
(2004) 04 AHC CK 0188
In the Allahabad High Court
Case No : C.M.W.P. No. 8577 of 1994

Ashthabhuja Prasad Dubey and Others	APPELLANT
Vs	
Zila Basic Shiksha Adhikari and Others	RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Societies Registration Act, 1860 — Section 12A, 3A, 3B

Citation : (2004) 4 AWC 3591

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare, Rajesh Rai, R.C. Srivastava, Prakash Padia, S.D. Shukla and J.K. Rai, for the Appellant; P.K. Saxena, D.K. Singh, B.N. Misra, K.N. Tripathi, C.P. Gupta, Amit Saxena and Shashi Nandan and S.K. Rai, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, senior advocate, assisted by Sri Rajesh Rai on behalf of the petitioner, Sri P. N. Saxena, senior advocate, assisted by Sri D. K. Singh for respondent Nos. 3 and 4 and standing counsel for the other respondents.

2. On 23rd September, 1968, a society in the name of Hari Shyam Khadi Gramodyog Seva Sangh was registered with the Registrar, Firms, Societies and Chits with Registration No. 710/1968-69. The said society claims to have established in the year, 1968 a junior high school by the name of Uttar Pradeshiya Balika Vidyalaya Junior High School, Malak Harhar, district Allahabad. Sri Ashthabhuja Prasad Dubey was the Secretary. The said Junior High School was granted recognition as a Junior High School under order of the Regional Inspectress of Girls Schools, Allahabad, dated 24th January, 1970. The said Ashthabhuja Prasad Dubey was also the Manager of the said institution, The institution was brought under grant-in-aid list of the State in the year, 1972 and there was no dispute whatsoever in respect of the society or in respect of the

institution at that stage.

3. By U. P. Act No. 52 of 1975. amendments were made in the U. P. Societies Registration Act. wherein it was provided that the societies shall not use the word "Sangh" in their name. As a consequence thereto the Assistant Registrar is said to have issued a notice to the petitioner on 23rd April, 1979, for deleting the word "Sangh" from the name of the society.

4. According to the petitioner in compliance of the aforesaid notice a resolution was passed, whereby the word "Sangh" was changed and substituted by the word "Sabha". Thus, the changed name of the society, according to petitioner, was recorded as Hari Shyam Khadi Gramodyog Seva Sabha.

5. According to the petitioner the renewal of the said society with the changed name has been granted from time to time and the last renewal of the society has been granted on 20.3.1991. It is further alleged by the petitioner that the institution was initially started in the Panchayat Bhawan of the Gaon Sabha with Smt. Reeta Rai as the Headmistress. The said institution was, however, shifted to kachcha bhawan because of the illegal insistence of the Pradhan. Reference has also been made to the order of the Director of Education dated 13th March, 1978, whereby the Director of Education (Basic) had directed that the institution should be shifted to Panchayat Bhawan again. However, on 4th September, 1989, the Zila Basic Shiksha Adhikari again wrote a letter directing that the institution should be run in kachcha bhawan.

6. During this period it is alleged by the petitioner that on 28.12.1978. a new society in the name of Hari Shyam Khadi Gramodyog Seva Samiti with Sri Ravindra Nath Mishra as Secretary was registered bearing Registration No. 4849-78-79. The said society was also granted renewal from time to time. Last renewal was granted on 31st May, 1986, for a period of 5 years w.e.f. 10.10.1985.

7. The said society through its Secretary Sri Ravindra Nath Mishra filed an application before the Assistant Registrar, Firms, Societies and Chits, for cancellation of the registration granted In favour of Hari Shyam Khadi Gramodyog Seva Sabha with Sri Ashthabhuja Prasad Dubey as Secretary.

8. On 6th January, 1976, the Director of Education (Basic) in exercise of powers u/s 315 of the U. P. Education Code, suspended the grant-in-aid of the institution and directed that the same shall be disbursed directly by the Zila Basic Shiksha Adhikari Women.

9. Consequently the aforesaid Committee of Management with Ashthabhuja Prasad Dubey filed a Writ Petition No. 5368 of 1981. The said writ petition was disposed of by means of judgment dated 13th January, 1988, directing the Zila Basic Shiksha Adhikari to decide the representation of the petitioner and to decide the question as to whether Sri Ashthabhuja Prasad Dubey was Manager of the institution. To the similar effect Sri Ashthabhuja Prasad Dubey filed another

writ petition, in which a similar direction was issued.

10. The Zila Basic Shiksha Adhikari, in compliance of the order of this Court, passed an order on 16th February, 1989 and recorded that there were two societies namely Hari Shyam Khadi Gramodyog Seva Sabha and Hari Shyam Khadi Gramodyog Seva Samiti. Both the societies are claiming a right to manage the institution. It was, therefore, appropriate that the dispute about the society be decided by the Registrar, Firms, Societies and Chits and as consequence thereto a letter was forwarded by the Zila Basic Shiksha Adhikari to Registrar, Firms, Societies and Chits and also directed the Headmistress of the institution Smt. Reeta Rai to shift the institution from kachcha bhawun to panchayat bhawan again.

11. The Assistant Registrar, Firms, Societies and Chits, in pursuance of the reference made by the Zila Basic Shiksha Adhikari, held that both the societies are duly registered under the Societies Registration Act. with one Sri Ashthabhuja Prasad Dubey as Secretary of Hari Shyam Khadi Gramodyog Seva Sabha and Ravindra Nath Mishra as Secretary of the other society namely Hari Shyam Khadi Gramodyog Seva Samiti.

12. The Zila Basic Shiksha Adhikari, on the basis of the said order of the Assistant Registrar, Firms, Societies and Chits, passed an order dated 19.8.1989 recognizing Sri Ravindra Nath Mishra as the Manager of the Committee of Management of the institution namely Uttar Pradeshiya Balika Vidyalaya Junior High School, Malak Harhar, district Allahabad..

13. Feeling aggrieved by the said order dated 19.8.1989. the society with Sri Ashthabhuja Prasad Dubey filed Writ Petition No. 20957 of 1990, wherein an interim stay order was granted and was finally allowed on 21.9.1993. This Court required Zila Basic Shiksha Adhikari to pass a fresh order in accordance with law. This Court specifically directed that the Zila Basic Shiksha Adhikari should record specific finding as to which of the two society through its office bearers was entitled to take over the control of the institution and as to which of the society through its office bearers is in effective control of the institution.

14. The Zila Basic Shiksha Adhikari in alleged compliance of the order referred to above, passed an order on 10th January, 1994 and against the order dated 10th January, 1994, the present writ petition has been filed. By means of order dated 10th January, 1994, the Basic Shiksha Adhikari has maintained his earlier order dated 19.8.1989.

15. On behalf of the petitioner it is contended that the order dated 10th January, 1994, passed by the Zila Basic Shiksha Adhikari is patently illegal and runs contrary to the directions issued by this Court in the earlier judgment dated 21.9.1993. passed in Writ Petition No. 20957 of 1990. It is stated that the Zila Basic Shiksha Adhikari has made out altogether a new case against the pleading of the parties while passing the impugned order.

16. On behalf of the respondent it is contended that the order passed by the Zila Basic Shiksha Adhikari is based on appreciation of facts and such findings of fact do not call for any interference under Article 226 of the Constitution of India. The petitioner may get his grievance adjudicated by filing a civil suit.

17. According to respondent, the society, which has established the institution, was admittedly Hari Shyam Khadi Gramodyog Seva Sangh and in December, 1978, Ravindra Nath Mishra applied for renewal of the registration of the said society with reference to the resolution of the General Body dated 3rd September, 1998, whereby word "Sangh" was deleted from the society and was substituted by word "Samiti". It is further stated that the Registrar, Firms, Societies and Chits, Lucknow, instead of issuing a renewal certificate in the name of Hari Shyam Khadi Gramodyog Seva Samiti, registered a fresh society in the name of Hari Shyam Khadi Gramodyog Seva Samiti, Allahabad.

18. It is contended by the counsel for the respondent Sri P. N. Saxena, senior advocate, that the registration of the original society could not be renewed with the changed name as the same had become deregistered and change in name could be permitted in respect of a society having valid registration only.

19. According to the respondent, for renewal it was necessary that there must be an existing registration in favour of the society and the renewal can be granted only in the name in which the valid registration exists on date. In other words the contention is that there cannot be a renewal of the society with change in name. It is further contended that the respondent society alone is entitled and competent to manage the affairs of the institution.

20. I have heard counsel for the parties and gone through the records of the writ petition as well as order passed by the Zila Basic Shiksha Adhikari, dated 10th January, 1994.

21. From the case set up by the parties it is not in dispute that the institution in question was originally established by Hari Shyam Khadi Gramodyog Seva Sangh with Ashthabhuja Prasad Dubey as Secretary. It is also not in dispute that the institution was granted recognition with Ashthabhuja Prasad Dubey as Secretary/ Manager and proceedings under Rule 315 of the Education Code were also taken in respect of the said institution against Ashthabhuja Prasad Dubey as Manager on 6.1.1976. The only controversy between the parties is as to whether the society with the name of Hari Shyam Khadi Gramodyog Seva Sabha, the registration whereof has been renewed with the changed name under the order dated 17.12.1984 with Ashthabhuja Prasad Dubey as its then Manager (at the relevant time), is entitled to manage and run the institution in the name and style of Uttar Pradesh Balika Vidyalaya Junior High School, Malak Harhar, district Allahabad or the new society registered in the name of Hari Shyam Khadi Gramodyog Seva Samiti with Rajendra Nath Mishra as Manager is entitled to manage the said institution.

22. The impugned order of the Zila Basic Shiksha Adhikari dated 10th January,

1994, is to be looked into with reference to the direction issued by this Court in the earlier judgment dated 21.9.1993, passed in Writ Petition No. 20957 of 1990. The relevant portion whereof reads as follows :

"The Basic Shiksha Adhikari relied upon the finding recorded by the Assistant Registrar and passed the impugned order recognising respondent No. 3 as a Manager of the institution. The Assistant Registrar only recorded a finding that there were two Societies and office bearers of the two Societies are different. He did not record any finding as to which Society was in effective control of the affairs of the institution. He also did not record any finding that respondent No. 3 was functioning as a Manager of the institution. In the absence of such finding by the Assistant Registrar, it was the duty of respondent No. 1 to record such a finding.

In the result, the writ petition is allowed. The order dated 19.9.1989 {Annexure-9 to the writ petition) and the order dated 20th August, 1990 (Annexure-11 to the writ petition) are hereby quashed. Respondent No. 1 is directed to decide the matter afresh keeping in view the observations made above and in accordance with law possibly within three months from the date of production of certified copy of this order. The parties shall bear their own costs."

23. The Basic Shiksha Adhikari in the impugned order dated 10th January, 1994, has recorded a finding, which is being quoted herein below :

"Vidyalay Par Prabhavi Niyantaran Ke Davedar Dono Hi Samitiyan "Hari Shyam Khadi Gramodyog Seva Sabha" Avam "Hari Shyam. Khadi Gramodyog Seva Samiti" Sahayak Nibandhak, Firms. Societies Avam Chits Dwara Panjikrit Hain Avam Sahayak Nibandhak, Firms Societies Avam Chits Kanpur Ke Nirnay Dinank 28.8.1989 Ke Anusar Dono Hi Samittiyaon Ka Panjikan Vidhi Sangat Hai, Sahayak Nibandhak Dwara Kiye Gaye Nirnay Ke Anusar Hari Shyam Khadi Gramodyog Seva Samiti Ka Uddeshya Uttar Pradesh Balika Vidyataya Junior High School, Malak Harhar, Allahabad Ka Samuchit Roop Se Sanchalan Vaa Prabandh Tatha Uski Uttarottar Unnati Hetu Karya Kama" Hone Se Ispasht Hai Ki Vidyalay Par Iska Hi Prabhavi Niyantaran Hai Tatha Iske Mantry/Prabandhak Sri Ravindra Nath Mishra Hain. Iske Vipreet Sri Ashthabhuja Prasad Dubey Apne Niji Kachche Bhawan Men Mool Vidyalay Ke Naam Se Hi Vidyalay Chalaye Jane Se Ispasht Hai Ki Unka Mool Vidyalay Bhawan Avam Us Bhawan Men Chalne Wale Vidyalay Par Koi Niyantaran Nahin Hat"

24. The reason assigned in the impugned order is apparently contrary to the directions issued by this Court. Basic Shiksha Adhikari has again repeated the same mistake which he had committed earlier and has placed reliance upon the clauses of the bye laws for holding that since in the bye laws of the society namely Hari Shyam Khadi Gramodyog Seva Samiti running of Uttar Pradesh Balika Vidyalaya Junior High School, Malak Harhar, district Allahabad, was mentioned as one of the aims and object, therefore, it is clear that the said society is in effective control of the institution. Such a reasoning is, on the face

of, it. misconceived. This Court on earlier occasion had specifically held as follows :

".....The Assistant Registrar by his order dated 28th August. 1989, came to the conclusion that two societies in different names were existing, one in the name of Hari Shyam Khadi Gramodyog Sangh (Sabha) and the other society Hari Shyam Khadi Gramodyog Seva Samiti registered on 18th December, 1978. Both the societies have different office bearers. We, however, came to the conclusion that the latter society which was registered in the year 1978 has in its memorandum of association an object to run the Institution known as Uttar Pradesh Balika Vidyalaya Junior High School, Malak Harhar and, therefore, it is the real society while the former society has no such specific objects in its Memorandum of Association. The Assistant Registrar, however, did not record any finding as to which society was in actual control of the affairs of the Institution and who is working as a Manager of the institution. The object of the former society was general in nature and the object of the latter society was general as well as specific. This, however, itself was not sufficient to hold that the office bearers of the latter society were entitled to take control of the affairs of the institution unless there was a finding that such latter society was in effective control of the affairs of the institution....."

25. Absolutely no facts have been mentioned by the Basic Shiksha Adhikari for coming to the conclusion as to how Sri Ravindra Nath Mishra has ineffective control over the said institution. It is further apparent from the record that the Basic Shiksha Adhikari has not noticed any fact as to how the Ravindra Nath Mishra has become Manager. It was not in dispute that the institution was established by a society with Sri Ashthabhuja Prasad Dubey as Manager. The order of the Basic Shiksha Adhikari is completely silent about the fact under which resolution of the General Body or otherwise Sri Ravindra Nath Mishra was elected as Manager or office bearer of the society. Further there is no mention of any fact which could establish that Sri Ravindra Nath Mishra was recognised as Manager In respect of the said institution at any point of time or was authorised as such by the educational authorities.

26. Similarly, the finding recorded by the Zila Basic Shiksha Adhikari to the effect that since the society with Ashthabhuja Prasad Dubey has shifted the institution from panchayat bhawan to kachcha bhawan, they cannot claim a right to manage the institution run at panchayat bhawan, is also unsustainable inasmuch as the same is based on non-consideration of the case with regards to shifting of the institution from panchayat bhawan to kachcha bhawan, as pleaded by Sri Ashthabhuja Prasad Dubey. The Zila Basic Shiksha Adhikari, even after noticing the case of Ashthabhuja Prasad Dubey with regard to the shifting the institution, has not recorded any finding as to whether case set up by Sri Ashthabhuja Prasad Dubey in that regard was correct or not.

27. That for deciding the controversy with regard to the effective control, reference to the clauses of the bye-laws of the two society in the facts of the

present case is totally irrelevant.

28. The contention raised on behalf of the respondent that the renewal of the society cannot be done with the changed name is totally misconceived and is based on misreading of the provisions of Section 3A (6) read with Section 12A of the Societies Registration Act. In the facts of the case it is not in dispute that the change of name by deletion of the word "Sangh" from the society, was necessitated in view of the U. P. Act No. 52 of 1975. It was always open to the society to seek renewal of its registration with the deletion of the word "Sangh" even after expiry of its original registration in accordance with the provisions of the Societies Registration Act and there is no basis for contending that the renewal of the society cannot be granted with the changed name once its registration has expired. Reference in that regard is made to Section 3B of the Societies Registration Act, which permits renewal of the registration of the society even after its earlier registration has expired.

29. Even otherwise the said contention of Sri P. N. Saxena, senior advocate, runs contrary to the pleading as made in counter-affidavit para 10, A, B, C, D and E. In paragraph 10E it is stated that the said action of the Registrar was uncalled for and illegal and Registrar should have referred the name of deponent. (Ravindra Nath Mishra) to get the renewal of the aforesaid society to the State Government u/s 3B of the Act. Para 10E of the counter- affidavit is being quoted herein below :

"That the aforesaid action of the Registrar as uncalled for and illegal as the Registrar should have referred the matter regarding the deponent's claim to get the renewal of the aforesard society, to the State Government u/s 3B of the Act."

30. In such set of fact, the order passed by the Zila Basic Shiksha Adhikari cannot be legally sustained. The order passed by the Zila Basic Shiksha Adhikari is hereby quashed.

31. The matter is remanded to the Zila Basic Shiksha Adhikari to decide the dispute with regard to the claim of rival parties to manage the institution afresh strictly in the light of the judgment passed by this Court earlier vide order dated 21.9.1993 in Writ Petition No. 20957 of 1990.

32. It is needless to point out that on remand, the Zila Basic Shiksha Adhikari shall take into consideration all necessary facts including control over the finance of the institution, control over the teachers and staff of the institution, recognition of the office bearers by the educational authorities etc. while recording the finding as to which of the society is entitled to manage the said institution. The Zila Basic Shiksha Adhikari shall also take into consideration and pass reasoned order on the case pleaded by the parties.

33. The said exercise may be undertaken by the Zila Basic Shiksha Adhikari, after affording opportunity of hearing to the parties concerned, within one month from the date a certified copy of this order is produced.

34. The writ petition is allowed subject to the observation made herein above.

35. Till the decision of the matter afresh by the Basic Shiksha Adhikari, status quo shall be maintained as of date with regards to management of the institution.