
(2010) 05 AHC CK 0250

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21478 of 2010

Jamia Razviya Merajul Uloom, Chilmapur, District Gorakhpur
and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Societies Registration Act, 1860 — Section 25

Citation : (2010) 05 AHC CK 0250

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.

Jamia Razviya Merajul Uloom, Chilmapur, district Gorakhpur (hereinafter referred to as the "Society") and Mohd. Fakhruddin Khan, claiming to be its Secretary/ Manager, have filed this petition for setting aside the order dated 27th March, 2010 passed by the Assistant Registrar, Firms, Societies & Chits, Gorakhpur (hereinafter referred to as the "Assistant Registrar") by which he has not approved of the papers submitted by the petitioner Mohd. Fakhruddin and respondent No.4Karimullah Khan regarding constitution of the Committee of Management of the Society and has directed that elections of the Committee of Management of the Society should be held under Section 25(2) of the Societies Registration Act, 1860 (hereinafter referred to as the "Act") from the list of 45 members of the General Body of the Society after excluding Mohd. Fakhruddin Khan shown at Serial No. 17 and has nominated the District Minority Welfare Officer, Gorakhpur as the election officer for holding the elections.

Jamia Razviya Merajul Uloom, Chilmapur, district Gorakhpur is a Society registered under the provisions of the Act. The registration of the Society was last renewed on 15th November, 2006 for a period of five years w.e.f. 8th August, 2006. The Society has its own Byelaws and term of the officer bearers of the Committee of Management of the Society is mentioned as five years. It

transpires that in the last election of the Committee of Management of the Society Farzand Ali (father of Mohd. Fakhruddin Khan) was elected as the Secretary/Manager but on 20th May, 2007 Farzand Ali resigned and Zafar Ahmad Khan was elected as the Secretary/Manager who also resigned on 7th March, 2008 and thereafter petitioner No. 2 Mohd. Fakhruddin Khan was elected as the Secretary/Manager on 9th March, 2008 and papers were sent to the Assistant Registrar for registering the list of office bearers and members of the Committee of Management of the Society.

It is the case of the petitioners that on 14th August, 2009 the Committee of Management of the Society passed a resolution removing Karimullah Khan, Kabir Ahmad and Farzand Ali as members of the General Body of the Society and the said resolution was approved by the Assistant Registrar on 22nd September, 2009.

On the other hand, respondent No.4 Karimullah Khan, filed an application before the Assistant Registrar enclosing therein the resolution of the Committee of Management of the Society dated 16th August, 2009 by which Karimullah Khan was removed from the membership of the General Body as well as the office bearer of the Committee of Management of the Society since he had been enrolled as a member of the General Body in contravention of Clause 12 of the Byelaws of the Society and a Fatwa had been issued on 6th July, 2009 to this effect by Mohd. Afzal Rizvi Marqazi Darul Ifta, 82 Saudagaran Bareilly Sharif (hereinafter referred to as the "Bareilly Sharif").

Upon receipt of the resolution dated 16th August, 2009, the Assistant Registrar issued notices dated 12th October, 2009 and 14th October, 2009 to Mohd. Fakhruddin to which a reply was submitted by him on 26th October, 2009 mentioning that Karimullah Khan had been removed from membership on 14th August, 2009 and, therefore, he could not have been elected on 16th August, 2009 and nor any meeting was held on 16th August, 2009. He also stated that a forged "Fatwa" of the Bareilly Sharif had been referred to in the resolution. It has also been stated by the petitioner that since the "Fatwa" dated 6th July, 2009 issued by Bareilly Sharif was referred to in the resolution dated 16th August, 2009, he had sent a letter dated 15th January, 2010 seeking reply to his queries from the Bareilly Sharif who had issued the "Fatwa".

Thereafter notices were issued by the Bareilly Sarif to both Mohd. Fakhruddin Khan and Karimullah Khan to appear on 7th February, 2010 and submit their evidence. On the basis of the evidence filed by the parties, the Bareilly Sarif declared on 7th February, 2010 that Mohd. Fakhruddin Khan is not a follower of Allah Sunnat Falzmat and passed an order to this effect. After the aforesaid "Fatwa" was issued on 7th February, 2010, it is said that both the parties also executed an agreement that they shall abide by the "Fatwa" issued on 7th February, 2010. These papers were forwarded by the Bareilly Sarif to the Assistant Registrar and it is on the basis of the aforesaid documents that the Assistant Registrar has held that Mohd. Fakhruddin Khan was rightly removed

from the membership of the General Body of the Committee of Management of the Society as well as from the post of Manager/Secretary of the Committee of Management of the Society.

Sri M.A. Qadeer, learned Senior Counsel appearing for the petitioners submitted that when respondent No. 4 Karimullah Khan, had been removed as a member of the General Body of the Society in the meeting held on 14th August, 2009, he could not have participated in the meeting of the Committee of Management of the Society held on 16th August, 2009 and nor could he have been elected as Manager/Secretary of the Committee of Management of the Society and the decision taken in this meeting is also of no consequence since the Corum was not complete if the members who had been removed on 14th August, 2009 are excluded. He further submitted that in any view of the matter, the enrollment of Mohd. Fakhruddin Khan is not contrary to the provisions of Clause 12 of the Byelaws of the Society and, therefore, his removal on that ground is bad in law. It is also his submission that the Assistant Registrar committed an illegality in relying upon the "Fatwa" issued on 7th February, 2010 without giving any opportunity to Mohd. Fakhruddin to file a reply and that in fact he had never agreed to abide by the "Fatwa" as has been mentioned in the impugned order. It is also his submission that the Assistant Registrar could not have decided the dispute and he should have referred the dispute to the Prescribed Authority under Section 25(1) of the Act. It is also his submission that even if the enrollment of Mohd. Fakhruddin Khan as a member of the General Body was bad in law, he alone could have been removed from the post of Manager but this could not have been made a ground to order for holding of fresh elections for constituting the Committee of Management of the Society.

Sri Ashok Khare, learned Senior Counsel appearing for the respondents submitted that as the enrollment of Mohd. Fakhruddin Khan was contrary to Clause 12 of the Byelaws of the Society, his membership was rightly cancelled by the Committee of Management of the Society in its meeting held on 16th August, 2009 and thereafter respondent No. 4 Karimullah Khan, who was the Deputy Secretary was elected the Secretary for the remaining tenure of the Committee of Management. He further pointed out that on receipt of the resolution of the Committee of Management dated 16th August, 2009, the Assistant Registrar issued notices to both the parties on 12th October, 2009 to appear before the Assistant Registrar and file their evidence. On 28th January, 2010, Mohd. Fakhruddin Khan filed an application before the Assistant Registrar for fixing a date after two weeks so that he may obtain the "Fatwa" from the Bareilly Sarif. Mohd. Fakhruddin also submitted a representation before the Bareilly Sharif and on the basis of the evidence filed by the parties, Bareilly Sharif found as a fact that the enrollment of Mohd. Fakhruddin was against the provisions of the Byelaws of the Society and issued the "Fatwa" on 7th February, 2009 to which Mohd. Fakhruddin agreed by executing the agreement dated 7th February, 2010.

He, therefore, submitted that since the "Fatwa" was issued by the Bareilly Sarif

on 7th February, 2010 that Mohd. Fakhruddin was not a follower of Allah Sunnat and Mohd. Fakhruddin had also agreed to abide by the "Fatwa" issued on 7th February, 2010, the Assistant Registrar could decide the matter and it was not necessary for him to refer the matter to the Prescribed Authority under Section 25(1) of the Act. He also submitted that resolution was not passed on 14th August, 2009 by the Committed of Management of the Society for the removal of Karimullah Khan and infact it was fraudulently prepared on a back date after Mohd. Fakhruddin was removed from the membership of the General Body on 16th August, 2009.

I have carefully considered the submissions advanced by learned counsel for the parties.

The dispute in the present petition is whether respondent No.4 Karimullah Khan can be a member of the General Body of the Society. Learned counsel for the parties have placed reliance upon Clause 12 of the Byelaws of the Society which provides for certain situations under which a person cannot be enrolled as a member of the General Body of the Society. Initially, a "Fatwa" was issued on 6th July, 2009 by Bareilly Sharif on the basis of which the Committee of Management on 16th August, 2009 removed Mohd. Fakhruddin Khan from the membership of the General Body and consequently from the post of Secretary. Thereafter, when the matter was pending before the Assistant Registrar, Mohd. Fakhruddin Khan submitted a representation before the Bareilly Sharif on which notices were issued to both the parties by the Bareilly Sharif fixing 7th February, 2010 for filing evidence. On 7th February, 2010 the Bareilly Sharif, after taking into consideration the documents filed by the parties, issued the "Fatwa" that Mohd. Fhakruddin Khan was not a follower of Allah Sunnat Falzmat and thereafter both the parties i.e. Karimullah Khan and Mohd. Fakhruddin Khan executed an agreement on 7th February, 2010 that they shall abide by the "Fatwa" issued on 7th February, 2010. These papers were forwarded by the Bareilly Sharif to the Assistant Registrar and it is on the basis of these papers that a decision has been taken by the Assistant Registrar.

It is the contention of learned Senior Counsel appearing for the petitioners that Mohd. Fakhruddin had not signed the agreement. It is not possible to accept this contention as in the communication dated 11th February, 2010 subsequently sent by Mohd. Fakhruddin to the Bareilly Sharif he did not state that he had signed the agreement on 7th February, 2010. In paragraph 28 of the rejoinder affidavit all that has been stated is that the signatures made by the petitioner on the blank sheet have been utilized for the purposes of agreement. Thus, once the petitioner had agreed that the "Fatwa" issued by the Bareilly Sharif on 7th February, 2010 will be binding on him, he cannot turn around and now contend that he should have been given an opportunity by the Assistant Registrar to rebut the "Fatwa" and establish that he could not have been removed as a member of the General Body under Clause 12 of the Byelaws of the Society. It needs to be mentioned that the communication dated 11th February, 2010 sent

by Mohd. Fakhruddin to the Bareilly Sharif shows that Mohd. Fakhruddin was aware of the contents of the "Fatwa" and, therefore, the contention that he should have been supplied with a copy of the "Fatwa" cannot also be accepted.

In such a situation when Mohd. Fakhruddin had agreed to abide by the "Fatwa" issued by the Bareilly Sharif on 7th February, 2010, it cannot be urged that the Assistant Registrar should have referred the dispute to the Prescribed Authority under Section 25(1) of the Act.

The contention of learned Senior Counsel for the petitioner that the membership of Karimullah Khan had been cancelled in the meeting of the Committee of Management of the Society held on 14th August, 2009 cannot also be accepted. The petitioners have annexed as Annexure 9 to the writ petition the copy of the letter dated 22nd September, 2009 sent by Mohd. Fakhruddin to the Assistant Registrar informing him about the decision taken by the Committee of Management of the Society on 14th August, 2009 to cancel the membership of Karimullah Khan. There is no explanation as why the decision taken on 14th August, 2009 was conveyed to the Assistant Registrar on 22nd September, 2009 and that too after the removal of Mohd. Fakhruddin from the membership of the General Body of the Society on 16th August, 2009. The learned Senior Counsel appearing for Karimullah Khan is, therefore, justified in asserting that the resolution dated 14th August, 2009 was not passed on 14th August, 2009 and is back dated.

There is, therefore, no infirmity in the impugned order of the Assistant Registrar in so far as it holds the removal of the petitioner from the General Body of the Society to be valid.

The issue that now needs to be decided is whether the Assistant Registrar was justified in passing an order for holding fresh elections for constituting the Committee of Management of the Society. It is contended by the learned Senior Counsel for the petitioners that even if the removal of Mohd. Fakhruddin from the General Body of the Society is taken to be valid then too at best he could have been removed from the post of Secretary of the Committee of Management of the Society and fresh election for the post of Manager alone should only be held.

It is not in dispute that the term of the Committee of Management of the Society has not come to an end. In such circumstances, the order passed by the Assistant Registrar to the extent it directs for holding of fresh elections of all the office bearers and members of the Committee of Management of the Society is set aside and it is ordered that the election for the post of Manager alone shall be held. The rest of the order of the Assistant Registrar is maintained.

The petition is allowed to the extent indicated above.