
(2011) 03 AHC CK 0146

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12105 of 2011

C/M Sri Haldhar Vidya Mandir Shiksha Samiti and Another	APPELLANT
Vs	
Prescribed Authority/U.P. Zila Adhikari and Others	RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 3 ADJ 801 : (2011) 3 AWC 3185

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard learned Counsel for the Petitioner Sri Indra Raj Singh, Sri A.K. Mishra holding brief of Sri Arvind Srivastava who has moved an application on behalf of one Ram Suhawan whose signatures are stated to have been attested pursuant to the elections held in response to the impugned order after the earlier round of litigation. Sri Alok Kumar Shukla has put in appearance on behalf of the Respondent No. 5.

2. The order under challenge has been passed by the Prescribed Authority dated 7th February 2011 holding that 32 members out of the original members who had participated in the elections of year 1987, are the valid members entitled to participate in the elections, and therefore any elections held pursuant thereto would be valid. This order appears to have been passed pursuant to the observations made by the Division Bench in Special Appeal No. 24 of 2011 decided on 7th January, 2011. Learned Counsel for the Petitioner Sri Indra Raj Singh submits that the nature of the order passed by the Prescribed Authority is without jurisdiction, inasmuch as, the Prescribed Authority could not have entered into this dispute and even otherwise the determination of the electoral college has been made completely ignoring the entire passage of time from 1987 to 2011 for no valid reason. Learned Counsel submits that merely because two lists had been submitted and one of the lists matched with the membership of 1987, the same could not have been a reason to discard the membership as set

up by the Petitioner. Sri Indra Raj Singh therefore contends that any elections held on the basis of such a list would not be valid. The proceedings are sought to be challenged on the ground that the Prescribed Authority had no authority to proceed in the matter for which reliance had been placed on a large number of decisions as is evident from the narration of facts contained in the impugned order itself. It is also evident from the impugned order that two complaints were filed by one Jugraj Singh and other by Durbin Singh and the same was not a reference as contemplated under Sub-section (1) of Section 25 of the Societies Registration Act, 1860. Even otherwise, it is contended that the nature of the dispute which was reflected in the said applications was not a rival claim with regard to the elections so as to confer any jurisdiction on the Prescribed Authority to proceed to decide the issues so raised. Learned Counsel submits that if it was a pure question relating to the membership then the Prescribed Authority even otherwise without any declaration of the earlier elections to be invalid, could not have proceeded to hold that the membership as relied upon by the Petitioner is invalid.

3. Sri A.K. Mishra contends that as a matter of fact the Assistant Registrar has already determined the list of membership that was not challenged and in such a situation, the contention raised on behalf of the Petitioner cannot be accepted, inasmuch as, the Prescribed Authority has simply reiterated the same position as was reflected by the Assistant Registrar in the orders dated 16.9.2010 and 4.1.2011. Sri Mishra therefore contends that it is no longer open to the Petitioner to raise the dispute in view of the directions issued by the Division Bench and also the observations made by the learned single Judge in the judgment dated 10.11.2010. He therefore submits that since the elections have been held and the signatures have been attested and now the Prescribed Authority has found the electoral college to be valid then no interference is called for. The contention of Sri Mishra in short is that the Prescribed Authority has acted well within his jurisdiction and the contentions so raised by the Petitioner is without any basis.

4. Learned Standing Counsel has also adopted the same arguments as the learned Counsel for the Applicant/proposed Respondent and they submit that they do not propose to file any counter affidavit. That matter is therefore being disposed of finally with the consent of parties.

5. Having heard learned Counsel for the parties, it is evident that while deciding the writ petition on 10th November, 2010 the learned single Judge recorded clearly that this was a case arising out of Sub-section (2) of Section 25 of the Societies Registration Act, 1860 as the term of the society had already expired. In such a situation, the Assistant Registrar had been directed to hold the elections of the management of the society through a list of members which in the opinion of the court were undisputed in the elections held in 1987.

6. It is against the said judgment that a special appeal was filed and the special appellate bench made an observation while disposing of the appeal to the following effect on 7.1.2011:

a) The election programme as directed under the notification dated 4.1.2011 will be held pursuant to such direction. There should not be any delay in completion of the election for any reason whatsoever particularly when the election was not held for a considerable period.

b) After the completion is over, the entire result will be kept in a sealed cover for a period of seven days and within such time, the Prescribed Authority will hear out the application already pending being Case No. 1 of 2009 and after giving fullest opportunity of hearing to both the contesting parties, decide the issue, if any, with regard to electoral college finally.

c) Decision of the Prescribed Authority will be finally binding upon the parties.

d) Immediately after the decision, the sealed cover will be opened and result will be declared subject to decision to be taken by the Prescribed Authority.

e) Till the time decision is not taken by the Prescribed Authority.

f) Till the time decision is not taken by the Prescribed Authority on the basis of the election, Authorized Controller will manage the affairs of the Society and immediately after declaration of the results, the charges will be handed over to the elected body.

7. The outcome thereof is that the parties virtually had acquiesced to the position that the term had expired and that the elections had to be held under Sub-section (2) of Section 25 of the Societies Registration Act, 1860. In such a situation the jurisdiction stands with the Assistant Registrar, Firms, Societies and Chits and not with the Prescribed Authority to hold fresh elections. The directions issued by this Court on 7.1.2011 that the decision of the Prescribed Authority shall be taken and shall be binding upon the parties does not amount to saying that the Prescribed Authority is being conferred with a jurisdiction to decide any issue which it otherwise did not possess. In the opinion of the court the Prescribed Authority cannot proceed to decide except any matter about any dispute or doubt of the elections or continuance of the office bearers. The division bench had clearly directed that election papers were to kept in a sealed cover. There was therefore neither any doubt or dispute of the elections held, inasmuch as, the authorities had reconciled to the position, that the term of the committee of management had come to an end, and accordingly steps were undertaken for fresh elections through the Assistant Registrar. This power therefore lay within Sub-section (2) of Section 25 with the Assistant Registrar. There was no dispute referable after the aforesaid accepted position to the Prescribed Authority.

8. This Court as well as the apex court has time and again held that a jurisdiction which an authority does not possess cannot be conferred by this Court even by consent of parties. Reference may be had to the Division Bench judgment in the case of Udit Narain Kshetriya High School Padrauna Deoria through its Secretary, Sri Ram Pratap Narain Singh and Ors. v. District Magistrate, Deoria 1993 (2) ACJ

1293. The Prescribed Authority has simply proceeded to decide the issue of membership assuming that it had been conferred with the jurisdiction to decide the issue of electoral college under the order dated 7th January, 2011.

9. The Petitioner had raised a specific plea relating to the question of jurisdiction which has not been answered by the Prescribed Authority. The order of the Assistant Registrar which the learned Counsel for the proposed Respondent submits had become final, lost its finality with the direction of the division bench judgment. The order of the Assistant Registrar as referred to by the proposed Respondent had not become final in the sense that this Court while deciding the appeal on 7th January 2011 has itself issued a direction for a fresh decision of the electoral college. Accordingly, the orders passed by the Assistant Registrar cannot be treated to be final and binding.

10. The Prescribed Authority has simply recorded contentions and has concluded by treating the list received from the Assistant Registrar to be valid without adjudicating the controversy relating to the enrollment in accordance with the bye-laws.

11. So far as Jugraj Singh is concerned his dispute attains finality with the judgment of this Court in writ petition No. 27781 of 1999 which was dismissed on 7.10.2004. It may be further pointed out that a special appeal filed against the said judgment is pending in which there are no interim orders. This aspect of the matter has already been completely overlooked by the Prescribed Authority.

12. The writ petition is therefore allowed. The impugned order dated 7th February, 2011 is quashed. The matter stands remitted to the Assistant Registrar, Firms, Societies and Chits to take action u/s 25 (2) of the Societies Registration Act, 1860 and before proceeding to hold elections he shall determine the electoral college afresh after looking into the objections of the concerned parties including the Petitioner and the Respondent No. 5 as also Mr. Ram Suhawan within a period of two months from today. The elections already held or to be held in future if found otherwise shall be dependent upon the outcome of the order passed by the Assistant Registrar.