
(2018) 02 AHC CK 0028
In the Allahabad High Court
Case No : 2591 of 2014

C/M Karari School Association And Another	APPELLANT
Vs	
State Of U.P. Thru Secy. And Others	RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

[Societies Registration Act, 1860](#), [Section 25\(1\)](#)

Citation : (2018) 02 AHC CK 0028

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Prabhakar Awasthi, O.P. Singh Sikarwar, D. Narayan, M.N. Singh, Rahul Agarwal

Final Decision : Dismissed

Judgement

1. Writ Petition No. 2591 of 2014 has been filed by the petitioners, Committee of Management, Karari School Association, Karari, Kaushambi and its Secretary, Abhishek Tiwari against the State-respondents and respondent No. 4, the rival Committee of Management through its Secretary, Santosh Kumar Jaiswal. The petitioners pray for quashing of the impugned order dated 24.12.2013 passed by the Prescribed Authority/Sub Divisional Magistrate, Manjhanpur, district Kaushambi and for issuance of mandamus commanding the Assistant Registrar, Firms, Societies and Chits, respondent No. 2 to permit the petitioners to discharge day to day functioning of the Institution after validating the election dated 24.07.2012, wherein Abhishek Tiwari was elected as Secretary.

2. Writ Petition No. 61488 of 2014 has been filed by the Committee of Management of Karari School Association through its Manager Kamta Nath Mehrotra. Petitioner Nos. 2, 3 and 4 respectively are Kamta Nath Mehrotra, alleged Manager, Deepak Kumar Mehrotra alleged Vice President and Ankur Mehrotra, allegedly elected member of Karari School Association, Karari, district Kaushambi. The petitioners have filed this writ petition challenging the order/

letter dated 28.10.2014 issued by the Assistant Registrar, Firms Societies and Chits, Allahabad as also the list of 51 members, which has been dispatched by the said letter by the Assistant Registrar. A further writ in the nature of mandamus has been prayed for commanding the District Inspector of Schools, Kaushambi not to hold any election of the Committee of Management of the Institution on the basis of Electoral College of 51 members as sent by the Assistant Registrar by the impugned letter dated 28.10.2014.

3. The petitioners have filed the aforesaid writ petition on the ground that in District Kaushambi, there is a Society named Karari School Association, Karari, Kaushambi, which is registered under the Society Registration Act, 1860. The Society is managing an Intermediate College called Karari Intermediate College, Karari, Kaushambi. The last valid election of the Committee of Management of the Society was held on 01.07.2007, wherein Mazhar Abbas was elected as President, Kamta Nath Mehrotra was elected as Manager and Santosh Kumar Jaiswal was elected as Secretary, besides other office bearers, the total being twelve office bearers.

4. Amongst the said office bearers, five members/office bearers of the Committee of Management died in between 2007 to 2010. Abhishek Tiwari was enrolled as member in the proceeding of the General Body dated 06.04.2010. Out of the 51 members constituting the General Body at the time, 35 members were present and voting and Abhishek Tiwari deposited his membership fee on the same date. The Resolution dated 06.04.2010 was signed by 35 members and the affidavits of five out of the surviving seven office bearers of the Committee of Management were also filed in favour of Abhishek Tiwari before the Assistant Registrar.

5. Under the Bye-laws of the Society, the term of the Committee of Management is five years, which was about to come to an end and therefore, the General Body held an election on 24.07.2012, wherein the Abhishek Tiwari was elected as Secretary, Kamta Nath Mehrotra was elected as Manager and Deepak Kumar was elected as President. The papers regarding election of Committee of Management with Abhishek Tiwari as the Secretary were sent to the Assistant Registrar along with supporting affidavits of office bearers.

6. The Assistant Registrar by an order dated 25.04.2013 rejected the claim of the petitioner- Society and validated the proceeding dated 02.07.2012, wherein respondent No. 4 was allegedly elected as Secretary along with the other office bearers including Kamta Nath Mehrotra as Manager.

7. The petitioners filed Writ Petition No. 29182 of 2013 with the affidavit of Kamta Nath Mehrotra saying that no such elections were held on 02.07.2012. Writ Petition No. 29182 of 2013 was disposed of on 22.05.2013 directing the petitioners to approach the Prescribed Authority under section 25(1) of the Society Registration Act.

8. After disposal of the writ petition No. 29182 of 2013 on 22.05.2013, the

petitioners Kamta Nath Mehrotra and others filed a representation to the Prescribed Authority, which was decided by the Prescribed Authority on 24.12.2013 holding the said Reference to be not maintainable under section 25 (1) of the Society Registration Act. This order dated 24.12.2013 has been challenged in Writ Petition No. 2591 of 2014. This Court therefore, is dealing with Writ Petition No. 2591 of 2014 first on merits.

9. It has been alleged that since notice of filing of Writ Petition No. 29182 of 2013 was served upon respondent No. 4 as caveat application had been filed, even before such writ petition could be taken up before this Court on 25.05.2013, a meeting was allegedly held by respondent No. 4 on 21.05.2013 expelling Kamta Nath Mehrotra, Manager, Deepak Kumar Mehrotra, Junior Vice President and Ankur Mehrotra, Executive Member from the membership of the Society. The papers relating to the alleged meeting held on 21.05.2013 were submitted to the Assistant Registrar on 03.06.2013 and he registered the new list of office bearers recognising the removal of Kamta Nath Mehrotra, Deepak Kumar Mehrotra and Ankur Mehrotra from the Committee of Management.

10. Against the order dated 03.06.2013 Kamta Nath Mehrotra filed a Writ Petition No. 34295 of 2013, which was allowed on 05.07.2013 holding that no opportunity of hearing was given to the petitioner therein. Respondent No. 4 filed Special Appeal No. 1113 of 2013, which was disposed of on 06.08.2013 with a direction that since the Prescribed Authority was already seized of the matter in Reference filed by Abhishek Tiwari, the dispute regarding removal of Kamta Nath Mehrotra and recognition of rival Committee of Management by the Assistant Registrar on 03.06.2013 may also be looked into by the Prescribed Authority.

11. It has been alleged that in pursuance of the order dated 06.08.2013 passed in Special Appeal No. 1113 of 2013, Kamta Nath Mehrotra along with 1/4th members of the General Body preferred Reference No. 6 of 2013, under section 25(1) of the Society Registration Act, whereas the Abhishek Tiwari had already preferred a representation to the Prescribed Authority, which was registered as Reference No. 5 of 2013.

12. It has been stated by the petitioners in the writ petition that after issuance of notice, an objection was filed by respondent No. 4 on 06.07.2013 to Reference No. 5 of 2013, to which the petitioners preferred their replication and submitted documentary evidence. The Prescribed Authority but without hearing the parties, only on the basis of written arguments given on behalf of respondent No. 4 before it passed the impugned order dated 24.12.2013 returning a finding that the Reference was not maintainable as the same was not preferred by 1/4th members of the General Body of the Society as well as returning a finding on the merits of the case that alleged incorporation of new members in the membership of the Society and deposit of membership fee by these members could not be believed as the symbol of Rupee i.e. "Rs." was adopted by the Central Government only in July, 2010, whereas the said symbol was printed on the right hand side corner of the receipts issued to the alleged members including the

petitioner No. 2 in between 2007 to April, 2010.

13. Mr Prabhakar Awasthi, learned counsel appearing on behalf of petitioners Abhishek Tiwari and also Kamta Nath Mehrotra and others has argued that the finding returned by the Prescribed Authority of the Reference being not maintainable, is against the mandate of this Court as this Court while disposing of Writ Petition No. 29182 of 2013 on 22.05.2013 had directed the petitioner No. 2 to approach the Prescribed Authority by filing a representation against the order dated 25.04.2013 passed by the Assistant Registrar validating the election held on 24.07.2012 by respondent No. 4. The petitioner in compliance of order passed by this Court had moved a representation, which was entertained and notice issued.

14. Moreover, it has been argued that no such plea of membership fee receipts being forged was raised during the hearing of the Reference before the Prescribed Authority as no oral hearing actually took place, only written arguments were filed by respondent No. 4 on the basis of which the Prescribed Authority passed the impugned order. The impugned order being passed without following the principle of natural justice is vitiated and liable to be set aside.

15. It has been argued by Mr Prabhakar Awasthi, learned counsel for the petitioners that it has not been held by the Prescribed Authority that Lalji Chaurasia was not the Treasurer of the Society and undisputedly Lalji Chaurasia had signed on the membership fee receipts, therefore, absolutely no argument could be made that the receipts contained symbol of Rupee i.e. "Rs.", which was not in use in April, 2010, raised by respondent No. 4 in the written argument could be believed without giving necessary opportunity of hearing to petitioner No. 2 to rebut the claim so made.

16. It has also been argued by Mr Prabhakar Awasthi, learned counsel for the petitioners that the Prescribed Authority having held once that the Reference was not maintainable being filed only by petitioner No. 2 in his personal capacity, could not have also made observations on the merits of the case also, and should have simply rejected the Reference on the ground of maintainability, leaving it open for Abhishek Tiwari to file a fresh Reference with the signatures of 1/4th members of the General Body of the Society. In any case, one reference No. 6 of 2013 filed by Kamta Nath Mehrotra along with 1/4th members of the Society was already pending before the Prescribed Authority, which should have been dealt with simultaneously, as it related to the same controversy with regard to the same Society.

17. Mr O.P. Singh Sikarwar, learned counsel has filed a detailed counter affidavit on behalf of respondent No. 4, wherein a preliminary objection has been raised regarding the maintainability of the writ petition on the ground that the original order dated 25.04.2013, which gave rise to the dispute has not been challenged in writ petition. The order dated 03.06.2013 registering the list of office bearers of respondent No. 4 had become final in view of the judgment rendered in

Special Appeal No. 68 of 2013 and quashing of the order dated 03.06.2013 having not been prayed, the consequential prayer for issuance of mandamus for recognising the election of the petitioners allegedly held on 02.07.2012 also cannot be granted by this Court.

18. It has been argued that in Writ Petition No. 29182 of 2013, this Court on 22.05.2013, gave liberty to the petitioners to approach the Prescribed Authority under section 25(1) of the Society Registration Act, but the order dated 25.04.2013 was not interfered with by this Court, and it consequently remained intact and operative and should have been challenged in the present writ petition as without the said order being set aside or order dated 03.06.2013 being set aside, no relief can be granted to the petitioners in this writ petition.

19. It has also been argued that the order dated 03.06.2013 has not been challenged because it was already challenged in Writ Petition No. 34295 of 2013, which writ petition was allowed on 05.07.2013 quashing the order dated 03.06.2013 and remanding the matter to the Assistant Registrar for decision afresh. This judgment dated 05.07.2013 was challenged by the respondent No. 4 by filing Special Appeal No. 1113 of 2013 and when the said Special Appeal was decided on 06.08.2013, the order dated 05.07.2013 was set aside. Consequently the order dated 03.06.2013 revived. The Hon'ble Division Bench only directed the Prescribed Authority to decide the representation submitted by Abhishek Tiwari pending before him within a maximum period of two months from the date a certified copy of the order dated 06.08.2013 is served upon him and that it would be open to respondent Nos. 2 to 4 (Kamta Nath Mehrotra, Deepak Kumar Mehrotra and Ankur Mehrotra) to the Special Appeal, to agitate the question of their removal from the Committee of Management as well as from the General Body of the Society before the Prescribed Authority, who was to decide the said issue also within the said time of two months.

20. It has been submitted by the learned counsel for the respondents that the order dated 03.06.2013 having been revived, it also needed to be challenged in this writ petition for no effective relief can be granted to the petitioner without setting aside the order dated 03.06.2013.

21. It has also been argued by Mr O.P. Singh Sikarwar, learned counsel for the respondents that from a perusal of the order sheet of Reference No. 5 of 2013 filed by petitioner No. 2 in this writ petition, it is evident that several dates were fixed for hearing by the Prescribed Authority. Although written statement was filed by respondent No. 4 along with affidavit on 06.07.2013, the petitioner continued to take time on several dates thereafter i.e. 12.07.2013 and 26.07.2013. Respondent No. 4 filed not only affidavit, but also application, which were taken on record, and on 26.07.2013. The Prescribed Authority thereafter passed an order directing for production of original record by both the parties on 02.08.2013. The matter could not be taken up on 02.08.2013 and was ultimately taken up on 11.09.2013. Both parties were present on 11.09.2013 and again an application was filed by respondent No. 4, which was taken on record and the

matter was directed to be listed on 19.09.2013 for arguments. The matter was listed thereafter on several dates, but could not be taken up and was ultimately taken up on 09.12.2013 and on which date both parties were present and it was observed by the Prescribed Authority that the High Court had given time of only two months to decide the matter, and therefore, a direction was issued that written arguments be filed by 12.12.2013 with last opportunity to both the parties to submit original documents in support of their case along with written arguments. The matter was next listed on 12.12.2013 and 18.12.2013, but could not be taken up and was finally taken up on 21.12.2013 when arguments of advocates appearing for both the parties were heard, the written arguments on behalf of respondent No.4 were filed and the Prescribed Authority directed the matter to be listed on 24.12.2013 for orders. On 24.12.2013, the matter was taken up for orders and it was observed that both the parties have already been heard on an earlier occasion. The original documents of both the parties were returned to them and final orders were delivered rejecting the said Reference/Representation.

22. It is the case of respondent No. 4 as argued by their counsel that this Court had disposed of the Writ Petition No. 29182 of 2013 on 22.05.2013 directing the writ petitioners to approach the Prescribed Authority under section 25(1) of the Act, which necessarily meant that reference had to be filed by 1/4th members of the General Body of the Society as prescribed under the Act as the Prescribed Authority had to decide the matter in accordance with law and not against it. The procedure prescribed under the Act had not been followed. The representation of Abhishek Tiwari was rightly rejected.

23. It has also been argued that the Reference No. 6 of 2013 filed allegedly by Kamta Nath Mehrotra, Deepak Kumar Mehrotra and Ankur Mehrotra was actually filed after delivery of judgment on 24.12.2013 by the Prescribed Authority only on 03.01.2014 as is evident from the answer to the questionnaire submitted by respondent No. 4 given by the office of the Prescribed Authority on 19.02.2014.

24. With regard to merits of the case, Mr O.P. Singh Sikarwar, learned counsel for the respondents has argued that as is evident from perusal of the documentary evidence filed along with writ petition by Abhishek Tiwari regarding deposit of membership fee by him on 06.04.2010, the receipt dated 06.04.2010 carries the symbol of Rupees i.e. "Rs." on it on the right hand side corner, which symbol could not have been printed on the receipt book of April, 2010 when the symbol itself was adopted by the Central Government in July, 2010.

25. Moreover, it has been argued by Mr O.P. Singh Sikarwar that other receipts of other members allegedly incorporated due to death of five office bearers in between 2007 to 2010 have also been referred to by the Prescribed Authority, but have deliberately not been filed by the petitioners as annexure to the writ petition, as it would make the forgery committed by the petitioners evident to this Court also.

26. Mr O.P. Singh Sikarwar has referred to the reply submitted to the representation filed by the petitioners before the Prescribed Authority and referred to its various paragraphs saying that in the written statement specific objections were taken regarding maintainability of the Reference as also to the effect that receipts were forged and in the undated reply (Replication) to the written statement filed by the petitioners before the Prescribed Authority, there is no specific reply to both the objections raised by the respondents.

27. It has been argued by Mr O.P. Singh Sikarwar, learned counsel for the respondent that due opportunity of hearing was given by the Prescribed Authority and there was a time constraint also before the Prescribed Authority for deciding the representation as fixed by this Court in its judgment and order dated 06.08.2013 in Special Appeal No. 1113 of 2013, therefore the Prescribed Authority clearly acted in accordance with law and applied its mind to all documentary evidence placed by the petitioners themselves as well as written arguments submitted on behalf of respondent No. 4 and passed the order dated 24.12.2013. The order dated 24.12.2013 being reasoned and speaking and having been passed after due consideration of all evidence on record should not be interfered with by this Court.

28. Mr Prabhakar Awasthi, learned counsel for the petitioners in rejoinder has argued that at least when in the written arguments submitted by respondent No. 4 before the Prescribed Authority specific reference was made to the membership fee receipts being forged, due opportunity should have been given by the Prescribed Authority to the petitioners to rebut the allegation and the reference was decided on merits in hot haste, which smacks of mala fide on the part of the Prescribed Authority.

29. Having heard the rival submissions and having gone through the representation referred to as Reference No. 5 of 2013 filed by Abhishek Tiwari before the Prescribed Authority and written statement of respondent No. 4 and the replication filed thereafter by the petitioner, it is evident that there was a specific reference of death of five out of twelve office bearers of the Committee of Management in paragraphs 7 and 8 of the representation and also a reference to Abhishek Tiwari being incorporated as member on 06.04.2010 and deposit of membership fee by him, to which, in the written statement filed by respondent No. 4 herein, there was a specific denial with further submissions that the alleged proceedings of the meeting of the General Body dated 06.04.2010 were forged and copies of membership fee receipts were also forged.

30. The contents of paragraphs 4, 7 and 8 of the representation/reference being specifically denied by respondent No. 4's replication Abhishek Tiwari filed copies of membership fee receipts with regard to himself as well as other members allegedly incorporated due to death of some office bearers of the Committee of Management. Such copies of receipts filed before the Prescribed Authority have not been filed before this Court. The representation as well as the replication mention thirteen documents filed as evidence before the Prescribed Authority,

which thirteen documents have not been filed along with the writ petition by Abhishek Tiwari for reasons best known to him, even though, in the counter affidavit, there is specific plea raised by respondent No. 4 that such documentary evidence as was filed before the Prescribed Authority, which has been taken into account by the Prescribed Authority in the order impugned, have deliberately not been filed by the petitioners before this Court to prevent this Court from applying its mind to such documentary evidence.

31. The petitioners have no doubt filed a rejoinder affidavit to the counter affidavit yet, they have not filed any documentary evidence referred to by the Prescribed Authority in its order dated 24.12.2013.

32. This Court from a perusal of the receipt dated 06.04.2010 regarding the deposit of membership fee by Abhishek Tiwari filed as annexure to earlier Writ Petition No. 29192 of 2013 at page No. 39, which copy of the writ petition was produced by the learned counsel for the respondent No. 4 before this Court in pursuance of the earlier order passed by this Court, has come to the conclusion that the receipt dated 06.04.2010 also has the symbol of Rupee i.e. "Rs." printed on the right hand side corner. Since the symbol of "Rs." was adopted by the Central Government only in July, 2010, Receipts book of membership fee of the Society could safely be presumed to have been printed after July, 2010, as the symbol of Rupee i.e. "Rs." was printed on such receipt book. The receipt book printed in July, 2010 could not have been utilized for issuing receipts for membership fee deposited on 06.04.2010.

33. With regard to membership fee of other members incorporated allegedly between 2007 to 2010, the observations of the Prescribed Authority has to be believed by this Court as no perversity in the order impugned has been pleaded and no documentary evidence has been filed by the petitioners showing the perversity or that the findings are against the documentary evidence on record.

34. It is settled law that when a procedure is prescribed under the law for a thing to be done in a particular manner it has to be done in that manner or not at all. The law in this regard has been laid down as far as back in 1936 by the Privy Council in *Nazir Ahmad vs King Emperor*, AIR 1936, Privy Council 253. A similar statement of law has been given by the Constitution Bench of Hon'ble Supreme Court in the case of *Barium Chemicals Ltd. Vs Company Law Board*, AIR 1967 SC 295, and has been reiterated thereafter in several judgments of the Hon'ble Supreme Court and of this Court.

35. The procedure has been prescribed under the Society Registration Act for filing of a Reference by 1/4th members of the General Body before the Prescribed Authority under section 25(1) of the Act and 1/4th members of the Society admittedly did not file the Reference, but only Abhishek Tiwari filed a representation before the Prescribed Authority. The later Reference, which was filed by Kamta Nath Mehrotra, Deepak Kumar Mehrotra and Ankur Mehrotra was filed on 03.01.2014 i.e. after the order impugned was passed by the Prescribed

Authority.

36. The Prescribed Authority has rightly observed that representation registered as Reference No. 5 of 2013 was not maintainable in view of the provisions of section 25 (1) of the Act. The observations on merits of the case with regard to documentary evidence being forged cannot be said to be without jurisdiction as this Court in the judgment and order dated 22.05.2013 and in the judgment and order dated 06.08.2013 had specifically referred the whole controversy to the Prescribed Authority for decision. As such this Court finds no factual or legal infirmity in the order impugned.

37. Writ Petition No. 2591 of 2014 being devoid of merits is hence dismissed.

38. In Writ Petition No. 61488 of 2014, petitioner No. 2 Kamta Nath Mehrotra, petitioner No. 3 Deepak Kumar Mehrotra his brother and petitioner No. 4, Ankur Mehrotra, alleging themselves to be duly elected members of the Committee of Management of the School have challenged the letter of the Assistant Registrar dated 28.10.2014. It has been stated that although the Special Appeal No. 1113 of 2013 was allowed on 06.08.2013 and the petitioners were relegated to the forum of Prescribed Authority, and thereafter Kamta Nath Mehrotra along with 1/4th members preferred Reference No. 6 of 2013 before the Prescribed Authority, the same has been kept pending consideration. During the pendency of the aforesaid Reference, the District Inspector of Schools, Kaushambi on 19.09.2014 sought a list of members of General Body of Karari School Association, which runs the Karari Intermediate College and the Assistant Registrar has sent the impugned list.

39. It has been alleged that the petitioners Kamta Nath Mehrotra and others preferred an objection before the office of the Assistant Registrar on 20.09.2014 against the sending of such list, but without caring to look into the objections, the Assistant Registrar by the letter dated 28.10.2014 has sent a list of 51 members to the office of the District Inspector of Schools for the purpose of holding of elections of the Committee of Management of the Institution. It has been alleged that the letter dated 28.10.2014 is ex-parte in nature and has denied opportunity of hearing to the petitioners. The petitioners being validly elected members and office bearers of the Committee of Management of Karari Schools Association had already filed Reference before the Prescribed Authority, namely, Reference No. 6 of 2013 on 03.01.2014 and the Assistant Registrar should have waited for the outcome of the pending Reference before the Prescribed Authority and no list of disputed Electoral College should have been sent as requested for by the District Inspector of Schools.

40. It has also been alleged that the Karari School Association has a different set of Bye-laws than Scheme of Administration of Karari Intermediate College, and therefore, it could not have been deemed by the Assistant Registrar that the the petitioners having been removed as Office Bearers of the Committee of Management of the Institution also as they had been removed as Office Bearers

of the Society.

41. It has also been argued by Mr Prabhakar Awasthi, learned counsel appearing for the petitioners in this writ petition that section 4-B was introduced w.e.f. 09.10.2013 in the Society Registration Act and the Assistant Registrar was duty bound to look into the objections filed by the petitioners on 20.09.2014 and to decide the same regarding the membership of the petitioners as well as the respondents and their right to hold elections for the Committee of Management before sending the letter dated 28.10.2014 containing list of 51 members of the Association to enable the District Inspector of Schools to hold elections on the basis thereof.

42. It has also been argued by Mr Prabhakar Awasthi that by means of an interim order dated 20.11.2014, this Court had found prima facie the contention of the petitioners to be correct that there was a serious dispute with regard to membership of the Society and various writ petitions were pending and Assistant Registrar should not have forwarded the list of 51 members without hearing the petitioners and without considering their claim. In the letter sent by the Assistant Registrar, mention has been made of two writ petitions being already pending and list being subject to final decision in those writ petitions. This Court had therefore directed that till the next date of listing, the effect and operation of the impugned letter dated 28.10.2014 sent by the Assistant Registrar shall remain stayed. This time bound interim order has been extended from time to time. Although it was not extended on 01.09.2015 and thereafter, it has come out in the counter affidavit filed by the District Inspector of Schools in this writ petition that no elections have been held and the term of the Committee of Management having expired, the District Inspector of Schools has issued an order dated 12.01.2015 putting the Salary Account of the said School under Single Operation.

43. Mr O.P. Singh Sikarwar, who appears for the respondents has read out the letter dated 19.09.2014 sent by the District Inspector of Schools, Kaushambi to the office of the Registrar, wherein the District Inspector of Schools had referred to judgment and order dated 05.07.2013 passed in Writ Petition No. 34295 of 2013 and the judgment and order dated 06.08.2013 passed in Special Appeal No. 1113 of 2013 and also to the letter written by the Joint Director of Education dated 06.02.2014 that the elections of the Committee of Management of Karari Intermediate College, Kaushambi should be held from amongst the valid members of the Society.

44. Mr O.P. Singh Sikarwar, has also read out the impugned letter dated 28.10.2014, wherein a mention has been made of the list of members being in accordance with the office order dated 25.04.2013 which was challenged later on in Writ Petitions and he has clarified that the list of 51 members is subject to decision in Writ Petition NO. 2591 of 2014 and Writ Petition No. 24850 of 2014.

45. Mr O.P. Singh Sikarwar has raised a preliminary objection regarding the maintainability of the writ petition as it has been filed challenging consequential

orders/communications alone.

46. It has been mentioned in the counter affidavit that the original order dated 24.12.2013 has already been challenged in Writ Petition No. 2591 of 2014 and the consequential communication should also have been challenged by moving an amendment application in the aforesaid writ petition.

47. It has also been mentioned that the order dated 25.04.2013 was initially challenged in Writ Petition No. 29182 of 2013, which writ petition was finally disposed of by this Court on 22.05.2013 with a direction to the petitioners therein to approach the Prescribed Authority under section 25(1) of the Society Registration Act. The petitioners thereafter approached the Prescribed Authority and the Prescribed Authority thereafter decided the controversy on 24.12.2013 holding the Reference to be not maintainable. The order dated 24.12.2013 has not been filed by the petitioners in the Writ Petition No. 61488 of 2014, but has been brought on record by means of counter affidavit filed by the respondents. The order dated 24.12.2013 has been challenged by the petitioners through the Secretary, Abhishek Tiwari in Writ Petition No. 2591 of 2014.

48. Moreover, in the short counter affidavit, a Reference has also been made to the pendency of the Reference No. 6 of 2013 filed on 03.01.2014 under section 25(1) of the Society Registration Act by Kamta Nath Mehrotra, Deepak Kumar Mehrotra and Ankur Mehrotra.

49. It has been pointed out that in pursuance of the earlier order passed by the Assistant Registrar dated 25.04.2013, which has also been referred to in the letter dated 28.10.2014, the list of Office-bearer of the respondents Committee of Management, which was registered in the year 2013-14 and 2014-15 under section 4 of the Society Registration Act has alone been forwarded. The Assistant Registrar's order dated 25/26.08.2014 was never subjected to any challenge in any writ petition, and therefore, amounts to constructive res-judicata.

50. Mr O.P. Singh Sikarwar, has pointed out that the Resolution of the Committee of Management dated 21.05.2013, by which the petitioners were removed from the membership of Karari School Association, was never challenged by the petitioners before any Competent Court of Law or even before the Prescribed Authority, in the then pending Reference before it.

51. Mr O.P. Singh Sikarwar has read out the relief clause of the plaint in Reference No. 6 of 2013, which has been filed as Annexure-14 to the writ petition, wherein the petitioners have prayed for quashing of the election proceedings dated 02.07.2012 and recognition of elections proceedings dated 24.07.2012.

52. Mr Prabhakar Awasthi, learned counsel for the petitioners has referred to section 25(1) of the Society Registration Act and has pointed out that removal from membership as such cannot be challenged before the Prescribed Authority.

53. Mr O.P. Singh Sikarwar has however pointed out the language of section

25(1) of the Society Registration Act, which makes it clear that in a dispute relating to continuance of Officebearers or a dispute relating to elections, the Prescribed Authority could also look into the membership dispute.

54. The relevant extract of section 25(1) of the Society Registration Act is being quoted herein-below: 25. Dispute regarding election of officebearers. -

(1) The prescribed authority may, on a reference made to it by the Registrar or by at least onefourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an officebearers of such society, and may pass such orders in respect thereof as it deems fit:

?[Provided that the election of an officebearer shall be set aside where the prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such officebearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such officebearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with the provisions of any rules of the Society. *****"

55. It has been contended by the learned counsel for the respondents that any controversy incidental to wrong acceptance or rejection of vote would include from membership also before holding of elections and it can also be looked into by the Prescribed Authority. In this case, the incidental controversy was with regard to removal from membership of petitioner Nos. 2, 3 and 4, and therefore, it could have been looked into by the Prescribed Authority.

56. It has also been pointed out by the learned counsel for the respondents that the original order dated 25.04.2013, by which the Assistant Registrar had recognised the elections held by the respondent-Committee of Management on 02.07.2012 was passed before the amendment in the Society Registration Act and addition of section 4-B w.e.f. 09.10.2013. After 09.10.2013, the Assistant Registrar has not passed any order, but orders have been passed by the Prescribed Authority and this Court has also mentioned in its judgments and orders dated 22.05.2013 and 06.08.2013, that the orders passed by the Educational Authorities and those passed by the Assistant Registrar, both shall be subject to final decision of the controversy by the Prescribed Authority.

57. Having considered the rival submissions, this Court finds from the impugned letter dated 28.10.2014 that the same has been issued by the Assistant Registrar in response to the letter sent to him by the District Inspector of Schools, Kaushambi. The tenure of the incumbent Committee of Management had expired and elections were due to be held. The approved and registered list of members

of the Karari School Association was therefore asked for from the Assistant Registrar. The Assistant Registrar while sending the list of 51 members has taken care to mention therein that it is subject to final decision in the Writ Petition No. 2591 of 2014 and Writ Petition No. 24850 of 2014.

58. There is no legal or factual infirmity in the said letter for this Court to exercise its extraordinary jurisdiction in Writ Petition No. 61488 of 2014 as this Court has already dismissed Writ Petition No. 2591 of 2014.

59. Consequently, the Writ Petition No. 61488 of 2014 is dismissed.

60. No order as to costs.