
(2008) 03 AHC CK 0100
In the Allahabad High Court
Case No : Special Appeal No. 462 of 2006

Fahim Ahmad and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 03 AHC CK 0100

Hon'ble Judges : U.K.Dhaon, J and Prakash Krishna, J

Final Decision : Dismissed

Judgement

1. This intraCourt appeal has been preferred by the writ petitioners of writ petition No. 1498 (MIS) of 2006 against the judgment and order dated 5th of July, 2006 passed by Hon"ble Single Judge whereby and where under the Hon"ble Single Judge for all practical purposes granted the desired relief to the petitioners even then the present special appeal has been preferred with the allegation that the learned Single Judge has granted much more relief than prayed for.

2. Kanpur is an industrial town and is known for leather goods. Several persons of the Muslim Community who are dealing in rawhides (Bovine), tanneries, at Kanpur with a view to run school for imparting religious and word by education through which Islamic theology and its culture could be taught, to supervise and manage the Waqfs, to give scholarship to create interest for acquiring knowledge in different trade of education and to provide fooding and lodging and education to orphan boys and girls etc., formed a society known as Muslim Association Kanpur which is a registered Society under Section 21 of the Societies Registration Act. The said society is running and managing six educational institutions enumerated in clause 12 of the byelaws of the society. A byelaw to govern the functioning of the society has been drawn. Three kinds of membership to the society has been provided. In addition to various other provisions, it has been provided that there would be an Executive Body of thirty

members inclusive of officebearers. The election of the members of officebearers will be for three years.

3. The last election of the Executive Body was held on 25th of June, 1993 which completed its term of three years on 24th of June, 1996. In the said election Fahim Ahmed, the appellant No. 1, was elected as President and Shri Ishrat Qayyum and Mohd. Aslam, respondents No. 4 and 5 were elected as Secretary and Treasurer. After completion of its term, the Executive Body continued to function as such on the strength of byelaw No. 10 wherein it has been provided that in case due to any reason the election is not held after three years, then, the elected Executive Body will continue to work till new election is held. Undisputably, no election was held after 25th of June, 1993 and the members of the Executive Body continued to remain in the office including respondents No. 4 and 5 on the strength of the aforementioned bye law No. 10 although the term of elected office bearers had expired, since fresh election was not held.

4. The Deputy Registrar, Firms, Societies and Chits, Kanpur Mandal at Kanpur issued a direction on 23.10.1999 for holding election of the society.

5. A writ petition No. 47580 of 1999: Muslim Association, Kanpur v. State of U.P. and others, was filed in the High Court at Allahabad, challenging the legality and validity of the aforesaid order dated 23.10.1999. This Court observed that the last elections were held in 1993 and for the sake of argument if it is accepted that the elected body could continue till the next election, it was allowed to continue for three years more, then, the election should have been held by June, 1999. The writ petition was dismissed by the judgment and order dated 18th November, 1999. This was the first round of litigation before this Court at Allahabad.

6. After the dismissal of the aforesaid writ petition, a fresh date i.e. 25th July, 2000 was fixed by the Deputy Registrar, Firms, Societies and Chits for holding the election of Executive Body. Some individual members filed writ petition No. 1723 (M/S) of 2000 challenging the said order of the Deputy Registrar, Firms, Societies and Chits before this Court at Lucknow. The Court stayed the holding of election vide order dated 24.7.2000. Subsequent thereto, this Court vide order dated 31.7.2003 vacated the order dated 24.7.2000, as the election process had started.

7. After the vacation of the interim order, the Deputy Registrar, Firms, Societies and Chits, again tried to hold the election of the Executive Body of Muslim Association Kanpur. The electoral list was prepared and finalized. A writ petition No. 43074 of 2003 was, again, filed before this Court at Allahabad against the preparation and finalization of the electoral list. The said writ petition was disposed on 25th of September, 2003 with the direction to the Deputy Registrar, Firms, Societies and Chits to permit the voters/candidates to participate in election who were members on 31st of December, 2002 and who have deposited their membership on or before 31 st of December 2002.

8. In pursuance of the aforesaid direction the Deputy Registrar, Firms, Societies and Chits invited objections from the various quarters including the present appellants. An opportunity of hearing was afforded by him to all the interested parties including Fahim Ahmed, appellant No. 1, who actually participated in the proceeding and after taking into consideration their respective submissions, a detailed order dated 13th of March, 2006 was passed finalising the electoral list vide Annexure 13 to this appeal. This order was not challenged and it had attained finality.

9. Instead of challenging the voter list as finalised by the Deputy Registrar, Firms, Societies and Chits, the members of Muslim Association, including appellant No. 1 approached the Registrar, Firms, Societies and Chits who vide order dated 21 st of March, 2006 issued guideline to the Deputy Registrar, Firms, Societies and Chits to refinalise the list in the light of eight points mentioned therein. It was provided that only after examining all those points in detail, the Deputy Registrar, Firms, Societies and Chits will hold the election. In continuation of earlier letter dated 21.3.2006 the Registrar, Firms, Societies and Chits vide its subsequent letter asked the Deputy Registrar, Firms, Societies and Chits to hold the election on 24th of March, 2006 or 28th of March, 2006 after examining all the points raised by the appellant No. 1 and supply of necessary information in that regard. A writ petition No. 1498 (MIS) of 2006 seeking a writ, order or direction in the nature of Certiorari for quashing and setting aside the order dated 23rd of March, 2006 as also order dated 21st of March, 2006 (already referred to above) was filed by Fahim Ahmed and others giving rise to the present appeal.

10. One Altaf Ahmad and others challenged the electoral list prepared by the Deputy Registrar, Firms, Societies and Chits by means of writ petition No. 1446 of 2006 (MIS): Altaf Ahmed and others v. State of U. P. and others. Both the writ petitions No. 1498 of 2006 (MIS.) and 1446 of 2006 (MIS) were heard and decided by a common judgment and order dated 5.7.2006. The writ petition filed by Fahim Ahmed and others was allowed and the impugned order dated 21st of March, 2006 and the order dated 23rd of March, 2006 were quashed. The writ petition No. 1446 of 2006 (MIS) was dismissed being not maintainable. The Court was of the view that once election was notified by the Deputy Registrar, Firms, Societies and Chits, Kanpur Region, Kanpur finalising the electoral list after providing opportunity of hearing to the parties, then, it was not proper for the Registrar, Firms, Societies and Chits to interfere with the election process by its impugned orders dated 21 st of March, 2006 and 23rd of March, 2006. It was also held that once the election process started which includes preparation of electoral roll, then, ordinarily the High Court should not interfere in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India as the aggrieved person will have a right to challenge the outcome of the election in process as per the provisions contained in the Societies Registration Act or any other law for the time being in force.

11. A Special Appeal No. 469 of 2006 against the aforesaid judgment and order passed in writ petition No. 1446 of 2006 (M/S) was preferred by a third party who had applied for his impleadment in the writ petition as respondent, but the said impleadment application remained and sposed of. The said Special Appeal was rejected on 5.2.2008 on the ground that the appellant therein had no locus stand to challenge the aforesaid judgment and order. It may be noticed that none of the petitioners of the writ petition No. 446 of 2006 (M/S) had come forward to challenge the judgment passed by the Hon"ble Single Judge dismissing the writ petition. Thus, the electoral list finalized by the Deputy Registrar, Firms, Societies and Chits dated 13th of March, 2006 has already attained finality.

12. Shri A.K. Tiwari, learned counsel for the appellants, has raised various factual controversies not raised in the writ petition giving rise to the present appeal. He submitted that the electoral list was not prepared properly, hence, the election is vitiated. He further submitted that if the electoral list has been prepared wrongly or incorrectly, this Hon"ble Court under Article 226 of the Constitution of India has inherent power to interfere in the election process and if the election is allowed to be held on the basis of wrong or incorrect electoral list, injustice will be caused to the genuine members of the Society and the Hon"ble Single Judge has wrongly held that the writ petition challenging the electoral list is not maintainable. Learned counsel for the appellant has relied upon the following decisions:

(1) Chief Commissioner of Ajmer and another v. Radhey shyam Dani. AIR 1957 SC 304;

(2) K. Venkatachalam v. A. Swamickan and another, 1999 (4) SCC 526;

(3) Pundlik v. State of Maharashtra and others, 2005 (7) SCC 181;

(4) Shri Sant Sadguru Janardan Swami Sahkari Dugdha Utpadak Sanstha and another V. State of Maharashtra and two others, (2001) 8 SCC 509;

(5) Amaravila Krishnan Nair v. Election Commissioner of India, New Delhi and others, AIR 1972 Ker5 (FB); and

(6) Sher Singh Budh Singh and another v. State of Punjab and others, AIR 1965 Punj 361.

13. He further submitted that the Registrar possesses all powers to issue necessary directions from time to time to the Deputy Registrar. He further submitted that the election conducted on the basis of electoral list finalised on 13th March, 2006 is illegal as the electoral list was not finalized after taking into consideration the eight objections raised by Fahim Ahmad before the Registrar who through his letters dated 21st March, 2006 and 23rd March, 2006 has issued necessary directions and Hon"ble the Single Judge has wrongly held that the Registrar is denuded with the power to issue directions after delegation was made in favour of the Deputy Registrar. The learned counsel for the appellant has

relied upon the following decisions:

- (1) *Ishwar Singh v. State of Rajasthan and others*, (2005) 2 SCC 334;
- (2) *Godawari S. Parulekar and others v. State of Maharashtra*, (1966)3 SCR 314 : AIR 1966 SC 1404; and
- (3) The judgment passed by this Court in writ petition No. 4561 (M/B) of 2002, *Committee of Management Ghaziabad Dughda Utpadak Sahkari Sangh Ltd. v. Milk Commissioner/Registrar, Milk Cooperative Societies U.P. and others*.

14. In reply, Shri Altaf Mansoor, the learned counsel for the contesting respondents No. 4 and 5, at the very outset, raised a question of maintainability and propriety of the present Special Appeal at the instance of Fahim Ahmed who has succeeded in the writ petition. The letters dated 21st of March, 2006 and 23rd of March, 2006 having been quashed by the writ Court as prayed by him, he is not entitled to file the present Appeal. By no stretch of imagination, Fahim Ahmed is an aggrieved person which is sine qua non for maintainability of the appeal. On merits, he submitted that Fahim Ahmed very much participated in the finalization of the electoral list dated 13th of March, 2006. The said electoral list cannot be challenged in present appeal indirectly at the instance of Fahim Ahmad. He further submitted that the election having taken place, no interference in the present Appeal is called for as only result is to be declared and the aggrieved persons will have statutory remedy as provided under the Societies Registration Act as well as before the Civil Court. He further submitted that election process having been started with preparation of electoral list which was challenged unsuccessfully on earlier occasions, the filing of the writ petition as also the Special Appeal is nothing but malafide action on the part of Fahim Ahmed who is having a lust for authority and wants to stick with the office. The learned counsel for the respondent Nos. 4 and 5 has relied upon the following decisions:

- (1) 2001 (8) SCC 509, *Shri Sant Sadguru Janardan Swami Sahkari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others*;
- (2) (2004) 13 SCC 574, *Tapash Majumder and another v. Pranab Dasgupta and others*;
- (3) 1994 All CJ162, *Basant Prasad Srivastava v. State of U.P. and others*;
- (4) (2004) 5 SCC 795, *New Friends Cooperative House Building Society Ltd. v. Rajesh Chawla and others*;
- (5) (1998) 4 SCC 529, *Umesh Shivappa Ambi and others v. Angadi Shekara Basappa and others*;
- (6) 1991 Supp (2) SCC 36, *Nagri Pracharini Sabha and another v. Vth Additional District Judge, Varanasi and others*;
- (7) (1991) 2 SCC 412, *K. Murugan v. Fencing Association of India and others*;

(8) (2002) 1AWC 771, Seva Samiti, Allahabad and another V. Assistant Registrar, Firms, Societies and Chits, Allahabad and another,

(9) (2000) 3 AWC 1802, Committee of Management and another v. Assistant Registrar Firms, Societies and Chits and others;

(10) (2002) 3 AWC 2393, Committee of Management and another v. Deputy Registrar, Firms, Societies and Chits and another,

(11) (1998) 7 SCC 162, State of Orissa and others v. Commissioner Of Land Records & Settlement, Cuttack and others;

(12) (2003) 2 SCC 101, O.C.L India Ltd. v. State of Orissa and others; and

(13) Al R 2005 All 121, Dr. Mohammed Usman Khan and others v. Registrar, Firms, Societies and Chits and others.

15. We have given our careful consideration to the respective submissions of the learned counsel for the parties and gone through the record.

16. Before entering into the merits of the controversy involved, it would be apt to consider the objections raised by the learned counsel for the respondents, first. According to him, as the reliefs prayed for in the writ petition have been granted by the writ Court, there is no occasion for Fahim Ahmed to maintain the present appeal. To appreciate the above argument, the relief clause from the writ petition for the sake of convenience is reproduced below:

"(i) a writ or writs, order or orders, direction or directions in the nature of Certiorari, quashing and setting aside the order dated 23.3.2006, passed and issued by opposite party No. 2 and filed as Annexure 25 hereinabove after summoning the original of the same, and

(ii) a writ or writs, order or orders, direction or directions in the nature of Certiorari, modifying order dated 21.3.2006, passed and issued by opposite party No. 2 and filed as Annexure 23 hereinabove to the extent of requiring the opposite party No. 3 to proceed with election of Muslim Association after disposal of application pending before Prescribed Authority/opposite party No. 6, and

(iii) any other writ or writs, order or orders, direction or directions deemed just and proper in the facts and circumstances of the case of the petitioner.

(iv) To award the costs."

17. The Hon"ble Single Judge has allowed the writ petition by the judgment and order under appeal with the following observations:

"The writ petition No. 1498 (MIS) of 2006 is allowed accordingly. Awrit in the nature of Certiorari is issued quashing the impugned orders dated 21st of March, 2006 followed the order dated 23rd of March, 2006 as contained in Annexures 23 and 25 to the writ petition No. 1498 (M/S) of 2006 with consequential benefits. The opp. party No. 3 is directed to reschedule the election keeping in view the

order dated 27.2.2006 as contained in Annexure 16 to the writ petition No. 1446 (M/S) of 2006."

18. A fair and conjoint reading of the prayer clause as also the operative portion of the judgment of writ Court, it would be clear that the relief prayed for by Fahim Ahmed has been granted in toto. Shri A.K. Tiwari, advocate, appearing for the appellants, could submit only this much that the writ Court was not justified in quashing the order dated 21st of March, 2006 in its entirety. He submitted that the order requiring the opp. party No. 3 to proceed with the election of the Association is bad. We will deal with this aspect of the matter at the appropriate stage but at this place it is sufficient to state that the grievance raised in the present Special Appeal by Fahim Ahmed is just for the sake of grievance. It is not out of place to mention here that the Deputy Registrar, Firms, Societies and Chits has been trying hard since the year 1999 as is evident from the facts stated above to hold the election of the Executive Body of the Society. The said attempt is being thwarted by Fahim Ahmed and his associates on the smallest pretext by raising trivial and imaginary issues. It is not necessary to go far to find out the reason.

19. Having disposed of the preliminary objection raised by the respondents in their favour, we feel it appropriate to consider the submissions of the learned counsel for the parties on merits.

20. Shri A.K. Tiwari, learned counsel appearing for the appellant raised the following two basic propositions in support of the appeal:

(1) It is not legally correct to say that the writ Court cannot interfere in the election process, if the electoral list has been prepared wrongly or incorrectly. The election is vitiated if it is held on the basis of wrong or incorrect electoral list and High Court in exercise of its writ jurisdiction can very well examine the question in the writ petition. In other words, the observation made by the learned Single Judge that a writ petition challenging the electoral list is not maintainable, according to the learned counsel is legally untenable.

(2) The election conducted on the basis of the electoral list finalized on 13th of March, 2006 is vitiated as the electoral list was not finalized after taking into consideration the eight objections raised by Fahim Ahmed before the Registrar, Firms, Societies and Chits who had directed the Deputy Registrar, Firms, Societies and Chits through letters dated 21st of March, 2006 and 23rd of March, 2006.

21. Taking first point first. The Electoral list has been wrongly prepared and finalized, the election held in pursuance thereto is vitiated and the writ petition is maintainable, submits the learned counsel for the appellants who has placed reliance upon the following cases:

(1) Chief Commissioner of Azmer and another v. Radheyshyam Dani, AIR 1957 SC 304, wherein it was held that "Election should be held on the basis of proper

electoral roll and if the election has been held on the basis of defective electoral roll, election can be challenged on the ground of defective voter list."

(2) *K. Venkatachalam v. A. Swamickan and another*, 1999 (4) SCC 526 wherein it was held that "The power of the High Court under Article 226 are couched in the widest possible terms and if a person was disqualified to be elected but has been elected, his election can be challenged by filing writ petition under Article 226 of the Constitution of India."

(3) *Pundlik v. State of Maharashtra and others*, 2005 (7) SCC 181 wherein it has been held that "Normally the Court will not interfere at the stage of preparation of voter list, but such action must be in accordance with law."

(4) *Ahmadnagar Zila S.D.V. & P.S. Sangh Ltd. v. State of Maharashtra and others*. In this case the Apex Court has noticed its earlier judgment in the case of *Shri Sant Sadguru Janardan Swami v. State of Maharashtra*, (2001) 8 SCC 509.

22. The validity of the electoral list was challenged in *Chief Commissioner of Ajmer and another (supra)* on the ground that the electoral list was not prepared in conformity with the provisions of Section 30, subsection (2) and the relevant provisions of the Regulation and thus, it could not form the basis of any valid elections to be held to the Ajmer Municipal Committee. In other words, the electoral list was prepared in violation of a statutory provision, which is not a case, here. In the present case, violation or breach of any statutory provision or rule in preparation of electoral list is not claimed or argued. While finalising, the electoral list, opportunity of hearing was afforded by the Deputy Registrar to all interested parties including Fahim Ahmad, the present appellant No. 1, who participated in the proceedings and thereafter the electoral list was finalised by the Deputy Registrar which order has not been challenged by anyone and the said order has attained finality. The judgment relied upon by the learned counsel for the appellant is not applicable to the facts of the present case.

23. The other case *K. Venkatachalam (supra)* was a case under the Representation of People Act, 1951 and was decided with reference to the provisions of Sections 5, 81 and 100 thereof. The writ petition was filed after the election on the allegation that the elected candidate was lacking requisite basic qualification as required by Article 173 (c) of the Constitution read with Section 5 of the Representation of People Act but was elected to the State Legislative Assembly by impersonating himself for another person who was an elector of that constituency. The Apex Court was not called upon in this case nor it considered the question whether a writ petition can be maintained to forestall the initiating election on the allegation that some irregularity has been committed in the finalization of the electoral roll. This case, therefore, does not advance the argument raised by the appellant. Similarly, the ratio laid down in *Pundlik (supra)* instead of advancing the argument of the appellant, it runs to the contrary. The contention therein was that under the relevant Rules a right was conferred on the Sangh to change its representative and when the right has been exercised

within a stipulated period by passing a resolution, it was incumbent on the Collector therein to effect the change as per resolution passed. The said contention was negated by the High Court placing reliance upon the judgment of Shri Sant Sadguru Janardan Swami (supra) with a view that it would amount to interference in the election process. Disagreeing with the view taken by the High Court and considering the ratio as laid down in Shri Sant Sadguru Janardan Swami (supra), Hon^{ble} the Supreme Court has held in paragraphs 17 and 18 of the report as under:

"17. In our opinion, the learned counsel for the appellant is also right in submitting that if the order passed by Respondent 2 is upheld, the provisions of subrule (2) of Rule 5 will become nugatory and otiose. When the rulemaking authority conferred power on the Sangh to change the name of its representative/ delegate by expressly permitting the change of representative/ delegate and intimating the said fact to the Collector, such right cannot be taken away or interfered with. Since the last date as per the communication of Respondent 2 the Collector was 1062005, the action of the respondent Sangh was within the four corners of Rule 5(2). The High Court was, therefore, in error in not allowing the petition and granting relief to the appellant.

18. We are also supported in taking this view by a recent threeJudge Bench decision in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra. In that case, the electoral roll was prepared on the basis of byelaws which were held to be illegal. When the action was challenged it was contended that the Court could not interfere with the list of voters prepared in accordance with the provisions of the Rules and the only remedy available to the aggrieved party was to file election petition after the election was over. Reliance was placed on Sant Sadguru Janardan Swam/(2004) 1 SCC133. The Court, however, distinguished Sant Sadguru Janardan Swam/(2004) 1 SCC 133 and held that where the voters' list had been prepared on the basis of nonexistent rules, it would, be illegal and the Court could interfere under Article 226 of the Constitution."

24. Shri Altaf Mansoor, learned advocate for the respondents, has rightly placed reliance on Shri Sant Sadguru Janardan Swami (supra). In this case the Apex Court after noticing its various earlier pronouncements has held as follows:

"11. In the aforesaid case, this Court held that a writ petition under Article 226 of the Constitution should not be rejected on account of an alternative remedy by way of election petition where, firstly, the challenge is not a ground under the Act or the Rules for filing an election petition and, secondly, where the validity of a rule is challenged being ultra vires and invalid. It is true that a tribunal being a creature of an Act or the Rules has a limited jurisdiction and it is not open to a tribunal to decide the validity of the Act and the Rules. But, that & not the case here and, therefore, the decision in the case of Bar Council of India v. Surjeet Singh, (1980) 4 SCC 211, is of no help to the case of the appellants. In the case of Ramchandra Ganpat Shinde v. State of Maharashtra, (1993) 4 SCC 216, the parties to a writ petition obtained a collusive order by applying fraud on the

Court and such an order was made the basis of the election. In that context, it was held that so long as the order of the High Court continues, the Tribunal would be bound by that order of the High Court and, therefore, the writ petition was maintainable and the same cannot be thrown out on the ground of an alternative remedy. Again, that is not the case of the appellants and, therefore, the same is distinguishable. In *Shreewant Kumar Choudhary M. Baidyanath Panjiar*, (1973) 1 SCC 95, it was held that it was not open to the Tribunal to go behind the entry in an electoral roll. This was in the context of the provisions of the Representation of the People Acts, 1950 and 1951. It may be borne in mind that there is a distinction between the scheme of the provisions of the Representation of the People Act, 1950 and the Representation of the People Act, 1951. The Representation of the People Act, 1950 provides for the delimitation of constituencies and allocation of seats for purposes of election to the House of the People and the legislature of States and preparation of the electoral roll, whereas, the Representation of the People Act, 1951 provides for conduct of election. Under Section 100 of the Representation of the People Act, 1951, one of the grounds amongst others is that an election can be challenged where there is noncompliance with the provisions of the Constitution or of the said Act and the Rules or orders made there under meaning thereby that breach of the Representation of the People Act, 1950 cannot be called in question in an election petition filed under the 1951 Act. In that view of the matter, the decision relied upon by the appellants is distinguishable.

12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

25. Similar view has been reiterated in *Tapash Majumder v. Pranab Dasgupta*, (2004) 13 SCC 574. A Division Bench of this Court in *Basant Prasad Srivastava v. State of U.P. and others*, (1994) All CJ 162, has held that it is desirable that the election process should end as early as possible and the declaration of result should not be deferred through repeated interim orders. Any interference with the election process at the intermediate stage under Article 226 of the Constitution of India is not desirable.

26. In view of the law declared by Hon^{ble} the Supreme Court in *Pundlik v. State of Maharashtra* (supra), we find that the writ Court was justified to hold that once election process commences and is notified with that ordinarily High Court should not interfere under Extraordinary Jurisdiction under Article 226 of the

Constitution of India. Hon"ble the Single Judge has also rightly held that the question relating to faulty electoral roll is not a ground for interference, specially when breach of any statutory provision or rule has not been complained of in the preparation of the said electoral roll.

27. The writ Court has allowed the writ petition of the appellant on merits. It also considered the maintainability of writ petition No. 1446 (M/S) of 2006 wherein this point was involved directly. Both the writ petitions were disposed of by a common judgment which is under appeal. Altaf Ahmed who had filed the writ petition No. 1446 of 2006 (M/S) which was ultimately dismissed, has not challenged the judgment of the writ Court. A third party, as noted above, had filed a Special Appeal which has already been dismissed by us on the ground of locus stand. The said order has attained finality. The said issue is no longer open and cannot be challenged indirectly in the present appeal and for these additional reasons, we reject the appellant's submission.

28. Now, we take up the second submission made by the learned counsel for the appellant. The contention of the appellant is that after the finalization of the electoral list, the Registrar, Firms, Societies and Chits, the respondent No. 2, had issued a letter dated 21st of March, 2006 wherein the Registrar, Firms, Societies and Chits had directed the Deputy Registrar, respondent No. 3, to look again into the matter and refinalize the electoral list after taking into consideration the eight points mentioned therein. The Registrar, Firms, Societies and Chits on the basis of the application filed by Fahim Ahmed, the appellant No. 1 herein sent the said letter dated 21.3.2006 with the direction to the Deputy Registrar, Firms, Societies and Chits to take a decision on the eight points enumerated therein before conducting the election. The appellants who were petitioners themselves have sought quashing of the aforestated letter in the writ petition and the writ petition was allowed quashing the letter dated 21st of March, 2006. Before us a strange plea was taken that the petitioners did not intend the quashing of the letter in toto but they sought only postponement of the election till the consideration of eight points mentioned therein. It was argued that the Deputy Registrar, Firms, Societies and Chits was only a delegatee under Section 21 of the Societies Registration Act and was exercising power of Registrar, Firms, Societies and Chits and as such the Registrar, Firms, Societies and Chits could issue direction from time to time to the delegatee. The writ Court was not legally correct to hold that the Registrar, Firms, Societies and Chits after delegation is denuded with the power. To appreciate the point, it is desirable to notice Section 21 of the Societies Registration Act which is reproduced below:

"30. (2) Power of the Registrar to interfere with the Election Process Section 21 of the Societies Registration Act defines the word "Registrar" which includes an Additional Registrar, a Joint Registrar, Deputy Registrar or Assistant Registrar. For convenience, Section 21 of the Societies Registration Act is reproduced as under:

"21. In this Act, the word "registrar" means a person appointed as such by the State Government and includes an Additional Registrar, on whom all or any of the

powers of the Registrar under this Act are conferred by general or special order of the State Government."

29. Various notifications from time to time have been issued by the State Government delegating the power of Registrar, Firms, Societies and Chits to Deputy Registrar and Assistant Registrar of the respective regions and districts, as the case may be. The learned counsel on the strength of *Godawari S. Parulekar and others v. State of Maharashtra*, (1966) 3 SCR 314: AIR 1966 SC1404; *Ishwar Singh v. State of Rajasthan and others*, (2005) 2 SCC 334 and an unreported judgment in the writ petition No. 4561 of 2002: *Committee of Management M. Milk Commissioner and others*, decided on 8.10.2002, submits that the delegation of power by one person to another does not mean that the delegator is denuded with the power. In *Godawari S. Parulekar and others* (supra) the Apex Court has held as follows:

"6. In *Hutch v. Clarke* (25 QBD 391) Wills, J., observed at p. 395:

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

In our opinion, by issuing the aforesaid notification the State Government has not denuded itself of the power to act under Rule 30."

30. The same view has been reiterated in *Ishwar Singh* (supra). There is no quarrel to the above legal proposition. However, its applicability on the facts of the present case is another thing. The above cases do govern relation in between a delegator and delegatee, which is not a case herein. On a plain reading of Section 21 of the Societies Registration Act, it is the State Government which has delegated the power of Registrar, Firms, Societies and Chits to the Assistant Registrar, Firms, Societies and Chits and Deputy Registrar, Firms, Societies and Chits by the notifications. The power of Registrar, Firms, Societies and Chits having been delegated by the State Government to the Assistant Registrar, Firms, Societies and Chits or Deputy Registrar, Firms, Societies and Chits, the State Government being delegator can resume the power. However, this does not entitle the Registrar, Firms, Societies and Chits to issue any direction that too after the finalization of the electoral list to reconsider the electoral list in the light of the directions given by him. If such a power is assumed by the Registrar, Firms, Societies and Chits, this would be akin to the revisional power against the decision of the Assistant Registrar, Firms, Societies and Chits/Deputy Registrar, Firms, Societies and Chits. The Assistant Registrar, Firms, Societies and Chits or the Deputy Registrar, Firms, Societies and Chits or to whom the power of Registrar, Firms, Societies and Chits has been delegated by the State Government would function in discharge of the duties as Registrar, Firms, Societies and Chits and the Registrar, Firms, Societies and Chits will have no power to interfere with the order passed by the such Assistant Registrar, Firms, Societies and Chits or Deputy Registrar, Firms, Societies and Chits in exercise of

power of Registrar, Firms, Societies and Chits. A somewhat similar controversy came up for consideration before the Apex Court in *OCL India Ltd. v. State of Orissa and others*, (2003) 2 SCC 101. In this case, the Sales Tax Commissioner delegated his statutory power to revise the order of Sales Tax Officer to Assistant Commissioner. The Assistant Commissioner in exercise of that power after issuing the show cause notice to the assessee dropped the proceedings. In such circumstances, it was held that the Commissioner could not exercise the revisional power as it stood exhausted by the Assistant Commissioner. Para 14 of the report is quoted below:

"14. It is no doubt true that the Commissioner is not denuded of the statutory power of revision after delegation, but that, in view of the said notification, only means that he can resume that power or cancel the delegation of revisional power to the Assistant Commissioner. That, by no stretch of imagination, can be construed to mean that once the orders have been examined under the revisional power by the Assistant Commissioner (the delegatee), the same orders can again be subjected to the revisional jurisdiction by the Commissioner."

31. Applying the ratio as reproduced above, on the facts of the present case, the electoral list was finalized after inviting objections from the persons concerned including the appellant, Fahim Ahmed and others, the Deputy Registrar, Firms, Societies and Chits by a detailed order finalized the electoral list taking into account the various stands taken by the respective parties. In doing so, it has rejected/accepted the objections and suggestion given by the various parties. It is nobody's case that the electoral list was finalized arbitrarily without giving an opportunity to the parties concerned. After the finalization of the electoral roll which had attained finality as it was not challenged before any higher authority or any Court of law, the Registrar, Firms, Societies and Chits had no power or authority to issue any direction by means of the letter dated 21st of March, 2006.

32. In *State of Orissa v. Commissioner of Land Records & Settlement, Cuttack and others*, (1998) 7 SCC 162 : AIR 1998 SC 3067, it was held that delegator cannot review an order of the delegatee. Relevant paragraphs 28 and 29 of the report are reproduced below:

"28. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to "review" of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available, to his successor.

29. The decision of the Privy Council in *Maharajah Moheshur Sing v. Bengal Govt.* (185760) 7 MIA 283: 3 WR 45 (PC) to which reference was made by learned Senior Counsel, Shri T. L. Vishwanath Iyer, is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council:

(p. 47)

"It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another Tribunal."

Their Lordships added:

"We do not say that there might not be cases in which a review might take place before another and a different Judge; before death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only ex necessitate. We do say that in all practicable cases the same Judge ought to review;....."

It is, therefore, clear that the same Judge who disposes of a matter, if available, must "review" the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasijudicial authorities."

33. The law was again considered in *Ishwar Singh* (supra), a case relied upon by the appellant, wherein it has been held that order of delegate, when delegation is made as authorised by the statute, has to be treated for all practical purposes as an order of principal and cannot be revised or reviewed by the principal unless such a power is specifically conferred.

34. In view of the above discussion, we find that the judgment of the writ Court on this point is on terra firma and the contrary submission of the appellant is misconceived.

35. There is another aspect to hold that the Deputy Registrar, Firms, Societies and Chits was not obliged to entertain any direction issued by the Registrar, Firms, Societies and Chits after the finalization of the electoral list. The Deputy Registrar, Firms, Societies and Chits exercised the power in pursuance of the direction issued by this Court in writ petition No. 43074 of 2003, *M/s H. Rehman & Sons v. Deputy Registrar, Firms, Societies and Chits*. This writ petition was the third round of litigation in the High Court at Allahabad, challenging the Electoral list. This Court while disposing of the writ petition issued certain directions to the Deputy Registrar, Firms, Societies and Chits. The relevant portion from the judgment is reproduced below:

"This petition is disposed of with the direction to the Deputy Registrar to permit only those voters/candidates to participate in the election who were members on 31 st December, 2002, and who had deposited their membership fees on or before 31st December, 2002."

36. In pursuance of the aforesaid direction the Deputy Registrar, Firms, Societies and Chits finalized the electoral list by the order dated 13.3.2006. Now,, a question arises when the Deputy Registrar, Firms, Societies and Chits was holding election in pursuance of the direction issued by this Court in writ petition No. 43074 of 2003, could any direction be issued by the Registrar. In our view, it could not be. Source to hold the election by the Deputy Registrar is the order of the High Court. More or less, a similar controversy arose in *Jawahar Lal Nehru Memorial Association v. Director of Higher Education, U.P., Allahabad*, 1994 ALJ 618, wherein the High Court with the consent of the parties directed the Registrar to hold the election. The Assistant Registrar finalized the voter list. It was held that source of the power is the order of Court, as such no other authority except Registrar could hold the election. The same principle will be applicable in this case also. The Deputy Registrar under the direction of the High Court was required to hold the election and any interference in its functioning by any authority without the leave of the Court will vitiate the proceedings. It is well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires. (See *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC405; *Bahadur Singh Lakhu Bhai Gohil v. Jagdish Bhai*, (2004) 2 SCC 65).

37. The writ Court has rightly held that the Registrar does not have not jurisdiction to revise or modify the order passed by the Deputy Registrar or the Assistant Registrar while he was discharging the statutory duty.

38. Certain factual disputes though not pleaded either in the writ petition or argued before the writ Court were sought to be raised before us during the course of hearing of the appeal, by the appellant. Repeatedly, it was argued that the respondents No. 4 and 5 were expelled from the post of treasurer and the secretary, they were not authorised to collect the subscription and enrol the members. It was also argued that several persons included in the electoral list were not dealing in the business of rawhides (Bovine). However, the said argument cannot be accepted as they were considered, dealt with and rejected by the Deputy Registrar in its order dated 13.3.2006. The electoral list was finalized which includes 304 members. The said electoral list, as indicated above, was neither challenged nor was subject matter of the writ petition giving rise to the present appeal. Dispute, if any, may be raised by aggrieved persons after the declaration of the result of the election under Section 25 of the Societies Registration Act or by way of filing suit. The contention that the disposal of the suit takes its own time and in election matter the civil Court is slow in granting interim injunction, is not at all attractive. The alleged expulsion of the respondents No. 4 and 5 took place on 30th of November, 1999 which is subsequent to initiation of proceeding by the Deputy Registrar, Firms, Societies and Chits to hold the election. Obviously the respondents No. 4 and 5 could not have been expelled on that date as the election process had already started and the Deputy Registrar, Firms, Societies and Chits on 23rd of October, 1999 directed the holding of the election of the society. The last election, admittedly,

was held on 25.6.1993 for a period of three years, which expired on 24th of June, 1996. Although under the byelaw No. 10 of the Society, it was provided that in case, due to any reason the election is not held after three years, then, the elected Executive Body will continue to work till the new election, but it will not empower the Executive Body to function in perpetuity. The election process having been started, the Executive Body could not expel the respondents No. 4 and 5 vide resolution dated 30th November, 1999.

39. In the order dated 13th of March, 2006, it is mentioned that on the earlier occasions the objection raised by Fahim Ahmed that General Secretary, Shri Ishrat Qayyum and Mohd. Aslam, Treasurer, were expelled on 30th of November, 1999, was not accepted by the Deputy Registrar, Firms, Societies and Chits. It is also mentioned there that through office letter No. 4014/1283 dated 23rd of December, 2005, the position was clarified by the Deputy Registrar, Firms, Societies and Chits with regard to the treasurer. This fact has not been disputed or controverted either in the writ petition or in the appeal.

40. The learned counsel for the appellant also submitted that against the resolution by which the respondents 4 and 5 were expelled from the posts of treasurer and secretary, a regular suit No. 147 of 2002 was filed for permanent injunction, wherein initially an interim injunction was granted, which was vacated subsequently and the suit having been dismissed thereafter for want of prosecution, the order of the Executive Body expelling them has attained finality.

41. It was stated at the bar that the said suit was with regard to the continuance of Fahim Ahmed in the office as President. According to the respondents No. 4 and 5 Fahim Ahmed at one point of time tendered his resignation as President. The said controversy as to whether Fahim Ahmed tendered the resignation as also whether the respondents No. 4 and 5 were expelled from the post of treasurer and secretary have become pale by the lapse of time, specially in view of the fact that now the election has taken place and result of the election is yet to be declared.

42. In view of the above discussion, we do not find any merit in the Special Appeal which deserves to be dismissed.

43. After the last election of the Executive Body held on 25th of June, 1993 for a period of three years which expired on 24th of June, 1996, fresh election has now taken place under the directions of this Court.

44. Interestingly, it may be noted that neither the appellant, Fahim Ahmed, nor the respondents No. 4 and 5 in view of the byelaws No. 13B is entitled to contest the election for any post as they have already completed their two consecutive term as officebearers. This appears to be reason which has impelled Fahim Ahmed to see that the election of the Executive Body does not take place. Whenever, as noted in the opening part of the judgment the Deputy Registrar, Firms, Societies and Chits, taken steps to conduct the election, Fahim Ahmed and his associates filed writ petitions one after the other either at Allahabad or at

Lucknow for the postponement of the election process on every conceivable grounds.

45. The founders of the Society were conscious about the lust of human beings for the chair. To protect the Society from such persons, they have provided for in the byelaws No. 13 (b) that any person cannot be elected for more than two consecutive period for any post of association or its connected institutions such as President, VicePresident, General Secretary, Joint Secretary, Treasurer, Secretary Finance Committee, Joint Secretary Finance Committee, Member Finance Committee, Manager, Joint Secretary, Assistant Manager for all these posts no one can be elected in third election. Except President, no one can be elected for more than one post at a time. This byelaws disqualifies an office bearer to remain in office for more than two consecutive periods.

46. In the result, we find no force in the Special Appeal. The Appeal lacks merit and it is dismissed accordingly.