

Writ Petition No. 6452/2014

20.10.2016

Shri Kailash Chand Ghildiyal, learned counsel for the petitioner.

Shri Vikram Johri, learned counsel for respondent Nos. 1 to 3.

Shri Piyush Bhatnagar, learned counsel for respondent No. 4.

With consent of learned counsel for the parties, the matter is finally heard.

Petitioner is a Society registered under the provisions of Madhya Pradesh Societies Registration Act, 1973. It calls in question the orders dated 25.2.2014 and 28.3.2014.

Whereas, by order dated 25.2.2014, the State Government of Madhya Pradesh on an appeal under Section 40 of Act, 1973 while setting aside the order dated 8.4.2013 passed by Registrar, Firms and Societies has remitted the matter with a direction to Registrar to call upon the petitioner Sangh to seek amendment in the name, object, location under Section 10 of Act, 1973. The impugned order dated 28.3.2014 is in furtherance to the order dated 25.2.2014.

The controversy as borne out from the pleadings and the elaborate submissions on behalf of the parties relates to identity of names of the Association, viz., the Petitioner, Athletic Sangh Madhya Pradesh and the respondent No. 4, M.P. Athletics Association.

Both these Associations are registered under the provisions of Adhiniyam, 1973.

Whereas, the petitioner is registered on 11.8.2009 with an object of organizing various athletic competitions at various levels for the players of Schools, Colleges, Universities and open categories in order to uplift the standard of athletics in the State of Madhya Pradesh.

Respondent No. 4 is also registered Association, registered under Adhiniyam, 1973 on 4.8.2009 as Pranteeya Athletics Association. However, later on got the name changed from Pranteeya Athletics Association to that of Madhya Pradesh Athletics Association vide order dated 22.3.2010. Though it is contended on behalf of respondent No. 4 that the change in name has been effected from 4.8.2009; however, the certificate of Registration dated 22.3.2010 brought on record as Annexure R/1 by respondent No. 4 does not substantiate these contentions. The certificate stipulates that from the date of issuance of certificate, i.e., certificate dated 22.3.2010, the name of the Society would be Madhya Pradesh Athletics Association (जिले में अपना नाम परिवर्तित कर लिया है और अब वह मध्यप्रदेश एथलेटिक्स एसोसिएशन ई 7/31 अरेरा कॉलोनी भोपाल नाम से मध्यप्रदेश सोसायटी रजिस्ट्रीकारण अधिनियम, 1973 (सन् 1973 का क्रमांक 44) की धारा 13 की उपधारा (2) के अधीन पंजीयित की गयी है) Sub-section (2) of Section 13 of Adhiniyam 1973 envisages that : “(2) If the Registrar is satisfied that the provisions of this Act in respect of change of name have been complied with and that the proposed name is in conformity

with the provisions of sub-section (2) of section 6, he shall enter the new name in the register in place of the former one and issue a certificate of registration with necessary alterations embodied therein, and the change of name shall be complete and effective only on issue of such a certificate.” (Emphasis supplied). Thus, the new name subscribed to the respondent No. 4 vide certificate dated 22.3.2010 became effective from the date of issuance of certificate dated 22.3.2010 and from retrospective date. Therefore, the contention raised on behalf of respondent No. 4 that new name became effective from initial date of the Society's registration, i.e., 4.8.2009 cannot be accepted and is negatived.

That, respondent No. 4 preferred an appeal under Section 40 of Adhiniyam, 1973 before Registrar, Firms and Societies against the order dated 11.8.2009, i.e., the order whereby the petitioner Association was registered on the plea that respondent No. 4 had initially sought registration in the name of Madhya Pradesh Athletics Association but the same was denied by the Authorities (however, there is no such order brought on record to substantiate this claim) which led the respondent itself registered as Pranteeya Athletics Sangh. In appeal it has also been contended that at the time of registration of the Petitioner Association, which was registered on very same day of filing an application, i.e., 11.8.2009, because of the letter by sitting Member of Legislative Assembly, the objections raised by the respondent No. 4 were ignored. Though the post haste manner

in which the petitioner Society has been registered at the instance of the Member of Legislative Assembly is not appreciated as it reflects the working of the Department of Firms and Societies of adhering to the extraneous commands rather than the stipulations contained in the Statute, i.e., Adhiniyam, 1973 and the Rules made thereunder. This aspect, however, has to be looked into by the department to take steps to prevent such interference in administration. The registration of the petitioner Society, however, does not get vitiated merely because it was registered on the very same day, in absence of an statutory bar that a Society cannot be registered in day unless it is established that the registration is de hors the provisions contained under Section 6 of Adhiniyam, 1973.

The appeal preferred by respondent No. 4 came to be decided on 8.4.2013 whereby Registrar, Firms and Societies declined to interfere, holding:

“प्रतिप्रार्थी क्रमांक 2 सहायक पंजीयक, फर्म्स एवं संस्थाएं, भोपाल एवं नर्मदापुरम की ओर से प्राप्त टीप में निम्नानुसार उल्लेख किया गया है कि मध्यप्रदेश एथलेटिक्स एसोसिएशन पंजीयन क्रमांक 20663 दिनांक 04.02.2009 एवं एथलेटिक्स संघ मध्यप्रदेश भोपाल पंजीयन क्रमांक 20680 दिनांक 11.08.2009 पर मध्यप्रदेश सोसायटी रजिस्ट्रीकरण अधिनियम, 1973 के अधीन पंजीकृत संस्था है, जिस पर उक्त अधिनियम, संशोधित नियम एवं पंजीयत नियमावली के समस्त प्रावधान प्रभावशील है। संबंधित अधिकारी ने अपनी टीप में यह भी उल्लेख किया गया कि दोनों संस्थाओं के नाम पृथक पृथक होने से अधिनियम की धारा 6(2) का उल्लंघन नहीं होगा तथा पंजीयत संस्था अपने नाम में परिवर्तन अधिनियम के प्रावधानों के अनुसार आवश्यक

प्रस्ताव पारित कर प्रस्तुत कर सकती है, जिस पर अधिनियम के प्रावधानों के अनुसार निर्णय लिये जाते हैं। संबंधित अधिकारी के द्वारा प्रस्तुत टीप में यह उल्लेखित किया गया है "अधिनियम के प्रावधानों के अनुसार इस प्रकरण में भी दो पृथक पृथक पंजीयन हेतु प्रस्ताव कार्यालय में प्राप्त हुये हैं, जिनका पंजीयन इस कार्यालय द्वारा किया गया है। दोनों संस्थाओं के नाम पृथक पृथक है, अतः दोनों संस्थाओं को अपने अपने पंजीकृत विधान में वर्णित उद्देश्यों के अनुसार कार्य करने हेतु निर्देश दिये जाकर अपील अमान्य किये जाने हेतु निवेदन है।

उपरोक्त दिये गये विवरण के आधार पर तथा प्रतिप्रार्थी क्रमांक 2 के द्वारा दोनों संस्थाओं का पंजीयन अलग अलग किये जाने, दोनों के पते, विधान अलग अलग होने तथा दोनों संस्थाओं के नाम अलग अलग होने के कारण अपील को स्वीकार किये जाने के पर्याप्त आधार होना नहीं पाये जाते हैं, इसलिये प्रस्तुत अपील को अस्वीकार किया जाता है।"

This order has been set aside by impugned order dated 25.2.2014 for the following reasons:

"6/अपीलार्थी द्वारा प्रस्तुत अपील, लिखित बहस एवं उस पर रजिस्ट्रार फर्म्स एवं संस्थायें मध्यप्रदेश, भोपाल से प्राप्त बिन्दुवार टीप एवं उपलब्ध अभिलेखों का अवलोकन किया गया, जिससे स्पष्ट है कि अपीलार्थी संस्था प्रतिप्रार्थी संस्था के पंजीयन के पूर्व से पंजीकृत है तथा उनके द्वारा दिनांक 11.08.2009 को सहायक पंजीयक, फर्म्स एवं संस्थायें के कार्यालय में एक आपत्ति प्रस्तुत कर मध्यप्रदेश शब्द एथलेटिक्स एसोसिएशन के आगे या पीछे जोड़कर मिलते जुलते नाम से किसी अन्य संस्था का पंजीयन न किया जाने का निवेदन किया गया था, किन्तु सहायक पंजीयक ने प्रतिप्रार्थी द्वारा पंजीयन हेतु प्रस्तुत ज्ञापन एवं नियमावली की जांच किये बिना एक दिवस में उसी तिथि को उन्हें पंजीयन प्रमाण-पत्र जारी कर दिया गया। जिससे स्पष्ट है कि सहायक पंजीयक द्वारा प्रतिप्रार्थी संस्था के पंजीयन के समय अधिनियम की

धारा-6(2)(ख) एवं 6(2)(ख) तीन के प्रावधानों का पालन नहीं किया गया है।

यहां यह भी स्पष्ट है कि प्रतिप्रार्थी संस्था का नाम, कार्यक्षेत्र एवं उद्देश्य अपीलार्थी संस्था जो कि पूर्व से ही पंजीकृत है, के समान होने के कारण एथलेटिक्स खेल के खिलाड़ियों में भ्रम की स्थिति निर्मित होना तथा मध्यप्रदेश के एथलेटिक्स टीम की राष्ट्रीय एथलेटिक्स चैम्पियनशिपों में भागीदारी एवं राज्य स्तर एथलेटिक्स प्रतियोगिताओं के आयोजन हेतु दोनों संघों में विवाद उत्पन्न होना स्वाभाविक है। साथ ही रजिस्ट्रार फर्म्स एवं संस्थायें मध्यप्रदेश, भोपाल द्वारा भी पारित अपीलाधीन आदेश में अपील अस्वीकार करने के ठोस कारणों का कोई उल्लेख नहीं किया गया है अतः रजिस्ट्रार फर्म्स एवं संस्थायें मध्यप्रदेश, भोपाल द्वारा पारित अपीलाधीन आदेश दिनांक 8/4/2013 बोलता हुआ आदेश नहीं है।

अतः उपरोक्त वर्णित स्थिति के प्रकाश में राज्य शासन एतद् द्वारा अपीलार्थी संस्था द्वारा प्रस्तुत विचाराधीन अपील को मान्य कर, रजिस्ट्रार फर्म्स एवं संस्थायें मध्यप्रदेश, भोपाल द्वारा जारी अपीलाधीन आदेश दिनांक 8/4/2013 को निरस्त करते हुये रजिस्ट्रार को निर्देशित करता है कि वे प्रतिप्रार्थी संस्था को मध्यप्रदेश सोसायटी रजिस्ट्रीकरण अधिनियम, 1973 की धारा-10 को प्रावधानों के तहत संस्था के नाम, कार्यक्षेत्र एवं उद्देश्यों में परिवर्तन किये जाने संबंधी प्रस्ताव प्रस्तुत करने संबंधी कार्यवाही करे तथा यदि प्रतिप्रार्थी संस्था द्वारा उपरोक्तानुसार कार्यवाही नहीं की जाती है तो परिवर्तन/संशोधन संबंधी कार्यवाही मध्यप्रदेश सोसायटी रजिस्ट्रीकरण अधिनियम, 1973 की धारा-11 के प्रावधान अनुसार किया जाना सुनिश्चित करे।”

Evidently, the order passed by Registrar, Firms and Societies on 8.4.2013 has been set aside on the ground that the same is not a speaking order. By impugned order the matter is remitted to the Registrar with a direction to call upon the

petitioners to give a proposal under Section 10 of Adhiniyam 1973 as regard to name, object and field of operation.

Grievance raised on behalf of the petitioner is that without even setting aside registration, dated 11.8.2009, Registrar is directed to call upon the petitioner to submit the proposal under Section 10 merely on an observation that the registration was accorded in one day. It is urged that under sub-section (2) of Section 6 of Adhiniyam, 1973 what is prohibited is the name which shall not be identical with or too nearly resembles the name by which the Society in existence has been previously registered anywhere in the State. It is urged that, identity of the objects for which Society is constituted nor the field of operation is prohibited. It is contended that the Appellate Authority, i.e., the State Government glossed over the fact that when the petitioner Society was registered on 11.8.2009, respondent No. 4 with its name as M.P. Athletics Association was not in existence. It came into being on 22.3.2010 with the issuance of certificate on said date or an application later on filed by respondent No. 4. It is contended the Appellate Authority, i.e., the State ought to have appreciated the fact that when respondent No. 4 proposed the change in its name from Pranteeya Athletics Association to Madhya Pradesh Athletics Association, the petitioner Association, i.e., Ahtletics Sangh Madhya Pradesh was already in existence, therefore, under sub-section (2) of Section 6 of Adhiniyam, 1973, the

change ought not to have been allowed. On these submissions petitioner seeks indulgence.

Section 6 of Adhiniyam, 1973 envisages:

“6. Requirements with respect to memorandum of association – (1) The memorandum of association of every society shall state -

- (a) the name of the society;
- (b) the objects of the society;
- (c) the location of the head office of the society;
- (d) the names, addresses, and occupations of the Governors, Council Directors Committee or other governing body to whom by the regulations of the society the management of its affairs is entrusted.

(2) No name shall be proposed in the memorandum of association –

- (a) as is identical with or too nearly resembles the name by which a society in existence has been previously registered anywhere in the State; or
- (b) which has as its component –
 - (i) such words as may suggest or may be calculated to suggest the patronage of the Government of India or the Government or a State; or
 - (ii) such words as National, Inter-National or Universal importance or such other words as

the State Government may, from time to time
by notification, specify; or

(iii) such words as in the opinion of Registrar,
likely to mislead the public .

(3) A copy of the regulation of the society, certified to a correct copy of not less than three of the members of the governing body shall be filed with the memorandum of association.

(4) The persons by whom or on whose behalf such memorandum is submitted shall furnish such further information in regard to the society as the registrar may require.”

Thus under sub-section (1) of Section 6 it is mandatory for the Society seeking registration under the Adhiniyam 1973 to mention in memorandum of Association, the name of Society, the objects of the Society, the location of the head office of the Society and the names, addresses and occupation of the Governors, Council, Directors, Committee or other governing body to whom by the explanations of the Society the management of its affairs is entrusted. However, except the name which is not be identical with or too nearly resembles the name by which a society in existence has been previously registered anywhere in the State, the identity of objects and field of activity is not prohibited. Since on 11.8.2009 no Society with the name identical with or too nearly resembling the petitioner Society was in existence, the findings arrived at by the

Appellate Authority suffers from vice of perversity as would warrant its existence.

Consequently, the impugned order is set aside. Petitioner is set at liberty to raise objection against the change in name of respondent No. 4 effected from 22.3.2010 as prima facie its name resembles that of the petitioner.

Before parting with the matter, it has been observed that some issue regarding recognition by Athletic Federation of India arising between the petitioner and respondent No. 4 was referred to the Arbitration and in the case at hand on 28.8.2013 statement was made to the effect that the decision therein would give a quietus of the lis in the present case. That, during pendency of present writ petition Arbitrators have passed the Award on 17.6.2016 which is brought on record vide I.A. 9289/2016. The Award is in the following terms.

“VI. Award :-

44. It is hereby decided that real body in the field of Athletic in M.P. is Madhya Pradesh Athletic Association and they are entitled to be recognized by the Athletic Federation of India as the real Athletic body in the State of M.P. It is hereby directed by way of this order/award that M.P. Athletics Association is deemed to be recognized by the Athletic Federation of India.

45. In view of the fact that Athletic Sangh and M.P. Olympic Association have not paid the hearing fees. It is hereby ordered that cost of Rs. Five Lakhs to be awarded

against the M.P. Olympic Association and Athletic Sangh, Bhopal since the entire fee is to be deposited by M.P. Athletic Association they are entitled to recover the cost from M.P. Olympic Association and Athletic Sangh, M.P.

46. In the next General Body/or Executing meeting of the Indian Olympic Association, M.P. Olympic Association should be allowed to take part only if they deposit the fee of Rs. Five Lakhs before start of Executive/or General Body meeting of the Indian Olympic Association.”

Since the dispute forming subject matter of the Arbitration was as to “which of the athletic Association out of all the three truly represents the games of Athletics the State of Madhya Pradesh and would be ultimately given recognition”, the decision in the case at hand will have no bearing on the decision taken by the Arbitrator.

The petition is finally disposed of in above terms. No costs.

(SANJAY YADAV)
JUDGE