

OPINION

1454

The Swatantra Party has a written constitution and the objects of the Party as stated in Clause 2 of the Constitution are to further and endeavour to put into effect the principles adopted by the Party's Preparatory Convention held in Bombay on 1st and 2nd August 1959 and such policies and programmes as the Party may from time to time adopt in furtherance of those principles. The Constitution contains a provision enabling the party to amend the Constitution in the manner provided in clause 19 of the Constitution. The power to amend the constitution is vested in the National Convention on the recommendation of the General Council by a majority of delegates present and voting at such convention, or on a proposal of 200 members of the Party by a three-fourths majority of the delegates present and voting subject to the provision that 30 days' clear notice is given to the National Executive. There is however no provision in the Constitution for winding up or dissolution of the Party.

The question on which our opinion is sought is whether the National Convention of the Party has power to dissolve or wind up the Party.

If the Constitution had provided for dissolution of the Party then the Party could in conformity with the provision for such dissolution pass a resolution for dissolution of the Party.

The Court in England has held in the case of *Re: Lead Co. Workmens Fund Society* (1904) 2 Ch., 196 that the Court has jurisdiction to dissolve and wind up an unincorporated members Club or unincorporated association of persons. That was a case of a Society formed for the benefit of the workmen and others in the employment of a Company. The members of the Society paid fines varying in amount according to age and an yearly contribution to the fund of the Society, which was held by the Company as a trustee. The Company ceased to carry on business and no new members were admitted in the Society. The Society also

became insolvent. A large majority of the beneficiaries of the pensioners and non-pensioners voted for the dissolution by the Court and an action was commenced for the dissolution of the Society. The Court came to the conclusion that in the special circumstances of the case the Court had power to interpose so as to bring about a position whereby justice can be administered on equitable principles and that having regard to the facts and circumstances of the case it can only be done by winding up the Society and on that ground the Court made an order for the winding up of the Society and its affairs and for the distribution of its fund amongst persons beneficially interested therein. It is therefore clear that if the case of an unregistered Society were to be brought within the equitable principle set in the above quoted decision, the Court would assume jurisdiction and pass an order for dissolution of the Society of the unregistered body and for the distribution of its fund.

As a general rule however the Court will not interfere where the rules of the Society provide for dissolution nor in the absence of such provision unless it clearly appears that the majority of the members desire to dissolve or there are special circumstances, which make it impossible or impracticable to continue the existence of the unregistered association.

See Halsbury Halsbury Edition Volume 5 Page 497.

In the case of the Swatantra Party, there is no provision in its Constitution for dissolution nor are there any special circumstances which could be urged for dissolution of the Party. The Constitution of the Swatantra Party however contains a provision for amendment of the Constitution in the manner laid down in the said Rule 19. At the highest, National Convention can claim to pass a resolution for dissolution if it is recommended by the General Council or on a proposal of 200 members of the Party by a 3/4th majority of the delegates present and voting provided 30 days clear notice thereof is given to the National Executive. We are however of the opinion Rule 19 which gives power to amend the Constitution cannot be construed to confer a

power to abrogate the Constitution. Moreover the facts of the case show that even the condition precedent to the exercise of power to amend the Constitution are non-existent. There is neither recommendation by the General Council nor is there a proposal sponsored by 200 members.

We are also ^{of} the opinion that the Party can be dissolved only by an order of the Court if the Plaintiff satisfies the Court that it is in the interest of the members that the Party should be dissolved.

Bombay dated this 31st day of July 1974.

Malvi Ramchoddas and Co.,

Partner.
Attorneys-at-law.

RE SWATANTRA PARTY.

OPINION

Dated this 31st day of July 1974.

M/s. Malvi Ranchoddas and Co.
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The question on which our opinion is sought is whether the National Convention of the Party has power to dissolve or wind up the Party.

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Malvi Ranchoddas and Co.,

Partner,
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