
(2012) 11 CHH CK 0026
In the Chhattisgarh High Court
Case No : Writ Petition C No. 3760 of 2008

Arya Shikshan Samiti

APPELLANT

Vs

Bhuneshwar Sharma Others

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 16, 16(1), 32, 32(1), 32(2)

Citation : (2012) 11 CHH CK 0026

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : B.P. Sharma, for the Appellant; Malay Bhaduri, Advocate for the respondent No. 1 to 4, Shri V.V.S. Moorthy, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 03.08.2005 (Annexure P/12) passed by the Registrar, Firms & Societies, Raipur, whereby the termination of the respondent No. 1 to 4 from the membership of the petitioner/Society has been held to be illegal and the same has been set aside, further, the order dated 29.04.2008 (Annexure P/1) passed by the respondent No. 1 whereby the appeal preferred by the petitioner/Society before the State Government, against the order dated 03.08.2005 has been dismissed affirming the order passed by the Registrar, Firms & Societies. The petitioner/Society also seeks dismissal of the complaint (Annexure P/10) made by the respondent No. 1 to 4. The facts, in brief, as projected by the petitioner/Society are that the petitioner is society registered under the provisions of Madhya Pradesh Societies Registration Act, 1973 (for short "the Act, 1973"). The petitioner has its own rules and regulations framed by the Society whereunder the Society is carrying on its business. Elections are held every three year in the Society. The petitioner society is running a school known as Shradhanand Arya Vidya Mandir at Raipur. Since the respondent No. 1 to 4 caused hindrance in the functioning of the Society and also did not deposit their membership fee for

years, their membership was terminated on 09.01.2005. Even after termination, the respondent No. 1 along with few other persons were interfering with the functioning of the Society, and made complaints to the authorities of the Education Department. Thus, the petitioner society was constrained to file a writ petition being W.P. No. 1209/2005, before the then High Court of Madhya Pradesh, in which direction was issued to the Registrar, Firms & Societies to decide the representation of the petitioner within a period of two months after giving opportunity of hearing. Thereafter, the Registrar called upon the parties to appear before him wherein the Registrar, on the basis of authority letters submitted by the parties, recorded that there is no dispute by and between the parties, and, as such, the case was closed by order dated 30.05.1995. Subsequently, a civil suit was filed by the respondent No. 1 to 4 wherein the petitioner appeared as defendant. The said matter was heard by the, then, 4th Civil Judge, Class II, Raipur in which an order of status quo was ordered. The said order was also affirmed by the appellate court.

2. Shri Sharma, learned counsel appearing for the petitioner/Society would submit that on being unsuccessful in their motive to take over the management of the Society, they filed an application on 12.01.2005 before the respondent No. 6/Registrar, Firms & Societies, in which it was alleged that the petitioner society committed financial irregularity and prayed for restoration of their membership. After receiving a notice from the respondent No. 6 in this regard, a detailed reply supported with documents and written arguments were filed by the petitioner/Society. The Registrar, by order dated 03.08.2005, without looking into the factual position, ordered to restore the membership without dealing with the complaint of financial irregularity. The said order was challenged in an appeal before the State Government, which was also dismissed by the State Government vide order dated 30.04.2008 (Annexure P/1) confirming the order of the Registrar, passed on 03.08.2005 (Annexure P/12).

3. Shri Sharma would further submit that the respondent No. 6 should not have exercised its power u/s 32 of the Act, 1973 when the application/complaint of the respondent No. 1 to 4, supported with affidavit, was not by majority of the members of the governing body of the society or by not more than 1/3rd of the total number of members of the society. Even if there were some complaints, the respondent No. 6 could not have passed an order in respect of restoring the membership of the respondent No. 1 to 4. The respondent No. 6 itself has found that the allegation of financial irregularity was false. The respondent No. 1 to 4 were terminated long back in the year 1995 but after more than 10 years, having failed in their attempts to obtain any order from the civil court, they filed a false and frivolous complaint. There is no concept of founder member and all the members are having equal status and are required to pay the membership fee. The respondent No. 1 to 4 were defaulters as they did not pay their membership fee for a long period. Thus, their expulsion was necessary.

4. On the other hand, Shri Bhaduri, learned counsel appearing for the

respondent No. 1 to 4 would submit that the respondent No. 6 as well as the respondent No. 5, in its appellate order, have directed to restore their membership. There is no illegality or infirmity in the order passed by the aforesaid authorities. He would further submit that the Registrar has full authority to conduct enquiry in exercise of its jurisdiction u/s 32 of the Act, 1973. The respondent No. 1 to 4 were expelled without giving them proper opportunity of hearing, further, they are the founder members of the society, who cannot be expelled. Section 16 of the Act, 1973 provides that founding members cannot be expelled by the Society, only their voting powers can be curtailed or kept in abeyance for arrears of subscription. The order of the Registrar was challenged by the petitioner before the State Government, which has affirmed the order passed by the Registrar. Thus, at this stage, the petitioner cannot claim that the respondent No. 1 to 4 ought to have challenged their expulsion before the Civil Court by way of civil suit or before the High Court, by way of writ petition. In support of his contention, he would rely on a decision of the Madhya Pradesh High Court in *Keshav Choubey v. Sarvodaya Samiti 1* and *M.C. Shrivastava & Another v. State of M.P. & Another 2*

5. Shri Moorthy, learned Deputy Advocate General appearing for the State/respondent No. 5 and 6 would submit that this petition involves disputed question of facts, which cannot be looked into by this Court. The officers of the State have passed the order after due application of mind and taking all the fact and circumstances of the case into consideration. In the report submitted by the Auditor/Inspector in the year 1995, it was opined that the meetings in which the private respondent No. 1 to 4 were ousted from the membership was not conducted according to section 16(1) of the Act, 1973, thus, the order dated 03.08.2005 was rightly passed by the respondent No. 6.

6. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. On bare perusal of the impugned order dated 03.08.2005 (Annexure-P/12) passed by the respondent No. 6, it is found that the petitioner has raised the question of maintainability u/s 32(2) of the Act, 1973. The respondent No. 6 has not dealt with the issue, which was relevant for entertaining the application, if any, in respect of expulsion of the members under the scheme of the Act, 1973.

8. Section 16 deals with register of members where there is no provision for expulsion of a member except that if the arrears of subscription exceeds six months the member shall not be entitled to vote in any proceedings of the society under this Act. The Registrar has power u/s 32 of the Act, 1973 to enquire and settle the dispute, however, Section 32(1) provides for initiation of enquiry either on suo moto or on an application made under sub-section (2). Sub-section (2) of Section 32 contemplates an application made by a majority of a governing body of the members or not less than one-third of the total number of members of the society.

9. It is well settled that if the procedure has been prescribed under the statute itself, no other procedure can be adopted for adjudication of the issue.

10. Section 4 of the Act, 1973 also provides that the Registrar of Societies shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act. Thus, the Registrar cannot exercise any other power, which is not conferred under the Act, 1973. The dispute with regard to maintainability was raised, which was not adverted by the Registrar.

11. In view of the above, without expressing any opinion on the merits of the case, the order dated 03.08.2005 (Annexure-P/12) passed by the Registrar as well as the order dated 29.04.2008 (Annexure-P/1) passed in appeal are quashed. The matter is remitted back to the Registrar to consider and decide the application filed by the petitioner on the question of maintainability as on that date and also decide the issue involved therein, in accordance with law and on its own merits, as early as possible preferably within a period of three months. As an upshot, the writ petition is allowed to the above extent. No order as to costs.