Indian National Congress (I) vs Institute Of Social Welfare & Ors on 10 May, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2158, 2002 AIR SCW 2245, 2002 (6) SRJ 512, ILR(KER) 2002 (3) SC 465, 2002 (1) JT (SUPP) 398, 2002 (4) SCALE 627, 2002 (2) LRI 709, 2002 (5) SCC 685, 2002 (3) SLT 693, (2002) 2 KER LT 548, (2002) 3 MAD LJ 164, (2002) 4 SUPREME 181, (2002) 2 RECCIVR 791, (2002) 4 SCALE 627, (2002) 3 CIVLJ 591

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Bench: V.N. Khare, Ashok Bhan

CASE NO.:
Appeal (civil) 3320-21 of 2001

PETITIONER:
INDIAN NATIONAL CONGRESS (I)

Vs.

RESPONDENT:
INSTITUTE OF SOCIAL WELFARE & ORS.

DATE OF JUDGMENT: 10/05/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

(with C.A. Nos. 3322-3323/2001, Contempt Petition Nos. 334-335/2000in C.A. Nos.3320-3321/2001 and C.A. Nos. 3324 and 3325/2001) J U D G M E N T V. N. KHARE, J.

The foremost question that arises in this group of appeals is whether the Election Commission of India under Section 29A of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') has power to de-register or cancel the registration of a political party on the ground that it has called for hartal by force, intimidation or coercion and thereby violated the provisions of the Constitution of India.

The aforesaid question has arisen out of the directions issued by the High Court of Kerala on the writ petitions filed for enforcement of decision in the case of Communist Party of India (Marxist) vs. Bharat Kumar & Ors. AIR (1998) SC 184 wherein it was held that "there is a distinction between 'bundh' and 'hartal'. A call for a bundh involves coercion of others into towing the lines of those who called for the bundh and that the act was unconstitutional, since it violated the rights and liberty of other citizens guaranteed under the Constitution".

In the writ petitions filed before the High Court it was alleged that despite the law having been declared by the Supreme Court that calling of a bundh is unconstitutional, the political parties in the State of Kerala continued to call bundh under the name and cover of hartal. It was prayed that direction be issued to the government of Kerala for taking appropriate measures to give effect to the declaration of law by the Supreme Court in the case of Communist Party of India (supra). The High Court from time to time issued orders and in compliance thereof, the Chief Secretary as well as Director General of Police issued necessary orders, but such directions proved ineffective and the political parties continued to give call for bundh in the name of hartal. It was also alleged that some of the writ petitioners submitted representations to the Election Commission of India for taking necessary proceedings against the registered political parties for de- registration as they had contravened the provisions of the Constitution, but no action has been taken by the Election Commission in that regard. In one of the writ petitions one of the reliefs sought for with which we are concerned in this group of appeals, was to issue a direction to the Election Commission of India to take action against the registered political parties for violation of their undertaking that they will abide by the Constitution. In nutshell, the case of the writ petitioners before the High Court was that by holding a hartal and enforcing it by force, threat and coercion, there is the performance of an unconstitutional act and one of the clear and definite ways of preventing such unconstitutional activity on the part of political parties registered under the Representation of the People Act is to take steps for their de-registration on the ground of violation of the Constitution of India.

In the said writ petitions, the Communist Party of India (Marxist) filed counter affidavit and stated therein that they did not give call for a bundh and, in fact, the call given by them was for a hartal. It is also stated therein that at the call for hartal, it was optional for every citizen either to open or close their shops and in fact there was only an appeal to public to join the hartal and further there was no element of compulsion in the appeal and, therefore, the Communist Party of India (Marxist) did not violate either the provisions of the Constitution or decision rendered by the Supreme Court in the case of Communist Party of India vs. Bharat Kumar (supra). Indian National Congress (I) also filed a counter affidavit submitting that the call for hartal given by them was not a bundh. It was also stated therein that giving a call for hartal was a part freedom of speech and expression protected under Article 19(1)(a) of the constitution and it was merely a device to elicit the support of the people towards their specific issues highlighted by political parties, organisation and also to inform and educate the public regarding specific problems affecting their day to day life. It was also stated that the State can take preventive measures in case there is any violence or interference of constitutional or legal rights of the citizens.

The Election Commission of India also filed its return and stated therein that it does not have power to de-register or cancel the registration of a political party under Section 29A of the Act. It was also

stated by the Election Commission that similar matter arose before it in a petition filed by Shri Arjun Singh and others seeking de-registration of the Bharatya Janata Party as a political party and also freezing of its reserved symbol 'LOTUS' and the Election Commission of India by its order dated 19.2.92 rejected the petition after having found that it does not have power under Section 29A of the Act to de-register a registered political party. It was also brought to the notice of the High Court that the decision of the Election Commission of India was also tested by filing a special leave petition before the Supreme Court, but the same was dismissed on 28.8.92. In that view of the matter, no direction can be issued by the High Court to the Election Commission of India to take any proceeding for de-registration of a registered political party for having violated the constitutional provisions.

The High Court was of the view that mere giving a call for a hartal or advocating of it as understood in the strict sense cannot be held to be illegal in the context of the decision in Communist Party of India vs. Bharat Kumar (supra). However, the moment a hartal seeks to impinge the right of others it ceases to be a hartal in a real sense of the freedom and really turns out a violent demonstration affecting the rights of others and such an act has to be curtailed at the instance of other citizens whose rights are affected by such an illegal act. The High Court, as a matter of fact, found that what was called a hartal was not what was strictly meant by that term, but a form of a bundh involving intimidation and coercion of those who do not want to respond to the call or participate in it. The High Court after having found that the political parties have contravened the constitutional provisions of guaranteed freedom to the citizens, they are liable to be appropriately dealt with. In that context, the High Court was of the view that although Section 29A of the Act expressly does not empower the Election Commission of India to de-register a registered political party for having contravened the provisions of the Constitution, but on application of Section 21 of the General Clauses Act, the Election Commission of India has power on a complaint filed with it, to initiate proceedings for de-registration against a political party for having violated the constitutional provisions and after giving opportunity to such political parties, if it is found that they have committed breach of the provisions of the Constitution, the Election Commission of India has power to de-register or cancel the registration of such political parties. The High Court distinguished the summary dismissal of the special leave petition No. 8738/1992 filed by Shri Arjun Singh against Bharatiya Janata Party and another by the appex Court on 28.8.92 on the ground that dismissal of a special leave petition without any reason is not binding as it does not lay down law within the meaning of Art. 141 of the Constitution.

In the aforesaid view of the matter, the High Court while allowing the writ petitions passed the following orders:

> " i. We declare that the enforcement of a hartal call by force, intimidation, physical or mental and coercion would amount to an unconstitutional act and party or a hartal has no right to enforce it by resorting to force or intimation.
>
> ii. We direct the State, Chief Secretary to the State, Director General of Police and all the administrative authorities and police officers in the State to implement strictly the directives issued by the directions given by the Director General of Police dated

4.2.1999 and set out fully in the earlier part of this judgment.

iii. We issue a writ of mandamus to the Election Commission to entertain complaints, if made, of violation of Section 29A(5) of the Representation of the People Act, 1951 by any of the registered political parties or associations, and after a fair hearing, to take a decision thereon for de-registration or cancellation of registration of that party or organisation, if it is warranted by the circumstances of the case.

iv. We issue a writ of mandamus directing the Election Commission to consider and dispose of in accordance with law, the Representation Ext. P9 in o.p. 20641 of 1998, after giving all the affected parties an opportunity of being heard.

v. We direct the state of Kerala, the Chief Secretary to the Government, the Director General of Police and all other officers of the State to take all necessary steps at all necessary times, to give effect to this judgment.

vi. We direct the State, District Collectors, all other officers of the State and Corporations owned or controlled by the State to take immediate and prompt action, for recovery of damages in cases where pursuant to a call for hartal, public property or property belonging to the corporation is damaged or destroyed, from the perpetrators of the acts leading to destruction/damage and those who have issued the call for hartal."

It is against the aforesaid decision of the High Court these appeals have been filed by way of separate special leave petitions.

We have heard Shri Ashwani Kumar, learned senior counsel appearing for the Indian National Congress (I), Shri Soli J. Sorabjee, learned Attorney General appearing for the Union of India, Shri S. Muralidhar, learned counsel, appearing for Election Commission of India, Shri Rajeev Dhavan, learned senior counsel and Shri B.K. Pal, learned counsel appearing for Communist Party of India (Marxist) and Communist Party of India, respectively, and Shri L Nageswara Rao, learned senior counsel appearing for the writ petitioners respondents.

Shri Soli J. Sorabjee, learned Attorney General and other learned counsel for the appellants appearing in other connected civil appeals stated that these appeals are pressed only against direction Nos. (iii) and (iv) given by the High Court to the Election Commission of India.

Learned counsel appearing for the appellants, inter alia, argued -

- that there being no express provision in the Act to cancel the registration of a political party under Section 29A of the Act, and as such no proceedings can be taken by the Election Commission of India against a political party for having violated the provisions of the Constitution;

- that the Election Commission of India while exercising the power to register a political party under Section 29A of the Act acts quasi-judicially and once a political party is registered, no power of review having been conferred on the Election Commission of India, the Election Commission has no power to de-register a political party for having violated the provisions of the Constitution or committed breach of undertaking given to the Election Commission at the time of its registration;

- and that the view taken by the High Court that since the Election Commission has power to register a political party under Section 29A of the Act, it is equally empowered to revoke or rescind the order of registration on application of Section 21 of the General Clauses Act is erroneous.

Learned counsel appearing for the respondent supported the judgment of the High Court and argued that the appeals deserve dismissal.

Before we advert to the arguments raised by learned counsel for the parties it is necessary to refer to relevant provisions of the Act and rules framed thereunder and the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the 'Symbols Order') framed by the Election Commission in exercise of its power under Article 324 of the Constitution to find out whether the Election Commission has power to de-register a registered political party.

By the Representation of the People (Amendment) Act, 1988 (1 of 1989), Section 29A was inserted in the Act. The Statement of Objects and Reasons appended to the Bill which was introduced in the Parliament and subsequently was converted into an Act, runs as under :

> " At present, there is no statutory definition of political party in the Election Law. The recognition of a political party and the allotment of symbols for each party are presently regulated under the Election Symbols (Reservation and Allotment) Order, 1968. It is felt that the Election Law should define political party and lay down procedure for its registration. It is also felt that the political parties should be required to include a specific provision in the memorandum or rules and regulations governing their functioning that they would fully be committed to and abide by the principles enshrined in the preamble to the Constitution".

Before Section 29A of the Act came into force, the political parties were registered under the Election (Reservation and Allotment) Symbols Order 1968 (hereinafter referred to as the 'Symbols Order) read with Rules 5 and 10 of the Conduct of Election Rules. Paragraph 3 of the Symbols Order as it existed prior to coming into force Section 29A of the Act, runs as under:

> " 3. Registration with the Commission of associations and bodies as political parties for the purposes of this Order - (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Order shall make an application to the Commission for its registration as a political party for the purposes of this Order.
>
> (2) Such application shall be made -

(a) if the association or body is in existence at the commencement of this Order, within sixty days next following such commencement:

(b) if the association or body is formed after the commencement of this Order, within sixty days next following the date of its formation:

Provided that no such application for registration shall be necessary on the part of any political party which immediately before the commencement of this Order is either a multi-state party or a recognised party other than a multi-state party and every such party shall be deemed to be registered with the Commission as a political party for the purposes of this Order.

(3) Every application under sub-paragraph (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and either presented to a Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely :-

(a) the name of the association or body;

(b) the State in which its head office is situated;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary and all other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels (such as district level, thana or block level), village level, and the like);

(g) the political principles on which it is based;

(h) the policies, aims and objects it pursues or seeks to pursue;

(i) its programs, functions and activities for the purpose of carrying out its political principles, policies, aims and objects;

(j) its relationship with the electors and popular support it enjoys, and tangible proof, if any, of such relationship and support;

(k) whether it is represented by any member or members in the House of the People or any State Legislative Assembly, if so, the number of such member or members;

(l) any other particulars which the association or body make like to mention.

(5) The Commission may call for such other particulars as it may deem fit from the association or body.

(6) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Order, or not so to register it; and the Commission shall communicate its decision to the association or body.

(7) The decision of the Commission shall be final;

(8) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or political principles, polices, aims and objects and any change in any other material matters shall be communicated to the Commission without delay."

Section 29A of the Act runs as under:

"29A. Registration with the Election Commission of association and bodies as political parties (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made -

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988, (1 of 1989) , within sixty days next following such commencement:

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation:

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely :-

(a) the name of the association or body;

(b) the State in which its head office is situated;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f)) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub- section (5).

(8) The decision of the Commission shall be final;

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay."

A conjoint reading of Section 29A and paragraph 3 of the Symbols Order as it existed prior to enforcement of Section 29A of the Act shows that there were only two significant changes and other provisions remained the same. The first change is reflected in sub-section (5) of Section 29A of the Act which provides that the application for registration shall be accompanied by a copy of memorandum or rules and regulations of the political party seeking registration under the Act and such memorandum or rules and regulations shall contain a specific provision that such a political party shall bear true faith and allegiance to the Constitution of India, as by law established and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. The second change is reflected in sub-section (4) of Section 29A of the Act which embodied in it, the provisions of different clauses of sub-paragraph (4) of paragraph 3 of the Symbols Order.

After Section 29A of the Act came into force, paragraph 3 of the Symbols Order stood amended inasmuch as the definition of a political party in paragraph 2(1) (4) of the Symbols Order was also amended. Earlier, under paragraph 3 of the Symbols Order, a political party was defined as a registered party. After Section 29A was inserted in the Act, the definition of a political party in the Symbols Order was amended to the effect that the political party means a party registered with the Election Commission under Section 29A of the Act. Consequently, paragraph 3 of the Symbols Order was also amended to the extent it prescribed additional information which a political party was required to furnish to the Election Commission along with an application for registration. Now such additional information the Election Commission is authorised to call for under sub-section (6) of Section 29A of the Act. A perusal of un-amended paragraph 3 of the Symbols Order shows that it did not provide for de-registration of a political party registered under the Symbols Order. Nor any such provision was made after the Symbols Order was amended after Section 29A was inserted in the Act. Further, neither the provisions of Section 29A of the Act nor the rules framed thereunder, provide for de-registration or cancellation of registration of a political party. We are, therefore, of the view that neither under the Symbols Order nor under Section 29A of the Act, the Election Commission has been conferred with any express power to de-register a political party registered under Section 29A of the Act on the ground that it has either violated the provisions of the Constitution or any provision of undertaking given before the Election Commission at the time of its registration.

The question then arises whether, in the absence of an express power in the Act, the Election Commission is empowered to de-register a registered political party. Learned Attorney General, appearing for the Union of India urged that the Election Commission while exercising its power under Section 29A of the Act, acts quasi-judicially and in absence of any express power of review having been conferred on the Election Commission, the Election Commission has no power to de-register a political party. According to learned Attorney General, excepting in three circumstances when the Election Commission could not be deprived of the power to de- register a party are - (a) when the Election Commission finds that the party has secured registration by

playing fraud on the Commission, (b) when a political party itself informs the Commission in pursuance of Section 29A(9) that it has changed its constitution so as to abrogate the provision therein conforming to the provisions of Section 29A(5) or does not believe in the provisions of the Constitution, rejecting the very basis on which it secured registration as a registration political party and (c) any like ground where no enquiry is called for on the part of Election Commission, the Commission has no power to de-register a political party. Learned Attorney General further argued that in a situation where a complaint is made to the Election Commission and it is required to make an inquiry that a particular registered political party has committed breach of the undertaking given before the Election Commission or has violated the provisions of the Constitution, the election Commission has neither any power to make any inquiry into such a complaint nor de-register such a political party.

Whereas, Shri L. Nageshwara Rao, learned counsel appearing for respondent No. 1 urged that the discharge of function by the Election Commission under Section 29A of the Act cannot be termed as quasi- judicial function, in the absence of a lis - a proposition and apposition between the two contending parties which the statutory authority is required to decide. According to him, unless there is a lis or two contending parties before the Election Commission, the function assigned to the Election Commission under Section 29A is an administrative in nature. His further argument is that where exercise of an administrative function manifests one of the attributes of quasi-judicial function, such a discharge of function is not quasi-judicial. Learned counsel referred to a passage from Wade & Forsyth's Administrative Law and relied upon decisions in Province of Bombay vs Kusaldas S. Advani & Ors. (1950) SCR 621, Shri Radeyshyam Khare & Anr. vs. The State of Madhya Pradesh & Ors. (1959) SCR 1440, T. N. Seshan, Chief Election Commissioner of India etc. vs. Union of India & Ors. (1995) 4 SCC 611 and State of H.P. vs. Raja Mahendra Pal & Ors. (1999) 4 SCC 43 in support of his argument.

On the argument of parties, the question that arises for our consideration is, whether the Election Commission, in exercise of its powers under 29A of the Act, acts administratively or quasi-judicially. We shall first advert to the argument raised by learned counsel for the respondent to the effect that in the absence of any lis or contest between the two contending parties before the Election Commission under Section 29A of the Act, the function discharged by it is administrative in nature and not a quasi judicial one. The dictionary meaning of the word quasi is 'not exactly' and it is just in between a judicial and administrative function. It is true, in many cases, the statutory authorities were held to be quasi-judicial authorities and decisions rendered by them were regarded as quasi judicial, where there were contest between the two contending parties and the statutory authority was required to adjudicate upon the rights of the parties. In Cooper vs. Wilson (1937) 2 KB 309, it is stated that "the definition of a quasi-judicial decision clearly suggests that there must be two or more contending parties and an outside authority to decide those disputes". In view of the aforesaid statement of law, where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority was held to be quasi-judicial and decision rendered by it as a quasi-judicial order. Thus, where there is a lis or two contesting parties making rival claims and the statutory authority under the statutory provision is required to decide such a dispute, in the absence of any other attributes of a quasi-judicial authority, such a statutory authority is quasi-judicial authority.

But there are cases where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as quasi-judicial decision when such a statutory authority is required to act judicially. In Queen vs. Dublin Corporation (1878) 2 Ir. R. 371, it was held thus :

> " In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question, a judicial act seems to be an act done by competent authority upon consideration of facts and circumstances and imposing liability or affecting the rights. And if there be a body empowered by law to enquire into facts, makes estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts."

Atkin L.J. as he then was, in Rex vs. Electricity Commissioners (1924) 1 KB 171 stated that when any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such body of persons is a quasi-judicial body and decision given by them is a quasi-judicial decision. In the said decision, there was no contest or lis between the two contending parties before the Commissioner. The Commissioner, after making an enquiry and hearing the objections was required to pass order. In nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act.

In Province of Bombay vs. Kusaldas S Advani& Ors. (supra), it was held thus:

> "(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act ; and
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> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforestated decisions are these :

> Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.
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> Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.
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> Coming to the second argument of learned counsel for the respondent, it is true that mere presence of one or two attributes of quasi judicial authority would not make an administrative act as quasi-judicial act. In some case, an administrative authority may determine question of fact before arriving at a decision which may affect the right of an appellant but such a decision would not be quasi-judicial act. It is different thing that in some cases fair-play may demand affording of an opportunity to the claimant whose right is going to be affected by the act of the administrative authority, still such an administrative authority would not be quasi-judicial authority.
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> What distinguishes an administrative act from quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.
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> Learned counsel for the respondent then contended that a quasi- judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial and in that view of the matter, the function discharged by the Election Commission under Section 29A of the Act is totally administrative in nature. Learned counsel in support of his argument relied upon the following passage from Wade & Forsyth's Administrative Law :
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> "A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A typical example is a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a public inquiry. The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objections and not (for

> example) to take fresh evidence without disclosing it to them. A quasi-judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure."

We do not find any merit in the submission. At the outset, it must be borne in mind that another test which distinguishes administrative function from quasi-judicial function is, the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency. In the present case, the Election Commission is not required to register a political party in accordance with any policy or expediency but strictly in accordance with the statutory provisions. The afore-quoted passage from Administrative Law by Wade & Forsyth is wholly inapplicable to the present case. Rather, it goes against the argument of learned counsel for the respondent. The afore- quoted passage shows that where an authority whose decision is dictated by policy and expediency exercises administratively although it may be exercising functions in some respects as if it were judicial, which is not the case here.

We shall now examine Section 29A of the Act in the light of the principles of law referred to above. Section 29A deals with the registration of a political party for the purposes of the Representation of the People Act. Sub-Section (1) of Section 29A of the Act provides who can make an application for registration as a political party. Sub-sections (2) and (3) of the said Section lay down making an application to the Commission. Sub- sections (4) and (5) of the said Section provide for contents of the application. Sub-section (7) of Section 29 provides that the Election Commission after considering all the particulars in its possession and any other necessary and relevant factors and after giving the representatives of the association reasonable opportunity of being heard shall decide either to register the association or body as a political party or not so to register it and thereupon the Commission is required to communicate its decision to the political party. Further, sub-section (8) of Section 29A attaches finality to the decision of the Commission.

From the aforesaid provisions, it is manifest that the Commission is required to consider the matter, to give opportunity to the representative of political party and after making enquiry and further enquiry arrive at the decision whether to register a political party or not. In view of the requirement of law that the Commission is to give decision only after making an enquiry, wherein an opportunity of hearing is to be given to the representatives of the political party, we are of the view that the Election Commission under Section 29A is required to act judicially and in that view of the matter the act of the Commission is quasi-judicial.

This matter may be examined from another angle. If the directions of the High Court for considering the complaint of the respondent that some of the appellants/political parties are not functioning in conformity with the provisions of Section 29A is to be implemented, the result will be that a detailed enquiry has to be conducted where evidence may have to be adduced to substantiate or deny the allegations against the parties. Thus, a lis would arise. Then there would be two contending parties opposed to each other and the Commission has to decide the matter of de-registration of a political party. In such a situation the proceedings before the Commission would partake the character of quasi-judicial proceeding. De-registration of a political party is a serious matter as it involves

divesting of the party of a statutory status of a registered political party. We are, therefore, of the view that unless there is express power of review conferred upon the Election Commission, the Commission has no power to entertain or enquire into the complaint for de-registering a political party for having violated the Constitutional provisions.

However, there are three exceptions where the Commission can review its order registering a political party. One is where a political party obtained its registration by playing fraud on the Commission, secondly it arises out of sub-section (9) of Section 29A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law.

Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In Smith vs. East Ellos Rural Distt. Council - (1956) 1 All E.R. 855, it was stated that the effect of fraud would normally be to vitiate all acts and order. In Indian Bank vs. Satyam Fibres (India) Pvt. Ltd. - (1996) 5 SCC 550, it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to de-register such a political party.

The second exception is where a political party changes its nomenclature of association, rules and regulation abrogating the provisions therein conforming to the provisions of Section 29A (5) or intimating the Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy, or it would not uphold the sovereignty, unity and integrity of India so as to comply the provisions of Section 29A (5). In such cases, the very substratum on which the party obtained registration is knocked of and the Commission in its ancillary power can undo the registration of a political party. Similar case is in respect of any like ground where no enquiry is called for on the part of the Commission. In this category of cases, the case would be where a registered political party is declared unlawful by the Central Government under the provisions of Unlawful Activities (Prevention) Act, 1967 or any other similar law. In such cases, power of the Commission to cancel the registration of a political party is sustainable on the settled legal principle that when a statutory authority is conferred with a power, all incidental and ancillary powers to effectuate such power are within the conferment of the power, although not expressly conferred. But such an ancillary and incidental power of the Commission is not an implied power of revocation. The ancillary and incidental power of the Commission cannot be extended to a case where a registered political party admits that it has faith in the Constitution and principles of socialism, secularism and democracy, but some people repudiate such admission and call for an enquiry by the Election Commission. Reason being, an incidental and ancillary power of a statutory authority is not the substitute of an express power of review.

Now, coming to the decisions relied upon by the learned counsel for the respondent, we are of the view that none of the decisions relied upon are of any assistance to argument of learned counsel for

the respondent. The decision of this Court in Province of Bombay vs. Kusaldas Advani (supra) has been dealt with by us in the foregoing paragraph and is of no help to the case of the respondent. In the case of Radhey Shyam Khare vs. State of M.P.(supra), the State government issued an order on the ground of expediency and policy and, therefore, it was held that the impugned order is an administrative in nature. In T.N. Seshan vs. Union of India (supra), it was held that the Election Commission besides administrative function is required to perform quasi-judicial duties and undertakes subordinate legislation making functions as well. This decision also is of no help to the case of the respondent. In the case of State of H.P. vs. Raja Mahendra Pal (supra), this Court found that Price Committee appointed by the government was not constituted under any statutory or plenary administrative power and, therefore, did not discharge any quasi-judicial function. This decision again is of no assistance to the case of the respondent.

It was next urged by the learned counsel for the appellants that the view taken by the High Court that by virtue of application of provisions of Section 21 of the General Clauses Act, 1897 the Commission has power to de-register a political party if it is found having violated the undertaking given before the Election Commission, is erroneous. According to him, once it is held that the Commission while exercising its powers under Section 29A of the Act acts quasi-judicially and an order registering a political party is a quasi-judicial order, the provision of Section 21 of the General Clauses Act has no application. We find merit in the submission.

We have already extensively examined the matter and found that Parliament consciously had not chosen to confer any power on the Election Commission to de-register a political party on the premise it has contravened the provisions of sub-section (5) of Section 29A. The question which arises for our consideration is whether in the absence of any express or implied power, the Election Commission is empowered to cancel the registration of a political party on the strength of the provisions of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:

> "21. Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws. Where by any central Act or regulation, a power to issue notifications, orders, rules or bye-laws 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 notifications, orders, rules or bye-laws so issued."

On perusal of Section 21 of the General Clauses Act, we find that the expression 'order' employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the functions exercisable by the Commission under Section 29A is essentially a quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of de-registration/cancellation of

registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially.

It may be noted that the Parliament deliberately omitted to vest the Election Commission of India with the power to de-register a political party for non-compliance with the conditions for the grant of such registration. This may be for the reason that under the Constitution the Election Commission of India is required to function independently and ensure free and fair elections. An enquiry into non-compliance with the conditions for the grant of registration might involve the Commission in matters of a political nature and could mean monitoring by the Commission of the political activities, programmes and ideologies of political parties. This position gets strengthened by the fact that on 30th June, 1994 the Representation of the People (Second Amendment) Bill, 1994 was introduced in the Lok Sabha proposing to introduce Section 29-B whereunder a complaint to be made to the High Court within whose jurisdiction the main office of a political party is situated for cancelling the registration of the party on the ground that it bears a religious name or that its memorandum or rules and regulations no longer conforming the provisions of Section 29-A (5) or that the activities are not in accordance with the said memorandum or rules and regulations. However, this bill lapsed on the dissolution of the Lok Sabha in 1996, (See p. 507 of "How India Votes : Election Laws, Practice and Procedure" by V.S. Rama Devi and S.K. Mendiratta).

To sum up, what we have held in the foregoing paragraph are as under:

> 1. That there being no express provision in the Act or in the Symbol Order to cancel the registration of a political party, and as such no proceeding for de-registration can be taken by the Election Commission against a political party for having violated the terms of Section 29A(5) of the Act on the complaint of the respondent.
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> 2. The Election Commission while exercising its power to register a political party under Section 29A of the Act, acts quasi-judicially and decision rendered by it is a quasi-judicial order and once a political party is registered, no power of review having conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration.
>
> 3. However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these -
>
> (a) where a political party has obtained registration by practising fraud or forgery;
>
> (b) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29A(5) of the Act or intimating the Election Commission that it has ceased to have faith and

allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply the provisions of Section 29A(5) of the Act; and

(c) any like ground where no enquiry is called for on the part of the Commission.

4. The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act has no application.

For the aforesaid reasons, the appeals deserve to be allowed in part. Consequently, direction Nos. (iii) and (iv) of the impugned judgment are set aside. The appeals are allowed in part. The contempt petitions are rejected. There shall be no order as to costs.

.J. (V. N. KHARE) .J. (ASHOK BHAN) 10th May, 2002