

CASE DETAILS

CHEN KHOI KUI

v.

LIANG MIAO SHENG & ORS.

(Civil Appeal No.5849-50 of 2023)

SEPTEMBER 13, 2023

[ANIRUDDHA BOSE AND SUDHANSHU DHULIA, JJ.]

HEADNOTES

Issue for consideration: Whether the Registrar of Society, empowered to grant registration under West Bengal Societies Registration Act 1961, also has the power to cancel such registration.

West Bengal Societies Registration Act 1961 – Power to review or cancel registration of the society by the registrar who earlier granted the registration:

Held: Registrar of the Society can cancel registration granted to the Society by exercising power of procedural review which is inherent within the authority who passed the order – There is no substantive power of review provided in the Act – On facts, in pursuance of an earlier Division Bench judgment of the High Court which held that even though there is no substantive power of review provided in the Act, the power of procedural review is inherent within the authority who passes the order, the Registrar allowed the application seeking cancellation of the registration granted earlier of a High School as a society, alleging forgery and fabrication of signatures – In appeal, the Referee Judge rightly held that the vital difference between a power of substantive review and a power of procedural review, was not present in the mind of the Registrar; and that the Registrar proceeded to exercise a power of substantive review, which was not available to him in terms of such order and that too without reference to the application for registration that succeeded – Said order does not call for interference. [Paras 6, 7, 9, 12 and 15]

LIST OF CITATIONS AND OTHER REFERENCES

Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Others (1980) (Supp) SCC 420:[1981] SCR 341; *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. and Another* (2005) 13 SCC 777:[2005] 2 SCR 888; *Rina Mukherjee and Another v. New India Assurance Co. Ltd. and Another* (2008) ACJ 1248 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.5849-5850 of 2023

From the Judgment and Order dated 19.09.2018 and 12.06.2019 of the High Court at Calcutta in APO No.542 of 2017.

Appearances:

Siddhartha Mitra, Sr. Adv., Kunal Chatterji, Sumitava Chakraborty, Ms. Maitrayee Banerjee, Rohit Bansal, Advs. for the Appellant.

Rana Mukherjee, Sr. Adv., Prosit Sen, Sourav Sen, Ms. Daisy Hannah, Soumitra G. Chaudhary, Chanchal Kumar Ganguli, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****ANIRUDDHA BOSE, J.**

Delay condoned.

2. Leave granted.

3. The main question which arises for adjudication in this appeal is as to whether the Registrar of Society, empowered to grant registration under West Bengal Societies Registration Act 1961, also has the power to cancel such registration. There is no specific provision in the statute granting such authority the power to review or cancel his own decision. The root of the dispute lies in what appears to be a conflict between two groups of

the chinese tannery owners in Kolkata over the control of a school. The school in question, as per pleadings, came into existence in the year 1929 as ‘Pei May Chinese School’, and operated out of a small hut in an area commonly referred to as China Town. Subsequently, the Chinese Tannery Owners’ Association in Kolkata set up the school on a large tract of land in a locality known as Tangra. As per the appellant, the school was moved to this location, now carrying the street address P-1 and 2, Iswar Mondal Lane, Kolkata-700046. The tanners of Chinese origin at one point of time constituted an affluent and vibrant trade group in Kolkata in the field of processing and production of leather goods and they still have a presence in that sector. The Chinese Tannery Owners’ Association was registered as a society in the year 1967 under the West Bengal Societies Registration Act, 1961. The Regulation of the Association, a copy of which has been annexed at page 72 of the paperbook records that the said association had been functioning since 1944 and has a school of its own known as Pei May School. The address of the school is also specified therein. The appellant claims to be the secretary of the school, which according to him was operated by the Chinese Tannery Owners’ Association.

4. Dispute arose when the Registrar, under the aforesaid Statute, granted certificate of Registration in the name of ‘Pei May Chinese High School’ as an independent society on 19.02.2010 in response to an application made by the respondents herein. The address of this society has been shown to be P-1-2, Iswar Mondal Lane over which the Chinese Tannery Owners’ Association claim title. The appellant contends that the said association has no connection whatsoever with Pei May Chinese High School. This dispute was initially raised with the Registrar by filing a complaint. The appellant, on 17.08.2010, had submitted to the Registrar copies of letters by seven individuals who had been shown as office bearers/members of the “Pei May Chinese High School” society. Their letters were broadly to the effect that they were never appointed in such capacity, as was shown in the memorandum of association of the “school society”. The said letters carried the request for cancelling the registration of Pei May Chinese High School as a society. There were allegations of forgery and fabrication of signatures in this set of complaints.

5. It appears such disputes were taken to the civil court and criminal proceeding was also instituted. A writ petition was also filed by the appellant

in which cancellation of the said registration was asked for. The civil suit was instituted by the Chinese Tannery Owners' Association in the year 2016 in the Court of Civil Judge, Junior Division at Sealdah, registered as T.S. No.142/2016. This was a suit for declaration and injunction and the substantive relief of the plaintiff therein was to restrain the respondents from interfering with the administration of Pei May Chinese High School. It appears that in an interlocutory proceeding taken out in connection with that suit, ad-interim injunction was granted in favour of the appellant.

6. From the year 2011, there have been several rounds of litigations by and between the rival parties. The order of the Registrar, from which the present proceeding originates was passed in pursuance of an earlier Division Bench judgment of the Calcutta High Court in APOT No. 498 of 2015 delivered on 14.01.2016. This judgment records:-

“The entire issue in the appeal revolves round the question whether the Registrar of Societies has power to cancel the order passed by him on 25-1-2012. An application came to be presented before the Registrar complaining that the application consists of forged signature of one Chung Chis Ping. Admittedly, a criminal case is registered and investigation is pending so far as allegation of forgery is concerned.

In that view of the matter the observation of the Registrar that on observation it does not appear that the signature of the other person namely Chung Shih Ping who has signed as Chung Chih Ping has not been forged is premature. On what basis he comes to such finding is also not spelt out in the impugned order which is under challenge before the learned Single Judge.

So far as the question of power of review, apparently there is no substantive power of review provided in the Act in question. So far as the procedural review, it is inherent within the authority who passes the order. In that view of the matter, learned Judge was justified in remanding the matter to the Registrar of Societies.

Coming to the argument of learned Senior Counsel Mr. Bandopadhyay with regard to sections 25 and 26 of the Societies Registration Act, 1961, we are of the opinion, it has no application since they operate altogether under a different circumstance. It is left to the wisdom of

the Registrar in the above circumstances to proceed with the matter keeping in mind the pendency of the criminal investigation as regards allegation of forgery of the signature, as mentioned above.

With these observations, the appeal and application are disposed of.”

7. The Registrar had passed an order for cancelling the registration on 19.04.2016 and it was, inter-alia, held in this order:-

“Hence, the matter is taken up for compliance of the Hon’ble Court’s order and to avoid further prolixity, I have decided to pass a reasoned order. I have gone through the writ applications, Mandamus Appeal, the applications for stay file thereon, arguments put forward by the parties in dispute and their learned Advocates and the solemn orders passed by the Hon’ble Court and the provisions of law which were referred by the Hon’ble Court as well as the contesting parties. It is evident from Clause- I (a) of the Memorandum of Association of the Chinese Tannery Owners’ Association, that the school in question (Pei May School) at 1 & 2, Iswar Mondal Lane, Kolkata - 700046 shall run under the auspices of the Chinese Tannery owners’ Association registered under West Bengal Societies Registration Act, 1961 having its registration number S/8546 of 1967-68.

If a new society (Pei May Chinese High School) is emerged with a separate entity at the same address of Pei May School which is a part of Chinese Tannery Owners’ Association and wish to register under West Bengal Societies Registration Act, 1961 then the Memorandum of Association of Chinese Tannery Owners’ Association is to be amended to that effect and to be approved from the Registrar of Societies. But I have not found any of such documents in the records wherein the Chinese Tannery owners’ Association applied for such amendment of their Memorandum of Association.

I have not gone through the merits of the criminal proceedings pending in this issue on which the decision to be taken by the competent authority concerned but emphasis is only given on the matter of justification of issuance of certificate to Pei May Chinese High School. In my opinion, the application for registration of Pei May Chinese High School under the separate ambit of a registered society i.e. Chinese

Tannery Owners Association, in violation of the provision of the Act and the registration so obtained by suppressing the fact, is liable to be cancelled.

Hence, being empowered by Section 22 of the Bengal General Clauses Act, 1899 mentioned in the order of the Hon'ble Justice Arijit Banerjee dated 16.07.2015, I am passing this order of cancellation of the registration granted under West Bengal Societies Registration Act, 1961 dated in respect of Pei May Chinese High School bearing registration number S/ IL/68216 of 2009-10.

Hence forth the very society cannot function as a society registered under West Bengal Societies Registration Act, 1961.

This is further to note that this order cannot be cited as precedent case unless it is specifically directed by the Court of law."

8. The order of the Registrar passed on 19.04.2016 was unsuccessfully assailed before a Single Judge of the High Court in Writ Petition No.391 of 2016 and Writ Petition No.518 of 2016. There was difference of opinion between the learned Judges of the Division Bench of the Calcutta High Court, in a Letters Patent Appeal filed by the respondent no.1 and others against the decision of the learned Single Judge sustaining the cancellation order. The presiding Judge opined that the Registrar's decision was correct whereas the companion Judge held that such an issue could not be dealt with by the Registrar as it was not in the nature of procedural review. The companion Judge in her differing view observed that since the issue of fraud and forging signatures is already pending before the "Court below," possibly implying pendency of the civil suit and the criminal proceeding, the decisions in such cases would provide complete relief to the parties. In case the court arrived at a finding that the signatures appended to the Memorandum of Association were forged then the Registrar in exercise of his procedural power to review his own registration order would be free to take a decision to deregister the society as fraud vitiates everything, and in case the court opines that the complaint does not have any merits then the certificate of registration will not be open for scrutiny.

9. In terms of the Clause 36 of the Letters Patent Act, 1865 of the Calcutta High Court, the matter was referred to a third Judge and the Referee Judge formulated the following two questions for answering the reference:-

“1. Whether the Registrar of Firms, Societies and Non-trading Corporations, West Bengal, the respondent no.2 in the writ petition (hereafter the Registrar), did have the power to cancel the registration earlier granted in the name of “Pei May Chinese High School” on the ground that such registration was obtained by the appellants/writ petitioners (hereafter the appellants) by suppression of material facts?

2. If the first question were answered in the affirmative, whether the Registrar prior to passing the impugned order of cancellation extended due and reasonable opportunity to the appellants in consonance with the principles of natural justice to defend the allegation levelled against them by the respondent no.4, Mr. Chen Khoi Kui. (hereafter the objector)?”

10. Analysing the distinction between procedural review and substantive review, the Referee Judge answered above questions in the following terms:-

“36. What the 1961 Act expressly bars is registration of a society under a name which is identical with, or too nearly resembles, the name of any other society which has been previously registered. In the present case, it is not in doubt that the names of the two societies are different, although it is true that the Chinese Tannery Owners’ Association has been registered under the 1961 Act, with a disclosure that Pei May Chinese High School is a sister organisation of such association. However, whether registration obtained by the appellants in the name of Pei May Chinese High School is the result of any fraud or is otherwise statutorily barred, is not too clearly reflected in the order of cancellation passed by the Registrar. In order to ensure that an allegation of suppression of a material fact succeeds, it is incumbent on the party alleging to prove it by reference to documents on record at the time the application for registration of the appellants was being considered. The 1961 Act requires that registration be applied for with particulars to be disclosed in a memorandum together with the rules and regulations of the proposed registered society. No form of memorandum has been statutorily prescribed. In the absence of such form, one is left to wonder what are the queries that are required to be answered for registration to ensue. The memorandum submitted

by the appellants has not been shown to be on the records of the writ appeal. The memorandum or its contents not being on record and the Registrar too not having referred to it in his impugned order, the degree of suppression and also whether it is of a material fact which, if disclosed, could have had the effect of summary rejection of the application for rejection cannot be ascertained and it is difficult in the exercise of the present jurisdiction to return a finding one way or the other.

37. In Shri Krishnan v. Kurukshetra University, (1976) 1SCC311, the Supreme Court while considering the claim of a law student to take an examination which the respondent university had refused, observed in paragraph 7 that:

*“*** It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. ***”*

(italics in original)

38. In my view, because of ignorance or otherwise, the Registrar did not act within the parameters of the jurisdiction laid down by the Hon'ble Division Bench in its order dated January 14, 2016, which is apparent on the face of the record. He proceeded to exercise a power of substantive review, which was not available to him in terms of such order and that too without reference to the application for registration of the appellants that succeeded. The vital difference between a power of substantive review and a power of procedural review, evidently, was not present in the mind of the Registrar. If at all there was suppression on the part of the appellants, it had to be shown that such suppression was akin to a fraud that had resulted in an order granting registration in violation of a statutory provision. That has not been shown. It is for this reason that, on facts and in the circumstances, I answer the first point of difference noted above in the negative.

39. In view of such answer, question of answering the second point does not arise.

40. Thus, though I agree with the learned Judge who proposed that the order of the learned Judge dated May 18, 2017 should be set aside

and the appeal allowed, I am also of the view that leaving the parties to battle it out before the civil court may not be appropriate in the circumstances. There being an allegation of fraud levelled by one party against the other and bearing in mind the law relating to fraud noticed above, coupled with observance of the order of the Hon'ble Division Bench dated January 14, 2016 in the breach by the Registrar, much to the detriment and prejudice of both the parties, it would only be fit and proper to set aside the order impugned in the writ petition and the judgment and order under appeal, and to order a further remand of the matter to the Registrar for taking an appropriate decision not only by adhering to the said order of January 14, 2016 but also in the light of the observations made hereinabove. It is ordered accordingly. To support such course of action, which is different from those directed by the differing Judges of the Hon'ble Division Bench, I may refer to the decisions of referee Judges of this Court in the decisions reported in 2014 (4) CHN (CAL) 242 (Shivani Properties Private Limited vs. Bank of India) and 2015 (2) CLJ (CAL) 141 (Tapas Paul vs. State of West Bengal & Ors.), and the unreported decision dated January 31, 2019 in APO 508 of 2017 (Sri Ami yo Bhusan Das vs. United Bank of India & Ors.) rendered by me.

41. The objector and the appellants shall be heard within four weeks from date of receipt of a copy of this judgment and order. The Registrar shall, immediately after hearing is closed, proceed to consider the contentious issues and render his decision within a further period of a month thereafter. Needless to observe, the Registrar ought to decide in the light of the observations made in this order and whatever decision is taken by him must have the support of reasons.

42. The reference is answered accordingly and the writ appeal stands disposed of, without costs."

11. On the point of power of the Registrar to cancel his own order, the Referee Judge, whose judgment is under appeal, has cited the provisions of Section 22 of the Bengal General Clauses Act, 1899 which stipulates:-

"22. Power to issue to include power to add to, amend, vary or rescind orders etc.— Where, by any Bengal Act or West Bengal Act, a power to issue orders, rules, bye-laws, or notifications is conferred,

then, that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any orders, rules, bye-laws or notifications so issued.”

12. Citing the judgments of this Court in the cases of **Grindlays Bank Ltd. -vs- Central Government Industrial Tribunal and Others** [1980 (Supp) SCC 420] and **Kapra Mazdoor Ekta Union -vs- Birla Cotton Spinning and Weaving Mills Ltd. and Another** [(2005) 13 SCC 777], and also a decision of the same High Court in the case of **Rina Mukherjee and Another -vs- New India Assurance Co. Ltd. and Another** [(2008) ACJ 1248], the Referee Judge opined that the Registrar had proceeded to exercise his power of substantive review and that too without reference to the application for registration that succeeded. This has been recorded in paragraph 38 of the judgment impugned, which we have reproduced above.

13. One of the points raised on behalf of the appellant before us is that the judgment of the Division Bench delivered on 14.01.2016 not having been appealed against, has attained finality and it was not permissible for the Division Bench, and subsequently by the Referee Judge to re-examine the question as to the manner in which the Registrar had exercised his power. But we find that the Referee Judge has not addressed any issue already covered by the decision of the Division Bench delivered on 14.01.2016. The Division Bench has explained the position of law on the aspect of power of substantive review and procedural review. The Referee Judge has only applied the same principle to test the order of the Registrar. Thus, we do not think the principle of constructive *res judicata* applied against the respondents so far as this point is concerned. Moreover, before the Referee Judge, the dispute centred around the decision taken by the Registrar after the Division Bench had delivered the judgment on 14.01.2016 and it formed a fresh cause of action.

14. On behalf of the respondents, it has been submitted that the FIR No.673/2010 dated 19.10.2010 in which the same allegation of forged signatures was made stood closed with submission of final report by the Investigating Officer before the concerned court. It has been submitted before us that the person accused in the criminal case (respondent no.14) has been discharged by the ACJM, Sealdah by an order passed on 07.04.2021. But this fact, in our opinion, does not conclude the dispute and in any event closure

report cannot result in final determination of the dispute between two sets of parties on the adjudication of allegations of filing false and fabricated documents before the Registrar of Societies. Otherwise, the respondents have defended the judgment which is under appeal before us.

15. We are of the view that the impugned judgment does not suffer from any legal shortcoming warranting our interference.

16. It has also been argued before us that Chinese Tannery Owners' Association is the owner of the land where the subject school is located. On this point, we would add that in the event the respondents cannot demonstrate their right to run the school on the land owned by the said Association without their permission, that factor may also be taken into consideration by the Registrar and that could also be a ground for cancellation of registration. But any decision on that count shall be subject to final adjudication by the civil court if an action on that count is pending before the civil court.

17. The present appeal shall stand disposed of in the above terms.

18. Pending application(s), if any, shall stand disposed of.

19. There shall be no order as to costs.

Headnotes prepared by:
Nidhi Jain

Appeal disposed of.