
(2000) 07 AHC CK 0111
In the Allahabad High Court
Case No : C.M.W.P. No. 15673 of 1998

Abul Kalam and another

APPELLANT

Vs

Prescribed Authority and others

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 25, 25(1)

Citation : (2000) 3 AWC 2472 : (2000) 3 UPLBEC 2499

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Prakash Padia and R.G. Padia, for the Appellant; Irshad Ali and S.C., for the Respondent

Final Decision : Allowed

Judgement

D. K. Seth, J.—The order dated 19th March, 1998 passed by the Additional District Magistrate, Phulpur, district Azamgarh in Case No. 3/3 u/s 25(1) of the Societies Registration Act has since been challenged. Dr. Padia, learned counsel for the petitioner contends that the complaint was made by only two persons, out of whom one person had contested the case. Therefore, reference could not be made u/s 25 (1) of the Act, since, it has to be made at least by 1/4th of the members. In the alternative, he contends that even if the Registrar makes a reference, in that event such reference is to be made after having been satisfied about the materials placed before the Registrar in order to enable him to exercise his power u/s 25 (1) of the Act. He cannot mechanically refer the same. Such mechanical reference would not confer jurisdiction on the prescribed authority and as such, the decision is void and without Jurisdiction. He then contends that the petitioner had submitted his objection, which is Annexure-5 to this petition and that objection was not considered at all in the impugned order contained in Annexure-6. He points out that 83 members had participated in the election, therefore, the finding in Annexure-6 that notice was not served on the ground that the materials produced did not legibly show the circulation. On the face of

the records produced showing that it was circulated, the authority could not have held otherwise. Relying on Section 25 (1), he contends that the prescribed authority is not the election tribunal to decide the question of validity of election. Its Jurisdiction is confined only within clauses (a), (b) and (c) of sub-section (1) and not beyond. Neither of these clauses refer to the question of notice. It is only on the grounds mentioned therein. There was no finding in the order contained in Annexure-6 to the extent that any of the grounds mentioned in clauses (a), (b) and (c) are fulfilled or were in existence. Therefore, even on merit, the order dated 19th March, 1998 could not be sustained. He further contends that in the meantime the life of the Committee of Management having expired, a fresh election has taken place. By means of amendment, the fresh election that was sought to be held was challenged as soon as notice was issued. The amendment was allowed. However, in absence of the Committee of Management, this election has been held, and therefore, he contends that notice can very well be challenged if it was so made by the Committee which could not have issued the notice unless the order dated 19th March, 1998 is upheld. If that order cannot be sustained. In that event all subsequent formalities cannot stand. Therefore, according to him, the petition should be allowed and the order contained in Annexure-6 should be set aside.

2. Mr. Irshad Ali, learned counsel for the respondents on the other hand contends that since the reference was made by the Registrar. It is immaterial whether it was complained by one or two persons. He then contends that the grounds mentioned in clauses (a), (b) and (c) to sub-section (1) of Section 25 were fulfilled and the election was held by using corrupt practice in not issuing notice to others. He then contends that in view of the subsequent election that had taken place and that the life of the Committee having expired, the writ petition has become infructuous. He then contends that the notice cannot be challenged and relies on the decisions, which would be referred to at appropriate stage.

3. Dr. Padia, on the other hand, contends that the petition could not have become infructuous.

4. I have heard both the learned counsel at length.

5. So far as the question of reference is concerned, u/s 25 (1), it can either be made by the Registrar or by 1/4th of the members when the Registrar does not make the reference. Therefore, if the Registrar acts on the basis of the complaint of one or two persons and feels that it has to be referred to the prescribed authority, in that event such a reference would be competent. But when reference is made, he does not act as post office. He has to apply his mind. Then only he can make a reference. Upon receipt of a complaint without ascertaining the truth of the complaint, he is not supposed to make reference for which he can seek objection from the other side and find out as to whether prima facie a case for reference is made out or not. Mechanical reference would bring complete deadlock in the administration itself. The authority conferred on the Registrar to make the reference when 1/4th member is not available is a statutory obligation

which pre-supposes that he will be discharging his function while making a reference only after satisfying about the existence of the dispute within the meaning of Section 25(1) of the Act. If it is so done, in that event the reference could not be held to be invalid.

6. In the present case, the order of reference is contained in Annexure-3. A plain reading of the said order shows that the Registrar had acted on the basis of the complaint made by two persons. But he has not taken any steps to ascertain the truth of the complaint. Neither he had ever called upon the other side to submit their view. In fact the text of the order dated 17th January, 1996 contained in Annexure-3 shows that he has acted mechanically in making the reference. Upon making of such reference, the prescribed authority cannot assume Jurisdiction. In such circumstances, this can always be challenged in a writ Jurisdiction without reference to civil court. Then again on a reference, the prescribed authority does not act as an election tribunal. It has to see that in the election of office-bearer corrupt practice has been committed and such corrupt practice are there as defined in Explanation 1 to Section 25 of the Act. It would be profitable to refer to Section 25 for our present purpose thus :

"25. Disputes regarding election of office-bearers :

(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit :

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied :

(a) that any corrupt practice has been committed by such office-bearer ; or

(b) that the nomination of any candidate has been improperly rejected : or

(c) that the result of the election in so far it concerns such office bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote which is void or by any non-compliance with the provisions of any rules of the society.

Explanation I--A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person :

(i) induces, or attempts to induce, by fraud. Intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election ;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election, offers or

gives any money, or valuable consideration, or any place of employment, or holds out any promise of individual advantage or profit to any person ;

(iii) abets (within the meaning of Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine dis-pleasure or spiritual censure ;

(v) canvasses on grounds of caste, community,, sect or religion ;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice."

7. Sub-section (1), in the proviso, provides that an election of an office-bearer can be held invalid if the prescribed authority is satisfied on the grounds mentioned in clauses (a), (b) and (c) of sub-section (1). The expression used in the sub-section clearly pre-supposes that unless these clauses are satisfied, the prescribed authority cannot assume jurisdiction to set aside the election on any other ground. So far as clause (b) is concerned, it has not been a ground on which the election has been proposed to be set aside by the prescribed authority. Similarly, the grounds set out in clause (c) is also not a ground made out in the order contained in Annexure-6. At best, the ground on which the election was proposed to be set aside can be stretched to clause (a). Inasmuch as it can be contended that non-circulation of notice is a corrupt practice.

8. But then, it appears that there were certain materials in the form of objection that 83 members had participated out of 95 members. But there was a ground mentioned in the order that the materials, produced to show that the notices so issued does not appear to be clearly legibly signed. But that cannot be a ground for holding that there was corrupt practice. The question of corrupt practice is a serious affair, which needs determination. Then again in Explanation 1, the corrupt practice has been defined. None of the clause mentioned in Explanation 1, namely, clauses (i) to (vi) does not appear to have been mentioned in the order impugned or that was the ground for setting aside the election. In the facts and circumstances of the case, we are not concerned with other two Explanations. Again on merits, it appears that the election was set aside only on the ground that the notices were not served on the members. But it appears that such a conclusion was arrived at only on the ground that the signatures were not legible. In fact, this cannot be a ground to hold that the notices were not served and then again the prescribed authority cannot assume the Jurisdiction of an election tribunal to set aside the election on the grounds other than the grounds mentioned In clauses (a), (b) and (c). Once records are produced and it was shown to the extent that 83 members had attended the election, it is not possible to term such a situation as corrupt practice as defined in Explanation 1. Explanation 1 does not include non-service of notice or non-circulation of notice as one of the corrupt practice as defined in clauses (i) to (vi) of Explanation 1. As

such this cannot be stretched to that extent as well. Therefore, on merits also, the order contained in Annexure-6 cannot be sustained.

9. Since the order contained in Annexure-6 is wholly without Jurisdiction, therefore, it was void ab initio and had no existence in the eye of law. Therefore, the notices issued by the Committee which came into existence by reason of the order dated 19th March, 1998 contained in Annexure-6 cannot assume Jurisdiction to issue notice for holding election. As such, the same could very well be challenged and that by reason of amendment the said notice having been incorporated, consequential election pursuant to such notice shall be subject-matter of the writ petition and as such would be guided by the consequences that might have been available pursuant to the order passed herein. Since the order contained in Annexure-6 appears to be without Jurisdiction, the same is declared to be void ab initio and non-est and as the election held pursuant to the said order is also non-est, the notice to hold election cannot be sustained and the election held pursuant to such notice also cannot be sustain in the eye of law.

10. It is contended by Mr. Irshad All that the life of the Committee of Management has expired. It is more than three years after 1998. On the other hand Dr. Padia contends that this election relates to the election of the Committee of Society and not of the college. According to him, life of the Committee of Management of the college is three years. Whereas that of the Society, is five years. Five years would expire in the year 2000. Therefore, according to him, the life of the Committee of the Society would expire in 2000. It is open to the Committee of Management to hold the election. I am not entering into this dispute at this stage. If its bye-laws prescribe five years, in that event it would be open to the society to hold its election if the life has not yet expired.

11. Mr. Irshad All had referred to a decision of this Court in the case of Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and others. 1996 (1) SCC 327. This decision cannot be applied in the facts and circumstances of the present case. Therefore, this decision, which is distinguishable in the facts and circumstances of the case, may not help us.

12. Similarly, the decision in Writ Petition No. 30115 of 1996, which was decided on 19th February, 1996 also does not help us on the fact and circumstances of the present case, and the decision in the case of Basant Prasad Srivastava and others Vs. State of U.P. and others, also docs not help us in the facts and circumstances of the present case.

13. In the result, the writ petition is allowed. The impugned order contained in Annexure-6 to the writ petition is, hereby quashed.