

(2019) 09 UK CK 0058
In the Uttarakhand High Court
Case No : Special Appeal No. 434 Of 2014

Dr Narendra Swarup Bhatnagar	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Societies Registration Act, 1860 — Section 25(2)

Citation : (2019) 09 UK CK 0058

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Shashank Pandey, Pradeep Joshi, Neeraj Garg

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in WPMS No.122 of 2014 dated 15.05.2014. The appellant herein filed WPMS No.122 of 2014 seeking a writ of mandamus directing respondent Nos. 2 and 3 to conduct elections to the office bearers of the fourth respondent-society as per the provisions of Section 25(2) of the Societies Registration Act.

2. Facts, to the limited extent necessary, are that elections were held to the fourth respondent-society on 28.11.2010, and a Managing Committee was formed. The three years term, of the Managing Committee, expired on 27.11.2013, despite which no fresh elections were held. The appellant addressed a letter to the Deputy Registrar, Firms, Societies and Chits on 23.12.2013, requesting him to hold elections under Section 25(2) of the Societies Registration Act, 1860. By his letter dated 18.01.2014, the Deputy Registrar informed the 4th respondent-society of their obligations to conduct elections. Three days thereafter, on 21.01.2014, the Deputy Registrar directing the fourth respondent-society not to hold elections.

3. While the fourth respondent-society claims to have passed a resolution on

19.01.2014, to have notified the elections schedule on 21.01.2014, and to have issued an advertisement in this regard on 22.01.2014, the appellant-writ petitioner disputes the fourth respondent's claim in this regard. It is his case that, only after receipt of the letter of Deputy Registrar dated 21.01.2014, an advertisement was issued by the fourth respondent on 22.01.2014 notifying the elections. It is, however, unnecessary for us to examine this dispute, in the present appeal, for reasons to be stated later in this order.

4. The fourth respondent herein filed WPMS No.178 of 2014 seeking a direction to have the letter of the Deputy Registrar dated 21.01.2014 quashed. A learned Single Judge of this Court, by his interim order dated 29.01.2014, refused to grant stay of the proceedings of the Deputy Registrar dated 21.01.2014. Elections to the fourth respondent-society, however, continued. Aggrieved by the interlocutory order passed by the learned Single Judge, in WPMS No.178 of 2014 dated 29.01.2014, the fourth respondent herein filed Special Appeal No.17 of 2014, and a Division Bench of this Court, by its order dated 17.10.2014, directed that the on-going elections of the fourth respondent-society be held under the supervision of the Deputy Registrar. It is the case of the appellant-writ petitioner herein that elections to the fourth respondent-society had concluded on 16.02.2014, even before the Division Bench had passed the order dated 17.02.2014; and the said order was passed in ignorance of the fact that elections had already been held.

5. The appellant-writ petitioner filed Review Petition No. 71 of 2014 seeking review of the order passed by the Division Bench in Special Appeal No. 17 of 2014 dated 17.02.2014. The said review petition was, however, dismissed by order dated 29.04.2014. In the meanwhile, the appellant-writ petitioner filed WPMS No. 122 of 2014, seeking a direction to the Deputy Registrar to hold elections as per Section 25(2). Both WPMS No.178 of 2014 filed by the fourth respondent questioning the order of the Deputy Registrar dated 21.01.2014, and WPMS No.122 of 2014 filed by the appellant-writ petitioner, came up for hearing before the learned Single Judge on 15.05.2014. In the order under appeal, in Writ Petition (M/S) No. 122 of 2014 dated 15.05.2014, the learned Single Judge held that elections to the office bearers, and the managing committee of the fourth respondent, was held on 23.02.2014; the new Managing Committee had taken over charge, and was looking after the affairs of the society; the contention, urged on behalf of the petitioner, was that a group of unauthorised persons, in violation of the order passed by the Registrar on 21.01.2014, had illegally conducted elections which was ab-initio void and illegal; and the fact, however, remained that the relief sought for, to direct the respondent to hold elections, could not be granted unless and until the elections held on 23.02.2014 was set aside declaring the same as illegal and void ab-initio. The learned Single Judge, while dismissing the writ petition as infructuous, granted the appellant-writ petitioner liberty to approach the appropriate forum challenging the election dated 23.02.2014. Instead of challenging the validity of the election dated 23.02.2014, the appellant-writ petitioner has preferred the present Special

Appeal against the order passed by the learned Single Judge in WPMS No.122 of 2014 dated 15.05.2014. In his final order, in WPMS No. 178 of 2014 dated 15.05.2014, the learned Single Judge observed that liberty was granted to the petitioner in WPMS No. 122 of 2014 to challenge the election before the appropriate forum; by his order dated 21.01.2014, the Registrar had directed that the elections be held only under his supervision; the fact, however, remained that the elections had already been held; the question whether elections held were legal or illegal or ab-initio void could only be agitated before an appropriate forum; and therefore the present petition, challenging the order dated 21.01.2014, had become infructuous. The learned Single Judge, however, left it open to the aggrieved person to challenge the elections before the appropriate forum on grounds available under law.

6. Against this order passed by the learned Single Judge, in WPMS No.178 of 2014 dated 15.05.2014, the appellant-writ petitioner herein filed SPA No.232 of 2014 and a Division Bench of this Court, by its order dated 25.06.2014, dismissed the Special Appeal as not maintainable. The order of the Division Bench, in Special Appeal No. 232 of 2014 dated 25.06.2014, has attained finality. Even if we were to proceed on the premise that the submission of Mr. Sheshank Pandey, learned counsel for the appellant-writ petitioner, that the elections held on 23.02.2014 is contrary to the specific directions of the Registrar of Societies dated 21.01.2014, is valid, the validity of such elections can be set at naught only if it is subjected to challenge in appropriate legal proceedings.

7. A feeble attempt is made by Mr. Sheshank Pandey, learned Counsel, to contend that the order of the Division Bench, in Special Appeal No.17 of 2014 dated 17.10.2014, is vitiated by fraud. This plea of fraud was specifically taken in Review Application No.71 of 2014. The fact, however, remains that the said review application was dismissed by order dated 29.04.2014, which order has attained finality. It would be wholly inappropriate for us therefore, in collateral proceedings, to examine whether or not the order in Special Appeal No. 17 of 2014 dated 17.02.2014 is vitiated by fraud.

8. The relief sought for in WPMS No.122 of 2014, to direct the Deputy Registrar to hold elections, cannot be granted since elections have already been held. The learned Single Judge was, in our view, justified in holding that the cause in the writ petition no longer survives, and the remedy available to the appellant-writ petitioner was to question the validity of the elections, held in February, 2014, in appropriate legal proceedings.

9. In an intra-court appeal, under Chapter VIII Rule 5 of the Allahabad High Court, interference would be justified only if the order under appeal suffers from a patent illegality. We are satisfied that the learned Single Judge has not committed any such error. As the cause in the Writ Petition no longer survives, we see no justification in interfering with the order under appeal.

10. The Special Appeal fails and is, accordingly, dismissed. No costs.