

(2004) 08 AHC CK 0206
In the Allahabad High Court
Case No : C.M.W.P. No. 5526 of 2004

Committee of Management, Shaoul Uloom Educational
Society and Another

APPELLANT

Vs

Commissioner, Azamgarh Division and Others

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

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

Citation : (2005) 1 AWC 580

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare and Faheem Ahmad, for the Appellant; A.P. Sahi and K.N. Rai and G.K. Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, senior advocate, assisted by Sri Faheem Ahmad advocate, for the petitioners, Sri A.P. Sahi advocate on behalf of respondent No. 3, Sri K. N. Rai advocate on behalf of respondent No. 4 and standing counsel on behalf of respondent Nos. 1 and 2.

2. At the very outset it has been stated by Sri Ashok Khare, senior advocate, appearing for the petitioners, that the order of the Commissioner, Azamgarh Division, Azamgarh, respondent No. 1, dated 30.1.2004, contained in Annexure-9, in so far as it holds that the appeal filed by the petitioner is not maintainable, is correct and is not being assailed before this Court. The said order has only been brought on record in order to explain the delay in filing the present writ petition against the order of the Assistant Registrar dated 22.12.2003. It has been stated that the petitioner was pursuing the remedy before a wrong Court, i.e., by way of appeal before the Commissioner, Azamgarh Division, Azamgarh, hence the delay in filing the present writ petition is liable to be condoned. The writ petition does not suffer from any laches.

3. In view of the aforesaid, this Court is satisfied that there are no laches on the part of the petitioner and this petition is entertained accordingly.

4. The Committee of Management Shaoul Uloom Educational Society, Karmaini, Post Office Rauanapar, Tehsil Sagri, district Azamgarh (hereinafter referred to as the Committee of Management) with its alleged Secretary-cum-Manager Sri Abdul Kavi, has filed the present writ petition against the order of Assistant Registrar Firms, Societies and Chits, Azamgarh Region, Azamgarh, respondent No. 2 (hereinafter referred to as the "Assistant Registrar") dated 22.12.2003, whereby the Assistant Registrar has held that valid elections of the Committee of Management have not taken place and therefore the earlier Committee of Management has become time barred. In exercise of the powers u/s 25 (2) of the Societies Registration Act, 1860 (hereinafter referred to as the "Act") he directed fresh elections be held under his control and for that purpose he fixed 27.12.2003 as the date for finalization of the list of the members of the general body of the society.

5. This Court while entertaining the writ petition on 11.2.2004 granted an ad-interim order whereby the operation of the order dated 22.12.2003 passed by the Assistant Registrar including all consequential actions in pursuance thereto were stayed. It is not in dispute that in pursuance of the order of the Assistant Registrar dated 22.12.2003 fresh elections have not taken place.

6. I have heard learned counsel for the parties and gone through the record.

7. On behalf of the petitioners it is contended that the Assistant Registrar while passing the order dated 22.12.2003, has exceeded the authority vested in him in respect of registration of the list of office bearers of the society under proviso to Section 4 of the Act in so far as he held that the elections of the Committee of Management which have taken place in 1997 were not in accordance with law and the bye-laws of the society as a consequence of which the Committee of Management has become time barred. It is also contended that the controversy before the Assistant Registrar arose on a list of office bearers being submitted for registration for the year 2002 wherein the names of Vice President and Treasurer were changed (with reference to the list of previous year) as they had been removed and new persons were elected in their place. The Assistant Registrar has travelled beyond the dispute in deciding the legality of the elections of 1997 which were not disputed by any person within reasonable time.

8. It is further contended on behalf of the petitioners that the impugned order dated 22.12.2003, has been passed by the Assistant Registrar in violation of the principles of natural justice inasmuch as the affidavit filed by Sri Gayasuddin son of Aslam dated 3.12.2003 was never brought to the notice of the petitioners and the said affidavit has been entertained subsequent to the last date of hearing before the Assistant Registrar. It is further stated that the Assistant Registrar has not taken into consideration the objections filed by the petitioners to the effect that the stand taken by Sri Gayasuddin son of Aslam as per his affidavit dated

3.12.2003 is mala fide since the society had lodged an F.I.R. against the nephew of said Sri Gayasuddin son of Aslam.

9. Lastly it has been contended on behalf of the petitioners that even assuming that the elections of 1997 were not held validly the Assistant Registrar could not hold that the Committee of Management had become time barred, so as to pass an order u/s 25 (2) of the Act without deciding the legality of the subsequent elections held in 2002.

10. On behalf of respondent No. 3 Sri A.P. Sahi has submitted that the Assistant Registrar in exercise of powers under proviso to Section 4 of the Act has ample authority to look into the legality or otherwise of the elections held in pursuance of which the list of the office bearers including members is sought to be registered. It is further submitted that the affidavit filed by Sri Gayasuddin son of Aslam was specifically replied by the petitioners as would be clear from their objections filed in writing dated 16.12.2003 (with specific reference to para 10 of the said objections) and therefore the contention of the petitioners that the impugned order dated 22.12.2003, suffers from violation of the principles of natural justice, is totally misconceived.

11. In respect of the allegations of mala fide it has been stated on behalf of respondent No. 3 that the first affidavit of Gayasuddin son of Aslam was filed before the Assistant Registrar on 27.5.2003 and the F.I.R. against the nephew of said Sri Gayasuddin son of Aslam was lodged on 6.6.2003 (on the basis of which it is said Sri Gayasuddin is said to have become hostile). According to the respondent No. 3 the F.I.R. having been filed subsequent to the first affidavit of said Sri Gayasuddin son of Aslam the allegation of mala fide is totally untenable and is liable to be rejected.

12. On behalf of Sri Gayasuddin son of Aslam, respondent No. 4, Sri K. N. Rai has appeared before this Court, an affidavit has also been filed stating that Sri Gayasuddin son of Aslam was never member of the general body and he was never elected as Vice President of the Committee of Management.

13. This writ petition can be decided only with reference to the issue as to whether the Assistant Registrar had jurisdiction to adjudicate upon the legality or otherwise of the elections as set up by the petitioners which according to them had taken place in the years 1997 and 2002. This Court while considering the scope of powers of Assistant Registrar u/s 25 (2) of the Act in the case of Sita Ram Rai and Others Vs. Additional Registrar, Firms, Societies and Chits, and Others, has specifically held that the Assistant Registrar has not been given power to decide the dispute arising out of the elections of the society. Such powers have been vested with the Prescribed Authority authorized by the State Government u/s 25 (1) of the Societies Registration Act. For ready reference para 17 of the said judgment is quoted below :

"17. The Assistant Registrar has not been given powers to decide the disputes arising out of the elections of the society. These powers have been given to the

prescribed authority authorized by the State Government by notification published in official Gazette. It is only when there is a stalemate, or there are rival committees who have set up the elections after the expiry of the term of the outgoing Committee of Management, and these elections are not found to be valid, and there is no provision in bye-laws to hold elections after expiry of tenure of executive committee, reasonably inferred from the bye-laws, that the Registrar can step in and provide for elections. He, however, cannot decide on the validity of the members, who are entitled to vote. The election disputes, if any, including validity of members entitled to vote can only be decided u/s 25 (1) by the prescribed authority, and that any person aggrieved thereafter has a right to approach civil court."

14. In view of the aforesaid legal position and since from the record it is established that the dispute giving rise to the order dated 22.12.2003, passed by the Assistant Registrar was confined to the issue as to whether Sri Gayasuddin son of Aslam and another Member Sri Sirajul had rightly been removed from the office of Vice President and Treasurer respectively from the Committee of Management of the Society. The Assistant Registrar for the purposes of registering the list of office bearers and members of the Committee of Management for the year 2002 issued notices to the aforesaid two persons whose names had been removed from the list of office bearers of the Committee of Management of the Society. The controversy as such could not have been enlarged by the Assistant Registrar with respect to the legality of the elections of 1997. He should have confined himself to the question as to whether the aforesaid two persons have rightly been removed from their respective offices or not. Even otherwise the Assistant Registrar has not referred to the elections of 2002 as pleaded by the petitioner Committee of Management before he proceeded to pass the impugned order u/s 25 (2) of the Act. In any view of the matter if there was any illegality or infirmity in the elections held in the year 1997 or 2002 the said dispute could have been decided by the Prescribed Authority u/s 25 (1) of the Act. If the Assistant Registrar was of the opinion that the legality of the elections of 1997 and 2002 was in dispute he should have referred the matter to the Prescribed Authority u/s 25 (1) of the Act. It is only after the Prescribed Authority holds that elections had not taken place in accordance with law and bye-laws of the Society the Assistant Registrar can exercise powers u/s 25 (1) of the Act.

15. In such circumstances the order passed by the Assistant Registrar dated 22.12.2003, contained in Annexure-6 to the writ petition, holding that the elections of the year 1997 were illegal and therefore the Committee of Management had become time barred, cannot be legally sustained. The Assistant Registrar could have referred the dispute with regard to legality or otherwise of the elections held in the years 1997 and 2002 for adjudication to the Prescribed Authority u/s 25 (1) of the Act. Accordingly, it is held that the order of the Assistant Registrar dated 22.12.2003 is without jurisdiction.

16. Accordingly, the writ petition is allowed. The order dated 22.12.2003 passed by the Assistant Registrar, contained in Annexure-6 to the writ petition, is set aside. A writ of mandamus is issued to the Assistant Registrar to refer the dispute with regard to legality or otherwise of the elections of the years 1997 and 2002 for adjudication to the Prescribed Authority u/s 25 (1) of the Act within 15 days of the receipt of the certified copy of this order. The Prescribed Authority in turn shall decide the dispute as referred by the Assistant Registrar, at the earliest possible preferably within six weeks from the date of receipt of the reference. It is needless to point out that the Prescribed Authority shall also decide the issue of expulsion of respondent Nos. 3 and 4 from the Committee of Management was in accordance with reference to the bye-laws of the society.