

(1996) 07 AHC CK 0106

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11540 of 1993

Jagdish Chandra Shastri

APPELLANT

Vs

Prescribed Authority and Another

RESPONDENT

Date of Decision : 22-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Societies Registration Act, 1860 — Section 25, 25(1), 25(2), 25(3)

Citation : (1997) 1 UPLBEC 242

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant; T.P. Singh, Pradeep Chandra and S.C., for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—By means of this writ petition the order dated 29-3-1993 passed by the Prescribed Authority u/s 25 of the Societies Registration Act, as applicable in U.P., has been challenged. The Prescribed authority while deciding the dispute u/s 25 of Societies Registration Act, 1860 (hereinafter referred to as the Act) purported to proceed for ascertaining the claim by rival parties and directed to produce the members supporting each other. It was observed that Sri Virendra Kumar Sisodia, had produced 16 members on 7-11-1992 four members on 22-1-1993 and three members on 15-2-1993, in respect of proceedings dated 6-1-1991, whereas Sri Jagdish Chandra Shastri (petitioner), has produced total nine members on 22-1-1993. The Prescribed Authority had come to a finding that there were "36" members in the Society.

2. Mr. Ashok Bhushan, learned counsel for the petitioner, contends that while deciding a dispute u/s 25 of the Act, the Prescribed Authority, is bound by law to decide the dispute. But, in this case, he has not decided any issue which are required to be decided u/s 25 of the said Act and had proceeded on extraneous consideration.

3. Sri T.P. Singh, learned counsel appearing on behalf of the respondents contends that there is no infirmity in the order impugned in the writ petition. The Prescribed Authority, has rightly decided the dispute in view of the facts and circumstances of the case. According to him, in the counter-affidavit the respondents have made out a case on the date when election was alleged to be held, no election at all had taken place. According to the respondents no election, as claimed by the petitioner, had ever taken place. Therefore, it is a case of doubt in respect of election. Sri T.P. Singh, contends that in the facts and circumstances of the case, it is not a dispute in respect of continuance in office bearers of such society. Therefore, according to him, the Proviso is not attracted. Sri T.P. Singh, further contends that the said Proviso clarifies only the dispute in respect of continuance in office bearers, inasmuch as the doubt in respect of election is completely distinct and different from the dispute in respect of continuance in office of an office bearer. The two parts are severable. The proviso does not apply to the first part i.e. with regard to doubt. According to him the Proviso applies only to the second part namely, with regard to the dispute. He further contends that since the decision in Section 25 is subject to Civil Court's decision, therefore, the method and manner, in which the decision was taken, cannot be questioned except by a civil suit. He further contends that from the affidavits in the proceedings u/s 25 of the Act it was contended by 23 members that there was no election held on the alleged date. The members were produced before the Prescribed Authority on different dates and all of whom supported the affidavits filed before him. Whereas only ten members out of "36" members has supported the contention of the petitioner that election had taken place. Therefore, the Prescribed Authority, was free to decide the question on the basis of evidence laid before him. Therefore, there is no infirmity in the order impugned in the writ petition.

4. Section 25 of the Act, as applicable in U.P. and the Societies Registration Act prescribes 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,

here 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 bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such office bearer has

been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iii) by any non-compliance with the provisions of any rules of the society."

5. An examination of the said section reveals that the Prescribed authority may decide in summary manner on a reference either made to it by the Registrar or by at least one fourth members of the society, registered in U. P. In case of any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society it may pass such orders in respect thereof as it deems fit. Thus the power to decide as enumerated is any doubt or dispute in respect of the election or any doubt or dispute in respect of continuance in office of an office bearer. The expression used in said section has not used or requires any other connotation so as to separate "doubt" or "dispute" in respect of an election or continuance in office.

6. In view of submissions made rules of interpretation is required to be referred to for ascertaining the correct position.

7. According to Blackstone the most fair and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are either the words, the context, the subject-matter, the effects and consequence or the spirit and reason of the law. A bare mechanical interpretation of the words and application of legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. It is a rule now firmly established that the intention of the Legislature must be found by reading the Statute as a whole. The principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole or not one of the parts is a saving clause or a proviso in order to control plain words. The practical utility of the above rule is more visible in construction of general words and in resolving inconsistencies by recourse to harmonious construction. When the words of a statute are clear, plain unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. Language which on its construction results in absurdity, inconsistency, hardships or strange consequences is ambiguous. The intention of Legislature is primarily to be gathered from the language used. A construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Court cannot add or mend and by construction make up deficiencies which are left in the Statute. The Court cannot read words into and an Act unless it is absolutely necessary to do so. Similarly it is wrong and dangerous to proceed by substituting some of the words for words of the Statute. The court cannot reframe the legislation for the reason that it has no power to legislate. The words of a statute when there is doubt

about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. When two interpretations are feasible the court will prefer that which advances the remedy and suppresses the mischief as the Legislature envisioned. In selecting out of different interpretations the court will adopt that which is just, reasonable and sensible rather than that which is none of those things.

8. On the basis of the above established principles, now I propose to proceed to analyse the section as a whole and interpret the same harmoniously which would be in consonance with the purpose and object and would further or advance the object and suppress the mischief.

9. Having regard to the above proposition, reading the section as a whole it is very difficult to accept the contention raised on behalf of the respondent in view of expression used in the section that "doubt" is related to election and dispute" is related to continuance in office. If such a distinction and separate meaning was intended to be given the Legislature would not have used such an expression. In order to achieve the meaning intended to be given by the respondent's counsel it is necessary to read the word "respectively" after the phrase "doubt" or "disputed" in respect of election or continuance in office bearer. In case word "respectively" is supplied by the court while interpreting the section, in that event such an interpretation would amount to refraining the legislation whereby the section would stand amended or modified. The Legislature neither waste word nor mince it. A plain and simple meaning of the expression including doubt or dispute in respect of the election or continuance in office of an office bearer. The simple meaning arrived at is with doubt or dispute in respect of the election of office bearer and doubt and dispute in respect of continuance in office of an office bearer.

10. It is also very difficult to accept as contended on behalf of the respondent that the Proviso is applicable only to one part and not to the whole part. The proviso is a proviso to Sub-section (1) which clarifies whole Sub-section which covers doubt or dispute in respect of both the election of office bearers and continuance in office of an office bearer.

11. The proviso makes it clear that it applies to the election as well. It is very difficult to agree with the respondents' contention that doubt is related to the election in view of proviso incorporating the expression election of an office bearer relates to election. Inasmuch as an office bearer continues or is entitled to continue in office only when he is elected through the election, and he continues in office till the election remains valid or held valid if disputed. Therefore, the continuance in office is correlated to and inter-dependent upon the election and the validity thereof. The election and continuance in office are inseparable. Therefore, there cannot be any distinction as has been sought to be drawn by the learned counsel for the respondent. Therefore, the proviso to Sub-section (1) is applicable in both the cases where there is doubt or dispute with regard to

election or doubt or dispute with regard to continuance in office.

12. The word "doubt" and "dispute" are also co-related. Doubt about the election is also a dispute that the election was held properly or validly or in other words it is a dispute with regard to the validity of election or existence of the election. The dispute is the result of doubt. However, the scope and ambit has been widened by incorporating the expression "doubt" which includes subjective dispute, which may not be objectively espoused. As soon as doubt and dispute is raised and the same is referred in the manner provided the jurisdiction of the Prescribed Authority u/s 25 is attracted. The Prescribed Authority is then required to decide in a summary manner such doubt or dispute. While deciding doubt and dispute the limitation that has been provided through proviso circumscribes the limit of power of the Prescribed Authority to set aside the election of an office bearer only when the Prescribed Authority is satisfied about the existence of any of the grounds mentioned in Clauses (a), (b) and (c). Now the Legislature in its wisdom had thought it fit to incorporate the limitation on the power of the Prescribed Authority to set aside the election only within the ambit and scope of the grounds mentioned in Clauses (a), (b) and (c) to the proviso. The provision has some similarity with regard to the provision for deciding the election dispute in other cases in other legislation. The power given u/s 25 of the Act is not all pervasive but restrictive as circumscribed by the proviso and exercisable only when the tests laid down in the proviso is satisfied.

13. On behalf of the respondent it is further contended that while election is an election of all the office bearers but continuance in office is related to an office bearer since proviso specified "the election of an office bearer", therefore, the proviso was never meant for applying to whole election but to an individual office bearer. If such a contention is accepted in that event in case continuance in office of more than one office bearer is doubted or disputed then only election of one office bearer can be set aside and not those of more than one. Inasmuch as the whole election may be a process but election elect individual office bearer. The election of each individual office bearer is separate and distinct from the election of others. The election of each individual office beaver may be separately doubted or disputed If election of each individual office bearer in doubted or disputed and thereby whole election is doubted or disputed the same cannot be outside the ambit of election of an office bearer. Inasmuch as the expression "election" of an office bearer does not preclude the doubt and dispute with regard to all office bearers, individually or collectively.

14. The word "election" has, by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both wide and a narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entired process culminating in a candidate being declared elected. In the case of *Sat Narayan v. Hanuman Prasad*, AIR 1945 Lah 85, it has

been held that the term "election" may be taken to embrace the whole procedure whereby elected member is returned whether or not it be found necessary to take a poll.

15. In the case of Harbans Lal and Others Vs. State of Punjab and Others, , it has been observed that the word "election" is of wide import and covers the whole procedure, right from the stage of inviting nomination papers upto that of taking poll and necessary subsequent steps for declaring the result. Though the whole election elects all the office bearer but it returns each individual office bearer separately. The election of an office bearer is distinct independent and separate from the election of another office bearer. The whole process of returning all the office bearer is a conglomeration of several election of each individual office bearer. Therefore, the election has to be referred to the election of an office bearer.

16. Therefore, such a strained meaning as contended by Mr. Singh, would be difficult to reconcile with the expression used in the section to the extent "doubt and dispute" in respect to election or continuance in office of an office bearer. Inasmuch as the said expression can be read as doubt and dispute in respect of election of an office bearer and his continuance in the office of such society.

17. The above interpretation, appears to me, is in consonance with the purpose and object of the legislation. The meaning interpreted above would further or advance the object and suppress the mischief as envisioned by the Legislature. Inasmuch as the object was to provide a summary remedy subject to decision of the civil suit. Legislature had never intended to make it all purvasive and that was the reason for circumscribing or restricting the scope to the extent as provided in the proviso.

18. Therefore, I am unable to persuade myself to agree with the contention advanced on behalf of the respondent, as has been sought to be advanced and as mentioned hereinbefore.

19. It is alternatively contended on behalf of the respondents that the present election could not be set aside since it does not come within the purview of the Proviso because the contingency, as has been raised in the facts and circumstances of the present case, does not fall within the ambit of any of the Clauses (a), (b) and (c) to the proviso. According to the respondent it was not an intention of the Legislature that if the very holding of the election is doubted or disputed then the prescribed authority would be powerless to entertain the same. Such an interpretation, according to the learned counsel for the respondents would render the Statute, unworkable and would not further the ends or serve the purpose for which the said section was incorporated.

20. The contention does not appear to be sound inasmuch as Clause (c) to the proviso provide that if the result of the election has been materially affected by any non-compliance with the provision or any rule of the society, in that event the election can be set aside. Hon"ble Gajendragad Kar, J. (as His Lordship then

was) in the case of Jabar Singh Vs. Genda Lal, , observed that, "the Tribunal has to decide whether the election of the returned candidate has been materially affected or not and that only mean that if any votes are shown to have been improperly accepted or any votes are shown to have been improperly refused or rejected the Tribunal has to make calculations on the basis of its decisions on these points and nothing more". Same principle equally applies in case of non-compliance of rules of the society governing election. In order to set aside an election two conditions must be fulfilled, (a) firstly, it must be shown that there had been improper reception, refusal or rejection of votes or nomination as the case may be, that there was non-compliance of the rules of the society governing the election ; and, (b) it must further be shown that as a consequence thereof the result of the election had been materially affected. While deciding the same it is to be borne in mind that it was the election which declared the result is the subject-matter of challenge. Therefore, it is the situation as obtaining on or at the time of holding the election is to be gone into and not a position subsequent thereto when the electorate or a part of it may change its mind.

21. In the present case, it has been alleged on behalf of the respondent that no election at all had taken place or in other word the process of election has not been processed through or gone into. Therefore, it is not at all a valid election. Therefore, the same is doubted. Now the rules of the society prescribes procedure for holding election, if the resolution is adopted by some of the members without following the procedure and election alleged to have been claimed in that event it can be said that there was no election, as is the case at hand. In other words there was no election because the resolution relating to the election was taken in non-compliance with the provisions of the rule of the society. Inasmuch as the election is to be held in a meeting. If no meeting is held and only a resolution is recorded in the minute books in that event such resolution has been made without holding a meeting which is non-compliance of the rules. If it is alleged that no election is held despite resolution being recorded it pre-supposes that the said election was held without notice to the members without convening a meeting without resolution for holding election, without preparing and finalising voters list and without casting any votes which ore all non-compliance of the rules of society. Therefore, the allegation that no election had taken place comes within purview of result of the election being materially affected by non-compliance of the provision of the rule of the society. The result of the election that has been alleged to be espoused by the petitioner, if there is non-compliance of the rules, admittedly is affected materially. Therefore, the proviso of Sub-rule (1) very much includes doubt regarding holding of election as well in its entirety namely, that of each individual office bearers even though alleged collectively.

22. With regard to the contention raised on behalf of the respondent that on the basis of evidence namely, 23 members who were produced before the Prescribed Authority conclusively proved that there was no election and that there was non-compliance of the rules and, therefore, there was satisfaction of the Prescribed

Authority within meaning or Clause (c) to Proviso to Sub-section (1) of Section 25. While opposing the said contention Sri Ashok Bhushan contended that record of the election shows that "17" members were present. Therefore, the members who were not present cannot vouch that there was no election and, therefore, it was not right on the part of the Prescribed Authority to believe their affidavits or their statement, as they did not have first-hand knowledge about the members present in the meeting and had vouched in favour of the petitioner that the election was duly held.

23. Be that as it may the election if takes place it has taken on a particular date. Section 25 of the Act does not empower the Prescribed Authority to ask the parties to parade its members before him and ascertain from such members as to who supports whom and thereby allow one of the party supported by majority members, in such parade, contrary to the result of the election disputed. In that event that would amount to another election before the Prescribed Authority, which is also not contemplated in the rule of the society. Section 25 does empower the Prescribed Authority either to hold election himself or to supervise the same. In view of Sub-section (2) if the election is set aside on account of satisfaction of the Prescribed as contained in the proviso in that event he has to call a meeting of general body for electing office bearers and such meeting may be directed to be presided over and conducted by the Registrar or any officer authorised by him. According to the rules of the society relating to meeting and election with necessary modification and if such general meeting is called in view of Sub-section (3) no other meeting can be called for holding election by any other authority or any other person. Therefore, the Prescribed Authority while on the basis of parade of the members decided that the respondents are entitled to continue in office contrary to the result of the election alleged to have been held by the petitioner, he over-stepped his jurisdiction. He can only direct the events, as enumerated in Sub-section (2) to take place. Section 25 does not contemplate parading of member and deciding on the basis of allegiance exposed in such parade. Inasmuch as there might be possibility of crossing of floor in between, which is not a ground to invalidate the election which have already taken place. There might be cases where such situation may arise. If such power is conceived u/s 25 to have been included in that event it would frustrate the purpose of holding election and validity of election would depend on the mercy of members who might cross the floor and it would be too dangerous a proposition to be included within the power of the Prescribed Authority. The Legislature can never had intended to such a situation inasmuch as in order to give finality to the election, procedure have been laid down.

24. Section 25 was incorporated by the Legislature out of its anxiety to maintain the sanctity of the election which finds expressions in the incorporation of the Proviso itself where grounds for setting aside the election has been restricted by Clauses (a), (b) and (c) with specific clarity. Section 25 envisages decision in a summary manner by finding out as to whether there was any corrupt practice by the concerned office bearer or where nomination of any candidate has been

improperly rejected or whether the result of election was materially affected by improper acceptance of any nomination or improper reception, refusal or rejection of any vote or receipt of any vote which is void or by any non-compliance with the provisions of any rules of the society. The Prescribed Authority has to ascertain these very aspects. He is not called upon to decide who has voted in whose favour and whether the vote cast in favour of one or the other. It can very well be decided by examination of ballot papers or other proofs produced. Therefore, it is not at all necessary to decide as to who has voted whom by affidavit or evidence produced before him. That will be wholly outside the ambit and scope and jurisdiction given to him. If such a dispute is raised, in that event the Prescribed Authority may direct production of the record and ask the persons supporting the election to prove that the election was validly held and also to allow the party objecting election to produce such material to dispute the case of the party supporting the election. But he cannot enter into the questions as to who has voted whom. He has to examine the existence of the grounds mentioned in the proviso and to satisfy himself about the same in order to render decision and not beyond.

25. In the present case it appears that no endeavour has been made by the Prescribed Authority to find out as to the existence of any grounds provided in the proviso. He has not recorded his satisfaction with regard to any of the grounds mentioned therein. On the other hand he had proceeded on the basis of affidavit and evidence of the members produced before him for deciding as to who has voted whom and had directed the party who challenged the execution to continue in office, without setting aside the election and without issuing the directions contained in Sub-section (2) wholly beyond his jurisdiction.

27. It is contended on behalf of the respondent that the decision u/s 2.5 of the Act is subject to the decision of the civil court. Therefore, in view of alternative remedy by way of civil suit the writ petition is not maintainable. But the same contention does not help the respondent in the facts and circumstances of the present case. Inasmuch as if an order appears to be without jurisdiction then High Court may in its discretion invoke writ jurisdiction despite remedy by way of civil suit is available. Alternative remedy is not an absolute bar. Here as has been observed the order is without jurisdiction. In the facts and circumstances of the case this is a fit case where the discretion should be exercised. Therefore, I am unable to accede to the respondents's contention about non-maintainability of the writ petition.

28. In that view of the matter the impugned order cannot be sustained and, as such, hereby quashed and a writ of certiorari do accordingly issue.

29. The Prescribed Authority, however, shall decide the dispute after giving opportunity to both parties in accordance with law in the light of observations made above within a period of three months from date a certified copy of this order is produced before the Prescribed Authority and a writ of mandamus do accordingly issue to the above extent.

30. In the result the writ petition succeeds and stands allowed.