
(2015) 08 AHC CK 0051
In the Allahabad High Court
Case No : Writ Petition No. 3266 (MS) of 2015

Hari Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 148, 149, 302, 379
Societies Registration Act, 1860 — Section 4

Citation : (2015) 9 ADJ 445 : (2015) 5 AWC 5191 : (2016) 1 ESC 234

Hon'ble Judges : Rajan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajan Roy, J—Heard Sri Raghvendra Singh senior counsel assisted by Sri Anurag Kumar Singh for the petitioner, Dr. L.P. Mishra, Advocate assisted by Sri Sharad Pathak, for opposite party No. 5, Sri S.K. Kalia Senior Advocate assisted by Sri Samir Kalia for opposite party No. 6, Additional Chief Standing Counsel for opposite parties 1 to 3 and Sri Ramesh Pandey for opposite party No. 4.

2. By means of this writ petition the petitioner claiming himself to be a member of the society known as Uttar Pradeshiya Prathmik Shikshak Sangh (hereinafter referred to as the society) has assailed the order dated 16.05.2015 passed by the Prescribed Authority/S.D.M. Sadar, Lucknow under Section 25(1) of the Societies Registration Act, 1860 in Case No. 11 of 2015 (Jabar Singh Yadav Vs. Hari Singh and others).

3. The facts of the case, in brief, are that there is a society of teachers, as named hereinabove. The elections to the committee of management of the said society were held on 29.10.2012. This fact has been asserted in para 7 of the writ petition and has not been denied, rather it has been admitted in para 8 of the counter affidavit of opposite party No. 5 though according to opposite party No. 5, subsequently another election has been held on 23.05.2015. The other

opposite parties have also not denied this fact.

4. In the elections held on 29.10.2012 the opposite party No. 5 was elected as President and opposite party No. 6 as General Secretary of the society. It appears that the said opposite parties were at logger heads with each other and certain resolutions were passed by the committee of management or the general body of the society, as the case may be, ousting them from the committee of management. These resolutions were passed at the behest of rival factions, one led by Lallan Misra (opposite party No. 5) and the other led by Jabar Singh (opposite party No. 6). Ultimately the matter went up to the Deputy Registrar who referred the dispute pertaining to office bearers of the committee of management of the society to the Prescribed Authority vide his letter dated 07.10.2014.

5. In the meantime the petitioner herein filed a writ petition before this Court bearing Writ Petition No. 8195 (MB) of 2013 seeking a writ of quo warranto against opposite party No. 5 herein as according to him the said opposite party had been convicted for a criminal offence under Section 302 and other sections of the Indian Penal Code in the year 1984 and, therefore, in view of the provisions of Section 16-A of the Societies Registration Act, 1860 (hereinafter referred to as the Act 1860) he was not legally entitled to hold the office of President of the society, more so, as he had obtained appointment as a teacher by concealing the aforesaid conviction. This Court disposed of the aforesaid writ petition on 26.11.2013 holding the same to be not maintainable but leaving it open for the petitioner to make appropriate application in accordance with the provisions contained in the Societies Registration Act, 1860 in such matters. The petitioner is said to have moved the Deputy Registrar, Firms, Chits and Societies, Lucknow (hereinafter referred to as Deputy Registrar) in this regard. However, as no order was passed on his application by the Deputy Registrar, he filed another writ petition bearing Writ Petition No. 2400 (MS) of 2014 which was disposed of vide order dated 20.08.2014 passed by this Court with a direction to the Deputy Registrar to pass appropriate orders on the petitioner's representation. The petitioner is said to have moved a representation before the Deputy Registrar on 23.08.2014 in pursuance to the aforesaid direction of this Court whereupon the Deputy Registrar passed an order dated 02.09.2014 directing the committee of management of the society to take action in accordance with law.

6. In the meantime, according to the petitioner, the committee of management passed a resolution on 14.07.2013 to remove opposite party No. 5 from the post of President which was communicated to opposite party No. 5. Consequently the vacant post of President was filled up by the committee of management by appointment of Sri Sanjay Kumar Mishra and the said decision along with amended list of office bearers of the committee of management is said to have been sent to the Deputy Registrar. The Deputy Registrar was also informed about removal of opposite party No. 5 from the post of President of the society vide letter dated 04.09.2014, which, according to the petitioner, had been approved in

the meeting of the general body of the society on 08.02.2014. Consequently the Deputy Registrar issued an order dated 16.09.2014 declaring the post of President of the society as vacant which was ultimately filled by the appointment of Sri Sanjay Kumar Mishra.

7. Opposite party No. 5 challenged the order dated 02.09.2014 passed by the Deputy Registrar before this Court by means of Writ Petition No. 5884 (MS) of 2014 which was decided by this Court vide order dated 17.09.2014. This Court while deciding the aforesaid writ petition opined that no cause of action had arisen to opposite party No. 5 to approach this Court as the Deputy Registrar had merely directed the society to act in accordance with Section 16-A of the Act 1860. The writ petition was held to be premature and was dismissed, however, with a direction to the society to take independent action in accordance with law after hearing the petitioner and other aggrieved persons. According to the petitioner the society had already taken a decision to remove opposite party No. 5 from the post of President and the said resolution of the society and the consequential order of the Deputy Registrar dated 16.09.2014 declaring vacancy on the post of President, were not placed before the Court.

8. Nevertheless consequent to order dated 17.09.2014 passed by this Court the Deputy Registrar vide order dated 19.09.2014 withdrew his earlier order dated 16.09.2014 declaring vacancy on the said post under the impression that now the society was to take a decision, though according to the petitioner the said decision had already been taken. According to the petitioner after passing of the order dated 16.09.2014 the opposite party No. 5 created a ruckus in the office of the Deputy Registrar for withdrawing the order, whereupon an F.I.R. was lodged by the Deputy Registrar.

9. Be that as it may, the opposite party No. 6, who is the General Secretary of the society and was at logger heads with opposite party No. 5, the alleged President, challenged the judgment of the learned Single Judge of this Court dated 17.09.2014 passed in Writ Petition No. 5884 (MS) of 2014 as also the order dated 19.11.2014 passed rejecting the review application filed by him, by filing Special Appeal Defective No. 753 of 2014. The order of the Deputy Registrar recalling his order dated 16.09.2014 was also challenged in the said appeal. All the parties were represented before the Division Bench of this Court in the Special Appeal filed by opposite party No. 6. The appeal was allowed vide judgment dated 23.12.2014 and the judgment dated 17.09.2014 passed by learned Single Judge in Writ Petition No. 5884 (MS) of 2014, the order dated 19.11.2014 passed on review application and the orders dated 02.09.2014, 16.09.2014 and 19.09.2014 passed by the Deputy Registrar were quashed and the parties were relegated before the Deputy Registrar who was directed to take into consideration the resolutions that had been relied upon by the appellant and respondent No. 4 therein (opposite party No. 5 herein) for removing each other. The Prescribed Authority was directed to decide the issue relating to disqualification of the respondent No. 4 therein as per Section 16-A of the Act

1860 and was also directed to assess and adjudicate the rival resolutions that had been set up by the appellant and respondent No. 4 therein against each other alleging their removal. Thus, there is no doubt that adjudication of the issue of disqualification of opposite party No. 5 in the light of Section 16-A of the Act 1860 was an issue referred to the Prescribed Authority for decision.

10. It is not out of place to mention here that after passing of the judgment by the Division Bench in the aforesaid special appeal the opposite party No. 6 moved an application before the Prescribed Authority before whom the reference made by the Deputy Registrar regarding rival claims and resolutions of opposite parties 5 and 6 was already pending and which had registered Case No. 9 of 2015, informing him about the judgment of the Division Bench whereupon the Prescribed Authority registered another case i.e. Case No. 11 of 2015 and the impugned order has been passed in this case.

11. It is worthwhile to mention here that the issue of disqualification of opposite party No. 5 was involved in Case No. 9 of 2015 as also 11 of 2015. Even though the Prescribed Authority registered two cases, the fact is that the question so far as disqualification of opposite party No. 5 in the light of Section 16-A is concerned, the same was common to both the cases.

12. Thereafter, it appears that the differences between opposite party No. 5 and 6, who were the two contesting parties till then in addition to the petitioner herein, subsided. Ultimately a meeting of general body of the society was called wherein it was decided to shelve the differences and hold the elections in the light of the decision taken by the general body of the society. The Prescribed Authority was informed accordingly whereupon he passed the impugned order on 16.05.2015 in Case No. 11 of 2015 disposing of the proceedings under Section 25(1) in the light of the consensus allegedly arrived at between the parties and the decision of the general body to shelve the dispute i.e. without adjudicating the issues on merits.

13. It has been informed by the learned counsel for opposite parties Nos. 5 and 6, both of whom are now sailing in the same boat having shelved their differences, that subsequent to the decision of the general body dated 19.04.2015 fresh elections have been held on 23.05.2015 wherein opposite party No. 5 has again been elected as President and opposite party No. 6 as General Secretary. Consequent thereto fresh list of office bearers had been submitted before the Deputy Registrar who was seized of the matter and considering the objections in respect thereof.

14. The contention of Sri Raghvendra Singh, learned senior counsel, appearing for the petitioner, was that Section 16-A of the Act 1860 imposes an obligation for adjudication of the question of disqualification of opposite party No. 5 consequent to his conviction in a criminal case way back in the year 1984 in the light of his election of President of the society in the elections held on 29.10.2012 and the Deputy Registrar could not have shelved the matter based

on some consensus arrived at between some of the parties, the petitioner not being a party to it, more so in view of the directions given by the Division Bench of this Court vide its judgment dated 23.12.2014, therefore, the Prescribed Authority clearly erred in law and on facts in disposing of the proceedings vide the impugned order. According to him the conviction of opposite party No. 5 was for an offence involving moral turpitude.

15. He also invited the attention of the Court to the Division Bench judgment to demonstrate that the counsel for the opposite party No. 5 had himself suggested to the Court that the Prescribed Authority was already seized of the matter on the reference made by the Deputy Registrar on 17.10.2014. The contention is that opposite party No. 5 having himself suggested before the Division Bench that the matter is pending before the Prescribed Authority and the Court having issued a direction to the Prescribed Authority to decide the issue relating to disqualification of opposite party No. 5 herein in the light of Section 16-A of the Act 1860, the Prescribed Authority had to decide the said issue necessarily and could not shirk the same.

16. He further submitted that the subsequent election dated 23.05.2015 was a farce as admittedly the earlier elections having been held on 29.10.2012 and the tenure being 3 years, the elected committee of management was bound to continue till 28.10.2015, the date which has not yet arrived. Therefore, there was no question of a decision being taken to hold the elections prior to it. The entire exercise has been done to pre-empt adjudication on the issue in question. The decision of the general body dated 19.04.2015 is also not sustainable in the light of the provisions contained in Section 16-A of Act 1860.

17. Dr. L.P. Mishra, learned senior counsel, appearing for opposite party No. 5, submitted that the writ petition at the behest of one individual qua the society is not maintainable. The petitioner herein is not a member of the society, rather he is member of another society. The Division Bench had ordered the Prescribed Authority to decide the question of disqualification of his client only because of the dispute pending before him regarding rival resolutions passed by the warring parties. Once the dispute relating to the said resolutions had been resolved amicably by the rival parties and the general body of the society had also resolved the matter by taking the decision to hold fresh elections, the Prescribed Authority rightly did not decide the reference on merits and disposed of the same by the impugned order. Moreover, two separate cases were registered i.e. Case No. 9 of 2015 and Case No. 11 of 2015. The order passed in Case No. 9 of 2015 has not been challenged. The decision of the general body dated 19.04.2015 had also not been challenged by the petitioner. Once the dispute referred by the Deputy Registrar to the Prescribed Authority vide order dated 07.10.2014 came to an end the petitioner herein could not pursue the proceedings before the Prescribed Authority as recourse to the said proceedings has been prescribed under the Act 1860 with certain conditions. Individual member cannot maintain a reference before the Prescribed Authority under Section 25(1). Such reference

can either be made by the Registrar or by 1/4th of the members of the society. Once the reference came to an end the petitioner cannot compel the Prescribed Authority to adjudicate the disqualification of opposite party No. 5 and this was certainly not the intention of the Division Bench which has to be understood in the context in which it was made. Moreover, fresh elections had taken place, therefore, the earlier elections and the dispute regarding the office bearers based on the said elections had become infructuous and could not be adjudicated any further. Once a decision had been taken by the Prescribed Authority then this writ petition is not maintainable and the only remedy available, if at all, was by way of a civil suit before the civil court. The subsequent elections dated 23.05.2015 had not been challenged. This Court will not create a jurisdiction which is not vested by the statute.

18. Dr. L.P. Mishra also contended that every conviction under the provisions of the Indian Penal Code or other provisions under criminal law does not necessarily involve moral turpitude. Section 16-A does not contemplate an automatic disqualification. The disqualification is dependent upon the conditions mentioned in the said provision, being satisfied. Even in the case of murder the offence may not involve moral turpitude as held by the Supreme Court and this Court in catena of decisions. After conviction the opposite party No. 5 had filed a criminal appeal wherein he had been enlarged on bail. The said criminal appeal is still pending, therefore, the conviction was not final as the appeal is continuation of the trial.

19. In support of his contentions Dr. L.P. Mishra relied upon the cases of (i) Supreme Court Bar Association and Others Vs. B.D. Kaushik, (2011) 11 SCALE 72 : (2011) 13 SCC 774 : (2011) 6 UJ 3736 , (ii) Prabhat Misra Vs. Jai Shankar Tripathi and others, reported in (1978) ALJ 672 , (iii) Satya Narain Tripathi and Ram Krishn Yadav Vs. State of U.P. and Mahendra Nath Dubey, (2008) 2 AWC 1320 , (iv) Baba Hulasi Das Sansthan and another Vs. D.R. and others, reported in (2013) 31 LCD 1102, (v) Sati Kumar Verma Vs. State of U.P. and others, reported in 2008u (72) ALR 449 , (vi) Raj Kumar Vs. State of U.P. and Others, (2008) 4 AWC 3665 : (2008) 3 UPLBEC 2478 , (vii) Shri Bhagwan Kaushik Vs. State of U.P. and Others, (2006) 5 AWC 4997 : (2006) 2 UPLBEC 1372 , (viii) Ranveer Singh Vs. State of U.P. and others, reported in 2013 (1) UPLBEC 393 , (ix) Committee of Management, Sri Kachcha Baba Inter College and Others Vs. Regional Committee Pancham Mandal and Others, (2008) 5 AWC 4434 , (x) Dr. P.P. Rastogi and Others Vs. Meerut University and Another, (1997) 1 UPLBEC 415 , (xi) Shiv Murti Verma Vs. State of U.P. and Others, (2011) 3 ADJ 755 : (2011) 3 AWC 2598 , (xii) Nagri Pracharni Sabha Vs. Vth Additional DJ, reported in 1991 Supp (2) SCC 36, (xiii) Udit Narayan Kshetriya High School Vs. D.M. Deoria, reported in 1993 ACJ 1293 , (xiv) Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, AIR 1959 All 71 , (xv) Kuldeep Singh Vs. State of Punjab, reported in AIR 1954 P. & H. 242 , (xvi) Pawan Kumar Vs. State of Haryana and another, (1996) 5 AD 1 : AIR 1996 SC 3300 : (1996) 73 FLR 1501 : (1996) 5 JT 155 : (1996) LabIC 1740 : (1996) 2 LLJ 703 : (1996) 4

SCALE 480 : (1996) 4 SCC 17 : (1996) 2 SCR 392 Supp : (1996) 2 SLJ 9 : (1996) 2 UJ 184 , (xvii) Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank, (2010) 127 FLR 16 : (2010) 8 JT 233 : (2010) 4 LLJ 297 : (2010) 8 SCC 573 : (2010) 9 SCR 796 : (2010) 5 SLR 352 , and (xviii) Smt. Akhtari Bi Vs. State of M.P., AIR 2001 SC 1528 : (2001) CriLJ 1727 : (2001) 2 Crimes 65 : (2001) 4 JT 40 : (2001) 2 SCALE 525 : (2001) 4 SCC 355 : (2001) 2 SCR 626 : (2001) 1 UJ 762 : (2001) AIRSCW 1236 : (2001) 2 Supreme 448 .

20. Sri S.K. Kalia, learned Senior Advocate, appearing for opposite party No. 6, supported the case of opposite party No. 5 and submitted that subsequent to the Division Bench judgment rendered on 23.12.2014 the general body of the society which is the highest body, had resolved the matter amicably in the meeting dated 19.04.2015. It had not found any ground for disqualification of opposite party No. 5 for being an office bearer of the society. It decided to hold fresh elections which had already been held on 23.05.2015. Therefore, the earlier dispute based on the earlier factual position consequent to the earlier elections had ceased to exist and there was nothing for the Prescribed Authority to decide. If any person was aggrieved he could approach the Deputy Registrar who was already seized of the matter under Section 4 of the Act 1860 in view of the subsequent elections dated 23.05.2015 and raise his objections there. If the Deputy Registrar finds it to be a genuine dispute then it is always open for him to refer the matter to the Prescribed Authority once again but no interference is called for with the impugned order by this Court.

21. Heard learned counsel for the parties and perused the records.

22. Section 16-A of the Societies Registration Act, as applicable in the State of Uttar Pradesh and as inserted vide Act No. 52 of 1975 with effect from 10.10.1975 reads as under:--

"16A. Disqualification for holding office in society.-- A person who is undischarged insolvent or who has been convicted of any offence in connection with the formation, promotion, management or conduct of the affairs of a society, or of a body corporate, or of an offence involving moral turpitude shall be disqualified for chosen as and for being a member of the governing body or the President, Secretary or any other office-bearer of a society."

23. From a reading of the aforesaid provision it is evident that disqualification as envisaged therein for being chosen as member of the governing body or President, Secretary or any other office bearer of the society or a person who is undischarged insolvent or who has been convicted of an offence in connection with formation, promotion, management or conduct of the affairs of a society or of a body corporate, or of an offence involving moral turpitude, is not automatic. There has to be a determination by the concerned authority about the factors mentioned in the said provision. Conviction in respect of every offence may not necessarily involve moral turpitude.

24. Section 16-A imposes a statutory obligation upon the concerned authority

whether it be a general body of the society or its committee of management, as the case may be, under the bylaws of the society, or the Prescribed Authority under Section 25(1) of the Act 1860 to decide the question of disqualification contemplated therein for holding office of the governing body of a society. The object behind the aforesaid provision is that a person who has been convicted for any offence relating to the factors mentioned therein should not have any say in the management of the society by virtue of being a member in its governing body by whatever name called.

25. Recently a 7 Judges Bench of this Court in re: Zila Adhivakta Sangh Allahabad, PIL No. 15895 of 2015, considered the provisions of Section 16-A of the Act 1860 while considering the case of the Bar Associations of the District Courts and High Court which are also societies registered under the Societies Registration Act, 1860, passed an interim order dated 25.04.2015. The relevant extract of the said order is quoted hereinbelow:--

"The stream of justice, both in the District Courts as well as in the High Court must be unpolluted. Law has always been regarded as a profession for the respectable. The control of the Bar must be with genuine advocates. Where this is doubted, the credibility of the Bar Associations may be in question. Hence, it is necessary for the Court to lay down parameters which are consistent with the provisions of the Act of 1860 to ensure that persons who are convicted of offences involving moral turpitude shall stand disqualified if they are already office bearers of a Bar Association and if they are not already office bearers, that they would not be permitted to contest elections to a Bar Association.

Section 16A of the Act of 1860 provides as follows:

"16A. Disqualification for holding office in society.- A person who is an undischarged insolvent or who has been convicted of any offence in connection with the formation, promotion, management or conduct of the affairs of a society, or of a body corporate, or of an offence involving moral turpitude shall be disqualified for chosen as and for being a member of the governing body or the President, Secretary or any other office bearer of a society."

Section 16A was introduced by way of a State amendment to the Act of 1860 by U.P. Act No. 52 of 1975. A person who has been convicted of an offence involving moral turpitude stands disqualified for being chosen as a member of a governing body or the President, Secretary or any other office bearer of the society. Having regard to this clear mandate, we are of the view that the provision of law must be enforced, both in regard to Bar Associations at the High Court as well as Bar Associations in the District Courts of the State."

26. The observations made in the context of Bar Associations and advocates in the aforesaid order to a great extent hold true in relation to the functioning of the societies and its office bearers herein also for the reason the society in question is of teachers and the Societies Registration Act, 1860 has been made by the Parliament for registration of literary, scientific and charitable societies.

The societies registered thereunder pursue literary, scientific and charitable goals.

27. The preamble to the said Act (Act 1860) states "whereas it is expedient that provision should be made for removing the legal condition of societies established for the promotion of literature, science or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education or for charitable purposes, it is enacted." The entrustment of the responsibility of management and governance of the affairs of a society in the hands of a person who is convicted of a criminal offence involving any of the factors mentioned in Section 16-A would not be in consonance with the objects of the Act 1860 nor with the objects of the society registered thereunder and would also not be in the interest of the affairs of the society itself. It is with this object in the mind that Section 16-A appears to have been inserted in the Act 1860.

28. It is not in dispute that opposite party No. 5 was convicted under Sections 302, 148, 149, 379 IPC. Whether or not the conviction in question involves moral turpitude is not for this Court to consider but it will have to be considered by the concerned authority, if this Court ultimately arrives at a conclusion that the conviction needs adjudication.

29. It is not in dispute that in the year 1985 the opposite party No. 5 was appointed as a teacher and based thereon he became a member of the society in question, namely Uttar Pradeshiya Prathmik Shikshak Sangh. It is inexplicable as to how he came to be appointed as Assistant Teacher in the year 1985 after his conviction in the year 1984. According to the petitioner the opposite party No. 5 concealed the fact of his conviction, though as per opposite party No. 5 this objection has already been considered by the authorities subsequently and considering his enlargement in appeal no further action has been taken. Be that as it may, the said question is not directly involved in the present case though it is an issue which needs to be gone into by the concerned authority. Leaving it at that, this Court proceeds to consider other relevant issues.

30. The election was held on 29.10.2012. This is also a fact which is not in dispute. The opposite party No. 5 was elected as President and the opposite party No. 6 was elected as General Secretary in the said election. Both of them were at logger heads with each other at the relevant time. The faction led by opposite party No. 6 claimed that resolutions were passed by the general body of the society removing opposite party No. 5 from the governing body on the ground of his aforesaid conviction. The faction led by opposite party No. 5, on the other hand, claims that the committee of management/general body of the society had removed opposite party No. 6 and as required under Section 4 of the Act 1860 a list of office bearers was filed before the Deputy Registrar.

31. The matter ultimately went before the Deputy Registrar on 07.10.2014 who referred the dispute under Section 25(1) to the Prescribed Authority as doubts had been created on the continuance of the respective office bearers of the committee of management/governing body of the society. While this dispute was

pending the petitioner herein filed a writ petition [WP No. 8195 (MS) of 2013] seeking a writ of quo warranto against opposite party No. 5 which was dismissed with the following observations:--

"The controversy in question seems to be between the petitioner and private society and not between the State Government. Hence, the present writ petition under Article 226 of the Constitution of India is not maintainable. A writ in the nature of quo-warranto can also not be issued against the opposite party No. 5 by this court since he is not holding a public office. Since, the opposite party No. 5 is the President of a society registered under the Societies Registration Act, option is open to the petitioner to move appropriate application in accordance to the provisions contained in Societies Registration Act to the statutory authority and in case it is found that due to criminal antecedent, the opposite party No. 5 is not entitled to hold the office in question in view of the provisions contained in Section 16-A of the Societies Registration Act, then it is for the Registrar/Deputy Registrar of the Society concerned to look into the matter and to proceed in accordance with law. It is not for this court to interfere with the matter. Accordingly, we give liberty to the petitioner to approach the statutory authority or forum under the Societies Registration Act to ventilate his grievance."

32. In the circumstances already narrated in the earlier part of this judgment when nothing was done by the Deputy Registrar the petitioner filed another writ petition bearing W.P. No. 2400 (MS) of 2014 which was disposed of by this Court on 20.08.2014 by the following judgment:--

"This writ petition has been filed with the following reliefs:-

"1) Issue a writ, order or direction in the nature of Mandamus commanding the opposite party No. 2 to take immediate decision with regard to removal of opposite party No. 3 from the post of President of Pradeshia Shikshak Sangh within time framed in compliance of the order dated 26.11.2013 passed by this Hon"ble Court, contained as Annexure No. 5 to the writ petition.

2) Issue a writ, order or direction in the nature of mandamus commanding the opposite party No. 2 to seize the power of opposite party No. 3 until matter pending before him is decided.

3) Issue any other writ or direction in the nature of mandamus as this Hon"ble court may deem fit under the facts and circumstances of the case.

4) Allow the writ petition with cost against the opposite parties."

After hearing learned counsel for the petitioner and learned Standing Counsel, this writ petition is disposed of with a direction to the Deputy Registrar (Firm and Societies), Lucknow Division, Lucknow to pass appropriate order on the representation of the petitioner within a period of one month from the date of production/receipt of a certified copy of this order along with fresh representation."

33. On 02.09.2014 the Deputy Registrar directed the committee of management of the society to take a decision in the matter.

34. Certain resolutions are said to have been passed on 25.06.2013 regarding disqualification of opposite party No. 5 which are said to have been communicated to the Deputy Registrar who on 16.09.2014 declared the post of President of the Society as vacant which led to the filing of Writ Petition No. 5884 (MS) of 2014 by opposite party No. 5 which was dismissed on 17.09.2014 by the following order:--

"Heard Dr. L.P. Misra, learned counsel for petitioner and Sri Bagesh Shukla for respondent.

Petitioner does not want to press relief clause No. (b) relating to declaration of Section 16-A of the Registration of Societies Act, 1860 as ultra vires.

Dr. L.P. Misra has seriously assailed the order dated 2.9.2014 passed by Deputy Registrar directing the U.P. Primary Teachers Association to take appropriate action in the light of Section 16-A of the Act.

It appears that petitioner was convicted under Section 302 IPC. Against the conviction, criminal appeal is pending in this Court. In the meantime, respondent challenged his continuance as President of society. This Court directed Deputy Registrar to pass appropriate order on the representation of petitioner. Deputy Registrar obtained some legal opinion from Standing Counsel of this Court who opined that moral turpitude occurring under Section 16-A of the Act covers the cases under Section 302 and 149 IPC. This part of the opinion has been seriously assailed by Dr. L.P. Misra contending that in every case moral turpitude would not be involved. I find from the order that Deputy Registrar has recorded no finding. He merely directed the society to act in accordance with Section 16-A of the Act. He has not given any finding with regard to involvement of moral turpitude in the case of petitioner.

In view of these circumstances, no cause of action has arisen to approach this Court. Writ petition is premature and is liable to be dismissed. However, it is directed that society would take independent action in accordance with law after hearing petitioner and other aggrieved persons.

Writ petition is dismissed."

35. Consequent thereto the Deputy Registrar vide order dated 19.09.2014 recalled his earlier order dated 16.09.2014. A review petition was filed by opposite party No. 6 for review of the judgment dated 17.09.2014 but the same was dismissed on 19.11.2014.

36. Thereafter the entire controversy went before the Division Bench of this Court in Special Appeal Defective No. 753 of 2014 filed by opposite party No. 6 challenging the judgment dated 17.09.2014 passed in Writ Petition No. 5884 (MS) of 2014 and the judgment dated 17.11.2014 passed on the review petition.

37. A perusal of the judgment dated 23.12.2014 passed by the Division Bench in the aforesaid special appeal reveals that it considered the entire factual background and the issues relating to the dispute regarding the office bearers of the society including rival resolutions passed by the rival factions. The provision of Section 16-A of the Act 1860, the conviction of opposite party No. 5 and the orders passed by this Court in various writ petitions were considered by the Division Bench in the aforesaid special appeal. The Division Bench opined firstly that the Deputy Registrar could not have decided the dispute relating to continuance of office bearers of the committee of management of the society; secondly the rival parties had passed resolutions removing each other from the office; thirdly the question of disqualification of the opposite party No. 5, Lallan Mishra, in view of his earlier conviction required adjudication in the light of Section 16-A and also that there was no such adjudication after hearing the parties; fourthly while passing the orders dated 02.09.2014 and 16.09.2014 Sri Lallan Mishra, opposite party No. 5 herein had not been heard; fifthly the learned Single Judge erred in passing the order dated 20.08.2014 in Writ Petition No. 2400 (MS) of 2014 by issuing a direction to the Deputy Registrar for adjudicating the controversy as no jurisdiction could be conferred upon an authority which it otherwise does not possess under the Act; sixthly if there was a claim or counter claim to the effect that the society had already passed a resolution, as urged by the contesting opposite party No. 6, there was no occasion for this Court to issue any direction to the society to take independent decision in the background of the case. Accordingly the Division Bench held the directions given in the judgment dated 17.09.2014 to be misplaced. The Division Bench, thereafter, recorded a clear opinion as under:--

"In our considered opinion, neither the Deputy Registrar had any authority to proceed in the matter nor could the learned Single Judge have issued directions to the Society to take any action in view of the background of the case where both parties were contending that action had already been taken by the Society which required adjudication. This adjudication, therefore, was to be done by the Prescribed Authority. In these circumstances, the appeal deserves to be allowed and all the orders either impugned or otherwise deserve to be quashed."

38. The operative portion of the judgment dated 23.12.2014 passed by the Division Bench in the aforesaid special appeal reads as under:--

"Consequently the appeal is allowed. The impugned judgment dated 19.11.2014 is set aside. The direction given in the impugned judgment dated 17.09.2014 to the Society to take appropriate action that extent is set aside. The orders passed by the Deputy Registrar dated 2.9.2014, 16.9.2014 and 19.9.2014 are also quashed. Thus, all the parties shall now stand relegated before the Prescribed Authority who shall take into consideration the resolutions that have been relied upon by the appellant and the respondent No. 4 for removing each other. The Prescribed Authority shall decide the issue relating to the disqualification of the respondent No. 4 as alleged as per Section 16-A of the 1860 Act and shall also

assess and adjudicate the rival resolutions that have been set up by the appellant and the respondent No. 4 against each other alleging their removal. This decision shall be taken by the Prescribed Authority preferably within three months from the date of production of certified copy of the order."

39. On a reading of the aforesaid judgment dated 23.12.2014 passed by the Division Bench this Court is of the firm view that the matter went out of the pale of the Deputy Registrar as also the committee of management and the general body of the society once the said judgment was passed by the Division Bench. Consequent thereto it was not open for the general body of the society to have considered the aforesaid question regarding disqualification of opposite party No. 5 in the light of Section 16-A of Act 1860, therefore, to that extent the decision of the general body of the society dated 19.04.2015 cannot be sustained. The fact that it is not specifically under challenge is meaningless as it is clearly in the teeth of the aforesaid Division Bench judgment.

40. A careful perusal of the Division Bench judgment leaves no doubt that as the said appeal arose out of the writ proceedings in Writ Petition No. 5884 (MS) of 2014 filed by opposite party No. 5 challenging the order dated 02.09.2014 passed by the Deputy Registrar directing the committee of management of the society to take a decision regarding disqualification in view of Section 16-A and the earlier direction of this Court in the writ petition filed by the petitioner herein i.e. Writ Petition No. 2400 (MS) of 2014, the question to be considered by the Division Bench was whether the question of disqualification of opposite party No. 5 on the ground of his conviction in the light of Section 16-A of Act 1860 was liable to be adjudicated or not, and if so, then the authority competent to do so. True the rival resolutions passed by the concerned parties were also brought to the notice of the Division Bench wherein also the question of disqualification of opposite party No. 5 was in issue and the Division Bench also took note of the fact that these conflicting resolutions had also been referred to the Prescribed Authority, but the direction of the Division Bench to the Prescribed Authority to decide the issue relating to disqualification of opposite party No. 5 herein (respondent No. 4 in Special Appeal) as per Section 16-A of the Act 1860 was a positive direction in addition to the direction given for adjudicating the rival resolutions and it was not dependent on the latter issue. In fact the question before the Division Bench was regarding the disqualification of opposite party No. 5 but to do complete justice the Division Bench ordered adjudication of validity of both the rival resolutions and the disqualification of opposite party No. 5 herein.

41. In these circumstances not only Section 16-A imposes statutory obligation but the Prescribed Authority was also under an obligation under the directions of this Court as issued by the Division Bench, to adjudicate the issue on merits.

42. As far as the subsequent elections dated 23.05.2015 are concerned it is not in dispute that the last elections were held on 29.10.2012. The tenure of the committee of management under the bylaws of the society is 3 years, therefore, the committee of management elected on 29.10.2012 including opposite parties

5 and 6, was to continue till 28.10.2015 subject of course, to any disqualification etc. incurred. It being so, there was no occasion to hold the elections on 23.05.2015. Even if an election could be held prior to the expiry of the term no further action could be taken for submitting the list under Section 4 of the Act 1860 nor the new committee of management could take charge before 28.10.2015. Moreover, as already stated earlier in view of the observations/directions of the Division Bench the general body of the society could not have discussed nor decided the question of disqualification of opposite party No. 5 in its meeting dated 19.04.2015. This issue could only have been decided by the Prescribed Authority.

43. For the facts and reasons mentioned hereinabove no mileage can be drawn by opposite parties 5 and 6 based on the general body meeting dated 19.04.2015 and the alleged elections held on 23.05.2015 so far as the adjudication of disqualification of opposite party No. 5 is concerned. Neither this issue has become infructuous nor redundant.

44. Normally such societies are private bodies and are left to take decision with regard to their private affairs subject of course, to adherence to the bylaws. But in this particular case the issue involved is referable to a statutory provision i.e. Section 16-A of Act 1860. It being so even the general body of the society cannot go against the statutory mandate/obligation. Assuming the general body could have considered the issue of disqualification of opposite party No. 5, though in view of the judgment dated 23.12.2014 it could not, it was not open for the general body in its meeting dated 19.04.2015 to have shelved the matter on the basis of alleged consensus or good will created during the meeting without considering the matter on merits in the light of the parameters laid down in Section 16-A. A bare perusal of the decisions of the general body dated 19.04.2015 discloses a clear attempt to scuttle the issue. There is no consideration worth the name in the light of Section 16-A. The object and purpose of Section 16-A cannot be allowed to be frustrated either by the society or by the Prescribed Authority in such a manner. Therefore, the contention of Dr. L.P. Mishra that the matter pertaining to rival resolutions which had been referred to the Prescribed Authority by the Deputy Registrar, having been resolved, the issue in question did not require any adjudication by the Prescribed Authority, cannot be accepted as it would amount to negating a statutory provision and nullifying the directions of the Division Bench of this Court dated 23.12.2014.

45. As far as the contention of Dr. L.P. Mishra that the petitioner is not a member of the society in question is concerned it has already been mentioned hereinabove that the petitioner had filed at least two writ petitions relating to the subject matter in issue which were decided by this Court. Neither the opposite party No. 5 nor any other person raised any dispute regarding membership of the petitioner by challenging the final orders passed by this Court in the said writ petitions in appeal. The petitioner was also a party in Special Appeal Defective No. 753 of 2015 in pursuance to which the Prescribed Authority was required to

take a decision in the matter but no objection was raised before the Division Bench also. It appears some objection had been raised before the Prescribed Authority but he has not recorded any such finding in the impugned order about the membership of the petitioner. The opposite party No. 5 filed an affidavit before this Court stating that the petitioner is member of some other society and is also office-bearer therein. The petitioner filed an affidavit in reply on the last date of hearing denying the said allegation. The petitioner has averred in the writ petition and has also filed an affidavit stating that he is a member of the society in question and has never submitted any subscription for membership of any other society. There is no reason for not considering the affidavit filed by the petitioner as far as the maintainability of this writ petition is concerned specially as the petitioner has been contesting the matter by filing various writ petitions earlier and was a party in Case No. 11 of 2015 decided by the impugned order, therefore, this writ petition at his behest is maintainable. The decisions holding that writ petition by individual member in matters relating to a society is not maintainable are not applicable to the facts of the present case. Considering the aforesaid background and also violation of the statutory provision by the Prescribed Authority in the proceedings wherein the petitioner was a party, this writ petition at the behest of the petitioner is maintainable specially as the ground of challenge herein is the violation of the statutory provision and the judgment of the Division Bench dated 23.12.2014 in proceedings wherein he was a party.

46. Considering the conviction of the opposite party no., 5 there is certainly a doubt regarding his continuance as an office-bearer of the society in view of Section 16-A of the Act 1860, therefore, the matter clearly falls within the ambit of Section 25(1) and this is the reason the Division Bench referred the matter to the Prescribed Authority vide its judgment dated 23.12.2014. Therefore, the contention of opposite party No. 5 to the contrary is unacceptable.

47. In the facts of the present case it cannot be said that the petitioner is acting against the interest of the society. In fact the adjudication is required on the issue in question in the interest of the society and it is in accordance with the legislative mandate contained in Section 16-A of the Act 1860. The petitioner has not raised any new dispute based on any fresh cause but is only aggrieved by the violation of the directions of the Division Bench contained in its judgment dated 23.12.2014 by the Prescribed Authority in the light of Section 16-A. The petitioner herein, the opposite party No. 5 and 6 and other opposite parties were parties to the aforesaid special appeal, therefore, it is not open for them now to resile from what has been stated in the said judgment nor to challenge the same in collateral proceedings nor to raise this issue in this writ petition. They are bound by the observations and directions of the Division Bench referred to hereinabove. If the opposite party No. 5 has any doubt regarding membership of the petitioner he may initiate appropriate proceedings in this regard as per law subject to his locus in this regard specially as now Section 4-B has also been inserted in the Act 1860. Irrespective of the question of membership of the

petitioner the Prescribed Authority was/is under an obligation to decide the question of disqualification of opposite party No. 5 under the directions of the Division Bench of this Court dated 23.12.2014 coupled with statutory obligation imposed by Section 16-A read with Section 25(1) of Act 1860 as it is a statutory obligation.

48. Considering the aforesaid facts and circumstances of the case discussed hereinabove and irrespective of the objection of the opposite party No. 5, this Court has ample powers under Article 226 of the Constitution of India to issue such direction to the statutory authority as may be necessary for implementation of statutory provision, as has already been done by the Division Bench in the earlier proceedings which have attained finality between the parties and are binding on them. It is no gain saying if the Registrar can refer the dispute to the Prescribed Authority this Court can also do the same. Reference may be made in this regard to the dictum of the Supreme court in the case of Bangalore Development Authority Vs. Vijaya Leasing Ltd. and Others, (2013) 5 AD 393 : AIR 2013 SC 2417 : (2013) 8 JT 417 : (2013) 3 RCR(Civil) 55 : (2013) 5 SCALE 651 : (2013) 14 SCC 737 : (2013) AIRSCW 3463 whereof is quoted hereinbelow:--

"17. Therefore, while exercising the extraordinary jurisdiction under Article 226 of the Constitution, the learned Single Judge came across the above incongruities in the proceedings of the Hon''ble Minister which resulted in the issuance of denotification dated 5.10.1999. We fail to note as to how the ultimate order of the learned Single Judge in setting aside such a patent illegality can be held to be beyond the powers vested in the constitutional court. The conclusion of this Court in Gujarat Steel Tubes case that judicial daring is not daunted when glaring injustice demands even affirmative action and that authorities exercising their powers should not exceed the statutory jurisdiction and correctly administer the law laid down by the statute under which the act are all principles which are to be scrupulously followed and when a transgression of their limits is brought to the notice of the court in the course of exercise of its powers under Article 226 of the Constitution, it cannot be held that interference in such an extraordinary situation to set right an illegality was unwarranted."

49. It being so the contention of Dr. L.P. Mishra and the judgments relied by him in this regard are of no help in the facts of the present case.

50. The question here is about compliance of the statutory mandate which cannot be allowed to be frustrated merely because the parties who were at logger heads earlier have now joined hands. The statutory mandate contained in Section 16-A cannot be allowed to be frustrated by consensus of the parties.

51. A perusal of the impugned order reveals that the only reason given by the Prescribed Authority for concluding the proceedings is the consensus arrived at between some of the parties. As already stated earlier it is not merely a private affair of a society but satisfaction of the statutory obligation imposed by Section

16-A read with direction of the Division Bench of this Court. It was not open for the Prescribed Authority to conclude the proceedings without adjudicating the question of disqualification and membership of opposite party No. 5 on merits. He clearly erred on this count.

52. As far as contention of Dr. L.P. Mishra that the order passed in Case No. 9 of 2015 had not been challenged, is concerned, this Court is of the considered view that the Division Bench had given an independent direction regarding adjudication of the issue of disqualification of opposite party No. 5 in the light of Section 16-A in addition to the adjudication of the the dispute relating to rival resolutions involving other issues. Therefore, even if some consensus had been arrived at with regard to the said case, it does not have any bearing on the issue referable to Section 16-A which was subject matter of Case No. 11 of 2015. No doubt, the case was registered on the application of Jabar Singh and not Hari Singh but these technicalities are absolutely irrelevant and insignificant. Whether or not a separate case should have been registered is absolutely immaterial. The crux of the matter is that adjudication was referred by the Division Bench vide its judgment dated 23.12.2014 to the Prescribed Authority in the light of Section 16-A, therefore, there has to be an adjudication on merits. Technicalities cannot be allowed to be used to serve the vested interests of the concerned parties.

53. The manner in which the affairs of the society are being conducted is evident from the facts of the present case. The opposite party No. 6 had initially raised the question of disqualification of opposite party No. 5 but he is now very conveniently sailing in the same boat with opposite party No. 5. Vested interests have had a free play. The statutory obligations cannot be allowed to be avoided nor the affairs of the society registered under the Act 1860 be allowed to run as personal fiefdoms at least in the context of the issue involved in the light of Section 16-A.

54. For the aforesaid reasons none of the decisions cited by Dr. L.P. Mishra come to his rescue.

55. For the reasons aforesaid the impugned order dated 16.05.2015 passed by the Prescribed Authority/S.D.M. Sadar, Lucknow, contained in annexure-1 to the writ petition is hereby quashed.

56. Learned counsel for the petitioner has informed the Court that hearing of the case had already taken place but in view of the interim order passed by this Court the decision had been deferred. Learned counsel for opposite party No. 5, on the contrary, informs that he has not been heard. Be that as it may, if hearing has already been concluded the Prescribed Authority shall pronounce his verdict within 15 days, if not, then he shall give notice to the concerned parties fixing the date of hearing as 25.08.2015. He shall proceed with the hearing on the said date and if necessary on the succeeding working days on day to day basis but not beyond 27.08.2015. Thereafter he shall pronounce his decision within next 15 days.

57. The question as to whether the offence for which the opposite party No. 5 has been convicted involves moral turpitude or not is open for consideration by the Prescribed Authority as per law. This Court has not expressed any opinion in this regard.

58. The writ petition stands allowed.