
(2009) 03 AHC CK 0055
In the Allahabad High Court

Kalrav Agarwal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Societies Registration Act, 1860 — Section 4

Citation : (2009) 85 AWC 1959 : (2009) 2 AWC 1959

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri Anoop Trivedi, the learned Counsel for the petitioners and Sri Prabhakar Awasthi, the learned Counsel for the respondent No. 6.

2. Two members of a society known as Dharm Samaj Society Inter College and Sanskrit Pathshala, Aligarh, have filed the present writ petition challenging the order dated 3rd May, 2008 passed by the Deputy Registrar, Firms, Societies and Chits, Agra u/s 4 of the Societies Registration Act. By this order, the office bearers of the managing body have been registered.

3. At the outset, the writ petition filed by two members of the Society is not maintainable. A dispute with regard to the election of the office bearers of a Society can be challenged by 1/4 members of the Society u/s 25(1) of the Act. The provision of 1/4 members of the Society was deliberately incorporated for a purpose and one such reason is, that frivolous dispute may not be raised by an individual and that a majority of the members of the society, if aggrieved by the election could raise a dispute u/s 25 which could be decided by an authority in a summary manner.

4. In the light of the aforesaid provision and the embargo placed u/s 25 for raising a dispute, this Court is of the opinion that a writ petition challenging the election of a Society or of the Managing Committee of the Society cannot be

maintained in a writ jurisdiction. The learned Counsel for the petitioner has placed reliance upon a decision of the Court in *Yogendra Singh v. State of U.P. and Ors.* decided on 7th May, 2007 passed in writ petition No. 43508 of 2006 and submitted that an individual member is competent to file a petition. For facility, the relevant paragraph which has been relied upon is quoted hereunder:

It is settled law that every valid member of the general body has a right to participate in the elections, which are to take place for constituting the Committee of Management. Such right of participation, if taken away without following due procedure provided by law give a cause to the individual member concerned to question the elections specifically in the circumstances, when the elections are held by a person not competent to hold elections.

This Court may record that right to participate in the elections includes a right to contest the elections. If a valid member is deprived of his participation, he alone gets a right to question his ouster and denial of right of participation. Ousting of a person from the electoral college without any justifiable cause vitiates the entire elections. In such circumstances, it cannot be said that merely because of a life member or valid member has been excluded from participation in the process of elections, he loses his right to challenge the elections held. Legal right of member to question such illegal elections cannot be taken away under any principle of law.

5. The learned Counsel has also placed reliance upon a decision of another decision of this Court in *Committee of Management A.K. College, Shikohabad and another Vs. State of U.P. and others*, and *Seva Samiti, Allahabad and Another Vs. Assistant Registrar, Firms, Societies and Chits, Allahabad and Another*,

6. In my opinion, the judgement in *Yogendra Singh (supra)* is not applicable since the judgment is not under the Societies Registration Act nor the Court had noticed the provision of Section 25 (1) of the said Act. u/s 25 of the Act, 1/4 members of a Society can make a reference to the Registrar challenging the election of the office bearers of the managing body. The law recognizes a right to raise a dispute and such dispute can only be raised by 1/4 members of the Society. The same principle would equally apply if a writ is entertained questioning a dispute with regard to the election of the Managing Committee and individual member of the general body cannot be allowed to raise a dispute, inasmuch if it is allowed, it would open a flood gate of litigation.

7. In *Dr. P.P. Rastogi and Ors. v. Meerut University, Meerut and Anr.* 1997 (1) UPLBEC 415 : 1997 (2) AWC 2.190 (NOC), a Division Bench of this Court held that an individual member of the Committee of Management had no locus standi to file an application and that if every member of the Committee of Management was permitted to file such application, it would create a lot of problems.

8. Consequently, this Court is of the opinion that a writ petition filed by an individual member which does not represent 1/4 members of the Society cannot be entertained. The judgments cited by the learned Counsel for the petitioner

has no application with regard to the maintainability of the writ petition. The said judgment talks about the validity of the election conducted by a Committee after the expiry of the stipulated period contemplated under its rule or bye laws.

In view of the aforesaid, writ petition is dismissed as not maintainable.