
(2010) 02 AHC CK 0120
In the Allahabad High Court

Awadh Jan Kalyan Samiti and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 02 AHC CK 0120

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dilip Gupta, J.—Awadh Jan Kalyan Samiti, Khalil Sharki, Shahjahanpur (hereinafter referred to as the ""Society") and two others namely Brijesh Chandra Pathak and Smt. Suman Bajpayee claiming themselves to be the Secretary and Manager of the Society have filed this petition for setting aside the order dated 19th November, 2009 passed by the Assistant Registrar, Firms, Societies and Chits, Bareilly (hereinafter referred to as the ""Assistant Registrar") by which the amendments made in the Bye-laws of the Society on 19th October, 2004 have not been accepted and a direction for holding fresh elections of the Committee of Management of the Society in accordance with the original Bye-laws from amongst the 12 original members has been issued.

2. The Society was registered under the provisions of Societies Registration Act, 1860 (hereinafter referred to as the ""Act") on 20th March, 1998. The registration was initially for a period of five years and papers for renewal of the registration of the Society were submitted before the Assistant Registrar and it was renewed on 25th April, 2003 for five years w.e.f. 23rd April, 2003. At the time of registration of the Society in 1998 there were 12 members in the Society.

3. The dispute is about the elections of the Committee of Management of the Society held in 2007. The Assistant Registrar by the order dated 29th September, 2007 referred the dispute to the Prescribed Authority u/s 25(1) of the Act as

papers for registration of the office bearers were submitted by two Committee of Managements. This order of reference was challenged by the Society through its Secretary Rajeev Kumar Mishra in Writ Petition No. 20866 of 2008. This petition was dismissed by the judgment and order dated 23rd April, 2008.

4. The Prescribed Authority by the order dated 28th April, 2008 held that the election of the Committee of Management with Suman Bajpayee as the Manager and Brijesh Chandra Pathak as Secretary was valid. This decision of the Prescribed Authority was challenged by the Committee of Management through its Secretary, Rajeev Kumar Mishra in Writ Petition No. 29924 of 2008. This petition was allowed by the judgment and order dated 2nd July, 2008 which is as follows:

Learned Counsel for the petitioners submitted that the main reason assigned by the Prescribed Authority for holding invalid the meeting convened by the petitioner-Committee of Management on 28th August, 2007 is that only 12 members participated in the meeting instead of 20 members whereas in fact there were only 12 members when the meeting was held and 9 members were enrolled in the meeting held on 28th August, 2007 and not on 25th August, 2007. He further contended that no amendments were made in the Bye-Laws on 10th October, 2004 and the Prescribed Authority has found the meetings held by the respondent-Committee to be valid without giving any reason for coming to such a conclusion.

Learned Counsel appearing for the respondent-Committee of Management found himself in some difficulty in defending the order and has, therefore, very fairly stated that the impugned order dated 28th April, 2008 passed by the Prescribed Authority may be set aside and the matter may be remanded for deciding it afresh in accordance with law after hearing the parties concerned.

Learned Standing Counsel does not have any objection to such an order being passed.

In this view of the matter, the order dated 28th April, 2008 passed by the Prescribed Authority (Annexure 17 to the Writ Petition) is set aside. The matter is remitted to the Prescribed Authority to decide the dispute afresh in accordance with law after hearing the parties concerned expeditiously, preferably within a period of six weeks from the date a certified copy of this order is filed by either of the parties before the Prescribed Authority.

The Writ Petition is, accordingly, allowed to the extent indicated above.

5. The Prescribed Authority then passed the order dated 20th September, 2008. It found that the main dispute between the parties was regarding the amendments made in the Bye-laws of the Society. It found that both the sides led by Sri Brijesh Chandra Pathak and Rajeev Kumar Mishra had claimed amendments but had not filed the original documents and, therefore, it was not possible to ascertain the amendments that had actually been made in the Bye-laws. The Prescribed Authority, therefore, observed that it was not possible to

decide the dispute and accordingly sent the papers back to the Assistant Registrar.

6. It is on the basis of this order dated 20th September, 2008 passed by the Prescribed Authority that the Committee with Rajeev Kumar Mishra as the Secretary filed Writ Petition No. 21812 of 2009 which was disposed of on 24th April, 2009 with the following observations:

The sole prayer made by the learned Counsel for the petitioner in this writ petition is that the matter, which has been sent to Respondent No. 2 by order dated 20.9.2008 passed by the Prescribed Authority, may be decided expeditiously.

Accordingly, it is provided that in case if the petitioner files an application before the Respondent No. 2 for expeditious disposal of the case after serving a copy of the said application on respondents No. 3 and 4, the said application shall be taken up by the respondent No. 2 in presence of Respondents No. 3 and 4 and every endeavour shall be made by the Respondent No. 2 to decide the dispute relating to the managerial dispute of society, in accordance with law, expeditiously, preferably within three months from the date of filing of the said application, after giving an opportunity of hearing to the petitioner as well as Respondents No. 3 and 4.

7. The Assistant Registrar then passed the order dated 19th November, 2009 nominating the Sub-Divisional Magistrate, Sadar District Shahjahanpur to hold the elections of the office bearers of the Society u/s 25(2) of the Act from amongst 12 original members on the basis of the Bye-laws of the Society initially registered on 20th March, 1998.

8. Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners submitted that the direction for holding a fresh election by the Assistant Registrar u/s 25(2) of the Act could not have been issued as none of the three conditions for issuing such directions existed. He further submitted that in any view of the matter, the Assistant Registrar could have at best directed for calling a meeting of the General Body of the Society for electing the office bearers which meeting could have been presided by the Registrar or by any Officer authorized by him in this behalf but that was not done and the Sub-Divisional Magistrate was directed to hold the elections. It is also his submission that since the Assistant Registrar had earlier referred the dispute to the Prescribed Authority u/s 25(1) of the Act, he could not have assumed jurisdiction in the matter and issued the directions. Elaborating his submissions, learned Senior Counsel submitted that it is not a case where the Prescribed Authority had set aside the election or had held that the office bearers are no longer entitled to continue in office and nor is it a case where the Assistant Registrar was satisfied that the election of the office bearers of the Society had not been held within the stipulated time which are conditions precedent for issuing such directions. It is, therefore, his submission that the order passed by the Assistant Registrar should be set aside.

9. Sri G.K. Singh, learned Counsel appearing for respondent No. 3 Rajiv Mishra, however, submitted that as the Prescribed Authority had remanded the matter to the Assistant Registrar and this Court in Writ Petition No. 21812 of 2009 had issued directions on 24th April, 2009 to the Assistant Registrar to decide the managerial dispute of the Society in accordance with law, the Assistant Registrar was justified in passing the impugned order. He, however, submits that he would have no objection if the Officer authorized by the Assistant Registrar presides over the meeting of the General Body of the Society for electing the office bearers and this part of the order of the Assistant Registrar which nominates the Sub-Divisional Magistrate, Sadar, district Shahjahanpur to hold the election, may be modified accordingly.

10. I have carefully considered the submissions advanced by learned Counsel for the parties.

11. It is not in dispute that earlier the Assistant Registrar had referred the dispute to the Prescribed Authority u/s 25(1) of the Act by the order dated 29th September, 2007 as two rival Committee of Managements of the Society had submitted papers pertaining to the elections held by them. The Prescribed Authority found that in order to resolve this dispute, it was necessary to find out which of the amendments made by the Committee of Managements in the Bye-laws of the Society after registration of the Society was renewed in 2003 were correct but it expressed its inability to decide this dispute as the parties had not placed the original documents relating to the amendments. The Prescribed Authority, therefore, concluded that it was left with no option but to send back the papers to the Assistant Registrar.

12. It is then that the Committee of Management of the Society with Rajiv Mishra as the Secretary filed Writ Petition No. 21812 of 2009 in which a direction was issued to the Assistant Registrar to decide the dispute expeditiously.

13. The records do not indicate that any objection was raised by the petitioner-Committee of Management before the Assistant Registrar that he could not decide the dispute. The order dated 20th September, 2008 passed by the Prescribed Authority was also not challenged by the petitioner-Committee of Management. The result is that none of the elections of the Committee of Managements held in 2007 was approved by the Prescribed Authority. The Assistant Registrar was, of course, bound by the observations made by the Prescribed Authority that it was not possible to decide the validity of any of the elections placed since the original documents relating to amendments in the Bye-laws of the Society had not been placed by the parties.

14. Sri Ravi Kiran Jain, learned Senior Counsel for the petitioners has contended that none of the conditions u/s 25(2) of the Act existed for issuing directions for holding fresh elections u/s 25(2) of the Act.

15. In order to appreciate the submissions, it would be necessary to reproduce Section 25(2) of the Act which is as follows:

25(2):- Where by an order made under Sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

17. Learned Senior Counsel may be justified in making this submission, but the position that emerges is that the term of the Committee of Management of the Society had come to an end in 2007 and the elections said to have been held in 2007 by the rival Committee of Managements of the Society had not been approved by the Prescribed Authority. Thus, the Assistant Registrar, was left with no option except to issue directions for holding of fresh elections. It will, therefore, not be appropriate for this Court to interfere with this part of the order of the Assistant Registrar under Article 226 of the Constitution.

18. The submission of Sri Ravi Kiran Jain learned Senior Counsel for the petitioners regarding the legality of the directions contained in the second part of the order that the nominated person namely the Sub-Divisional Magistrate shall hold the elections of the Committee of Management of the Society within three weeks, however, has to be accepted as such a direction could not have been issued u/s 25(2) of the Act. The said direction has, therefore, to be modified to bring it in accordance with Section 25(2) of the Act. It is, therefore, ordered that the Sub-Divisional Magistrate shall preside the meeting of the General Body of the Society and the election will be held in accordance with the Bye-laws of the Society registered on 20th March, 1998 from amongst the 12 original members of the Society registered in 1998.

19. Thus, while the first part of the impugned order dated 19th November, 2009 passed by the Assistant Registrar is upheld, the second part of the said order is modified in terms of the observations made above.

20. The writ petition is allowed to the extent indicated above.