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2009 (3) LJSOFT 68
2009 (1) BOM.C.R. 32
2009 (1) AIR BOM R 349
2009 (1) ALL MR 536
2009 (2) MAH.L.J. 745

2009 (3) LJSOFT 68
IN THE HIGH COURT OF BOMBAY
WRIT PETITION NO.4436 OF 2008
WITH
WRIT PETITION NOS.5577, 5651 AND 5954 OF 2008
1-12-2008

(V.C. DAGA, J.)

Peoples Education Society & ors.
Vs.
Dr. Manohar Shivappa Modi & ors.

Appearances

Mr. S.G. Deshmukh, for the petitioners in W.P. No.4436/08.
Mr. V.B. Naik i/b Mr. Sandesh Patil for respondent No.1 in W.P. No.4436/08.
Mr. V.B. Naik i/b Mr. Sukand R. Kulkarni with R.S. Alange, for the petitioner in W.P. No.5954/08.
Mr. S.D. Rayrikar, AGP for respondent No.3 in W.P. No.4436/08 and for respondent No.17 in W.P. No.5577/08.
Mr. S.S. Patwardhan, for the petitioners in W.P. Nos.5577/08 and 5651/08.
Mr. V.A. Shastri for respondents in W.P. No.5577/08.
Mr. V.A. Sonpal, AGP for the respondent in W.P. No.5651/08.
Mr. P.D. Dalvi, for the Respondent Nos.1 & 2 in W.P. No.5954/08.

Constitution of India, 1950 _ Article 14, 227 _ Bombay Public Trusts Act, 1950 _
Section 41-A _ Opportunity of hearing _ Principles of natural justice _ Fraud _
Judicial decisions.

1) Applications filed u/s 41-A making serious allegations against various persons without joining them _ Assistant Charity Commissioner (ACC) passed orders adverse to their interest without following the principles of natural justice _ Orders passed by ACC with undue haste makes it clear that he did not apply his mind before passing

the order as to whether or not the persons against whom serious allegations were made were parties to the application _ In a judicial proceeding fair opportunity of hearing following "rule of natural justice" is a condition precedent _ Impugned orders quashed and set aside and all the applications filed u/s 41-A are rejected since all of them were moved with a view to play fraud on the Court as well as petitioners. (See para 6, 28, 30, 44)

2) Judicial decisions _ Judicial approach is required to be adopted which postulates (a) arriving at the decision after adopting a fair and just approach and (b) application of objective test to the facts and circumstances of the case based on the evidence lead by the parties _ When these tests are satisfied then the act or decision becomes a judicial decision _ Impugned order can hardly be said to be judicial decisions. (See para 29)

3) Administration of justice _ Obligatory on the part of the Court to see that lawful authority is not allowed to be abused by unfair approach made by any of the litigants _ If any authority exercises any power conferred on it by law in bad faith or for collateral purpose, it is an abuse of power and fraud on the statute _ Any judgment or order obtained by fraud cannot be said to be a judgment or order in the eye of law _ Judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eyes of law _ Such a judgment, decree or order by the first Court or by the final Court has to be treated as a nullity by every Court, superior or inferior _ It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. (See para 35, 39, 42)

4) Administrative duty _ Writing of incomplete roznamas or stereo typed roznamas _ Judicial officer is expected to maintain proper record of the judicial proceedings so that justice can be administered without any hindrance. (See para 35)

Held : a) "Having heard rival parties, having noticed the aforesaid scenario common to almost all the cases, this Court can conveniently observe that none of the orders can be said to be the order passed with judicial approach much less with application of mind. The word 'judicial' has two meanings; one with respect to the discharge of duties exercisable by a Judge or by Justices in the Court and another with regard to the administrative duty. With regard to first one, application of open judicial mind to the facts of each case while taking decision following principles of natural justice is necessary." (Para 26).

b) "If one turns to the administrative side of the administration of justice in the matters in hand, it would be clear that the application purportedly moved under section 41-A of the BPT Act, which is a subject matter of Writ Petition No.4436 of 2008, was accepted by the learned ACC when he was camping in another town. The order thereon was passed directing examination in chief on affidavit even without getting the application registered. The spot orders passed by the learned ACC with undue haste makes it clear that he did not apply his mind before passing the order as to whether or not the persons, against whom serious allegations were made were parties to the application, though in discharge of judicial duty, he was expected to consider

facts and circumstances of each case on its own merits including presence of necessary parties." (Para 28).

c) "It is needless to mention that while taking judicial decision, judicial approach is required to be adopted. Judicial approach postulates (a) arriving at the decision after adopting a fair and just approach and (b) application of objective test to the facts and circumstances of the case based on the evidence lead by the parties. When these tests are satisfied, then the act or decision becomes a judicial decision. Considered from this angle, the orders impugned in the present petitions can hardly be said to be judicial decisions." (Para 29).

d) "It is always obligatory on the part of the Court to see that lawful authority is not allowed to be abused by unfair approach made by any of the litigants. In a judicial proceeding fair opportunity of hearing following "rule of natural justice" is a condition precedent. The object underlined in the rule of natural justice is to prevent miscarriage of justice and to secure fair play in action. The power to determine question affecting the rights of the citizens has to be exercised judicially in conformity with the principles of natural justice; forming part of Article 14 of the Constitution of India. They are required to be followed, especially, when it affects the rights of the other parties. Considered from this angle, it would be clear that in none of the cases, the principles of natural justice were followed by the learned ACC." (Para 30).

e) "So far as administrative duty is concerned, the judicial officer is expected to maintain proper record of the judicial proceedings so that justice can be administered without any hindrance." (Para 35).

f) "It is needless to mention that if any authority exercises any power conferred on it by law in bad faith or for collateral purpose, it is an abuse of power and fraud on the statute. In such a case, the order cannot stand to the scrutiny of law and there cannot be any difficulty in striking down such order in exercise of Article 227 of the Constitution of India." (Para 39).

g) "It is, thus, settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eyes of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as a nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings." (Para 42).

h) "In the result, all these petitions are allowed, orders impugned therein are quashed and set aside. All the applications filed under section 41-A of the BPT Act are rejected, since all of them were moved with a view to play fraud on the Court as well as petitioners. Rule is made absolute in terms of this orders with costs quantified in the sum of Rs.25,000/- payable to the petitioners in each case to be shared by all the contesting respondents (excluding State & the learned ACC) in equal ratio." (Para 44).

Result : Petitions allowed.

Case Law Referred :

1. Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi 1991 (2) SCC 716 (Para 34).
2. Swamiji v. Commissioner, H.R.C.E. AIR 1980 SC 1 (Para 33).
3. Union of India v. H.P. Chothia 1978 (2) SCC 586 (Para 31).
4. Mohinder Singh Gill and Anr vs. Chief Election Commissioner, New Delhi and Ors A.I.R. 1978 SC 851 (Para 38).
5. Bhagat Raja v. Union of India AIR 1967 SC 1606 (Para 32).
6. Lazarus Estates Ltd. v. Beasley 1956 (1) All ER 341 : 1956 (1) QB 702 : 1956 (2) WLR 502 (Para 43).

JUDGMENT

Rule. Rule returnable forthwith in all petitions. Heard all these petitions finally by consent of parties. Perused the petitions, counter-affidavits and replies.

INTRODUCTION

2. All these writ petitions filed under Article 227 of the Constitution of India are directed against the various orders passed by Shri M.K. Dongare, learned Assistant Charity Commissioner, Sangli Division, Sangli ("the ACC" for short) in exercise of powers under section 41A of the Bombay Public Trusts Act, 1960 ("the BPT Act" for short).

3. The parties are different, but the issue involved is identical so also the challenges set up against all the impugned orders passed by the learned ACC unfolding very sad and sorry state of affairs prevailing in the office of the ACC, Sangli, sufficient to tarnish the image of the judiciary as such all these petitions were heard together and closed for judgment with a view to dispose of by a common judgment.

4. The modus operandi adopted by all the contesting respondents in all these petitions reveals that the applications purportedly under section 41-A of the BPT Act were filed making serious allegations against various persons in the body of the applications without joining them. The learned ACC entertained such applications with open eyes knowing fully well that the persons against whom serious allegations were made were not even parties to the subject proceedings and passed orders adverse to their interest without following the principles of natural justice.

5. The learned advocates appearing for the petitioners in all these petitions have made serious complaints against the learned ACC for adopting procedure contrary to the rule of law in discharging his duty as a judicial officer. They also brought to my notice that petitions before this Court are nothing but the sample petitions and many such orders have been passed by the learned ACC entertaining such applications purportedly moved under section 41-A of the BPT Act to obtain favourable orders and that all of them were successful in their efforts.

6. This Court was shocked and disturbed to see the speed with which all these applications, filed under section 41-A, were entertained and disposed of by adopting perfunctory and casual approach without following principles of natural justice. Consequently, this Court had to pass an order dated 25th August, 2008 directing the Charity Commissioner to inform this Court by filing an affidavit disclosing the number of cases decided by learned ACC just six weeks before his transfer.

7. The learned ACC pursuant to the above order has filed an affidavit dated 15th September, 2008. The relevant extracts of the said affidavit are reproduced hereinbelow to bring on record the magnitude of the illegality committed by the learned ACC while discharging his duty. The subject affidavit reads as under:-

"3. Pursuant to the direction of Hon'ble High Court the letter was sent to our Sangli Office by fax to furnish the above information. Accordingly, the Sangli Office has furnished statements containing the above information."

"4. As per the abstract (R3) and 'R4' to 'R9' as furnished by the Sangli Office Shri. M.K. Dongare disposed as many as 1057 matters during the period of December 2007 to May 2008.

Monthwise Break-up of disposal is as under

December 2007 _ 156

January 2008 _ 118

February 2008 _ 102

March 2008 _ 233

April 2008 _ 223

May 2008 _ 225

Copies of monthly statements from December 2007 to May 2008 are marked as 'R4' to 'R9'.

5) As per the copy of abstract at 'R3' out of total disposed of cases, 1051 matters are found, so it seems that six matters were not traceable.

6) Out of 1051 matters, in 462 matters stereotyped / typed roznamas were written. However, in 41 matters roznamas were written incompletely, and in 542 matters roznamas are not written.

7) Duration of proceedings (from the date of institution to the date of disposal) is as shown in the statement marked at 'R10' to 'R15'."

BRIEF FACTS

8. The modus operandi adopted by all the original applicants/ contesting respondents in initial proceedings under section 41A of the BPT Act as also by the learned ACC while disposing them, being common, it is not necessary to trace history of each proceeding from deck to deck. Brief reference to the facts involved in each petition would serve ends of justice.

WRIT PETITION No.4438 OF 2008 :

9. The petitioner No.1 in the above Writ Petition is a Society registered under the Societies Registration Act, 1866 and also public charitable trust registered under the BPT Act (the said Trust). The petitioner Nos.2, 3 and 4 are the President, Vice-President and Secretary of the said Trust and other petitioners are the members of the said Trust. The respondent Nos.1 and 2, claiming to be the members of the said Trust, filed an application purportedly under section 41-A of the BPT Act without joining the petitioners as party respondents making serious allegations against them in the body of the application.

10. The above application was entertained by the learned ACC on 10th April, 1988, while he was camping at Kolhapur and without verification of the facts directed the applicants to file affidavit-in-lieu of examination in chief, which was filed by them on 11th April, 2008. The learned ACC, thereafter, allowed the said application vide impugned order dated 15th April, 2008 permitting the applicants to enroll new members and start the election process with further permission to appoint Election Officer. The impugned proceedings were disposed of within a period of six days.

11. The applicants with undue haste have acted upon the aforesaid order. They filed Change Report under section 22 of the BPT Act within a period of one month from the date of order. The Change Report proceedings are pending before him. The order dated 15th April, 2006 is a subject matter of challenge in the petition contending that the impugned order is ex facie incorrect, illegal, void and has caused serious miscarriage of justice.

(ii) WRIT PETITION No.5651 OF 2008

12. In above Writ Petition, the petitioner No.1 is an Education Trust, whereas petitioner Nos.2 to 5 are the trustees thereof. The contesting respondents chose to file an application purported to be under section 41-A of the BPT Act being Misc.Application No.579/2008 without joining anybody as respondent or opponent and submitted list of 54 persons for being enrolled as members of the petitioner No.1-Society.

13. The learned ACC, without considering the necessity of joining existing trustees or office bearers of the Trust as respondents, allowed application vide impugned order dated 30th May, 2008 and directed admission and enrollment of 52 persons as members of the Society/Trust. This order was passed incidentally only one day after the Change Reports bearing Nos.405 and 485/2003 were listed for hearing before him.

Learned ACC has decided the application under section 41-A, practically within a period of seven days from the date of receipt thereof.

When this petition came up for hearing, the material disclosing the sorry state of affairs came to the notice of this Court. Both parties, in order to avoid reasoned judgment, chose to file consent minutes of order duly signed by the respective advocates appearing for the parties and prayed for disposal of the petition in terms of the consent terms. Since all these petitions were heard together, this Court did not accept consent terms filed in the said petition. Hence this judgment.

(iii) WRIT PETITION No.5954 OF 2008

14. This Writ Petition depicts the same scenario as sketched in the aforesaid two matters; wherein the applications purported to be under section 41-A were entertained and allowed by the learned ACC within a span of seven days from the date of filing thereof without considering necessity of joining of the trustees as opponents or respondents.

15. The factual matrix in this case reveals that the Sangli District Cricket Association was registered under the BPT Act on 26th June, 1968. The managing committee was constituted to remain in office for a period of three years from 1983 to 1986. One Mr.Arvind Baburao Yadav and Mr.Vinayak Madhav Mirashi, who were members of the original managing committee constituted in the year 1983, filed an application being Application No.1058/2000 under section 41-A of the BPT Act with a prayer to give direction to the trustees to carry out the objects of the Trust on various grounds. The petitioner committee was appointed as Ad-hoc Committee by the learned ACC to look after day to day administration of the said Cricket Association. The Ad-hoc Committee has submitted a scheme under section 50-A(1) to the learned ACC on 7th April, 2001 vide application No.681/2001. During pendency of above proceedings, the application purported to be under section 41-A being, Application No.554/2008 came to be filed on 13th May, 2008 at the instance of respondent Nos.1 and 2 herein without joining anybody as respondent or opponent.

16. The learned ACC directed the respondents to file an affidavit in lieu of examination-in-chief, which came to be filed on the very date. The learned ACC proceeded to pass an order and allowed application under section 41-A filed by the respondents/ original applicants and appointed them (S/Shri Anandrao Patil and Jamal Chand Patil) to look after the affairs of the Society and also permitted them to call a meeting of the members of the society and take all decisions relating to the affairs of the Trust. The impugned order passed by the learned ACC makes reference to the dead trustees of the Trust S/Shri Arvind Yadav, Vinayak Mirashi and also to various litigations to which Shri Ravindra Biniwale is a party. It is, thus, clear that learned ACC was well aware of the fact that there is dispute pending before him between two groups of the Society. The order also refers to the name of the trustees viz., Rajabhau Haribhau Jagdale, Govind Jagganath Joshi, Gurusabbappa Arki, Haider Dadasaheb Kudchikar but conveniently he ignored their absence before the Court. The present trustees were not made parties to the application. As a matter of fact, the learned ACC ought to have realised that the trustees were necessary parties to the

petition. The record of the proceedings reveals that order-sheets have not been maintained. Consequently, the parties were denied even the certified copies of the order-sheets.

(iv) WRIT PETITION No.5577 OF 2008

17. There is one more petition being Writ Petition No.5577/2008; wherein an application purported to be under section 41-A was filed on 16th May, 2008, joining 16 persons as party respondents/opponents, was heard and decided by Shri M.K.Dongare, in the capacity of Deputy Charity Commissioner vide his order dated 17th May, 2008 wherein he appointed committee of 5 persons to look after the day to day affairs of the Trust. This order is a subject matter of challenge in this Petition.

THE SUBMISSIONS :

18. The advocates appearing for the petitioners in all these petitions strongly criticised the orders impugned in the respective petitions contending that the impugned orders are not only ex facie illegal and bad in law but also unreasonable and unacceptable, causing prejudice. That the impugned orders were passed hurriedly with undue haste in a short period ranging from (1) one day to (7) days clearly in breach of principles of natural justice without even looking into the pleadings in the applications and even without noticing that the serious allegations were made against the various persons without joining them as parties to the applications though they were necessary parties.

19. Mr.Deshmukh, learned counsel appearing in one of the petitions has strongly canvassed that the learned ACC has deliberately failed to notice that none of the persons were made parties to the application against whom serious allegations were made in the application. He submits that, had the learned ACC gone through the subject application, it would not have been difficult for him to notice the serious allegations that were made against the present petitioners without joining them as respondents. He further submits that any Judge with average judicial mind ought to have noticed that the person against whom serious allegations are made is required to be joined as party to the proceeding. He further submits that it was not necessary for the learned ACC to accept the application while camping at Kolhapur and pass an order thereon directing affidavit in lieu of examination-in-chief. According to him, there is no such procedure requiring an affidavit to be filed in support of the application. He further submits that the learned ACC ought to have put himself on guard noticing that not a single trustee or the office bearer of the Trust was made party to the application, especially, when none of the applicants were projecting themselves in the application to be the office bearers of the Trust.

20. Mr.Deshmukh submits that it was expected on the part of the learned ACC to have gone through Schedule-I to the notice that the petitioner No.1-Trust has always been represented by the members of the managing committee, through its President or Secretary. He further submits that the impugned order is clearly in breach of principles of natural justice. Mr.Deshmukh further pointed out that in the impugned order serious strictures have been passed by the learned ACC against petitioners

Nos.2 to 4 behind their back. He submits that it was expected on his part to issue notice to the said petitioners before passing any order, much less impugned order.

21. Mr.Deshmukh went a step ahead and pointed out that this is not the only case in which such illegal orders are passed arbitrarily by the learned ACC but there are hundreds of such cases wherein such untenable orders have been passed by him with undue haste behind the back of the office bearers of the Trust, at the instance of some disgruntled persons, who are always ready to indulge in frivolous litigation. He, thus, prayed for setting aside the impugned order.

22. The learned advocates appearing in the other set of petitions supported Mr. Deshmukh and adopted all the submissions made by him.

23. On being asked, learned A.G.P., appearing for respondent No.3 fairly stated that the impugned order cannot be supported. He also candidly admitted that various such illegal orders are passed by the learned ACC (Shri M.K.Dongare) when he was stationed at Sangli.

24. Mr. Naik, learned counsel appearing for respondent No.1 while opposing Mr. Deshmukh tried to support the impugned order contending that the order has been acted upon pursuant to which elections were conducted, the change report was submitted and that it was accepted by the very same learned ACC on 22nd May, 2008 and that the newly elected committee has started functioning. He further pointed out that the appeal against the order passed by the learned ACC under section 22 of the BPT Act, accepting Change report is pending before the Joint Charity Commissioner, Kolhapur as such this Court should not interfere with the impugned order.

25. The appeal memo filed in the above appeal produced on record, (Exh.I) (at page 62) reproduces the order passed under section 22 of the BPT Act, reading as under:

"ORDER

- 1) Reported Change is hereby accepted
- 2) Entries is SCH-be amended accordingly
- 3) No Order as to costs."

Sd/-

Date: 22/5/2008 (Assistant Charity Commissioner,
Place: Sangli. (Sangli Region, Sangli)."

Reading of the above order shows the mode, manner and quality of the order passed by the learned ACC while accepting Change Report.

CONSIDERATION :

26. Having heard rival parties, having noticed the aforesaid scenario common to

almost all the cases, this Court can conveniently observe that none of the orders can be said to be the order passed with judicial approach much less with application of mind. The word 'judicial' has two meanings; one with respect to the discharge of duties exercisable by a Judge or by Justices in the Court and another with regard to the administrative duty. With regard to first one, application of open judicial mind to the facts of each case while taking decision following principles of natural justice is necessary.

27. On the above backdrop, if one turns to the facts sketched hereinabove, it would be clear that in almost all cases, the absence of application of judicial mind is writ large. Not a single case can be said to have been decided by the learned ACC following principles of natural justice.

28. If one turns to the administrative side of the administration of justice in the matters in hand, it would be clear that the application purportedly moved under section 41-A of the BPT Act, which is a subject matter of Writ Petition No.4436 of 2008, was accepted by the learned ACC when he was camping in another town. The order thereon was passed directing examination in chief on affidavit even without getting the application registered. The spot orders passed by the learned ACC with undue haste makes it clear that he did not apply his mind before passing the order as to whether or not the persons, against whom serious allegations were made were parties to the application, though in discharge of judicial duty, he was expected to consider facts and circumstances of each case on its own merits including presence of necessary parties.

29. It is needless to mention that while taking judicial decision, judicial approach is required to be adopted. Judicial approach postulates (a) arriving at the decision after adopting a fair and just approach and (b) application of objective test to the facts and circumstances of the case based on the evidence lead by the parties. When these tests are satisfied, then the act or decision becomes a judicial decision. Considered from this angle, the orders impugned in the present petitions can hardly be said to be judicial decisions.

30. It is always obligatory on the part of the Court to see that lawful authority is not allowed to be abused by unfair approach made by any of the litigants. In a judicial proceeding fair opportunity of hearing following "rule of natural justice" is a condition precedent. The object underlined in the rule of natural justice is to prevent miscarriage of justice and to secure fair play in action. The power to determine question affecting the rights of the citizens has to be exercised judicially in conformity with the principles of natural justice; forming part of Article 14 of the Constitution of India. They are required to be followed, especially, when it affects the rights of the other parties. Considered from this angle, it would be clear that in none of the cases, the principles of natural justice were followed by the learned ACC.

31. In Union of India v. H.P. Chothia 1978 (2) SCC 586 it was held by the Apex Court that absence of a speaking order cannot be cured by a counter affidavit giving reasons which should have been in the order itself.

32. In the case of Bhagat Raja v. Union of India, AIR 1967 SC 1606 it was held that "after all a tribunal which exercises judicial or quasi judicial powers can certainly indicate its mind as to why it acts in a particular way and when important right of parties of far-reaching consequences to them are adjudicated upon in a summary fashion, without giving a personal hearing when proposals and counter proposals are made and examined, the least that can be expected is that the tribunal shall tell the party why the decision is going against him, in all cases where the law gives a further right of appeal".

33. In Swamiji v. Commissioner, H.R.C.E., AIR 1980 SC 1, the Supreme Court noted with approval the legal maxim "cessante ratione legis cessat ipsa lex", which means reason is the soul of law and when reason of any particular law ceases, so does the law.

34. In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi 1991 (2) SCC 716, the Supreme Court held that reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or the conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an in-built support to the conclusion/decision reached.

35. So far as administrative duty is concerned, the judicial officer is expected to maintain proper record of the judicial proceedings so that justice can be administered without any hindrance.

36. The abstract of total cases disposed of by the learned ACC, details of which are given in the affidavit filed by the Assistant Charity Commissioner, Maharashtra State, Mumbai pursuant to the order of this Court dated 25th August, 2008 discloses that out of total cases of 1057 disposed of by the learned ACC between December, 2007 to May, 2008, the cases found were 1051. Out of these 1051 cases, only in 6 cases roznamas were written completely, whereas in 542 cases roznamas were not written. In 41 cases incomplete roznamas were written, whereas in 462 cases, stereo typed roznamas were written. The proceedings were disposed of with undue haste within a period ranging from 1 to 7 days which is clear from the details furnished herein.

DURATION OF IMPUGNED ORDERS

Writ Appl. No. Date of Date of No.of
Pet. No. institution decision days.

5954/2008 554/2008 13/5/2008 20/5/2008 7

4436/2008 408/2008 9/4/2008 15/4/2008 6

5577/2008 5010/2008 16/5/2008 17/5/2008 1

5651/2008 579/2008 27/5/2008 30/5/2008 3

37. It was expected on the part of the learned ACC to at least notice, in some of the cases that the impugned proceeding under section 41-A, and the change reports under section 22 of the BPT Act, both are related to the same Trust. As such, he ought to have put himself on guard or at least noticed that the contesting parties are not parties to the application. However, the learned ACC conveniently, ignored this fact and ventured to pass impugned orders which are unsustainable.

38. In *Mohinder Singh Gill and Anr vs. Chief Election Commissioner, New Delhi and Ors* A.I.R. 1978 SC 851, it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of evidence or otherwise, otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. The submissions made by Mr. Naik are misplaced.

39. It is needless to mention that if any authority exercises any power conferred on it by law in bad faith or for collateral purpose, it is an abuse of power and fraud on the statute. In such a case, the order cannot stand to the scrutiny of law and there cannot be any difficulty in striking down such order in exercise of Article 227 of the Constitution of India.

40. Having said so, if one turns to the various applications moved by various applicants in the above bunch of writ petitions, it would be clear that the orders were obtained by the applicants/ contesting respondents by suppressing material facts and playing fraud on the Court. They abused the process of the law.

41. Now, it is well settled principle of law that any judgment or order obtained by fraud cannot be said to be a judgment or order in the eye of law. Almost three centuries back, Chief Justice Edward Coke proclaimed :

"Fraud avoids all judicial acts, ecclesiastical or temporal."

42. It is, thus, settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eyes of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as a nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

43. In the leading case of *Lazarus Estates Ltd. v. Beasley*, 1956 (1) All ER 341 : 1956 (1) QB 702 : 1956 (2) WLR 502, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

It has been said, Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent). All the impugned orders being the outcome of fraud, they are non-est, as such liable to be set aside for the reasons stated.

44. In the result, all these petitions are allowed, orders impugned therein are quashed and set aside. All the applications filed under section 41-A of the BPT Act are rejected, since all of them were moved with a view to play fraud on the Court as well as petitioners. Rule is made absolute in terms of this orders with costs quantified in the sum of Rs.25,000/- payable to the petitioners in each case to be shared by all the contesting respondents (excluding State & the learned ACC) in equal ratio. Parties are free to act upon the authenticated copies of this Judgment.

45. At this stage, the learned counsel appearing for the respondent Nos.1 and 2 in Writ Petition No.4436 of 2008 has prayed for stay of the effect and operation of this judgment. The learned counsel appearing for the petitioner strongly opposed the same. Looking to the nature of impugned orders and the illegality noticed by this Court, this is not a fit case for grant of stay. In the result prayer for stay is rejected. Needless to mention that Civil Application (St.) No.26693 of 2008 filed therein does not survive, in view of the decision of the petition on merits.