
(2012) 09 AHC CK 0293

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 46454 of 2012

Dr. Shyam Narain Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Societies Registration Act, 1860 — Section 15, 4

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A

Citation : (2013) 1 ADJ 250 : (2013) 3 AWC 2679

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Radha Kant Ojha, for the Appellant; P.N. Saxena, Ashok Singh, S.D. Shukla and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This petition assails the order of the Assistant Registrar, Firms, Societies & Chits, Allahabad who had been entrusted to decide the said dispute in relation to the District of Basti on account of an order transferring the proceedings from Gorakhpur to Allahabad. The petition has been filed praying for quashing of the impugned order dated 31st August, 2012 whereby the Assistant Registrar has arrived at the conclusion that the elections of the managing body of the Society deserves to be held under Sub-Section (2) of Section 25 of the Societies Registration Act, 1860 as the tenure of the earlier Committee has come to an end. He has further proceeded to decide the electoral college of the society in terms of Section 15 of the Societies Registration Act, 1860 whereby he has authorised the participation of 46 members in the elections which are proposed under the impugned order to be held on 14th September, 2012.

2. Sri. R.K. Ojha, learned counsel for the petitioners advancing his submissions has narrated the past story of the society and has urged that the society had not been renewed for long and the said society had initially established a Junior High School. There is no dispute between the parties that so far as the society and the

erstwhile Junior High School are concerned, were governed by the bye-laws of the society which have been appended alongwith the memorandum of association as Annexure 2 to the writ petition. Sri. P.N. Saxena for the contesting respondent No. 4 has also not disputed the said bye-laws.

3. It is urged by Sri. Ojha that the institution was later on upgraded as an Inter College and some elections were held for the Committee of the Intermediate College in 1981 after a list of 36 members was finalized in relation to the General Body entitled to participate in the said elections. Sri. Ojha contends that the said membership of 36 persons remained unchallenged out of whom 16 died and only 20 members remained alive.

4. The respondent No. 4 -Yogendra Singh later on succeeded in getting him self recognised as the Manager of the Inter College but at present there is an Authorised Controller functioning therein.

5. Reverting back to the facts of the society, Sri. Ojha contends that the respondent No. 5 Praveen Kumar Singh manipulated documents taking advantage of the non-registration of the society by preparing documents from 1981 to 2005 and got an alleged list registered. It is in this manner that the dispute of society arose as respondent No. 5 was a rank trespasser and outsider and his claim was not in accordance with the bye-laws. One Shyam Kali alongwith Respondent No. 5 set up their claims on the basis whereof they had succeeded in getting renewal as such the petitioner Dr. Shyam Narain Singh who is the life long Manager of the society raised his objections against the said claim of Praveen Kumar Singh and others.

6. The respondent No. 4 -Yogendra Singh also set up his claim that he is the Manager of the Intermediate College and his signatures have been attested, therefore, his Committee should also be registered u/s 4 of the 1860 Act. All these claims were taken up by the Assistant Registrar, Firms, Societies & Chits Gorakhpur and he rejected the claim of the respondent No. 4 -Yogendra Singh as well as Respondent No. 5 -Praveen Kumar Singh. The Assistant Registrar further passed an order holding that the 20 members were valid and that elections should be held by the District Inspector of Schools that shall be subject to the ultimate decision in Writ Petition No. 46306 of 2008. The issues of the Society and the Inter College were mixed up under the said order.

7. This order of the Assistant Registrar was challenged by Smt. Shyam Kali, Praveen Kumar Singh and others in Writ Petition No. 3525 of 2011 before the Lucknow Bench of this Court and the following judgment was delivered quashing the order dated 27.5.2011:

Hon"ble Rajiv Sharma, J.

A request has been made on behalf of Mr. Dinesh Kumar Mishra, learned counsel for the petitioners for adjournment of the case as he has gone out of station. A perusal of the cause list, it reflects that name of Mr. Subodh Kumar Verma has

also been shown as counsel for the petitioners. Neither there is any request on his behalf for adjournment of the case nor he is present.

However, Mr. Ajay Pratap Singh, learned Counsel, who has accepted notice on behalf of private respondents, submits that grievance of the petitioners is that without preparation of tentative list of members of general body and inviting objections, final list has been prepared on 27.5.2011. While entertaining the writ petition, this Court stayed the operation and implementation of the order dated 27.5.2011. He further submits that the relief so claimed by the petitioners may be allowed.

In view of above, the writ petition is allowed and the impugned order dated 27.5.2011 is quashed. The Deputy Registrar, Firms, Societies and Chits, Gorakhpur Division, Gorakhpur is directed to prepare a tentative list of members of general body and some time may be granted to the members to file their objections and after deciding the objections, final list of members of general body be prepared and thereafter, election be held, in accordance with law.

8. The operative part of the order directed the Deputy Registrar to prepare a tentative list of members of the General Body and then proceed further. The aforesaid judgment still holds good and it is in pursuance thereof that the impugned order has been passed. Sri. Ojha contends that the said judgment read as a whole means that the fresh elections have to be held but after deciding the objections in relation to the electoral college.

9. The legal submission advanced by Sri. Ojha is that the Assistant Registrar has proceeded to rest his decision on the basis of the membership and electoral college of the Ashok Inter College which is an Institution governed by a separate scheme of administration. A copy of the scheme applicable to the Inter College is Annexure-1. He contends that the General Body of the Society is the General Body which elects the Committee of Management of the Institution. He however submits that the Committee of Management of Ashok Inter College is a separate distinct entity under the Scheme of Administration which has been approved in terms of Section 16-A of the U.P. Intermediate Education Act, 1921. He contends that the said scheme elects the office bearers of the Committee of Management of the Inter College only and not of the society.

His contention is that any transaction in relation to the Intermediate College would therefore be not relevant for the purpose of the elections of the parent society which is governed by a set of bye-laws (Annexure-2 to the writ petition) about which there is no dispute. Sri. Ojha submits that the Assistant Registrar while proceeding to decide the matter has heavily relied on the membership as projected by the respondent No. 4 -Yogendra Singh in relation to the Intermediate College as well, apart from those 20 members who were the members of the parent society. He accordingly finalized a list of 46 members out of the list of 47 members whose tentative list had been earlier published on 25th July, 2012. Sri. Ojha contends that the petitioner had never enrolled any

members as set up by the respondent. The elections set up by the respondents have not been approved by the High Court as per a reading of the judgment dated 30.11.2011. Sri. Ojha submits that none of these contentions about which detailed objections had been filed has been considered by the respondent Assistant Registrar while passing the impugned order on 31.8.2012.

10. Sri. P.N. Saxena on the other hand contends that the case of the petitioner as pleaded in the writ petition is that the Committee has become time barred and therefore fresh elections should be held to which he also does not dispute that the elections have to be held as per the judgment dated 30.11.2011. He however contends that the bye-laws of the society itself provide, that the office-bearers under the bye-laws, of the Committee of Management shall be the office-bearers of the Junior High School mentioned therein which includes the Institution established by the Society. For this, Sri. Saxena relying on Clause 3 and Clause 4 of the bye-laws contends that the Committee of Management of the Junior High School is also included in the bye-laws and therefore it is that Committee which controls the Society. He submits that once the Committee of Management has been constituted under the scheme of administration of the Institution, namely, Ashok Inter College then that Committee prevails and is entitled to look after the affairs of the society as well and hence the conclusions drawn by the Assistant Registrar do not suffer from any infirmity. He submits that u/s 15 of the Act the Assistant Registrar has the power to decide the issue of membership and the same has been done after perusing the entire records and he has not committed any error in treating the members of the General Body of the College to be the same as that of the society. Sri. Saxena submits that the General Body being the same, then the members who have participated in the elections of the Committee of Management of the College earlier have been rightly treated to be the members of the General Body of the Society. He therefore contends that the elections having been announced the impugned order does not deserve any interference.

11. Learned Standing Counsel has also supported the impugned order.

12. Sri. Saxena, learned counsel for the respondent No. 4 -Yogendra Singh, had already stated yesterday at the bar that he does not propose to file any counter-affidavit. The same prayer was made by the respondent Nos. 1 and 2 represented by the learned Standing Counsel. The respondent No. 3 is the Assistant Registrar who has been impleaded by name and as such there is no need to issue notice to him in view of the nature of the order that is proposed to be passed.

13. The respondent No. 5 does not appear to have put in contest or challenged the impugned order, inasmuch as, the impugned order is in favour of Yogendra Singh. The claim of membership as set up by Yogendra Singh has been accepted by the Assistant Registrar for reasons as indicated above in the submissions of Sri. Saxena. In the aforesaid circumstances, since the respondent No. 5 does not appear to be aggrieved by the impugned order it is not necessary to issue any

notices to him, and therefore, the matter is being disposed of finally at this stage with the consent of the counsels representing the other parties.

14. The real contest is between the petitioners and the respondent No. 4 who have raised their objections before the Assistant Registrar. Having heard learned counsel for the parties, to the mind of the Court it is clear that the entire litigation has taken a misdirected approach after the judgment of the Lucknow Bench on 30.11.2011. I have carefully perused the bye-laws that are annexed as Annexure 2 to the writ petition and were registered in the year 1968. The said bye-laws have not been disputed by either of the contesting parties.

15. The members of the General Body of the society have been defined in Clause 1 consisting of four types of members. The bye-laws in Clause 2 define the office-bearers of the Committee where Basant Raj Singh has been nominated under the bye-laws to be the President of the Society or any person nominated by him. Basant Raj Singh is reportedly dead. The petitioner No. 1 -Dr. Shyam Narain Singh is nominated as the Manager of the society under the same bye-laws or any person nominated by him. Similarly Ram Sumer Singh and Gajadhar Prasad Vaidya (Petitioner No. 2) are nominated as the Secretary and Auditor respectively by name or any person nominated by the Secretary, Admittedly Ram Sumer Singh is dead. Gajadhar Prasad Vaidya is the petitioner No. 2. Thus, the petitioners Dr. Shyam Narain Singh and Gajadhar Prasad Vaidya cannot be replaced or substituted by any election, inasmuch as, there is no such provision under the bye-laws for holding elections to their posts till such nomination continues. Clause 3 categorically provides that elections shall be held every three years only in relation to those members who are not permanent, which categorically means that the office-bearers nominated under Clause 2 will occupy their office till their wish or death and no elections for the same shall be held.

16. It is also provided that there shall be only 21 members of the General Body which can be increased by a resolution of the General Body. Thus the increase in membership or its enrollment is dependent upon the decision of the General Body. The Committee of Management of the Society is empowered to perform its functions and was also authorised to manage the affairs of the educational institution established by it. It is undisputed that the society had established a Junior High School which it was managing under the bye-laws till the institution was upgraded as an Inter College. In Clause 14 of the bye-laws, the General Body of the society has been empowered to fill up the casual vacancies of the Committee of Management of the Society.

17. This undisputed document therefore clearly indicates the manner in which the members of the General Body of the Society have to be enrolled and also the power of the Committee of Management and the General Body in this regard. The nominated persons including the two petitioners herein therefore cannot be eliminated from their office by any general election. The elections have to be held only in relation to the other office-bearers and members who are not nominated on a permanent basis. Otherwise under Clause 14 of the bye-laws the

General Body can fill up any casual vacancy.

18. The direction of the High Court on 30th November, 2011 was therefore to determine the electoral college and the same could have been determined only in terms of the bye-laws and not in terms of the scheme of administration of the Inter College or its proceedings. The claim of the respondent No. 4 before the Assistant Registrar stood rejected, and that of respondent No. 5 as well. It is not understood as to by what process of logical reasoning has the Assistant Registrar superimposed the members who had allegedly participated in the elections of the Inter College as members of the General Body of the society by the impugned order without advertent to the bye-laws of the society. The Assistant Registrar has not made any effort worth the name by proceeding to take a decision on the issue of membership by referring to the registered bye-laws of the society which is undisputed between the parties. The Assistant Registrar therefore completely misdirected himself by advertent to the facts of the elections of the Inter College thereby traveling beyond his authority and exercising a wrong discretion. The Assistant Registrar was duty bound to examine the claim of membership or giving a direction to hold elections only in accordance with the bye-laws of the society and not under the scheme of administration of the Inter College as they are separate legal entities governed by separate rules under two distinct Act.

19. There is nothing in the bye-laws indicating application of the Scheme of Administration of the College framed under the 1921 Act in the affairs of the society. The argument of Sri. Saxena does not hold water.

20. The Assistant Registrar therefore has erroneously proceeded to decide the matter on the basis of a wrong premise and hence the same cannot be sustained. The order dated 31st August, 2012 is therefore quashed. The matter stands remitted to the respondent No. 2 for decision afresh in accordance with the bye-laws as expeditiously as possible preferably within three months in the light of the observations made hereinabove and after giving the parties an opportunity of hearing in accordance with law. The writ petition is allowed.