

(1996) 01 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 29782 of 1995

Committee of Management, Baba Saheb Bhimrao Ambedkar
Primary Pathshala, Azamgarh and Another

APPELLANT

Vs

Asstt. Registrar Firms, Societies and Chits Gorakhpur and
Others

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Societies Registration Act, 1860 — Section 12D, 25, 4

Citation : (1996) 01 AHC CK 0081

Hon'ble Judges : D.K.Seth, J

Final Decision : Disposed Of

Judgement

D. K. Seth, J.—By order, dated 23/25th September, 1995 challenged in this writ petition, the Assistant Registrar has purported to decide the dispute with regard to the election between two rival claimants and as to who is entitled to continue in office as office bearers. According to Mr. S. U. Khan, learned counsel for the petitioner, the said order is wholly without jurisdiction in view of Section 25 of the Societies Registration Act, hereinafter referred to as the Act". Drawing my attention to the relevant portion of the said order which is Annexure 7 to this writ petition, while translating the same, Mr. Khan points out that the Assistant Registrar had held that the election of the petitioner held on 26th June, 1994 is fraudulent and, therefore, the registration of list of members of the Governing Body was sought to be cancelled. He further points out that on the other hand, the Assistant Registrar had decided that the election held on 5th February, 1995 by the respondent was valid and the office bearer, namely, the Manager elected in the electrode held on 5th Feb. 1995 is entitled to get registration of 1st ,of members. While observing that if there is any dispute with regard to the election, the parties may refer the matter to the prescribed authority under Section 25(1) of the Act, according to Mr. Khan, the Assistant Registrar had himself decided the question of election and continuation in office of the office bearers which he could

not do because of absence of jurisdiction so far as the Assistant Registrar is concerned.

2. Mr. R. Paridey, learned counsel for the respondents, on the other hand, contends that the impugned decision is a decision within the meaning of Section 12 D of the Societies Registration Act. According to Mr. Pandey, in view of subsection (2) of Section 12D of the Act, the impugned order is subject to appeal which he puts forward as a preliminary objection to the maintainability of the present writ petition. He also translates the relevant portion of the impugned order and points out that in fact the Assistant Registrar has not decided any question of election. He had only cancelled the registration of list of members since he has found that the order dated 26th June, 1994 was fraudulent. The Assistant Registrar has every right to cancel the said registration when he finds the same to have been obtained by exercising fraud. Therefore, the said order cannot be said to be without jurisdiction.

Section 12D of the Act runs as follows :

"12D. Registrar's power to cancel registration in certain circumstances.(I) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds :

(a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act, or of any other law for the time being in force ;

(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy ;

(c) that the registration or the certificate or renewal has been obtained by misrepresentation or fraud :

Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of alternates name or object or of showing cause against the action proposed to be taken in regard to it.

(2) An appeal against an order name under subsection (1). may be preferred to the Commissioner of the Division in whose jurisdiction the Headquarter of the society lies, within one month from the date of communication of such order.

(3) The decision of the Commissioner under subsection (2) shall be final and shall not be called in question in any court."

3. Section 12D deals with the cancellation of registration. It does not deal with the question of cancellation of registration of list of members of the Governing Body or the office bearers. Mr. Pandey draws my attention to clause (c) of subsection (1) of Section 12D and contends that the cancellation of registration also includes cancellation of certificate of renewal if obtained by misrepresentation or fraud. With due respect to him, I am unable to accept such

a contention. Clause (c) of subsection (1) of Section 12D is only a ground on which registration of the society can be cancelled. Section 12D deals only with cancellation of Registration of the society itself on the grounds mentioned in clauses (a)(b) and (c) of subsection (1) when clause (c) is a ground for cancellation of registration.

4. By the impugned order, the Assistant Registrar has not cancelled registration of the society. It had recognised one or the other person as to have been elected and eligible to continue as office bearer. He is really purported to derecognise the list of members which he had recognised under Section 4(1) of the said Act after having held that the election of the petitioner held on 26th June, 1994 was fraudulent and that of the respondent held on 5th February, 1995 was valid, therefore, by no stretch of imagination, it can be brought within the purview of Section 12D and, as such, I am unable to persuade myself to agree with the contention of Mr. Pandey with regard to him preliminary objection.

5. Mr. Pandey alternatively argues that the said order can at best be an order under Section 4(1) proviso. The dispute is not a dispute within the meaning of Section 25 of the Act inasmuch as according to him, though the Assistant Registrar has found that the election of the petitioner was fraudulent but in effect he has really decided the question within the meaning of Section 4(1) of the Act and the finding about the election is only incidental or ancillary to such a finding. He has not really decided the question of election. Inasmuch as according to him, he has kept the said question open in the last line of the said order giving liberty to the parties to approach the prescribed authority with regard thereto.

Section 4 of the Act runs as follows :

"4 Annual list of managing body to be filed.(1) One in every year, on or before the fourteenth day succeeding the day which, according to the rules of the society, the annual general meeting of the society is held or, if the rules do not provide for an annual general meeting in the month of January, a list shall be filed with the Registrar, of the names, addresses and occupation of the Governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society :

Provided that if the Managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be obtained on the list. If the old" officebearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in subsection (1) there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension, or abridgement of purposes made under Section 12, and of the rules of the society corrected upto date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the

balancesheet for the preceding year of account."

6. It appears that Section 4(1) requires every society after the annual general meeting to furnish with the Registrar the names, addresses, and occupations of the Governors, council, directors, committee and other governing body then entrusted with the affairs of the management of the society. The proviso requires countersignatures of the old members on the list. If the old officebearers do not countersign the list, the Registrar may issue public notice or notice to such persons inviting objections. Therefore, the said provision or the said section does not contemplate any dispute or doubt with regard to the election. The said section deals with only question of submission of list of members which is to be recognised under the said section and the dispute relate only to the question as to countersignature of old office bearers.

7. Even if after the notice is issued and any objection is available, if the same raises a doubt or indicates; any dispute in respect of any election or continuance in office of an office bearer, in that event, such a doubt or dispute takes away the case from the ambit of Section 4 of the said Act and it becomes a case within the meaning of Section 25 of the said Act.

8. Section 25(1) prescribes that the prescribed authority, on a reference made to it by the Registrar or by at least onefourth of the members of a society, may decide in a summary manner "any doubt or dispute in respect of the election or continuance in office of an office bearer" and may pass such orders as it deems fit. Therefore, even a doubt is required to be referred to the prescribed authority. If there is a dispute or doubt with regard to the election or continuation in office of an office bearer, in that event, the same comes within the purview of Section 25 and outside the jurisdiction of the Registrar.

9. In the present case, in my view, the dispute that has been decided by the Assistant Registrar is in effect a dispute with regard to the election and the eligibility of office bearers to continue in office as have been understood from the translation of the impugned order made at the bar. Though it has been very ably argued by Mr. R. P. Pandey to dress the said order as an order outside the scope of Section 25 but in substance and effect the dispute is between two rival committees which allege to have held election on two diverse dates. My above observation is further fortified by reason of statement made in para 18 of the counteraffidavit wherein it has been said that a fresh election of the Committee of Management has taken place on 8th October, 1955, and the general body of the society had by its resolution dated 8th October 1995 reelected the office bearers of the Committee of Management who were recognised by respondent No. 1 by his order, dated 25th September, 1995 and the aforesaid resolution has been forwarded to the respondent No. 1 for recognition. It is very difficult to appreciate the said fact. In one breath, it has been said that election had taken place on 8th October, 1995. Then it was again said in the same breath that by resolution dated 8th October, 1995, the office bearers were reelected while the Committee of Management was recognised on 21st September, 1995 and the

said resolution was forwarded for recognition of respondent No. 1 when it is already recognised. The facts stated therein appears to h we been a little confusing. Be that as it may I am not entering into those questions and none of my observation should be taken to be deciding any such question. But the fact remains that the dispute in substance and effect is a dispute with regard to the election and the right to continue in office by the office bearers.

10. Therefore, in the facts and circumstances of the case, the order, dated 23/25th September, 1995 (Annexure 7 to the writ petition) is without jurisdiction so far as it decides the question of election and the eligibility of the person to continue in office as the office bearer. In that view of the matter, the respondent No 1 is hereby directed to refer the said dispute to the prescribed authority within a period of two weeks from the date a certified copy of this order is produced before him. As soon such reference is made, the Prescribed Authority shall decide the same in accordance with law after giving opportunity to either of the parties including the dispute with regard to the election held on 8th of October, 1995 within a period of six months from the date of making such reference.

11. This writ petition is thus disposed of. There will, however, be no order as to costs. .