

(2004) 12 AHC CK 0154
In the Allahabad High Court
Case No : C.M.W.P. No. 29178 of 2004

Committee of Management, Raja Ram Saheb Lal Kishan
Adarsh Junior High School

APPELLANT

Vs

Assistant Registrar, Firms, Societies and Chits and Others

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Societies Registration Act, 1860 — Section 25(1), 25(2), 4

Citation : (2005) 2 AWC 1929 : (2005) 1 ESC 469

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : I.R. Singh and A.N. Pandey, for the Appellant; C.S. Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Indra Raj Singh, Advocate, on behalf of the petitioner, learned Standing Counsel on behalf of respondent Nos. 1 to 3 and Sri Charanjeet Singh Yadav, Advocate, on behalf of respondent No. 4.

2. Raja Ram Saheb Lal Kishan Adarsh Junior High School, Saraibika, Samiti Jaunpur, is the society duly registered under the Societies Registration Act. The said society has established a Junior High School in the name and style of Raja Ram Saheb Lal Kishan Adarsh Junior High School, Saraibika, Jaunpur. The said institution is recognised under the provisions of U.P. Basic Education Act, 1972 and is also covered by the provisions of the U.P. Junior High School Payment of Salaries of Teachers and other Employees Act, 1978, under the provisions of the registered bye-laws of the society, the elections for constituting the Committee of Management of the institution as well as those of office bearers of the society are one and the same.

3. According to petitioner last elections of the Committee of Management took place on 12th December, 1995, in which the petitioner Sri Ram Murti Yadav was

elected as Manager, while Sri Shiv Ram Chaurasiya was elected as the President. The aforesaid elections were duly recognised by the authorities concerned. The term of the Committee of Management being three years, fresh elections became due in the year 1998. According to petitioner fresh elections took place on 25th October, 1998 in which Sri Kewala Prasad was elected as the President while petitioner Sri Ram Murti Yadav was elected as the Manager. The aforesaid elections were recognised by the District Basic Education Officer vide order dated 14.12.1998.

4. On the other hand, father of respondent No. 4 Sri Ram Chandra Yadav set up election dated 17.12.1995 in which it was claimed that Sri Ram Chandra Yadav was elected as the Manager, while Sri Lalta Yadav was elected as the President. The rival dispute with regards to elections held in the year, 1995 was referred for adjudication by the Assistant Registrar, Firms, Societies and Chits u/s 25(1) of the Societies Registration Act to the Prescribed Authority. However, this Court vide order dated 7th November, 1998, passed in Writ Petition No. 27539/98, held that it is not necessary to adjudicate upon the legality of the aforesaid elections by the Prescribed Authority, as the term of the elected office bearers had expired. Against the said order of the Single Judge, Special Appeal No. 1864 of 1998 was filed by respondent No. 4, which was also dismissed by the Court on 25.5.1999.

5. According to the respondent, in the meantime fresh elections were held on 13th December, 1998, in which Sri Charanjeet Yadav was elected as the Manager and Shri Shiv Ram Chaurasiya was elected as President. However, there is nothing on record to establish that any authority whatsoever adjudicated upon the legality of the elections set up by the parties dated 25.10.1998 and 13.12.1998. However, it is undisputed that during this period Committee of Management with Sri Ram Murti Yadav was permitted to function. The term of three years of the office bearers/Committee of Management elected in the year, 1998 expired in the year, 2001.

6. According to petitioner fresh elections took place on 21.10.2001 in which the petitioner Ram Murti Yadav was again elected as Manager and the elections were also recognised by the District Basic Education Officer vide order 5.11.2001. Against the aforesaid order dated 5.11.2001, Sri Dhananjay Yadav filed Writ Petition No. 37040 of 2002 and an ex parte interim order dated 4th September, 2002 was passed by which this Court directed the District Basic Education Officer to decide the petitioner's representation in respect of his elections.

7. On an application being filed by the present petitioner, the said order dated 4th September, 2002 was recalled and this Court recorded specific finding that in view of the attestation of signatures of Sri Ram Murti Yadav vide order of the District Basic Education Officer dated 5.11.2001 there is no occasion for reconsideration of the matter on the representation of the petitioner. In such circumstances, this Court kept its earlier order dated 4th September, 2002 in abeyance till the decision of the writ petition.

8. From the records, it is apparent that the said writ petition got dismissed as not pressed by Sri Dhananjay Yadav. Thereafter Sri Dhananjay Yadav approached the Assistant Registrar for registration of the list of office bearers said to have been elected on the same date i.e., 21.10.2001, in which he claimed himself to be elected as the Manager. On the basis whereof the Assistant Registrar issued notice dated 7th January, 2004 fixing. 27th January, 2004. According to petitioner, in the aforesaid notice for the first time there is a reference to a third set of election having been submitted before the Assistant Registrar by respondent No. 4, namely, Sri Rajesh Kumar Yadav dated 14th October, 2003. In the notice, it was mentioned that the list of office bearers submitted by the aforesaid three rival claimants in respect of the office bearers of the same society, were entirely different and, therefore, opportunity of hearing is being afforded to the parties concerned for establishing their validity of the rival claims.

9. The Assistant Registrar, after affording opportunity of hearing to the aforesaid three rival claimants, proceeded to pass an order, dated 29th June, 2004, whereby he has held that elections set up by the petitioner Ram Murti Yadav and Sri Dhananjay Yadav cannot be accepted for the reasons mentioned in the order and further held the elections set up by Sri Rajesh Kumar Yadav are in accordance with the bye-laws of the society and have been held from amongst the valid members, list whereof was submitted before the Civil Court on 1.10.1989 at the time of hearing of the suit and therefore, it has been directed that the list of office bearers elected on 18.10.2003 with Sri Rajesh Kumar Yadav as Manager be registered. It is against the aforesaid order of the Assistant Registrar, the present writ petition has been filed by the Committee of Management with Sri Ram Murti Yadav as Manager.

10. On behalf of petitioner it is contended (a) that the Assistant Registrar, in the facts of the case has no jurisdiction to decide the issue with regards to legality or otherwise of the rival elections and the matter should have been referred u/s 25 (1) of the Societies Registration Act to the Prescribed Authority, (b) the Assistant Registrar has not recorded any finding as to on what basis Sri Rajesh Kumar Yadav claims to have held elections inasmuch as he was not the outgoing office bearers of the society/institution nor he was recognised as such by any of the authority at any point of time prior to the aforesaid elections and (c) there is no basis for accepting the list of the members of the general body comprising of 344 members as produced by Sri Rajesh Kumar Yadav only on the basis that the said list was filed at the time of hearing before the Civil Court. As a matter of fact, Civil Court has not adjudicated upon the legality or otherwise of the aforesaid list of members, under any order whatsoever.

11. On behalf of the respondent Sri Rajesh Kumar Yadav it has been submitted that the writ petition as filed by the petitioner suffers from non-impleadment of necessary party namely Sri Dhananjay Yadav and is liable to be dismissed in view of the judgment of this Court reported in Chief of the Army Staff and Others Vs. Daya Shanker Tiwari, The Assistant Registrar has held that the petitioner is

not even a member of the general body, as such the only remedy available to petitioner is to file civil suit against the order of the Assistant Registrar in view of the judgment of this Court in Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and Anr. v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and Anr. (1995) 2 UPLBEC 1242. Since petitioner is not even primary member, the elections set up by him are those of a rank outsider and the Assistant Registrar was not obliged to refer the dispute to the Prescribed Authority. The petitioner has concealed material facts, therefore, the writ petition is liable to be dismissed.

12. I have heard counsel for the parties and have gone through the records of the writ petition.

13. The controversy raised in the present writ petition, can be decided on one short ground namely as to whether Assistant Registrar, Firms, Societies and Chits, in the facts of the case, has jurisdiction to decide the legality or otherwise of the rival set of elections pleaded by the parties and further as to whether he was obliged under law to refer the dispute u/s 25 (1) of the Societies Registration Act to the Prescribed Authority.

14. Before advertng to the aforesaid issue, it would be necessary to deal with one of the objection raised on behalf of the respondent namely; the writ petition is not maintainable for non-impleadment of Sri Dhananjay Yadav as one of the respondent. In respect of the said contention the respondent has submitted that Dhananjay Yadav is a necessary party to the present writ petition inasmuch as he was also one of the claimant to the post of Manager of the Committee of Management and he was also heard by the Assistant Registrar, Firms, Societies and Chits while passing the impugned order. In support of the said contention the petitioner has placed reliance upon the Division Bench judgment of this Court in Chief of the Army Staff and Others Vs. Daya Shanker Tiwari, as well as upon the judgment of the Hon''ble Single Judge reported in (2003) 2 UPLBEC 1307 and that reported in Saraswati Vidya Mandir Vs. State of U.P. and Others,

15. The legal position as stated in the said judgment, namely that non-impleadment of necessary party is fatal to a writ petition and in such a case petition is liable to be dismissed, is not in dispute between the parties. However, it is to be seen as to whether in the facts of the case Sri Dhananjay Yadav is a necessary party to the writ petition or not. From the facts which have been noticed hereinabove and as borne out from the order of the Assistant Registrar, Firms, Societies and Chits, it is apparently clear that the claim set up by Sri Dhananjay Yadav as an elected office bearer/Manager has been rejected with the finding that he has not held elections in accordance with the provisions of the bye-laws. Thus, under the order of the Assistant Registrar, Firms, Societies and Chits, the election set up by Sri Dhananjay Yadav have been held to be invalid. It is always open to Sri Dhananjay Yadav to question the legality or otherwise of the order of the Assistant Registrar in so far as his claim has been rejected. However, so far as the petitioner is concerned, he is aggrieved by the part of the

order whereby the elections set up by Sri Rajesh Kumar Yadav has been accepted for the purposes of registration of list of office bearers u/s 4 and claim of the petitioner rejected.

16. In the opinion of the Court, the petitioner, who does not seek any relief whatsoever against Sri Dhananjay Yadav nor has any grievance the qua part of the order passed by the Assistant Registrar rejecting the claim set up by Sri Dhananjay Yadav, while filing the present writ petition against the order of the Assistant Registrar accepting the elections of respondent No. 4 Sri Rajesh Kumar Yadav, cannot be said to have rendered in the writ petition as not maintainable because of non-impleadment of Sri Dhananjay Yadav. In the opinion of the Court no relief has been claimed against Sri Dhananjay Yadav, further for grant of effective and complete relief to the petitioner it is not necessary to implead Sri Dhananjay Yadav as one of the respondent. This Court may also take note of the fact that earlier writ petition filed by Sri Dhananjay Yadav against the recognition of the Committee of Management by the Zila Basic Shiksha Adhikari in respect of the same elections has already been dismissed by this Court (against which it is claimed that a recall application is pending). In such circumstances, the objection raised on behalf of the respondent to the effect that the writ petition suffers from non-impleadment of a necessary party namely Dhananjay Yadav, cannot be legally sustained and is hereby turned down.

17. Reverting to the main issue as to whether the Assistant Registrar, in the facts of the case, could adjudicate upon the legality or otherwise of the elections set up by the rival parties. It is worthwhile to mention that this Court has repeatedly held that if there is a dispute with regards to the elections of the elected office bearers of a society, the Assistant Registrar has no authority of law to adjudicate upon the said issue. He is under legal obligation to refer the dispute for adjudication u/s 25 (1) of the Societies Registration Act to the Prescribed Authority. Reference--Committee of Management v. Secretary, Arya Kanya Inter College (1999) 2 UPLBEC 77 and Sitaram Rai and Ors. v. Additional Registrar, Firms, Societies and Chits, Gorakhpur Division, Gorakhpur and Ors. 2003 (3) ESC 1617 (All).

18. From the facts, which have been noticed hereinabove, it is not in dispute that the legality or otherwise of the election held in the year, 1998 was not adjudicated upon by any authority. So far as the elections set up by the petitioner of the year, 2001 are concerned, the same were recognised by the Basic Shiksha Adhikari and during all this period it is the petitioners Committee of Management which has been recognised and permitted to function as such by the authorities concerned and was in effective control of the institution. It is also settled law that elections of the office bearers, after expiry of the term can be held by the outgoing office bearers or the said elections can be held u/s 25 (2) of the Societies Registration Act by the Registrar only. Reference--1995 (1) AWC 181.

19. From the records, it is established that the respondent No. 4 was never

earlier recognised as the lawful office bearers of the Committee of Management. At least no order has been enclosed in that regard on behalf of the respondent No. 4. The Assistant Registrar, while adjudicating upon the legality or otherwise of the elections set up by the respondent No. 4, has failed to consider that the basic issue involved in respect of the elections pleaded by any party is as to who was competent to hold such elections. The aforesaid issue has not at all been noticed by the Assistant Registrar in the impugned order. The petitioners were continuing in the office on the basis of the alleged elections set up by them dated 12.12.1995, 25.10.1998 and 21.10.2001. The petitioners Committee of Management was also accorded approval by the District Basic Education Officer vide order dated 14.12.1998 and 21.10.2001 respectively and on the basis of the aforesaid recognition they were also permitted to manage the institution run by the society, although the order passed by the District Basic Education Officer recognising the aforesaid elections, may not be binding upon the authorities under the Societies Registration Act, yet it cannot be said that the petitioners are rank outsiders and the elections set up by them of the year, 2001 are farce or could be ignored. Further, from the findings recorded in the impugned order by the Assistant Registrar to the effect that the voter list as submitted by respondent No. 4 Sri Rajesh Kumar Yadav comprising of 344 members is the valid list and in the said list the name of petitioner Sri Ram Murti Yadav has not been mentioned, is a clear case of non-application of mind to the effect of production of a list filed before the Civil Court.

20. In the opinion of the Court, merely because a list has been filed in some proceedings in Civil Court, it would not mean that same has become final and binding upon the authorities under the Societies Registration Act, unless the legality or otherwise of the said list has been adjudicated upon by the Civil Court. In such circumstances, the Assistant Registrar was not justified in holding that because the list of 344 members has been filed on 1.10.1999 before the Civil Court the same is taken to be correct and accordingly the petitioners are held not to be a member of the general body. From the order, it is apparently clear that the Assistant Registrar, except for referring to the list as filed before the Civil Court on 1.10.1999, has not recorded any independent finding to the effect that Sri Ram Murti Yadav petitioner is not a member of the general body and, therefore, the contention of the respondent to that effect is also strictly not correct.

21. In the facts of the case, the Assistant Registrar was, under legal obligation, to refer the dispute u/s 25 (1) of the Societies Registration Act to the Prescribed Authority. In such circumstances, this Court has no hesitation to hold that the order passed by the Assistant Registrar dated 29th January, 2004 cannot be legally sustained as it runs contrary to the law laid down in the cases referred to above.

22. In view of the aforesaid, writ petition is allowed. The order passed by the Assistant Registrar dated 29th January, 2004 is hereby quashed. A writ of

mandamus is issued to the Assistant Registrar to refer the dispute pertaining to the office bearers of the society for adjudication to the Prescribed Authority u/s 25 (1) of the Societies Registration Act, within two weeks from the date of receipt of the order of this Court passed today. He shall also transmit all the relevant records to the Prescribed Authority. The Prescribed Authority, in turn, shall decide the dispute, after affording opportunity of hearing to the parties concerned and after permitting the exchange of documents between the parties, including Sri Dhananjay Yadav, by means of reasoned speaking order, preferably within two months from the date such a reference is received.