

(2004) 09 AHC CK 0125
In the Allahabad High Court
Case No : C.M.W.P. No. 17203 of 2004

Committee of Management, Shiksha Pracharini Sangh and Another APPELLANT

Vs

Prescribed Authority/Sub Divisional Magistrate and Others RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Societies Registration Act, 1860 — Section 25(1)

Citation : (2005) 1 AWC 588

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : H.K. Singh, for the Appellant; Y.K. Singh and P.K. Singh and A.S. Diwakar, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri H.K. Singh, learned counsel for the petitioners, Sri A.S. Diwakar, learned counsel for the respondent No. 3 and learned standing counsel for the respondent Nos. 1 and 2.

2. The Committee of Management of Shiksha Pracharini Sangh, Isari Salempur, Ballia, which is a society duly registered under the Societies Registration Act, 1860 (hereinafter referred to as the Act) through its alleged Secretary/Manager Sri Jaishankar Singh has filed this writ petition against the order of the Prescribed Authority dated 6th April, 2004, passed in proceedings u/s 25(1) of the Act.

3. It is contended on behalf of the petitioner that the aforesaid order of the Prescribed Authority is patently illegal inasmuch as it was specifically pleaded before the prescribed authority that the petitioners have set up the elections of the years 1993, 1997, 2000 and 2003. The Prescribed Authority has refused to take into consideration the claim of the petitioners and has proceeded to record a finding that the reference made by the Assistant Registrar has become redundant

because of the expiry of the term of the Committee of Management which was elected in the year 1990 and 1991.

4. The contention so raised on behalf of the petitioner is not sustainable in the eyes of law. Admittedly under order of the Assistant Registrar, Firms, Societies and Chits, Azamgarh, dated 2nd April, 1992, the rival set of elections pleaded by the parties claiming themselves to be the duly elected office bearers of the society on the basis of the alleged elections pleaded by the petitioners on 16th September, 1990 and that pleaded by the respondents on 1st October, 1991, were referred for adjudication u/s 25 (1) of the Act, to the prescribed authority.

5. It is admitted position from the record that the said reference remained pending for 14 years and during this period no list of office bearers was ever registered by the Assistant Registrar, Firms, Societies and Chits, Azamgarh u/s 4 of the Act on the basis of the alleged elections pleaded by the parties subsequent to the years 1990 and 1991 respectively.

6. It is further apparent from the record that no efforts were made to get the right for managing the affairs of the society adjudicated u/s 25 (1) of the Act on the basis of the subsequent elections held.

7. In the opinion of the Court the order of the Assistant Registrar so far as it refuses to decide the dispute pertaining to the elections of the year 1990 and 1991 on the ground that reference has become infructuous calls for no interference under Article 226 of the Constitution of India inasmuch as the Prescribed Authority has rightly held that no purpose would be served for deciding the legality or otherwise of the elections pleaded by the parties, specifically in view of the fact that the term of the elected office bearers has expired long back. It is to be remembered that the power exercised by the Prescribed Authority u/s 25 (1) of the Act are summary in nature and are subject to the orders passed by the civil court in regular suit proceedings. Reference in that regard may be made upon the law laid down by the Hon'ble Supreme Court in Qamar Rashid Khan Vs. Committee of Management, Azamgarh Muslim Education Society, Azamgarh and others, wherein it has been held as follows :

"In these appeals, we are not concerned with the legality of the fresh elections, if any that has been held and if there has been an election, the legality of the same had to be assailed in appropriate forum by the party concerned. Since the period of tenure is already over, it is not necessary for us to examine the correctness of the conclusion arrived at by the Division Bench of Allahabad High Court. In our view, the appeals have become infructuous."

8. So far as the right claimed by the petitioner on the basis of the subsequent elections is concerned, suffice it to point out, that it can be established by the petitioner only through a regular civil proceeding by filing a regular civil suit before the appropriate forum. It may also be noticed that the order of the Prescribed Authority refusing to adjudicate upon the dispute as referred by the Assistant Registrar will not affect in any way the parties for declaring their rights

by means of the regular civil proceedings.

9. In view of the aforesaid, the present writ petition is devoid of merits and is dismissed.