

(2013) 03 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15912 of 2013

Committee of Management, Brahmacharya Ashram Sri Sarvar
Sanskrit Mahavidyalaya and Another

APPELLANT

Vs

Commissioner, Gorakhpur and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Societies Registration Act, 1860 — Section 12D(1)(2), 25CD, 5

Citation : (2013) 03 AHC CK 0120

Hon'ble Judges : Arun Tandon, J

Final Decision : Partly Allowed

Judgement

Arun Tandon, J.

There is a Society duly registered in the name and style of Brahmacharya Ashram Shri Sarvar Sanskrit Mahavidyalaya, Kishorganj, Salempur, Tehsil Salempur, District Deoria.

The dispute in respect of renewal of the registration of the Society was subject matter of consideration before the Assistant Registrar culminating in an order dated 28.05.2008. Under the said order the Assistant Registrar held that the renewal of the Society was due, it had to be renewed but such renewal had to be issued in favour of respondent to the present petition. The earlier renewal of the Society issued in favour of the petitioner was set aside. This order came to be challenged before the High Court by means of Civil Misc. Writ Petition No. 28431 of 2008. The writ petition was dismissed with the observation that the petitioner may file an appeal against the order dated 28.05.2008 under Section 12D(2) of the Societies Registration Act. Against the order of the writ Court, Special Appeal No. 839 of 2008 was filed by the present petitioner. Initially an interim order was granted but ultimately the appeal was also dismissed vide judgment and order dated 02.11.2010. The Division Bench observed that the petitioner are being relegated to the remedy of statutory appeal, however, they can raise all the points on merits, raised in the special appeal.

It is the case of the petitioner that the appeal itself was not maintainable as there had been no cancellation of the registration of the Society. Therefore the order dated 28.05.2008 will not fall within the four corners of Section 12D(1) of the Societies Registration Act so as to become appealable. The petitioner, however, in compliance to the order of the Division Bench filed an appeal before the Commissioner.

The Commissioner under the order impugned has upheld the order of the Assistant Registrar dated 28.05.2008. It is against these two orders that the present writ petition has been filed.

This Court made a pointed query from the counsels appearing for the parties that once renewal was granted in favour of the Society but to be issued to one party under order dated 28.05.2008, can it be said that an order has been passed cancelling the registration or its renewable referable to Section 12D(1) of the Societies Registration Act, so as to make it appealable under Section 12D(1), both the counsels agree that such an order cannot be said to be an order under Section 12D(1). Therefore, in the facts of the case, this Court has no hesitation to record that no appeal under Section 12D(2) was maintainable.

The order dated 28.05.2008 has to be read in two parts (a) the renewal of registration of the Society being granted and (b) the renewal certificate is to be issued to one of the parties namely respondents in the present petition and the renewal certificate handed over to the petitioner was cancelled.

It is needless to emphasize that renewal of the Society is always done in favour of the Society and not in favour of any particular office bearer. Issuance of certificate in favour of a particular person is only a ministerial act. The dispute with regard to the right to manage the Society is entirely a different dispute not covered by Section 12D(2) of the Act. It is a dispute which is to be examined either under Section 4 or under Section 25(1) of the Societies Registration Act.

In these set of circumstances this Court hold that the order dated 28.05.2008 and the order passed by the Commissioner insofar as it directs that the renewal of the Society be granted is upheld but the part of the order dated 28.05.2008 which directs that renewal certificate be issued in favour of a particular office bearer is unsustainable. So far as the later part of the direction of order dated 28.05.2008 is concerned, it is held that the same is not referable to Section 12D (1) of the Societies Registration Act and it is hereby quashed.

The dispute with regard to the right to manage the Society or being the lawful Manager/office bearers, in the facts of the case needs to be examined by the Prescribed Authority under Section 25(1) of the Societies Registration Act.

Accordingly, the writ petition is partly allowed. The order dated 28.05.2008 may be read as an order for renewal of the Society done in favour of a Society and not in favour of any particular person.

Each of the parties are at liberty to file their respective claims for being

recognized as lawful office bearers of the Society under Section 25(1) of the Societies Registration Act before the Prescribed Authority within two weeks from today along with a certified copy of this order. The Prescribed Authority shall enter into the dispute so raised and shall decide the right of the respective parties to be the lawful office bearers of the Society within six weeks after affording opportunity of hearing. All consequential action for registration of list of office bearers shall be taken accordingly. The Prescribed Authority shall not be influenced by any of the observations made by the Assistant Registrar or the Commissioner under the orders impugned.

Writ petition is partly allowed subject to the observations made herein above.