
(2012) 09 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 48589 of 2012

C.O.M., Dr. Ram Manohar Lohiya Smarak Kisan
Mahavidyalaya Samiti and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Societies Registration Act, 1860 — Section 4

Citation : (2013) 2 AWC 1770

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

Bench : Single Bench

Advocate : Yogish Kumar Saxena, for the Appellant; M.C. Chaturvedi, Naresh Kumar and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Shri Yogish Kumar Saxena learned counsel for the petitioner. Sri M.C. Chaturvedi learned counsel for the respondent No. 3 and the learned standing counsel for the respondent Nos. 1 and 2. The petitioner namely Smt. Rekha Verma and Naveen Verma are the wife and son respectively of late Mahesh Chandra Verma who was undisputedly the erstwhile Secretary/Manager of the Committee of Management of a Society registered under the Societies Registration Act known as Dr. Ram Manohar Lohiya Smarak Kisan Mahavidyalaya Samiti Purva Sujan Auraiya.

2. Mahesh Chandra Verma died on 19.4.2012. Consequently a casual vacancy arose in the office of Manager and it is here where the dispute commences between the petitioners and the respondent No. 3 including one Bhaiya Lal who was admittedly the President of the Society. Bhaiya Lal Verma has not been made a party to this writ petition.

3. Learned counsel for the petitioner contends that this casual vacancy was filled up in the meeting that was held on 26.5.2012 and accordingly the respondent

No. 2 Deputy Registrar was intimated about the said vacancy having been filled up with the election of the petitioner No. 2 as Manager in place of her late husband. This intimation dated 8.6.2012 was taken notice of by the Deputy Registrar and on the basis of an alleged affidavit said to have been filed by the President Bhaiya Lal Verma the list of office bearers was accordingly registered after the said reconstitution under the resolution dated 26.5.2012.

4. The respondent No. 3 Dhani Ram Verma is the father of late Mahesh Chandra Verma. He filed a representation on 10.7.2012 alongwith Bhaiya Lal Verma who according to him was the President of the Society and who also filed a notarial affidavit alongwith photographs before the Deputy Registrar asserting that the earlier proceedings submitted by the petitioner are forged and they do not bear his signatures. Bhaiya Lal Verma also got his statement recorded before the Deputy Registrar. On this the Deputy Registrar issued a notice to respond this complaint that had been received to the effect that the earlier registration of list of office bearers has been obtained by playing fraud, and, therefore, why it should not be cancelled invoking the powers u/s 4 of the Societies Registration Act, 1860.

5. The parties thereafter contested the matter by filing objections and reply, basically raising the aforesaid contention. Apart from this, submissions were also raised with regard to the interpretation of the bye-laws. The Deputy Registrar after considering the entire facts came to the conclusion that Bhaiya Lal Verma had appeared In person and given his statement, and, therefore, he cancelled the list of office bears that was earlier submitted and registered on behalf of the petitioner. He further held that in view of the Clause 11 of the bye-laws of the Society the petitioner could not have been elected as Manager and that the respondent No. 3 has been validly nominated as Manager in exercise of such powers.

6. Raising his submissions Sri Saxena learned counsel for the petitioner contends that the bye-laws have been incorrectly construed and he has invited the attention of the Court to Clauses 5, 6 and 11 of the Bye-laws read with Clause 19 (e) to contend that on an assessment of these provisions, the election of the petitioner No. 2 as Manager is fully justified, and Clause 11 is not at all applicable as it relates only to the power of nomination by the President in relation to such classes of members only as referred to therein. In short he contends that Clause 11 is not in relation to the powers of nomination as an office bearer.

7. Sri Saxena has further advancing his submissions contended that the respondent No. 3 has without having been elected as Manager, submitted an application describing himself as a Manager copy whereof is Annexure-7 to the writ petition. He therefore, submits that all the documents on which reliance is being placed are manipulated and his entitlement to the office of Manager being contrary to the bye-laws, the impugned order is vitiated. He further submits that the impugned order deserves to be set aside as the respondent No. 3 has been unable to establish his claim on any count.

8. Sri M.C. Chaturvedi learned counsel for the respondent No. 3 contends that it is undisputed that the answering respondent is the founder life member of the Society and even after the death of his son, the President was Bhaiya Lal. He submits that on account of this dispute and Bhaiya Lal Verma having supported the answering respondent Bhaiya Lal Verma has been shown to have now been expelled by the alleged resolution dated 18.8.2012.

9. He contends that the answering respondent was nominated by the President in terms of Clause 11 and there is no provision for holding of any election for the casual vacancy of an office bearer in the entire byelaws.

10. The contention, therefore, is that the provisions as pointed out by the learned counsel for the petitioner do not in any way provide for any method of filling up a casual vacancy of the office bearer except Clause 11, in these circumstances the entire election by the petitioner is contrary to the bye-laws. The petitioner could not have been elected as Manager against a casual vacancy. He contends that the President has himself appeared before the Deputy Registrar and has filed his affidavit and has also got his statement recorded clearly to the effect that the documents relied upon by the petitioner with his signatures are forged.

11. Learned standing counsel has also supported the impugned order and he submits that this being a case arising out of forged documents having been taken recourse to the Deputy Registrar was well within his Jurisdiction to decide the objections u/s 4 of the Societies Registration Act, 1860.

12. Having heard learned counsel for the parties, had there been a bona fide and genuine dispute founded on the correct interpretation of the byelaws then such a dispute could have been allowed to be taken before the Prescribed Authority u/s 25 of the Societies Registration Act on the strength of 1/4th members. In the present case, the entire question is about the nomination of an office bearer against a casual vacancy or its election as claimed by the petitioner.

13. I have perused Bye-law No. 5 which provides for the constitution of the Committee of Management. Clause 2 of Bye-law No. 5 defines a life member and out of them. 8 members are to be sent to the Committee of Management, and out of ordinary members four members are to be sent to the said Committee. Apart from this there are 3 ex-officio members. Clause 6 provides for election of the office bearers of the Society from such members. Accordingly these members elect the Manager of the Society. The provision for filling up the casual vacancy of a member is provided under Clause 19 (e). This provision however, is not in relation to an office bearer for which there is another clause, namely Clause 11 which is quoted herein below for ready reference:

14. A perusal of the said bye-law clearly indicates that the same is in relation to the filling up a casual vacancy that has arisen in an emergent situation. It is undisputed between the parties that in the present case there was an emergent situation on account of the casual vacancy having arisen due to the death of the

erstwhile Manager.

15. To the mind of the Court, apart from Clause 11 there is no other provision for filling up a casual vacancy of an office bearer of the Society. It is only Clause 11 which authorises filling up of a casual vacancy of an office bearer. This has to be done by nomination which power is conferred on the President of the Society.

Accordingly the petitioner could not have claimed any right on the strength of any election against a casual vacancy. This has to be filled up by way of nomination and it is admitted by the petitioner that she was not nominated by the President.

16. The respondent No. 3 on the other hand has been nominated by the President. In the aforesaid circumstances the Deputy Registrar was perfectly justified in relying on Clause 11 to construe that for the filling of the casual vacancy by way of nomination, the power has to be exercised by the President of the Society.

17. The contention of Sri Saxena learned counsel for the petitioner that Clause 11 is not attracted, therefore, has to be rejected.

18. Apart from this even if the respondent No. 3 mentioned himself as Manager in a letter, the same will not confer any such authority unless President nominates him. The mention in the letter does not authorise the respondent No. 3 to claim himself to be the Manager which he became only after nomination. In the aforesaid circumstances and having found that there is only one provision for nomination against the casual vacancy of an office bearer and there being no other provision available in the bye-laws the Deputy Registrar was found to take this view. In such circumstances there is no scope for allowing the reference to go before the Prescribed Authority.

The writ petition, therefore, fails and is accordingly dismissed.