
(2011) 01 AHC CK 0305

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 533 of 2011

Committee of Management, Educational and Village Devp.
Society and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 25(1)

Citation : (2011) 2 ADJ 533 : (2011) 3 AWC 2999

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Saw, J.—Heard Sri Ashok Khare learned Senior Counsel assisted by Sri Saroj Yadav for the Petitioner.

2. The challenge in this petition is to the order dated 27th December, 2010 passed by the Sub-Divisional Magistrate Basgaon, Gorakhpur/Prescribed Authority in relation to the dispute of a society registered under the Societies Registration Act, 1860. The power invoked is u/s 25(1) thereof on a reference alleged to have been made by 21 persons.

3. The facts giving rise to this petition are that an alleged election was set up on 18th December, 2005 by the Petitioner Shivaji Singh. A rival election by the Ravindra Singh was set up on 29th December, 2005. It further transpires from the case of the Respondent that Ravindra Singh resigned in June, 2007 and one Vivekanand Respondent No. 5 was elected as the Manager.

4. The Petitioner contested this position and the matter came up before the Prescribed Authority in a reference by 21 persons. These 21 persons who had raised the reference are also admitted by the Petitioners to be the members of the general body with whose support the elections of the Petitioner were held.

5. The matter was decided by the Prescribed Authority on an earlier occasion vide order dated 21.4.2008 which was subject matter of scrutiny by this Court in Writ Petition No. 23697 of 2008. The said writ petition was filed by the Respondent No. 5 Vivekanand Singh contending that the order of the Prescribed Authority is erroneous as it does not contain any reasons. The judgment dated 7th May, 2010 has been brought on record as Annexure-15 to the writ petition. The order of the Prescribed Authority was quashed and the matter was remanded to the Prescribed Authority to record reasons afresh.

6. From a perusal of the impugned order, it appears that the faction of the Respondent No. 4 Ravindra Singh was being represented by Vivekanand Singh in view of the stand taken that Ravindra Singh had resigned and Vivekanand had stepped into his shoes.

7. The Petitioners were contending that their elections had been held through a valid electoral college and after assessing the material on record the Prescribed Authority came to the conclusion, that the 21 members who had raised the reference and who were supporting the Petitioner, were not the members of the general body and they have not been able to establish their membership of the society. Accordingly, the Sub-Divisional Magistrate concluded that it will not be justified to proceed with the objections raised by the said members.

8. The Prescribed Authority, however, proceeded further to hold that the meeting convened on 18th December, 2005 in which the Petitioner claims to have been elected was not by the Secretary of the Society according to the bye laws and therefore, the said elections as set up by the Petitioner cannot be accepted. The Prescribed Authority further went on to accept the elections of the Respondent Ravindra Singh on the ground that it was in accordance with the bye-laws and he had been continuing as Manager from before.

9. Sri Khare submits that all these findings recorded are erroneous, inasmuch as, once the Prescribed Authority had arrived at the conclusion that the membership of the 21 members was doubtful or not established then nothing further remained for the Prescribed Authority to proceed and therefore any finding recorded with regard to the dispute of elections was a futile exercise and beyond jurisdiction of the Prescribed Authority.

10. He further submits that apart from this in the objections which had been filed it had been categorically stated that the membership fee of the 21 persons had been deposited and in such a situation to believe that they were not members was erroneous. For this Sri Khare submits that there were other documents including the list duly signed by Sri Ravindra Singh himself which demonstrates that the 21 persons who had raised the reference were members as per the list dated 20.11.2005 and non-consideration of this relevant material vitiates the order.

11. The third submission of Sri Khare is that the impugned order accepts the elections of the Respondent Ravindra Singh without recording any finding as to

what is the basis for holding the same to be valid.

12. In response Sri M.D. Singh "Shekhar", learned Senior Counsel for the Respondent Nos. 4 and 5 submits that the issue relating to the membership has been considered and since the Petitioners failed to support their stand on the basis of any cogent evidence therefore, the Prescribed Authority was justified in concluding that those moving the reference were not the members of the general body.

13. He further submits that the Clause 15 of the bye-laws clearly provides that the meeting shall be convened by the Secretary and there are three modes prescribed. He submits that the Secretary did not convene the meeting and, therefore, the finding recorded in the impugned order does not suffer from any infirmity as no evidence to the contrary has been demonstrated by the Petitioners.

14. Replying to the third submission of Sri Khare that the elections of the answering Respondent have not been investigated by the prescribed authority, he submits that the entire records were perused by the Prescribed Authority and it has been held that the Respondent No. 4 Ravindra Singh was the then Manager under whom valid elections have been held and hence the order does not require any interference.

15. Learned Standing Counsel submits that the order records clear findings of fact and the Petitioner has not been able to adduce any further evidence even before this Court in relation to the findings which are sought to be assailed and therefore the order impugned deserves to be maintained.

16. Having heard learned Counsel for the parties and having perused the documents which have been annexed therewith, it is evident that on the issue of membership the Prescribed Authority has arrived at conclusions after perusing the records. The Petitioner did not adduce any evidence with regard to the deposit of membership fee nor did the 21 members who had raised the reference file any evidence with regard to their deposit of membership fee before the Prescribed Authority. They have not filed any petition of their own assailing the said position.

17. The facts that ought to have been pleaded have been baldly stated in Paragraphs 38 and 56 of the writ petition without any evidence having been filed in support of these submissions even before this Court.

18. It is by now settled that the writ Court can proceed on the basis of averments contained and the material in support thereof keeping in view the law laid down in the case of Bharat Singh and Others Vs. State of Haryana and Others, The pleadings, therefore, on this issue being incomplete and not substantiated even before this Court, there is no occasion to disbelieve the finding recorded by the Prescribed Authority.

19. The issue relating to convening of the meeting has also not been dealt with

in the writ petition, inasmuch as, it is not the case of the Petitioners that the meeting was called by the Secretary. The bye-laws as noted above requires the Secretary to convene a meeting and in the absence of any such evidence of the meeting having been convened by the Secretary the elections of the Petitioner have rightly been rejected on that score.

20. The third issue relating to the validity of the elections of the Respondents, need not be further investigated, inasmuch as, the Petitioner has utterly failed to establish his own case that disentitles him for any discretionary relief under Article 226 of the Constitution of India.

21. One of the submissions of Sri Khare however deserves to be noted that there was a document in the shape of a list dated 20.11.2005 before the Assistant Registrar. The said list is said to have been submitted under the signatures of Ravindra Singh Respondent No. 4. It is correct that the Prescribed Authority has not recorded any finding on the said issue yet the document which has been placed through the supplementary affidavit by the Petitioner himself indicates that it bears a stamp of the office of the Assistant Registrar clearly stating that this list is not the approved list of the members of the general body or registered under the Societies Registration Act, 1860.

22. In this view of the matter, any reliance placed on behalf of the Petitioner on a list which has neither been approved by the Assistant Registrar, cannot be of any avail in law. If the Petitioner was contending that the said list was a valid list then it was the obligation of the Petitioner to have filed, evidence before the Prescribed Authority and substantiate the claim of membership of such members from amongst whom the Petitioner is claiming elections. This includes all those 21 persons who had raised the reference. A mere list is nothing more than another shade of a bald assertion before the Assistant Registrar and as such the list by itself is no evidence of the validity of the membership of such persons who are named therein. In order to attach any probative value to the said list it had to be supported by evidence which was never furnished by the Petitioner. Accordingly the list by itself cannot be said to have any evidentiary value worth persuasion.

23. Accordingly, this Court is not in a position to record any finding in favour of the Petitioner on that issue as the entire record is unaided by any corroborative evidence to establish the membership as relied upon by the Petitioners.

24. In such a situation, the order impugned cannot be faulted with. In case the Petitioner chooses to assail the order of the Prescribed Authority before the civil Court, the dismissal of the writ petition would not be an impediment for the civil Court to proceed in the matter.

25. The writ petition is dismissed with the aforesaid observations.