
(2009) 05 AHC CK 0728
In the Allahabad High Court
Case No : Special Appeal No. 273 of 2009

Govind Agarwal

APPELLANT

Vs

Committee of Management and Others

RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0728

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Allowed

Judgement

S.N.H. Zaidi, J.—This special appeal challenges the order dated 8.4.09 passed by the learned Single Judge, by means of which the elections said to have been conducted by the appellant as well as by the contesting respondent, Lakhan Lal, have been found to be invalid and the orders dated 23.1.09 passed by the Regional Committee recognizing the elections held by the appellant on 18.1.08 and the order passed by the District Inspector of Schools dated 27.1.09, by means of which the signatures of Govind Agarwal, the present appellant were attested, have been quashed. A further direction has been issued to the District Inspector of Schools, Faizabad to hold the elections through Prabandh Sanchalak, who shall be appointed by the District Inspector of Schools within a period of 15 days and thereafter elections shall be held within two months after finalising the list of members. The Prabandh Sanchalak has been authorised to manage the affairs of the institution, till the elections are held.

2. The controversy involves the determination of right to manage the affairs of the institution between the two rival claimants, namely, the Committee, which is represented by Govind Agarwal, the present appellant, and the Committee, which is said to be represented by Lakhal Lal.

3. The brief narration of chronological events will reflect the nature of dispute and rights of the parties to look after the affairs of the institution.

4. In the year 1953, a Society in the name of Kundan Lal Kedar Nath Asharfi Devi

Vidyalaya Association, was registered at file no. I5633 under the provisions of the Societies Registration Act, in order to run an intermediate college i.e. Kundan Lal Kedar Nath Asharfi Devi Inter College, Mazaruddinpur, Faizabad (hereinafter referred to as the institution). With effect from 10.10.75, the provision of renewal of the Society was introduced vide U.P. Act No. 52 of 1975, which necessarily required the renewal of the registration, for each and every Society within a period of two years, failing which the Society would cease to remain a registered Society.

5. The Society registered in the year 1953 did not get its renewal and thus, became unregistered Society.

6. One Smt. Prem Lata claiming herself as President and Lakhan Lal as Manager of the Society, applied for registration of another Society in the name of Kundan Lal Kedar Nath Asharfi Devi Vidyalaya and got the registration done on 5.8.86 at file no. I86332. On 18.8.86, Prem Chandra Agarwal, namely, father of the appellant Govind Agarwal, moved the application for restoration of the original Society, which was registered at serial no. I5633 and which could not be renewed earlier. Upon the said application being moved, the Registrar, Chits Fund and Society perused the record and thereafter cancelled the registration of the Society registered by Smt. Prem Lata at file no. I86332 vide his order dated 6.7.87 by exercising his powers under Section 12D of the Societies Registration Act and directed for registration of the Society of Prem Chandra Agarwal. This registration was done at file no. I87727.

7. Smt. Prem Lata filed an appeal against the aforesaid order of registration before the Commissioner, who, vide his order dated 17.2.88 remitted the matter to the Prescribed Authority with an observation that the dispute relates to the status of the office bearer and the controversy sought to be resolved does not fall within the parameter of Section 12D. The matter was, therefore, referred to the Prescribed Authority under Section 25(1) of the Act.

8. The Prescribed Authority (Sub Divisional Officer, Bikapur) after considering the entire matter, came to the conclusion that the Society headed by Prem Chandra Agarwal, Manager, was the valid Society and accordingly recommended registration vide his order dated 3.10.91.

9. Aggrieved by the aforesaid order, Smt. Prem Lata filed Writ Petition No. 1939 of 1991, in which no interim order was passed in her favour and rather in the interim order dated 11.10.91, it was directed that in the meanwhile the person in whose favour renewal subsists shall continue to manage the institution, meaning thereby that Govind Agarwal was allowed to continue to manage the affairs of the institution.

10. Prem Chandra Agarwal got the registration renewed from time to time and in the meantime the Writ Petition No. 1939 of 1991 was got dismissed as withdrawn on 18.01.07.

11. Thus, according to the appellant, his Committee was the lawful Committee, having valid registration and consequently he had a right to manage the affairs of the institution.

12. Prem Chandra Agarwal held the elections of the Committee of Management and Govind Agarwal was elected as Manager.

13. During the pendency of the Writ Petition No. 1939 of 1991 Lakhan Lal and Smt Prem Lata moved an application under Section 12D of the Societies Registration Act in the year 2002 for renewal of Society originally registered in the year 1953 at file no. I5633 and also prayed for cancellation of the registration of the Society made in favour of Prem Chandra Agarwal. The Deputy Registrar rejected the said application on 21.8.02, against which Lakhan Lal and Smt. Prem Lata filed another Writ Petition bearing number 2574 (MS) of 2002, which is still pending but without any interim order.

14. The Society headed by Prem Chandra Agarwal was renewed.

15. Thereafter, the Joint Director of Education gave a show cause notice on 16.12.04 to Govind Kumar Agarwal saying that he was running the institution without getting the renewal of the original Society, as such, why authorised controller be not appointed. Despite reply being given, the Joint Director of Education appointed the District Inspector of Schools as Authorised Controller vide his order dated 11.3.05.

16. It is said that Lakhan Lal who was not the member of the Society and whose registration stood cancelled allegedly held the election and forwarded it to the District Inspector of Schools for its recognition. The District Inspector of Schools vide his order dated 18.9.05 referred the matter to the Regional Committee. The Regional Committee approved the election vide its order dated 21.12.05 but with a condition that newly elected Committee will get the renewal of the original Society.

17. Govind Kumar Agarwal filed Writ Petition No. 90 (MS) of 2006 against the order dated 21.12.05 passed by the Regional Committee, which is pending.

18. In pursuance of the order dated 21.12.05 aforesaid, Lakhan Lal again applied for renewal of the original certificate of registration, which was registered at file no. I5663 but the said application was rejected on 22.9.06 by the Deputy Registrar. The Deputy Registrar while rejecting the application of Lakhan Lal, observed that the said controversy stands decided on 21.8.02, in which the prayer for cancellation of the registration of the Society headed by Prem Chandra Agarwal was rejected and the writ petition filed against the said order was still pending, without any interim order. He further observed that till the Writ Petition No. 2574 (MS) of 2002 is finally disposed of, the claim of Lakhan Lal cannot be accepted and that the claim of Govind Agarwal is approved. The Deputy Registrar vide his letter dated 22.9.06 intimated this fact to the District Inspector of Schools.

19. Lakhan Lal filed Civil Suit No. 276 of 2006 for injunction after impleading Govind Agarwal alone. In the said Suit, ex parte injunction was granted on 1.11.06 but it continued only till 15.11.06 and later on, it was set aside by the competent court.

20. Lakhan Lal filed another Civil Suit bearing number 271 of 2006 for declaration i.e. declaring the Society registered at file no. I5633 of the year 1953 as Original Society and for cancelling the registration of the Society registered in favour of Prem Chandra Agarwal. The said suit is still pending before the civil court.

21. It appears that on 10.5.07, the authorised controller was appointed, aggrieved by which Lakhan Lal filed Writ Petition No. 2565 (MS) of 2007 but again he could get any interim order. The State later on vide order dated 23.7.07 permitted Govind Agarwal to continue as Manager. The said order and consequential order dated 3.8.07 have been challenged by Lakhan Lal in Writ Petition No. 4969 (MS) of 2007 but there is no interim order in the said writ petition. Govind Agarwal was again recognised as Manager of the institution.

22. As a result of the aforesaid recognition of Govind Agarwal as Manager, he continued as such and the Regional Committee attested his signatures and directed him to hold the election within three months. The elections were held by Govind Agarwal on 18.1.08 and the result of the same was intimated to the District Inspector of Schools. The District Inspector of Schools forwarded the said matter to the Regional Committee for its approval, who vide its order dated 8.8.08 refused to accord approval and again appointed Deputy Director of Education as authorised controller with a direction to hold fresh election. The order dated 8.8.08 became the subject matter of challenge in Writ Petition No. 4193 (MS) of 2008, which was disposed of vide order dated 1.9.08 with a direction that validity of the election dated 18.1.08 would be decided by the Regional Committee itself within three months.

23. The Regional Committee examined the matter and held that the election dated 18.1.08 were valid. This order was passed on 23.1.09. In pursuance of the order dated 23.1.09, the District Inspector of Schools attested the signatures of Govind Agarwal on 27.1.09.

24. Here it may be relevant to mention that one Sri Virendra Kumar and Laxmi Narayan also moved an application before the Registrar under Section 12D in the year 2008 for cancelling the registration of the Society registered in the name of Govind Agarwal, Manager, which remained pending. Thereafter Writ Petition No. 5515 (MS) of 2008 was filed by Virendra Kumar and another, which writ petition was also disposed of with a direction to the Deputy Registrar, Faizabad to decide the application under Section 12D in accordance with law, within a maximum period of two months from the date of the order.

25. In the present writ petition, out of which the special appeal arises, the orders passed on 23.1.09 by the Regional Committee and the order passed by the

District Inspector of Schools dated 27.1.09, were in issue.

26. The learned Single Judge has allowed the writ petition after taking note of the plea of both the sides that they have held elections on 18.1.08 and 6.11.08 respectively. The learned Single Judge also took note of the observations made by the Regional Committee that Lakhan Lal had not adduced any evidence to show that the election has been held by the original Society and further observed that the Society registered in the name of Govind Agarwal is altogether a new Society on a new registration number and the members of the two Societies are different and that the registration of a new Society in the same name and address is not permissible under law.

27. The learned Single Judge also noted that the proceedings under Section 12D of the Act are going on in regard to cancellation of the fraudulent registration obtained by Govind Agarwal on the strength of certain papers submitted by him. After making the aforesaid observations, the learned Judge further observed that the elections have not been held by both the parties under the observer and, therefore, no validity can be attached to the elections held by both the parties as they are warring groups within the Committee of Management and are trying to establish their superiority and control by one way or the other.

28. The Court also took into consideration that the last election held on 18.9.05 was recognised in favour of the respondent by the District Inspector of Schools and the Regional Committee and on that basis the respondents were managing the affairs of the institution. The Court further observed that though against the order dated 23.7.07 Writ Petition No. 4969 (MS) of 2008 was filed but the same is pending and, therefore, the claim of the appellant was under scrutiny of this Court. The proceedings under Section 12D were also going on and it appears that the appellant is not cooperating in the hearing and in spite of the order of this Court passed in Writ Petition No. 5515 (MS) of 2008, the said proceedings have not been decided uptillnow. The learned Single Judge has recorded a finding that the registration of the appellant being under scrutiny, no finality can be attached to the same. The elections held do not inspire confidence as they have not been held under the supervision of the observer.

29. Considering the aforesaid facts, the writ petition has been allowed.

30. The objection regarding the locus standi of Lakhan Lal to maintain the writ petition in view of the fact that he was not even a member of the Society as per the case of the appellant and that in the presence of two civil suits filed by him, the writ petition itself was not maintainable, was overruled by the learned Single Judge after holding that the civil suits related to the prayer of injunction, whereas in the present case, the signatures have been attested and so in regard to the attestation of the signatures, the writ petition would be maintainable.

31. We fail to appreciate the reasoning given by the learned Single Judge regarding maintainability of the writ petition in the presence of the two suits.

32. It cannot be disputed that if the petitioner to the writ petition, namely, respondent, Lakhan Lal in the instant case had filed civil suits for redressal of the same grievance, which is the substantial grievance of his right to manage the affairs of the institution and which suits are still pending, the writ petition for the same cause of action would not be maintainable, though relief may be couched in different language. It is the sum and substance of the relief claimed and the cause of action which accrued to Lakhan Lal for filing the suit and the writ petition would be relevant to find out as to whether the writ petition has been filed on different cause of action for a different relief or it is the same cause of action, in essence, and the same relief.

33. In civil suit no. 276 of 2006 for injunction, Govind Agarwal has been impleaded as defendant in which, time bound temporary injunction had been granted which continued only for a period of 15 days or so and thereafter, it was set aside by the competent court. The injunction was claimed on the basis of his right to manage the affairs of the institution in view of his own pleadings.

34. In the other civil suit no.271 of 2006, declaration has been sought, declaring his Society to be the original Society and to cancel the registration of Society in favour of Govind Agarwal.

35. The aforesaid pleadings and the reliefs claimed would reveal that in fact and in essence, the respondent Lakhan Lal was aggrieved by the registration made in favour of the Society of Govind Agarwal and that he was claiming his right to manage the affairs of the institution on the basis of the registration in his favour, claiming it to be registration of original Society, whereas in the present writ petition also, claim was that he was the only competent person to manage the institution and the order passed by the Regional Committee approving the election dated 18.1.08 in favour of Govind Agarwal was bad in law and that consequently, the order of attestation of signatures by the District Inspector of Schools was also illegal.

36. The learned Single Judge made a distinction in the reliefs claimed in the two suits as against the present writ petition, saying that in the present writ petition it is the attestation of signatures of Govind Agarwal by the District Inspector of Schools is in dispute and, therefore, it is separate cause of action.

37. It need not be reminded that attestation of signatures of Govind Agarwal by the District Inspector of Schools is a consequential act in pursuance of the order dated 23.1.09, by means of which the elections said to have been held electing Govind Agarwal as Manager have been recognised. Once the elections have been recognised by the Regional Committee, the District Inspector of Schools had no option but to attest the signature of Govind Agarwal. Thus, challenge to the consequent order, without challenging the order of Regional Committee dated 23.1.09 could not subsist nor can be maintained.

38. The consequent order of attestation of signatures is not the real cause of action, for which writ petition could be said to have been filed.

39. On this ground alone, the said writ petition could not be said to be maintainable.

40. In regard to the challenge to the order of the Regional Committee recognising the elections held in which Govind Agarwal was elected as Manager on 18.1.08, suffice it would be to mention that the Regional Committee was conferred the authority to look into the matter and decide the same in pursuance of the directions issued by the High Court in an earlier writ petition.

41. The order aforesaid takes into consideration that the Society said to have been registered in favour of Lakhan Lal is no more a registered Society as its registration already stands cancelled and the writ petition preferred against the said order in the year 1991 was dismissed as withdrawn in which an interim order was passed on 11.10.91 that the person in whose favour renewal subsists shall continue to manage the affairs of the institution and undisputedly he was not Lakhan Lal but Prem Chandra Agarwal, or Govind Agarwal.

42. Without entering into further details, in view of the admitted position that there is no registration in favour of the Society, which is said to be headed by Lakhan Lal till date, Lakhan Lal cannot claim any right to manage the affairs of the Society nor can be allowed to hold any elections and if any elections are said to be held by him, they are absolutely without any authority.

43. An unregistered Society would not have any right to hold the elections. It is a different matter that the proceedings for cancellation of the registration made in favour of Govind Agarwal is pending consideration before the Deputy Registrar but unless the appropriate order are passed in the said proceedings, no inference can be drawn about any illegality having been committed in registering the Society in the name of Prem Chandra Agarwal or Govind Agarwal.

44. The facts as they are and which are not disputed, reveal that it is only the Society of Govind Agarwal, which is registered and there is no registration of Society of Lakhan Lal.

45. The observation made by the learned Single Judge that there cannot be registration of the Society in the same name with different sets of members in the presence of the original Society, is an observation which appears to be made as an obiter, as the said matter is engaging attention of the Deputy Registrar, where the question would be decided, but to protect the parties from being effected by this observation either way, we clarify that the observation so made cannot be binding upon the authorities or on any other person, when the same was not in issue and he himself has observed that proceedings for cancellation of registration are going on in which appellant is not cooperating. If this observation is allowed to remain in order, it would certainly prejudice the case of one of the parties, namely, the appellant and, therefore, that observation not being relevant for deciding the controversy, the same cannot be sustained.

46. The other observations made with respect to the fraudulent action of the

appellant are concerned, they are also not relevant for the purpose as no such finding could have been recorded nor any such observation can be made, unless there were specific pleadings to this effect, moreso, when the dispute regarding the cancellation of registration of the Society of Govind Agarwal is pending before the competent authority.

47. In view of the fact that the Society of Lakhan Lal is not a registered Society and that the Regional Committee has given cogent reasons for approving the elections held on 18.1.08 in which Govind Agarwal has been elected as Manager, we do not find any reason for setting aside the said election on the aforesaid grounds, which are mere presumptions and to direct the control to be vested with the Prabandh Sanchalak and to hold the elections.

48. Once we have found that the Society of Lakhan Lal could not be said to have been registered, he has no locus standi to challenge the election held by Govind Agarwal, which have been approved by the Regional Committee.

49. We, therefore, set aside the order passed by the learned Single Judge and dismiss the writ petition.

50. We further direct that in view of the recognition of the elections held by Govind Agarwal by the Regional Committee and attestation of the signatures by the District Inspector of Schools, he shall be allowed to manage the affairs of the institution henceforth, subject to any order which may be passed in the proceedings pending before the competent authority for cancellation of registration made in favour of Govind Agarwal.

51. The special appeal is allowed.

52. Under the circumstances, costs would be easy.