

(2011) 03 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9455 of 2011

Committee of Management, Madarsa Jame-UI-Uloom and
Another

APPELLANT

Vs

Prescribed Authority/Sub-Divisional Magistrate and Others

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Societies Registration Act, 1860 — Section 25, 25(1)

Citation : (2011) 4 ADJ 49 : (2011) 8 RCR(Civil) 1904

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The Petitioners have assailed the order dated 2.2.2011 passed by Respondent No. 1 - Prescribed Authority whereby the elections set up by the Petitioners have been rejected and that of the contesting Respondent Nos. 2 to 15 has been accepted. The decision impugned is an order in the exercise of powers under Sub-clause (1) of Section 25 of the Societies Registration Act, 1860.

2. The dispute relates to the constitution of the Committee of Management of Madarsa Jame-UI-Uloom of which the Petitioner No. 2 - Irshad Ahmad claims himself to be the validly elected Manager. Undisputed area of facts which is also indicated in the impugned order relates to the elections which were held on 24.5.2004. One Mohd. Waish is stated to have been elected as the Manager, who is arrayed as Respondent No. 5. He along with other office-bearers was registered as the Committee of Management on 31.5.2004 before the Assistant Registrar, Firms, Societies & Chits, Azamgarh.

3. Mohd. Waish resigned on 2.2.2008 and on 3.2.2008 the Petitioner - Irshad Ahmad was elected to act as Manager in place of Mohd. Waish. As a consequence thereof, the signatures of Mohd. Waish were also attested by the educational authorities.

4. The case of the Petitioner is that a Meeting was convened on 16.4.2008 for the constitution of a new Committee of Management and accordingly fresh elections were held on 27.4.2008 in which the Petitioner was elected as Manager and a new Committee of Management took over charge which list was registered with the Assistant Registrar.

5. The Respondents allege that proceedings were conducted on 12.5.2009, 20.5.2009 and 23.5.2009 in which fresh elections were held as the term of 5 years as prescribed in the bye-laws had come to an end. In these elections, the Respondent No. 3 claims himself to have been elected as Manager with other office-bearers.

6. The signatures of the Petitioner were again attested by the educational authority on 19.6.2009. The Respondents alleged that on coming to know of the manipulation made by the Petitioner on the basis of the elections of 2008, an application was moved before the Assistant Registrar, Firms, Societies & Chits, to decide the objections with regard to the said claim of the rival parties. The Assistant Registrar issued notices and thereafter passed an order on 11.2.2010 holding that Naseem Ahmad could not prove his membership in the Society nor any evidence was filed to substantiate the same and, therefore, the proceedings of election dated 12.5.2009, 20.5.2009 and 23.5.2009 were rejected. It was further recorded by the Assistant Registrar that neither the then President or Vice-President were informed of any such meeting and, therefore, the meeting itself was invalid as being not in accordance with the bye-laws. The proceedings relating to the fresh elections as submitted by the Petitioner on 16.4.2008 was accepted and the claim set up by the Respondents was rejected.

7. Aggrieved by the order of the Assistant Registrar, the Respondent - Naseem Ahmad filed Writ Petition No. 13467 of 2008 that was not entertained on the ground of availability of alternative remedy u/s 25(1) of the 1860 Act and it was observed that in case the Prescribed Authority entertains the dispute, the same shall be decided in accordance with law. The judgment dated 16.3.2010 is Annexure-12 to the writ petition. It is thereafter that the proceedings were registered with the Prescribed Authority who has now proceeded to pass the impugned order reversing the opinion of the Assistant Registrar and accepting the claim of the Respondents which has been assailed in the present writ petition.

8. I have heard Sri Arvind Srivastava for the Petitioner and Sri P.S. Baghel, learned senior counsel, for Respondent Nos. 2 to 15. The Respondents have filed a short-counter-affidavit and two supplementary-affidavits and a rejoinder-affidavit has been filed by the Petitioner. Learned Standing Counsel has also been heard in opposition to the writ petition and the learned Counsel for the parties agreed that the matter be disposed of finally.

9. The contention of Sri Srivastava on behalf of the Petitioner is that the Respondent - Naseem Ahmad is not even a member of the General Body and the evidence that was sought to be relied upon by the Prescribed Authority had

already been disbelieved by the Assistant Registrar which aspect has not been appreciated in correct perspective. He further contends that the proceedings before the Prescribed Authority was neither through a valid reference nor 1/4th of members of the General Body had presented it and, therefore, it is not a decision in accordance with law. He contends that the judgment dated 16.3.2010 had only observed that the matter has to be decided in accordance with law if the dispute is entertained by the Prescribed Authority. The contention, therefore, is that if the pre-requisites of Section 25 were not available, then the dispute did not fall within the jurisdiction of the Prescribed Authority.

10. He further contends that the real issue was with regard to the electoral list of the members of the General Body which according to the Petitioner was 78 and that of the contesting Respondent was 51. This issue has been decided in violation of the principles of natural justice without informing the Petitioner about the alleged Affidavits of some old members having been entertained and without recording any appropriate finding on the validity of the electoral College. For this, Sri Srivastava contends that these 78 members continued since the undisputed 2004 elections and, therefore, to rely on a list of the year 1999 allegedly supported by some receipts has been wrongly accepted by the Prescribed Authority.

11. As a natural corollary to the dispute of membership, it is further submitted that the meeting was neither convened in accordance with the bye-laws as alleged by the Respondents for holding fresh elections in the year 2009 and neither the President nor the Vice-President, who were registered with the Assistant Registrar, were ever informed of any such proceedings. Further no finding has been recorded by the Prescribed Authority on the issue relating to the elections as set up by the Respondents or the validity thereof. Sri Srivastava further submits that the findings are perverse in fact inasmuch as the Petitioner had never admitted the alleged membership in any of his pleadings and as recorded in the impugned order and further the Petitioner had filed original proceedings indicating the participation of 62 members and not 26 as recorded in the impugned order. He, therefore, contends that the finding is perverse.

12. Reliance has been placed by the learned Counsel for the Petitioner on the Division Bench judgment in the case of Committee of Management, Vaidik Higher Secondary School, Faizpur Ninana, District Meerut, and Anr. v. District Inspector of Schools, Meerut and Anr. (1993) 2 UPLBEC 934 (Paragraph No. 19) to contend that the Prescribed Authority did not provide any opportunity to the Petitioner to rebut the alleged Affidavits of some old members and the list relied upon for the purpose of accepting the claim of membership of the Respondents and in the absence of any chance of rebuttal to the said evidence, the impugned order is vitiated. On the contrary, the Petitioner's case was supported by 38 Affidavits filed by those members, who have participated in the elections of 2008 which has been completely ignored and hence the impugned order deserves to be set aside for want of non-consideration of relevant material.

13. Replying to the aforesaid submissions, Sri Baghel contends that findings of fact have been recorded on issue of membership and if there is an error or a mistake which is apparent on the face of record then the Petitioner could have moved an application before the authority itself that too if there was an error in the description of number of members as claimed by the Petitioner. He, therefore, submits that the said findings of fact cannot be disturbed with the aid of the writ jurisdiction of this Court and the Petitioner may have to avail the ordinary remedy of filing a civil Suit.

14. He further contends that the term of the Committee of Management is 5 years and there is no occasion for holding an election one year before the expiry of period in 2008 itself. Apart from this, the Petitioner surreptitiously got his signatures attested by the educational authority after one year of the alleged election in the year 2009. This doubtful circumstance has also been taken into account by the Prescribed Authority to reject the claim set up by the Petitioner.

15. He further contends that the entire election of the Petitioner that has been set up is fake and founded on the basis of an incorrect electoral College. The Assistant Registrar erroneously proceeded to register the list of office-bearers and the order dated 11.2.2010 is not based on correct facts. He further submits that the writ petition was dismissed on the objection raised by the Petitioners themselves that there is a remedy available u/s 25(1) of the 1860 Act and, therefore, the issue of jurisdiction now cannot be raised by the Petitioners.

16. He further contends that the proceedings that have been conducted in the year 2009, in which the answering Respondent has been elected, is on the basis of a valid electoral College consisting of members out of the 51 members, who were continuing from before since 1999. He further contends that the Petitioner himself has admitted the 26 members, who are also amongst those who have participated in the election of 2009 and, therefore, the finding recorded by the Prescribed Authority does not suffer from any infirmity.

17. The first issue to be dealt with is the issue relating to the jurisdiction of the Prescribed Authority to entertain the dispute and decided the same. It is evident that from the judgment dated 16.3.2010 that the Petitioners themselves had raised this plea that the Respondents had a remedy of approaching the Prescribed Authority under Sub-section (1) of Section 25 of the 1860 Act. Accordingly, the Petitioner now cannot say that there was any lack of jurisdiction. The issue relating to a valid reference by 1/4th Members would be dependent upon any calculation on the basis of a valid electoral College. For this, the Prescribed Authority will have to also decide the validity of the electoral College and, as such, it cannot be said that the Prescribed Authority cannot proceed in the matter. Apart from this, it is clear from the pleadings of the parties that the Petitioners have set up an election dated 27.4.2008 whereas the contesting Respondents have held elections in the year 2009. This, in the opinion of the Court, was a clear dispute relating to a doubt or dispute of the election of office-bearers of the Society. Such a dispute can only be decided by the Prescribed

Authority under Sub-section (1) of Section 25 of the Act and, therefore, the preliminary objection raised by the Petitioners before this Court in Writ Petition No. 13467 of 2010 was rightly upheld. Accordingly, in the opinion of the Court, there was no lack of jurisdiction with the Prescribed Authority to proceed to decide the dispute.

18. The next contention to be dealt with is the issue relating to the violation of principles of natural justice and non-consideration of relevant material. The impugned order nowhere records any finding on the 38 Affidavits that were filed on behalf of the Petitioners. The Prescribed Authority has simply rejected the list of 78 Members as projected by the Petitioners on the ground that before the Assistant Registrar a list of 78 members had been presented whereas before the Prescribed Authority the list contains only 77 names. This has been held to be an inconsistency. In the opinion of the Court, a mere shortage of one name will not make the list inconsistent unless there is a finding that the list contains different names.

19. Apart from this, the Prescribed Authority has also not taken into account the fact that the elections dated 24.5.2004 remained undisputed between the parties. If the said elections are undisputed then the Prescribed Authority ought to have delved into the issue of participation of valid members keeping in view the list which was existing in the year 2004. The Prescribed Authority has simply indicated that only 26 Members were present in the election of 2004 whereas the Petitioners contend that there were 62 members and for that the Petitioner relies on the proceedings that were submitted before the Prescribed Authority and has been accepted in the order sheet dated 6.9.2010. Learned Counsel for the Petitioners is, therefore, right in contending that the said proceedings having not been noted correctly, as such, the same renders the order perverse for non-consideration of a relevant material in view of the law laid down by this Court in the Full Bench decision in the case of Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others,

20. Sri Baghel vehemently urged that such proceedings which are now sought to be introduced through an Affidavit before this Court were never filed before the Prescribed Authority. Learned Counsel for the Respondents has been unable to dis-lodge the fact of the filing of the proceedings as recorded in the ordersheet dated 6.9.2010. The Prescribed Authority, therefore, ought to have taken notice of the same before having rejected the claim of the Petitioners and, therefore, the impugned order is vitiated on this score.

21. The contention on behalf of the Petitioners that the order is also in violation of the principles of natural justice in view of the law laid down in the case of Committee of Management, Vaidik Higher Secondary School (supra) has also to be partially accepted inasmuch as the Petitioners have clearly set up a case that the Affidavits of some of the members were never given to the Petitioners and he had no opportunity to rebut these Affidavits. The aforesaid averment has been categorically made in paragraph No. 34 of the writ petition. The short-counter-

affidavit of the contesting Respondent does not successfully deny the same. Apart from this, the non-consideration of the 38 Affidavits filed on behalf of the Petitioners also vitiates the impugned order.

22. Even assuming for the sake of argument that the membership of Naseem Ahmad was supported by documents, a further finding was required to be recorded on the validity of the elections set up by the Respondents in the year 2009 when it was the clear case of the Petitioners that the said proceedings were forged and the meeting for the said elections were not validly convened as per the bye-laws of the Society. It was further the case of the Petitioner that some members have been expelled. Nonetheless, the Prescribed Authority ought to have addressed himself on this issue and recorded a clear finding with regard to the validity or otherwise of the election of 2009 which has not been done in the light of the objections raised by the Petitioners.

23. Accordingly, the writ petition is allowed as the order impugned dated 2.2.2011 cannot be sustained. The same is hereby set aside and the Prescribed Authority is directed to decide the dispute as expeditiously as possible preferably within a period of 2 months from the date of production of a certified copy of this order before him in the light of the observations made herein above after giving an opportunity of hearing to the parties.