The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi

Vs

The State of Delhi and Another

Petition No. 96 of 1955

(CJI B. P. Sinha, A. K. Sarkar, N. Rajgopala Ayyangar, S. K. Das, J. R. Mudholkar JJ)

23.10.1961

JUDGMENT

S. K. DAS, J. –

This is a writ petition on behalf of two petitioners. The first petitioner is the Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi, through Hakim Mohammed Jamil Khan, stated to be its properly elected Secretary. The second petitioner is Hakim Mohammad Jamil Khan himself, who states that he is still one of the trustees or members of the said Board. The petition was initially filed on behalf of the first petitioner. Subsequently, an amendment petition was moved which was allowed by us. As a result of the amendments allowed petitioner No. 2 was added as one of the petitioners, and certain new grounds of attack were added in para. 14 of the petition. To these grounds we shall advert later.

The short facts giving rise to the petition are these. One Hakim Mohammad Ajmal Khan was a physician (of Unani medicine) of all-India repute. He lived in Delhi and started a pharmaceutical institute in the town known as Hindustani Dawakhana in the year 1903.

He also established a medical college known as the Tibbia College. He died in the year 1927. But before his death, in the year 1911, he along with certain other persons formed a society styled Anjuman-i-Tibbia and had it registered under the Societies Registration Act, 1860 (Act XXI of 1860). The name of the society was changed in 1915, and it became known as the Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi. For convenience we shall refer to it as the Board. The Board ran the Tibbia College and an attached hostel. The pharmaceutical institute was also managed by it, though at one stage petitioner No. 2 claimed the institute as his private property. Certain rules and regulations were made for the functioning of the Board, which were amended from time to time. The main objects of the Board were thus stated in the rules :-

> (a) to establish colleges for the purposes of imparting higher education in the Unani and Ayurvedic systems of medicine to the inhabitants of India;
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> (b) to improve the indigenous systems of medicine on scientific lines and for that purposes to establish one or more pharmaceutical institutes (dawakhanas); and
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> (c) to have medical books compiled and translated and to adopt other means which might enhance the popularity of those systems and add to the information of the people in general on hygiene etc.

The maximum number of members (called trustees in the rules) was 35 to be elected from all the Provinces of India. It was stated in r. 5 that one-third of the members of the Board should be Hakims and Vaids. The financial year of the Board was to from April 1 to March 31 of each year, and the annual subscription to be paid by a member of the Board was fixed at Rs. 12/- per annum payable in advance before April 30 of each year. Rule 6 laid down the circumstances in which the office of a member should be deemed to be vacant, and one of such circumstances was the failure of a member to pay his annual subscription before the date fixed for such payment. There were also rules regarding (a) power of inspection of the college, hostel etc., (b) ordinary meetings of the Board of Trustees and (c) matters which could be dealt with by the Board and its sub-committees. It is not necessary to state these rules in detail. Rule 13 provided for the formation of a Managing Committee consisting of nine members and six officials for a period of three years and the functions of the Managing Committee were also prescribed in the rules. The office-bearers of the Board and the Managing Committee were to be the same and consisted of (i) a President, (ii) a Senior Vice-President, (iii) a Junior Vice-President, (iv) a Secretary, (v) a Financial Secretary, and (vi) a Joint Secretary. It was laid down in r. 26 that the office-bearers of the Board were to be elected for three years by the members. The rules also laid down the powers and duties of the President, Secretary, Financial Secretary and Joint Secretary. One of the rules said that the office of the Secretary of the Board shall, as far as possible, vest in the lineal descendants of Hakim Mohammad Ajmal Khan. Hakim Mohammad Jamil Khan, son of Hakim Mohammad Ajmal Khan and petitioner No. 2 before us, was the first Secretary of the Board.

In the year 1948 Shri Rameshwar Dayal, the then Collector of Delhi, and Dr. Yudhvir Singh the then President of the Delhi Municipal Committee, and certain other persons were elected as members of the Board. Dr. Yudhvir Singh was elected President and one Shri Mool Chand Gagerna was appointed Joint Secretary. Soon after the elections in 1948, a struggle ensued between different groups of members for obtaining control of the Board and the college, and for possession of the Hindustani Dawakhana. Certain criminal proceedings followed. On October 18, 1949, a suit was brought in the court of the senior Subordinate Judge, Delhi under s. 92 of the Code of Civil Procedure against the Secretary and 31 members of the Board. In that suit an application was made for the appointment of a receiver and on October 19, 1949, the Subordinate Judge appointed two local advocates as joint receivers with plenary powers. These receivers took possession of the Dawakhana and the college between October 19 and 23, 1949. When the suit was still pending, the Delhi State Legislature passed an Act called the Tibbia College Act, 1952 (Delhi Act No. 5 of 1952), hereinafter referred to as the impugned Act. This Act came into force on October 10, 1952. The constitutional validity of the Act is the principal question for decision on this writ petition and we shall presently refer to the provisions thereof. We may only state here that by s. 9 of the impugned Act, the Board stood dissolved and all property, movable and immovable, and all rights, powers and privileges of the Board vested in a new Board constituted under the Act. This new Board is called the Tibia College Board and we shall refer to it as the new Board. After the passing of the impugned Act, the suit instituted before the Subordinate Judge, Delhi was withdrawn. On the withdrawal of the suit, an application was made for making over possession of the properties to the new Board. That application was allowed in spite of the objection of petitioner no. 1. Petitioner no. 1 unsuccessfully moved the High Court of Punjab against that order.

Thereafter, petitioner No. 1 moved this Court under Art. 32 of the Constitution for the issue of a writ restraining the State of Delhi and the newly constituted Board under the impugned Act, the State from enforcing the provisions of the impugned Act and the new Board from exercising any functions thereunder. The respondents to the petition raised a number of preliminary objections, and on December 13, 1954, the writ petition was withdrawn. This was followed by some amendments of

the rules of the Board and it is stated on behalf of the petitioners that a fresh election was held in accordance with the amended rules on January 6, 1955. On January 11, 1955, the Managing Committee passed a resolution authorising the Secretary to institute a proceeding in this Court to enforce the fundamental rights of petitioner no. 1. The present petition was then filed on March 14, 1955, in pursuance of that resolution. The petition was subsequently amended in the manner already indicated by us. The State of Delhi and the new Board are the respondents to the present petition.

The learned Advocate for the petitioners has challenged the validity of the Act on two main grounds. His first ground is that the Delhi State Legislature had no legislative power or competence to enact the impugned Act, which must on that ground be declared invalid and inoperative. The second ground proceeds on the footing that assuming the Delhi State Legislature had power to enact the impugned Act, the Act is bad because its several provisions violate the fundamental rights guaranteed to the petitioners under Arts. 14, 19 and 31 of the Constitution. Two subsidiary points have also been urged before us, one to the effect that the Delhi State Legislature could not by the impugned Act over-ride the provisions of the Societies Registration Act, 1860 which is a Central Act, and the other to the effect that the Delhi State Legislature acted mala fide in passing the impugned Act.

We shall presently deal with these arguments in the order in which we have stated them. It is necessary to state here, however, that a preliminary objection similar to the one urged against the previous petition was also urged in respect of the present petition. The learned Solicitor General appearing on behalf of the respondents has urged that by reason of the failure of the members of pay the annual subscription in time, all of them ceased to be members in 1950-1951; therefore, the elections held in 1955 were of no effect there being no one competent to elect; and the Board as a Board ceased to exist before 1955 and neither petitioner no. 1 nor petitioner no. 2 could maintain the present writ petition. Some of the affidavits made on behalf of the parties containing averments with regard to the payment or non-payment of subscription particularly in the years 1949-50 and 1950-51 were read, and Ex. B series which were the cash books of the years 1951 to 1954 were also placed before us. On one side there is the averments on behalf of the respondents that no subscriptions were paid before the due date for the years 1949-50 and 1950-51 by any of the members. As against this, it is stated on behalf of the petitioners that petitioner no. 2 and some of the other members paid their subscription to the Financial Secretary for the years 1949-50 and 1950-51. An affidavit made by the then Financial Secretary was also placed before us. From a perusal of the affidavits and the documents filed it appeared to us that the question being one of disputed facts could not be satisfactorily decided on the materials placed before us. We, therefore, thought it proper and convenient to consider the legal points urged as regards the constitutional validity of the impugned Act and of the action taken thereon.

Now, we take up the first argument advanced on behalf of the petitioners. This argument has been put in the following way. The State of Delhi became a Part C State on the coming into force of the Constitution of India. Under Art. 239 of the Constitution as it then stood, a Part C State was to be administered by the President acting, to such extent as he thought fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State. Article 240 of the Constitution enabled Parliament by law to create or continue for any Part C State a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State. By virtue of the power conferred by Art. 240, Parliament enacted the Government of Part C States Act, 1951 (Central Act 49 of 1951), by which a Legislative Assembly was constituted for some of the Part C States including one for Delhi. Section 21 of the said Act laid down the extent of legislative power of the Legislative Assembly. This section said inter alia that the

Legislative Assembly of a Part C State may make laws for the whole or any part of the State with respect to any of the matters enumerated in the State List (List II) or in the Concurrent List (List III). There was an exception provided with regard to the Legislative Assembly of the State of Delhi in respect of public order police etc., which is not relevant for our purpose. Section 22 said that if any provision of a law made by the Legislative Assembly of a Part C State was repugnant to any provision of a law made by Parliament, then the law made by Parliament, whether passed before or after the law made by the Legislative Assembly of the State, shall prevail and the law made by the Legislative Assembly of the State, shall to the extent of the repugnancy, be void. There is an Explanation to the section which is not relevant for our purpose and need not be read. The point which the learned Advocate for the petitioners has emphasised is that under s. 21 aforesaid, the extent of the legislative power of the Delhi State Legislature was limited to the making of laws for the whole or any part of the Delhi State with respect to any of the matters enumerated in the State List or in the Concurrent List of the Seventh Schedule to the Constitution. Now, item 32 of the State List (List II) is in these terms :

> "32. In corporation, regulation and winding up of corporations, other than those specified in List I, and universities, un-incorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

Items 43 and 44 of the Union List (List I) are in these terms :

> "43. Incorporation, regulation and winding up of corporations, including banking, insurance and financial corporations but not including co-operative societies.
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> 44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities."

The argument of the learned Advocate for the petitioners is this. The old Board which was registered under the Societies Registration Act, 1860 and is petitioner no. 1 before us, was a corporation, whose objects were not confined to the State of Delhi. Therefore, any legislation with regard to it would fall under item 44 of List 1 and not under item 32 of List II. This argument consists of two parts - first, that the old Board was a corporation, and, secondly, that its objects were not confined to one State. The learned Advocate urges that that being the position, the Delhi State Legislature had no legislative competence to make the impugned legislation which went beyond the extent of its legislative power under s. 21 of Act 49 of 1951. It is worthy of note here that if the Board were not a corporation, then the impugned legislation would not fall under item 44 of List I at all; alternatively, if the Board were a corporation but its objects were confined to only one State, viz. the State of Delhi, then again item 44 would not be attracted. On behalf of the respondents there is a threefold reply to the argument stated above : firstly, that the Board was not a corporation; secondly, its objects did not extend beyond the State of Delhi; and thirdly, the impugned legislation is supportable under item 28 of the Concurrent List (List III) relating to "Charities and charitable institution".

The first and foremost question is whether the old Board was a corporation in the legal sense of that word. What is a Corporation ? Corporations may be divided into two main classes, namely, corporations aggregate and corporations sole. We are not concerned in the present case with corporation sole. "A Corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual,

particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence". (Halsbury's Laws of England, 3rd Edn. Vol. 9, page 4.) A corporation aggregate has therefore only one capacity, namely, its corporate capacity. A corporation aggregate may be a trading corporation or a non-trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special acts of parliament, (3) companies registered under the Companies Act, etc. Non-trading corporations are illustrated by (1) municipal corporations, (2) district boards, (3) benevolent institutions, (4) universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member of members and his or their successors are one. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself; for a corporation is a legal persona just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient.

The learned Advocate for the petitioners has referred us to various provisions of the Societies Registration Act, 1860 and has contended that the result of these provisions was to make the Board a corporation on registration. It is necessary now to read some of the provisions of that Act. The Act is entitled an Act for the registration of literary, scientific and charitable societies and the preamble states that it was enacted for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge etc., or for charitable purposes. Section 1 of the Act states that any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in s. 20 of the Act may, by subscribing their names to a memorandum of association and filing the same with the Registrar or Joint-stock Companies form themselves into a society under the Act. Section 2 lays down that the memorandum of association shall contain and one of the particulars it must contain is "the objects of the society". Section 3 deals with registration and the fees payable therefor. Sections 5 and 6 are important for our purposes and should be read in full.

> "5. The property, movable and immovable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.
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> "6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :
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> Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary of the trustees

thereof, if on an application to the governing body some other officer or person be not nominated to be the defendant."

Section 7 provides for non-abatement of suits or proceedings and the continuance of such suits or proceedings in the name of or against the successor of the person by or against whom the suit was brought. Section 8 says that if a judgment is recovered against a person or officer named on behalf of the society, such judgment shall not be put in force against the property, movable or immovable, or against the body of such person or officer, but against the property of the society. Section 10 provides that in certain circumstances mentioned therein a member of the society may be sued by the society; but if the defendant shall be successful in any such suit brought at the instance of the society and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit was brought, or from the society. Sections 13 and 14 provide for dissolution of societies and the consequences of such dissolution. These provisions have also an important bearing on the questions before us and are quoted in full.

"13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal court of Original civil jurisdiction of the district in which the chief building of the society is situate, and the Court shall make such order in the matter as it shall deem requisite :

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved, without the consent of the Government of the State of registration.

14. If upon the dissolution of any society registered under this Act there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present personally or by proxy at the time of the dissolution, or, in default thereof, by such Court as aforesaid :

Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint Stock Company."

Now, the question before us is - regard being had to the aforesaid provisions - was the Board a corporation ? Our conclusion is that it was not. The most important point to be noticed in this connection is that in the various provisions of the Societies Registration Act, 1860, there are no sufficient words to indicate and intention to incorporate, on the contrary, the provisions show that

there was an absence of such intention. Section 2 no doubt provides for a name as also for the objects of the society. Section 5, however states that the property belonging to the society, if not vested in trustees, shall be deemed to be vested in the governing body of the society and in all proceedings, civil and criminal, the property will be described as the property of the governing body. The section talks of property belonging to the society; but the property is vested in the trustees or in the governing body for the time being. The expression "property belonging to the society" does not give the society a corporate status in the matter of holding or acquiring property, it merely describes the property which vests in the trustees or governing body for the time being. Section 6 gives the society the right to sue or be sued in the name of the president, chairman etc. and s. 7 provides that no suit or proceeding in a civil court shall abate by reason of the death etc. of the person by or against whom the suit has been brought. Section 8 again says that any judgment obtained in a suit brought by or against the society shall be enforced against it. It has been submitted before us that ss. 6, 7 and 8 clothe the society with a legal personality and a perpetual succession; and s. 10 enables the members of the society to be sued as strangers, in certain circumstances, by the society, and the costs awarded to the defendant in such a suit may be recovered, at his election, from the officer in whose name the suit was brought. Dealing with very similar provisions (ss. 7, 8 and 9) of the English Trade Union Act, 1871 (34 and 35 Vict, e. 31) Lord Lindley said in the celebrated case of Taff Vale Railway v. Amalgamated Society of Railway Servants [[1901] A.C. 426].

> "The Act does not in express terms say what use is to be made of the name under which the trade union is registered and by which it is known. But a trade union which is registered under the Act must have a name..... It may acquire property, but, not being incorporated, recourse is had to the old well-known machinery of trustees for acquiring and holding such property, and for suing and being sued in respect of it (ss. 7, 8, 9). The property so held is, however, the property of the union; the union is the beneficial owner..... The Act appears to me to indicate with sufficient clearness that the registered name is one which may be used to denote the union as an unincorporated society in legal proceedings as well as for business and other purposes."

In 'Trade Union Law' by N.A. Citrine (1950 edn.) to which the learned Advocate for the petitioners has referred, it is stated at p. 143 :

> "The object of this section (s. 9) was to provide a method of enabling legal proceedings to be brought in respect of the property of a registered trade union. Since the legislature had no intention of giving such unions corporate status with power to hold property and to sue and be sued in their registered names, it was necessary to provide for the vesting of their property in trustees and to permit them to bring or defend legal proceedings in respect of that property on the union's behalf. Section 8 of this Act, having provided for the vesting of the union's property in its trustees, the present section supplements that section by empowering the trustees to bring or defend, on the union's behalf, civil or criminal proceedings concerning its property."

In Bonsor v. Musicians' Union [(L.R.) 1956 A.C. 104] the position of a registered trade union in England came under consideration of the House of Lords in an appeal from the Court of Appeal. On a review of earlier decisions including the decision in Taff Vale Railway v. Amalgamated Society of Railway Servants [[1901] A.C. 426], Lord Macdermott, Lord Keith of Avonholm and Lord Somervell of Harrow held that a registered trade union was not a juristic person distinguishable at any moment of time from the members of which it was composed. After referring to the various

provisions of the Trade Union Act, 1871 and some of the earlier decisions bearing on the question Lord McDermott said :

> "I base this opinion primarily on the statutes. The more closely they are examined the clearer it seems to be that the legislature, though minded to bestow upon registered unions some of the gifts and attributes of legal personality, had no intention of doing more and was, indeed, averse to the idea of going the whole length and making those unions new creatures, distinct in law from their membership, and fundamentally different from the "combination" of persons which the definition requires all trade unions to be."

Lord Morton of Henryton and Lord Porter, who expressed the minority view, held that a registered trade union though not an incorporated body, was yet capable of entering into contracts and of being sued as a legal entity, distinct from its individual members.

It is clear from the aforesaid decisions that provisions similar to the provisions of ss. 5, 6, 7 and 8 of the Societies Registration Act, 1860 were held not to show any intention to incorporate; on the contrary, the very resort to the machinery of trustees or the governing body for the time being acquiring and holding the property showed that there was no intention to incorporate the society or union so as to give it a corporate capacity for the purpose of holding and acquiring property. It appears to us that the legal position is exactly the same with regard to the provisions in ss. 5, 6, 7 and 8 of the Societies Registration Act, 1860. They do not show any intention to incorporate, though they confer certain privileges on a registered society, which would be wholly unnecessary if the registered society were a corporation. Sections 13 and 14 do not carry the matter any further in favour of the petitioners. Section 13 provides for dissolution of societies and adjustment of their affairs. It says in effect that on dissolution of a society necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the society; if there be no rules, then as the governing body shall find it expedient provided that in the event of any dispute arising among the said governing body or the members of the said society, the adjustment of the affairs shall be referred to the Court. Here again the governing body is given a legal power somewhat distinct from that of the society itself; because under s. 16 the governing body shall be the governors, council, directors, committee, trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

We have, therefore, come to the conclusion that the provisions aforesaid do not establish the main essential characteristic of a corporation aggregate, namely, that of an intention to incorporate the society. We may further observe that the scheme and provisions of the Societies Registration Act, 1860 are very similar to those of the Friendly Societies Act, 1896 (59 and 60 Vict. c. 25), as amended in certain respects by subsequent enactments. It is appropriate to quote here what Dennis Lloyd has said in his 'Law relating to Unincorporated Association' (1938 edn.) at page 59 in respect of the provisions of the Friendly Societies Act, 1896 as modified by subsequent enactments. He has said :

> "The modern legislation still maintains the policy of the older Acts in withholding corporate status from friendly societies. Registration does not result in incorporation, but merely entitles the society so registered to enjoy the privileges conferred by the Act. These privileges are of considerable importance and certain of them go a long way towards giving registered societies..... a status in many respects analogous to a corporation strictly so-called, but without being technically incorporated. Thus

> something in the nature of perpetual succession is conceded by the provision that the society's property is to vest in the trustees for the time being of the society for the use and benefit of the society and its members and of all persons claiming through the members according to the society's rules, and further (and this is the most noteworthy provision) that the property shall pass to succeeding trustees without assignment or transfer. In the same way, though the society, being unincorporated, is unable to sue and be sued in its own name, it is given the statutory privilege of suing and being sued in the name of its trustees."

We think that these observations made with regard to similar provisions of the Friendly Societies Act, correctly and succinctly summarise the legal position in respect of the several provisions of the Societies Registration Act, 1860. Those provisions undoubtedly give certain privileges to a society registered under that Act and the privileges are of considerable importance and some of those privileges are analogous to the privileges enjoyed by a corporation, but there is really no incorporation in the sense in which that word is legally understood.

On behalf of the petitioners reliance has been placed on the decision in Krishnan v. Sundaram [(1940) 43 Bom. L.R. 562] where Kania, J., (as he then was) said :

> "The position of a society registered under the Societies Registration Act, 1860 is like that of a club or a joint stock company."

There was no discussion of the question of incorporation, and the decision cannot be accepted as authoritatively laying down that a society registered under the Societies Registration, Act is a corporation. There was a similar observation without any discussion in Boppana Rukminamma v. Maganti Verkata Ramadas [A.I.R. 1940 Mad. 949] and N.A. Nannier v. Official Assignee, Madras [A.I.R. 1951 Mad. 875]. There is, however, a fairly full discussion of the question is Satyavart Sidhantalankar v. The Arya Samaj, Bombay [(1945) 48 Bom. L.R. 341] where Bhagwati, J., held that a society registered under the Societies, Registration Act, 1860 was a legal entity apart from the members constituting it, and it can sue and be sued in its own name. The question which fell for decision in that case was not whether a society registered under the Societies Registration Act was 'incorporated' as that term is legally understood. The question where was whether such a society could sue or be sued except in the manner provided by ss. 6 and 7. It was held that it could and the reason given was thus expressed by the learned Judge :

> "I am of opinion that the provisions contained in ss. 6, 7 and 8 of the Societies Registration Act are not inconsistent with the user of the registered name of the society in connection with legal proceedings. As Lord Lindley observed in Taff Vale Railway Company's case (supra), "I do not say that the use of the name is compulsory but it is at least permissive."
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> If this is the true legal position of a society registered under the Societies Registration Act, the objection..... that the plaintiffs and the defendants are one and the same and that the suit as framed is not maintainable by reason of the society being the plaintiffs as well as the defendants disappears. The plaintiffs are suing on behalf of themselves and all the members of the society. The first defendant is the president of the society and represents the society. As I have already observed the society on its registration with the Registrar of Joint Stock Companies becomes a legal entity apart from its members; it would be therefore idle to contend that the society are the plaintiffs as

well as the first defendant in this action."

It is unnecessary for us to consider the correctness or otherwise of the reason given; it is sufficient for us to state that we do not think that the decision proceeds on the footing that a society registered under the Societies Registration Act is a corporation in the sense of being incorporated as that term is legally understood, but if it does, we are unable to accept it as correct."

The precise question which has arisen before us arose in Servants of India Society, Poona v. The Charity Commissioner of Bombay [(1960) 63 Bom. L.R. 379]. The facts of that case were these. The "Servants of India Society" was an institution which was registered under the Societies Registration Act, 1860. It owned considerable movable and immovable property both in the statue of Bombay as well as in other parts of India. The State of Bombay issued a notification under s. 1(4) of the Bombay Public Trusts Act, 1950 (Bom. Act XXIX of 1950) which applied the provisions of that Act to a society formed for religious or charitable purposes and registered under the Societies Registration Act. An application was made under s. 18(1) of the Bombay Public Trusts Act, 1950 for registration of the Servants of India Society. During an enquiry into that application an objection was taken that the Servants of India Society having been registered under the Societies Registration Act was a corporation and had objects also outside the Bombay State and therefore, a legislation purporting to regulate the activities of such a society fell in entry 44 of List I and consequently the State Legislature had no power to make any law to regulate the affairs of such a society. This objection was dealt with first by the Assistant Charity Commissioner and then the Charity Commissioner; thereafter, an application was made under s. 72 of the Bombay Public Trusts Act, 1950 to the Court of the District Judge, Poona. Then the matter was taken to the High Court on appeal from the decision of the District Judge. The appeal came up for hearing before our learned brother Mudholkar, J. (who was then a Judge of the Bombay High Court) and Patel, J. After referring to several decisions including the decision of Bhagwati, J. in Satyavart Sidhantalankar v. The Arya Samaj, Bombay [(1945) 48 Bom. L.R. 341] our learned brother held that the Servants of India Society registered under the Societies Registration Act was a legal entity and a quasi-corporation. He further held that entry 44 in List I and the first party of entry 32 in List II relating to 'Incorporation, regulation and winding up of corporations' must be given a liberal construction and quasi-corporations would come under those entries. Basing himself on a parity of reasoning relating to entry 7 in List III which related to 'Contracts', he said that if quasicontracts would come under entry 7, quasi-corporation must also come under entries 43 and 44 of List I and the first part of entry 32 of List II. Mr. Justice Patel took a different view. He said :

> "A reference to entry 32 of the State List shows that "incorporation, regulation and winding up of corporations, other than those specified in List I (Union List, entries 43 and 44), and universities" are excepted from the Union List. Further "unincorporated trading, literary, scientific, religious and other societies and associations" and "co-operative societies" are also excepted from the Union List. The emphasis would appear to be on the word "unincorporated" used in connection with "trading, literary, scientific, religious and other societies and associations". If an association or society is unincorporated, then it may not fall within the Union List. The question, therefore, that is pertinent to be decided is not whether or not an association or a society is a legal entity or a quasi-corporation, but whether it is incorporated or unincorporated. If this is borne in mind, then it is amply clear that entries 43 and 44 of the Union List would cover only those societies and associations which are incorporated and those which may have legal entity but which are not incorporated will not fall within the Union List."

The matter was then referred to a third Judge (Gokhale, J.) who thus expressed his view :

> "In my judgment, societies registered under the Societies Registration Act are neither corporation nor quasi-corporations, but are unincorporated societies contemplated under the second part of entry 32 of the State List."

Mr. Justice Gokhale also expressed the view that when considering the ambit of an express legislative power in relation to an unspecified residuary power a broad interpretation must be given to the former; the case, however, is different where under the Constitution there are two complementary powers each expressed in precise and definite terms and in such a case there is no justification for giving a broader interpretation to one power rather than to the other. We find ourselves in agreement with this view. It seems clear to us that entries 43 and 44 of List I when they talk of 'incorporation, regulation and winding up of corporations' relate to such legal entities as have been incorporated and are corporations in the full sense of the term. Similarly, the first part of entry 32 of List II when it talks of "incorporation, regulation and winding up of corporations" relates to such legal entities as are incorporated. This is further clarified by the second part of entry 32 which talks of "unincorporated trading, literary, scientific, religious and other societies and association". In entry 32 there is a dichotomy in the two parts thereof : the first part relates to incorporated societies which are corporations in the true sense of that term, and the second part relates to unincorporated societies. The juxtaposition is between incorporated societies and unincorporated societies and there can be no doubt as to which of the two parts in which a society registered under the Societies Registration Act, 1860 will fall, be it called a quasi-corporation or by any other name. A society registered under the Societies Registration Act may have characteristics which are analogous to some of the characteristics of a corporation; yet it is not incorporated and remains an unincorporated society. As soon as it is held that it is an unincorporated society, it must come under the second part of entry 32 of List II.

In this view of the matter it is unnecessary to decide the further questions as to (1) whether the objects of the old Board extended beyond the State of Delhi, and (2) if other entries such as entry 11 of List II and entry 28 of List III can support the impugned legislation. We may, however, observe that if we had come to a different conclusion on the question whether the old Board was a corporation or not and it became necessary to decide question no. (1) above, we might have held that in view of the rules governing the old Board, its objects were not confined to the State of Delhi only in the sense that it would not have been ultra vires of the old Board to have started colleges etc., outside the State of Delhi. We should, however, add that he activities of the old Board did not, as a matter of fact, extend beyond the State of Delhi on the date when the impugned Act was enacted.

There is another aspect of the question which has to be considered here. Section 3 of the impugned Act is these terms :

> "3. (1) With effect from such date as the Chief Commissioner may, by notification in the Official Gazette, appoint (hereinafter referred to in this Act as "the appointed day"), the entire management and control of the Ayurvedic and Unani Tibbi College, Delhi, now vested in the Board of Trustees of the Ayurvedic and Unani Tibbi College, Delhi, shall be vested in a Board to be called "the Tibbia College Board".
>
> (2) The Board shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued."

Sub-section (2) of s. 3 says in express terms that the new Board constituted under the impugned Act is given a corporate status; in other words, the new Board is a corporation in the full sense of the term. Does the impugned legislation still come within entry 32 of List II ? We think it does and for these reasons. We have held that the old Board was not a corporation, even though it was registered under the Societies Registration Act. When, therefore, the Delhi State Legislature passed a law dissolving the old Board, it was really dealing with an unincorporated society or association. By the impugned legislation, however, it gave the new Board a corporate status, but at the same time so delimited the powers and duties of the new Board as to confine them to the State of Delhi only. The impugned Act is entitled an "Act to provide for transfer of the management of the Ayurvedic and Unani Tibbi College, Delhi, founded by the late Hakim Ajmal Khan from its present trustees to a Board." In other words, the Act deals only with the college in Delhi and the pharmaceutical institute attached to it. Section 7 which gives the powers and duties of the new Board is in these terms :

> "7. The Board shall exercise the following powers and perform the following duties, namely :-
>
> (a) to maintain the Ayurvedic and Unani Tibbi College, Delhi with a view to impart higher education to men and women in the Ayurvedic and Unani Systems of Medicine and to promote and conduct research in the same;
>
> (b) to maintain and improve the Hindustani Dawa Khana and Rasayanashala;
>
> (c) to provide for studies to enable incorporation, where necessary of the principle of the modern system of medicine and surgery in order to help the scheme of studies for the Ayurvedic and Unani systems according to the exigencies of time;
>
> (d) to help produce and publish books in order to facilitate the carrying out of the objects specified in the clauses (a) to (c);
>
> (e) to receive gifts, donations or benefactions from Government and to receive bequests, donations and transfer of movable or immovable properties from trustees, doners or transferors, as the case may be;
>
> (f) to deal with any property belonging to or vested in the Board in such manner as the Board may deem fit for advancing the objects specified in clauses (a) to (d);
>
> (g) to do all such things as may be necessary incidental or conducive to the attainment of all or any of the subjects specified in clauses (a) to (d)."

Unlike the rules governing the old Board which enabled it to establish colleges outside Delhi for the purpose of imparting higher education in the Unani and Ayurvedic systems of medicine, s. 7 gives the new Board powers and duties with regard to the Ayurvedic and Unani Tibbi College at Delhi and the pharmaceutical institute and laboratory attached to it. This is made further clear by the definition of the word 'Board' in s. 2, incorporation section, namely, s. 3, constitution of the Board as laid down in s. 4, and the sections relating to the power of the Chief Commissioner to supersede the Board, to make rules to carry out the objects of the Act and the powers of the Board to make regulations not inconsistent with the Act for carrying out the purposes thereof. None of the provisions of the impugned legislation excepting s. 9 to which we shall presently refer give the new Board any powers or duties other than those connected with the college, attached pharmaceutical institute and laboratory, all situate in the State of Delhi. We now come to s. 9 which is in these terms

:

> "9. (1) As from the appointed day, the Board of Trustees of the Ayurvedic and Unani Tibbi College, Delhi, a society registered under the provisions of the Registration of Societies Act, 1860, on the 12th day of August, 1911, by the name Anjuman-i-Tibbia whose purpose, constitution and name was amended on 25th November, 1915, shall stand dissolved and all property, movable and immovable, and all rights, powers and privileges of the said society which immediately before the appointed day belonged to or were vested in the said society shall vest in the Board and shall be applied for the purposes for which the Board is constituted.
>
> (2) As from the appointed day all debts and liabilities of the said society shall stand transferred and attached to the Board and thereafter be discharged and satisfied by the Board.
>
> (3) Any will, deed or other document whether made or executed before or after the commencement of this Act, which contains any bequests gifts, or trust in favour of the said society shall, as from the appointed day, be construed as if the Board were therein named instead of the said Society."

It no doubt says that all rights, powers and privileges which immediately before the appointed day belonged to or were vested in the old Board shall vest in the new Board; but it adds that those rights, powers and privileges shall be applicable for the purposes for which the new Board is constituted. We must, therefore, read s. 9 as being subject to the provisions of s. 7 of the Act. In terms s. 9 says that the rights, powers and privileges of the old Board shall be available to the new Board and shall be applied for the purposes for which the new Board is constituted. The words under-lined are important, and show clearly enough that the right, powers and privileges of the old Board are available to the new for a limited purpose only, namely, for the purposes for which the new Board is constituted. If the purposes for which the new Board is constituted are confined to the institutions in Delhi, then obviously the objects for which the new Board is incorporated do not extend beyond the State of Delhi.

The conclusions at which we have arrived may now be summarised as follows :

> (1) on registration under the Societies Registration Act, the old Board did not become a corporation in the sense of being incorporated within the meaning entry 44 of List I; it remained and continued to be an unincorporated society though under the several provisions of the Societies Registration Act, 1860 it had certain privileges, some of the privileges being analogous to those of corporation;
>
> (2) the impugned legislation while creating the new Board has given it a corporate status, but has confined its powers and duties to the college, pharmaceutical institute and laboratory in Delhi and while giving the new Board rights, powers and privileges of the old Board has limited them to such purposes for which the new Board is constituted;
>
> (3) the impugned legislation, therefore, falls under entry 32 of List II; so far as the dissolution of the old Board is concerned, under the second part of the entry and so far as incorporation of the new Board is concerned, under its first part.

That being the position, the impugned legislation was well within the legislative competence and power of the Delhi State Legislature. We must, therefore, overrule the first ground of attack urged on behalf of the petitioners.

We now proceed to a consideration of the second ground of attack. So far as the alleged violation of Art. 14 is concerned, the petitioners have stated in their petition :

> "There are various other institutions..... where there have been actual allegations of mismanagement but the State has picked out the petitioner. Assuming, without admitting, that there has been mismanagement by the petitioner of its affairs, there is not the slightest suggestion in the whole Act that it is promulgated on the ground of any mismanagement on the part of the petitioner..... The said Act is an arbitrary piece of legislation and there is no reasonable classification whatsoever on which it can be supported."

To this the reply of the respondents is that the old Board was grossly mismanaging its affairs they said.

> "Before the said Act was passed, there was a great deal of discontent among the students of the said institution and also the general public and there was strong agitation against gross mismanagement by the trustees of the said Board. That owing to the gross mismanagement of the Board's affairs by the trustees the situation had so deteriorated that early in 1949 there were constant students' strikes, defalcation of funds and frequent interruption in work and studies of the institution."

In our view the petitioners have not made out any basis for the contention that [[1950] S.C.R. 869, 913, 914] there were other institutions similarly situated, and (2) petitioner No. 1 was picked out for unequal treatment. The names of no other institutions similarly situated have been disclosed. In the first Sholapur case Chiranjit Lal Chowdhuri v. The Union of India [[1950] S.C.R. 869, 913, 914] it was held by a majority of Judges of this Court that even one corporation, (in our case one society) or a group of persons can be taken as a class by itself for the purpose of legislation, provided it exhibits some exceptional features which are not possessed by others.

> "The courts should prima facie lean in favour of constitutionality and should support the legislation if it is possible to do so on any reasonable ground, and it is for the party who attacks the validity of the legislation to place all materials before the court which would go to show that the selection is arbitrary and unsupportable. Throwing out of vague hints that there may be other instances of similar nature is not enough for this purpose".

(per Mukherjea, J. at pp. 913-914 of the report.) These observations apply with equal force to the present case and we are unable to sustain the contention of the petitioners that any right under Art. 14 of the Constitution has been violated.

As to Art. 31 of the Constitution it seems clear to us that cl. (2) of the said Article as it stood at the relevant time has no application. The impugned legislation does not relate to nor does it provide for, compulsory acquisition of property for a public purpose. The impugned legislation provided for the transfer of the management of the Ayurvedic and Unani Tibbi College, Delhi, from the old Board to a new Board and for that purpose the old Board was dissolved and a new Board was created with

certain rights, powers and privileges to be applied for the exercise of powers and performance of duties as laid down in s. 7 of the Act. Such legislation does not fall under Art. 31(2) and cannot be judged by the tests laid down therein.

As to cl. (1) of Art. 31 there is no question of any violation of that clause if the law by which the transference of management has been made is valid law. We have already held that the impugned legislation was well within the legislative competence of the Delhi State Legislature. Now the question is - is the impugned legislation bad on the ground that it violates the right of the petitioners under Art. 19(1)(f) ? The property for the protection of which Art. 19(1)(f) is invoked belonged either to the Board or to the members composing the Board at the date of the dissolution. In either event, on the terms of s. 5 of the Societies Registration Act, 1860, the property was to be deemed to be vested in the governing body of the Board. There could be no doubt that if the Board was dissolved by competent legislative action, and in view of our conclusions on the first point raised it must be held that this had taken place, the Board would cease to exist and having ceased to exist cannot obviously lay any claim to the property. This however may not be sufficient to negative the contention urged before us by the petitioners. If the legal ownership of the property by the Board or the vesting of it in the governing body was merely a method or mechanism permitted by the law where by the members exercised their rights quoad the property, the dissolution of the Board and with it of the governing body thereof would merely result in the emergence of the right of the members to that property. It is, therefore, necessary to ascertain the precise rights the members of the Board possessed to see whether the changes effected by the impugned Act amount to an infringement of their rights within the meaning of Art. 19(1)(f). During the subsistence of the society, the right of the members was to ensure that the property was utilised for the charitable objects set out in the memorandum and these did not include any beneficial enjoyment. Nor did the members of the society acquire any beneficial interest on the dissolution of the society; for s. 14 of the Act, quoted earlier, expressly negatived the right of the members to any distribution of the assets of the dissolved body. In such an event the property had to be given over to some other society, i.e., for being managed by some other charitable organisation and to be utilised for like purposes, and the only right of the members was to determine the society to whom the funds or property might be transferred and this had to be done by not less than three-fifths of the members present at the meeting for the purpose and, in default of such determination, by the civil court. The effect of the impugned legislation is to vary or affect this privilege of the members and to vest the property in a new body created by it enjoined to administer it so as to serve the same purposes as the dissolved society. The only question is whether the right to determine the body which shall administer the funds or property of the dissolved society which they had under the pre-existing law is a right to 'acquire, hold and dispose of property' within the meaning of Art. 19(1)(f), and if so whether the legislation is not saved by Art. 19(5). We are clearly of the opinion that that rights is not a right of property within the meaning of Art. 19(1)(f). In the context in which the words 'to dispose of' occur in Art. 19(1)(f), they denote that kind of property which a citizen has a right to hold - the right to dispose of being part of or being incidental to the right to hold. Where however the citizen has no right to hold the property, for on the terms of s. 14 of the Societies Registration Act the members have no right to 'hold' the property of the dissolved society, there is, in our opinion, no infringement of any right to property within the meaning of Art. 19(1)(f). In this view, the question as to whether the impugned enactment satisfies the requirements of Art. 19(5) does not fall to be determined.

The two decisions on which the learned Advocate for the petitioners has relied are the State of West Bengal v. Subodh Gopal Bose [[1954] S.C.R. 587] and Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. [[1954] S.C.R. 674]. We do not think that these decisions have any application in the present case. In the State of West Bengal v. Subodh Gopal Bose [[1954] S.C.R.

587] this Court was considering a piece of legislation which affected the right of the first respondent therein who had purchased a particular touzi at a revenue sale. As such purchaser he acquired under s. 37 of the Bengal Revenue sales Act, 1859, the right "to avoid and annual all under-tenures and forthwith to eject all under-tenant" with certain exceptions. In exercise of that right the respondent gave notices of ejectment and brought a suit in 1946 to evict certain tenants. The suit was decreed. When the appeal was pending, a new legislation was made which took away the right of the first respondent which he had obtained by a decree of a court of law. In these circumstances it was held that the right of the first respondent under Art. 19(1)(f) was violated. The facts of that case were wholly dissimilar and the respondent's right there did not depend on his being a member of a society. In the second Sholapur case Dwarkadas Shrinivas v. The Sholapur Spinning & Weaving Co. Ltd. [[1954] S.C.R. 674] a Controller was appointed by Government to supervise the affairs of the mills of a certain company under the Essential Supplies Emergency Powers Act, 1946. The Controller made certain requisitions which the Directors refused to comply with. The Governor-General then made an Ordinance which was followed by an Act. Under the provisions of the Ordinance the Central Government delegated all its powers to the Government of Bombay. The Government of Bombay then appointed certain Directors to take over the assets and management of the mills. These new Directors passed a resolution making a call of Rs. 50/- on each of the preference shares payable at the time stated in the resolution. The appellant in that case was a preference shareholder who was called upon to pay Rs. 1,62,000/- in pursuance of the resolution aforesaid on the preference shares where which he held. The appellant then brought a suit challenging the validity of the Ordinance and out of that suit appeal to this Court arose. It was held by this Court that the impugned Ordinance and the Act replacing it authorised in effect a deprivation of the property of the company within the meaning of Art. 31 without compensation and violated the fundamental right of the appellant therein as a preference shareholder, who was called upon to pay the moneys unpaid on his shares. The point to be noticed as distinguishing that case from the case under our consideration is this the Sholapur Spinning and Weaving Co. Ltd., which was the company in that case, had not been dissolved or brought to an end by the impugned Ordinance or the Act replacing it and the appellant in that case continued to be a preference shareholder; not only did he continue to be a preference shareholder but he was called upon to pay the moneys unpaid on his shares. It is obvious, therefore, that the appellant was entitled to complain that by the impugned Ordinance he was being deprived of his property without fulfilling the requirements of Art. 31 of the Constitution. The position in the case under our consideration is, as pointed out already, entirely different.

In our view the impugned legislation does not violate any fundamental right of the petitioners under Arts. 14, 19 or 31 of the Constitution.

This disposes of the two main grounds on which the legislation in question has been impugned. We now turn to the two subsidiary points. It has been argued that some of the provisions of the impugned Act are in conflict with the provisions of the Societies Registration Act 1860; therefore under s. 22 of the Government of part C States Act, 1951 the provisions of the impugned Act, in so far as they are repugnant to the provisions of the Societies Registration Act, 1860, must be held to be void. The simple answer to this argument is that s. 22, to which we had earlier referred in the course of this judgment, has no application. Section 22 provides for inconsistency between laws made by Parliament (in the sense in which the word 'Parliament' is used in the Constitution of India) and laws made by the Legislative Assembly of a Part C State. The Societies Registration Act, 1860 was not a law made by Parliament; therefore s. 22 has no application in the present case. We have already held, for reasons earlier given, that the Delhi State Legislature had legislative competence or power either to amend the Societies Registration Act, 1860 in respect of unincorporated societies, or

to make a law for a particular unincorporated society, and even to create a new corporate body provided its objects were confined to the State of Delhi. In effect the impugned legislation provides for a disolution of the old Board which was an unincorporated society and for the creation of a new corporate body for the management of the Ayurvedic and Unani Tibbi College, Delhi. In this view of the matters, no question of any conflict with the Societies Registration Act, 1860 arises in this case.

It has also been argued that the impugned legislation is a piece of colourable legislation because the Delhi State Legislature acted mala fide in enacting it. This argument is completely answered by what this Court said in K.C. Gajapathi Narayan Deo v. The State of Orissa [[1954] S.C.R. 1, 10, 11]. This Court said :

> "It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular Legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question motives does not arise at all..... If the constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of is powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence of disguise."

From what we have said earlier it should be manifestly clear that the Delhi State Legislature did not transgress any of the limitations placed on it, when it enacted the impugned legislation. There being no transgress whatsoever, the further question of the transgression being veiled by a disguise or pretence does not really arise. Nor is it necessary for us to enquire into the motives which led the Delhi State Legislature to enact the impugned legislation. In the affidavits field on behalf of the respondents enough material have been placed to show why the Delhi State Legislature considered it necessary to dissolve the old Board and transfer the management of the college to a new Board. This was a matter for the Legislature to consider and not for this Court to investigate.

In the result we hold that there is no merit in the petition which is accordingly dismissed with costs.

MUDHOLKAR, J. –

While I agree with my brother Das J., that the petition be dismissed I would like to say a few words. This petition under Art. 32 of the Constitution has been preferred by the Board of Trustees, Ayurvedic and Unani Tibia College, through its Secretary, Hakim Mohammad Jamil Khan.

By Act 5 of 1952 called the Tibia College Act, 1952 the erstwhile Delhi State Legislative Assembly dissolved the Board of Trustees of the Ayurvedic and Unani Tibia College, incorporated a Board called 'Tibia College Board' and transferred to that Board all the property, rights, powers and privileges of the Board of Trustees of the Ayurvedic and Unani Tibia College as also the management and control of the Ayurvedic and Unani Tibia College to the aforesaid Board. The reason for doing so would appear from the Statement of objects and Reasons appended to the Bill which are as follows :

> "This Bill seeks to take powers for transferring the management of the Ayurvedic and Unani Tibia College, Delhi, from its present trustees to a Board under the control of the Delhi State Government. The College has been grossly mismanaged for some time past with the result that its reputation is very low today. In early 1949, the situation deteriorated to such an extent that there were students strikes, defalcation of funds and frequent interruptions in scholastic work. The Controller, Delhi made an interim prayer to the Civil Court for the appointment of receivers. This prayer was granted and three receivers appointed by the Civil Court are at present in charge of the properties and management of the institution. This arrangement, which is good so far as it goes, is inevitably temporary and inadequate, and it seems desirable to provide by legislation for the control and management of the College and the properties attached thereto." (Statement of Objects and Reasons published in the Gazette of India, Extraordinary, Part II, s. 2, July 18, 1952).

The petitioner's complaint is that its property has been taken may without compensation and handed over to a Board in contravention of Art. 31 of the Constitution and that this has been done under a law which the Delhi legislature was not competent to make.

The following four contentions were raised by Mr. Purshottam Trikamdas on behalf of the petitioner.

> (1) That the Delhi Legislative Assembly was not competent to pass the impugned Act.
>
> (2) Even assuming that it had legislative competence the Act offends Arts. 14, 19 and 31.
>
> (3) The Societies Registration Act under which the Board of Trustees were registered being a Central Act the Delhi legislative assembly had no power to over-ride it.
>
> (4) The law was enacted by the legislature mala fide.

I will confine my observations mainly to the first and third points because, it is only with regard to them that my view is somewhat different from that taken by my learned brother.

The respondents point out that the petitioner Board having been registered under the Societies Registration Act, 1860 is nothing more than an unincorporated society and that the Delhi State legislature was competent to enact a law affecting it under the latter part of Entry 32 of List II which runs thus :

> "..... unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies".

According, however, to Mr. Purshottam, after the Board of Trustees was registered as a Society under the Societies Registration Act it blossomed into a corporation and since admittedly its objects extend beyond the limits of the Delhi State the State Assembly could not make any law affecting it. This contention has been negatived by my learned brother. An alternative contention was also raised on behalf of the petitioner on the basis of certain decisions and my opinion in Servants of India Society, Poona v. The Charity Commissioner of Bombay [(1960) 63 Bom. L.R. 379, 381] to the effect that upon registration the Board became at least a quasi-corporation. This contention has also been negatived by my learned brother.

If, as the petitioner says the Board, after registration under the Societies Registration Act, 1860 was transformed into a corporation the Delhi Legislative assembly could not make a law with respect to it under Entry 32 because though under the first part thereof it can make a law affecting corporations, its powers cannot reach a corporation, the objects of which extend beyond the limits of the Delhi State. But as my learned brother has pointed out and with which I respectfully agree, the essence of a corporation is its 'incorporation' and as the Societies Registration Act does not provide for incorporation the petitioner cannot be regarded as a corporation. It is true that even though it possesses some of the attributes of a corporation it is not a corporation but in my view it is a 'near corporation' or a 'quasi-corporation'. This is what I have held in the Servants of India Society's case [(1960) 63 Bom. L.R. 379, 381] and I adhere to that view. There, relying on some Indian decision and the decision in The Taff Value Railway Co. v. The Amalgamated Society of Railway Servants [[1901] A.C. 426], I held that such a society is a legal entity and that a State legislature cannot make any law affecting it under the second part of Entry 32 of List II. The question whether a registered society which enjoyed more or less the same powers as those under the Societies Registration Act is a legal entity fell for consideration by the House of Lords in Bonsor v. Musicians' Union [[1956] A.C. 104] and there Lords Morton and Parker held that such a society is a legal entity though not a corporation and thus accepted the position that there is an intermediate semi-corporation status. Lord Keith held that such a society is both a legal entity and association of individuals, that is, it is a quasi-corporation to the extent recognized by the governing statute and a voluntary association for other purposes. Lords McDermott and Somervell, however, did not accept the position that there is any intermediate semi-corporate status at all. With respect, I think that the view taken by the majority has much to commend itself. That this is the better view is the opinion of Prof. Dennis Lloyd (vide 1956 M.L.R. at p. 360) and of Dr. Glanville Williams (vide Salmond's Jurisprudence, 1957 ed. p. 356). I have not come across a contrary opinion in any recent treatise or article.

Now, under the Societies Registration Act, 1860, which was enacted by the Governor General in Council upon registration a society is entitled to sue and can be sued in the name of its President, Secretary etc., as shall be determined by its rules or by its governing body. A suit by or against the society would not abate by reason of the death of the person through whom or against whom the suit had been brought. A judgment obtained against a person sued as representing a society shall not be enforced against him but against the property of the society. The society can sue any of its members for arrear of subscription, damages etc. It can also enter into contracts as an entity. Upon dissolution, its property cannot be distributed amongst is members but must go to some other society.

All these are the characteristics of a separate legal entity such as a corporation. If the law confers on a body all the normal powers of a legal person it will be a corporation in all but name. A registered society, however, cannot hold property and to that extent it must be treated as a voluntary association, made up of its constituents. Therefore, it can be regarded as a quasi-corporation or, in the words of Lords Morton and Porter, a "near-corporation". Now, a quasi-corporation or a near

corporation - whatever we may call it - being a legal entity at least for some purposes is not a mere society made up of its constitutes.

The question, therefore, must be considered whether the latter part of Entry 32 confers power on the State legislature to legislate about 'legal entities.' Let us consider the scope of the latter part of Entry 32. It permits the making of laws concerning societies and associations which are not incorporated. This would imply that thereunder the legislature cannot provide for the 'incorporation' of a society or association. One of the main results of incorporation is to confer upon the thing incorporated the status of a separate legal entity. Even so, under this Entry the legislature has a wide discretion in the matter of conferral of powers upon a society. But can it confer such powers on it as would alter its character as a society and convert it into a legal entity, may be only for certain purposes ? By its very definition a society is a voluntary association and can have no existence separate from its constituents. It is thus not a separate legal entity in any sense and for any purpose. That Entry makes it clear by using the word 'unincorporated', that the power conferred by it is confined to such societies and associations only. Therefore, in my judgment the Entry does not permit of any law being made which confers on a society such powers as would constitute it into a legal entity. A fortiorari, it does not permit a law to be made which takes away from a society already existing and which is a legal entity any of the powers of that legal entity, such as those conferred by the Societies Registration Act, 1860, much less can it destroy that entity. For doing so it will have to take the aid of other entries, if any, which permit legislation concerning legal entities.

The Board, as already stated, was registered under the Societies Registration Act, 1860. That was a law made by the Indian legislature under 24 & 25 Vict. ch. 67 passed in the year 1860. That law conferred the power to make laws for the whole of British India on the Governor-General-in-Council the ambit of whose power is set out in s. 22 which runs thus :

> "The Governor General in Council shall have Power at Meetings for the Purposes of making Laws and Regulations as aforesaid, and subject to the Provisions herein contained, to make Laws and Regulations for repealing, amending, or altering any Laws or Regulations whatever, now in force or thereafter to be in force the Indian Territories now under the Dominion of Her Majesty, and to make Laws and Regulations for all Persons, Whether British or Native, Foreigners or others, and for all Courts of Justice whatever, and for all Places and Things Whatever within the said Territories, and for all Servants of the Government of India within the Dominions of Princes and States in Alliance with Her Majesty; and the Laws and Regulations so to be made by the Governor General in Council shall control and supersede and Laws and Regulations in any-wise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort Saint George and Bombay respectively in Council, or the Governor or Lieutenant Governor in Council of any Presidency or other territory for which a Council may be appointed, with Power to make Laws and Regulations, under and by virtue of this Act : Provided always, that the said Governor General in Council shall not have the power of making any Laws or Regulations which shall repeal or in any way affect any of the Provisions of this Act :
>
> Or any of the Provisions of the Acts of the Third and Fourth Years of King William the Fourth, Chapter Eighty-five and Sixteenth and Seventeenth Years of Her Majesty, Chapter Ninety-five, and of the Seventeenth and Eighteenth Years of Her Majesty, Chapter Seventy-seven, which after the passing of this Act shall remain in force : Or

any Provisions of the Act of the Twenty-first and Twenty-second Years of Her Majesty, Chapter One Hundred and Six entitled An Act for the better Government of India; or of the Act of the Twenty-second and Twenty-third years of Her Majesty, Chapter Forty-one, to amend the same : Or of any Act enabling the Secretary of State of Council to raise Money in the United Kingdom for the Government of India : Or of the Acts for punishing Mutiny and Desertion in Her Majesty's Army or in Her Majesty's Indian Forces respectively; but subject to the Provision contained in the Act of the Third and Fourth Years of King William the Fourth, Chapter Eighty-five, Section Seventy-three, respecting the Indian Articles of War :

Or any Provisions of any Act passed in this present Session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian Territories, or the Inhabitants thereof :

Or which may affect the Authority of Parliament, or the Constitution and Rights of the East India Company, or any Part of the unwritten Laws or Constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any Degree the Allegiance of any Person to the Crown of the United Kingdom, or the Sovereignty or Dominion of the Crown over any Part of the said Territories."

This clearly shows that the Governor General in Council was unhampered in the matter of making laws by any legislative lists and thus enjoyed plenary powers to make any kind of law on every conceivable topic which did not fall within the excepted categories. Within the sphere of his powers the Governor General in Council was and could consequently make a law conferring upon a society such powers as could transform it into a legal entity either either for all purposes or only some. If he chose to confer all the powers of a corporation upon a registered society, that society would become a corporation in all but a name.

The position of the State legislature in the matter of making laws is not the same as that of the Governor General in Council under the statute of 1860. For, though it enjoys no less plenary powers than the Governor General in Council, its spheres of legislation are restricted by the legislative lists and it cannot overstep them by doing something directly which is patently outside Lists II and III.

The only entry in List II on which reliance was placed on behalf of the respondents as conferring power on the Delhi legislature to make the impugned law is the latter part of Entry 32, List II. That entry speaks of societies, that is, of associations of individuals as distinct from a legal entity, from that which has a separate legal existence. An association has no such separate existence, that is, none apart from its members. That entry, therefore, could not furnish the Delhi legislature with the power to make a law affecting a separate legal entity such as the petitioner. Section 9 of the impugned Act dissolved the petitioner, a legal entity and transfers its property, rights etc., to a corporation created by it. Thus it deals with a legal entity and the rights of that entity. This is wholly outside the ambit of the latter part of Entry 32. It would have been possible for the state legislature to resort to the first part of the Entry had the object of the society been limited to the Delhi state but, as already stated, the objects extent beyond the Delhi State. The reason why I think it would have been possible is that the entry is not restricted to 'incorporation' of a corporation but deals also with the regulation or winding up of a corporation - which would include a quasi-corporation or any other fictitious legal person, and further because the essence of winding up can be no different from that of dissolution.

No doubt, ours is a federal constitute and the legislative fields of Parliament and of the state legislatures are demarcated. In addition we have a concurrent field in which Parliament's legislative power is exercisable and, subject to certain conditions, also that of the state legislatures. But even so, there is a certain amount of overlapping in the entries in the three lists pertaining to these three legislative fields. Therefore, when a law is challenged on the ground of legislative competence what one has to ascertain is its pith and substance. It is well settled that if in pith and substance it is found that the legislature could make that law under a particular entry, the mere fact that it incidentally trenches upon some other entry, not pertaining to the legislation, it cannot be struck down as being beyond the competence of the legislature which made it.

For finding out its pith and substance, let us examine the Act. It is comprised of 16 sections. Section 3 deals with the incorporation of the Tibia College Board and transferring to it the management and control of the Tibia College vested in the petitioner-board. Section 9 deals with the dissolution and transfer of property of the Board of Trustees of the Ayurvedic and Unani Tibia College Delhi to the Tibia College Board and the remaining sections deal with incidental matters such as definitions, constitution of the Board, powers of the Board and so on.

One of the conclusions reached by my learned brother is that so far as the dissolution of the old Board is concerned the impugned law falls under the second part of Entry 32 and so far as the incorporation of the new Board is concerned under its first part. It may be that a legislature may seek to derive its powers to enact a law concerning difference topics from various entries in its legislative List. But this aspect of a legislature's power has no significance when, in a divided jurisdiction its law is challenged on the ground of encrouchment on a field not open to it. The question which would then arise for consideration would be 'what is the pith and substance of the law ?' The degree of encroachment made by it on another field would be a guide for ascertaining its pith and substance. Here the impugned Act is aimed at dissolving the petitioner-Board and transferring all its property, rights etc. No doubt, the transfer is to be in favour of a corporation created by the Act. No doubt also, that most of the provisions of the Act, apart from ss. 3 and 9, deal exclusively with matters pertaining to the newly created entity. But looking to the preamble as well as ss. 3 and 9 of the Act, the creation of a new Board and its incorporation is not the pith and substance of the Act. The sole reason for its creation is to transfer to it what was, till then, with the petitioner-Board. The new Board was thus to serve only a consequential purpose and its incorporation cannot be said to be the pith and substance of the impugned Act. The activities of the petitioner were not confined to the state of Delhi. That Act cannot, therefore, be sustained by reference to the first part of Entry 32. The pith and substance of the law being the dissolution of the petitioner Board, a legal entity, and transference of its property and rights to someone else, it cannot be sustained by reference to the power conferred by the latter part of Entry 32. For sustaining the law the learned Solicitor General had placed reliance also on Entries 10 and 28 of List III. What we have to see, therefore, is whether the impugned law could be made by the Delhi legislature under these entries.

It is not disputed that the Petitioner-Board is a trustee. It is also clear from the objects with which the trust was established, (which have been set out in the judgment of my learned brother) that it was for a charitable purpose. The petitioner is, therefore, a charitable trust and the object of the law is to dissolve it and transfer its property etc. Entries 10 and 28 of List III run thus :

> Entry 10 : "Trust and Trustees".
>
> Entry 28 : "Charities and charitable institutions, charitable and religious endowments

and religious institutions".

The entries are not limited to trusts or charitable institutions which are 'unincorporated societies' as is the latter part of Entry 32 of List II. Entry 10 clearly permits a law being made with regard to a trust or trustee which is a separate legal entity. Similarly Entry 32 permits a law to be made affecting charities and charitable institutions of every kind, whether consisting of voluntary associations of individuals or having a corporate or semi-corporate character. For, institutions may have a corporate or a semi-coporate character as for instance Hindu religious endowments and these are plainly included in the latter Entry. The Delhi legislature had, therefore, competence to make a law dissolving a charitable trust and transferring its property, rights etc., to another institution. The aforesaid two entries permit making a law of this kind. No doubt these entries are in the concurrent field but since the impugned Act was reserved for the assent of the President and was assented to by him to September 12, 1952, it cannot be called in question on the ground of repugnancy with an 'existing law' or a law made by Parliament.

I agree with the view taken by my learned brother on the second and the fourth points urged by Mr. Purshottam and have nothing to add.

As regards the third point the argument on behalf of the petitioner is that s. 22 of the Government of Part C States Act, 1951 (which created a legislature for the Delhi State, then a Part C State) precluded the Delhi legislature from enacting a law repugnant to an Act of Parliament and that as the impugned Act contains provisions which are repugnant to those of the Societies Registration Act 1860, it is ultra vires. Apart from the fact that what s. 22 prohibits is a repugnancy with a law made by Parliament itself - the Societies Registration Act is not one of such laws - the argument does not really arise upon the view I have taken. The petitioner-Board upon Registration under that Act became a quasi-corporation and thus a separate legal entity. Even though it owed its existence to the provisions of the Societies Registration Act, the Delhi legislature was free to deal with it under its powers under List III because by doing so it did not enact a law repugnant to the provisions of the Societies Registration Act. That Act still retains its full force and rigour and is unaffected by the impugned Act. The petitioner-Board may, by operation of the impugned law, not be able to exercise any of its powers under the Societies Registration Act but that would be not because the provisions of that law are abrogated in any sense but because the petitioner-Board has ceased to exist as a legal entity. The argument must, therefore, be rejected.

The petition is, therefore, dismissed with costs.

Petition dismissed.

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