
(2010) 08 AHC CK 0110
In the Allahabad High Court
Case No : C.M.W.P. No. 48540 of 2010

Bhupendra Kumar Tyagi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Societies Registration Act, 1860 — Section 25(1), 4, 4(1)

Citation : (2010) 6 AWC 5703

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Shailendra, learned Counsel for the Petitioners, Sri G.K. Singh, learned Counsel for Respondent Nos. 3 and 4 and learned standing counsel for Respondent Nos. 1 and 2.

2. Learned Counsel for the parties agree that the present writ petition may be disposed of without calling for further affidavits specifically in view of the order proposed to be passed today.

3. Petitioners before this Court, who are 36 in number, claim to be the life members of the society known as "A.S. Degree College Society, Mawana, district Meerut. The said society is duly registered under the Societies Registration Act, 1860. Elections for constituting the Office Bearers/Committee of Management of the said society, which in turn becomes competent to manage the institution run and managed by the said society, are stated to have been held on 15th November, 2009 by the outgoing Committee of Management. The papers in respect of elections so held were transmitted to the Deputy Registrar, Firms, Societies and Chits, Meerut for the list of elected office bearers being registered u/s 4 of the Societies Registration Act, 1860, as amended in the State of Uttar Pradesh. At that stage, objections were filed by the present Petitioners, some of whom were outgoing office bearers of the society. The Deputy Registrar under

the order dated 31st July, 2010 has held that objections raised had no force and has therefore, proceeded to uphold the legality of the elections held and has further recorded that in the facts of the present case, it is not necessary to refer the dispute u/s 25(1) of the Societies Registration Act, 1860 to the Prescribed Authority. Accordingly, the list of office bearers has been registered u/s 4(1) of the Societies Registration Act, 1860. It is against this order that the present writ petition has been filed.

4. On behalf of the Petitioners various documents including resolution passed by the Committee of Management, as obtained from the office of the Deputy Registrar himself as well as other infirmities in the procedure adopted qua elections, have been brought to the notice of the Court. It is contended that in the facts of the present case, it cannot be said that there was no bona fide dispute about the elections. Therefore, in view of the Division Bench judgments of this Court in the case of Committee of Management v. Secretary, Arya Kanya Inter College (1991) 2 UPLBEC 77 and Sitaram Rai and Ors. v. Additional Registrar, Firms Societies and Chits, Gorakhpur Division, Gorakhpur 2003 (3) ESC (All) : 2003 (5) AWC 4151, the Assistant/Deputy Registrar could not have examined the dispute himself and he was bound to refer the same to the Prescribed Authority u/s 25(1) of the Societies Registration Act.

5. The contention so raised on behalf of the Petitioners is opposed by Sri G.K. Singh, learned Counsel for Respondent Nos. 3 and 4 and it is contended that the Deputy Registrar has examined all aspect of the matter and has come to the conclusion that in the facts of the present case elections were validly held and therefore, there was no occasion for any reference being made to the Prescribed Authority. He has placed reliance upon an judgment of writ court dated 25th May, 2010, passed in Writ Petition No. 30414 of 2010, Alias Ahmad Khan v. State of U. P. and Ors., for the proposition that since the Petitioners do not represent 1/4 of the members of the general body of the society, therefore, no judicial review can be asked for by such number of persons.

6. I have considered the submission made by the learned Counsel for the parties and have examined the records of the present writ petition.

7. Judgment relied upon by the learned Counsel for the Respondents is clearly distinguishable, inasmuch as the Division Bench of this Court has held that if there is bona fide dispute about the elections held, the Deputy. Registrar has no jurisdiction to enter into the said issue. Such dispute has to be referred to the Prescribed Authority. Petitioners before this Court are not rank outsider, they are life members and some of them were also outgoing office bearers. From the order of the Deputy Registrar impugned in the present writ petition this Court has no hesitation to record its satisfaction that there was no bona fide dispute about the elections. This Court is deliberately refraining itself from expressing any opinion on the issue of dispute, inasmuch as any finding recorded in that regard may adversely reflect upon the claim of the parties before the Prescribed Authority.

8. In the facts of the present case, I am of the considered opinion that the Deputy Registrar should have referred the dispute to the Prescribed Authority u/s 25(1) of the Societies Registration Act, 1860. Accordingly, the order passed by the Deputy Registrar dated 31st July, 2010 is hereby set aside. Let the papers qua elections held on 15th November, 2009 by outgoing Committee of Management be transmitted to the Prescribed Authority u/s 25(1) of the Societies Registration Act, 1860 within two weeks from the date a certified copy of this order is filed before the Deputy Registrar. On receipt of the same, the Prescribed Authority shall adjudicate upon the reference so made in accordance with law, within three months thereafter.

9. All objections raised including the disqualification of the office bearers concerned are left open to be agitated before the Prescribed Authority.

10. In order to ensure that no vacuum is created in respect of the institution, it is further provided that till the matter is resolved by the Prescribed Authority as indicated above, status quo with regard to the management of the institution as on date shall be maintained. However, no major policy decision/major expenditure shall be incurred by the Respondent-Committee of Management without the approval of the Vice-Chancellor.

The present writ petition is allowed subject to the observations made above.