
(2014) 03 AHC CK 0046

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7139 of 2010

Anjuman Farogh-e-Islam

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Citation : (2014) 5 ADJ 673 : (2015) 1 ALJ 10 : (2014) 3 UPLBEC 1953

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Shamim Ahmad, M.A. Qadeer and S. Ahmad, Advocate for the Appellant; Suresh Ch. Dwivedi, Advocate for the Respondent

Final Decision : Allowed

Judgement

P.K.S. Baghel, J.—The petitioner No. 1, Anjuman Farogh-e-Islam, Kanpur is a society. It has preferred this writ petition aggrieved by the order dated 23 December, 2009 passed by the Deputy Registrar, Firms, Societies & Chits, Kanpur Region, Kanpur-respondent No. 2, whereby he has determined the electoral college of the society and after the election, has registered the list of office bearers. The petitioner Nos. 2 to 5 have also joined the writ petition as its President and Members of the General Body. The essential facts of the case, as disclosed in the writ petition, are; the petitioner No. 1 is a society registered under the provisions of the Societies Registration Act, 1860 (Act 21 of 1860). It manages and runs a madarsa known as Madarsa Farroquiya (for short, "the Madarsa"), which is imparting education up to class-8th and it receives aid under the "Uttar Pradesh Ashashkiya Arbi Tatha Farsi Madarson Ki Manyata Niyamawali, 1987". It is averred that initially the petitioner No. 2 and 10 other members had established the Anjuman Farogh-e-Islam, Kanpur (for short, "the Society") and the Madarsa. The affairs of the Society are regulated by its bye-laws. The certificate of registration of the Society was renewed from time to time. The last renewal was made on 12.5.2004 for five years on the application moved by the petitioner No. 2, who was the President and one Mohammad Aslam-respondent

No. 5 as a Secretary at that time. The Madarsa came into grant-in-aid list on 02 May 2005 prior to which the Madarsa was being run by the Society out of its resources.

2. It is averred in the writ petition that the respondent No. 5 was not taking any steps for holding the election and the office bearers pursued the petitioners to approach the Deputy Registrar to appoint an observer for holding the election. On the said representation the Deputy Registrar issued a notice to respondent No. 5 to show-cause by 18 December 2004 but instead of replying the said notice he submitted a fictitious election dated 20 November 2004. The said election was alleged to have been conducted on the basis of a fictitious electoral roll containing names of the 19 members, who were not at all enrolled as Members of the Society and on the basis of the said fictitious electoral roll the alleged election dated 20.11.2004 had allegedly taken place.

3. The petitioners and other members had made a complaint against the respondent No. 5 to the Deputy Registrar, however the Deputy Registrar without deciding the said representation/complaint recognized the election dated 20.11.2004.

4. The petitioners aggrieved by the order of the Deputy Registrar dated 27 May 2005 preferred a Writ Petition No. 46831 of 2005. Initially an interim order was granted and finally the writ petition was allowed on 21 July 2006 after exchange of affidavits. The Court was of the view that there was not a proper consideration of the material on record and in view the dispute relates to the election of office bearers, the Prescribed Authority was the appropriate forum to decide the dispute in terms of Section 25(1) of the Act 21 of 1860. The Court set aside the order dated 27 May 2005, whereby the office bearers of the respondent No. 5 were recognized and it issued a direction to the Deputy Registrar to transmit the entire record with reference qua the validity of election dated 20.11.2004 to the Prescribed Authority. Certain directions were also issued to the Prescribed Authority.

5. The Deputy Registrar in compliance of the order of this Court made a reference to the Prescribed Authority u/s 25(1) of the Act 21 of 1860. The Prescribed Authority after hearing both the factions vide his order dated 27 September 2007 came to hold that the alleged election set up by the respondent No. 5 dated 20.11.2004 was illegal and the Deputy Registrar was directed to hold fresh election u/s 25(2) of the Act 21 of 1860 from among 11 members.

6. The respondent No. 5 aggrieved by the order of the Prescribed Authority dated 27 September 2007 preferred a Writ Petition bearing No. 62144 of 2007, which was dismissed by this Court on 20 December 2007. The Court refused to interfere in the matter and the order of the Prescribed Authority was upheld. However, this Court made an observation that if in future any person is validly enrolled in accordance with the bye-laws of the Society after 20.11.2004 he may also be permitted to participate in the election.

7. The Deputy Registrar in compliance of the order of the Prescribed Authority issued notices to the petitioner and respondent No. 5. In response thereto the petitioner had submitted a list of 11 members who were accepted as valid members by the Prescribed Authority. The respondent No. 5 did not submit any list however in response to the second notice issued by the Deputy Registrar he submitted a list of some members and moved an application for postponement of the election on the ground that his application for modification was pending in this Court in Writ Petition No. 62144 of 2007.

8. The Deputy Registrar vide order dated 14 May 2009 published a tentative list of 37 members inviting objections including the members alleged to be enrolled prior to 20.11.2004. The petitioner No. 2 had submitted objections to the said list. Some other members had also filed their objections. The objections filed by the petitioner No. 2 and other members are on the record as annexure Nos. 17, 18 and 19 to the writ petition.

9. The respondent No. 2 vide his order dated 23 December 2009 declared the electoral roll containing 23 members. It is stated that the said order was passed without giving any notice or opportunity to the petitioners and it was passed behind the back of the petitioners against the principles of natural justice.

10. On the basis of the electoral roll finalized by the respondent No. 2 an election was said to have been taken place on 30.12.2009. The said election was unanimous. The petitioners' grievance is that no such election had ever taken place and the respondent Nos. 2 and 3 had colluded with respondent No. 5. The petitioners submitted objections before the respondent No. 2 against the said election on 13.1.2010.

11. A counter-affidavit has been filed by the respondent No. 5. The stand taken in the counter-affidavit is that the list of 23 members submitted by the respondent No. 5 was verified by the Deputy Registrar, who found that it contains the valid members of the Society and permitted them to participate in the election. The Deputy Registrar had considered the objection submitted by the petitioners and finalized the list of the electoral college. It is stated in the counter-affidavit that the Deputy Registrar has specifically held that these 23 members are genuine and office bearers of the Society, who have deposited membership fee and they also fulfill all the criteria and requirements need to be satisfied by a member of the Society, therefore, the order dated 23 December 2009 is a valid and legal order. It is also stated that the election programme was notified on 29.12.2009 and the said election had taken place on 30.12.2009 in the office of the Deputy Registrar, wherein the respondent No. 5 was elected as Secretary of the Society in the said election. It is also stated that the election was held after giving proper information as well as notice in the newspaper and if the petitioners have any grievance they could raise their grievance u/s 25(1) of the Act 21 of 1860.

12. A rejoinder-affidavit has been filed. It is stated that the election programme

was not notified. The election was sham. No notice was given to the petitioners or other members. It is also mentioned that the election was not held in the premises of Madarsa on the basis of valid electoral roll, and it contains name of rank-outsiders. The electoral roll which has been annexed as annexure CA-10 is stated to be a bogus and fake.

13. I have heard Sri M.A. Qadeer, learned Senior Advocate assisted by Sri Shamim Ahmad, learned Counsel for the petitioners and Sri Suresh Chandra Dwivedi for respondent No. 5 and learned Standing Counsel.

14. The last election of the Society was held on 20.11.2004. A reference was made against the said election before the Prescribed Authority. The Prescribed Authority vide order dated 27.5.2005 had recognized the said election on the ground that the petitioner No. 1 failed to produce any document in support of his contention, thus the Prescribed Authority directed to register the list of 2005-06. The petitioner No. 2 Mohammad Rafiq preferred a Writ Petition No. 46831 of 2005, wherein the order of the Prescribed Authority was set aside and the matter was remitted back and the Deputy Registrar was directed to transfer the entire record with reference to the validity of the election dated 20.11.2004 to the Prescribed Authority again. In compliance thereof the Prescribed Authority vide order dated 27.9.2007 found that there were only 11 valid members and the agenda issued for the election dated 20.11.2004 was contrary to the provisions of the bye-laws and the Prescribed Authority also recorded the finding that there are only 11 valid members and there are no other valid members. The operative portion of the order dated 27.9.2007 of the Prescribed Authority reads as under;

15. Aggrieved by the said order a Writ Petition No. 62144 of 2007 was filed by the respondent herein. The writ petition was dismissed on 20.12.2007. The Relevant part of this order reads as under;

The Prescribed Authority while adjudicating the issue relating to the dispute of two Committee of Managements has a authority to consider the membership dispute on the basis of the evidence on record. Before the Prescribed Authority, the dispute was relating to the election held on 20.11.2004. The Prescribed Authority held that in the said election the prescribed procedure has not been adopted and, therefore, the election held on 20.11.2004 has been cancelled. The Prescribed Authority has also considered that there were only eleven valid members on the basis of the evidences adduced by both the parties. The finding of the Prescribed Authority is finding of fact and does not require any interference. However, I am of the view that in the election which may be held in future apart from eleven members which are held to be valid on the date of the election held on 20.11.2004 if any person has been or is being made as a valid member, they may also be permitted to participate in the election.

With the aforesaid observation, writ petition stands dismissed.

16. Pursuant thereto the Deputy Registrar in addition to 11 members, who were found to be valid by the Prescribed Authority, has added 13 more members, who

were said to be valid members on the date of last election dated 20.11.2004.

17. Court finds that the submission of Sri Qadeer, learned Senior Advocate has considerable force that the Deputy Registrar has chosen to bypass the finding recorded by the Prescribed Authority which was affirmed by this Court in Writ Petition No. 62144 of 2007. The Deputy Registrar has made a fresh determination of the electoral roll under the pretext that this Court while dismissing the writ petition of the respondent on 20.12.2007 has also observed in following terms;

However, I am of the view that in the election which may be held in future apart from eleven members which are held to be valid on the date of the election held on 20.11.2004 if any person has been or is being made as a valid member, they may also be permitted to participate in the election.

18. The Prescribed Authority has in its judgment dated 23.12.2009 dealt with in detail about the validity of members who had participated in the election of 20.11.2004 and had found that except 11 members there were no other valid member thus the Deputy Registrar ought to have accepted the said finding but he has embarked upon determination of the electoral roll afresh in view of the observation of this Court.

19. From a perusal of the impugned order it is evident that while accepting the membership of 13 new persons he has not examined the fact whether they were enrolled in terms of the bye-laws of the Society or not. There is only a casual reference that from the original records it is clear that they are members. He has not even mentioned that his finding about these members is based upon which document, neither there is a reference of document or original record in the impugned order. In fact he has only recorded his conclusion without support of any reason.

20. Regard being had to the fact that the State Government has recently made an amendment by U.P. Act No. 23 of 2013, the Societies Registration (Uttar Pradesh Amendment) Act, 2011, wherein Section 4-B has been inserted. The said amendment reads as under;

4-B(1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society.

21. Prior to the insertion of Section 4-B there was no provision under the Act 21 of 1860, which empowers the Deputy Registrar/Assistant Registrar to require the office bearers to submit the list of general body. Under the unamended Section 4 the Act 21 of 1860, the Society was required to submit only a list of office bearers and name of the members of the general body. It did not require the list of the general body. In view of absence of any provision under the Act 21 of 1860 with regard to the submission of general body. Whenever the dispute arose with regard to the office bearer of the Society the rival factions rely on the list of general body submitted by them. Thus the serious dispute about the validity of the members arises. This Court is also burdened with the large number of the writ petitions, wherein the disputed question of fact about the enrollment of the members of general body is raised.

22. Keeping in view of the said problem the State Government has inserted Section 4-B of the Act 21 of 1860. The object and reasons of the said Act noticed the fact that at present a large number of the Societies are disputed due to non-existence of correct list of the general body to the Registrar. It is also stated in the objects and reasons that in several cases on the basis of the fake documents produced by the claimants it becomes difficult to decide the matter. The relevant part of the Statutes of object and reasons of the U.P. Act No. 23 of 2013 reads as under;

Prefatory Note--Statement of Objects and Reasons.--..... At present, a large number of societies are disputed due to non-existence of its correct list of General Body with the Registrar. In several cases, an illegal person, fraudulently, produces before the Registrar an incorrect list of General Body of the society and claims to be the member or office bearer of such society. In order to avoid such situation, it has been decided to amend the said Act in its application to Uttar Pradesh, to insert a new Section 4-B, to provide for filing of the list of General Body with the Registrar at the time of registration or renewal of such society.

23. From a plain reading of Section 4-B of the U.P. Act 2013 of it is discernible that now all the Societies at the time of the registration or renewal of certificate, as the case may be, are required to submit a list of members of general body alongwith their required documents. The Registrar has been empowered to examine the correctness of a list of members of general body on the basis of register of members of general body, Minute Books, Cash Book, Receipt book of membership and Bank etc. of the Society. It further requires that if there is change in the list of the members of the general body of the Society due to enrollment of new members, bare resignation or removal, the modified list of members of general body is required to be filed with the Registrar within one month from the date of the change.

24. From the aforesaid amendment it is also evident that the intention of the legislature is to minimize the dispute of the Societies as in the most societies the disputes are with regard to validity of enrollment of the members and the election held on the basis of disputed members.

25. The requirement of Section 4-B of the U.P. Act No. 23 of 2013 is for all the Societies at the time of registration/renewal of a Society, therefore, requirement u/s 4-B of the U.P. Act No. 23 of 2013 can be applied in pending cases also. If there is a dispute with regard to the enrollment of the fresh members, the Registrar can direct the parties concerned to produce the minutes book, cash book, membership fee receipts etc. to establish that the enrollment was in terms of the bye-laws. If the Registrar examines the validity of the enrollment of the members on the basis of the aforesaid documents, it would ensure that rank outsider could not be able to control the affairs of the Society on the basis of fake documents.

26. In the present case the Deputy Registrar has not examined the enrollment of the 12 new members in correct perspective. He has neither examined the fact whether the bye-laws of the Society have been followed in respect of the procedure of enrollment of the new members nor he has referred the original documents which he has alleged to peruse.

27. Therefore, for the aforesaid reasons the order of the Deputy Registrar is liable to be set aside. Accordingly, it is set aside. The matter is remitted to the Deputy Registrar to examine the validity of the 12 new members in the light of the observations made hereinabove within two months from the date of communication of this order. Till the fresh decision is taken by the Deputy Registrar, the status-quo as on today shall be maintained by the parties.

28. Thus the writ petition is allowed. No order as to costs.