
(2014) 04 AHC CK 0197

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15676 of 2012

Committee of Management

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 12, 4, 4(1)

Citation : (2014) 5 ADJ 263 : (2015) 1 AWC 1061

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Ashok Khare, Siddharth Khare and S.D. Shukla, Advocate for the Appellant; M.M. Sahai, Advocate for the Respondent

Judgement

P.K.S. Baghel, J.—This writ petition is directed against the order dated 19th November, 2011 passed by the Assistant Registrar, Firms, Societies and Chits, Jhansi Region, Jhansi, the respondent No. 2, whereby he has cancelled the renewal of registration of the Society submitted by the petitioners and has registered the list of the office-bearers submitted by the respondent No. 3. The essential facts are that Gyan Bharti Shiksha Sadan, Karvi, District Chitrakoot (for short, the "Society") is a Society registered under the provisions of the Societies Registration Act, 1860. The affairs of the Society are regulated by the Memorandum of Association and bye-laws. The Society has established a Junior High School, namely, Purva Madhyamik Vidyalaya, Karvi, Chitrakoot (for short, the "Institution"), which is recognised under the provisions of the Uttar Pradesh Basic Education Act, 1972. It receives aid out of the State fund. Thus, the provisions of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 are applicable to the Institution. The petitioner No. 2 claims to be its Manager.

2. It is stated that Sri Awadhesh Prasad, the respondent No. 3, filed some fabricated proceedings dated 30th August, 2011 before the Assistant Registrar,

Firms, Societies and Chits, Jhansi Region, Jhansi (for short, the "Assistant Registrar"), wherein the petitioner No. 2 was stated to be removed from the office of the Manager and in his place Sri Awadhesh Prasad, the respondent No. 3, was elected as Manager. The Assistant Registrar registered the list of the office-bearers for the year 2011-12, wherein the respondent No. 3 is recognised as a Manager. A copy of the list of office-bearers is on the record as annexure-5 to the writ petition. The petitioner No. 2 filed an objection before the Assistant Registrar on 13th September, 2011 for cancellation of the list so registered. On the basis of the objection filed by the petitioner No. 2, the Assistant Registrar issued notice to the concerned parties on 19th September, 2011, and 30th September, 2011 was fixed for hearing. The Assistant Registrar after hearing both the parties passed the impugned order dated 19th November, 2011, wherein he has found that the petitioner No. 2 on the basis of the fabricated documents had obtained the renewal of registration of the Society, therefore, he cancelled the renewal of registration of the Society obtained by the petitioner No. 2 and refused to cancel the list of office-bearers submitted by the respondent No. 3 of the year 2011-12, which was registered by him in terms of Section 4 of the Societies Registration Act.

3. A counter-affidavit has been filed on behalf of the respondent No. 3. The stand taken by the respondent No. 3 is that on 15th February, 2009 last election was held, wherein the petitioner No. 2 was elected as Manager, but due to serious allegations against him a meeting of the General Body of the Society was convened on 30th August, 2011, wherein out of 31 members 25 members were present. In the said meeting, a resolution was passed for removal of the petitioner No. 2 as he was found to be involved in the activities against the interest of the Society and in his place Sri Awadhesh Prasad, the respondent No. 3, was elected as Manager and no change was made in respect of other office-bearers. Before the Assistant Registrar the respondent No. 3 submitted the election proceedings for the year 2009-10 dated 15th February, 2009, confirmation proceedings dated 28th February, 2009, proceedings dated 30th August, 2011 and list of members of the Committee of Management from 2007-08 to 2011-12 alongwith other documents. He had also filed a copy of the order of the District Basic Education Officer dated 14th September, 2011, whereby the respondent No. 3 was recognised as Manager.

4. It is stated in the counter-affidavit that the petitioner No. 2 had submitted a fabricated document as he had shown one Sri Jagmohan Lal as Member in his Committee of Management, whereas Sri Jagmohan Lal had died on 28th June, 1992. His death certificate was also filed before the Assistant Registrar. A copy of the said certificate is also on the record as annexure-4 to the counter-affidavit.

5. I have heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Siddhartha Khare, learned Counsel for the petitioners, Sri M.M. Sahai, learned Counsel for the respondent No. 3, and learned Standing Counsel.

6. Sri Ashok Khare, learned Senior Advocate appearing for the petitioners,

submits that the Assistant Registrar had no jurisdiction to decide the election of the office-bearers of the Society and without issuing any notice to the erstwhile office bearers, he has registered the list of the office-bearers submitted by the respondent No. 3. Sri Khare has placed reliance on the judgments of this Court in the case of Committee of Management, Ashok Educational Society Gram Barpar (Araipar) and others v. Assistant Registrar, Firm, Societies and Chits, Gorakhpur and others, 2004(4) ESC (All) 2444; Gram Shiksha Sudhar Samiti, Junior High School, Sikandra, District Kanpur Dehat and another v. Registrar, Firms, Societies and Chits, U.P. Lucknow and others, Special Appeal No. 1089 of 2010, decided on 13th July, 2010; and C/M Anjuman Kherul Almin Allahganj and another v. State of U.P. and others, Special Appeal Defective No. 1286 of 2013, decided on 18th December, 2013.

7. Sri M.M. Sahai, learned Counsel for the respondent No. 3, submits that there was no dispute of election of the office-bearers as only the petitioner No. 2 was removed on 30th August, 2011 and all other office bearers are continuing, therefore, there was no need to issue notice to the office bearers of the Society. The Assistant Registrar has admittedly heard the petitioner No. 2 before passing the impugned order.

8. Sri Sahai further submits that the Assistant Registrar is not bound to refer frivolous disputes to the Prescribed Authority as he has applied his mind and found the claim of the petitioner No. 2 to be totally fictitious and the petitioner No. 2 has failed to produce any evidence before the Assistant Registrar. Lastly, Sri Sahai submits that the findings recorded by the Assistant Registrar have not been assailed in the writ petition, therefore, no interference is called for under Article 226 of the Constitution of India as the Assistant Registrar has recorded the findings of fact.

9. Sri M.M. Sahai has placed reliance on the following judgments:

(I) Shambhu Kumar Tripathi Vs. The Assistant Registrar, Firms, Societies and Chits and another,

(II) Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another, 1995(2) UPLBEC 1242.

(III) Kranti Kumar Chaturvedi and Another Vs. District Inspector of Schools and Others,

(IV) Shiksha Prasar Samiti and Another Vs. Registrar, Societies, Chits and Firms and Others,

(V) Shiksha Parishad and Another Vs. Deputy Registrar, Firms, Societies and Chits, Faizabad Division and Another,

10. I have considered the rival submissions advanced by the learned Counsel for the parties and perused the record.

11. A large number of writ petitions are filed in this Court raising the issue with regard to scope and power of the Registrar u/s 4 and Section 25 of the Societies Registration Act, as applicable in State of Uttar Pradesh. The interplay and interaction amongst Section 4 and Section 25 of the Societies Registration Act has been subject-matter of long course of judgments of this Court. Before advertng to the divergent view of this Court by the Division Benches, I find it helpful to refer necessary amendments brought in the Societies Registration Act in the State of Uttar Pradesh which deal with the issue involved in the present case.

12. The Societies Registration Act, 1860 is a Central Act. It was adopted by the Adaptation of Laws Order, 1950. In the State of Uttar Pradesh drastic amendments have been made by amending the Central Act as well as by inserting new provisions in the Central Act by U.P. Acts 25 of 1959, 52 of 1975, 13 of 1978, 11 of 1984 and 23 of 2013. Section 4 has again been amended in its application to State of Uttar Pradesh by U.P. Act No. 23 of 2013, whereby Section 4-B has been inserted in the Societies Registration Act.

13. For the sake of convenience, Sections 4 and 25 of the Societies Registration Act, as applicable in State of Uttar Pradesh, read as under:

4. Annual list of managing body to be filed.--(1) Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Provided that if the managing body is elected after the last submission of the list, the counter signature of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not counter-sign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in sub-section (1) there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension or abridgement of purposes made u/s 12, and of the rules of the society corrected up to date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the proceeding year of account.

4A. Changes etc. in rules to be intimated to Registrar.--A copy of every change made in rules of the society and intimation of every change of address of the society, certified by not less than three of the members of the governing body shall be sent to the Registrar within thirty days of the change.

4-B *****

25. Dispute regarding election of office-bearers.--(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth 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 office-bearers of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied--

(a) that any corrupt practice has been committed by such office-bearer; or

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

(c) that the result of the election in so far it concerns such office-bearer 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 non-compliance with the provisions of any rules of the society.

Explanation I.--A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person--

(i) induces, or attempts to induce, by fraud, international misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election;

(ii) with a view to inducing any elector to give or refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in Clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he or any person, in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II.--A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Explanation III.--The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

(2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has been not held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society.

Explanation.--For the purposes of this section, the expression "prescribed authority" means an officer or Court authorised in this behalf by the State Government by notification published in the Official Gazette.

14. A careful reading of proviso to sub-section (1) of Section 4 and Section 25, as above, it is evident that the interplay of the said sections is overlapping to some extent.

15. The scope of Section 25 of the Societies Registration Act, as inserted in the year 1975 in its application to Uttar Pradesh, came to be considered authoritatively for the first time before the Division Bench of this Court in the case of *Vijai Narain Singh v. Registrar, Firms, Societies and Chits Registration, U.P. Lucknow and others*, 1981 UPLBEC 308. The Division Bench, speaking through Hon"ble Mr. Justice Satish Chandra, Chief Justice (as his Lordship then was), held that the Registrar has no jurisdiction to hear the dispute in respect of election and he was bound to refer the dispute to the Prescribed Authority. The Court held thus:

It is, thus, apparent that the Registrar himself had no jurisdiction to hear and decide any doubt or dispute in respect of an election or continuance in office of an office-bearer of such a society. His decision that the respondent No. 5 continues to be the Manager-cum-Secretary or that the petitioner was not duly elected was wholly without jurisdiction. He was in law bound to refer the dispute to the Prescribed Authority.

16. The view taken in *Vijai Narain Singh* (supra) was consistently followed by this Court. Reference may be made to some of the judgments of the Division Benches of this Court in *Committee of Management and others v. Zila Basic Shiksha Adhikari and others*, 1987 UPLBEC 333; *Urwa Bazar Educational Society and*

Another Vs. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Division and Others, All India Council and Another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and Another, Gram Shiksha Sudhar Samiti, Junior High School Sikandra, District Kanpur Dehat and another v. Registrar, Firms, Societies and Chits, U.P. Lucknow and others, 2010(7) ADJ 643 (DB); and Committee of Management, Anjuman Kherul Almin and Another Vs. State of U.P. and Others, and judgments of learned Single Judge in the cases of Muslim Welfare Society, Machhlishahr and another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi and another, ; Khapraha Educational Society and Another Vs. Assistant Registrar, Firms, Chits and Societies and Another, Committee of Management, Radha Adarsh Bal Vidya Mandir Samiti, Shivpura, Balrampur, through its Committee of Management, Radha Adarsh Bal Vidya Mandir Samiti, Shivpura, District Balrampur and Another Vs. State of U.P. and Others, and Committee of Management, Church City Junior High School and Another Vs. State of U.P. and Others,

17. The first divergent view was taken by a Division Bench of this Court in the case of Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another, 1995(2) UPLBEC 1242, and thereafter in the case of Shiksha Parishad and Another Vs. Deputy Registrar, Firms, Societies and Chits, Faizabad Division and Another,

18. This Court (learned Single Judge) while considering the scope of proviso to Section 4(1) and provisions of Section 25(1) of the Societies Registration Act noticed the divergent view taken by the Division Benches of this Court and he made a reference to a Bench comprising of three Judges in Civil Misc. Writ Petition No. 49883 of 1999 (Committee of Management, Lal Bahadur Shastri Laghu Madhyamik Vidyalaya and others v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur and others). The opinion recorded by the learned Single Judge on 14th December, 1999 reads as under:

In my opinion if interpretation as suggested by learned Counsel for the petitioners is accepted then the words "and shall decide all objections received" in the proviso of Section 4(1) will become absolutely meaningless.

On the other hand the provision of Section 25(1) indicates that the said Section is intended to constitute the Prescribed Authority into an Election Tribunal dealing with cases of election of individual members who either guilty of corrupt practice or have been improperly elected because of the reasons given in the said proviso. Thus, Section 4(1) and Section 25(1), aforesaid, operate in different and distinct field. Where the dispute is not of the nature referred to in the provision of Section 25(1), but concerns other matters it has to be decided by the Registrar if the list is not countersigned by outgoing members and objections are received pursuant to or even without public notice or other notice contemplated by proviso.

In the circumstances, I consider it desirable that the matter be placed before a Bench of at least three Hon"ble Judges (in view of the earlier Division Bench) for clear interpretation of two provisions referred to above so that the question of law may be settled. For this purpose relevant papers may be submitted before the Hon"ble the Chief Justice for instituting a Larger Bench. In the mean time if the petitioner is so advised he may institute a suit in accordance with normal law.

Dt. 14-12-1999.

19. Said matter was placed before the then Hon"ble the Chief Justice on 19th January, 2000 who passed an order to place it before the Bench presided over by Hon"ble D.S. Sinha, J. (as his Lordship then was). When the matter was heard by the Division Bench, it found that the learned Single Judge had not formulated the question in terms of Clause (b) of the second proviso to Rule 2 of Chapter V of the Rules of the Court, 1952. Therefore, the matter was remitted back to the learned Single Judge but the case was dismissed for non-prosecution, therefore, the larger Bench could not be constituted.

20. In Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti (supra) the Division Bench took the view that the Assistant Registrar is not a post office. He has to apply his mind and only a bona fide dispute can be referred u/s 25(1) and not the frivolous disputes. Said view has been favoured by the following Division Benches:

(I) Kranti Kumar Chaturvedi and Another Vs. District Inspector of Schools and Others,

(II) Committee of Management, Rashtriya Junior High School (Society) Vs. Asstt. Registrar, Firms, Societies and Chits and Others, wherein the Court observed as follows:

4. It is the standard law that, if any, bona fide dispute as to two rival Committees of Managements is shown to be in existence to the Registrar or Assistant Registrar, a reference by him of the dispute to the Prescribed Authority follows as a matter of course. But a bona fide dispute does come into existence merely because one member, even if he is a founder member, chooses simply to say or ascertain that he has a rival Committee and therefore, a bona fide dispute as to Management exists. Sufficient prima facie material must be produced before the Registrar before he can validly exercise his jurisdiction of referring the dispute. He must, simply put, be satisfied that there is something to refer and he is not merely sending litigations before the Prescribed Authority, without there being even a shadow of real cause for litigation.

(III) Committee of Management, Adarsh Krishak Junior High School, Mau Aima, Allahabad v. State of U.P. and others, 2009(9) ADJ 270 (DB), wherein it was held as under:

19. The aforesaid facts having not been noticed by the learned Judge, in our opinion, renders the impugned judgment unsustainable. Further-such a direction,

in our opinion, could not have been issued without putting the appellant to notice. The Assistant Registrar, as pointed out in the case of Kisan Shiksha Sadan, Banksahi (supra), is not a post office for referring any and every dispute. The respondents-petitioners with the aid of 1/4th members of the general body of the Society could have moved for a reference as provided u/s 25 of the Act 1860 or they could have filed a civil suit. There was absolutely no occasion for a writ petition to have been entertained at such a belated stage and further after more than three years of holding of the elections.

21. The view taken in Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti (supra) has been followed in large number of recent cases by the learned Single Judge. Reference may be made to some of the recent decisions.

22. In Committee of Management, Gramya Vikas Uchattar Madhyamik Vidyalaya Samittee, Khuthan, District Jaunpur and Another Vs. State of U.P. and Others, it was held as under:

21. Learned Counsel for the petitioner has also placed reliance on the case of Committee Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another, (1995) 2 UPLBEC 1242, wherein this Court has taken view that Registrar has authority to see that the person is member of the society or not and power of registration is exclusively vested with the Registrar Relevant extract of the judgment is being quoted below:

This appeal arises out of the order, dated 14.2.1994 dismissing the writ petition No. Nil of 1004. The plea of the second appellant is that he was elected as the Manager of Kisan Shiksha Sadan, Banksahi, District Basti (hereinafter referred to as the Shiksha Sadan) in January, 1992. This plea was denied by the second respondent herein stating that he was lawfully elected as the Manager of the Shiksha Sadan, and the second appellant was not even a member of the Shiksha Sadan, As the application filed by the second appellant herein was not considered by the Registrar of the societies, he filed a writ petition No. Nil of 1994 seeking a direction to the Registrar to decide his application. This writ petition was disposed of on 10th January, 1994 directing the Registrar to consider the plea of the second appellant herein and pass appropriate orders by giving reasons after considering the objections raised by the second appellant. Accordingly, the Registrar considered the plea of the second appellant in the light of the objections raised by him and passed the appropriate order dated 1.2.1994 holding that the second appellant herein was not even a member of the Shiksha Sadan. Therefore, he refuse to refer the dispute or doubt relating to the election of the Manager of the Shiksha Sadan. Aggrieved by that order, he filed writ petition No. Nill of 1994, the learned Single Judge dismissed the writ petitioner holding that the Registrar was competent to pass such an order. Aggrieved by that order, this appeal is preferred.

It is submitted by the learned Counsel for the appellants that the Registrar has no power or jurisdiction to decide the question relating to the membership of the second appellant. When he raised a dispute about the election of the Manager of the Shiksha Sadan, he had no other alternative but to refer the doubt or dispute relating to the election of the Manager of the Shiksha Sadan to the Prescribed Authority u/s 25 of the Societies Registration Act, 1860 (in short "the Act"). On the other hand, it is submitted by the learned Counsel appearing for the respondents that the Registrar may or not refer a dispute or doubt relating to the election of the Manager of a society to the Prescribed Authority for valid reasons and the Registrar is under no obligation to refer any dispute or doubt relating to the election, without applying his mind, to the Prescribed Authority. It is further submitted that the Registrar is under an administrative obligation u/s 4 of the Act to maintain a register of members of the managing body for his own administrative purpose. He is under an obligation to record the names of the elected members of the managing body and for that purpose he can be held an enquiry so as to find out who are the elected members of the managing body of a society. On the basis of such enquiry, if the Registrar comes to the conclusion that a person or persons are not even the members of the Society, he will be quite justified in not referring the doubt or dispute as to the election of members of the Managing body of a Society.

Having regard to the provisions of the Act, we see force in the submission of the learned Counsel for the respondents. Section 4 of the Act provides that a list of members of the managing body of a Society shall be filed with the Registrar. That list is maintained by the Registrar for the purpose of performing his administrative functions as a Registrar. Section 25 of the Act provides that whenever any doubt or dispute is raised regarding the election of members of a managing body of a society, the Registrar may refer such doubt or dispute to the Prescribed Authority for his decision. But when one-fourth members of the Society raise a doubt or dispute relating to the election of the members of managing body or Society, the matter automatically goes to the Prescribed Authority for decision and in such a case the Registrar does not come into the picture. In exercising this power whether to refer or not any doubt or dispute relating, to the election of members of the managing body of a Society to the Prescribed Authority. The Registrar has to apply his mind to the facts of the case and take a decision. In taking such a decision the Registrar will be quite justified to take into account all the relevant circumstances, as he has done in the present case. If an objection is raised about the membership of a person. In our view, it is the duty of the Registrar, for his own administrative purpose, to inquire into whether the person concerned is a member of the Society or not. If the Registrar comes to the conclusion that such a person is not a member of the Society then he is under no obligation to refer the dispute; or doubt relating to his election to the Prescribed Authority for decision. In the present case, the Registrar has applied his mind to the facts of the case to find out whether the second appellant herein or was not a member of the Shiksha Sadan. He found that he was not

even a member of a Society. It is a pure question of act. If any person feels aggrieved by such a decision, the proper course open to him is to approach the Civil Court and seek appropriate relief. The Registrar is bound by the decision of the Civil Court and his decision will be subject to the decree passed by the Civil Court.

23. Similar view was taken in *Committee of Management, Chacha Nehru Vidyalaya Vs. State of U.P. and Others*, Paragraph-5 of the judgment reads as under:

5. The contention of the petitioner could have been accepted provided there was some material to even prima facie establish that the petitioner's claim of entering into the society is based on any valid material. There is nothing either on record nor there was anything before the Assistant Registrar and therefore the Assistant Registrar is not bound to refer every dispute, inasmuch as, it is only a bona fide claim which can be gone into for the purpose of deciding the claim of rival parties u/s 25 of the Societies Registration Act. The Assistant Registrar is not a mere post office as held by this Court in the Division Bench of this Court in the case of *Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another*, 1995(2) UPLBEC 1242.

24. In *The The Field Council of Norwegian Evangelical Mission and Another Vs. State of U.P. and Others* this Court followed the Division Bench of judgment of *Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti (supra)* and held as under:

6. A Division Bench of this Court in *Committee of Management, Kisan Shiksha, Sadan, Banksahi, District Basti and another (supra)* observed that the Deputy Registrar can decide whether persons are valid members or not and the observations are as follows:

....In exercising this power whether to refer or not any doubt or dispute relating to the election of members of the managing body of a Society to the Prescribed Authority, the Registrar has to apply his mind to the facts of the case and take a decision. In taking such a decision, the Registrar will be quite justified to take into account all the relevant circumstances, as he has done in the present case. If an objection is raised about the membership of a person, in our view, it is the duty of the Registrar, for his own administrative purpose, to enquire into whether the person concerned is a member of the Society or not. If the Registrar comes to the conclusion that such a person is not a member of the Society then he is under no obligation to refer the dispute or doubt relating to his election to the Prescribed Authority for decision.....

7. In this connection the judgment of this Court in *Sri Babu Ram Shiksha Prasar Samit and Smt. Ram Rati Yadav Vs. Deputy Registrar, Firm, Societies and Chits and Shri Kripal Singh, Alleged Manager, Sri Babu Ram Shiksha Prasar Samiti (Registered Society)* also needs to be referred wherein it has been held that

Assistant Registrar can examine whether a person is a valid member of the Society or not. The Court in the aforesaid judgment after considering the provisions of the Act and various Division Bench judgments of this Court including Committee of Management, Kisan Shiksha Sadan held that the dispute as to whether a person is a valid member or not of the Society can be examined by the Assistant Registrar and he need not refer the matter to the Prescribed Authority.....

25. Same view was taken in the case of Committee of Management, Sri Shankar Shiksha Prasar Samiti and Another Vs. State of U.P. and Others, and, Committee of Management, Baba Ram Sahai Shiksha Samiti and Another Vs. Assistant Registrar, Firms, Societies and Chits and Others,

26. In Committee of Management, Baba Ram Sahai Shiksha Samiti, Ballia (supra) learned Single Judge has considered a large number of judgments of this Court on this issue and came to hold as under:

7. On the other hand, the learned counsel for respondent submitted that a total fraud was played by the petitioner in submitting the list of the office bearers who were not even members of the Society and that a complete fabrication of the records was submitted by the petitioner, which was rightly rejected by the Assistant Registrar, after he made an investigation and found that the documents submitted by the petitioner were forged and unreliable. The learned counsel submitted that such a limited enquiry could be made by the Assistant Registrar on the administrative side while registering the list of the office bearers u/s 4 of the Act. In support of his submission, the learned counsel for respondent placed reliance upon a decision of this Court in Shambhu Kumar Tripathi v. Assistant Registrar, Firms, Societies and Chits, Allahabad and others, 1992(2) ALR 224; Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another, 1995(2) UPLBEC 1242; and Kranti Kumar Chaturvedi and Another Vs. District Inspector of Schools and Others,

27. In the case of Sri Babu Ram Shiksha Prasar Samit and Smt. Ram Rati Yadav Vs. Deputy Registrar, Firm, Societies and Chits and Shri Kripal Singh, Alleged Manager, Sri Babu Ram Shiksha Prasar Samiti (Registered Society) this Court went elaborately into all implication of the power and jurisdiction of the Registrar while exercising his power under the proviso to Section 4(1) and Section 25(1) of the Societies Registration Act. The Court held that the Registrar has jurisdiction to decide whether a member is valid or not, and if an annual list of Managing body is submitted to the Registrar and he finds that two parallel Committees have submitted the list of the office-bearers which require to decide the dispute of the office bearers, he may, in his discretion, refer the dispute to the Prescribed Authority if he is satisfied that bona fide and genuine dispute has arisen in respect of the election or continuance of the office-bearer, and if he finds that the dispute raised before him totally lacks bona fides and is a fake dispute, then he can exercise the authority vested in him u/s 4 of the Societies Registration Act.

This action of the Registrar can always be tested on the parameters of the judicial review. The Court further held that the aggrieved persons are not remediless as they can always assail the validity of such list, after mustering support in terms of the statutory requirement u/s 25(1) before the Prescribed Authority.

28. The Court may usefully refer to a discussion on this issue by the Supreme Court in the case of *A.P. Aboobaker Musaliar v. District Registrar (G), Kozhikode and others*, (2004) 11 SCC 247, has considered the issue where two rival groups had submitted the list of office-bearers u/s 4 of the Societies Registration Act. In the said case, two groups had filed the list of office-bearers u/s 4 of the Societies Registration Act, as applicable in the State of Andhra Pradesh. The District Registrar had accepted one of the lists of the office-bearers u/s 4. Aggrieved party challenged the order of the District Registrar before the Andhra Pradesh High Court. Learned Single Judge of the High Court took the view that u/s 4 the Deputy Registrar had no power to adjudicate the matter, but in the letters patent appeal the Division Bench set aside the order of the learned Single Judge and took the view that in case of a dispute when more than one return is filed, the Registrar has got the power to find out as to which group has to be recognised. For the said purpose, it is not necessary for the District Registrar to hold an elaborate enquiry. The Deputy Registrar, on prima facie satisfaction, can accept one of the lists submitted by a faction. In the said case, the District Registrar held that one of the groups, whose list was accepted, had submitted the list for a long period. The Division Bench held that the enquiry made by the Registrar and his decision does not become final and aggrieved party can take up the matter before the competent Court about the dispute of the office-bearers. In the special leave petition, the Supreme Court upheld the order of the Division Bench of the Andhra Pradesh High Court and held as under:

3.....It is clear from what is stated above by the Division Bench that the enquiry made by the Registrar and the decision taken did not become final and the party could take up the matter before a competent Court as to who were the members of the governing body. When there were two lists, the District Registrar, prima facie, on being satisfied, accepted the list filed by E.K. Aboobaker as he was filing the lists for the previous years also. The District Registrar has only taken into consideration the limited question of accepting the list of members of the governing body. The Division Bench of the High Court was right in taking the view that the list accepted by the District Registrar did not become final; if the appellant was aggrieved, it was open to him to establish his claim in a competent Court/forum. To us, it appears even the District Registrar did not adjudicate any dispute as such. It was only a question of accepting, prima facie, the list of members of the governing body. If the appellant's claim was right and justified, merely because the District Registrar accepted the list of the governing body of members given by E.R. Aboobaker, it did not prevent him from establishing his claim in a competent Court.

29. Bearing in the mind the aforesaid principles of law, the State Amendment can be examined. In the State of Uttar Pradesh, a proviso has been inserted under sub-section (1) of Section 4 by U.P. Act No. 11 of 1984, which requires that if the Managing Body is elected after the last submission of the list, the counter signature of the old members shall be obtained on the list and if the old office-bearers do not countersign the list, the Registrar may issue a notice to such person inviting objection from them and decide all the objections received within the specified period. In view of the said proviso, if any objection is filed by ex-office bearers and they raise the dispute of the election, it cannot be said that the Registrar cannot decide such dispute and he is bound to refer the dispute to the Prescribed Authority. If such interpretation is accepted, then the power conferred on the Registrar by the proviso to Section 4(1) will become redundant. Said interpretation would also be against the true intendment of the Legislature, which has empowered the Registrar to decide the objection raised before him.

30. A close look at the scheme of the Societies Registration Act, as applicable in the State of Uttar Pradesh, makes it manifest that the Registrar has been given wide power, such as, u/s 3A of the Societies Registration Act for renewal of certificate of registration; u/s 4 to register the annual list of the Managing body; u/s 4A (U.P. amendment) intimation to the Registrar regarding the change etc. in rules; u/s 12-A power to approve change the name of the Society; u/s 12-B in respect of change of name and object of the Society; and, u/s 12-D power to cancel registration in the certain circumstances. u/s 22 the Registrar is empowered to call for information, and u/s 23 he can direct the society to furnish its account or copy of the statement of receipts and expenditure for any particular year duly audited by the Chartered Accountant. Section 24 also empowers the Registrar in directing the investigation of affairs of the Society and u/s 25 he has power to refer the dispute of the election or for continuance of the office-bearers to the Prescribed Authority.

31. The powers conferred under the aforesaid sections clearly demonstrate that the Registrar is the principal Executive Officer to exercise his power in respect of the affairs of the Society. Thus, his power u/s 4 cannot be divested only on the ground that some frivolous dispute is raised in respect of the election or continuance of the office-bearers. If there is a dispute of two parallel groups of the society, the Registrar can always examine whether the persons of rival group, who have raised the dispute, are member of the society or not. He can record his prima facie satisfaction in this regard. If he is satisfied that the dispute is genuine and it is a dispute inter se between the members of the society, then he can refer the dispute to the Prescribed Authority. But merely on the basis of fake documents if election has been set up and the matter is referred to the Prescribed Authority, it can cause serious prejudice to the institution established by the Society and the Society itself.

32. In the State of Uttar Pradesh, u/s 25 of the Societies Registration Act the State Government has notified the Sub-Divisional Magistrates/Sub-Divisional

Officers as the Prescribed Authority. As has been observed, the Sub-Divisional Magistrates/Sub-Divisional Officers are the Executive Officers and apart from the administrative work, they also hold the revenue Courts under the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and similar other functions under different statutes. In a district the number of the Sub-Divisional Magistrates is limited. Therefore, generally the Prescribed Authority takes considerable long time to decide the dispute of the office-bearers of the Society. In large number of cases it is found that the dispute becomes infructuous as the term of the office-bearers of the society is normally 3-5 years. This Court is also burdened with large number of writ petitions seeking direction to the Prescribed Authority to decide the dispute expeditiously.

33. After the judgment of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the role of the societies have grown manifold. Now all the professional colleges can be established only by a society. The Supreme Court in the case of Illachi Devi (D) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others, , has underlined the requirement of change in the Societies Registration Act by the Parliament in the following words:

53. Before parting, however, we may add that growing needs of the country in this field of law appears to have not received sufficient attention of the Parliament. Existing law is required to be suitably amended to meet the requirement of changing scenario.

54. A Society registered under the Societies Registration Act in the changed scenario play an important role in society. They discharge various functions which are beneficial to the society. They run educational and other institutions. They sometimes work in public interest and act in aid of State functions. They have their own accountability. They sometimes incur liability. Public Interest Litigations filed by Societies are galore.

34. Regard may be had to the fact that in the Societies Registration Act Section 25 has been inserted by the Uttar Pradesh Amendment. There is no corresponding section in other States. Thus, the dispute of the office-bearers are decided u/s 4 of the Societies Registration Act by the Registrar on the basis of prima facie satisfaction, as he has to deal with them for performing his administrative functions under the various provisions of the Act, as detailed above. The aggrieved parties are left open to adopt the other remedies available to them such as civil suit.

35. Coming back to the facts of the present case, I find that in the instant case there was no claim by two rival faction with regard to election of the office bearers.

36. The Assistant Registrar has registered the list of the office-bearers u/s 4 of the Societies Registration Act. There was no claim by two rival factions with regard to election of the office-bearers. The Assistant Registrar had already registered the list of the office-bearers for the year 2010-11 and only on the

basis of the complaint made by the petitioner No. 2 the Assistant Registrar has issued notice to the respondent No. 3. The petitioner No. 2 has not produced any document before the Assistant Registrar. He also failed to produce the original records of the Society. The finding recorded by the Assistant Registrar is extracted hereunder:

37. In the writ petition said finding has not been assailed. Thus, it cannot be said that finding recorded by him is illegal or perverse. In the writ jurisdiction this Court cannot sit as a Court of appeal. Writ Court in any event does not enter into any finding of facts.

38. On the other hand, it is recorded in the impugned order that the respondent No. 3 had produced the original records including the minutes, etc. After perusal of the original records, the Assistant Registrar has found that the papers submitted by the respondent No. 3 for registration of the list of office-bearers were valid and genuine.

39. In the instant case, the Assistant Registrar has recorded a finding with regard to fabricated documents submitted by the petitioner No. 2 in obtaining renewal of certificate of registration of the Society and he has cancelled the said certificate. The dispute with regard to cancellation of renewal of registration of Society cannot be adjudicated upon by the Prescribed Authority u/s 25(1) of the Societies Registration Act. Therefore, I find it difficult to accept the submission of Sri Khare that the Assistant Registrar has no jurisdiction and he ought to have referred the matter to the Prescribed Authority. Pertinently, u/s 3A of the Societies Registration Act only the Registrar is empowered to take decision with regard to renewal or cancellation of registration. The Prescribed Authority does not have any jurisdiction in this respect.

40. So far as the judgment of Committee of Management, Ashok Educational Society Gram Barpar (Araipar) (supra) as relied upon by Sri Khare is concerned, in the said case the Assistant Registrar had already renewed the certificate of registration of the Society u/s 3A of the Societies Registration Act and two rival groups had submitted the list of office bearers on the basis of two separate elections. The Court, however, observed that only genuine dispute regarding election has to be referred by the Assistant Registrar to the Prescribed Authority. Relevant paragraph of the judgment reads as under:

12. We are, however, conscious of the fact that it is only when there is a genuine dispute regarding the elections that the matter has to be referred by the Assistant Registrar to the Prescribed Authority but when the dispute appears to be frivolous in nature, the provisions of Section 25 of the Act will not be applicable.

41. In Gram Shiksha Sudhar Samiti, Junior High School, Sikandra, District Kanpur Dehat (supra), the Registrar had issued notice in terms of proviso to Section 4 of the Societies Registration Act as he had received an objection with regard to election of the office-bearers. The Registrar enquired into the claim and

found that the list submitted by one of factions was based on fake election. He further recorded a finding that the respondent No. 3 therein was duly elected President of the Committee of Management. In the said case, the Court held that the Registrar had no jurisdiction to decide the election dispute. The law laid down in the said case is not applicable in the present case where there was no rival election and the list was already registered by the Assistant Registrar u/s 4 of the Societies Registration Act and the matter was heard only on the complaint made by the petitioner No. 2.

42. The judgment of C/M Anjuman Kherul Almin Allahganj (supra) is also factually distinguishable as there was a clear dispute of two sets of the office-bearers. In the said case, the list of the office-bearers u/s 4 for the year 2013-14 was submitted by one of the factions and the rival faction immediately filed an objection before the Deputy Registrar. Thus, there was conflicting claim between the appellant and the contesting respondent therein. Therefore, the facts of said case also does not help the learned Counsel for the petitioners.

43. After careful consideration of the facts and circumstances of the case, I am of the view that there was no rival claim of the office-bearers and the petitioners have not challenged the findings recorded by the Assistant Registrar and, as such, the findings of fact cannot be determined under Article 226 of the Constitution. Thus, the writ petition lacks merits and it is accordingly dismissed. No order as to costs.