to act on the enquiry report by issuing appropriate directions to the society. This kind of action, which can effect the rights of the society or a person adversely, is a quasi judicial power. The dictionary meaning of the word “quasi” is “not exactly”. In “principles of administrative law” (by M.P. Jain and S.N. Jain) (revised by Justice G.P. Singh and Alok Aradhe, Advocate – as his Lordship then was) (Page 37, 5th Addition), it is opined that a quasi judicial act is just in between a judicial and administrative function.

17. In *Ridge vs. Baldwin, 1964*, it was held that the duty to act judicially may arise from the very nature of the function performed by the authority. The ratio of *Ridge (supra)* was approved by the Constitution Bench of the Supreme Court in the celebrated case of *Maneka Gandhi vs. Union of India (1978) 1 SCC 248*. A Division Bench of this Court in *Sukhlal Sen vs. Collector, District Satna and others, 1969 MPLJ 516*, opined that the nature of duty to determine whether licensee has committed any breach of terms or conditions of his licence and whether for that reason the licence should be cancelled, imposes upon the





authority the duty to act judicially and to comply with the principles of natural justice. In *Sukhlal Sen Vs. Collector, District Satna and others, 1969 MPLJ 516* Justice G.P. Singh speaking for the Bench held as under :-

“5..... Ridge vs. Baldwin establishes that judicial character of a duty may be inferred from the nature of the duty itself and there need not be any express language used by the Legislature requiring the body on which the duty is imposed to act judicially; duty to act judicially will be implicit in the duty to determine what the rights of an individual should be.”

48. Further the Supreme Court in ***Automotive Tyre Manufacturers Association v. The Designated Authority and others 2011 SCW 818***

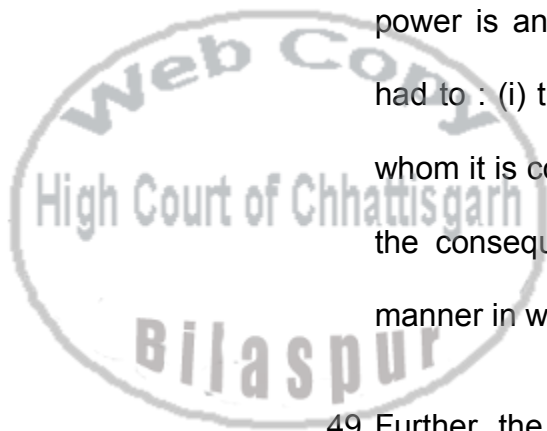
has held that when the Statute empowers the authority to decide the lis the authority has to act judicially and the decision of the authority would be a quasi-judicial act. The Court further held that for determining whether a power is an administrative power or quasi judicial power, regard must be had to : (i) the nature of the power conferred; (ii) the person or persons on whom it is conferred; (iii) the framework of the law conferring that power; (iv) the consequences ensuing from the exercise of that power; and (v) the manner in which that power is expected to be exercised.

49. Further, the Apex Court in ***Indian National Congress (I) versus Institute of Social Welfare (2002) 5 SCC 685*** has held that the statutory authority would be a quasi judicial act and has laid down the legal principles 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 :

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.”

50. Therefore when the lis of contents is pending between the contending





parties before the statutory authority takes place, it would be a quasi judicial authority under the Act of 1973. Section 40 of the Act, 1973 relates to appellate power to be exercised by the State who has to decide a lis between the parties. Therefore, it cannot be at par with an institutional hearing to say that one authority may hear and the other authority may pass a judgment for the reason that the word “State” has been used in Section 40.

51. In respect of institutional hearing, this court falls in line to the principle laid down by author and endorse its affirmation about institutional hearing and quasi judicial hearing. In the ***Principles of Administrative Law 2007 Fifth Edition*** by M.P. Jain, S.N. Jain and by Justice G.P. Singh & Justice Alok Aradhe, the following principle is laid down :

“There is one more point of difference between judicial and institutional decisions viz., the routine departmental procedure, notings on the file, etc., by various officials go on as usual before the final decision is taken and this may, to some extent, even compromise the rule, discussed earlier, that no material should be used against a person without giving him an opportunity to rebut the same. Much of the notings and views expressed on the file concerned, as it moves from official to official within the department before it reaches the stage where final decision is formally taken, may never come to the notice of the person affected.

Where adjudicatory power is conferred on a specific official it is he, and he alone, who ought to take the final decision (*Please see Devi Datt v. Union of India AIR 1985 Del.195*). On the other hand, a decision by a department differs from the decision by a designated official, body or tribunal created exclusively for adjudication, for while in the latter case, the discretion exercised and the view taken are those of the specified authority, in the former case, the decision is that of the department as a whole and represents the cumulative wisdom of a number of officials and in this sense it is institutional and not



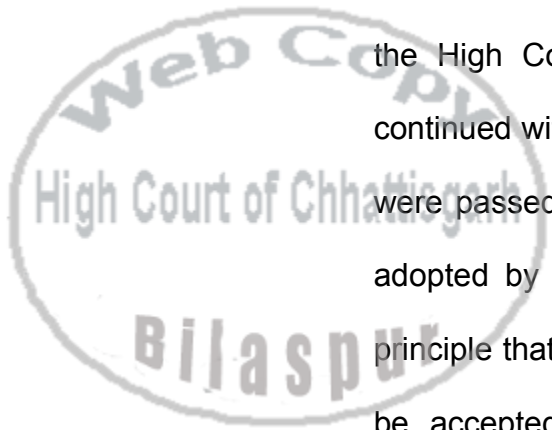


individual. Schwartz graphically calls in institutional decision as a “vicarious type of hearing and decision.”

Therefore, the State cannot aver the fact that though the case was heard by the Joint Secretary and the orders have been passed by the Principle Secretary, but it would be enveloped within the definition of institutional hearing as the word State has been used in section 40 thereby the appellate power has been conferred on the State to decide the appeal.

52. The documents would show that the petitioners raised an objection that according to the direction of the High Court, the Joint Registrar cannot hear but the Joint Registrar continued with the hearing and passed an order dated 15.07.2020 filed as Annexure P-24 in W.P(C) No.1721/2020. Therefore, despite raising objection that the specific direction was given by the High Court to hear the case by the Registrar, the Joint Registrar continued with the hearing and thereafter, after hearing was over, the orders were passed by the Principle Secretary. As such contradictory stand was adopted by the State and eventually, the State tried to fall back on the principle that it is an institutional hearing. Hence the said proposition cannot be accepted in the given set of facts. Consequently the order dated 15.07.2020 (Annexure P-24) passed by the Joint Secretary which is filed in W.P(C) No. 1835/2020 is hereby quashed.

53. In WP(C) No.1835 of 2020 & others filed by the members, the members filed an application to be impleaded. The said application was filed as Annexure P-23 on 13.07.2020 in the said writ petition. The Joint Secretary by order dated 15.07.2020 Annexure P-24 has dismissed the application. Admittedly, the case of main hearing on which the members wanted to be impleaded was fixed on 16.07.2020 for which the impleadment application was filed on 13.07.2020. However, the date was preponed and the orders were passed on 15.07.2020. When nobody was present before the Joint





Secretary the rejection was made solely on the ground that the application was belated. Respondent no.3 Harak Jain who was the complainant had not made any of the members who wanted to be impleaded as party/respondents in his appeal. The existence of validity of the membership apart from the earlier conduct of the Society sending three names to the Registrar was further validated in the general body meeting held on 18.11.2007, therefore, the complainant Harak Jain was also aware of the fact that these persons were members who wanted to be impleaded in appeal. However, the application was dismissed by preponing the date. By such preponement of the date, gross procedural irregularity was committed by the Joint Registrar and the fair play requires that the members who wanted to be impleaded should have been given the opportunity of hearing irrespective of the fact whatever the fate would have been to the application.

54. Preponement of hearing date in absence of parties apparently defeats the rules of natural justice. The Supreme Court in ***Uma Nath Pandey vs. State of Uttar Pradesh (2009) 12 SCC 40*** has held that even an administrative order, which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

55. The concept of natural justice and hearing when it has a civil consequences has been considered by the Supreme Court many a time. The members who wanted to become a party if they have been disqualified by the order which is impugned herein these petitions, naturally it will have a civil consequence, therefore, whether the doctrine of natural justice can be given a go-bye it is answered by the supreme court many a time. In ***Central***



Homeopathic and Biochemic Association, Gwalior, 2013(2) MPLJ 2013 419 (Para 18 & 19) the principles laid down by the Apex Court in **Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405** and the **Swadeshi Cotton Mills vs. Union of India (1981) 1 SCC 664** have been reiterated and the same is reproduced here-in-below:

18. “.....To-day, in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights penumbral areas it is only for improving the equality of government by injecting fair play into its wheels.....Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity.....”

In **Swadeshi Cotton Mills vs. Union of India**, the Apex Court opined as under:

“44..... this rule of fair play “must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands’. The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications.”

19. In the opinion of this Court, the impact of impugned order entails civil consequences on the petitioners. The Apex Court in **Mohinder Singh Gill vs. Chief Election Commissioner** held as under :

“66.....'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-primary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.....”

56. Further in **Mangilal v. State of Madhya Pradesh, 2004 AIR SCW 137** the Apex held as under :





“10. Even if a statute is silent and there are no positive words in the Act or Rules made thereunder there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every Tribunal/Court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on principles of natural justice irrespective of the extent of its application by express provision in that regard in given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See *Swadesi Cotton Mills etc. etc. v. Union of India etc. etc.*, AIR 1961 SC 818). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are; notice of the case to be met, and opportunity to explain.”

57. With such preponement of hearing and dismissal of the application for impleadment would certainly have serious consequence on the members who wanted to become a party in appeal. It cannot be stated that since the application itself was not filed while the appeal was pending, the members do not have a right. In any case, though the Society was acting in a

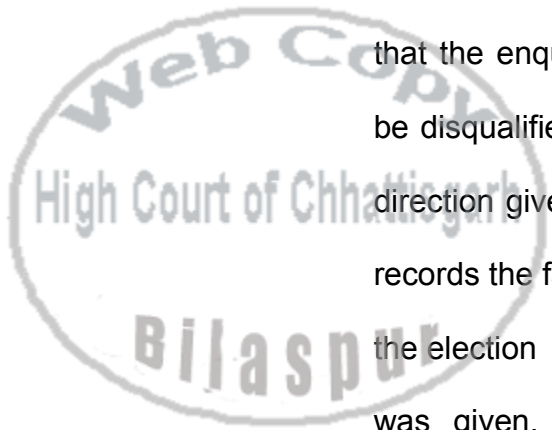




representative capacity, the members who are ousted cannot be stopped to ventilate their grievance with the preponement of hearing that too behind the back of the petitioners. Since the impugned order is the outcome of quasi judicial act, the principles of natural justice would take over the procedural fall-out, therefore, if the the principles of natural justice and fair play action are made applicable to the cases in hand, it can be said the application to implead the members was wrongly rejected and they should have been given opportunity of hearing before the orders are passed.

58. When the impugned order Annexure P-1 is examined, it shows the members who were admitted in the Society from 1991 to 1997 were disqualified. It records that the general body meeting dated 18.11.2007 whereby the members were validated cannot be accepted for the reason that the enquiry report dated 28.06.2007, the members have been held to be disqualified. The said order appears to be factually wrong inasmuch as direction given by the Registrar u/s 32(4) of the Act of 1973 on 28.06.2007 records the facts that the executive body is no longer in existence, therefore, the election be held in between the valid members and the specific direction was given. Thereafter the general body conducted the meeting on 18.11.2007 and informed the Registrar, for which, the satisfaction was recorded by the Registrar on 26.12.2007. With respect to the amendment, it has been held that the transfer of the membership has been made heritable as it defeats the object. Since the said issue was cutting the rights of the members which was created by the amendment, whether it was according to the object of the Society or not would be a secondary issue to be decided but before that the members were required to be heard. Therefore, at this juncture, this Court refrains to make any observation on the validity of the amendment and as it appears it may perhaps see another bout of litigation.

59. Further more, on 21.07.2020, the direction has been passed to hold a





meeting among 11 founder-members of the Society. Respondent No.3/ /appellant Harak Jain has failed to satisfy the court as to whether such prayer was made in the appeal or not. The memo of appeal (Annexure P-7) prima facie does not reflect so. In the appeal memo, no such prayer was made. When the relief is not specifically claimed in the memo whether such relief can be granted was principally laid down by the Supreme Court in ***Bachhaj Nahar Vs. Nilima Mandal (2008) 17 SCC 491*** and it was held at Para 23 thus:

23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res-judicata, estoppel acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property "A", court cannot grant possession of property "B". In a suit praying for permanent injunction, the court cannot grant relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.

60. Since it has been stated by the State that the fresh election has already taken place, the said issue is also required to be further adjudicated in view of the finding arrived at by this Court in the foregoing paragraphs. As the order (Annexure P-1) is set aside, the consequences would follow. In view of the facts and circumstances as discussed above, the following directions are passed:





(i) The order dated 21.07.2020 passed by the State (Annexure P-1) is set aside. Since the order is set aside , the consequence will follow;

(ii) It is held that the Members of the Society whose names find place in the list of compliance u/s 27 of the Act, 1973 and are validated as members of the Society by the general body meeting dt. 18.11.2007 shall hold the membership of the Society.

(iii) In respect of the amendment, without any observation on the validity of the amendment, at this juncture, it is observed that since the amendment was set aside which takes away the right of the members, therefore, it would have a civil consequence, as such the members are required to be heard afresh so as to put-forward the validity of the amendment made.

(iv) The members who had filed their application for impleadment will be heard afresh by the Principal Secretary, Commerce and Industries Department by giving fresh opportunity of hearing to them and thereafter respondent no.1 shall pass the orders. The hearing shall be confined to the amendment part of the bye-laws of the Society.

61. In view of the aforesaid observations/direction, the writ petitions are disposed of.

Sd/-

**GOUTAM BHADURI
JUDGE**

