BOMBAY HIGH COURT

Servants of India Society

Vs.

Charity Commissioner of Bombay

A.F.O.D. No. 815 of 1955. Misc. Appln. No.204 of 1954

(Gokhale, J. Mudholkar and Patel, JJ.)

08.11.1960

JUDGMENT

Gokhale, J.

1. (On difference between Mudholkar and Patel, JJ.)
This appeal raises the question whether the Bombay Public Trusts Act, 1950, applies to a society registered under the Societies Registration Act, 1860, and having its objects not confined to the State of Bombay, now, so far as this case is concerned, the State of Maharashtra. The appeal has been referred to me as there has been a difference of opinion between Mr. Justice Mudholkar, as he then was, and Mr. Justice Patel.

2. The appellant is the Servants of India Society founded by the late Mr. G.K. Gokhale on 12th June 1905. It is a society registered under the Societies Registration Act (XXI of 1860), and shall hereafter be referred to as the Society. When the Bombay Public Trusts Act (XXIX of 1950), which shall hereafter be referred to as the Act, came into force, the society applied under section 18(1) of that Act for registration and, in an enquiry in connection with that application held by the Assistant Charity Commissioner under section 19, contended that the provisions of the Act could not apply to the Society on the ground that it was registered under the Societies Registration Act and was a Corporation and the State Legislature had no power to pass legislation purporting to govern such a society, though it was not disputed that the objects of the Society were charitable. It is not necessary for the purpose of this appeal to go into the other contentions raised on behalf of the Society in the enquiry. The aforesaid contention of the Society was, however, negatived by the Assistant Charity Commissioner, who ordered the certificate of registration to issue under the Act on 8th December 1953. This decision was upheld in appeal by the Charity Commissioner on 21st May 1954. The Society, therefore, filed an application under section 72 of the Act challenging the decision of the authorities under the Act on the ground that the Society being registered under the Societies Registration Act, was a Corporation and the state

Legislature would have no power to legislate about it by reason of entry 44, Seventh Schedule, List I Union List, of the Constitution. That application being Miscellaneous Application No.204 of 1954 was heard by the learned District Judge of Poona, who negatived the contention of the Society that it was a corporation and held that it was an unincorporated body and the State Legislature was competent to pass the Act under entry 32 of List II - State List of the Constitution. He also held that the Society was a public trust within the definition of section 2(13) of the Act and, therefore, liable to be registered under the provisions of the Act. Consequently the application of the Society came to be dismissed by him. It is against this dismissal that the present appeal has been filed; and in this appeal, when it was heard by Mudholkar and Patel JJ., the same two contentions were raised, viz., whether the Society is a public charitable trust and whether the state Legislature was competent to make a law regulating a society of this type, objects of which were not confined to one State. On the first question, both the learned Judges held that the Society was a public charitable trust, but they differed, as already stated, on the other point and that consequently is the only point which I am required to consider in this appeal.

3. Mr. Amin, learned counsel appearing on behalf of the appellant-Society, contends that all Societies registered under the Societies Registration Act would be corporations or, at any rate, quasi-corporations; and since the Society's objects are not confined to this State, only Parliament can pass legislation about it by virtue of entry 44, List I-Union List, of the Seventh Schedule, of the Constitution. It, therefore, becomes necessary to refer to some of the entries in the Seventh Schedule to the Constitution, to which reference has been made in the course of arguments before me by Mr, Amin as well as the learned Government Pleader, who appeared on behalf of the Charity Commissioner.

4. From List I-Union List, the following entries were referred to:-

> "43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies."
> "44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities."
> "85. Corporation tax".

From List II-State List, the following entry was referred to:-

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

From List III-Concurrent List, the following entries were referred to:-

"10. Trust and Trustees."

"28. Charities and charitable institutions, charitable and religious endowments and religious institutions."

I may state that the two aforesaid entries in the Concurrent List are not referred to in the judgments of Mr. Justice Mudholkar and Mr. Justice Patel, though the learned Government Pleader stated that he had relied upon those entries in support of his case. According to Mr. Amin, entries 43 and 44 of the Union List as well as entry 32 of the State List clearly define the powers of the Union and State Legislatures regarding corporations. Entry 43 refers to trading corporations, including banking, insurance and financial corporations, but does not include co-operative societies. Entry 44 refers to incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but excludes universities. Entry 32 of the State List is divided into two parts. The first limb of that entry refers to corporations other than those specified in List I, i.e. non-trading corporations with objects confined to the State, and universities, which are excluded in entry 44. The second limb of entry 32 refers to unincorporated societies-or associations, arid co-operative societies which are excluded in entry 43. Mr. Amin argues that a Corporation or a quasi-corporation with objects not confined to a State, must fall within entry 44 of the Union List and cannot consequently fall in either the first or the second limbs of entry 32 of the State List. It is necessary to mention that what is challenged before me is not the vires of the Act but that part of it which defines the expression "public trust." Section 2(13) of the Act is in these terms:-

2(13) "'Public trust' means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.'

5. It is contended that the appellant-Society cannot be governed by this definition since it is a corporation or a quasi-corporation by virtue of its registration under the Societies Registration Act and consequently it is incompetent to the State Legislature to bring such societies with objects not confined to one State within the ambit of the provisions of the Act. Now, once it is held, as it has been held in this case, that the society constitutes a public charitable trust, I fail to see why the State Legislature cannot pass legislation governing such a society by virtue of entries 10 and 28 in the Concurrent List which refer to trusts and trustees and charities and charitable institutions, without any reference to their objects being confined to one State or not. It is not contended before me that Parliament has enacted any legislation in respect of trusts or charitable institutions which is in conflict with the provisions of the Act, and if that be so, in my judgment, it would be difficult to hold that the Act, in so for as it brings the Society which is a public charitable trust within its scope, is not a valid legislation. But Mr. Amin's answer to this is that once the Court holds that the Society is a Corporation or quasi-corporation with objects which are India-wide, no other entry in the Act can come into operation except entry No.44 which must be given a liberal and not a narrow interpretation on the decided authorities.

6. Now, the principles governing the interpretation of the entries in the three lists in the Seventh Schedule of the Constitution are well settled. A number of authorities were cited before me on this point and the following principles can indisputably be deduced from these authorities:-

> 1. In construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon them, so that the same may have effect in their widest amplitude. This principle would equally apply to the construction of the items in the three lists. None of the, items should be read in a narrow or restricted sense and each general word should be held to extend to all ancillary or subsidiary matters which can be fairly and reasonably comprehended in it. See the *United Provinces v. Atica Begum*[1], and *Navinchandra Mafatlal v.*
>
> [1](1940) FCR 110 at p.134 : AIR 1941 FC 16 at p.25
>
> *Commissioner of Income Tax*[2],
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> 2. When considering the ambit of an express legislative power in relation to an unspecified residuary power, a broad interpretation can be given to the former at the expense of the latter.

The case, however, is different where under the Constitution there are two complementary powers each expressed in precise and definite terms. In such a case, there is no justification for giving a broader interpretation to one power rather than to the other. See *Ram Krishna Ramnath Agarwal Firm, Kamptee v. Secretary, Municipal Committee*[3] It would, therefore, follow that an item in the Union List cannot be interpreted at the expense, of a complementary item in the State list, when both are in precise and definite terms.

> 3. An attempt must always be made to reconcile two different legislative powers so as to avoid a conflict. As was observed by Gwyer C.J. in *In re The Central Provinces and Berar Act*[4],
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> "It is a fundamental assumption that the legislative powers of the Centre and Provinces could not have been intended to be in conflict with one another, and therefore we must read them together and interpret or modify the language in which one is expressed by the language of the other."
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> He, however, further observed at pp. 49-50 (of FCR) :
>
> "..... that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning."

See also *Bank of Toronto v. Lambe*[5] at pp. 586-587 and *Citizens Insurance Co. of Canada v. Parsons*[6] referred to by Gwyer C.J. in that case. It would, therefore, seem to follow that in an attempt to reconcile conflicting powers it has to be seen whether a fair reconciliation is not

possible by giving to an item in the Union List a meaning which, if less wide than it might in another context bear, is yet one that can be property gives to it and equally giving to the language of the entry in the State List a meaning which it can properly bear. *G.G. in Council v. Madras Province*[7],

> 4. When the validity of a legislation is challenged on the ground that though purporting to deal with a subject in one list it touches also on a subject in another list, the impugned Statute may be examined in the light of the rule evolved by the Judicial Committee of the Privy Council to ascertain its "pith and substance" or its "true nature and character" for the purpose of determining whether it is legislation with respect to matters in this list or in that list. *Subrahmanyan Chettiar v. Muttuswami Goundan*[8], *Prafulla Kumar Mukherjee v. Bank of Commerce, Ltd. Khulna*[9], *The State of Bombay v. F.N. Balsara*[10], *at p.322.* This doctrine of "pith and substance" has been recently explained in the decision of the Supreme Court in *A.S. Krishna v. Madras State, AIR 1957 Supreme Court 297 at p.301*, where

[2]57 Bom LR 628 at p.631: (AIR 1955 SC 58 at p.61)
[3](1950) SCR 15 at p.22: AIR 1950 SC 11 at p.13
[4]1938, 1939 FCR 18 at p.49 : (AIR 1939 FC 1 at P.10)
[5](1887) 12 AC 575
[6](1881) 7 AC 96
[7]72 Ind App 91 (102) : (AIR 1945 PC 98, (100)
[8]1940 FCR 188 at p. 201 : (AIR 1941 FC 47 at p.51)
[9]1947 FCR 28 at p.51 : (AIR 1947 PC 60 at P.65)
[10](1951) SCR 682 at 694 : AIR 1951 SC 318

> Mr. Venkatarama Ayyar J. observed:
> ".....if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is in truth, making a law on a subject beyond its competence. But where that is not the position, then the, fact of encroachment does not affect the vires of the law even as regards the area of encroachment."

7. Mr. Amin contends that in the present case there is no question of any reconciliation between entry 44 in the Union List and entry 32 in the State List, as there is no overlapping and, therefore, there is no question also of invoking the doctrine of "pith and substance." According to Mr. Amin, the Society having been registered under the Societies Registration Act gets the status of a corporation or a quasi-corporation and the objects of the Society being hot confined to one State, the first part of entry 32 cannot apply to such a society, but only Parliament can pass legislation regulating such society under entry 44 of the Union List. Mr. Amin further contends that the second part of entry 32 dealing with unincorporated societies or associations refers to wholly different legal bodies and the two entries cannot be mixed up.

8. In support of his argument that the Society is a corporation, Mr. Amin has invited my attention

to Halsbury's Laws of England, 3rd edition, Vol.9 at page 3, where corporations have been divided into two main classes, namely, corporations aggregate and corporations sole. A corporation within either of these classes may be an ecclesiastical corporation or a lay corporation, the latter class of corporations being divided into trading and non-trading corporations. A "corporation aggregate" is defined by Halsbury as follows:

> "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."

According to Halsbury, some of the essential characteristics of a corporation are that its identity is continuous, that is to say, it has perpetual succession, that it has a distinct legal entity, that it must have a name and, in the case of a corporation aggregate, as a general rule, it can only act or express its will by deed under the common seal. Under the English law, a corporation may be created by charter or by statute, and in the latter case a corporation may be created by the authority of Parliament expressed either in a special statute creating a particular corporation or corporations, or in a general statute, under which any number of corporations may be created on complying with its terms. To constitute a corporation, however, it is not necessary that any particular form of words should be used in the statute; it is sufficient if the intent to incorporate be evident. Halsbury also refers to third class of corporations, namely, quasi-corporations, which only partially fulfil the definition of a corporation. Instances of quasi-corporations sole are the Lord Chancellor, the Lord Chief Justice and the Chamberlain of London. Churchwardens and overseers formerly constituted a quasi-corporation aggregate, holding land for parochial purposes, and churchwardens continue to possess a quasi-corporate capacity to hold personal property for church purposes. According to Halsbury, the distinction does not seem to be of importance, except for the purpose of classification and to draw attention to the fact that bodies of this character are not fully constituted corporations. See foot-note (a), pages 3-4, of Halsbury's Laws of England, 3rd edition, Volume 9 See also Grant's Practical Treatise on the Law of Corporations, page 661. Corpus Juris Secundum, Volume 18, in dealing with the subject of Corporations, refers to Quasi-Corporations in section 21 at page 399, in these terms:-

> "In addition to corporations proper, there exist so called quasi-corporations or corporations sub modo. These consist of associations and government or political institutions or officers which are not corporations in the full sense, but which are invested by law with some of the attributes of a corporation, as the capacity to sue or to be sued as a corporate body, to have a continued existence unaffected by death or disability of

members, or to make particular contracts or hold particular property or rights as a corporate body.

In this class for example, the courts have included counties, towns or townships, parishes, school towns or districts, and the like drainage, leave, or reclamation districts; certain state, county, or municipal boards or officers; and a society not expressly incorporated, but which was invested by law with the proprietorship of lands and which had been recognized as a body in the courts and by the legislature."

In support of his argument, that the Society is a Corporation or a quasi-corporation, Mr. Amin has relied on certain decisions. The first is Cantonment Committee, *Poona v. Barjorji Bamanji*[11], where the Poona Cantonment Committee was sued to recover damages for breach of conservancy contract and the Committee resisted the suit on the ground that it was not. properly framed since all the members of the Committee were not parties to the suit and it was held that the rules by which the Committee was created did by implication, though not by express words, create the committee a corporation for the purposes of the conservancy of the cantonment and, therefore, it could sue and be sued in its own name on contracts entered into in its corporate character. It appears from the Judgment of Mr. Justice Jardine that the Court considered the evidence in the case as well as the rules of the committee and came to the conclusion that the committee did act in a quasi corporate manner. In the case of *District School Board, Bijapur v. Bhagwan*[12], it was held by a Division Bench of this Court that a District School Board constituted under section 3, clause 1, of the Bombay Primary Education Act, 1923, as amended by Act XV of 1927, is a corporation and is liable to be sued as such. It was observed by Mr. Justice Fatkar in this case that the general scheme of the Bombay Primary Education Act was that the members of the School Board could not act individually and had to act

[11] ILR 14 Bom 286

[12]34 Bom LR 1500

collectively and that the School Board has a perpetual succession and capacity to act as an individual. On that ground be held that the School Board was a corporation. It has to be observed that the School Board was itself constituted under the Bombay Primary Education Act. In *Krishnan v. Sundaram*[13], Mr. Justice Kania held that the position of a society registered under the Societies Registration Act, 1860, is like that of a club or a joint stock company, and in order to redress a wrong done to the society or to recover moneys or damages alleged to be due to the society, the action should be brought by the society itself. This ruling, however, is not an authority for the proposition that a society registered under the Societies Registration Act would be a corporation.

9. Mr. Amin, however, places very strong reliance on the judgment of Mr. Justice Bhagawati, as he then was, in *Satyavart Sidhantalankar v. Arya Samaj, Bombay*[14], in support of his argument that the appellant-Society is a corporation or, at any rate, a quasi-corporation. In the case before Mr. Justice Bhagwati, one Satyavart and four others were members of a society called the Arya

Samaj, Bombay, and they brought a suit describing themselves as "members of the Arya Samaj, Bombay, on behalf of themselves and all other members of the Arya Samaj, Bombay, being a society registered under the Societies Act XXI of 1860." Defendant No.1 was described as "Vijayashankar Mulshankar, President of the Arya Samaj, Bombay," "as representing the said Society of Arya Samaj, Bombay" while the said Vijayashankar and two others were impleaded as defendants Nos.2 to 4 and described as "all the three being members of, the Managing Committee of the Arya Samaj, Bombay, on behalf of themselves and all the other members of the Managing Committee of the society of the Arya Samaj, Bombay, registered under the Societies Act XXI of 1860." As there was some doubt about the title of the suit, the original plaint and the written statement in Suit No.489 of 1945 on the Original Side of this Court were sent for. Paragraph 1 of the plaint in that case contained this statement: "The plaintiffs in suing defendant No.1 are in reality suing the said society," and the written statement contained the statement that the suit was instituted by the plaintiffs on behalf of themselves and all other members of the society, that is to say, on behalf of the society itself, and the plaintiffs have not obtained the sanction or consent of the society for the institution of the suit and they were, therefore, not entitled to maintain it. It was also contended that the society could not be made both plaintiff and defendants as was disclosed in the title as well as paragraph 1 of the plaint and, therefore, the suit as framed was bad in law and not maintainable. It was on the basis of these pleadings that issue No.2 was raised as to "Whether the society in the suit is both the plaintiff and the defendant and whether the suit as framed is maintainable." The title in the plaint clearly showed that it was a suit against Vijayashankar, President of the Arya Samaj, and was not a suit against the society of the Arya Samaj in its own name. Mr. Justice Bhagwati, however, considered the question as to whether the Arya Samaj was a corporation and came to the conclusion, after exhaustive consideration of the provisions of the Societies Registration Act, that the society registered under the said Act was a legal entity, apart from the members constituting the same and therefore it could sue and be sued in its own name. On the second issue, Mr. Justice Bhagwati allowed the plaintiffs to amend the plaint by describing themselves as members of the Arya Samaj, Bombay, on behalf of themselves and all other members of the Arva Samaj, Bombay, being a society registered

[13]43 Bom LR 562

[14]48 Bom LR 341

under the Societies Registration Act XXI of 1860, "xcept the defendants" Mr.

Amin did not seriously dispute that in view of the description of defendant No.1 in the title of the plaint in the case before Mr. Justice Bhagwati, the suit could not have been regarded as a suit brought against the Arya Samaj in its own name and, therefore, the observations of Mr. Justice Bhagwati would be obiter. But he contends that the view of Mr. Justice Bhagwati that a society registered under the Societies Registration Act would have legal existence apart from the members constituting the same and would acquire all the essential attributes of a corporation, is entitled to great weight and should be followed. Mr. Amin does not dispute that the Societies Registration Act by itself does not expressly confer the status of a corporation on societies registered under its provisions. But he argues that a society being registered under the Societies Registration Act, it will have a perpetual succession or a continuous identity and would be a legal

entity distinct from its members and, therefore, would be a corporation.

10. In order to appreciate this argument, it is necessary to refer to some of the provisions of the Societies Registration Act (XXI of 1860). The preamble of the Act shows 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 know ledge, the diffusion of political education or for charitable purposes. Under section 1, any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may be subscribing their names to a memorandum of association and filing the same with the Registrar of Joint Stock Companies, form themselves into a society. Under section 2, the memorandum of association is to contain the name of the society, the objects of the society and the names, addresses, and occupations of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. Under Section 5 the property, moveable and immoveable, belonging to a society registered under the Societies Registration 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. Under Section 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. Under Section 7, no suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceedings shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceedings shall be continued in the name of or against the successor of such person. Under Section 8, if a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society. Under Section 14, if upon the dissolution of any society registered under the 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 the Court. It is contended by Mr. Amin that Mr. Justice Bhagwati held in the case of Satyavart Sidhantalankar, 48 Bom LR 341 that in spite of the provisions contained in sections 6, 7 and 8 of the Societies Registration Act it was competent to a society registered under the said Act to sue or be sued in the registered name of the society, because the society on its registration became a legal entity apart from the members constituting the same, In coming to this conclusion Mr. Justice Bhagwati relied on *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants*[15] That was a case where a trade union registered under the English Trade Union Acts of 1871 and 1876 was sued by the Railway which claimed an injunction against the trade Union on account of a strike which had taken place in

August 1900 among that railway's servants. The general secretary as well as the organizing secretary of the Amalgamated Society were also impleaded as defendants. A summons was taken out on behalf of the trade union to strike out its name on the, ground that it was neither a corporation nor an individual and could not be sued in a quasi-corporate or any other capacity. Mr. Justice Farwell, however, held that though a trade union was neither a corporation nor an individual nor a partnership between a number of individuals, the Trade Union Act having given it a capacity for owing; property and acting by agents, such capacity involved the necessary correlative of liability to the extent of such property for the acts and defaults of such agents. He, therefore, dismissed the summons taken out by the trade union. The appeal Court, however, held that a trade union registered under the Trade Union Act could not be sued in its registered name, and reversed the decision of Farwell, J. The railway company filed an appeal to the House of Lords, and the House of Lords reversed the decision of the appellate Court and restored the decision of Farwell, J. holding that a trade union registered under the Acts of 1871 and 1876 could be sued in its registered name. Mr. Justice Bhagwati in his judgment referred to the speeches of Lord Brampton and Lord Lindley in this case. It would be however, clear from the observations of Lord Brampton at Page 442 that as there was no provision in the Trade Union Act of 1871 authorizing and directing that the trade union shall sue and be sued in ansy other name than that given to it by registration, Lord Brampton was of the view that, the Legislature in creating, a trade union intended that for all purposes the name of the trade union should be used in all legal proceedings, though under section 9 of the same Act the trustees were to hold real and personal property of the society. In the present case, however, section 6 of the Societies Registration Act provides that a society registered under that 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. Mr. Justice Bhagwati, however, relied on the observations of Lord Lindley at page 445, who held that the use of the name of the registered trade union in legal proceedings was a more convenient mode of proceeding than that which would have to be adopted if the name could not be sued and though the use of the name was not compulsory it was at least permissive. It is not necessary for the purpose of this appeal to consider the question whether a society registered under the Societies Registration Act could sue or be sued in its own name in spite of the provisions of section 6 of the Societies Registration Act. But the case of (1901) AC 426, on which Mr. Justice Bhagwati relied does not in my judgment, support the proposition that a society registered under the Societies Registration Act would be a corporation. Lord Lindley's observations in the case show that he regarded a trade union registered under the Trade Union Act as "an unincorporated society." The observations of Lord Lindley on

[15](1901) AC 426

this point at pages 444-445 may be usefully quoted:-

> "The Act does not in express terms say what use is to be made of the name wider 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: See sections 14, 16 and Schedule I; 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 (sections 7, 8, 9) The property so held is, however, the property of the union: the union is the beneficial owner ..... My Lords, a careful study of the Act leads me to the conclusion that the Court of Appeal held, and rightly held, that trade unions are not corporations; but the Court held further that, not being corporations, power to sue and be sued in their registered name must be conferred upon them; and further that the language of the statutes was not sufficient for the purpose. Upon this last point I differ from them. 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."

It will be clear, therefore, that Lord Lindley accepted the view of the Court of Appeal which was also the view of Farwell, J., that the trade union registered under the Trade Union Act was not a corporation, but differed from the view of the Court of Appeal and held that the use of the registered name of the trade union in legal proceedings would be at least permissive. Under section 5 of the Societies Registration Act, as already indicated, property belonging to the society, if it is not vested in trustees, is to be deemed to be vested for the time being in the governing body of such society and that, in my opinion, would also indicate that the societies registered under the Societies Registration Act would not be corporations.

11. The learned Government Pleader has also pointed out that Mr. Justice Bhagwati refers at page 350 (of Bom LR). in Satayavart Sidhantalankar's case, 48 Bom LR 341 (AIR 1946 Bombay 516) to the terminology said to have been adopted by Cozens-Hardy M.R. in *Osborne v. Amalgamated Society of Railway Servants*[16] at p.174, with reference to a registered trade union as "a species of quasi-corporation;" but in fact that was how a registered trade union was described in the arguments addressed to the learned Master of the Rolls, and the judgment of Cozens-Hardy M.R. does not clearly indicate whether he accepted the argument that a registered trade union would be a species of quasi-corporation. There is some force in what the learned Government Pleader has urged in this connection. As I have already indicated, it is not necessary in the present case to consiccepted the argument that a registered trade union would be a species of quasi-corporation. There is some force in what the learned Government Pleader has urged in this connection. As I have already indicated, it is not necessary in the present case to consider whether a society registered under the Societies Registration Act can sue or be sued in its own name desrce in what the learned Government Pleader has urged in this connection. As I have already indicated, it is not necessary in the present case to consider whether a society registered under the under the Societies Registration Act can sue or be sued in its own name despite the provisions of section 6 of that Act; and it is, therefore, not necessary for me to consider the argument of the learned Government Pleader that the

[16](1909) 1 Ch. 163

decision of Mr. Justice Bhagwati may have perhaps to be reconsidered on this point.

12. It is contended by the Government Pleader that societies registered under the Societies Registration Act cannot be regarded as corporations within the meaning of the term 'corporation' used in the entries in the Union and the State Lists under the Constitution. In the first instance, it is argued that a corporation is a creature of a statute and in India, even prior to the Societies Registration Act, which was enacted in 1860, as well as after 1860, Acts have been passed expressly creating corporations, and it is urged that the framers of the Constitution could not have ignored this legislative practice and, therefore, could not have used the word 'corporation' so as to include in its ambit bodies which, though unincorporated, would have attributes similar to those of a corporation so as to be described as quasi-corporations. It cannot be disputed that reference to legislative practice may be admissible for cutting down the meaning of a word in order to reconcile conflicting provisions in two legislative lists. See 1939 FCR 18 at p.53 : (AIR 1939 FC 1 at p.12) and *Navinchandra Mafatlal v. Commr*[17]*.,* On this point, the learned Government Pleader referred to a number of Statutes creating corporations both prior to and after the Constitution. Before 1860, there were for instance four Acts. viz., Act No.II of 1857 establishing the University at Calcutta; Act No.XIX of 1857, an Act for the incorporation and regulation of Joint-Stock Companies and other Associations; Act No.XXII of 1857 incorporating and establishing the University of Bombay; and Act No.XXVII of 1857, incorporating and establishing the University of Madras. Section 1 of Act XXII of 1857 constitutes and declares the University of Bombay as one Body Politic and states that "such Body Politic shall by such name have perpetual succession and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded. and answer and be answered unto, in every Court of Justice within the territories in the possession and under the government of the East India Company." Similar provision as to incorporation is to be found in all the other Acts. The other Central Acts to which my attention was invited are the Co-operative Societies Act (II of 1912), the Red Cross Societies Act (XV of 1920), the Cantonments Act (II of 1924), the Bar Councils Act (XXXVIII of 1926), the Medical Councils Act (XXVII of 1933), the Damodar Valley Corporation Act (XIV of 1948) and the Employee's State Insurance Act (XXXIV of 1948). All these Acts have specific sections incorporating bodies created by these Acts. The Companies Act of 1913 as well as the Companies Act of 1956 expressly provide for incorporation of companies. The Bombay Co-operative Societies Act (VII of 1925) as well as the Bombay Non-trading Corporations Act (XXVI of 1959) also contain similar provisions. The learned Government Pleader, however, does not dispute that apart from express incorporation, it is possible to have a corporate body, if the Legislature in dealing with it, without expressly incorporating it, manifests an intention to incorporate it. See *Mackenzie Kennedy v. Air Council*[18] at p.534, where Atkin, L.J. held that the Air Council was not a corporation though under Section 10 of the Air Force (Constitution) Act, 1917, the Air Council might sue and be sued, and might for all purposes be described, by that name and by virtue of section 8 has the characteristic of perpetual succession. He quoted with approval the observations of Littledale, J. in *Tone River Conservators v. Ash*[19] that "To create a corporation by charter or Act of Parliament it is not necessary that any particular form of words be used. It is sufficient if the intent to incorporate be evident." But then Atkin, L.J. proceeded to

observe:-

[17] I.T. 57 Bom LR 628 at p.631 : (AIR 1955 SC 58 at p.61) [19](1829) 10 B and C 349, 384,
[18](1927) 2 KB 517

> "I find, however, that in fact under the Order in Council the property of the Secretary of State for War, and such property as the Air Council may acquire under the powers transferred to them, is vested not in the Air Council but in the President. I also bear in mind that there were in existence before 1917 various Acts expressly constituting Departments of State Corporations. I need only refer to the Acts incorporating for certain purposes the Secretary of State in Council of India (Government of India Act, 1840, section 65); the Postmaster-General (Post Office Duties Act, 1840, section 67); and the Commissioners of Public Works (Commissioners of Works Act, 1892, section 1). If it had been intended to incorporate the Air Council one would have expected the well known precedents to be followed with express words of incorporation, and express definition of the purposes for which the department was incorporated."

The learned Government Pleader contends that apart from the fact that the Societies Registration Act contemplated the registration of societies of various and heterogeneous types under section 20, there are provisions in the Act which would militate against the argument that all societies registered under the Act would have the status of a corporation or quasi-corporation. In this connection, I have already referred to sections 5 and 6 of the Act which show that the property of the society is either to vest in the trustees or, if not so vested be deemed to be vested for the time being in the governing body of the society, and societies registered under the Act can 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. The learned Government Pleader has also invited my attention to paragraph 2 of section 10 of the Societies Registration Act, which shows that if the defendant is successful in any suit or other proceedings brought against him 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 shall be brought or from the society, and in the latter case shall have process against the property of the said society. The provisions of sections 5, 6 as well as paragraph 2 of section 10, it is contended, would indicate that the Legislature was really manifesting an intention to withhold incorporation from societies registered under the Societies Registration Act rather than conferring the status of a corporation or a quasi-corporation on these societies. There is considerable force in this argument.

13. Then it is contended that the term 'corporation' as used in the Union as well as the State Lists cannot include quasi-corporations or societies having substantially, if not all, the attributes of a corporation. It was argued by Mr. Amin that entry 7 in List III, Concurrent List, of the Constitution refers to contracts, and that must necessarily refer to quasi-contracts also, and if that be so, the term 'corporation' must also include within its ambit quasi-corporations or, as Mr. Amin also proposed to call them, societies similar to corporations. In the first instance, the

analogy of the entry relating to contracts would, in my opinion, be not proper, because the entry occurs in the Concurrent List, and obviously, if that entry is given a meaning so as to include quasi-contracts, no question of any conflict is likely to arise because both the Parliament as well as the State Legislature would be competent to legislate on the subject of 'contracts' interpreted in its widest ambit. The difficulty, however, arises with reference to the term 'corporation' which occurs in the Union List as in the State List. The learned Government Pleader points out that if the term 'corporation' is to include quasi-corporations, a similar meaning will have to be given to that term in entry 85 in List I, Union List, which refers to a corporation tax; so that under that entry, the Union Legislature would have power to impose a corporation tax not only on corporations in the real sense of the term but also quasi-corporations which, according to the contention of the appellant, would include all heterogeneous kinds of societies which are likely to be registered by virtue of section 20 of the Societies Registration Act. In my judgment, the difficulty pointed out by the learned Government Pleader cannot be easily brushed aside.

14. The learned Government Pleader also referred to the case of *Narasaraopeta Electric Corporation v. State of Madras*[20], where a question as to the validity of the Madras Electricity Supply (Acquisition) Act, 1949, was raised and the Madras High Court had to consider the conflict between item 33 of List I dealing with corporations and item 31 of List III dealing with electricity, in the Seventh Schedule to the Government of India Act, 1935. I do not however, propose to refer to that case, since the learned Government Pleader frankly stated that it appears to Have been reversed by the Supreme Court, though on another ground, in *R.E.S. Corporation v. State of Andhra*[21],

15. In my Judgment, societies registered under the Societies Registration Act are neither corporations nor quasi-corporations but are unincorporated societies contemplated under the second part of entry 32 of the State List. As I have already indicated, the object of the impugned Act is to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay. The definition of 'public trust' under section 2(13) of the Act includes a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act. If all the provisions of the Act are carefully examined, the Act is in the main intended to regulate the administration of public religious and charitable trusts, and this subject would fall within the ambit of entries 10 and 28 of the Concurrent List. Even assuming, therefore, that societies registered under the Societies Registration Act are not unincorporated societies but fall within the scope of entry 44, I do not think that the validity of the Act can be challenged on the ground that incidentally it entrenches on the field contemplated by entry 44. In the result, therefore, I agree with the view expressed by my brother Patel, J. on the point involved in this appeal.

16. I may mention that no argument was advanced by Mr. Amin before me challenging the vires of the Act on the ground that so far as the appellant-Society is concerned the Act might affect its properties outside the State of Maharashtra. The learned Government Pleader wanted in this

connection to rely on the Supreme Court case, *State of Bihar v. Charusila Dasi*[22], in support of the validity of the Act even on that point. But it is not necessary for me to deal with it, as the question was not raised before me by Mr. Amin.

17. I was informed during the course of arguments that the Society has made an application to the State Government for an order directing its exemption from the provisions of the Act as contemplated under the first proviso to section 1(4) of the Act. That application, the learned Government Pleader informs me, could not be considered by

[20] AIR 1951, Mad 979 [22](1959) SCJ 1183

[21] AIR 1954 SC 251

the State Government because these proceedings have been pending Nothing in this judgment may, however, be taken to affect a favourable consideration of that application on merits.

18. The result is that I hold, agreeing with my brother Patel, J. that the Bombay Public Trusts Act, 1950, applies to the appellant-Society, though it is registered under the Societies Registration Act and has its objects not confined to one State. This appeal, therefore, will have to be dismissed, but in the circumstances of this case there will be no order as to costs.

Appeal dismissed.