

(2015) 04 AHC CK 0051
In the Allahabad High Court
Case No : Writ C. No. 14907 of 2015

Asma Alsam and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Companies Act, 1956 — Section 36
Constitution of India, 1950 — Article 12, 19(1)(c)
Societies Registration Act, 1860 — Section 12, 14, 4

Citation : (2015) 4 ADJ 607 : (2015) 4 AWC 3615 : (2015) 3 ESC 1411

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : Udayan Nandan and Shashi Nandan, for the Appellant; K.D. Tiwari, Pradeep Verma and Shailesh Pandey, Advocates for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—This petition was called for admission before this Court on 23rd March 2015 and thereafter on 26th March 2015 when it was posted for final disposal with the consent of parties. On 26th March 2015 this Court recorded that the counsel for the Respondents gave up their right to file a counter affidavit and consented to proceed for a final disposal of the writ petition itself. They reserved their right to file an affidavit bringing on record any further material or documentation that may be required for this purpose. Pursuant to the said liberty, the said respondents have filed a short affidavit which was taken on record. But first the brief facts.

2. On or about 11/9/2013, one Mr. Mohd. Aslam Shamsi, the family patriarch, constituted a Trust called the Indian-Al-Muslima Welfare Charitable Trust. This Trust was admittedly registered under the Societies Registration Act, 1860. This body hereinafter for the sake of brevity shall be referred to as the "Trust/Society". From the affidavit filed on behalf of the contesting respondents and more particularly from the documents appended as Annexures SCA-2 and SCA-3

thereof it appears that the original memorandum of the Trust/Society underwent certain changes. While Annexure-1 to the writ petition mentions 5 persons as being the founder Trustees and designates the offices held by them in the Trust/Society, the document filed along with the affidavit of the respondents mentions the Founder Trustees to be 9. The memorandum appended to the writ petition mentions the petitioner Nos. 1 and 2 at Serial Nos. 3 and 5 of the list of Founder Trustees and as per the recitals contained therein designates them as the Secretary and Treasurer respectively, it does not carry the name of the respondent No. 4 who was also the son of the founder namely Mohd. Aslam Shamsi. It is also relevant to note here that while the name of the respondent No. 4 is absent from the name of the Founder Trustees in the document appearing at page 35 of the writ petition, his name stands included at serial No. 9 of the list of Founder Trustees in the document appended at page 16 of the affidavit of the respondents. Curiously however, the Memorandum of Association appended with the affidavit of the respondents is a replica of Annexure-1 to the writ petition and does not carry the name of the respondent No. 4 and mentions the name of the original 5 persons including the petitioner Nos. 1 and 2 as the Founder Trustees.

3. One of the primary objects of the Trust/Society and as mentioned in its memorandum was to establish, promote, and operate in Uttar Pradesh, and also the Union of India, school, colleges and Technical institutions of high standard. It appears that it was pursuant to and in implementation of the said purpose that Muslima Girls Degree College, Moradabad came to be established. The Muslima Girls Degree College, Moradabad was also separately registered under the provisions of the Act, 1860 and shall for the purposes of convenience hereinafter be referred to as the "College/Society". As per Clause 5 of the memorandum of the said College/Society, the members of the first Managing Committee stood mentioned therein. It is not disputed by the learned counsel for the respective parties that neither the petitioner No. 1 nor the petitioner No. 2 nor the Respondent No. 4 were members of the Committee of Management of the College. What is submitted is that all three were members of the General Body of the College/Society.

4. The memorandum of the College/Society significantly under clause 4(s) thereof records that the society would work under the registered Trust namely, Indian Al Muslima Welfare Charitable Trust, Moradabad or in other words the Trust/Society. The constitution of the College/Society then goes on to record that Shri Mohd. Aslam, who was the founder of College/Society would be the life member of the said society. It further records that he would not be liable to deposit any membership fee as he had donated the land upon which the institution was to be established. The other clause of significant importance relates to the office of President and provides that the President will always be elected from the family of the founder of the institution namely Shri Mohd Aslam. The two other clauses of seminal importance and upon which most of the arguments of the learned counsel for parties converged are clauses 7(a) and

7(3) and the same being relevant for the purposes of resolution of this writ petition are set forth herein below:

"7 Parts of the Institution

(A) General Body

(B) Managing Committee

Duties of General Body

(a) To elect the office bearers and members of the Governing

Body. 7(3) Governing Body/Managing Committee:-

The Governing Body shall consist of the following office bearers and executive members:-

1. President.

2.Vice-President.

3.Manager/Secretary.

4.Joint Manager/Joint Secretary.

5.Treasurer.

6.Executive Members (Five).

There will be ten members in the present Governing Body which can be extended upto fifteen in future. Out of which five members will be office bearers and five executive members. The General Body will elect the executive members and they will elect the Office Bearers.

Filing of casual vacancy

In case any casual vacancy is created in the managing committee due to the resignation or death of any member or for any other reason the same shall be filled up by the Governing Body by Co-Option for the unexpired term of the members from respective categories"

5. From the records and the pleadings taken on the writ petition, it transpires that Shri Mohd. Aslam Shamsi, the founder of the Trust died on 30/11/2014. As a consequence thereof a vacancy in the office of President of the Co. College/ Society as well as of the Trust/Society came into existence. It is here that the dispute inter parties presents and manifests itself.

6. It is alleged that on 11/12/2014, a meeting of the Managing Committee of the College/Society came to be convened and held under the Chairmanship of Shri Mohd. Azam, the Vice President of the said Committee. The minutes of the meeting held on 11/12/2014, (appended as Annexure-8 to the writ petition) records that the meeting was called at 11.00 A.M. and was attended by 12 out of

15 members of the Governing Body. Resolution No. 3 passed in the said meeting records that the members of the Managing Committee unanimously agreed to nominate the respondent No. 4 as President of the Managing Committee of the College. This resolution admits and records that the respondent No. 4 was a member of the General Body of the College and that he would be handed over the charge of the office of the President.

7. The second event of significance is then stated to have taken place on 28/1/2015. The minutes of this meeting (appended as Annexure-9 to the writ petition) records as follows. The meeting is said to have been chaired by the respondent No. 4 who had by then and pursuant to the resolution dated 11/12/2014, referred to above come to be nominated and handed over the reigns of the office of the President in the Governing Body of the College. This meeting is stated to be a meeting of the General Body of the College/Society. This records that 13 out of 15 members of the General Body of the College/Society were present. The following significant decisions are said to have been taken in this meeting. Resolution No. 2 provided for deletion of the clause occurring in the memorandum of the College/Society to the effect that it would run and work under the Trust/Society. This resolution for deletion of the said clause is stated to have been unanimously accepted.

8. Resolution No. 3 then proceeds to accept the resignation submitted by various members of the Managing Committee and these resignations are said to have been submitted on 23/5/2014, 10/6/2014, 27/9/2014 and 14/10/2014. One of the resignations accepted in this meeting and which is of significance is that of Shri Mohd. Azam, the Vice President in the Managing Committee of the College. Shri Mohd. Azam is stated to have submitted his resignation on 23/5/2014. This aspect of the matter assumes significance in light of the fact that Shri Mohd. Azam is said to have presided over the meeting held on 11/12/2014 in which the respondent No. 4 was nominated and anointed as President of the College.

9. Consequent to the resignations referred to above being accepted, vacancies in the office of the Vice President and Executive Members of the Managing Committee are said to have come into existence and on this date itself the respondents arrayed as respondent Nos. 5 to 8 are said to have been elected and a decision taken to include them in the list of office bearers of the College/Society for the year 2014-15 and submitted for registration with the Assistant Registrar.

10. Pursuant to the above, the relevant papers are said to have been submitted before the Assistant Registrar on or about 09/2/2015.

11. The election/co-option of various members to the Governing Body of the College on 28/1/2015 is also liable to be viewed in light of the following un-rebutted averments carried in paragraphs 5, 6, 7, 8 and 9 of the supplementary affidavit filed on behalf of the petitioners. The said averments read as follows:

"5. That in the meeting held on 28.1.2015 one Smt. Subhana Begum has been

inducted as member of the Management when in fact she is the wife of Sri Majibur Rehman who is the Treasurer of the Managing Committee of the Society.

6. That similarly one Smt. Zeba Raza daughter of Sri Nooh Ahmad is inducted as member of the Managing Committee when in fact she is the daughter-in-law of the Treasurer Sri Mujibur Rehman and Smt. Subhana Begum.

7. That it is also submitted that Smt. Subhana Begum and Smt. Zeba Raza are not the members of the General Body of the Society and as such they are not entitled to be inducted as office bearers of the Management of the Society.

8. That it is also submitted that Sri Mohd. Akbar Shamsi, who has illegally occupied the post of President of the Trust in the meeting dated 11.12.2014, is also related to the Treasurer Sri Mujibur Rehman and his son-in-law.

9. That in view of such fact, it is submitted that all the above mentioned three persons are relatives of the Sri Mujibur Rehman, who is the Treasurer of the Managing Committee of the Society and, therefore, were illegible for being elected as an office bearer of the Managing Committee of the Society."

12. It further becomes relevant to note here that pursuant to the respondents assuming control over the College, various withdrawals appear to have been made from the bank accounts of the institution between the period 01/1/2015 to 31/3/2015. The majority of these transactions are "self" transactions and as of 19/3/2015 the account is shown to have stood with "Nil" balance. The statement of account brought on record by means of the second supplementary affidavit was also chosen not to be rebutted by the respondents.

13. The last event of significance then occurred on 03/2/2015. On this date a meeting of Trustees of the Trust/Society is stated to have been convened. Resolution No. 3 is said to have been passed at this meeting and records the appointment of the respondent No. 4 in place of the Founder Trustee/President.

14. Upon the papers being forwarded to the Assistant Registrar for registration, he by his communication dated 13/2/2015 appears to have called for various information and clarifications. Amongst other issues, he draws the attention of the College/Society to the fact that the amendment in the memorandum of the College/Society does not appear to have been affected in accordance with the requirement of the constitution and the provisions of Section 12 of the Act, 1860. He, therefore, defers registration of the changes till the statutory procedure is complied with. However, insofar as the list of members of the Managing Committee of the College/Society and the Governing Body of the Trust/Society is concerned, the same is registered by him and taken on record. It is these two lists registered by the Assistant Registrar appended as Annexures 12 and 14 to the writ petition which form subject matter of challenge in the present writ petition.

15. Before dealing with or noticing the rival submissions advanced by the parties, it would be apposite to briefly notice the law and the contours within which this

present petition is required to be considered and decided.

16. The position of a member of a co-operative society is in many ways akin to that of a stock holder in a Corporation. By accepting and becoming a Member of an Association, the individual submerges his rights and obligations in and with the rights and obligations of the Society. He binds himself to the Memorandum and Articles of Association of the Society. These Articles of Association form the contract between the individual and the Society. In fact, they constitute a contract not just between the Corporation and its individual member, but also the members inter se. In *Corpus Juris Secundum* under the subject of "Corporations", the following passages are worthy of notice.

"118. Operation and Effect

b. Operation as between and against Corporation and Members.

A by-law may operate and be binding as a contract between the corporation and its members and between the members inter se, ordinarily without the express consent of the latter, although such consent may render an invalid, but not illegal or ultra vires, by-law binding as a contract.

Since a by-law may operate as a contract among the members of the corporation as well as between the corporation on the one side and the members on the other, a by-law, if consistent with the charter, articles, or certificate of incorporation, and not in contravention of law or public policy, and if legally adopted, is binding both upon the members and upon the corporation, and both as between the members and as between them and the corporation.

By-laws ordinarily are binding on the stock-holders or members whether they expressly consent to them or not; but a by-law which might be invalid as such, or without the consent of the members, may operate as a contract between the members of the corporation consenting thereto or between them and the corporation or officers thereof, if it is not of itself illegal or ultra vires the corporation or inconsistent with public policy."

17. Then comes the issue of individual members (as is in the present case) and their right to sue the Society/Corporation or bring an individual action against it. On this the law in *Corpus Juris Secundum* is stated as under:

"353. Suit by Stockholder

A stockholder's cause of action, in order for him to sue the corporation, must be against the corporation. Among other things he may sue to annul or restrain illegal or ultra vires corporate acts.

To entitle a stockholder to bring an action against the corporation it is of course essential that he has a cause of action against the corporation. So there must be some wrong of omission or commission on the part of those in control resulting in a special injury to the individual stockholder before a cause of action arises in favor of the stockholder against the corporation.

.....On the other hand, a court of equity will not at the instance of minority stockholders enjoin, set aside, or otherwise grant relief from an intra vires corporate act, unless under the circumstances such act constitutes fraud, or a breach of trust on the part of those lawfully managing the corporation."

18. Insofar as our Courts are concerned, a consistent view has been taken that the by-laws of a Society constitute a contract between the Member and the Society and the members inter se. The Court in this connection refers to what was held by the Hon"ble Supreme Court of India in *Siddheshwar Sahakari Sakhar Karkhana Ltd. Vs. Commissioner of Income Tax , Kolhapur and Others*, (2004) 191 CTR 66 : (2004) 270 ITR 1 : (2004) 7 JT 295 : (2004) 7 SCALE 519 : (2004) 12 SCC 1 .

"48. There is one more point to be adverted to. Compulsory nature of the deposit has been stressed by the Revenue and the High Court too as being obnoxious to the idea of a deposit. It has been pointed out that the member had no option but to agree for deduction on pre-ordained terms and there could not be in law a contract creating deposit. This contention, however, does not appeal to us. A person by becoming the member of a Co-operative Society, volunteers to abide by the bye-laws of the Society, the real object of which is to provide for internal management of the Society including rendering assistance to the members. There is an authority for the proposition that the bye-laws of the Co-operative Society constitute a contract between the Society represented by its managing body and its constituents. This legal position has been recognized in *Hyderabad Karnataka Education Society Vs. Registrar of Societies and Others*, AIR 2000 SC 301 : (1999) 9 JT 482 : (1999) 7 SCALE 361 : (2000) 1 SCC 566 : (1999) 5 SCR 161 Supp : (1999) AIRSCW 4420 : (1999) 10 Supreme 145 . In *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, AIR 1970 SC 245 : (1970) 40 CompCas 206 : (1969) 19 FLR 56 : (1970) LabIC 285 : (1969) 2 LLJ 698 : (1969) 2 SCC 43 : (1970) 1 SCR 205 , this Court held that the bye-laws of the Society framed by virtue of the authority conferred by the Co-operative Societies Act were on par with Articles of Association of a Company, which, it is well settled, establish a contract between the Company and its members and between the members inter se (vide paragraph 14 in *Naresh Chandra Sanyal Vs. Calcutta Stock Exchange Association Ltd.*, AIR 1971 SC 422 : (1971) 41 CompCas 51 : (1971) 1 SCC 50 : (1971) 2 SCR 483). That apart, the mere fact that the contract has to be entered into in conformity with and subject to restrictions imposed by law does not per se impinge on the consensual element in the contract. "Compulsion of law is not coercion" and despite such compulsion, "in the eye of law, the agreement is freely made", as pointed out in *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, AIR 1968 SC 599 : (1968) 1 SCR 705 : (1968) 21 STC 212

19. The Apex Court has further gone on to hold that any action taken contrary to the articles would be ultra vires. This aspect of the matter was explained by the said Court in *Smt. Claude-Lila Parulekar Vs. Sakal Papers Pvt. Ltd. and Others*,

AIR 2005 SC 4074 : (2005) 2 BC 542 : (2005) 124 CompCas 685 : (2005) 4 CompLJ 193 : (2006) 1 CTLJ 465 : (2005) 3 JT 523 : (2005) 11 SCC 73 : (2005) 59 SCL 414 : (2005) 2 SCR 1063 : (2005) 2 UJ 1103 : (2005) AIRSCW 1892 : (2005) 3 Supreme 46 .

"25. Section 36 of the Companies Act, 1956 makes the Memorandum and Articles of company, when registered, binding not only on the company but also the members inter-se to the same extent as if they had been signed by the company and by each member and covenanted to by the company and each shareholder to observe all the provisions of the Memorandum and of the Articles. The Articles of Association constitute a contract not merely between the shareholders and the company but between the individual shareholders also. The Articles are a source of powers of the Directors who can as a result exercise only those powers conferred by the Articles in accordance therewith. Any action referable to the Articles and contrary thereto would be ultra vires."

20. Lucidly explaining the position in law with respect to membership of a society, the Apex Court in Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, AIR 2005 SC 2306 : (2005) 125 CompCas 235 : (2005) 4 JT 337 : (2005) 5 SCC 632 : (2005) 1 SCR 592 : (2005) AIRSCW 2317 : (2005) 3 Supreme 428 , held as follows:

"27. Under the Contract Act, 1872 a person sui juris has the freedom to enter into a contract. The bye-laws of a cooperative society setting out the terms of membership to it, is a contract entered into by a person when he seeks to become a member of that society. Even the formation of the society is based on a contract. This freedom to contract available to a citizen cannot be curtailed or curbed relying on the fundamental rights enshrined in Part III of the Constitution of India against State action. A right to enforce a fundamental right against State action, cannot be extended to challenge a right to enter into a contract giving up an absolute right in oneself in the interests of an association to be formed or in the interests of the members in general of that association. This is also in lieu of advantages derived by that person by accepting a membership in the Society. The restriction imposed, is generally for retaining the identity of the society and to carry forward the object for which the society was originally formed. It is, therefore, a fallacy to consider, in the context of cooperative societies, that the surrendering of an absolute right by a citizen who becomes a member of that society, could be challenged by the said member by taking up the position that the restriction he had placed on himself by entering into the compact, is in violation of his fundamental right of freedom of movement, trade or right to settle in any part of the country. He exercises his right of association when he becomes a member of a society by entering into a contract with others regulating his conduct vis-a-vis the society, the members constituting it, and submerging his rights in the common right to be enjoyed by all and he is really exercising his right of association guaranteed by Article 19(1)(c) of the Constitution of India in

that process. His rights merge in the rights of the society and are controlled by the Act and the bye-laws of the society.

32. It is true that in secular India it may be somewhat retrograde to conceive of co-operative societies confined to group of members or followers of a particular religion, a particular mode of life, a particular persuasion. But that is different from saying that you cannot have a cooperative society confined to persons of a particular persuasion, belief, trade, way of life or a religion. A co-operative society is not a state unless the tests indicated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, AIR 1981 SC 487 : (1981) 1 LLJ 103 : (1981) 1 SCC 722 : (1981) 2 SCR 79 : (1981) 2 SLJ 651 are satisfied. There is no case here that the appellant society satisfies the tests laid down by *Ajay Hasia* so as to be considered to be a state within the meaning of Article 12 of the Constitution. The fundamental rights in Part III of the Constitution are normally enforced against State action or action by other authorities who may come within the purview of Article 12 of the Constitution. It is not possible to argue that a person has a fundamental right to become a member of a voluntary association or of a co-operative society governed by its own bye-laws. So long as this position holds, we are of the view that it is not possible, especially for a Registrar who is an authority under the Cooperative Societies Act, to direct a co-operative society to admit as a member, a person who does not qualify to be a member as per the bye-laws registered under the Act. Nor can a Registrar direct in terms of Section 14 of the Act to amend the bye-laws since it could not be said that such an amendment, as directed in this case is necessary or desirable in the interests of the appellant society. What is relevant under Section 14 of the Act is the interests of the society and the necessity in the context of that interest. It is not the interest of an individual member or an aspirant to a membership."

21. Bearing the above legal position in mind, the contentions advanced by rival parties may now be noticed.

22. Shri Shashi Nandan, learned Senior Counsel appearing in support of the writ petition has submitted that the resolutions allegedly passed on 11/12/2014 and 28/1/2015 are clearly illegal and fly in the face of the Articles of Association/ Constitution of the College/Society as well as the Trust/Society. He submits that the aforesaid resolutions have come to be engineered by the respondent No. 4 and his other family members only with a view to exclude the petitioners from the management of the bodies and contrary to the wishes of the Founder Trustee.

23. Referring more particularly to the constitution of the College/Society, Shri Nandan, has laid great stress on Clause "L" relating to the office of President by submitting that the same envisages the President to be "elected" from the family of the founder of the institution. He submits that the respondent No. 4 has assumed the aforesaid office without any election process having been undertaken. He submits that Clause 7 while elaborating the duties of the General Body clearly specifies that the office bearers and members of the Managing Committee would be elected by the General Body. He has further drawn the

attention of the Court to Clause 7(3)(6) to submit that the power of the General Body to elect and constitute the governing body and its Executive Members stands reiterated in this clause. Taking his submissions forward Shri Shashi Nandan has submitted that the clause in the constitution relating to filling up of a casual vacancy could have no application to the office of the President and that the same by applying the principles of purposive interpretation must be confined to co-option of Executive Members only.

24. He has further contended that on 11/12/2014, the respondent No. 4 was not a member of the Managing Committee and like the petitioners was only a Member of the General Body of the College Society. He therefore had no right superior to that of the Petitioners to assume the office of President.

25. Referring then to the constitution of the Trust/Society, Shri Sashi Nandan has referred to Clause 3 of the Memorandum of Association Rules and Regulations to submit that here also it is clearly manifest that the Founder Trustees were to form the Board and in case of a vacancy arising on account of death, resignation or otherwise, the remaining trustees would fill up the vacancy by co-option of any other person as a member of the Board. He submits that in terms of Clause 4, a meeting of the Board of Trustees could have been convened only by the Secretary. The petitioner No. 2, who is the Secretary of the Trust/Society denies having ever convened or acted upon the requisition of the other members of the Board. Shri Shashi Nandan has further contended that it is also not the case reflected or borne out from the records that the Secretary failed to convene such a meeting as a result of which the other members requisitioned to convene and hold the meeting in question.

26. Shri Shashi Nandan has lastly submitted that the respondent No. 4 acting in concert with other interested parties has clearly proceeded in a manner which is ex facie in violation of the constitution of the College Society and Trust Society. Their actions are clearly in breach of trust and causes special injury to the Petitioners. He would submit that the actions taken by the said respondents were clearly designed to exclude and annihilate the special rights conferred upon the family members of the Founder Trustee. He submits that the College/Society and its affairs have been taken over clandestinely and in violation of the constitution of the College for private gains of the respondent No. 4. This submission he makes in light of the fact that his own family members are said to have been co-opted on to the Governing Body of the College Society as also with reference to the siphoning of all funds of the College/Society.

27. Elaborating his submission with respect to the validity of the resolutions said to have been passed on 28/1/2015, Shri Shashi Nandan has submitted that the amendment of significance which was sought to be brought about in the Constitution of the College Society was not presented by following the procedure prescribed under Section 12 of the Act, 1860. Shri Shashi Nandan submits that admittedly the so called amendment was not preceded by any report of the Governing Body nor was it preceded by any notice to the members of the

General Body.

28. He has further submitted that the various family members of the respondent No. 4 are said to have been co-opted/appointed to various offices of the Governing Body when the said process had not been preceded by filing of nominations or notice. He submits that no process/steps as ordinarily conceptualized as being part of a process of election were ever followed. He has further submitted that the power of co-option was one which was conferred on the Managing Committee and not on the General Body of the College/Society. For this reason too, he would submit that the resolution passed in the said meeting and the consequential actions taken by the Assistant Registrar pursuant thereto are liable to be quashed by this Court.

29. In light of the above, Shri Shashi Nandan would submit, that this Court would be well within its rights in declaring and ruling that the impugned resolutions and the consequential decisions taken by the Assistant Registrar are liable to be quashed.

30. Countering the above submission, Shri Ashok Khare, learned Senior Counsel submitted that this Court should not entertain the present petition inasmuch as ruling upon the validity of the submissions advanced would clearly result in this Court walking into an arena of disputed questions of fact and, therefore, would be against the very grain of the jurisdiction exercised by this Court.

31. He further contends that the petitioners if aggrieved, should have filed objections under Section 4 of the Act, 1860 before the Assistant Registrar. It is further submitted by Shri Ashok Khare, learned Senior Counsel that even today the petitioners have a right to invoke the provisions of Section 25 of the Act, 1860 by instituting a reference before the Prescribed Authority.

32. Insofar as the merits of the dispute are concerned, Shri Ashok Khare has submitted that a reading of the constitution of the College/Society clearly establishes that the election of the respondent No. 4 cannot be faulted. He submits that for the purposes of co-option, the Governing Body was acting well within its right by co-opting the respondent No. 4 who was a member of the General Body.

33. With regard to the validity of the meeting held on 11/12/2014 is concerned, Shri Khare submits that the said meeting was validly chaired by Shri Mohd. Azam in light of the fact that his resignation came to be accepted only on 28/01/2015. He submits that although the resignation was tendered on 23/5/2014, from the minutes of the meeting dated 28/1/2015, it is apparent that the resignation was accepted on the said date and, therefore, prior thereto Mohd. Azam was fully justified in chairing the meeting of 11/12/2014.

34. Shri Khare has lastly submitted that insofar as the issue of amendment is concerned, the same has already been remitted back by the Assistant Registrar for consideration by the Society and for compliance of the procedures prescribed

under statute and the Act, 1860 and, therefore, no interference at this stage by this Court was warranted.

35. Dealing with the first submission of Sri Khare this Court finds that the facts are really not in dispute. The submissions of parties too have centered around the interpretation of the provisions of the constitution. The absence of a dispute on facts is further highlighted by the respondents themselves having chosen not to rebut the averments made in the writ petition or having filed any affidavit in traverse thereof.

36. Insofar as the Petitioners being relegated to the remedies under Section 4 and 25 of the Act, 1860 is concerned suffice it to state that the stage of objecting has clearly passed. The lists of the Trust/Society and College/Society already stands registered under the Act, 1860. The Assistant Registrar does not appear to have put the Petitioners to notice in the course of proceedings under section 4 of the Act, 1860. The second aspect of the matter which this Court must bear in mind is the special injury caused to the Petitioners in light of the alleged violation of the provisions of the constitution and the breach of trust which appears to have been practised in this respect. The submissions of Sri Khare are therefore rejected on this score.

37. Having heard learned counsel for the parties, this Court finds that the affairs of the College Society and the Trust Society were inextricably interlinked. This not just because of common membership, but by the very nature and terms of the bequest/disposition made by the Founder Trustee. Undisputedly, the Trust/Society came to be founded by Shri Mohd. Aslam Shamsi who was the Founder Trustee and appears to have donated the land upon which the institution managed by the College/Society exists. One of the primary objects of the Trust/Society was to establish schools, colleges, and technical institutions of high standards. The fact that the College/Society was established and set up in implementation of the primary objective of the Founder Trustee is evident from the special position conferred upon him under the constitution. He is described to be the founder of the College/Society as well as the institution in question. The donation of land for the establishment of the institution also finds mention in this constitution. There appears to be further evidence of his control and wishes when the constitution of the College/Society provides that the office of President would always be filled by election from amongst the family members of the Founder Trustee. The constitution then categorically declares that it would work under the Trust/Society. The special position and status, therefore, placed upon the Founder Trustee and his family members is self evident and stark.

38. One then must bear in mind that the constitution and its terms constituted a binding contract not just between the members and the society but also between the members inter se. Any action taken in violation thereof would be ultra vires and therefore liable to be declared as void. If the action be in violation of the constitution and therefore ultra vires, the issue of ratification would not arise at all. The second aspect which has weighed with this Court is to test whether the

actions impugned were in tune with the aims, objects and wishes of the Founder Trustees as embodied in the constitution.

39. Upon a careful consideration of the provisions of the constitution of the College/Society, this Court finds that it envisages the following category of members:-

? Life members

? Ordinary members

? Special members

? Ex-officio members

40. The membership of the Society is envisaged to terminate upon any of the following contingencies

? Demise

? If dues are not paid in time

? If the term has expired

? Upon tendering of resignation

? If a member is not faithful or sincere to the society

? If a member remains absent from 3 consecutive meetings

41. The Constitution in clause (7) then provides that the society would consist of the following parts:-

? General Body

? Managing Committee

42. One of the salient functions of the General body is to elect the "office bearers" and "members" of the Society. This Court has consciously laid stress on the above two words for reasons that would become apparent from the discussion which follows.

43. Then comes clause (7)(3) of the Constitution, which provides that the Governing Body shall consist of "office bearers" and "executive members". While the office bearers of the Managing Committee are described to be the President, Vice President, Manager/Secretary, Joint Manager/Joint Secretary and Treasurer, this clause provides that it would also comprise of 5 executive members. This clause then mandates that the General Body would elect the executive members and the office bearers. The words "office bearers" and "members" are again employed separately in clause (c) when it provides that both classes would be elected in the annual general meeting. The disjunction between the two phrases is therefore apparent and stark.

44. Bearing the above in mind, let us approach the clause for co-option. This clause deals with the procedure for filling a vacancy created in the Managing Committee. However the vacancy likely to be created and filled up according to the procedure prescribed under this provision is one which may occur "due to the resignation or death" "or for any other reason" "of any member". This clause does not speak of an "office bearer". While an office bearer is also a constituent of the Managing Committee this Court must necessarily bear in mind what was noticed earlier and that being the apparent and conscious use of the words "office bearer" and "member" separately and disjunctively. In the opinion of this Court, the provisions of the constitution referred to above, clearly tend to indicate that the "office bearers" and "executive members" while together constituting the Managing Committee did represent a separate and distinct class inter se. Therefore when the clause of co-option refers only to a member there appears to be a deliberate and conscious omission of the words "office bearer" therefrom. Consequently this Court comes to the conclusion that the said clause would apply only to a vacancy created due to the resignation or death of an executive member and not an office bearer.

45. While interpreting this provision one must not lose sight of one of the golden rules of interpretation which bids one to not just consider the written word but also those which have been deliberately and consciously omitted and kept out. The mind and intent of the author speaks not just through words penned but also through the "omissions" made and supplied to the provision.

46. One then must make an effort to harmoniously construe all the provisions of the constitution. This becomes necessary in order to give effect to all the clauses of the charter equally without bringing the competing clauses in conflict. As has been noticed hereinabove, the constitution conferred a special status upon the Founder Trustee and his family members. This is evident when one reads the clause, which unambiguously mandates that the office of President would be filled up by election from amongst the family members of the Founder Trustee only. Justice cannot be accorded to this seminal and special provision and the will of the makers of the constitution if the clause of co-option is interpreted to include the office of President. This special clause must be permitted to run its full width and amplitude and cannot be scuttled by the provision of co-option.

47. While on this clause of the constitution, a word with respect to the sentence "due to the resignation or death" of any member "or for any other reason..." as employed therein. This Court is firmly of the opinion that the words "or for any other reason" as used therein would not amplify the scope and ambit of the provision and bring within its sweep office bearers also. Firstly the said phrase is again connected to a "member" of the Managing Committee. Secondly the sole reason for the usage of the said words appears to be the fact that the cessation of membership does not come about only on account of death or resignation but also on account of various other factors and contingencies specified in clause 6 of the constitution.

48. One then comes to the fateful meeting of 11.12.2014. This Court has already held that the clause of co-option would not be applicable insofar as the office of President was concerned. Therefore the so-called proceedings taken by the members of the Managing Committee was clearly in violation of the provisions of the constitution of the College/Society. This meeting then appears to be suspect for the following reason. Undisputedly this meeting was of the remaining members of the Managing Committee and was chaired by Sri Mohd. Azam. The factum of him having tendered his resignation on 23.05.2014 is not disputed by Sri Khare. What he however submits was that the resignation would become effective only upon its acceptance. However this Court finds that the resignation in question is not asserted or stated to have been made effective from a future date. Further the constitution while dealing with the issue of termination of membership uses the words "If a member tenders his/her resignation." Therefore the constitution clearly envisages cessation of membership from the very moment that the resignation is tendered. It is therefore apparent that the membership of Sri Mohd. Azam stood terminated with effect from 23.05.2014 itself and therefore he could not have chaired the meeting in question. In view of the conclusion arrived at above, this Court is unable to accept the contention advanced by Sri Khare that the resignation would be deemed to have come into effect only from the date that it was accepted.

49. More fundamentally this Court finds that the special provision made in the constitution with respect to the members of the family of the Founder Trustee was given a clear go by. Undisputedly the Petitioner Nos. 1 and 2 and the Respondent No. 4 were all members of the family of the Founder Trustee and part of the general body. All three were equally entitled to offer themselves for election to the office of President. However no process of election was undertaken at all. As has been noticed above, the office bearers were liable to be elected by the members of the general body. The process of co-option was not available for the purposes of filling this casual vacancy of an office bearer. However the Petitioner Nos. 1 and 2 do not appear to have been afforded any opportunity of filing nomination or entering the fray. The constitution in this connection lays down a detailed procedure for conduct of election in clause (7) (3). It is not the case of the respondents that such procedure was adopted. The reason in fact is obvious the appointment of the respondent No. 4 came to be made by the Managing Committee and not the General Body at all.

50. The Court is therefore constrained to record its conclusion that the process adopted for filling the office of President as adopted in this meeting of 11.12.2014 was in clear violation of the constitution of the College/Society.

51. One then comes to the meeting of 28.01.2015. Insofar as the issue of the amendments in the constitution are concerned, it is admitted to parties that the Assistant Registrar has remitted the matter back to the College/Society for submitting the same after following the procedure prescribed under the Act, 1860. This Court therefore does not deem it appropriate to rule on this aspect of

the matter. However one cannot loose sight of the fact that various respondents herein came to be placed in the position of office bearer and member in this meeting of the General Body. The submission of Sri Nandan learned Senior Counsel that this meeting was not preceded by any steps known to the conduct of an election has not been refuted by Sri Khare. The so called election of the respondents as office bearers is not stated to have been preceded by the filing of nominations, inviting of objections or any other like preliminary step commonly known and understood as falling within the ambit of an election. There can surely be a case where only a single nomination is filed or the nominations in opposition are withdrawn and the persons elected unanimously. However even this process of unanimous election must necessarily be preceded by the following of the preliminary processes envisaged and spelt out in clause (7)(3). What appears to have been followed in this meeting is a process of co-option and not election. However the procedure of co-option was a power conferred upon the Managing Committee and not the General Body. More significantly this Court notices that in paragraph 41 of the writ petition it is averred that the Respondent Nos. 6, 7 and 8 were not even members of the General Body of the College/Society. This fact also has not been controverted by the Respondents either by way of affidavit or in oral submissions. The Court must further take notice of the un-rebutted averments in paragraph 5, 6, 7 and 8 of the supplementary affidavit which establishes the family connection between the persons co-opted into the Managing Committee and the Respondent No. 4. The assertions made therein clearly show that they fall within the mischief of Section 20 of the U.P. State Universities Act, 1973 and were therefore ineligible to be a part of the Managing Committee.

52. For the aforesaid reasons the so-called election of Vice President and executive members is also, in the opinion of this Court in violation of the provisions of the constitution.

53. Coming then lastly to the meeting of the Trust/Society stated to have been held on 03.02.2015 this Court finds that the submissions of Sri Nandan that this meeting was never convened by the Secretary nor was any notice of such meeting circulated is not countered or denied by the Respondents. The respondents also do not rely upon any requisition that may have been submitted by the Trustees pursuant to which the Secretary may have been under an obligation to convene the meeting.

54. That leaves the Court with one last aspect of the matter and that being the exercise of jurisdiction by the Assistant Registrar. The Assistant Registrar exercises power under Section 4 of the Act, 1860 to take on record a list of the members comprising the governing body of every Society registered under the Act, 1860. The proviso to Section 4 then provides that in case the list so submitted be of a managing body elected after the last submission of the list, it would be countersigned by the old members as far as possible. The proviso then mandates that in case the old members do not counter sign, the Assistant

Registrar may in his discretion issue a public notice or effect notice upon such persons as he thinks fit inviting objections to the said list.

55. From the nature of the power conferred upon the Assistant Registrar under Section 4 it is apparent that he does not act as a mere post office or rubber stamp. The list of the managing committee taken on record represents a significant step taken by the Assistant Registrar. The proviso to section 4 of the Act, 1860 is a clear indicator in this behalf. After all he is the primary executive authority enjoined to administer the provisions of the Act, 1860 and oversee the working of societies registered thereunder. The power to invite objections is invested in the Assistant Registrar to be exercised not just in a case where objections are filed before him. When a list of members said to be comprising the managing committee is submitted before the Assistant Registrar, he is obliged to at least *prima facie* satisfy himself with respect to the membership of the members stated to be comprising the managing committee, whether the constitution and the byelaws of the Society were followed, whether elections were held in accordance thereof. These are all aspects upon which the Assistant Registrar must confer consideration even if it were brief, summary and aimed towards recordal of *prima facie* satisfaction. After all the list taken on record by him and registered carries with it and stands imbued with a degree of authenticity.

56. However the Assistant Registrar in the facts of the present case does not appear to have applied his mind to this aspect of the matter at all. A plain reading of the provisions of the constitution would have been sufficient to create a doubt with respect to the validity of the proceedings filed before him. The categorical case of the Petitioner's in paragraph 43 of the writ petition is that the list submitted did not carry the counter signatures of the old members. It is further averred that no objections were invited by the Assistant Registrar in this regard.

57. For the reasons recorded hereinabove, this Court is of the firm opinion that the actions of the Assistant Registrar in registering and taking on record the list of office bearers of the Muslima Girls College and Indian Al Muslima Welfare Charitable Trust for the years 2014-15 cannot be sustained. Accordingly the lists registered by the Assistant Registrar and appended as Annexures 12 and 14 to the writ petition are hereby quashed. This Court leaves it open to the parties to proceed in the matter in light of the observations made hereinabove and the constitution of the College/Society and Trust/Society.

58. The writ petition stands allowed in the above terms.