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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 20th December, 2025**Pronounced on: 27th February, 2026*

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W.P.(C) 2506/2015

M/S UNIVERSAL PROMOTERS
& DEVELOPERS & ORS

.....Petitioners

Through: Mr. Sandeep Sharma, Senior Advocate
with Mr. Rohit Sharma, Mr. Hunny
Singh & Mr. Ankit Parindiyal,
Advocates

versus

GOVERNMENT OF NCT DELHI & ORS

.....Respondents

Through: Mr. Dhananjaya Mishra, Mr. Navneet
Dogra & Mr. Aiman Singh Kler,
Advocates for R-1 to 4
Mr. Rahul Malhotra, Mr. Rahul
Saxena, Ms. Padamja Sharma & Mr.
Mukul Nagpal, Advocates for R-5
alongwith R-5 in-person**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Article 226 of the Constitution of India, 1950, has been filed seeking the following prayers: -



“It is, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

- a) Call for the record of the case;
- b) Issue a writ of certiorari quashing the impugned illegal orders dated 17/02/2014 and 5/1/2015 respectively;
- c) Issue a writ of mandamus. directing the respondents to restore and revive the Certificate of Registration of Firm "M/s Universal Promoters and Developers" of the petitioners;
- d) Issue any other appropriate writ, order or direction, which this Hon'ble Court which may deem fit in the facts and circumstances of the present case;
- e) All cost of the writ petition in favour of the petitioners.”

2. By way of the present petition, setting aside of orders dated 17.02.2014 and 05.01.2015 have been sought. *Vide* order dated 17.02.2014, respondent No.3 (Deputy Commissioner, Industries (Firms)) issued an order setting aside and cancelling the Registration of petitioner No.1 (partnership firm), on a complaint/application made by respondent No.5-Ashok Kataria alleging fraud, and subsequently, on an application filed by petitioner No.4 seeking review of the said order, the same was dismissed *vide* order dated 05.01.2015 passed by respondent No.4, Registrar of Firms. The primary contention on behalf of the petitioners is that the respondent No.4, Registrar of Firms, had no power to cancel the Registration Certificate issued to petitioner No.1-partnership firm.

3. The relevant portion of the impugned order dated 17.02.2014 passed by Deputy Commissioner, Firms/respondent No.3 reads thus: -



“E. ORDER

On perusal of the facts, submissions made by the partners, complaint and the records provide a fit case of REVIEW of the registration No. S-1003/2006 granted by this department on 08.05.2006. It is evident that Smt. Rekha Sharma, from the records that she was not a partner from 31.03.2006 and as such she lacked the capacity to apply as a partner for registration under the Partnership Act, 1932. The above facts clearly reveal that there was a concealment of the facts. Further there is a concealment regarding Mr. Mahinder Kaushik joining the firm with effect from 17.02.2006 yet application introducing his name was filed in this office on 06.12.2010. This is after more than four years. Further, the said application does not bear the signature of Mr. Mahinder Kaushik. When Mr. Mahinder Kaushik had already joined on 17.02.2006. then instead of making declaration and signing of application by Smt. Rekha Sharma who had already retired on 31.03.2006, in the normal and usual course of business this application ought to have been signed by Mr. Mahinder Kaushik on 17.04.2006/20.04.2006.

Filing of the application for deleting the name of Smt. Rekha Sharma and introduction of partner Mr. Mahinder Kaushik was also approved by this office and a note to this effect has been made on the relevant form showing therein the name of Mr Mahinder Kaushik as a partner introduced pr: 17.02.2006. Name of Mr. Mahinder Kaushik as a partner of the firm for the first time has been disclosed to this office vide application dated 06.12.2010, whereas his name ought to have been disclosed in the original application dated 20.04.2006 and a declaration to this effect ought to have been signed by Sh. Mahinder Kaushik. In the application for amendment of the partners/change of partners dated 06.12.2010 Mr. Mahinder Kaushik did not furnish any declaration to this effect and even did not sign the necessary application for change of name of the partners.

As Mr. Mahinder Kaushik has not signed any application form and an affidavit/declaration for registration of partnership as a partner of the firm on 20.04.2006 further the application bears the name of only two persons i.e. Mrs. Rekha Sharma and Mr. Sandeep Sharma, whereas Mrs. Rekha Sharma signed the declaration as a partner on 17.04.2006 by concealing the facts that she was, not a partner in the above said firm when she has retired on 31.03.2006.



In view of the aforesaid facts, Mr. Sandeep Sharma is left as a single partner which does not fulfil the definition of partnership under Section 4 of the Partnership Act, 1932. Subsequent rectification cannot be accepted in Form A when Smt. Rekha Sharma was not a partner on the date of application and registration, so how could the firm be registered with one partner under the Partnership Act, 1932?. It is evident that the registration certificate No. S-1003/2006 obtained by M/s Universal Promoters and Builders was obtained by concealing true facts and it seems that the subsequent amendments by this department made without due diligence and without proper examination of facts. documents filed by the firm and the legal position under Section 4 and Section 59 of the Partnership Act, 1932. The very registration of the partnership firm was void ab initio. Therefore, subsequent amendments for change in constitution under Section 63 of the said Act are devoid by merit. Therefore, the registration of the firm bearing no. S-1003/2006 dated 08.05.2006 is set-aside. Necessary entry in this effect may be made in the relevant register. A copy of this order be communicated to the complainant as well as to the firm and its partners, at their last known addresses.

The above issues with the prior approval of the competent authority.”

4. The relevant portion of the impugned order dated 05.01.2015 passed by Registrar of Firms/respondent No.4 reads thus: -

“GOVERNMENT OF NCT OF DELHI
OFFICE OF SPECIAL COMMISSIONER: INDUSTRIES
419, FIE, PATPARGANJ INDUSTRIAL AREA, DELHI

NO. ROS. (F & S)/S-1003/2006/26
05/01/2015

Dated:

ORDER

Re: Application by Mrs. Rekha Sharma for withdrawal of the order dated 17.02.2014 passed by the Office of Registrar of Firms (ROF)

(01) Mrs. Rekha Sharma. has filed on record application dated 19.03.2014, 16.04.2014, 27.07.2014 and 20.09.2014 for recalling the order dated 17.02.2014 by which registration of the firm was recalled." "Earlier before passing an order dated 17.02.2014, notices were issued to



Mrs. Rekha Sharma to appear on 28.06.2013, 21.08.2013, 24.09.2013 and 31.12.2013. The aforesaid notices were sent at the residence of No. 17, Church Road, Delhi Cantt., Delhi as per address on record.

(02) Hearings were given to Mrs. Rekha Sharma on 30.09.2014, 20.10.2014, 07.11.2014, 18.11.2014 and 01.12.2014 in response to her application to recall the order dated 17.02.2014. I have gone through the record of the case and submissions made by Mrs. Rekha Sharma, I find no merit, in this application.

(03) The registration of the firm was obtained by misrepresentation and by concealing true facts. As has been discussed in detail in order dated 17.02.2014 which may be adverted and are not repeated herein for the sake of brevity.

(04) By way of present application, Smt. Rekha Sharma wants to settle her dispute inter-se with Mr. Sandeep Sharma and/or Mr. Mahender Kaushik for which this is not an appropriate forum. The application is clearly an afterthought and there appears to be no basis to recall the orders dated 17.02.2014. There can't be review of review of particularly when the facts mentioned in the application seems to be made up ones without any supportive evidence. On the one hand, Mrs. Rekha Sharma alleges that the Registrar of Firms was functus officio when the aforesaid order was passed and again she is asking the same authority to pass order when the said authority in her eyes is functus officio.

(05) Application being without merits is **DISMISSED**.

(K. MAHESH)
REGISTRAR OF FIRMS"

BRIEF BACKGROUND

5. Petitioner No.1, M/s Universal Promoters and Developers, was a partnership firm constituted between petitioner No.2, Sandeep Sharma, and petitioner No.4, Rekha Sharma, *vide* partnership deed dated 01.01.2006. Petitioner No.3, Mahender Kaushik, was inducted as a partner in the aforesaid



firm *vide* a supplementary partnership deed dated 17.02.2006 executed amongst the partners. It is stated in the petition that, thereafter, petitioner No.4 decided to resign from the firm on the assurance that petitioner No.3, newly inducted partner, will settle the accounts, and it was agreed, as a pre-condition, that he will make an investment in business of the firm by 15.04.2006. Petitioner No.4 resigned from the firm and an amended partnership deed was executed on 31.03.2006. It is further stated that petitioner No.3 failed to honour his commitment, and in view of the same, the amended partnership deed executed on 31.03.2006 was not given effect to.

6. The partnership deed dated 01.01.2006 executed between petitioner Nos.2 and 4 was registered *vide* Registration Certificate dated 08.05.2006 (No. S-1003/2006).

7. Subsequently, Registrar of Firms, *vide* application dated 02.12.2010, was notified that petitioner No.4 had retired from petitioner No.1-firm *w.e.f.* 31.03.2006, and petitioner No.3 has been admitted as partner *w.e.f.* 17.02.2006 in petitioner No.1. Thereafter, Registrar of Firms, Delhi, issued Form-C on 07.01.2011 acknowledging the change in the constitution of the partnership firm.

8. Thereafter, one Ashok Kataria (respondent No.5) filed a complaint regarding forgery. The respondent Nos.1 to 4 reviewed certificate of registration of petitioner No.1 issued on 08.05.2006 and cancelled the same *vide* impugned order dated 17.02.2014. Petitioner No.4 moved an application on 18.03.2014 before Special Commissioner, Industries (Firms) Govt. of NCT



of Delhi, for recalling the impugned order dated 17.02.2014 on the ground that there was no forgery, or fraud, as mentioned in the complaint filed by Ashok Kataria-respondent No.5, and all the material facts were presented to the Registrar of Firms from time to time. However, Special Commissioner, Industries (Firms), did not entertain the application of petitioner No.4. Subsequently, petitioner No.4 filed another application on 10.09.2014 to Special Commissioner, Industries (Firms), for deciding her review application on merits which was disposed of, along with all other applications filed by petitioner No.4 on 19.03.2014, 16.04.2014, 27.07.2014, and 20.09.2014, by impugned order dated 05.01.2015. Hence, the present petition has been filed seeking quashing of the impugned orders and directing respondents to restore and revive the Certificate of Registration of Petitioner No.1-Firm.

CONTENTIONS ON BEHALF OF THE PETITIONERS

9. Learned Senior Counsel for the petitioners has submitted that the cancellation of registration of certificate of petitioner No.1 issued on 08.05.2006 by the Office of Special Commissioner: Industries *vide* the impugned order dated 17.02.2014 is without jurisdiction and *non-est* as Registrar under Section 64 of the Indian Partnership Act, 1932¹, has power only to rectify the mistake in order to bring the entry in Register in conformity with documents relating to that firm. It is further submitted that Registrar of Firms or any such person is not vested or bestowed with the power to set aside/cancel the certificate of registration conferred on any partnership under IPA. It is further submitted that Special Commissioner does not have power to

¹ For short, 'IPA'



set aside the order passed by Registrar of Firms, and Special Commissioner while exercising review has, in fact, exercised a power which has not been conferred upon him by any statute or otherwise.

10. Learned Senior Counsel for the petitioners has drawn attention of this Court to Section 64 of the IPA which reads as under: -

“64. Rectification of mistakes.—(1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.”

11. It was contended on behalf of the petitioners that only power given to the Registrar, after issuance of certificate of Registration under Section 59 of the IPA, under the foregoing provisions is to rectify a mistake. It was submitted that there was no case of fraud as alleged by respondent No.5, and which was accepted by respondent Nos.1 to 4, inasmuch as initially petitioner No.1-partnership deed was constituted between petitioner Nos. 2 and 4 on 01.01.2006 *vide* a partnership deed dated 01.01.2006. It was submitted that petitioner No.3-Mahender Kaushik was inducted as a partner in the firm, and a supplementary deed dated 17.02.2006 was executed, and as such, petitioner No.4-Rekha Sharma decided to resign from the said firm on assurance that the aforesaid-Mahender Kaushik shall settle the accounts. It is further contended that on the said assurance of settlement made by petitioner No.3, Ms. Rekha Sharma resigned from the said firm, and an amended partnership deed was



executed on 31.03.2006. It is the case of the petitioners that since petitioner No.3-Mahender Kaushik did not honour his commitment, the amended partnership deed executed on 31.03.2006 was not given effect to, and did not come into force, and, therefore, the partnership deed dated 01.01.2006 which was initially executed between Sandeep Sharma and Rekha Sharma (petitioner Nos.2 & 4) was registered *vide* Registration Certificate dated 08.05.2006. Thus, resignation letter dated 31.03.2006 by petitioner No.4-Rekha Sharma was never given effect to. It is also argued by learned Senior Counsel appearing on behalf of the petitioners that subsequently, petitioner No.3-Mahender Kaushik made investment in the firm and, therefore, it was decided to incorporate his name in the partnership firm. It has been argued that the case of the petitioners, in nutshell, before the Registrar of Firms was that, although, *vide* a supplementary partnership deed dated 17.02.2006, petitioner No.3-Mahender Kaushik was inducted as partner in their firm, and subsequently, on 31.03.2006 the petitioner No.4-Rekha Sharma had resigned from the said firm *vide* an amended partnership deed dated 31.03.2006; however, Form No.1 dated 20.04.2006 was submitted on 05.05.2006 in the Office of Registrar of Firms incorporating the original partnership deed dated 01.01.2006, and the supplementary and amended partnership deed were omitted to be included on account of oversight. It is submitted that this was sought to be corrected by way of Form No.5 dated 02.12.2010 filed before the Registrar of Companies on 06.12.2010 alongwith both the supplementary and amended partnership deeds. It is, thus, submitted that on account of the same, there is no fraud or mis-statement given initially by petitioner No.1-firm to cause any loss or damage to society or public at large. Therefore, it is submitted that, at best, it was a case of correcting the records which was



permissible in terms of Section 64 of the IPA, as no power is vested in the Registrar of Firms to recall the registration.

12. Learned Senior Counsel for the petitioners further contended that respondent No.5 had no *locus-standi* to have filed a complaint, which was entertained by respondent Nos.1 to 4. Attention of this Court has been drawn to Rule 6 of the Delhi Partnership (Registration of Firms Rules, 1972), which reads as under: -

“DELHI PARTNERSHIP (REGISTRATION OF FIRMS) RULES, 1972

Rule 6. Procedure on disputes –Where any partner or other person interested makes a protest in writing to Registrar disputing any entry made in the register of firms, the Registrar shall record such protests and make a reference thereto in "Red ink" in the remarks column against the disputed entry.”

It is, therefore, submitted that as respondent No.5 was alien to the said firm, he had no *locus* to raise any dispute with respect to the constitution or acts of the petitioner No.1-partnership firm.

13. Reliance has been placed on the following judgments by learned Senior Counsel for the petitioners: -

- a) On the judgment of Hon’ble Supreme Court in **Common Cause (A Registered Society) v. Union of India**², to contend that power under Section 21 of General Clauses Act, 1897³, cannot be invoked to

² (2023) 10 SCC 321: 2021 SCC OnLine SC 687

³ For short, ‘GCA’



enlarge the Government's power to constitute the commission in a manner other than that provided in the statute itself (Commissions of Inquiry Act, 1952). It is submitted that the rule of construction embedded in Section 21 of GCA cannot apply to the present case as subject matter, context and effect of section 64 of IPA is inconsistent with such application.

b) On the judgment of Hon'ble Supreme Court in **Sharad Vasant Kotak v. Ramniklal Mohanlal Chawda**⁴, to contend that for non-compliance of certain mandatory provisions in not informing Registrar of Firms about the changes in constitution of the firm, certain penalties provided in the IPA itself, would be attracted, and the same would not lead to conclusion that the registration of the firm had ceased. It is further submitted that the changes in the constitution of firm by inducting a new partner and resignation of an existing partner will not affect the registration of the firm which was once made in accordance with law.

c) On the judgment of Hon'ble Calcutta High Court in **Durga Prasad Sarawagi v. Registrar of Firms, West Bengal**⁵, to contend that the Registrar under Section 63 of the IPA has no power to cancel the registration certificate of a firm and action beyond the scope of said Section is clearly unauthorised.

⁴ (1998) 2 SCC 171

⁵ 1966 SCC OnLine Cal 256; AIR 1966 Cal 573



d) On the judgment of Hon'ble Rajasthan High Court in **Rakesh Dhariwal and Ors. v. Balaji Marble Mines and Ors.**⁶, to contend that under IPA, the Registrar of Firms is having limited powers for rectification of mistake, and that could have been exercised only to remove manifest mistake and not the disputed issues.

14. Reliance has also been placed by learned Senior Counsel for the petitioners on the following cases: -

- i. **Sri Lakha Granites v. Eklavya Singh and Ors.**⁷;
- ii. **Shri Balaji Marbels Mines v. State of Rajasthan and Ors.**⁸;
- iii. **Supreme Tech Engineering v. Registrar of Firms (Vadodara Circle) and Ors.**⁹;
- iv. **Areness Foundation v. Govt. of NCT of Delhi & Anr.**¹⁰;
- v. **Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. v. Commissioner of Income Tax, Gwalior, Madhya Pradesh**¹¹;

15. In view of the aforesaid submissions, it is prayed that the impugned orders be set aside and the registration of petitioner No.1-Firm be restored and revived.

⁶ AIR 2015 Cal 573

⁷ 2010 SCC OnLine Raj 4689: AIR 2011 Raj 49

⁸ D.B. CIVIL SPECIAL APPEAL NO.109/2010 dated 16.04.2010

⁹ 2012 SCC OnLine Guj 1412

¹⁰ 2018 SCC OnLine Del 2004: AIR 2019 Del 59

¹¹ (2018) 4 SCC 494



CONTENTIONS ON BEHALF OF RESPONDENT NOS.1 TO 4

16. *Per contra*, learned counsel appearing on behalf of the respondent Nos.1 to 4 has submitted that, as per Section 58 of the IPA in order to effect registration of firm, a statement signed by all partners is required to be filed with Registrar of Firms. Attention of this Court has been drawn towards Section 58 of the IPA in this regard. It is submitted that, in the present case, Form-I was submitted on 20.04.2006 carrying the signatures of petitioner Nos.2 and 4 and on the basis of the said statement, Registrar had issued Form-A whereby, petitioner No.1 was registered with petitioner No.2 and 4 as its partners. It is further submitted that a supplementary partnership deed dated 17.02.2006 was produced bearing signatures of petitioner Nos.2, 3 and 4, inducting petitioner No.3 as partner in petitioner No.1, and on enquiry, it was revealed that the signatures of petitioner Nos.2 and 4 in Original Partnership Deed dated 01.01.2006 are different from that of Supplementary Partnership Deed dated 17.02.2006. Thus, in these circumstances, Deputy Commissioner, Firms, passed the impugned order dated 17.02.2014 on the ground that case was one of fraud/concealment of facts and set-aside the registration of petitioner No.1-firm. It is further submitted that petitioner No.4 is stated to have resigned as partner of petitioner No.1-firm on 31.03.2006, and therefore, she could not have signed as a partner for registration of the firm on 20.04.2006.

17. It is further submitted that, as on date of filing of Form-I, *i.e.*, 20.04.2006, as well as on the date of registration of firm, *i.e.*, 08.05.2006, petitioner No.4 was not the partner of the firm, and thus, had no authority to



sign the said form on 20.04.2006 as she is stated to have resigned on 31.03.2006, as per the case of petitioners themselves. It is,, therefore, the case of the respondents that the registration certificate issued on 08.05.2006 was on the basis of an application form in which material facts were misrepresented and concealed by the petitioners. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Indian National Congress v. Institute of Social Welfare and Ors.**¹², to contend that it is well settled that fraud, misrepresentation, and concealment, vitiate any order and such order is to be set aside/cancelled/reviewed on said basis.

18. Attention of this Court has also been drawn to Delhi Partnership Registration of Firm Rules, 1972, framed under the exercise of powers conferred under Section 71(2) of the IPA. It was contended that as per Rule 3, the documents submitted to the Registrar under Sections 58 and 60 of the IPA would be in Forms- I and II respectively, annexed to the said Rules and same shall be verified in the manner indicated therein. Attention of this Court was further drawn towards Form-I, and it was pointed out that the same requires the signatures of all of the partners or their authorised agents and the same would be in presence of a witness who must be a Gazetted Officer, Advocate, Attorney, *Vakil*, Magistrate or Registered Accountant and on account of the same, it is submitted that the contents of this Form-I are akin to that of an affidavit.

19. It is further submitted that, if the documents submitted before Registrar are found to be fraudulent or suffered from material concealment of facts, the

¹² (2002) 5 SCC 685



Registrar in exercise of his powers under Section 64 of the IPA can cancel the registration of the firm. Reliance has also been placed on the following precedents: -

- i. **Durga Prasad Sarawagi & Ors. v. Registrar of Firms & Ors**¹³, paragraph 10 (Division Bench of the Hon'ble Calcutta High Court);
- ii. **Rakesh Dhariwal v. Balaji Marble Mines, Makrana & Ors.**¹⁴, paragraphs 11 to 15 (Division Bench of the Hon'ble Rajasthan High Court);
- iii. **Dwarika Prasad Agarwal & Brothers v. Registrar, Firms, Societies and Chits**¹⁵, paragraphs 36 to 38, 41 and 42 (Single Judge of the Hon'ble Allahabad High Court);

20. Learned counsel for the respondent Nos.1 to 4 has, without prejudice to aforesaid contentions, further submitted that, even if, Section 64 of the IPA is not applicable, then also, Registrar has power to cancel registration under Section 21 of the GCA, 1897, which provides that when a power is conferred on any authority to do a particular act, such power carries with it the power to withdraw modify, amend, or cancel the act, which is exercisable in the like manner and subject to like conditions, if any, attached with the exercise of such power. Thus, the Registrar has power to cancel/rescind the registration of a firm, especially in cases when the original registration is vitiated by fraud, and/or material misrepresentation or concealment of facts. Reliance has been placed on the following observation made in a judgment of Full Bench

¹³ *Supra note 5*

¹⁴ *Supra note 6*

¹⁵ 2014 (2) ADJ 524



of Hon'ble Gauhati High Court in **Atowar Rahman v. The State of Assam & Ors.**¹⁶, which reads as under: -

“16. The certificate of registration under section 3 of the Act is issued in the form of an order whereby the Registrar certifies under his hand a society to be a registered society and authorises the validity of such registration to a time-bound period, with provision for extension. The form and contents of the certificate brings it within the meaning of “orders” under section 21 of the General Clauses Act. Therefore, in the absence of provision for cancellation of certificate under the Societies Registration Act and such certificate being in the nature of an order issued by the statutory authority i.e. the Registrar of Societies, the application of section 21 of the General Clauses Act is clearly available to the Registrar to add to, vary or rescind the certificate.

18. To sum it up, we hold as follows:

- (i) an order of cancellation of certificate of registration (CoR) that had been granted under section 3 of the Societies Registration Act, 1860, is an order within the meaning of “orders” under section 21 of the General Clauses Act, 1897 and that of section 23 of the Assam General Clauses Act, 1915.
- (ii) an order of cancellation of certificate of registration (CoR) by the Registrar of Societies is neither a legislative nor a quasi-judicial order but purely an administrative order.
- (iii) an order of the Registrar of Societies cancelling a certificate of registration on a complaint and after giving opportunity of hearing to the contending parties, is an act of expediency and not a quasi-judicial act dictated by rules.
- (iv) the provision of section 21 of the General Clauses Act and/or section 23 of the Assam General Clauses Act, in the absence of an

¹⁶ 2018 SCC OnLine Gau 1575



express power of cancellation of certificate of registration (CoR) under the Societies Registration Act, is available empowering the Registrar to order cancellation, as above.”

It is, thus, prayed that since Registrar had power to cancel/rescind the registration certificate, the impugned orders are not to be interfered, and the present petition be dismissed.

CONTENTIONS ON BEHALF OF RESPONDENT NO.5

21. Learned counsel appearing on behalf of the respondent No.5 had drawn the attention of this Court to a Board Resolution filed on behalf of the petitioner No.1 showing itself to be a private limited company, and signed by Mahinder Kaushik (petitioner No.3) and Sandeep Kumar (petitioner No.2) as Directors. It is submitted that the aforesaid Board Resolution was filed by the petitioner No.1-firm in a suit instituted on its behalf against the respondent No.5.

22. It is the case of the said respondent that the stand of partners of petitioner No.1-firm in the said suit was that the firm was a company and the suit was initially, therefore, filed through one of its directors. It is pointed out that when the said respondent filed an application in the Court to produce the proof of the company, then the petitioner No.1 came up with the plea that it is not a company but a registered partnership firm. It is, therefore, submitted that since doubt was created, the said respondent made the enquiries and obtained certified copies of the documents under the Right to Information Act, 2005, and after obtaining the said documents, a complaint was filed before the



Registrar of Firms, bringing on record the alleged forgeries committed by petitioner No.1-Firm.

23. It is submitted that the Rule 6 of Delhi Partnership (Registration of Firms) Rules, 1972 gives the respondent no. 5 *locus* to file a complaint. In any case, it is submitted that by way of the complaint, the necessary facts were brought to the knowledge of the respondent Nos.1 to 4/authorities, who after examining the same, decided to review the registration certificate of the petitioner No.1-Firm. Reliance has been placed on the order dated 04.07.2014 passed by Hon'ble Allahabad High Court in **W.P.(C)18808/2013**, titled as **“Raj Gramodhyog Sansthan and Anr. v. Assistant Registrar, Firms Societies & Chits & Others”** to contend that in similar circumstances, where the renewal certificate of the society therein was obtained by fraud and misrepresentation, Assistant Registrar had cancelled the registration certificate and same was upheld by Hon'ble Allahabad High Court.

24. Attention of this Court has been drawn to Rule 6 of the Delhi Partnership (Registration of Firms Rules, 1972), and it is submitted that respondent No.5 would come in the category of “other person”, and thus, he had *locus* to file a complaint against the petitioner No.1-Firm. Therefore, it is prayed that the present petition be dismissed.

25. Reliance has been placed on the following judgments by learned counsel for respondent No.5 in support of his case: -



- i. **S.P Chengalvarya Naidu v. Jagannath**¹⁷;
- ii. **Indian Bank v. Satyam Fibres (India) (P) Ltd.**¹⁸;
- iii. **Chen Khoi Kui v. Liang Miao Sheng**¹⁹;
- iv. **Shree Sidhballi Steels Ltd. v. State of U.P.**²⁰;

ANALYSIS AND FINDINGS

26. Heard learned counsels for the petitioners, respondent Nos.1 to 4, and respondent No.5, and perused the records.

27. At the very outset, it is pertinent to note that, the impugned order dated 17.02.2014 has been passed by Deputy Commissioner Firms and not Registrar (Firms). The impugned order passed by Deputy Commissioner Firms, in fact, records that a complaint received was at his Office and after hearing the submissions by the parties and perusing the records, it was thought to be fit case of 'REVIEW' of registration granted by the department to petitioner No.1-Firm on 08.05.2006.

28. Section 57 of the IPA reads as under:-

“57. Appointment of Registrars.—(1) The State Government may appoint Registrars of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

¹⁷ (1994) 1 SCC 1

¹⁸ (1996) 5 SCC 550

¹⁹ (2023) 9 SCC 376: 2023 SCC OnLine SC 1153

²⁰ (2011) 3 SCC 193



(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).”

29. In pursuance of the aforesaid, the Lieutenant Governor of Delhi had issued a notification dated 26.03.2010 bearing no. CI/Admn. RFS-I/2009/1703 published in Delhi, Gazette Part-IV, Extraordinary, which reads as under:-

“Notification

In exercise of powers conferred under section 1 of the Societies Registration Act 1860 as applicable to the National Capital Territory Delhi and section 57 of the Indian Partnership Act, 1932 and in supersession of all previous orders in this regard for the purpose of decentralisation of the work of registration of societies as well as partnership firms, the Lt. Governor is pleased to issue orders, as following:-

- a) Sub-Divisional Magistrate (Headquarter) of the nine Revenue areas of the National Capital Territories Delhi are hereby designated as Registrar of Societies and Firms also for the purpose of carrying out function of Registrar under respective Acts
- b) The area jurisdiction of these nine Registrars shall be corresponding with the area under the jurisdiction of the respective revenue areas.
- c) The nine Registrars so designated shall also act as State Public Information Officer for the work allocated to them under the Right to Information Act, 2005.
- d) The nine Registrars shall be under the day-to-day administrative control and supervision of respective Deputy Commissioner of the revenue areas, however, the Secretary-cum-Commissioner of Industries shall be the overall administrative Head of the Office of the Registrars of Societies and Firms for the purpose of respective Acts
- e) The present Registrar, Societies and Firms in Industries Department shall remain custodian of records of already registered Societies and Firms till transfer of records to respective Sub-Divisional Magistrate



(Headquarter) and shall act as Nodal Officer for smooth transfer of records.

These orders shall take effect on the date of their publication in the official Gazette.”

30. A perusal of the aforesaid provisions would reflect that the Act recognizes Registrar (Firms) in terms of Section 57 of the IPA, to be the concerned Authority for all its purposes mentioned therein. Section 57 of the IPA further provides that the State Government may appoint Registrar (Firms) and in exercise of such power, Hon’ble Lieutenant Governor was pleased to appoint Sub-Divisional Magistrate (Headquarter) of the 9 revenue areas of NCT of Delhi to be designated as Registrar of Societies and Firms in terms of Clause (a) of the aforesaid notification. The said notification also records that the 9 Registrars, i.e., the Sub-Divisional Magistrates, would be under day-to-day control administrative control and supervision of respective Deputy Commissioner, Revenue Areas; however, Secretary-cum-Commissioner of Industry shall be overall administrative head of the Office of Registrar Firms for the purposes of respective acts.

31. Thus, clearly in terms of the aforesaid notification, the Registrar for the purposes of the present Act would be the SDM (Headquarter) of the respective revenue areas of NCT of Delhi and not the Deputy Commissioner of the said area. Power exercised by Registrar of Firms is not delegated but originated by virtue of Section 57 of the IPA. As pointed hereinabove, in the present case, the Deputy Commissioner-Firms had passed the impugned order in his purported exercise of power of ‘REVIEW’ which is not provided for



under the IPA and the Rules framed thereunder by Administrator of Delhi in exercise of powers under Section 71(2) of the IPA. In fact, the entire Act and the Rules are conspicuously silent with regard to provisions of any appeal/review of orders of action taken by the Registrar of Firms under the Act.

32. Thus, assuming, *arguendo*, that the Registrar had the power to cancel the registration, as contended by respondent Nos.1 to 4, in view of Section 21 of GCA, 1897, the said jurisdiction could not have been usurped by the Deputy Commissioner in absence of any provision. The notification, as noted hereinabove, provides that the Registrar would be under day-to-day administrative control and supervision of the respective Deputy Commissioner; however, the same would not vest the Deputy Commissioner or by the Act for that matter, Secretary-cum-Commissioner of Industries with the power otherwise to be exercised by Registrar of Firms under the provisions of the IPA.

33. Be that as it may, the legal issue raised in the present petition needs to be addressed, which is, whether the Registrar of Firms could have cancelled the Registration Certificate granted to the petitioner No.1/partnership firm under Section 64 of the IPA with aid of provision of Section 21 of the GCA.

34. Before proceeding further, some of relevant provisions of IPA, referred to in the judgment, read thus: -



“57. Appointment of Registrars.—(1) The State Government may appoint Registrars of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

58. Application for registration.—(1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating—

- (a) the firm name,
- (b) the place or principal place of business of the firm,
- (c) the names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely:—“Crown”, “Emperor”, “Empress”, “Empire”, “Imperial”, “King”, “Queen”, “Royal”, or words expressing or implying the sanction, approval or patronage of ^{1***} Government ^{2***}, except ³ [when the State Government] signifies ⁴ [its] consent to the use of such words as part of the firm name by order in writing ^{5***}.

59. Registration.—Where the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

60. Recording of alterations in firm name and principal place of business.—(1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed



fee, specifying the alteration, and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

63. Recording of changes in and dissolution of a firm. Recording of withdrawal of a minor.—(1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1)

64. Rectification of mistakes.—(1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

65. Amendment of Register by order of Court.—A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to



such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

67. Grant of copies.—The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

68. Rules of evidence.—(1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

70. Penalty for furnishing false particulars.—Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.”

Further, Section 21 of the General Clauses Act, 1897, reads as under: -

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.—Where, by any 1 [Central Act] or Regulations a power to 2 [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 3 [notifications,] orders, rules or bye-laws so 4 [issued].”



35. Learned Senior Counsel for the petitioners had placed reliance on the following judgments to contend that such a power was not available with the Registrar of Firms: -

a) Reliance is placed on the following paragraphs in **Sri Lakha Granites (supra)**: -

“In this writ petition, the petitioner, a registered partnership firm has assailed the validity of the order dated 18.5.09 passed by the Registrar of Firms, Jaisalmer (“Registrar”) in exercise of the power conferred under Section 64 of the Partnership Act, 1932 (in short “the Act”), cancelling the orders dated 7.2.05 and 13.10.06 recording the changes occurred in the constitution of the firm in the Registrar of firms.

18. Thus, the conjoint reading of the provisions of Section 58, 59, 63 and 69 makes it abundantly clear that the registration of the firm under the Act is optional and it entirely lie within the discretion of the firm or partners concerned. Non registration of the firm does not entail any penal consequences but, by virtue of the provisions of Section 69, an unregistered firm will be unable to enforce its claims against third parties in the civil courts and any partner of unregistered firm will be unable to enforce his claims against third parties or against his fellow partners except the claim which falls within the exception carved out by Section 69(3)(a) of the Act. However, once a firm is registered under the Act, the statement recorded in the register regarding constitution of the firm shall be treated to be conclusive proof of the facts contained therein against the partner making them but, it is no manner, affects the mutual rights and duties of the partners of a firm which shall always be governed by the contract between the partners. But then, in any case, the Registrar appointed by the State Government in exercise of the power conferred u/S. 57 for the purposes of the Act is only a recording officer and possesses no power to adjudicate upon the mutual rights and duties of the partners flowing from the contract arrived at between them.

19. Section 64 of the Act confers on the Registrar a power to rectify any mistake in order to bring the entry in the Register of the Firms relating to



any firm into conformity with the documents relating to that firm filed under Chapter VII of the Act in exercise of the power conferred u/S. 64, the Registrar is empowered to rectify any mistake made by himself or on application made by all the parties who have signed any document relating to the firm filed under the said Chapter.

20. A bare perusal of Section 64 of the Act makes it abundantly clear that the Registrar can exercise the power only for rectification of the mistake so as to bring the entries made into conformity with the documents relating to the firm. In considered opinion of this Court, while exercising the power of rectification of mistakes, the Registrar who is only a registering authority authorised to record the entry in respect of constitution of the firm, its dissolution etc. has no authority to enter into roving and fishing inquiry into the rival claims of the parties and pronounce upon the genuineness or validity of the documents produced. Suffice it to say that if the alteration recorded in the register of the firms is in conformity with the statement made and documents produced in terms of the provisions of Section 63 of the Act, no proceedings for cancelling or deleting the entries already made can be initiated by the Registrar in purported exercise of the power u/S. 64 of the Act. Moreover, as per the provisions of sub-section (2) of Section 64, the proceedings for rectification of mistake can be initiated by the Registrar only on application made by all the parties who have signed any document related to the firm filed before him and not otherwise. **Therefore, no proceedings could have been initiated by the Registrar for cancellation of the entry recorded in conformity with the provisions of Section 63 of the Act, in the garb of the power conferred u/S. 64 of the Act for rectification of the mistakes and that too at the instance of one of the partners of the firm who is alleged to have retired after reconstitution of the partnership.**

22. Indisputably, by way of appeal preferred as aforesaid, the respondent No. 1 sought cancellation of the registration dated 13.10.06 and 7.2.05 and not the rectification of an error in the entry recorded in conformity with the provisions of Section 63, invoking the jurisdiction of the Registrar u/S. 64 of the Act. **It is not disputed before this court that no appeal is maintainable before the Registrar for cancellation of the entries made in the register of the firms. Thus, the proceedings for**



cancellation of the entry initiated by the Registrar on the appeal preferred by the respondent No. 1 as aforesaid, in purported exercise of the power u/S. 64 of the Act were ex facie without jurisdiction.

26. Rule 13 of the Rules authorising the Registrar to hold inquiry and investigation can only relate to the matter to be dealt with by the Registrar under the provisions of the Act and not beyond it. Therefore, the contention raised by the learned counsel for the petitioner on the strength of Rule 13 of the Rules is also devoid of any merit.

27. Learned counsel for the petitioner is justified in contending that the remedy for cancellation of a partnership deed is available under the general law before the civil Court of competent jurisdiction and the Registrar has no jurisdiction whatsoever to entertain any appeal or application for declaring the reconstitution of partnership deeds as null and void and cancelled the entries made on the basis of such partnership deeds. If a document is claimed to be void or voidable, the same could always be so adjudged by the Civil Court of competent jurisdiction in terms of the provisions of Section 31 of the Specific Relief Act. Moreover, as per the provisions of Section 65 of the Act, a court deciding any matter relating to the registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision and the Registrar shall amend the entry accordingly. This Court is informed that the respondent No. 1 has already filed a civil suit before the District Judge, Jaisalmer for cancellation of reconstituted partnership deeds. Suffice it to say that if the reconstituted partnership deeds are declared to be void and cancelled by the civil Court, it is always open to the respondent No. 1 to make an appropriate application before the Registrar for amendment in the entry in terms of provisions of Section 65 of the Act.

28. Thus, in view of the discussion above, in considered opinion of this Court, the proceeding initiated by the Registrar for cancellation of the entries recorded in the Registrar of the Firms in conformity with the provisions of Section 63 of the Act and the order impugned passed in purported exercise of the power u/S. 64 of the Act are ex



facie without jurisdiction being beyond the power conferred upon him by Section 64 of the Act.”

(emphasis supplied)

b) Reliance is placed on the following paragraphs in *Supreme Tech Engineering (supra)*: -

“21. The language employed by the legislature in casting the relevant provision namely Section 64(1) would eminently go to show that what is envisaged is rectification of mistake. This in itself is sufficient to persuade the Court to accept the plain and simple purport of the provision namely that provision is only for the purpose of rectifying the mistake. **While undertaking the procedure of rectifying the mistake, as could be seen from the procedure itself, at least the statute does not lay down any elaborate scope of enquiry which would render justification to exercise of enquiring into the disputed claims, which otherwise can never be subject matter of adjudication by the administrative authority. Even if it is assumed and presumed that authority is exercising quasi judicial power which is unfortunately is not the present case. So far as the provision of Section 64(1) of the Act is concerned. The principle of administrative law has by now cristalized to conclude safely that where ever there is disputes in respect of veracity of a claim of a party, same is required to be established upon leading of evidences by the administrative authority, if not equipped with proper elaborate procedure enabling it to come to a conclusion, then the said authority cannot be said to have power to adjudicate upon disputes. In the instant case, the plain language of Section 64(1) eminently prescribes the purport of the Section and provision and therefore, in my view, there exists strong case in favour of the petitioner for quashing of the order impugned.**

22. This Court is unable to accept the submission canvassed on behalf of the respondent no. 2 for upholding the order on the basis of the decision of Madras High Court as well as Calcutta High Court, as the facts of those cases do not warrant applicability of those ratio so far as the facts of the present case are concerned, as they are distinguished from the facts of the present case. Those decisions would be of no avail to the respondent no. 1 in supporting the order passed by respondent no. 1.



23. The decisions cited at the bar, on behalf of the petitioner, of Rajasthan High Court and Delhi High Court would go to show that the facts and ratio of those cases will have applicability to the facts and circumstances of the present case also. The decision cited at the bar on behalf of the petitioner have already been listed hereinabove and therefore, in order to avoid repetition, the Court would not elaborately delve thereupon. Suffice it to say here that the view expressed by the Rajasthan High Court in case of "*Sri Lakha Granites v. Eklavya Singh*", reported in 2010 (0) ALJ-RJ 1823320 and Delhi High Court in case of "*Raman Kapur v. Government Of The National Capital Territory Of Delhi*", reported in 2002 (0) ALJ-DL 1319193, is the ratio which this Court would follow, as the facts of those cases are much more similar and similar to the facts of the present case. The Court is unable to accept the submission of learned advocate for respondent no. 2 that the factum of resignation being not accepted on account of documentary evidence would be of no consequence, as this Court is persuaded to hold that so far as the provision of Section 64(1) is concerned, the adjudication procedure is unfortunately not prescribed thereunder.

24. Learned advocate for respondent no. 2's reliance upon the Gujarat Rules would also be of no avail to support or sustain the order passed by respondent no. 1, as when plain reading of the parent statute itself is very clear. Amusing for the sake of argument that there exists some scope of inquiry under the rule, then, that scope cannot be stretched to justify adjudicatory process assumed by respondent no. 1 and hence that submission is also of no avail to the respondent no. 2.

25. The Court is of the considered view that in light of the ratio laid down by the Rajasthan High Court as well as Delhi High Court, so far as Section 64(1) of the Partnership Act is concerned, the petitioner's case is required to be accepted. The order impugned is required to be quashed and set aside and is accordingly quashed and set aside. The acceptance of this petition would not be in any manner construed as pronouncing upon the claim of the respondent of no. 2 qua his resignation or his entitlement to continue, as it is absolutely open to him to approach the competent Court for appropriate adjudication on these issues. This petition is accepted only on the principle that Section 64(1) of the Partnership Act would not justify the Registrar in assuming power to himself for adjudicating the disputed question of facts."



(emphasis supplied)

c) On **Areness Foundation (supra)**, wherein, learned Division Bench while dealing with the provisions of The Registration Act, 1908, regarding power of Registrar and source of such power to annul a registration of document, had observed and held as under: -

“16. Even in *Thota Ganga Lakshmi* (supra) the Supreme Court clarified by referring to Rule 26(k)(i) that it is only when a sale deed is cancelled by a competent court that the cancellation deed (in that case) can be registered and that too after notice to the parties concerned. So in view of the clear exposition of law, the impugned circular issued, giving power to the Registrar to annul the registration is ultra vires the Registration Act.

17. In so far as the other judgments in *Indian National Congress (I)* (supra), *Mannalal Khetan* (supra), *Jantia Hill Truck Owners Association* (supra) and *Joint Action Committee of Air Line Pilots Association of India* (supra) relied upon by Mr. Singh are concerned, the same are on the following propositions:

- (1) Even if there is no express power under the Registration Act to cancel/recall the registration of an instrument, it can still be cancelled/recalled by exercising inherent powers, if the registration is obtained by fraud.
- (2) The source of power to recall a registration on the grounds mentioned in impugned circular is also found in Section 82 of the Act.
- (3) The power to recall a registration by the registering authority on account of fraud as contemplated in the impugned circular can be independently traced to Section 21 of the General Clauses Act.

18. Suffice to say in view of the law laid down by the Supreme Court in *Satya Pal Anand* (supra) it must be held that Registrar has no powers



under Section 82 of the Registration Act nor can invoke Section 21 of the General Clauses Act, to annul a registration of a document. Accordingly, the circular dated July 13, 2016 to the extent it empowers the Registrar to annul a registered document is ultra vires the Registration Act, 1908 and is set aside.”

d) Reliance has also been placed on judgment of Hon’ble Supreme Court in **Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. (supra)**, wherein, while dealing with issue whether the Commissioner, Income Tax can cancel the registration of certificates granted under Section 12A of the Income Tax Act, 1961, it was observed and held as under: -

“17. In our considered opinion, the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12-A till 1-10-2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12-A of the Act. Second, the order passed under Section 12-A by the CIT is a quasi-judicial order and being quasi-judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.

20. In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12-A of the Act, is neither legislative nor an executive order but it is a “quasi-judicial order”. It is for this reason, Section 21 has no application in this case.

21. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification



or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See *Interpretation of Statutes*, Ninth Edn., by G.P. Singh, p. 893.)”

36. *Per contra*, learned counsel for respondent Nos.1 to 4 has placed reliance on the judgment of Full Bench of Hon’ble Gauhati High Court in **Atowar Rahman (supra)** wherein, the said Court was dealing with following reference in respect of Societies Registration Act, 1860: -

“Two questions of law have been referred by a Single Bench of this Court for a decision by a larger Bench. The matter is placed before this Full Bench, although the same could have been answered by a Division Bench of this Court. Be that as it may, the two questions are:

(17) Whether registration of a Society by the Registrar of Firms & Societies, Assam under section 3 of the Societies Registration Act, 1860 cannot be cancelled once registered?”

37. Answering the aforesaid reference, the Full Bench relied upon a judgment of Hon’ble Supreme Court in **Indian National Congress (supra)** and observed and held as under: -

“11. In *Shree Sidhballi Steels Limited (supra)* the Supreme Court explained that section 21 of the General Clauses Act, which is of general application, is based on the principle that where there is power to create, it includes the power to destroy as well as the power to add to, amend, vary or rescind; where there is a power conferred on any authority to do a particular act, such power carries with it the power to withdraw, modify amend or cancel the act, which is exercisable in the like manner and subject to like conditions, if any, attached with the exercise of the power.



12. One of the primary questions in Indian National Congress (I) (supra) that fell for consideration and which is relevant to the case in hand was whether the Election Commission of India, which wields power to register a political party under section 29A of the Representation of the People Act, 1951, is equally empowered to revoke or rescind the order of registration on application of section 21 of the General Clauses Act. To address this issue, the Supreme Court was of the opinion that another question that arose for consideration is whether the Election Commission of India in exercise of its powers under section 29A of the above Act, acts **administratively or quasi-judicially**. On consideration of the decisions referred to at paragraphs 20 to 24 of the reported case, the Supreme Court underlined the legal principles as to when an act of a statutory authority would be a quasi-judicial act. The Supreme Court noted the legal principle in the following words:

“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 subject and (d) the statutory authority is required to act judicially under statute, the decision of the said authority is quasi-judicial”.

13. Having said that, it was also held that mere presence of one or two attributes of quasi-judicial authority would not render an administrative act as a quasi-judicial act. As an illustration, it was held that an administrative authority may determine question of fact before arriving at a decision which may affect the right of an individual but such decision would not be quasi-judicial. Taking it further, it was held that what distinguishes an administrative act from a quasi-judicial act is that in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially, in that, where law requires that an authority prior to arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority. The Supreme Court took note of another test which distinguishes administrative function from quasi-judicial function. It was held that an 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.



14. Section 29A of the Representation of the People Act, in the light of the above principles of law, was answered to be an order of the Election Commission which is neither a legislative nor an executive order but a quasi-judicial order. Such conclusion was drawn upon due examination of section 29A. The Supreme Court made reference to the provisions under the various sub-sections of section 29A and explained that it provides as who can make an application for registration as a political party; the making of application to the Commission; what would be the contents of the application; provision obligating the Election Commission to consider all particulars in its possession and any other necessary and relevant factors and deciding either to register the association or body as a political party or not after giving the representatives of the association reasonable opportunity of being heard, and thereupon, the requirement to communicate its decision to the political party. The Supreme Court held that from the provisions under the various sub-sections of section 29A it is manifest that the Election Commission is required to act judicially and in this view of the matter the act of the Commission is quasi-judicial.

15. Unlike the rigour of procedure envisaged under section 29A of the Representation of the People Act, 1951, section 3 of the Societies Registration Act, 1860 only obligates the Registrar to certify under his hand that the concerned society is registered under the Act. The requirement of payment of necessary fess to the Registrar for every such registration, which would be accounted for to the State Government, is also envisaged. A perusal of the provision under section 3 of the Act makes it abundantly clear that the same does not involve any such procedure as under section 29A of the Representation of the People Act, 1951. In other words, the function to be discharged by the Registrar under section 3 of the Act is administrative in nature and not a quasi-judicial one. **Thus, unlike the power of the Election Commission under section 29A which is a quasi-judicial act, the power of the Registrar under section 3 of the Act is not a quasi-judicial but purely an administrative act. Having held so, the very next issue for consideration would be whether the act of cancellation of the certificate of registration by the Registrar, involving a lis between parties, would amount to a quasi-judicial act. First and foremost, the Societies Registration Act does not prescribe any procedure requiring the statutory authority to act judicially under the statute for cancelling a certificate of registration. The presence of a lis or contest between the contending parties before a statutory authority**



will not alone clothe the proceeding as a quasi-judicial one. The determination of a question of fact and reaching a decision after affording opportunity of hearing to the person whose right is going to be affected, would not ipso-facto make it a quasi-judicial act. It would be a different thing if the concerned statute requires that an authority before arriving at a decision must make an enquiry. Such a requirement of law would make the authority a quasi-judicial authority. **Taking a leaf out of the reported case in Indian National Congress (I) (supra), another test which distinguishes administrative function from quasi-judicial function is that the authority who acts quasi-judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by policy and expediency.** Without any doubt, the act of cancellation of CoR is not dictated by the Act. It is absolutely in the realm of expediency where, on a complaint that a CoR issued to a party had been obtained by fraud, misrepresentation and/or on any sufficient reasons, the Registrar hears the parties and arrives at a decision. **In the scheme of the Societies Registration Act, read with the Assam Act, no procedure is laid down as to the exercise of power of rescission or cancellation of a CoR. Notwithstanding such absence, the compliance of the principles of natural justice is inherently implicit and has to be read into in the exercise of the power of rescission or cancellation so as to sub-serve the very principles underlying section 21 of the General Clauses Act.** The above decision of the Registrar is not the fall-out of any act which the statute specifically empowers the Registrar to do. It is an act of expediency on the part of the Registrar, which may involve a lis or contest between the contending parties. The presence of a lis or one or two attributes of a quasi-judicial act would not make an administrative act as quasi-judicial act, as in the instant case.

16. The certificate of registration under section 3 of the Act is issued in the form of an order whereby the Registrar certifies under his hand a society to be a registered society and authorises the validity of such registration to a time-bound period, with provision for extension. **The form and contents of the certificate brings it within the meaning of “orders” under section 21 of the General Clauses Act. Therefore, in the absence of provision for cancellation of certificate under the Societies Registration Act and such certificate being in the nature of an order issued by the statutory authority i.e. the Registrar of Societies, the application of section 21 of the General Clauses Act is**



clearly available to the Registrar to add to, vary or rescind the certificate.

17. To answer the argument advanced by Mr. Choudhury that the Societies Registration Act only envisages express provision for dissolution of societies and not cancellation of registration and if the latter is to be allowed by importing section 21 of the General Clauses Act the same would distort or nullify the very scheme of the Societies Registration Act, we say that the provision for dissolution of societies under section 13 of the Act is an internal act of the required number of members of any society to determine that it shall be dissolved. Such act is altogether a different legal concept from cancellation. Dissolution cannot be an alternative to cancellation. Whereas dissolution of a society is an act provided under the statute, cancellation of registration is an act dictated by expediency alone. To make cancellation of registration by the Registrar by virtue of section 21 of the General Clauses Act on ground of expediency, it cannot be said that the transaction would amount to eroding or distorting the very scheme under the Societies Registration Act. A contrary view cannot have legal sanction.”

(emphasis supplied)

38. In the present case as well, there is no specific provision in the IPA or Rules made thereunder with regard to a power to cancel the registration granted by the Registrar of Firms. In these circumstances, power to do the same is being traced to Section 21 of the GCA. For that purpose, a distinction which was drawn in the **Indian National Congress (supra)** followed by Full Bench of Gauhati High Court in **Atowar Rahman (supra)**, was whether the act of grant of registration is an administrative or quasi-judicial function. The Hon'ble Supreme Court in the **Indian National Congress (supra)** had observed and held as under: -

“20. On the argument of parties, the question that arises for our consideration is, whether the Election Commission, in exercise of its



powers under Section 29-A 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 29-A 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 was contest between the two contending parties and the statutory authority was required to adjudicate upon the rights of the parties. In *Cooper v. Wilson* [(1937) 2 KB 309 : (1937) 2 All ER 726 : 106 LJKB 728 (CA)] 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.

21. 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 a quasi-judicial decision when such a statutory authority is required to act judicially. In *R. v. Dublin Corpn.* [(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.”



22. Atkin, L.J. as he then was, in *R. v. Electricity Commrs.* [(1924) 1 KB 171 : 1923 All ER Rep 150 : 93 LJKB 390 (CA)] stated that when any body of persons has 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 a 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 is 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.

23. In *Province of Bombay v. Khushaldas S. Advani* [1950 SCC 551 : AIR 1950 SC 222 : 1950 SCR 621] it was held thus: (AIR p. 260, para 173)

“(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 (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.”

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid 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.

33. 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 29-A 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.

34. 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 v. East Elloe Rural Distt. Council* [(1956) 1 All ER 855 : 1956 AC 736 : (1956) 2 WLR 888 (HL)] it was stated that the effect of fraud would normally be to vitiate all acts and orders. In *Indian Bank v. Satyam Fibres (India) (P) 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 to 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 deregister such a political party.”

39. In **Atowar Rahman (supra)**, after discussing the judgment of the Hon’ble Supreme Court in the **Indian National Congress (supra)**, it was held that unlike the power of Election Commission under Section 29A of the Representation of Peoples Act, 1951, the power of Registrar under Section 3



of the Societies Registration Act, 1860, was not quasi-judicial but purely an administrative act. However, learned Full Bench, after determining that the power exercised by Registrar under Section 3 of the Societies Registration Act, 1860, is purely an administrative act, further proceeded to determine, whether the act of cancellation of registration by Registrar would amount to a quasi-judicial act. Learned Full Bench held that the Societies Registration Act does not prescribe any procedure requiring the statutory authority to act judicially under the statute for cancelling a certificate of registration. It was observed that, if the concerned statute requires that an authority before arriving at a decision must make an enquiry then, such a requirement of law would make the authority a quasi-judicial authority. An additional test, distinguishing administrative function from quasi-judicial function was also noted that an authority, who acts quasi judicially, is required to act according to the Rules whereas the authority which acts administratively is dictated by policy of expediency. It was further observed that in the scheme of the Societies Registration Act read with the Assam Act, no procedure is laid down for exercise of power of recession or cancellation of the certificate of registration, and thus, it was held that it is within the realm of expediency, where on a complaint that certificate of registration issued to a party had been obtained by fraud, mis-representation and/or any sufficient reason, the Registrar would hear the parties and arrives at a decision. An additional feature in respect of certificate of registration under Section 3 of the said Act, was noted that it's form and contents brought it within the meaning of 'orders' under Section 21 of the GCA. Thus, it was held that such certificate being in the nature of an order issued by the statutory authority, the power under Section 21 of the GCA would be available to the Registrar. The



relevant observation in **Atowar Rahman (supra)** for sake of completeness is reproduced as under: -

“16. The certificate of registration under section 3 of the Act is issued in the form of an order whereby the Registrar certifies under his hand a society to be a registered society and authorises the validity of such registration to a time-bound period, with provision for extension. The form and contents of the certificate brings it within the meaning of “orders” under section 21 of the General Clauses Act. Therefore, in the absence of provision for cancellation of certificate under the Societies Registration Act and such certificate being in the nature of an order issued by the statutory authority i.e. the Registrar of Societies, the application of section 21 of the General Clauses Act is clearly available to the Registrar to add to, vary or rescind the certificate.”

(emphasis supplied)

40. In this background, it will be pertinent to note that, Section 71(2)(d) of the IPA provides for regulation of procedure of the Registrar in case a dispute arises in the following terms: -

“71. Power to make rules.—

(2) The State Government may ³[also] make rules—

(d) regulating the procedure of the Registrar when disputes arise;”

40.1. Under the present Act, as already noted hereinbefore, Rules, *i.e.*, Delhi Partnership (Registration of Firms), Rules 1972, have already been made by



Administrator of Delhi in exercise of power under Section 71(2) of the IPA.
Rules 6, 7, 9 of the said Rules reads as under: -

“Rule 6. Procedure on disputes.

Where any partner or other person interested makes a protest in writing to Registrar disputing any entry made in the register of firms, the Registrar shall record such protests and make a reference thereto in "Red ink" in the remarks column against the disputed entry.

Rule 7. Examination of documents received by the Registrar.

On receipt of every statement, intimation, notice or any other document required by the Act to be filed or registered in his office, the Registrar shall examine it, and if it is found to be defective or incomplete in any of the particulars required to be given therein or not verified in the manner prescribed by these rules or in any way not in accordance with the provisions of the Act or these rules, he shall return it to the person who applied for filing or recording or to the firm concerned, and until proper rectification or completion is made, he shall not register or file the document in question nor shall he file or register the same unless and until the prescribed fees are paid to and received by him. The Registrar shall pending the payment of the such fees, act in the same way if no such document or fact have been tendered for filing or recording or registration.

Rule 9. Enquiries and investigation by the Registrar in case of disputes.

The Registrar may in his discretion institute such enquiries or make such investigations in respect of any matter as may in his opinion be necessary for the performance of his duties and administration of the Act, especially when a dispute arises amongst the several partners of a firm, and the Registrar may in his discretion call upon any of the partner or all of them to produce any original deed, document or such evidence as he thinks fit.”



Thus, the aforesaid Rule 6 provides for Registrar to record such protests and make a reference regarding the same in ‘Red Ink’ in the remarks column against the disputed entry and no more. Further, perusal of Rules 7 and 9 of the Rules show that the Registrar of Firms has been bestowed with power to examine the documents received by him and he may in his discretion institute such enquiries or make such investigations in respect of any matter, as may in his opinion, he deems necessary for the performance of his duties and administration of Act, especially when a dispute arises amongst the several partners of firm. Thus, despite a procedure being prescribed on dispute, there is no power given to the Registrar for de-registration/cancellation. However, the aforesaid provisions demonstrates that the authority, *i.e.*, Registrar of Firms, is required to act as per Rules in case of disputes and therefore, will be considered a ‘quasi-judicial’. At this stage, it will be apposite to refer to the judgment of learned Division Bench of Hon’ble Calcutta High Court in **Durga Prasad Sarawagi & Ors. v. Registrar of Firms, West Bengal & Anr. (supra)**²¹, wherein while interpreting the Rule 8 of Bengal Partnership Rules, 1933, enacted in State of West Bengal in exercise of power under Section 71(2) of the IPA, akin to Rule 9 of the Delhi Partnership (Registration of Firms), Rules 1972, it was observed and held as under: -

“13. Then Rule 8 provides:

“The Registrar may in his discretion institute such enquiries or make such investigation in respect of any matter as may in his opinion be necessary for the proper performance of his duties and administration of the Act, especially when a dispute arises amongst the several partners of a firm. The Registrar may in his discretion call upon any of the partners or all of them to produce any original deed, document or such other

²¹ 1965 SCC OnLine Cal 256: AIR 1966 Cal 573



evidence as he thinks fit.” **This Rule appears to indicate that a discretion is given to the Registrar to make enquiries. It also makes it clear that in enquiring the Registrar acts in quasi-judicial manner in the sense that he should call for the original deeds and documents or other evidence as he thinks fit.** The Registrar did nothing of the kind in this case. He did nothing at the stage before he made the impugned entry “dissolved” nor did he make the enquiries when he was called upon by the appellant to rectify his mistakes. He has powers under Rule 8 which not only are powers to be exercised in his own discretion but are powers to make such enquiries or such investigation as he may in his discretion think necessary for the proper performance of his duty and in the administration of the Act and especially when the dispute is among the several partners. That test is more than satisfied here on the ground of proper administration of the Act, dispute among partners and not to contradict his own Register and the other entries contained therein. He should have called for an investigation. He did not.”

(emphasis supplied)

40.2 In these circumstances, in absence of any provision to cancel the registration certificate, recourse to Section 21 of the GCA could not be taken.

41. Furthermore, the acknowledgement of receipt dated 08.05.2006 issued by Registrar of Firms, Government of NCT of Delhi, with respect to registration of the petitioner No.1-firm, has been reproduced thus: -



FORM B

[Rule - 8]

Acknowledgment of Registration of Firm

[of the Delhi Partnership (Registration of Firms) Rules, 1972]

The Registrar of Firms, Delhi, hereby acknowledges the receipt of the statement prescribed by section 58(1) of the Indian Partnership Act, 1932.

The statement has been filed and the name of the firm M/S UNIVERSAL
PROMOTORS & DEVELOPERS has

been entered in the register of firm, as No. 1003 of 2006



Dated the 08 day
of May 2006

Balwant Singh
Registrar of Firms
Govt. Of NCT of Delhi
Delhi

Thus, unlike an 'order' under Section 3 of the Societies Registration Act, 1860, as noted by Hon'ble Full Bench in **Atowar Rahman (supra)**, the registration certificate under IPA is an acknowledgment of acceptance of statement prescribed by Section 58(1) of the IPA and entering the name of firm in the register of firm and cannot be considered an 'order' and recourse to Section 21 of GCA will, thus, not be available.



42. It has been vehemently contended that certificate of registration was obtained by fraud, and thus, the cancellation of the same was justified. The essence of complaint was that the partnership deed, which was registered on 08.05.2006 was on the basis of a deed, which was signed between petitioner Nos. 2 and 4 on 01.01.2006. The deed was accepted and registered and it continued to operate till amended and supplementary deeds were filed. Alongwith the aforesaid amended and supplementary deeds, letter of resignation dated 31.03.2006 of petitioner No.4 was also submitted. This was filed before Registrar of Firms, Patparganj, Delhi, by way of Form No. V (Section 63(1)), for 'Notice of Change in the Constitution of a Registered Firm' which is reproduced as under: -



Form No. V
[Section 63(1)]

Notice of Change in the Constitution of a Registered Firm

THE INDIAN PARTNERSHIP ACT, 1932.

Delhi Registration of Partnership Firms Rule 1972

To

The Registrar of Firms,

New Delhi

I, Sandeep Sharma being an in-coming / continuing / outgoing partner of the Firm Universal Promoters & Developers do hereby give you notice to the following change in the continuation of the said firm.

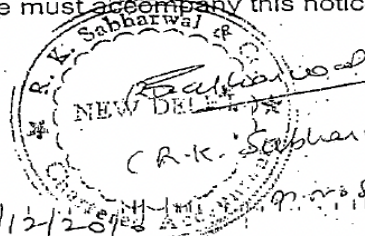
① Smt. Aakha Sharma retired from partnership
on 16.3.13/2006.

② Sh. Mahinder KauriK has been admitted as
partner on 16.12/2006.

(Describe the change briefly but clearly and precisely)

NB : Certified copy of alteration with certified copy of the new deed if one has been executed and certified translation of alteration and the deed if not in English language must accompany this notice and be shortly referred to here..

Verified



For Universal Promoters And Developers

Sandeep Sharma
Signature
Partner

Date

2/12/2010

* Name of the Firm

This form must be signed by any of the partners or his agent specially authorized in this behalf in the presence of a witness who must be either Gazetted Officer, Advocate, Attorney, Vakill, Magistrate or Registered Accountant.

Received
Office of the Registrar of (Firms)
Plot No. 419 F.I.E. Patparganj
Indl. Area, Delhi-110092

43. It is pertinent to note that, till that stage, the letter of resignation was not submitted before any authority or was acted upon. Both the amended and



supplementary deeds are dated 31.03.2006 and 17.02.2006 respectively. Thus, at the time of registration, there was no misrepresentation or concealment made by the petitioner No.1 or its partners (petitioner Nos.2 and 4) while submitting the documents before Registrar of Firms. It is the case of the petitioners that a resignation letter dated 31.03.2006 of petitioner No.4 was not acted upon by the partners at that stage for the reasons as stated by them. In these circumstances, the resignation letter dated 31.03.2006 was brought into effect by the petitioners only when it was submitted before Registrar of Companies on 02.12.2010. By way of aforesaid Form V, the petitioners gave a full disclosure with regard to the resignation letter, amended partnership deed and the supplementary partnership deed. It is important to note that had the petitioners not filed the resignation letter dated 31.03.2006 of petitioner No.4 then, the same would have never seen the light of the day. It is the case of respondent Nos.1 to 4 since the resignation was dated 31.03.2006, petitioner No.4 could not have signed the deed dated 31.03.2006 which was finally registered, and therefore, it amounted to fraud.

44. At this stage, it is apposite to refer to a judgment rendered by learned Single Judge of this Court in **Brij Mohan Gupta v. The Registrar of Societies**²², wherein, while discussing the concept of fraud in public law and fraud on the statute, the learned Single Judge had observed and held as under:

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“21. Reference, for the present purposes, is made to the judgment of the Supreme Court in *Shrisht Dhawan v. Shaw Brothers*, (1992) 1 SCC 534 : AIR 1992 SC 1555, wherein the Court had the occasion to consider

²² 2012 SCC OnLine Del 2535



the concept of fraud in public law and fraud on the statute. The Supreme Court observed as under:

*“But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction can be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja Khawaja v. Secretary of State for Home Deptt., 1983 (1) All ER 765 that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. In Pankaj Bhargava ((1991) 1 SCC 556 : AIR 1991 SC 1233) (supra) it was observed that **fraud in relation to statute must be a colourable transaction to evade the provisions of a statute.** ‘If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope’ [Craies on Statute Law, 7th Edition, p. 79]. Present day concept of fraud on statute has veered round abuse of power or malafide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. **The colour of fraud in public law or administrative law, as it is developing, is assuming different shade. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or nonexistence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud.** Even in commercial transactions non-disclosure of every fact does not vitiate the agreement, ‘In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain’ [Anson's Law of Contract]. In public law the duty is not to deceive. For instance non-disclosure of any reason in the application under Section 21 of the Act about its need after expiry of period or failure to give reason that the premises shall be required by son, daughter or any other family member does not result in misrepresentation or fraud. It is not misrepresentation under Section 21 to state that the premises shall be needed by the landlord after expiry of the lease even though*



*the premises in occupation of the landlord on the date of application or, after expiry of period were or may be sufficient. **A non-disclosure of fact which is not required by law to be disclosed does not amount to misrepresentation.***"

(emphasis supplied)

22. In light of the aforementioned judgment, **the disclosure of incorrect facts by the President of the society in the affidavit - as regards the desirous members of the society not being related by blood, would not amount to committing fraud on the statute, since the disclosure of the desirous persons being related by blood, or otherwise, is not required by the statute, in the first place.** In fact, the said requirement is patently illegal. Keeping in view the object and provisions of the Societies Registration Act, as discussed above, the non disclosure of the desirous members of the society being related by blood or otherwise, could not result in exercise of jurisdiction by the registrar to reject the application to seek registration, or cancel the registration already granted.

25. I am, therefore, of the view that **section 21 of the General Clauses Act could not have been invoked in the facts of the present case by the Registrar to cancel the registration of the society.** The *inter se* disputes between the petitioner and respondent nos. 2 to 6 with regard to management and control of the society in question cannot be decided in these proceedings. **It shall be open to the parties to raise all such issues in appropriate civil proceedings, and in accordance with the law.** As above noted, this Court has not gone into the issue of illegality, if any, committed by the deponent of the affidavit, namely, the President of the society in the present case. The said issue may be raised and decided on its own merits, in appropriate proceedings, if and when raised."

(emphasis supplied)

45. As already noted hereinbefore, the resignation letter dated 31.03.2006 though in existence was never acted upon, and thus, at the time of first registration, the same was not required to be disclosed. A letter of resignation



will be effective only when it is tendered and accepted. Hon'ble Supreme Court in **Dr. Prabha Atri v. State of U.P.**²³, while analyzing as to when a letter could be construed to mean or amounted to a letter of resignation or merely an expression of the intent to resign, had observed and held as under: -

“10. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but **whether the letter dated 9-1-1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a “resignation”, it must be unconditional and with an intention to operate as such.”**

(emphasis supplied)

Thus, in view of the fact that, the resignation letter dated 31.03.2006 was never acted upon, the initial registration dated 08.05.2006, therefore, cannot be faulted with.

46. Thus, in these circumstances, what is borne from the records is that the Form No. V filed on behalf of the partnership firm in 2010 for bringing on record change in the constitution of the firm was defective inasmuch as the resignation letter and the deeds were in contradiction with the previous documents already filed with the respondent Nos.1 to 4. For the subsequent change, the parties could have brought on record a contemporaneous resignation letter from petitioner No.4 as well as the supplementary and

²³ (2003) 1 SCC 701



amended partnership deeds. The said defect could have been examined by the Registrar under Rule 7 of the Delhi Partnership (Registration of Firms) Rules, 1972, which provided for 'Examination of documents received by the Registrar'. In these circumstances, whether the initial registration 08.05.2006 was obtained by fraud is doubtful. The letter of resignation dated 31.03.2006 which was placed on record by way of Form No. V on behalf of the petitioner No.1-firm could not have been given a retrospective effect to nullify the initial registration.

47. It is the case of respondent No 5 that on an application being moved on his behalf under Order VII Rule 11 of the CPC read with Section 69(2) of the IPA in a suit, C.S. OS No.153/15, titled as 'M/s. Universal Promoters and Developers v. Gyan Chand and Ors.', learned ACJ, Panipat, *vide* order dated 19.05.2012, asked the plaintiff therein, *i.e.*, petitioner no. 1 herein, whether they are a registered firm or a company. It is the case of the respondent No.5 that, thereafter, in order to avoid the return of the plaint, these documents were manipulated. It is pertinent to note that the aforesaid order was passed in May 2012, and the documents, *i.e.*, resignation letter, supplementary deed and amended deed were placed on record by petitioner No.1 by way of Form No. V filed on 06.11.2010.

48. The judgments relied upon by the petitioners in **Sri Lakha Granites (*supra*)**, **Supreme Tech Engineering (*supra*)**, which has been rendered in terms of the IPA are squarely applicable to the facts of the present case. In fact, in **Sri Lakha Granites (*supra*)**, the learned Single Judge of Hon'ble Rajasthan High Court noted that the cancellation of entries made on an appeal



preferred in purported exercise of power under Section 64 of the IPA, were *ex-facie* without jurisdiction, as there is no appeal maintainable before the Registrar for the cancellation of such entries in the Register of Firms. In the present case, as well, as already noted hereinbefore, the cancellation of registration has been done by the Deputy Commissioner in his purported exercise of power of 'REVIEW' under Section 64 of the IPA, which is non-existent. Similarly, in the said judgment, it was also noted that the remedy for canceling a partnership deed is available under the general law before a civil Court and the Registrar of Firms does not have a jurisdiction to entertain appeal or application for declaring partnership deeds as null and void or cancelling the entries made on the basis of such partnership deed. Similarly, in **Supreme Tech Engineering (supra)**, it was held that while undertaking the procedures for rectifying the mistakes the statute does not provide for any elaborate scope of inquiry and it was held as under: -

“21. While undertaking the procedure of rectifying the mistake, as could be seen from the procedure itself, at least the statute does not lay down any elaborate scope of enquiry which would render justification to exercise of enquiring into the disputed claims, which otherwise can never be subject matter of adjudication by the administrative authority.”

(emphasis supplied)

49. The judgment given by the Hon'ble Full Bench of Gauhati High Court in **Atowar Rahman (supra)** was in respect of the provisions under the Societies Registration Act, 1860, which, as already noted hereinbefore, is distinguishable with respect to the provisions and the scheme of the Indian Partnership Act, 1932.



50. In view of the above findings, issue of *locus standi* of respondent No.5 to file a complaint before Registrar of Firms needs no adjudication by this Court.

CONCLUSION

51. In the considered opinion of this Court, after analyzing the provisions of the Act and the Rules made thereunder, the act of cancellation of registration would be quasi-judicial in nature and in absence of any express power provided in the Act or the Rules made thereunder, the Registrar of Firms would not have a power to cancel the registration. The power which has been conferred upon the Registrar by Rule 6 of the Delhi Partnership (Registration of Firms), Rules, 1972, enacted in exercise of the power under Section 71(2) of the IPA, is with respect to the noting of protest and making of reference in the manner as provided in the said Rule. Even otherwise, Deputy Commissioner, Firms, would not have a power to pass an order of the nature as has been done in the present case. Finally, as already noted hereinbefore, it is not a case of fraud as has been noted in the impugned order. Consequently, impugned orders dated 17.02.2014 and 05.01.2015 passed by Deputy Commissioner, Firms, and Registrar of Firms, respectively, are set aside. Registration Certificate dated 08.05.2006 of petitioner No.1-firm is restored.

52. The present petition is allowed and disposed of accordingly.

53. No order as to costs.



54. Copy of the judgment be sent to the concerned Registrar of Firms as well as the Office of Special Commissioner, Industries, Patparganj Industrial Area, Delhi, for necessary information and compliance.

55. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

FEBRUARY 27, 2026/nk/kr/ns