H. C. Suman and Another

Vs

Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi and Others

Civil Appeal No. 3382 of 1991

(S. Ranganathan, N.D. Ojha, Smt. M.S. Fathima Beevi JJ)

29.08.1991

JUDGMENT

OJHA J. –

1. Special leave granted.

2. This civil appeal by special leave is directed against the order of the Delhi High Court dated May 19, 1989 as clarified by order dated May 24, 1989 in Writ Petition No. 2915 of 1988.

3. The facts in brief necessary for the decision of this appeal are that some land was proposed by the Central Government to be allotted for the resettlement of displaced persons. In October 1959 the Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi responded 1 (hereinafter referred to as the Society) was formed and incorporated. After completing necessary formalities an allotment of 60 acres of land was made by the Central Government in favour of the Society which, however, was subsequently cancelled on May 7, 1979. The Society challenged the aforesaid order of cancellation before the Delhi High Court in Writ Petition No. 654 of 1979 which was allowed by a Single Judge of that Court on September 1, 1980. This judgment was challenged by the Delhi Development Authority before the High Court in Letters Patent Appeal No. 254 of 1980 which was dismissed by a Division Bench of the High Court on January 5, 1981. Aggrieved by these orders the Delhi Development Authority filed Special Leave Petition (Civil) No. 3762 of 1981 before this Court in which the parties entered into a compromise inter alia providing that an area of 45 acres of land in place of 60 was to be allotted to the Society and that membership of the Society was to be restricted to persons who were members as on September 1, 1980 in accordance with the bye-laws of the Society as then prevailing. September 1, 1980 was the date on which Writ Petition No. 654 of 1979 giving rise to Special Leave Petition (Civil) No. 3762 of 1981 had been allowed by the High Court. In pursuance of the compromise learned counsel for the Delhi Development Authority prayed for and was granted leave on May 6, 1982 to withdraw the said special leave petition. In consequence, the order of the High Court stood modified in the light of the compromise entered into between the parties.

4. The Society thereafter proceeded to make allotment of land to its members and draw of lots was held by the Society on December 14, 1988. This draw of lots was challenged by the appellants before the Delhi High Court in Writ Petition No. 2915 of 1988 in which the orders appealed against were passed. In order to appreciate the nature of dispute which was raised in this writ petition with reference to the draw of lots it is necessary to advert to some more facts.

5. Appellants 1 and 2 even though employees of Rehabilitation Ministry stood posted in its subordinate offices outside Delhi. It appears that even though only such persons who were intended to be eligible for membership of the Society, appellants 1 and 2 were enrolled as members of the Society of November 22, 1972 and January 11, 1974 respectively. Likewise, certain other persons who were not employees of Rehabilitation Ministry but were employees of departments which were under the charge of the Minister/Minister of State of the Rehabilitation Ministry, were also enrolled as its members by the Society.

6. With regard to such members who even though employees of the Rehabilitation Ministry, were posted outside Delhi, the Union Cabinet in 1977 accepted a suggestion to enable Central Government employees serving outside Delhi to become members of cooperative housing societies in Delhi. In pursuance thereof the Lt. Governor of Delhi passed a consequential general order on June 9, 1977 directing that the condition with regard to bona fide residents of Delhi will stand relaxed to the extent that in case the government servant during the term of employment and with a view to settle in Delhi after retirement has become a member of a Cooperative House Building Society, he will not be debarred from the membership of the Society simply on the ground that he was not a resident of Delhi at the time of enrolment. In pursuance of this general order the appellants and some other similar persons who had been enrolled as members by the Society became eligible to be members of the Society and subsequently their membership was approved. As regards those persons who were employed in other departments under the charge of the Minister/Minister of State of the Rehabilitation Ministry the Society by its Resolution dated December 14, 1980 proposed an amendment of the bye-laws so as to enable such persons also to become eligible for membership of the Society. The proposed amendment which was to be inserted as bye-law 5(1)(a)(iii) was sent by the Society to the Registrar for approval. The Registrar, however, refused to approve and register the proposed amendment. Aggrieved, the Society preferred an appeal before the Lt. Governor of Delhi which was allowed on August 19, 1985. The Lt. Governor directed the bye-laws to be so amended as to provide for eligibility of employees of a Ministry of which Department of Rehabilitation had been a part. In pursuance of the aforesaid direction the amended bye-law 5(1)(a)(iii) was registered and incorporated into the bye-laws by the Registrar on March 10, 1986.

7. At this place Section 12 of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as the Act) may be referred to which provides that an amendment of the bye-laws of a cooperative society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered. Nothing to the contrary having been provided in this behalf the amended bye-law 5(1)(a)(iii) was, in view of Section 12 of the Act, to come into operation from March 10, 1986 on which date the said amended bye-law was registered as stated above. It appears that releasing this difficulty, the Society wrote to the Registrar of February 3, 1987 to move the Lt. Government for relaxing the provisions of Section 12 of the Act. A remainder was sent by the Society of March 26, 1987 to approve the aforesaid amended bye-law with retrospective effect. The Registrar seems to have moved the government accordingly and necessary order in this behalf appears to have been passed by the Lt. Governor, the terms whereof are to be found in a Notification dated October 27, 1987 issued by the Office of the Registrar, Cooperative Societies which reads as hereunder :

> # "Office of the Registrar Cooperative Societies New Delhi October 27, 1987 Notification##

No. F. 46/2007/115/85/Bye-laws/Coop/5398. - In exercise of the powers conferred under Section 88

of the Delhi Cooperative Societies Act, 1972, the Lt. Governor Delhi has been pleased to exempt the Rehabilitation Min. Emp. Coop. House Building Society Ltd., New Delhi from the provision of Section 12 of the said Act in respect of the amended bye-law No. 5(1)(a)(iii) of the said Society as registered on March 10, 1986 will have retrospective effect from January 10, 1968, instead of February 10, 1986.

By Order on behalf of L.G., Delhi. G.P. Sewallia, Spl. Secy. (Coop)"##

8. The effect of the order of the Lt. Governor indicated in the aforesaid notification was that employees of other departments under the charge of the Minister/Minister of State of Rehabilitation Ministry became eligible to the membership of the Society with effect from January 10, 1968. There was a third category of members which too had given rise to the disputes raised in Writ Petition No. 2915 of 1988. One of the conditions for being eligible to be a member of the Society was that the person sought to be enrolled as a member of the Society had to file an affidavit that he or she did not own a residential house or plot either in his or her name or in the name of his or her spouse, parents or dependent relations. 15 person had not, in their affidavits filed along with their applications for membership, given full particulars in this behalf. It appears that subsequently this lacuna having come to its notice the Society kept their membership in abeyance and gave them an opportunity to file fresh affidavits giving full particulars which they did and on that basis their membership was regularised.

9. In the writ petition giving rise to this appeal Shri S.C. Saxena, Secretary of the Society had filed an affidavit which contained three lists. List 'A' contained the names of 572 persons whose membership had been cleared both by the Registrar of Cooperative Societies and the Ministry of Home Affairs (Department of Rehabilitation) in accordance with the dates of their enrolment. List 'B' contained the names of 26 members who where employees of the Ministers in Delhi/New Delhi which were under the charge of the Minister/Minister of State of Rehabilitation Ministry. List 'C' on the other hand contained the names of such persons who were employees in the subordinate offices of the Ministry/Department of Rehabilitation and were posted outside Delhi but wanted to settle in Delhi/New Delhi after retirement. The appellants as noticed earlier fell in the category of members shown in List 'C'. Their membership had, in pursuance of the order of the Lt. Governor dated June 9, 1977 referred to above, been approved by the Society in the meeting of its Managing Committee held on November 17, 1979. In the same meeting by another Resolution the membership of the 15 persons referred to above as persons falling in the third category was also regularised on the basis of the fresh affidavits filed by them. As regards those members whose names were mentioned in List 'B' aforesaid it has been pointed out by the High Court in the judgment appealed against that "there is no dispute that the membership of these 26 persons mentioned in List 'B' was either approved by the General Body in the meeting held on July 8, 1970 or approved by the Managing Committee on March 22, 1974 or by the Administrator on or before June 9, 1976".

10. As regards members mentioned in List 'B' the grievance of the appellants before the High Court was that the order of the Lt. Governor expressed in the Notification dated October 27, 1987 was ultra vires his powers insofar as it made the amended bye-law 5(1)(a)(iii) effective retrospectively from January 10, 1968. As regards 15 persons of the third category referred to above the grievance of the appellants before the High Court on the other hand was that they having filed fresh affidavits after the appellants had been enrolled as members could not be given seniority over the appellants in the matter of drawing of lots. These contention having been repelled by High Court by the orders appealed against the appellants have preferred this civil appeal in which subsequently various interlocutory applications for impleadment and other directions were made which to are being

considered hereinafter along with the appeal.

11. In the appeal the real question which arise for consideration is about the seniority of the members of the Society which constitutes the basis for allotment of plots at the time of drawing of lots. As regards the seniority of the 15 members who have been referred to above as members filling in third category namely those who had been accepted as members of the Society but subsequently whose membership was kept in abeyance on some defects being noticed in their affidavits and who on an opportunity being given in this behalf filed fresh affidavits giving full particulars and were on the basis of such affidavits treated as regular members, the appellants' grievance has been, as noticed earlier, that they having filed affidavits after the appellants had been enrolled as members could not be given seniority over the appellants. The High Court in the orders appealed against has pointed out that the cases of these 15 persons were scrutinised by the screening committee who recommended that they should be treated as regular members of the Society and share certificates be issued to them. It has, further, been found by the High Court that these 15 persons were admitted as members of the Society either by the Managing Committee or the General Body of the Administrator prior to November 17, 1979 and that the record indicated that their membership was kept in abeyance because of full information not being furnished in their affidavits. It has held that since the membership of 26 persons falling in category 'C' including the appellants was for the first time approved by the Managing Committee in its meeting held on November 17, 1979 and the 15 persons referred to above had been admitted as members prior to November 17, 1979 and in meeting held on November 17, 1979 their membership was only regularised, the 26 persons of category 'C' including the appellants would obviously be junior to the 15 members referred to above. In our opinion, the view taken by the High Court in this behalf does not suffer from any such error which may justify interference under Article 136 of the Constitution. Indeed no serious argument was addressed on this point on behalf of the appellants.

12. Now, we advert to the main submission made on behalf of the appellants with regard to the validity of the order of Lt. Governor indicated in the Notification dated October 27, 1989 giving the amended bye-law 5(1)(a)(iii) retrospective effect from January 10, 1968. Before dealing with this plea, however, it is necessary to point out that during the pendency of the special leave petition giving rise to this appeal, the Lt. Governor issued another notification dated August 29, 1990, the relevant portion of which reads as hereunder :

> # Delhi Administration, Delhi (Cooperative Department) Old Court's Building Parliament Street : New Delhi Dated August 29, 1990 NOTIFICATION##

No. F. 466/2007/115/85/Bye-laws/Coop. - The Lt. Governor of the Union territory of Delhi is pleased to rescind his Notification No. F. 46/2007/115/86/Bye-laws/Coop./dated October 27, 1987, issued under Section 88 of the Delhi Cooperative Societies Act, 1972 by which the Rehabilitation Ministry Employees' Cooperative House Building Society Ltd. was exempted from the provisions of Section 12 of the said Act in respect of the amended bye-law 5(1)(a)(iii) of the said Society with retrospective effect from January 10, 1968 instead of February 18, 1986.

> # By Order and in the name of the Lt. Governor of the Union Territory of Delhi. (A.C. KHER) Spl. Secy., (Cooperation) Delhi Administration, Delhi."##

13. By order dated August 30, 1990 and a subsequent order dated April 7, 1991 passed by this Court, the parities were permitted to challenge the validity of this notification and I.A. No. 13 of 1991 has been filed by Shri B.R. Puri and six others in this behalf.

14. It has been urged by learned counsel for the appellants that if the subsequent Notification dated August 29, 1990 is held to be valid the order appealed against passed by the High Court deserve to be set aside on that ground alone inasmuch as they are based on the earlier Notification dated October 27, 1987 which has been rescinded. In the alternative, it has been urged that if the notification dated August 29, 1990 is held to be invalid, the orders appealed against yet deserve to be set aside inasmuch as the earlier Notification dated October 27, 1987 which forms the basis of these orders is ultra vires.

15. Since the validity of the Notification dated August 29, 1990 would to a large extent depend upon the true nature and import of the earlier Notification dated October 27, 1987 we propose to consider the question of the validity of the Notification dated October 27, 1987 first. As noticed earlier, it was in pursuance of the order passed by the Lt. Governor on August 19, 1985 that the amended bye-law 5(1)(a)(iii), was registered and incorporated in the bye-laws by the Registrar on March 10, 1986. This order had been passed by the Lt. Governor in an appeal filed by the Society against the order of the Registrar refusing to register the aforesaid amendment and rejecting the proposal made in this behalf by the Society. This appeal had obviously been filed under Section 76(1)(b) of the Act and was entertained and decided by the Lt. Governor in view of the provision contained in this behalf in Section 76(2)(c) of the Act. It cannot be disputed that the jurisdiction which the Lt. Governor exercised in entertaining and deciding the appeal was of a quasi-judicial character. For allowing the appeal the Lt. Governor in his order dated August 19, 1985 gave the following reasons :

> "The rest of the proposed amendments, which are based on model bye-laws, with certain modifications, are designed to regularise such of the members, as were not the employees of the Department of Rehabilitation, but were employees of the Ministries, of which the Department of Rehabilitation had been a part, from time to time, under one Minister/Minister of State. As these persons, whose number is stated to be not large, became members of the Society many years ago, and their names also figured, as has been stated by the counsel for the appellant, in the list of members which was supplied by the Society to the Department of Rehabilitation, and which formed the basis for the allotment of land to the Society by the Ministry of Rehabilitation, it would be neither fair nor just to leave them in the lurch now, by depriving them of their membership, when they cannot become members of any other Society."

16. It would thus, appear that what weighed with the Lt. Governor apart from the other considerations stated in his order was that the proposed amendment to the bye-laws was "designed to regularise such of the members ... whose number is stated to be not large" and who "became members of the Society many years ago" and that "it would neither be fair nor just to leave them in the lurch now, by depriving them of their membership, when they cannot become members of any other Society. If these were the considerations which weighed with the Lt. Governor in allowing the proposed amendment it can hardly be denied that the propose of the order was not to give effect to the amended bye-law from the date on which it registered as contemplated by Section 12 of the Act, which date in the instant case came to be March 10, 1986 but from the date on which the first person under this category was enrolled as a member, for otherwise the purpose of the order was bound of brutum fulmen. This quasi-judicial order passed by the Lt. Governor has become final and it was really to give effect to this order that the order of the Lt. Governor referred to in the Notification dated October 27, 1987 was passed. In the normal course, it would not be just and proper to interfere with such an order under Article 136 of the Constitution.

17. Learned counsel for the appellants has, however, strenuously urged that the notification dated October 27, 1987 is ultra vires the powers of the Lt. Governor. He pointed out the Section 88 of the Act under which the said notification was issued does not authorise the issue of a notification such as the Notification dated 27, 1987. Having given our anxious consideration to the submissions made by learned counsel in this behalf, we find it difficult to agree with them. Section 88 of the Act may usefully be reproduced here. It reads :

> "88. Power to exempt co-operative societies from provisions of the Act. - The Lt. Governor may, by general or special order, to be published in the Delhi Gazette, exempt any co-operative society or any class of co-operative societies from any of the provisions of this Act, or may direct that such provisions shall apply to such societies or class of societies with such modifications as may be specified in the order."

18. The Notification dated October 27, 1987 has already been quoted above. Its perusal indicates that by its earlier part the Lt. Governor has exempted the Society from the provision of Section 12 of the Act. This was clearly permissible on a plain reading of Section 88. By its later part the notification provides that the amended bye-law 5(1)(a)(iii) "will have retrospective effect with effect with effect from January 10, 1968." The word "which" seems to have been omitted after "as registered on March 10, 1986" and before "will have retrospective effect". It is clear not only from the context of the notification but also from its Hindi version a photostat copy whereof has been produced before us. Transliterated in Roman script, it reads :

> "Dilli ke up Rajyapal, Dilli Sahkari Samitiyan Adhiniyam 1972 ki dhara 88 ke Antargat pradatt Shaktiyon ka prayog karte hue the Rehabilitation Ministry Employees' Cooperative Society Ltd. naee Dilli ko ukta Adhiniyam ki dhara 12 me diye gaye pravidhan ke anusar ukta Samiti ko bye-laws me dhara 5(1)(a) tatha (iii) me sanshodhan dinank March 10, 1986 ki apeksha January 10, 1968 se lagu hone ki chhut dete hain."

19. According to the Hindi version, the Society has been permitted to enforce the amended bye-law 5(1)(a)(iii) with effect from January 10, 1968. Section 12 contemplates "unless it is expressed to come into operation on a particular day." The notification really permits to express January 10, 1968 as the particular day on which the amended bye-law aforesaid is to come into operation. Suppose the Notification dated October 27, 1987 had said "At end of Section 12 of the Act add - provided that the amendment of the bye-law made by the Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi, shall come into force on January 10, 1968". Could it be said that this would be beyond the power conferred by Section 88 of the Act ? The answer would have to be in the negative on a plain reading of Section 88. Except for the unhappy language used therein the Notification dated October 27, 1987, does not seem to have been issued by the Lt. Governor in excess of the powers conferred on him by Section 88 of the Act. In such matters, substance has to prevail over the form. We have been informed by learned counsel for the applications in I.A. No. 13 of 1991 that January 10, 1968 mentioned in the notification dated October 27, 1987 is the date on which the first member falling in category 'B' referred to above had applied for enrolment. As indicated above this was really the purpose of the quasi-judicial order dated August 19, 1985 passed by the Lt. Governor in the appeal filed by the Society and the notification has obviously been issued to subserve that purpose. Insofar as we have taken the view that the word "which" seems to have been omitted in the Notification dated October 27, 1987 and it has to be read there, we may point out that in Surjit Singh Kalra v. Union of India ((1991) 2 SCC

87) it has held in paragraph 19 of the report : (SCC p. 98, para 19)

> "True it is not permissible to read words in a statute which are not there, but 'where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the word' (Craies Statute Law, 7th edn., p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar ((1988) 2 SCC 513) where it was observed that the court construing a provision should not easily read into it words which have not expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See : Sirajul Haq Khan v. Sunni Central Board of Waqf (1959 SCR 1287 : AIR 1959 SC 198).)"

20. Learned counsel for the appellants then urged that a delegated legislation could not be given retrospective effect unless it was specifically provided for. He relied on the following passages from Wade on Administrative Law, 5th edn., pp. 748, 751-52 :

> "It follows likewise that the courts must determine the validity of delegated legislation by applying the test of ultra vires, just as they do in other contexts. Delegated legislation in no way partakes of the immunity which Acts of Parliament enjoy from challenge in the courts, for there is a fundamental difference between a sovereign and a subordinate law-making power. Acts of Parliament have sovereign force, but legislation made under delegated power can be valid only if it conforms exactly to the power granted."
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> "Whether delegated legislation can have retrospective operation without express parliamentary sanction is a question upon which there is scant authority. It is natural to presume that Parliament is unlikely confer a power which it uses only most sparingly itself."

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> "Just as with other kinds of administrative action, the courts must sometimes condemn rules or regulations for unreasonableness. In interpreting statutes it is natural to make the assumption that Parliament could not have intended powers of delegated legislation to be exercised unreasonably, so that the legality of the regulations becomes dependent upon their content."

21. Reference was made to similar passages even from Maxwell on the Interpretation of Statutes and Vepa P. Sarathi's Interpretation of Statutes. Certain decisions of this Court were also cited in support of the above propositions. Relying on S. Partap Singh v. State of Punjab (AIR 1964 SC 72 : (1964) 4 SCR 733 : (1966) 1 LLJ 458), it was further urged that mala fides vitiates an order.

22. Even though there can be no dispute with the legal propositions enunciated above we find it difficult to apply them in the instant case to nullify the notification dated October 27, 1987. Firstly,

the power exercised by the Lt. Governor as indicated earlier was within the ambit of and permissible under Section 88 of the Act. Secondly, keeping in view the facts of the instant case and the purpose of amending bye-law 5(1)(a)(iii) we find that the notification is neither unreasonable nor can any mala fide be attributed in issuing the same.

23. In Kruse v. Johnson ((1898) 2 QB 91 : 14 TLR 416) it was held that in determining the validity of bye-laws made public representative bodies, such as country councils, the court ought to be slow to hold that a bye-law is void for unreasonableness. A bye-law so made ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it. In view of this legal position the Notification dated October 27, 1987 deserves to be upheld as, in our opinion, it does not fall within any of the exceptions referred to in the case of Kruse v. Johnson ((1898 2 QB 91 : 14 TLR 416).

24. Learned counsel for the appellants further submitted that the Notification dated October 27, 1987 had the effect of defeating the purpose of the Act and was consequently bad. Reliance was placed on Registrar of Co-operative Societies, Trivandrum v. K. Kunjabmu ((1980) 1 SCC 340, 346 : (1980) 2 SCR 260, 267) where with reference to Section 60 of the Madras Co-operative Societies Act, 1932, it was held : (SCC p. 346, para 12)

> "Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the government under Section 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear."

25. We are of the view that the said notification cannot be held to be bad on this score as well for the simple reason that the bye-law 5(1)(a)(iii) introduced by amendment consequent upon the quasi-judicial order of the Lt. Governor passed in appeal on August 19, 1985 has not been challenged on the ground that it was beyond the power conferred by the Act. What has been challenged is the retrospective operation thereof. As soon above, if the amended bye-law was not made retrospective its very purpose was to stand defeated. So far as the Notification dated October 27, 1987 is concerned, it really subserves the purpose of the amended bye-law made under the Act and does not defeat it.

26. Lastly, it was urged by learned counsel for appellants that at worst the effect of the notification is that the emended bye-law 5(1)(a)(iii) would be deemed to be there with effect from January 10, 1968 but from that fact alone the respondents could not become members unless their membership was approved as contemplated by Rule 24 of the Delhi Co-operative Societies Rules, 1973. Suffice it to point out so far as this submission is concerned that with regard to members whose names were mentioned in List 'B' of the affidavit filed by Shri S.C. Saxena before it, the High Court, as already noticed earlier, has held in the judgment appealed against that "there is no dispute that the membership of these 26 persons mentioned in List 'B' was either approved by the General Body in the meeting held on July 8, 1970 or approved by the Managing Committee on March 22, 1974 or by the Administrator on or before June 9, 1976."

27. If the Notification dated October 27, 1987 is valid it had by legal fiction the effect of making persons mentioned in List 'B' aforesaid eligible for membership of the Society with effect from

January 10, 1968 and the approval of the membership of these persons on various dates as pointed out by the High Court could not be held to be invalid simply because those dates happened to be prior to the date on which bye-law 5(1)(a)(iii) was actually incorporated in the bye-laws of the Society. As pointed out by Lord Asquith East End Dwellings Co. Ltd. v. Finsbury Borough Council (1952 AC 109, 132 : (1951) 2 All ER 587 (HL)) if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have followed from or accompanied it and that when the statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

28. Learned counsel for the appellants, however, urged that the aforesaid principle of legal fiction cannot be invoked to put life in a still-born action and relied on the decision of this Court in B. Shama Rao v. Union Territory of Pondicherry ((1967) 2 SCR 650 : AIR 1967 SC 1480). Having gone through that decision we are of the view that it is clearly distinguishable. The facts if that case were that the legislative assembly for the Union territory of Pondicherry passed the Pondicherry General Sales Tax Act (10 of 1965) which was published on June 30, 1965. Section 1(2) of the Act provided, that it would come into force on such date as the Pondicherry Government may, by notification, appoint and Section 2(1) provided that the Madras General Sales Tax Act, 1959, as in force in the State of Madras immediately before the commencement of the Pondicherry Act, shall be extended to Pondicherry subject to certain modifications, one of which related to the constitution of the Appellate Tribunal. The Act also enacted a Schedule, giving the description of goods, the point of levy and the rates of tax. The Pondicherry Government issued a notification on March 1, 1966, appointing April 1, 1966 as the date commencement. Prior to the issue of the notification, the Madras legislature had amended the Madras Act and consequently it was the Madras Act as amended up to April 1, 1966 which was brought into force in Pondicherry.

29. When the Act had come into force, the petitioner was served with a notice to register himself as a dealer and he thereupon filed a writ petition challenging the validity of the Act.

30. After the petition was filed, the Pondicherry legislature passed the Pondicherry General Sales Tax (Amendment) Act, 13 of 1966, whereby Section 1(2) of the principal Act was amended to read that the latter Act "shall come into force on the first day of April, 1966", it was also provided that all taxes levied or collected and all proceedings taken and things done were to be deemed valid as if the principal Act as amended had been in force in all material times.

31. On these facts it was held that the Act of 1965 was void and still-born and could not be revived by the amendment Act of 1966. In this connection it was pointed out at page 660 (SCR) :

> "In the present case it is clear that the Pondicherry legislature not only adopted the Madras Act as it stood at the date when it passed the principal Act but also enacted that if the Madras legislature were to amend its Act prior to the date when the Pondicherry Government would issue its notification it would the amended Act which would apply. The legislature at that stage could not anticipate that the Madras Act would not be amended nor could it predicate what amendment or amendments would be carried out or whether they would be of a sweeping character or whether they would be suitable in Pondicherry. In point of fact the Madras Act was amended and by reason of Section 2(1) read with Section 1(2) of the principal Act it was the amended Act which was brought into operation in Pondicherry. The result was that

> the Pondicherry legislature accepted the amended Act though it was not and could not be aware what the provisions of the amended Act would be. There was in these circumstances a total surrender in the matter of sales tax legislation by the Pondicherry Assembly in favour of the Madras legislature and for that reason we must agree with Mr Desai that the Act was void or as is often said 'still-born'."

32. Such is obviously not the position in the instant case. In view of what has been discussed above no exception can be taken to the view of the High Court holding the said notification to be valid.

33. The question of validity of the subsequent Notification dated August 29, 1990 whereby the earlier Notification dated October 27, 1987 was rescinded may now be considered. As noticed earlier, the Lt. Governor had passed the quasi-judicial order on August 19, 1985 in an appeal filed by the Society against the order of the Registrar declining amendment of the bye-law concerned. Relevant findings of the Lt. Governor along with the reasons therefor have already been extracted above. We have already pointed out that what weighed with the Lt. Governor in passing that order was that persons for whose benefit the bye-law was sought to be amended had become members of the Society many years ago, that their names figured even in the list of members which was supplied by the Society to the Department of Rehabilitation and which formed the basis for allotment of land to the Society and that it would be neither fair nor just to leave them in the lurch now by depriving them of their membership when they cannot become members of any other society. It was pointed out by the Lt. Governor that the proposed amendment in the bye-law was "designed to regularise such of the members". From the tenor of this order there can be no manner of doubt that the order was passed with a view to ensure that the persons who had become members of the Society many years ago should get the benefit of the amended bye-law by having their membership regularised. Such members could obviously get the benefit of the bye-law only if it was made retrospectively effective. The order of the Lt. Governor did not contemplate fresh enrolment of those persons as members after the passing of the order and the bye-law being amended in consequence thereof but it contemplated regularisation of their membership. This clearly indicated that those persons were sought to be treated as members as from the dates on which they had factually become members of the Society. We have also pointed out above that in our opinion in having the Notification dated October 27, 1987 issued, the Lt. Governor only took steps to give effect to the quasi-judicial order passed by him of August 19, 1985 so that the purpose of that order could be achieved. This being the true nature of the Notification dated October 27, 1987, the Lt. Governor cannot be said to have in any manner reviewed the quasi-judicial order dated August 19, 1985. On the other hand, the subsequent Notification dated August 29, 1990 even though purported to rescind the earlier Notification dated October 27, 1987 only it had keeping in view the nature and purpose of the Notification dated October 27, 1987 really the effect of reviewing and nullifying the quasi-judicial order passed by the Lt. Governor on August 19, 1985. In a matter such as this, it is the substance and the consequence of the Notification dated August 29, 1990 which has to be kept in mind while considering the true import of that notification. It is settled law that a quasi-judicial order once passed and having become final cannot be reviewed by the authority passing that order unless power of review has been specifically conferred. The quasi-judicial order dated August 19, 1985, as seen above, had been passed by the Lt. Governor under Section 76 of the Act. No power to review such an order has been conferred by the Act. In Godde Venkateswara Rao v. Government of A.P. ((1966) 2 SCR 172 : AIR 1966 SC 828) an order had been passed by the government under Section 62 of the Andhra Pradesh Panchayat Samithies and Zila Parishads Act, 1959, it was subsequently reviewed. The validity of this order of review was in question in that case. No power of review had been conferred for review of an order passed under Section 62. What was, however, argued was that the government was competent to review that order in exercise of power conferred

by Section 13 of the Madras General Clauses Act, 1891. Repelling this argument, it was held :

> "The learned counsel for the State then contended that the order dated April 18, 1963, could itself be sustained under Section 62 of the Act. Reliance is placed upon Section 13 of the Madras General Clauses Act, 1891, whereunder if any power is conferred on the Government, that power may be exercised from time to time as occasion requires. But that section cannot apply to an order made in exercise of a quasi-judicial power. Section 62 of the Act confers a power on the Government to cancel or suspend the resolution of a Panchayat Samithi, in the circumstances mentioned therein, after giving an opportunity for explanation to the Panchayat Samithi. If the Government in exercise of that power cancels or confirms a resolution of the Panchayat Samithi, qua that order it becomes functus officio. Section 62, unlike Section 72, of the Act does not confer a power on the Government to review its orders. Therefore, there are no merits in this contention."

34. We are aware that the Notification dated August 29, 1990 purports to rescind the earlier Notification dated October 27, 1987 only and does not speak in clear terms that the quasi-judicial order dated August 19, 1985 was also being rescinded. On the facts and circumstances of this case, as emphasised above, we are of the opinion that this circumstance hardly makes any difference inasmuch as even though the quasi-judicial order dated August 19, 1985 has not been expressly nullified, it has certainly for all practical purposes been nullified by necessary implication. This, in our opinion, could not be done and the Notification dated August 29, 1990 is ultra vires on this ground alone.

35. The matter can be looked at from another angle also. It cannot be disputed that as a consequence of the quasi-judicial order of the Lt. Governor dated August 19, 1985 and the Notification dated October 27, 1987, a substantive right was created in favour of the 26 persons whose names had been mentioned in list 'B' of the affidavit by Shri S.C. Saxena filed in the High Court. The challenge to that notification had already failed before the High Court and the matter was sub judice before this Court in special leave petition giving rise to this civil appeal when the Notification dated August 29, 1990 was issued. The Notification dated October 27, 1987 had specifically been issued under Section 88 of the Act. Even though the subsequent Notification dated August 29, 1990 does not disclose the source of the power under which it had been issued, learned counsel for the appellants traced its source to Section 88 itself read with the powers to add to, amend, vary or rescind notifications, orders, rules or bye-laws contained in Section 21 of the General Clauses Act 1897. In State of Kerala v. K.G. Madhavan Pillai it was held by the High Court that if in pursuance of an earlier order passed by the government some person acquires a right enforceable in law, the said right cannot be taken away by a subsequent order under general power of rescindment available to the government under the General Clauses Act and that the said power of rescindment had to be determined in the light of the subject matter, context and the effect of the relevant provisions of the statute. The view taken by the High Court was upheld by this Court in paragraph 27 of the report. The notification dated August 29, 1990, would, therefore, be invalid on this ground also. In view of the foregoing discussion, the civil appeal deserves to be dismissed.

36. At this place we consider it proper to make a note that learned counsel for the applicants in I.A. No. 13 of 1991 had attacked the Notification dated August 29, 1990 on two other grounds also. One was that the said notification was vitiated for breach of principles of natural justice, it having taken away vested rights of the applicants created by the quasi-judicial order of the Lt. Governor dated August 19, 1985 and the Notification dated October 27, 1987, and the other that the effect of

dismissal of an earlier special leave petition by this Court on March 19, 1990 could not be nullified by the Notification dated August 29, 1990. In the view we have taken was have not found it necessary to go into these questions.

37. We now take up interlocutory applications made in the appeal. Some of these applications have already been disposed of by various orders passed from time to time. The only applications which are surviving are I.A. No. 1 of 1989, I.A. Nos. 4 and 5 of 1989, I.A. Nos. 6 and 8 of 1989 and I.A. No. 13 of 1991. The nature and purpose of I.A. No. 13 of 1991 has already been indicated above. Since the Notification dated August 29, 1990 has been found by us to be ultra vires and the civil appeal is being dismissed, this application deserves to be allowed. So does I.A. No. 1 of 1989 also which has been made by the same category of members who have made I.A. No. 13 of 1991. The applicants in I.A. Nos. 6 and 8 of 1989 have taken the same stand as the appellants and their learned counsel has before us also adopted the arguments made by learned counsel for the appellants. Since the appeal is being dismissed, no further order on I.A. Nos. 6 and 8 of 1989 is necessary. The applicant in I.A. Nos. 4 and 5 of 1989 was really aggrieved by the interim order passed by this Court in the special leave petition on July 19, 1989 and since with the dismissal of the appeal the said interim order will automatically stand vacated, no further order in these applications also is necessary.

38. In the result, the appeal fails and is dismissed. Orders on the interim applications aforementioned shall be as already indicated hereinabove. They are disposed of accordingly. In the circumstances of the case, however, the parties shall bear their own costs.

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