
(2006) 07 AHC CK 0039
In the Allahabad High Court

Fahim Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 329
Societies Registration Act, 1860 — Section 4

Citation : (2006) 07 AHC CK 0039

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Judgement

Devi Prasad Singh, J.—In these two writ petitions, common question of law and facts are involved, hence, decided by the present common judgment with the consent of parties at admission stage.

In the present petitions, the question involved for adjudication is:

(1) Whether a writ petition under Article 226 of the Constitution of India shall be maintainable to direct for correction of electoral roll when the election of Committee of Management has already been notified and schedule has been circulated by the competent authority?

(2) Whether the Registrar, Firms, Societies and Chits, U.P., Lucknow, has got power to interfere with the election process or with the decision taken by the Deputy Registrar of the region to hold the election?

2. The brief fact of the case is that a Muslim Association, Kanpur (in short referred as a "Society") is a society registered under the Societies Registration Act. The aim and object of the said society is to establish schools for Muslim boys and girls and to impart religious and word by education through which Islamic theology and culture may be nurtured and to supervise and manage the Waqfs (Trusts) entrusted to the society. However, the main object of the Society is to provide scholarship as well as fooding and lodging to the poor boys and girls.

According to Rules 6, 7 and 8 of the Rules of the Society, every Muslim merchant

and firm dealing in Bovine (Raw Hide) and tanneries of Kanpur who pays the deduction (subscription) as per their account books or pays Rs. 100 p.a. shall be a member of the Anjuman. Every merchant or firm who pay his/their deduction or subscription due upto 31st of December of the calendar year, shall be entitled to vote. Only one representative of every merchant or firm will be entitled to vote. For convenience, Rules 6, 7 and 8 of the Rules of the Society are reproduced as under:

6. Every Muslim merchant and firm dealing in Bovine (Raw Hide) and tanneries of Kanpur who pays the deduction (subscription) as per their a/c books or pays Rs. 100 p.a. provided their deduction is less than Rs. 100 shall be Anjuman Member.

7. Every merchant or firm if fails to pay his/their deduction or subscription due upto 31st December in the same year upto 31st December will not be entitled to vote.

8. Only one representative of every merchant or firm will be entitled to vote.

According to Rule 10 of the Rules, election of the members and officer bearers of Executive Committee will be for three years. In case due to any reason the election is not held after three years, then the elected Executive Committee may continue to work till new election is held.

3. Admittedly, the last election of the executive body and office bearers of the society was held on 25.6.1993, for a period of 3 years. In the said election, Sri Fahim Ahmad, petitioner of W.P. No. 1498 (M/S) of 2006 was elected as President and Sri Ishrat Qayum was elected as Secretary and Mohd. Islam S/o late Sri Noman Ahmad was elected as Treasurer. The tenure of the Committee of Management was till 24.6.1996. However, the then President of the Society Sri Ishrat Qayum had sent a letter dated 2.9.1996 to the Deputy Registrar of the Society, Kanpur to intimate him that according to resolution of the general body dated 26.8.1996, the tenure of the executive body has been extended for a period of 3 years in pursuance to the power conferred by Rule 10 of the Rules of the Society. Copy of the letter dated 2.9.1996, has been filed as Annexure-1 to the supplementary-affidavit filed by one Sri Praveen Kumar in W.P. No. 1446 (M/S) of 2006. For convenience, Rule 10 of the Rules of the Society is reproduced as under:

10. The election of members and office bearers of executive committee will be for three years. In case due to any reason the election is not held after three years then the elected Executive Committee will continue to work till new election.

A plain reading of Rule 10 of aforesaid Rules shows that members of the elected executive body shall continue to work till the new election is held. Thus, in case, for any reason, no election is held within the period of 3 years, then the elected executive body will continue to work till new election is held. The purpose of Rule 10 of the Rules is not to extend the tenure of the Committee of Management

without holding an election after a period of 3 years as appears from its letter in spirit. It is to meet out the special circumstances and emergent situation when the general body could not have elected the new office bearers under some extraordinary situations or compelling circumstances. But it lacks the power to extend the tenure of the executive body by a resolution.

Moreover, since admittedly, the election of the Committee of Management was held on 24.6.1993 and if the general body wanted to take any decision then, it should have taken on or before 24.6.1996 and not subsequent to a date after expiry of tenure of the Committee of Management. The general body had become functus-officio by passing the resolution dated 26.8.1996. The only option open to the office bearers was to hold fresh election in accordance to Rules of the Society. Any decision by the general body or the office bearers of the society after lapse of period for which the office bearers are elected, shall be nullity in law. Accordingly, no benefit could have been availed by the office bearers in terms of the letter dated 2.9.1996.

4. Rule 10 of the Rules as reproduced hereinabove, is meant to meet out the emergent situation or to meet out the extraordinary situation for a reasonable period subject to condition that appropriate initiatives should have been taken by the office bearers to hold the election. The power conferred by Rule 10 of the Rules cannot be utilized with ulterior motive or for continuance of office bearers without taking initiative to hold fresh election. In case, it is permitted to do so, then it shall give a set back to the democratic process which is the backbone of a society formed under the Societies Registration Act. Accordingly, the office bearers who were elected in the year 1993 or who had continued in the office on the basis of resolution of the general body up to the year 1996 will have no right to usurp the office and run the society for any reason whatsoever. The only remedy open to the members or the office bearers of the society was to take appropriate steps for holding fresh election. They have no right to hold the office for such a long period that is for more than the period for which they were elected. In case, they are permitted to do so, it shall amount to give a set back to the democratic process in the society. In such situations it shall be the duty of Registrar to take initiative u/s 25(2) of Societies Registration Act.

5. Under the above facts and circumstances, the Deputy Registrar of the region by the order dated 23.10.1999, had notified election of the society in question for 15.12.1999. The schedule of the election was published. The initiative taken by the Deputy Registrar to hold election was impugned in W.P. No. 47580/1999 in this Court at Allahabad. The writ petition was dismissed by the judgment and order dated 18.11.1999. Copy of the Judgment and order dated 18.11.1999, passed in W.P. No. 47580/1999 has been filed as Annexure-3 to the writ petition. While dismissing the writ petition, it has been held by this Court that since the election process has been scheduled and the scheme has been published, it should be interfered under extraordinary remedy of Article 226 of the Constitution of India. While dismissing the writ petition, a Division Bench

Judgment of this Court in Basant Prasad Srivastava and others Vs. State of U.P. and others, . was also relied upon.

6. It appears that on account of alleged expulsion of opposite parties No. 5 and 6, a Regular Suit No. 147/2002 was filed in the Court of Civil Judge, Kanpur in which initially a temporary injunction was granted which was later on vacated. An F.A.F.O. was filed which is pending in this Court. Thereafter, the Deputy Registrar of the region had notified for fresh election by the order dated 15.12.2000. Some of the members of the society in question had filed a W.P. No. 1723 (M/SJ/2000) on the ground that their names have not been included in the voter list. In the said writ petition, initially, an interim order dated 24.7.2000, was passed by this Court which was later on vacated by the subsequent order dated 31.7.2003, on the ground that since the election process has been started in view of the case of Basant Pd. Srivastava (supra), no interference is called for under extraordinary jurisdiction. Copy of the order dated 24.7.2000, followed by the order dated 31.7.2003 have been filed as Annexures-6 and 7 to the writ petition.

7. It appears that thereafter one more Writ Petition No. 43074/2003 was filed in this Court at Allahabad.

The said writ petition was finally disposed of by the judgment and order dated 25.9.2003 with the direction that only those persons shall be entitled to cast their votes who were the members of the society in question subject to payment of dues upto 31.12.2002. Copy of the judgment and order dated 25.9.2003, passed in W.P. No. 43074/2002 has been filed as Annexure-8 to the writ petition.

8. Thereafter, the Deputy Registrar had issued an order dated 20.12.2004 (Annexure-9) directing all the members of the society in question to deposit their fees upto 31.12.2004 so that the election of the society may be held in accordance to rules in the year 2005. Another order dated 16.12.2005. was passed permitting the members of the society to deposit their fees by 31.12.2005 so that the election of the society in question may be held in accordance to the rules. Copy of the order dated 16.12.2005 has been filed as Annexure-11 of the writ petition. Subject to aforementioned facts and circumstances, when the Deputy Registrar had proceeded to hold election keeping in view the directions passed in W.P. No. 44074/2003 decided on 25.9.2003, Sri Ataur Rahman, Sri Hazi Mohd. Mobin and Sri Faheem Ahmad, petitioner No. 1 of W.P. No. 1498 (M/S)/2006 had submitted their membership list containing the names of the members who were said to be the members of the society in question upto 31.12.2002 with a declaration that fees has been deposited of all those members. Sri Mafooz Alam had filed the copy of the Judgment and order dated 20.10.2003. passed in W.P. No. 47327/2003 with the averment that he may be permitted to produce the evidence. Accordingly, a notice dated 23.10.2003, was issued to him. After receipt of rival submissions of the persons concern, the Deputy Registrar by the impugned order dated 27.2.2006, as contained in Annexure-16 to the Writ Petition No. 1446 (M/S)/2006 has notified election of the society.

9. The Deputy Registrar has proceeded to decide the controversy relating to the membership of the members of the society in question on the basis of the representations submitted by the rival claimants. By the impugned order dated 13.3.2006, as contained in Annexure-18 to the writ petition, the Deputy Registrar has recorded a finding that there are 304 members of the general body who are entitled to cast their votes. He had proceeded to notify the election fixing 18.3.2006 as date for nomination and 22.3.2006 for the election of 30 members of the executive body and 23.3.2006 as the date for the election of office bearers of the executive body. List of all the qualified members is a part of the impugned order dated 13.3.2006, copy of which has been filed as Annexure-18 to the writ petition. It has been brought to the notice of this Court that ballot papers as well as voter lists have been published after notifying the scheme of election.

10. The Deputy Registrar has invited objections and has provided the reasonable opportunity to parties while deciding the objections relating to electoral roll as is evident from the impugned order itself. He has acted within his power provided under Sub-section (2) of Section 25 of the Societies Registration Act.

11. Thereafter, again the opposite party No. 2, i.e., the Registrar, Firms, Societies and Chits, U.P., Lucknow, had passed an order dated 23.3.2006 staying the election process on the basis of a complaint submitted by Sri Faheem Ahmad. A copy of order dated 23.3.2006 has been filed as Annexure-25 to the Writ Petition No. 1498 (M/S)/2006.

12. While assailing the impugned order passed in W.P. No. 1498 (M/S)/2006 as well as in W.P. No. 1446 (M/S)/2006, earned Counsel for the respondents has relied upon various Judgments in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, ; Tapash Majumder v. Pranab Das Gupta 2004 (13) SCC 574; Basant. Prasad Srivastava, Manager, Gandhi Smarak Uchchar Madhyamik Vidyalaya v. State of U.P. and Ors. 1994 ACJ 162 ; The New Friends Co-operative House Building Society Ltd. Vs. Rajesh Chawla and Others, ; Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, ; Nagri Pracharini Sabha and Another Vs. Vth Additional District and Sessions Judge, Varanasi and Others, ; K. Murugan Vs. Fencing Association of India, Jabalpur and Others, ; Seva Samiti, Allahabad and Another Vs. Assistant Registrar, Firms, Societies and Chits, Allahabad and Another, 13. In the case of Basant Prasad Srivastava, Manager, Gandhi Smarak Uchchar Madhyamik Vidyalaya, Kauriya, Azamgarh v. State of U.P. and Ors. (supra) which has been relied upon by the Division Bench in earlier judgment referred hereinabove, a Division Bench of this Court has proceeded to hold as under:

7. In our opinion the judgment of the learned single Judge does not suffer from any infirmity. The election process having started it must come to its logical conclusion. Once, it has come to its logical conclusion by declaration of result of the election the aggrieved person may challenge the election by filing election

petition or civil suit in accordance with law. In such a proceeding the election may not be set aside if the alleged illegality or irregularity has not materially affected the result of the election. Approach to Court at intermediate stages in the election is bound to result in an office either remaining vacant or being occupied by a person whose entitlement to hold the office has ceased. Neither is a happy situation. It is, therefore, desirable that the election process should end as early as possible and the declaration of result should not be deferred through repeated interim orders passed from time to time. In taking this view we have the support of authorities which may be immediately noticed.

13. It has been settled by this Court more than once that election of the Committee of Management of an educational institution can be challenged before civil court. A dispute with respect to the management of such institution can also be agitated before Deputy Director of Education u/s 16A (7) of the Intermediate Education Act and the decision of the Deputy Director given under the above provision is subject to the decision of a competent court. Neither Intermediate Education Act nor the scheme of Administration limits/restricts the ground on which the election of the Committee of Management can be challenged. Election of such a committee, as such, can be challenged, both on merits as well as on the ground that the persons who were not entitled to vote were permitted to vote or the persons who were entitled to vote were excluded. The order of any person or authority limiting the right to vote in the election to certain persons only is liable to be challenged, while challenging the election and competent authority or the Court can set aside the election of the Committee of Management on that ground. Under these circumstances, it is not open to challenge any order at the intermediate stage. The position would have been different had the law excluded the challenge to the election on the ground of defective electoral roll. But, as mentioned above, this is not the position in the instant case.

14 In the case of Shri Sant Sadguru Janardan Swami (Moingtri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors. (supra), Hon"ble Supreme Court held that breach or non-compliance with the mandatory provisions of Rules during the preparation of electoral roll can be challenged in an election petition. It has been further held by the Hon"ble Supreme Court that the preparation of voter list is a part of the election process for constituting Managing Committee of a specified society, accordingly, the Court should not interfere with the election process at the intermediate stage. For convenience, relevant portion from the judgment of Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors. (supra) is reproduced as under:

9. If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that that the preparation of electoral roll is

part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election means of an election petition before the Tribunal.

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.

15. In one another case in *Tapash Mqjumder v. Pranab Das Gupta* (2004) 13 SCC 574 (supra), Hon''ble Supreme Court held that when the election process is started, the Court should not interfere with such election process.

16. In the case of *New Friends Cooperative House Building Society Ltd. v. Rajesh Chawla and Ors.*, the Hon''ble Supreme Court has again reiterated the same principle and held that question relating to non-payment of dues of the society should be raised at the appropriate stage and the election process may not be interfered. Relevant portion from the judgment of the Apex Court in the case of *New Friends Cooperative House Building Society Ltd. v. Rajesh Chawla and Ors.* (supra) is reproduced as under:

4. The question whether a member was a defaulter had to be adjudicated in appropriate proceedings and writ application prima facie was not a proper course. Assuming without accepting that the stand taken for the alleged defaulters can be entertained and gone into in the course of conduct of election, it could, if at all, be only for the limited purpose of election and the right of the Society or the member for having their rights and liabilities finally and effectively get adjudicated by arbitration proceedings statutorily provided for under the statute in lieu of proceedings before the civil court, and the conclusions arrived at or recorded in the course of election proceedings shall be only without prejudice to and ultimately subject to all or any such proceedings and decisions by such statutory forums.

17. In the case of *Umesh Shivappa Ambi and Ors. v. Amngadi Shekara Basappa and Ors.*, the Apex Court held that once the election is over, then the outcome of such election should be considered by preferring an election petition and not by invoking the extraordinary remedy. In the case of *Nagri Pracharini Sabha and Anr. v. Vth Additional District and Sessions Judge, Varanasi and Ors.* (supra), Hon''ble Supreme Court held that once the tenure of election of office bearers is over by the passage of time, then the Court should decide the controversy keeping in view the subsequent development.

18. In the case of *K. Murgan v. Fencing Association of India, Jabalpur and Ors.* where the tenure of office bearers of Indian Olympic Association was expired, Hon"ble Supreme Court had appointed a retired Judge of the Hon"ble Supreme Court to conduct the election in accordance to rules and regulations of the society which was registered under the Societies Registration Act and Hon"ble Supreme Court had directed to hold the election by a secret ballot. In the case of *Sewa Samiti, Allahabad and Anr. v. Asstt. Registrar, Firms, Societies and Chits, Allahabad and Anr.*, after expiry of term of the society, Hon"ble single Judge of this Court appointed the District Magistrate of the district or his nominee to look after the affairs of the society till the fresh election is held. The Deputy Registrar was directed to proceed with the election process in pursuance to the power conferred by Sub-section (2) of Section 25 of the Societies Registration Act.

19. In the case of *Committee of Management and Anr. v. Assistant Registrar, Firms, Societies and Chits and Ors. (supra)*, a Division Bench of this Court has held that after expiry of tenure of Committee of Management, erstwhile members of the Committee of Management cannot hold the election and only the Deputy Registrar may proceed to hold the election in pursuance to the power conferred by Sub-section (2) of Section 25 of the Act. Relevant portion from the judgment of *Committee of Management and Anr. v. Assistant Registrar, Firms, Societies and Chits and Ors. (supra)* is reproduced as under:

3. In these circumstances, we are of the opinion that the Assistant Registrar was justified in exercising powers under Sub-section (2) of Section 25 of the Societies Registration Act in directing that a fresh meeting of the general body be held for electing office bearers of the Society. Sri Srivastava lastly urged that it is a case where there was a dispute in respect of election or continuance of office bearers of the society and, therefore, the matter ought to have been referred to the prescribed authority for decision under Sub-section (1) of Section 25 of the Act. We are unable to accept the contention raised by the learned Counsel for the appellants. The dispute referred to under this provision could arise only if the election had been held within the period of three years and two rival groups claimed to have been elected as office bearers of the Society. The claim made by both the parties was based upon the elections, which were admittedly held after more than five years. In these circumstances, the Assistant Registrar was perfectly justified in issuing direction to hold a fresh election under Sub-section (2) of Section 25 of the Act. We, therefore, find no illegality in the impugned judgment and order of the learned single Judge.

In the case of *Committee of Management, Shiksha Prasar Samiti and Anr. v. Deputy Registrar, Firms, Societies and Chits, Azamgarh and Anr.*, Hon"ble single Judge of this Court held that whenever the renewal certificate is impugned on the ground of commission of fraud then the competent authority will have got right to recall the order.

20. In view of various reported cases discussed hereinabove, it is evident that once the election process commences and is notified, then ordinarily High Court

should not interfere under extraordinary jurisdiction of Article 226 of the Constitution of India. The question relating to faulty electoral roll may also not be a ground for interference under extraordinary jurisdiction of this Court. The outcome of the election under the Societies Registration Act may be interfered at the time of renewal of the society under Sections 3A, 3B read with Section 4 of the Societies Registration Act or u/s 25 of the Societies Registration Act as the case may be. u/s 25 of the Societies Registration Act, wide power has been given to the Registrar to refer an election controversy to the prescribed authority for adjudication which seems to include the dispute relating to electoral process. For reference, Section 25 of the Societies Registration Act is reproduced as under:

25. Disputes regarding election of office bearers.--(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office bearer shall be set aside where the prescribed authority is satisfied:

- (a) that any corrupt practice has been committed by such office bearers; or
- (b) that the nomination of any candidate has been improperly rejected; or
- (c) that the result of the election in so far it concerns such office bearer has been materially affected by the improper acceptance of any nomination or by the improper reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

Explanation I.--A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person:

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;
- (ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand, as or to withdraw or not to withdraw from being, a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;
- (iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in Clauses (i) and (ii)
- (iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II.--A "promise of individual advantage or profit to a person" includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Explanation III.--The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

(2) Where by an order made under Sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has been not held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office bearer or office bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under Sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office bearer of the society.

Explanation. -- For the purposes of this section, the expression "prescribed authority" means an officer or Court authorised in this behalf by the State Government by notification published in the official Gazette.

21. A plain reading of Section 25 referred hereinabove indicates that almost all the controversies relating to election dispute may be referred to the Registrar of the Society which affects the outcome of the election. The Division Bench of this Court in the case of *Basant Prasad Srivastava, Manager, Gandhi Smarak Uchchar Madhyamik Vidyalaya v. State of U.P. and Ors.* (supra) had considered this aspect of matter and held that the order of any person or authority limiting the right to vote of election by certain person can be challenged before the competent authority or Court. The defective electoral roll can also be challenged before the competent authority or by filing a regular suit. There is no bar under the law to challenge the defective electoral roll as it affects the outcome of election. Sub-clause (c) of Sub-section (1) of the Section 25 of the Societies Registration Act provides that in case the result of any election is materially affected by the improper refusal or rejection of any vote or by non-compliance with the provisions of rules of the society, then the dispute can be referred to the prescribed authority by the Registrar of the Society. The Explanation I of Section 25 of the Act further provides that in case there is fraud, intentional

misrepresentation of facts or to do a certain thing which may amount to corrupt practice may also be a ground for dispute before the Registrar. Accordingly, though the complaints submitted by the rival parties against the voter list has been decided by the Deputy Registrar, but it is still open to them to challenge the outcome of the election by representing the Registrar in pursuance to the power conferred by Section 25 of the Societies Registration Act. After the declaration of the result, parties have got alternative remedy to challenge the outcome of the election including the alleged faulty electoral roll.

22. Sub-section (2) of Section 25 of the Societies Registration Act further provides. that in case the election is set aside under Sub-section (1) of Section 25 of the Act or in case the office bearers is no longer entitled to continue in office and the election has been not held within the specified time provided under the rules of the society, then the Registrar has got power to call a meeting of the general body of the society for electing new office bearers of the society. Sub-section (3) of Section 25 of the Act further creates a bar and prohibits by providing that in case the Registrar proceeds to call for a meeting of the general body in pursuance to the power conferred by Sub-section (2) of Section 25 of the Act, then any other meeting shall not be called for the purpose of election by any other authority or by any person claiming to be an office bearer of the society.

23. It is now a settled principle of law that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule has been propounded with all firmness by Willes J., in *Wolver Hampton New Water Works Co. v. Hawkesford* in the following passages:

There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implications exclude the common law remedy, the party suing has his election to pursue either that or his statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy, there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it...." The remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.* and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co.* 1935 AC 532 and *Secretary of State v. Mask and Co.* Cal WN 709.

24. The aforementioned principle of English Law was made applicable by the Apex Court in a case in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . Their Lordships of the Apex Court in the said case held that whenever a remedy has been provided by an Act or Statute to challenge the outcome of the election or illegality committed during the course of the election, then extraordinary remedy of Article 226 should not ordinarily be exercised. Relevant portion from the case of N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Salem Distt. and Ors., (Supra) is reproduced as under:

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election" and if any irregularities are committed which it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special Tribunal by means of an election petition and not be made the subject of dispute before any Court while the election is in progress.

25. Their Lordships of the Apex Court in the case of N.V.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal Salem Distt. and Ors. (supra) has again proceeded to hold as under:

(18) The points which emerge from this decision may be stated as follows : (1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. (2) Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special Tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.

26. This principle of law enunciated by N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal Salem Distt. and Ors. case has been followed by a Constitution Bench of Hon"ble Supreme Court in a case in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , in the following words:

3. The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other things necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete

Justice within the parameters set by the existing law.

27. Keeping in view the provisions contained u/s 25 of the Societies Registration Act referred hereinabove, petitioners have got statutory remedy under Sub-section (1) of Section 25 of the Act to ventilate their grievance. Accordingly, on account of availability of alternative statutory remedy to approach the competent authority under Sub-section (1) of Section 25 of the Act, it cannot be said that the petitioners are the remediless.

28. The law emerges from the discussion made hereinabove is that once the election process is started which includes the preparation of electoral roll, then ordinarily High Court should not invoke extraordinary jurisdiction of Article 226 of the Constitution of India and the aggrieved party shall have a right to challenge the outcome of the election in pursuance to the provisions contained in the Societies Registration Act or any other law time being enforced. The outcome of the election may also not be impugned under extraordinary jurisdiction of Article 226 of the Constitution of India in case the remedy to file an election petition or any other remedy under the Act or Statutes is available to an aggrieved person.

29. In view of above, since, by the impugned order the Deputy Registrar, has finalised the voter list and notified the election, the present writ petition shall not be maintainable.

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, a Joint Registrar, Deputy Registrar, or Assistant 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.

31. The State Government by the notifications dated 20.7.1981, 7.1.1982, 31.7.1985, 24.1.1987, 6.7.1991, followed by another notification dated 29.10.1991, has delegated the work of Registrar to the Deputy Registrar or Assistant Registrar of the respective regions or districts. In view of the delegation of power by the State Government in pursuance to the power conferred by Section 21 of the Societies Registration Act, the Deputy Registrar or the Assistant Registrar of the regions or districts or as the case may be, have got power to discharge all the statutory duties provided under the Societies Registration Act. Once the State Government has delegated the power to the Deputy Registrar or the Assistant Registrar of the respective regions or the districts then the Registrar, Firms, Societies and Chits, U.P., Lucknow, has got no jurisdiction to interfere with the discharge of statutory duties by the Deputy Registrar or the

Assistant Registrar while proceeding with the controversy. The supervisory power vested in the Registrar does not seem to include to pass an order staying the election process or to summon the record and usurp the power of the Deputy Registrar or the Assistant Registrar. Of course, in case, it is brought into the notice of the Registrar relating to some malpractice, fraud or the corrupt practice by the Deputy Registrar, then in such situation, Registrar, Firms, Societies and Chits may transfer the proceeding to some other Deputy Registrar or the Assistant Registrar having the Jurisdiction to discharge duties u/s 21 of the Societies Registration Act. Corollary to that the Registrar does not have got jurisdiction to rescind or modify the order passed by the Deputy Registrar or the Assistant Registrar while discharging the statutory duties. The Registrar does not possess the appellate power under the Act to rescind the decision taken by the Deputy Registrar or the Assistant Registrar as the case may be. It is a settled law that the power of appeal or review or revision are the statutory powers and in the absence of any specific provision under the Act or Statute, the authorities have got no Jurisdiction to exercise such powers.

32. In the present case, once the election was notified by the Deputy Registrar, Kanpur Region, Kanpur and he had passed the impugned order after providing the opportunity of hearing to the parties, then it was not incumbent on the Registrar to interfere with the election process by passing the impugned orders dated 21.3.2006, followed by the order dated 23.3.2006, impugned in W.P. No. 1498 (M/S/2006. The order impugned in the Writ Petition No. 1498 (M/S)/2006 does not disclose any-commission of corrupt practice, fraud or any action which may amount to exceeding of Jurisdiction by the Deputy Registrar. The complainants who had approached the Registrar, Firms Societies and Chits, U.P., Lucknow, were given the ample opportunity by the Deputy Registrar to raise their grievance by submitting representations. The impugned order challenged in the Writ Petition No. 1446 (M/S)/2006 was passed by the Deputy Registrar after providing the reasonable opportunities to parties while finalizing the electoral roll and notifying the election. Accordingly, the interference by the Registrar with the election process seems to be an act of exceeding of jurisdiction and is not sustainable under the law.

33. One of the grounds raised by the petitioners' counsel in W.P. No. 1498 (M/S)/2006 is that since the controversy is pending before the prescribed authority, the Deputy Registrar or the Registrar should not have passed the impugned orders questioned in the present writ petition. The arguments advanced by the learned Counsel for the petitioners seems to be misconceived. Admittedly, the election of the Committee of Management was held in the year 1993 and its term expired in the year 1996 as discussed and held hereinabove. No validly elected Committee of Management is continuing in office since 1996. u/s 25 of the Act reproduced hereinabove, either the Registrar suo motu or on the grievance raised by the 1/4 members of the society a dispute may be raised in respect of the election or continuance of office of office bearers of the society. In the present case, no election has been held since 1996. Accordingly, neither any

member of executive body or any office bearer is occupying any office of the society in question in accordance to law, hence, the exercise of power u/s 25 of the Act by the certain members after lapse of almost 10 years seems to abuse of process of law. When there is no validly elected Committee of Management or its office bearers are continuing in office on the basis of the election held in accordance to the bye-laws of the society, then no right shall accrue to any person or member of the society to raise the election dispute u/s 25 of the Societies Registration Act.

In the present case, from the letter dated 23.2.2006, filed as Annexure-20 and letter dated 9.3.2006, filed as Annexure-22 to the Writ Petition No. 1498 (M/S)/2006, it appears that steps were taken to raise a dispute u/s 25 of the Societies

Registration Act is based on unfounded facts. The election dispute u/s 25 of the Act relating to continuance of members or office bearers may be raised only immediately after election or the within the reasonable period from declaration of election result and not otherwise.

34. In view of above, the ground raised by the petitioners' counsel to interfere with the impugned orders on the basis of the alleged letters sent to the Deputy Registrar or the letter sent by the prescribed authority does not seem to be sustainable under law. There appears to be an act of abuse of process of law on the part of certain persons. Moreover, once this Court by the earlier judgment referred hereinabove has already directed to hold election on the basis of the membership fees deposited upto 31.12.2002, then there is no justification to raise a dispute under Sub-section (1) of Section 25 of the Societies Registration Act. A dispute under Sub-section (1) of Section 25 of the Act may be raised within the reasonable period from the date of declaration of the result.

Earned Counsel for the respondents has submitted that no free and fair election is likely to be held on account of involvement of certain interested anti-social elements. It was submitted that on account of political interference and by some anti-social elements, election is further likely to be prolonged and is not likely to be completed at an early date. In case, it is so, then it shall be the duty of the district administration to provide necessary police protection and ensure to hold a free and fair election of the society in question.

No other ground has been raised or argued by parties' counsel except the grounds discussed hereinabove.

35. In view of above, to sum up:

(1) Since, the petitioners have got alternative remedy to challenge the outcome of the election in accordance to the provisions contained in the Societies Registration Act and rules framed thereunder, the Writ Petition No. 1446 (M/S)/2006 is not maintainable.

It is a settled law that whenever the election process is initiated, ordinarily. High

Court should not exercise extraordinary jurisdiction of Article 226 of the Constitution of India to interfere with the election process. The election process includes the preparation of electoral roll. It is the further settled law that ordinarily a writ petition should not be entertained not only after initiation of election process but also after declaration of the election result, in case, an alternative statutory remedy is available to an aggrieved party to challenge the outcome of the result of the election by preferring an election petition or by any other method provided under the Act or Statute.

(2) The Deputy Registrar of the region or district discharges duties in pursuance to the delegation of the power provided u/s 21 of the Act by the State Government. Once, the election process was initiated by the Deputy Registrar by finalizing the electoral roll then the Registrar, Firms, Societies and Chits was having no jurisdiction to interfere with such election process. The Deputy Registrar or the Assistant Registrar of the respective regions or districts discharges the delegated duties of the Registrar conferred by the State Government. The Registrar has got no power to withdraw such rights or interfere with such duties assigned to the Deputy Registrar or the Assistant Registrar by the State Government.

36. In view of above, the Writ Petition No. 1446 (M/S/2006 does not seem to be sustainable under the law and is liable to be dismissed. The Writ Petition No. 1498 (M/S/2006 deserves to be allowed as the Registrar, Firms, Societies and Chits, U.P., Lucknow, has interfered with the functioning of the Deputy Registrar and with the said election process.

In view of above, the Writ Petition No. 1446 (M/S/2006 is dismissed with no costs. The Writ Petition No. 1498 (M/S/2006 is allowed accordingly. A writ in the nature of certiorari is issued quashing the impugned orders dated 21.3.2006 followed the order dated 23.3.2006, as contained in Annexures-23 and 25 to the Writ Petition No. 1498 (M/S/2006 with consequential benefits. Opposite 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)/2006.

Let the necessary exercise be done by the Deputy Registrar, Firms, Societies and Chits, Kanpur, expeditiously and preferably within a period of 3 months from the date of receipt of certified copy of this order. Since, no validly elected Committee of Management is continuing in the society in question, the District Magistrate, Kanpur, is directed to nominate immediately a Class-I Officer of the district as Receiver to discharge the routine duties of the society in question namely Muslim Association, Kanpur. The Receiver so appointed shall continue till the final outcome of the election of the society.

The District Magistrate as well as Senior Superintendent of Police, Kanpur, are further directed to make necessary security arrangement for a peaceful, free and fair election of the society in question.