
(2014) 03 AHC CK 0276
In the Allahabad High Court
Case No : Writ C. No. 6788 of 2014

C/M Mahila Udyog Mandir Jr. High School APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 39 Rule 1, Order 6 Rule 17
Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 3, 4, 4(1)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16A(7)

Citation : (2014) 4 ADJ 405 : (2014) 3 ALJ 326 : (2014) 4 AWC 3487 : (2014) 3 UPLBEC 2100

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : R.C. Singh, Advocate for the Appellant; A.K. Yadav and L.K. Dwivedi, Advocate for the Respondent

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioner, Committee of Management of a Junior High School; Mahila Udyog Mandir Junior High School has preferred this writ petition through the petitioner No. 2 Sri. Akhiesh Kumar Mishra, who claims as a Manager of the Committee of Management of the said Institution. The petitioner is aggrieved by the order dated 20.01.2014 passed by the District Basic Education Officer, Allahabad-respondent No. 2 herein, whereby he has refused to recognize the election of his faction dated 06.04.2012 and consequently rejected the representations of the petitioners dated 06.06.2013 and 27.09.2013.

2. The essential facts are; a Society, Mahila Udyog Mandir (for short, "the Society") is registered under the provisions of the Societies Registration Act, 1860 (Act No. 21 of 1860). It was registered on 22.01.1954. The Society has established and run a Junior High School; Mahila Udyog Mandir Junior High School (for short, "the Institution"). It is recognized by the U.P. Basic Shiksha Parishad. It receives aid out of the State funds, thus it is governed under the

provisions of the U.P. Basic Education Act, 1972 and the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978.

3. A reference was made by the Registrar u/s 25(1) of the Act, 1860 to the Prescribed Authority in respect of the office bearers of the Society. From the record it seems that one Sri. Sangam Lal Yadav was the Secretary/Manager of the Society, who continued to hold the office till his death on 13 April, 1991. After his death it is stated that on 11.05.1991 the general body elected Sri. Vishwamohan Vaidya as the Secretary/Manager. It is stated that a notice was issued to hold the meeting of the Management to consider the allegations against Sri. Vishwamohan Vaidya and Sri. Murli Manohar Pathak that their functioning is detrimental to the interest of the Society and on the date fixed 06 September, 1992 both were expelled from the membership and in his place the petitioner No. 2 was elected as Manager/Secretary. The Prescribed Authority recognized the petitioner No. 2 as the Manager/Secretary of the Society by order dated 23.06.1997. A copy of the order of the Prescribed Authority is annexure-1 to the writ petition.

4. The Prescribed Authority has found that Manila Udyog Mandir was initially registered on 22 January, 1954 but its renewal was not made in terms of Section 3A of the Act No. 21 of 1860. Section 3A has been inserted and by Act Nos. 13 of 1978 and 11 of 1984 further amendments have been made therein. Before insertion of said Section there was no provision for the renewal of the certificate of the registration. It is provided that a certificate of registration issued u/s 3 shall remain in force for a period of two years from the date of issue and a certificate issued before the commencement of the Amendment Act No. 11 of 1984 the certificate shall remain in force for a period of five years. Sub-clause (5) of Section 3A provides that a Society which fails to get its certificate of registration renewed in accordance with the said Section within one year from the expiration of the period, for which the certificate was operative, shall become an unregistered Society. The provisions of sub-section (5) of Section 3A empowers the Registrar to renew the certificate beyond the prescribed limit, if the Society shows sufficient cause.

5. Admittedly, in the instant case, the application for the renewal was not made within the prescribed period, consequently the Society became unregistered. When the Society became unregistered one Sri. Ghanshyam Dutt Mishra moved an affidavit that the original certificate of the Society was lost and he made a prayer that a fresh registration may be made under the name and style of Manila Udyog Mandir Samiti, Dariyabad. On his application a fresh registration of a new Society was made under the name and style of Manila Udyog Mandir Samiti Dariyabad.

6. In the meantime one Sri. Sangam Lal Shastri, who claimed himself as one of the founder member of the Society which was registered in 1954-55, filed an objection against the fresh registration of the Society by Ghanshyam Dutt Mishra. In his objection Sri. Shastri stated that the fresh Society which has been

registered has a different entity and the office bearers. In view of the said dispute the Assistant Registrar referred the matter to the Prescribed Authority u/s 25(1) of the Act, 1860.

7. Consequent upon the Assistant Registrar vide order dated 27 June, 1997 cancelled the registration of the Society registered by Sri. Ghanshyam Dutt Mishra dated 13 October, 1983 u/s 12(D)(c)(1) of the Act, 1860 and renewed the certificate of the original society registered on 22 January, 1954 and also registered the list of office bearers u/s 4 of the Act, 1860.

8. Accordingly, the Society was renewed for five years from 10.10.1995 to 10.10.2000. Sri. Vishwamohan Vaidya preferred a Writ Petition No. 21785 of 1997 challenging the order of the Prescribed Authority dated 23 June, 1997 and the order of the Assistant Registrar dated 27 June, 1997. The said writ petition, after the contest, was dismissed by this Court with an observation that it was left open to the petitioner therein (Vishwamohan Vaidya) to establish his claim in regard to the validity of the Committee of Management in a civil suit.

9. After dismissal of the writ petition Sri. Vishwamohan Vaidya filed an original civil suit No. 377 of 1997 in the Court of the Civil Judge (Senior Division), Allahabad for a declaration that he is the Pradhanmantri of Mahila Udyog Mandir, which runs two Institutions; (i) Mahila Udyog Mandir Junior High School and (ii) Mahila Udyog Mandir Higher Secondary School.

10. It is averred by the petitioners that along with the presentation of the suit the plaintiff therein also filed an application (6-C) under Order 39 Rule 1 for an interim injunction. Initially the interim injunction was granted, however it was recalled on 11.08.1997 as the said interim injunction was granted ignoring the caveat filed by the petitioner. It is stated that thereafter in the said suit no interim injunction was granted by the Court and the suit is still pending.

11. During the pendency of the suit the plaintiff Sri. Vishwamohan Vaidya unfortunately died in January, 2001 and one Sri. Surendra Kumar Dhawan-respondent No. 3 moved an impleadment application under Order 1, Rule 10 CPC, which was allowed by the Trial Court on 03 November, 2004. The respondent No. 3 appears to move an application dated 07 March, 2003 to restrain the petitioner No. 2 from damaging, demolishing and misappropriating the property of the Society. On the said application both the parties agreed to maintain status-quo. A copy of the order is annexure-11 to the writ petition.

12. The District Basic Education Officer-respondent No. 2 on 30 July, 1997 recognized the respondent No. 3 as a Manager of the Institution. Aggrieved by the said order, the petitioner preferred an appeal before the Regional Assistant Director of Education (Basic). The Regional Assistant Director of Education issued a notice dated 22 October, 1997 to respondent No. 3. He (respondent No. 3) preferred a writ petition No. 36395 of 1997, which was disposed of on 15 March, 2000 with a direction to the Regional Assistant Director of Education to decide the appeal after hearing the concerned parties. It was also observed by this

Court that the decision of the Assistant Director shall be subject to the final decision of the Civil Court. The Assistant Director of Education vide his order dated 23 June 2000 set aside the order of the respondent No. 2 dated 30 July, 1997. Aggrieved by the said order one Gopal Ji Bhartiya preferred a Writ Petition No. 29761 of 2000 against the order dated 23 June, 2000. In the said writ petition no interim order was passed.

13. In the meantime the fresh election was held on 23 April, 2000. The petitioner No. 2 is stated to be elected again as Secretary/Manager. The papers were forwarded to the office of respondent No. 2, who accorded his approval by order dated 19 August, 2000 and the signature of the petitioner No. 2 was attested. It is stated that the said Committee of Management completed its three years term and the fresh election was held on 07 April, 2003, wherein the petitioner No. 2 was reelected.

14. It is stated that the respondent No. 3, on the basis of some ex parte order of the Trial Court and questionnaire issued therefrom, moved an application before the Director of Education, who issued an order dated 09 June, 2006 to respondent No. 2 to pass an appropriate order. In compliance of the said order the respondent No. 2 on 26 September, 2006 attested the signature of the respondent No. 3 as a Manager of the Institution.

15. Dissatisfied with the said order, the petitioner preferred a Writ Petition No. 58391 of 2006. On 19 October 2006, wherein this Court stayed the order of the respondent No. 2 dated 26 September, 2006. The said writ petition is still pending.

16. Pursuant thereto the respondent No. 2 again attested the signatures of the petitioner in the order dated 23 May, 2007. The respondent No. 3 aggrieved by the order of the respondent No. 2 dated 23 May, 2007 preferred a writ petition No. 26326 of 2007. This Court stayed the order of the respondent No. 2. The said writ petition is still pending.

17. It is further stated that the respondent No. 3, who had got ex parte order on 18.03.2005 was not acceptable by the Additional Civil Judge (Senior Division) and it was made clear that the earlier interim injunction dated 27.03.2003 shall continue until the disposal of the application 6(2-C). Thus there is no interim injunction in favour of the respondent No. 3 except to maintain the status quo in respect of the properties of the Society.

18. It is averred by the petitioner that on the papers moved by petitioner No. 2, the Assistant Registrar has renewed the certificate of the Society from 10.10.2010 to 10.10.2015. The fresh election has also been held on 06 April, 2012 and the papers were forwarded to the office of the Assistant Registrar, who had registered the list of the office bearers in terms of Section 4 of the Act, 1860. A copy of the said order is on the record as annexure-31 of the writ petition.

19. Consequent upon, the petitioner moved an application before the respondent No. 2 to recognize the election of the petitioner and attest his signature as the Assistant Registrar has registered the list of office bearers u/s 4 of the Act, 1860, wherein the petitioner No. 2 was recognized as Secretary/Manager of the Society. It transpires from the record that respondent No. 3 had also moved an application before the respondent No. 2 claiming himself to be elected as a Secretary. The respondent No. 2 by the order dated 11 April, 2013 has rejected the claim of the petitioners and recognized the respondent No. 3 as a Manager of the Institution.

20. Aggrieved by the order of the respondent No. 2 dated 11.04.2013 the petitioners preferred a Writ Petition No. 24371 of 2013. The said writ petition was allowed by this Court on 01.05.2013 after hearing the respondent No. 3. This Court was not satisfied with the finding of the respondent No. 2 and remitted the matter back to the respondent No. 2 to advert the following issues;

(i) Who was competent to hold the elections.

(ii) Whether the elections have been held from valid members of the general body.

(iii) Whether the elections have been held in accordance with the bye-laws of the Society.

21. In compliance of the order of this Court, it is stated that both the parties submitted their respective written submissions. The petitioner No. 2 has filed his objections/written arguments on 06.06.2013. The respondent No. 2 had passed two subsequent orders requiring the parties to file fresh documents. It is stated that the petitioner No. 2 had appeared before the respondent No. 2 and produced all the documentary evidences and has also submitted a list of the documents filed before him. The respondent No. 2 vide impugned order dated 20 January, 2014 has recognized the election of the respondent No. 3 and has refused to accept the election set up by the petitioner No. 2.

22. I have heard Sri. R.C. Singh, learned Counsel for the petitioners, learned Standing Counsel and Sri. L.K. Dwivedi, learned Counsel for the respondent No. 3.

23. Learned Counsel for the petitioners submits that respondent No. 3 was removed. Sri. Surendra Kumar Dhawan and Sri. Shyam Ji Bharti were appointed as Pradhanmantri/Manager. It is stated that one amendment application was filed in civil suit under Order 6 Rule 17, CPC to amend the array of parties. The said amendment was allowed on 24.01.2014 and the name of Sri. Surendra Kumar Dhawan-respondent No. 3 has been deleted and in his place Sri. Shyam Ji Bharti has been ordered to be substituted as Pradhanmantri/Manager. Therefore, it is contended by learned Counsel for the petitioners that the respondent No. 3 has now no concern with the Society and he is ranked outsider. He has invited attention of the Court to an order dated 24.01.2014 passed by the Additional

Chief Judicial Magistrate (Senior Division) in Civil Suit No. 377 of 1997.

24. It was next stated by the learned Counsel for the petitioners that the Basic Shiksha Adhikari-respondent No. 2 has misdirected himself as in the matter of the Junior High School he had applied the principles of U.P. Intermediate Education Act, 1921 (U.P. Act No. II of 1921). He further urged that the respondent No. 2 has referred the order of Civil Judge (Senior Division) dated 18 March, 2005, wherein injunction has been issued against the petitioner from functioning as Manager. The order of the status quo passed by learned Civil Judge on 27 March, 2003 was with reference to the demolition or damaging the property of the School and was not in support of the dispute of the office bearers of the Society.

25. Lastly it was urged that the order of the Prescribed Authority is in favour of the petitioners and the writ petition of the contesting respondents against the order of the Prescribed Authority was dismissed by this Court with a liberty to file a Civil Suit, which the contesting respondent has filed but there is no interim injunction in favour of the plaintiff, therefore, in terms of the order of the Prescribed Authority the petitioners have right to run the Institution.

26. Sri. L.K. Dwivedi, learned Counsel for the respondent No. 4 submits that the petitioner No. 2 is a stranger and in the year 1992 he has managed to manipulate the documents and got the recognition. He has further submitted that the signature of Sri. Vishwamohan Vaidya was attested in the years 1992 to 1994 and the respondent No. 3's signature was also attested in 1994.

27. I have considered the rival submissions of the learned Counsel for the respective parties and perused the record.

28. It is a common ground that the Society namely Mahila Udyog Mandir Unchamandi, Allahabad has established a Junior High School, Mahila Udyog Mandir Junior High School. The Registrar, Firms, Societies & Chits, Lucknow referred the matter to the dispute of the office bearers vide order dated 26 March, 1985. The said dispute was decided by the Prescribed Authority vide order dated 23 June, 1997. The Prescribed Authority in his order has considered the fact that the original Society got unregistered and a fresh Society was registered with a similar name Mahila Udyog Samiti, Dariyabad. The Prescribed Authority found that the petitioner No. 2 is the office bearer of the original Society and the said Society is legal and valid society. In compliance of the order of Prescribed Authority the Assistant Registrar vide his order dated 27 June, 1997 cancelled the registration of the fresh Society, Mahila Udyog Samiti, Dariyabad u/s 12D of the Act No. 21 of 1860 and also registered the list of office bearers of the petitioner No. 2's faction in terms of Section 4 of the Act No. 21 of 1860.

29. The faction of the respondent No. 3 had challenged the aforesaid two orders in Writ Petition No. 21785 of 1987 (Vishwa Mohan Vaidya & another v. The Sub Divisional Magistrate & others), which was dismissed by this Court on 17.07.1997 with an observation that the order of the Prescribed Authority is

summary in nature and it would be subject to decision of the civil suit. In compliance of said order, the then alleged Pradhanmantri/Manager who had preferred Writ Petition No. 21785 of 1987 Vishwamohan Vaidya filed a civil suit in the Court of Civil Judge (Senior Division) Allahabad, which was registered as Suit No. 377 of 1997.

30. Learned Counsel for the respondent No. 3 Sri. Dwivedi could not place any order of the Civil Judge, wherein the petitioners have been restrained from functioning as office bearers. In paragraph-15 of the counter affidavit filed by the respondent No. 3 there is a reference of the Civil Suit but there is no averment in the counter affidavit that any interim injunction was granted in the said civil suit.

31. From the aforesaid facts it is evident that the order of the Prescribed Authority dated 23 June, 1997 is still operative and the Civil Suit is still pending without any interim injunction.

32. I find that the submissions of learned Counsel for the petitioners that an order of status quo dated 01.04.2003 is in respect of the property of the Institution. The said order was passed on an application moved by the plaintiff on 07 March, 2003. Paragraphs - 9 and 10 of the said application read as under:

9. That the ends of justice demands that the property of the plaintiff's society Mahila Udyog Mandir, 29, Uncha Mandi, Allahabad and its school Mahila Udyog Mandir Junior High School 29 Uncha Mandi Allahabad be saved.

10. That if by means of temporary injunction, the defendants are not restrained from damaging, demolishing, misappropriating the property of the society and the school, the defendant would succeed in devouring the property of the plaintiff's society and school and the plaintiff would suffer the great and irreparable loss.

33. On the said application the Court has passed the following order;

10.04.2003

Case is called out Sri. Gopal Das Sinha, Jr. plaintiffs Sri. S.K. Shukla, Advocate Sri. S.K. Shukla has filed its objection paper No. 84C fix 08.04.2003. Till disposal 82C parties are agreed to maintain status quo. Put up on 08.04.2003.

34. On perusal of the said order it is evident that no temporary injunction in respect of the office bearers of the Society has been passed.

35. Regard being had to the fact that in the case of Junior High School the office bearer of the Society runs the affairs of the Institution likewise in the case of the Degree and Post Graduate Colleges affiliated under the U.P. State Universities Act, 1973. Only in the matter of the Institutions, which are governed under the provisions of U.P. Act No. II of 1921, a separate scheme of administration is provided u/s 16A, which has statutory force.

36. Section 16A(7) of the U.P. Act No. II of 1921 was inserted in the year 1981

by the U.P. Act No. 1 of 1981. Prior to insertion of the said amendment there was no such provision in the Act No. II of 1921.

37. Relevant it would be to mention that in the First Statute of the almost all of the State Universities the Vice Chancellors have been given limited power to decide the dispute of the rival claims. The Statute itself empowers the Vice Chancellor to recognize a Committee as a valid Committee of Management in terms of Section 2(13) of the Act, 1973. For the sake of convenience the Statute 12.05(f) of the Agra University is extracted hereinbelow:

12.05 (f) if any question arises whether any person has been duly chosen as, or is entitled to be a member or office-bearer of the Management or whether the Management is legally constituted, the decision of the Vice Chancellor shall be final;

38. There are similar provision in the First Statute of the other State Universities also. But in the U.P. Basic Education Act, 1972 (U.P. Act No. 34 of 1972) the District Basic Education Officer has not been conferred any power to decide the rival claims.

39. The learned Counsel for the parties have not brought to the notice of this Court any executive order/Government order or the circular issued by the State Government/appropriate authority conferring power on the Basic Shiksha Adhikari to decide the dispute of the rival committees.

40. In view of the aforesaid facts, I am of the view that in the matter of Junior High School the BSA for the administrative purposes can recognize a Committee of Management on the basis of the order of the Prescribed Authority or the Assistant Registrar passed order u/s 4 or 25(1) of the Act 21 of 1860. If the Assistant Registrar has accepted a list of office bearers u/s 4(1) of the Act 21 of 1860. The said list of the office bearers can be recognized by the BSA for administrative purposes. Similarly if there is a dispute of the office bearers of the Society and the matter is referred to the Prescribed Authority u/s 25(1) of the Act 21 of 1860, the order of the Prescribed Authority shall be binding on the BSA and the said order shall be subject to the judicial review by this Court under Article 226 of the Constitution.

41. This Court in Committee of Management Raja Tej Singh Vidyalaya Aurandh, Mainpuri and another Vs. District Inspector of Schools, Mainpuri and others, had occasioned to consider the same issue. This Court took the view that the BSA has to follow the order of the Prescribed Authority. Relevant paragraph of the judgment reads as under:

16..... He has to bow to the orders passed by the prescribed authority u/s 25 of the Societies Registration Act. Similarly, the Registrar also exercises statutory powers (jurisdiction) and the BSA has to alter its order suitably so as to accord to the order passed by the Registrar under the Societies Registration Act.

42. It is significant to mention that some of the Institutions have their separate

general body under the scheme of administration and the bye-laws of the Society. But by the Government order dated 20.10.2008 all the Institutions are required to amend their scheme of administration to have general body of the Society and the Institution.

43. Coming to the facts of the present case, the District Basic Shiksha Adhikari-respondent No. 2 in my view has travelled beyond his jurisdiction under the provisions of the U.P. Act No. 34 of 1972. He does not have any authority to decide the dispute of the office bearers when the said dispute has already been decided by the Prescribed Authority under the provisions of the Act No. 21 of 1860. The respondent No. 2 has failed to decide the matter in the light of the orders passed under the provisions of the Act No. 21 of 1860.

44. It is significant to mention that under the provisions of Section 16A(7) of the Act No. II of 1921 the Joint Director is empowered to decide the dispute of the Committee of Management. Under the said Section also he has to give due regard who has effective control over the aforesaid Institution.

45. Therefore, for the reasons stated hereinabove the order of the Basic Shiksha Adhikari-respondent No. 2 dated 20.01.2014 is unsustainable. It needs to be set aside. Accordingly, it is set aside. The matter is remitted to the respondent No. 2 to consider the matter afresh in light of the observations made hereinabove. The respondent No. 2 shall decide the matter expeditiously preferably within a period of two months from the date of communication of this order.

46. Thus the writ petition is allowed. No order as to costs.