
(2006) 07 AHC CK 0090

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 8032, 42959 of 2001, 19874 of 2002 and 47239 of 2003

Karhal Education Society, Sheo Nath Dubey and Narayan Singh Dubey

APPELLANT

Vs

The Assistant Registrar, Firm Societies and Chits and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Societies Registration Act, 1860 — Section 25, 25(1), 3A, 4, 4(1)

Citation : (2006) 4 AWC 3975 : (2006) 3 UPLBEC 2217

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : V.S. Dwivedi, K. Ajit and M.C. Tewari, for the Appellant; A.K. Tiwari, Ashok Khare, R.B. Trivedi, Vipin Sinha, P.C. Shukla, S. Chaturvedi, R.B. Pradhan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, petitioner has challenged the order of the Assitant Registrar dated 06.02.2001, (annexure-8 to the writ petition) and claimed the following relief:

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 6.02.2001 (Annexure-8 to this writ petition), passed by the respondent No. 1.

(ii) issue a writ, order or direction in the nature of certiorari quashing the contents of the order mentioned in the letter of the branch Manager State Bank of India, Karhal branch, district Mainpuri.

(iii) To issue any other writ, order or direction as this Hon"ble Court may deem fit and proper in the circumstances of the case.

(iv) To award the costs of this petition to the petitioners.

2. Brief facts as stated in the writ petition are as follows:

There is a society named Karhal Education Society, registered under the Societies Registration Act, 1860. The society was registered on 01.04.1947. It has its own bye-laws, which was approved by the Assistant Registrar. As per Clause 17 of the bye-laws, the term of the office bearer is for one year. The renewal of the registration of the society is prescribed under the Societies Registration Act, 1860 (hereinafter referred to as " Act") after every five year. The last renewal of the society was made w.e.f. 10.10,1990 for five years. Petitioner no.2 was elected as Secretary and petitioner No. 3 was elected as President of the society in the year 1995. Petitioner No. 1 submitted papers for renewal for another five years. The papers of renewal were kept pending by the Assistant Registrar in his office and it was only after four years registration was renewed on 19.08.1999 for five years. It is alleged that the petitioner received a letter from the Assistant Registrar asking explanation from the petitioners regarding a complaint stating therein that the petitioner was removed from the Secretaryship by resolution of no confidence motion passed against him by the managing committee on 13.08.2000. Petitioner filed the reply pointing out that meeting of the socety was not held at the college premises on 13.08.2000 at 9.00 A.M. On the other hand meeting was held in the college premises on that very day at 11.00 A.M. in which the persons alleged to have passed the resolution at 9.00 A.M. were present and put their signature. Photocopy of the proceedings held on 13.08.2000 at 11.00 A.M. is annexed as annexure No. 5 to the writ petition. It may be mentioned here that the respondents further claimed that election was held on 19.11.2000 in which Shri Narain Singh Dubey had been elected as President, Assistant Registrar, Agra by the impugned order considered the complaint of the respondents vide letter dated 29.09.2000 and held that on 13.08.2000 a no confidence resolution was passed against Shri Narain Singh Dubey and Shri Shiv Nath Dubey, which has been approved by the general body, hence there is no justification for Shri Narain Singh Dubey and Shri Shiv Nath Dubey to continue on their posts. Assistant Registrar also approved the committee of management of Shri Jagdish Narain Dubey and allowed the renewal u/s 3A of the Act.

3. Heard Sri K. Ajit, learned Counsel for the petitioner and Sri Ashok Khare, learned Senior Advocate, assisted by Sri P.C.Shukla, learned Counsel for the respondents.

4. Learned Counsel for the petitioner submitted;

* that as per bye-laws, no confidence motion can be passed only by the general body and not by the executive committee.

* that in a meeting dated 13.08.2000 there was five agendas:

i) to approve the earlier proceedings;

ii) to consider, the election of the college to be held on 27,08.2000:

iii) to consider the application of management;

iv) to consider the examination result of the college.

v) Any other matter with the permission of the President.

* that in the agenda of the meeting dated 13.08.2000 there was no agenda relating to no confidence motion ;

* as per the notice, the meeting was to be held at 11.00 A.M. at college premises, this fact is mentioned in the annexure No. CA-3. Thus, the observation of the Assistant Registrar that meeting of executive committee was held on 13.08.2000 at 9.00 A.M. and resolution of no confidence motion was passed is based on no material ;

* that the order of Assistant Registrar is solely based on the aforesaid observations and the complaint letter filed on 29.09.2000 is without any basis ;

* that even in the letter dated 29.09.2000 it has not been stated that the resolution has been passed in the general body meeting;

* that in fact the meeting was held on 13.08.2000 at 11.00 A.M. and as per agenda the proceeding was taken up and in election, petitioner No. 2 has been elected as Secretary and petitioner No. 3 has been elected as President ;

* that in the complaint letter dated 29.09,2000 there is nothing to suggest that any election has been held and the managing committee has been formed by Shri Jagdish Narain Dubey. Even in the impuned order, there is no reference of any election being held on 19,11.2000 in which the committee of Shri Jagdish Narain Dubey was found. Thus, in the absence of any material, the Assistant Registrar has illegally approved the alleged committee of management of Shri Jagdish Narain Dubey and this shows the mala fide on the part of the Assistant Registrar;

* that the nature of dispute which has been adjudicated by the Assistant Registrar was beyond his jurisdiction, in as much as u/s 4 of the Act he could not decide such dispute ,

* that in any view of the matter it was obligatory on the part of the Assistant Registrar to refer the matter to the Prescribed Authority u/s 25 (1) of the Act;

* that the operation of the impugned order dated 03.03.2001 has been stayed by this Court ;

* that on 10.06.2001 fresh election was held in which petitioner No. 2 was elected as Secretary. The list of the office bearers was submitted before the Assistant Registrar and the same was approved u/s 4 of the Act for the year 2001-02 and this order of the Assistant Registrar has become final in as much as it has not been challenged. On 16.09.2001 the bye-laws of the society was amended and the term of one year was extended to five years. On 18.11.2001 after the amendment in the bye-laws fresh election was held which has been

approved on 12.04.2002. The amendment in the bye-laws has been challenged by the respondents in Writ Petition No. 42959 of 2001 and the order dated 12.04.2001 approving the election dated 18.11,2001 has been challenged in Writ Petition No. 19874 of 2002. Assistant Registrar further approved the list of the office bearers for the year 2003-04 on 16.09.2003. This order has again been challenged by the respondents in Writ Petition No. 47239 of 2003. Again in the year 2004-05 the list of the office bearers has been approved on 02.06.2004, which has not been challenged ;

* that the committee of management of the petitioners is continuing and is holding the charge.

* on the aforesaid fact, it has been submitted that after the impugned order dated 03.03.2001 fresh election has been held on 16.06.2001 which has been approved by the Assistant Registrar and has not been challenged, the present writ petition has become infructuous ;

* that u/s 4 of the Act, Assistant Registrar has no jurisdiction to decide the dispute relating to the committee of management. In case of any dispute relating to the committee of management, Assistant Registrar was under the obligation to refer the matter to the Prescribed Authority u/s 25 of the Act. Thus, the order passed by the Assistant Registrar is erroneous ;

* that even on the merit of the case, order of the Assistant Registrar is mala fide, in as much as he has approved the committee of management of Jagdish Narain Dubey while there was no such claim in the complaint and the fact relating to the formation of such committee has not been referred in the order;

* that the case of the respondents that a meeting was held on 13.08.2000 at 9.00 A.M., and a resolution of no confidence motion was passed, is based on no material, in as much as it is contrary to the bye-laws because such resolution could be passed only by the general body and not by the executive committee.

5. In support of his contention that the dispute relating to the committee of management can not be decided by the Assistant Registrar. He relied upon the various decisions of this Court.

6. Sri Ashok Khare, learned Senior Advocate contended that the present writ petition has not become infructuous for the reasons that in case, if the writ petition is dismissed and the resolution of no confidence motion is held to be valid, the subsequent election held by the petitioner become illegal and the entire action taken by the committee of management of the petitioner will become null and void including amendment made in the bye-laws. In support of his contention he relied upon the decision in the case of Shri Arya Mahila Hitkarini Maha Parishad and Another Vs. Asstt. Registrar Firms, Societies and Chits and Others,

7. Learned Counsel for the respondent further submitted that:

* that u/s 4 of the Act Assistant Registrar has power to approve the list of the office bearers and this power is not mechanical and in the present case Assistant Registrar by the impugned order has approved the list of the committee of management of the respondents after holding that the petitioners have been removed from the committee of management by the resolution of no confidence motion and that u/s 4 of the Act, Assistant Registrar can exercise such powers. In support of his contention he relied upon the decision in the case of Committee of Management Sri Janta Audyogik Vidyalaya v. Deputy Registrar, Firms Societies & Chits, Kanpur Region, Kanpur reported in 1998 (2) LBSER 928, Dwarika Prasad Secondary School v. Dy. Director of Education, Azamgarh reported in 1999 (1) LBSER 94, Shiksha Parishad, Nagwa v. Deputy Registrar, Firms Societies and Chits and Anr. reported in 1998 (2) LBESR 184.

8. Learned Counsel for the respondent further submitted that the result of the Writ Petition No. 42959 of 2001, 19874 of 2002 and 47239 of 2003 depends upon the decision in Writ Petition No. 8032 of 2001. In case, if Writ Petition No. 8032 of 2001 will be allowed, the aforesaid writ petitions are liable to be dismissed and in case, if Writ Petition No. 8032 of 2001 is dismissed, the aforesaid three writ petitions are liable to be allowed.

9. Having heard learned Counsel for the parties, I have perused the writ petition, counter affidavit, rejoinder affidavit and other documents. I find substance in the argument of Sri K.Ajit, learned Counsel for the petitioner. As per bye-laws no confidence motion could be passed only by the general body and not by the executive committee. As per notice, meeting of the general body was to be held on 13.08.2000 at 11.00 A.M. at the college premises in which there was no agenda for passing any resolution relating to the no confidence motion. Thus, the meeting held on 13.08.2000 at 9.00 A.M. in which it is alleged that resolution of no confidence motion was passed, is a case of manipulation. Thus, the observation of the Assistant Registrar that the meeting of the executive committee was held on 13.08.2000 at 9.00 A.M. and resolution of no confidence motion was passed is based on no material. Moreover, as per the complaint letter dated 29.09.2000 and as per the observation made by Assistant Registrar the meeting held at 9.00 A.M. on 13.08.2000 in which the alleged resolution of no confidence motion was passed by the executive committee meeting and not by the general body meeting. Thus, resolution of no confidence motion alleged to have been passed on 13.08.2000 was improper, void and illegal. It is not the case of the Assistant Registrar or the respondent that the said resolution passed by the executive committee has been ratified subsequently by the general body meeting and thus, the claim of the respondent that Shri Narain Singh Dubey and Shri Shiv Nath Dubey have been removed by no confidence motion is illegal. Moreover, in the complaint letter dated 29.09.2000 there is nothing to suggest that any election was held and managing committee was formed by Shri Jagdish Narain Dubey. Even in the impugned order there is no reference of any election being held on 19.11.2000 in which committee of Shri Jagdish Narain Singh Dubey was formed. Thus, in the absence of any material, Assistant Registrar has

illegally approved the alleged committee of management of Shri Jagdish Narain Singh Dubey and this shows the mala fide on the part of Assistant Registrar.

10. u/s 4 of the Act Assistant Registrar has limited power, to approve the list of the office bearers and in case there is any dispute relating to the committee of management, the adjudication of such dispute is beyond his jurisdiction. In such situation he is under the obligation to refer the matter u/s 25 (1) of the Act to the Prescribed Authority for the settlement.

11. In the case of Sri Ram Laxmi Narain Marvadi Hindu Hospital, Godaulia, Varanasi and Ors. v. Assistant Registrar, Firms, Societies and Ors. reported in 2000 (3) UPLBEC 2063, this Court has considered the scope of Section 4(1) and 25 of the Act and held as follows:

It is an indubitable fact that the scope and object of the provisions of Section 4(1) on the one hand and Section 25 on the other are quite separate and distinct. They are invocable and are operational in entirely varying facts and circumstances. The two provisions are mutually exclusive. There is no quarrel about the proposition of law that the Registrar, or for that matter, a Deputy or Assistant Registrar who has been invested with the power to pass orders u/s 4(1) has absolutely no authority to decide the dispute or doubt with regard to the elections of rival Committee of Management. Such type of dispute has, of necessity, to be decided by the Prescribed Authority u/s 25 of the Act. Power of the Registrar are limited and are exercisable within the ambit of Section 4(1) of the Act. Registrar cannot usurp the power of the Prescribed Authority u/s 25 of the Act in any circumstance. The above conclusion stands crystallized and the first oft quoted Division Bench of this Court on the point is Vijai Narain Singh v. Registrar, Chits, Funds, Firms and Societies, U.P., Lucknow and Ors. 1981 UPLBEC 308, in which it was held that the Registrar himself has no jurisdiction to hear and decide any doubt or dispute in respect of an election or continuance in office of an office-bearer of a society. Therefore, any decision given by him in this regard will be wholly without jurisdiction. He is in law bound to refer any such dispute to the Prescribed Authority. In the subsequent case Maha Narayan Pandey and Ors. v. Registrar, Chits, Funds and Societies, U.P., Lucknow and Ors. 1984 ALJ 583, it was observed by another Division Bench of this Court that whenever it comes to the notice of the Registrar that a dispute which can be decided by the Prescribed Authority alone has arisen between the parties, he should refer the matter to the Prescribed Authority instead of assuming jurisdiction in himself to decide the said dispute. The legal position as abumbrated in the aforesaid cases came to be reiterated in the subsequent decisions of this Court in Committee of Management and Ors. v. Zila Basic Siksha Adhikari and Ors. (1987) 1 UPLBEC 333; Purva Bazar Educational Society, Gorakhpur v. Assistant Registrar, Firms, Chits and Societies, Gorakhpur (1988) 1 UPLBEC 515 ; All India Council and Another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and Another, Muslim Welfare Society, Machlinagar v. Assistant Registrar, Firms, Societies and Chits 1991 AWC

1311; Khoproha Educational Society and Ors. v. Assistant Registrar, Firms, Societies and Chits 1993 (2) UPLBEC 890 and Company Management v. Assistant Registrar, Firms, Societies and Chits 1994 HVD (All.), Vol. (III) 389 (DB). In short the gamut of all these rulings is that if there is any doubt or dispute about the Committee of Management or its office bearers, such a dispute cannot be resolved by the Registrar in exercise of his powers u/s 3(A) and Section 4 of the Act. The only course left open to him is to refer the dispute for consideration and determination by the Prescribed Authority.

12. In the case of Committee of Management and Ors. v. Zila Basic Shiksha Adhikari and Ors. reported in 1987 UPLBEC 333, there was dispute between the parties about the committee of management. One election was held on 10.02.1986 and the other on 23.02.1986. Assistant Registrar upheld the election dated 19.02.1986 and left open to petitioner to invoke the jurisdiction of Prescribed Authority. Division Bench of this Court held that since there was a dispute between the two parties relating to the committee of management which was covered u/s 25 of the Act and the Assistant Registrar should have referred the matter to the Prescribed Authority u/s 25 of the Act.

13. In the case of Abhay Grasth Gramin Jan Sangathan Kusmikhalan and Anr. v. Assistant Registrar Firms, Societies and Chits, Varanasi Region, Varanasi and Anr. reported in 1990 (1) UPLBEC 480, the dispute arose between the two parties. Assistant Registrar has accepted the election valid of one group. Division Bench relying upon the earlier Division Bench of this Court in the case of All India Council v. Assistant Registrar Firms, Societies and Chits, Varanasi Region, Varanasi reported in 1988 AWC 1154 held that Section 4 of the Societies Registration Act does not confer power on the Registrar to assume function of the Prescribed Authority which had been conferred on him in the event of a dispute of election arisen. Prescribed Authority alone has power to decide the controversy and the Registrar should have made a reference to him.

14. In the case of All India Council v. Assistant Registrar Firms, Societies and Chits, Varanasi Region, Varanasi reported in 1988 AWC 1154 this Court held as follows:

If a dispute is raised with regard to the election or continuance in office of an office bearer of a society registered in Uttar Pradesh, the same has to be decided only by the Prescribed Authority u/s 25 (1) and not by the Registrar.

15. In the case of Mahipal Singh v. State of U.P. and Ors. reported in 2006 (1) AWC 375, election for the purpose of electing the President of the society took place on 15.06.2005. In the result of election declared by the election officer, whereby it was recorded that Shri Mahipal Singh (petitioner) has secured 1342 votes while Shri Bhupendra Singh, respondent No. 4 has received only 1283 votes. Accordingly, Shri Mahipal Singh was declared elected as President. On 21.06.2005, the election officer on a complaint made by Shri Bhupendra Singh to the effect that he received 1282 votes while Shri Mahipal Singh received 1223

votes only, an order of recounting of votes was passed. The said order of the election officer was challenged in this Court. The said writ petition was dismissed by the Division Bench of this Court with liberty to the petitioner to file fresh petition. Even prior to the passing of the order of the Division Bench, election officer by means of the order dated 27.06.2005 has in fact effected the recounting and declared that Shri Bhupendra Singh has secured 1282 votes in recounting while Shri Mahipal Singh has secured only 1223 votes and accordingly, Shri Bhupendra Singh was declared as President. The relevant papers in respect of the aforesaid elections were transmitted to the office of the Assistant Registrar with the list of office bearers being registered u/s 4(1) of the Act. Shri Mahipal Singh filed the writ petition. This Court held as follows:

Admittedly the registered bye-laws of the society do not provide for any such power upon the Registrar, Firms, Societies and Chits, Lucknow. The registered bye-laws of the society are required to be read independently and the powers conferred on various persons mentioned in bye-laws of the society do not require any enlargement with reference to any powers which may be vested in the Registrar under the Societies Registration Act, 1860. The Registrar as such had no authority to recognize or register the list of elected office bearers or to interfere in the same in any manner.

16. In the aforesaid decisions, it has been held that when there is dispute between the two parties about the election of committee of management, Assistant Registrar has no jurisdiction to decide and he is under the obligation to refer the matter to the Prescribed Authority u/s 25 of the Act,

17. In the case of Shiksha Parishad, Nagwa v. Deputy Registrar, Firms Societies and Chits and Anr. reported in 1998 (2) LBESR 184 (All), the controversy relates to the renewal of certificate of registration of the society known as Shiksha Parishad, Nagwa, Ballia. The renewal sought was opposed on the ground that the person applying for the same is not even a member of the society. By the impugned order, Deputy Registrar, Finns Societies and Chit, Faizabad Division, Faizabad has held Sri Nagendra Kumar Pathak to prosecute the proceeding for the renewal of the certificate of registration u/s 3A of the Act. Such order was challenged on the ground that the Assistant Registrar had no jurisdiction to decide such issue and the matter ought to have been referred to the Prescribed Authority u/s 25 of the Act. The Division Bench of this Court held that Section 25 of the Act is attracted where there is dispute between the two rivals party each claiming to be validly elected body and renewal of the certificate of registration to inure that the benefit of the official bearer in whose favour the order is ultimately passed. So far as registration/ renewal of the certificate of registration of society is concerned, it can be done only by the Registrar and the Prescribed Authority has nothing to do with it and, therefore, the order of the Deputy Registrar, Firms, Societies and Chits, in so far as it allowed the proceeding for renewal of the certificate of registration initiated at the behest of Nagendra Kumar Pathak to go on. This judgment does not help to the respondent inasmuch

as the facts of the case are entirely different.

18. The decisions cited by the learned Counsel for the respondent in the case of Committee of Management Sri Janta Audyogik Vidyalaya v. Deputy Registrar, Firms Societies and Chit, Kanpur Region Kanpur (supra) and Dwarika Prasad Secondary School v. Deputy Director of Education, Azamgarh (supra) are based on different facts and are of no help to the respondents.

19. It may be mentioned here that the impugned order dated 03.03.2001 passed by the Assistant Registrar has been stayed by this Court. Thereafter, on 10.06.2001 fresh election was held in which petitioner No. 2 was elected as Secretary. The list of office bearers was submitted before the Assistant Registrar and the same was approved u/s 4 of the Act for the year 2001-02 and this order of the Assistant Registrar has become final in as much as it has not been challenged. On 16.09.2001 the bye laws of the society was amended and the term of one year was extended to five years. On 18.11.2001 after the amendment in the bye laws fresh election was held which has been approved on 12.04.2002. Such amendment has been challenged in Writ Petition No. 42959 of 2001 and the order dated 12.04.2001 approving the election dated 18.11.2001 has been challenged in Writ Petition No. 19874 of 2002. Assistant Registrar further approved the list of the office bearers for the year 2003-04 on 16.09.2003. This order has again been challenged by the respondents in Writ Petition No. 47239 of 2003. However, the list of the office bearers for the year 2004-05 has again been approved on 02.06.2004, which has not been challenged. It may be mentioned here that since the election held on 10.06.2001 was valid election, the amendment made by the said committee also stand valid. After the amendment the term of the committee was extended to five years. After the amendment fresh election was held on 12.04.2002. In this way the five years term expires on 11.04.2007. There is no dispute that the petitioner committee of Writ Petition No. 8032 of 2001 is managing the affairs of the society. There is no allegation of mismanagement or financial irregularities. Thus, it would be appropriate that the same committee may continue and the fresh election be held immediately after 11.04.2007. Assistant Registrar is directed to held the election immediately after the expiry of 11.04.2007 in accordance to the law. In case, if there will be any dispute, same may be considered in accordance to the law.

20. In the result, Writ Petition No. 8032 of 2001 is allowed and impugned order dated 06.02.2001, annexure No. 8 of the writ petition passed by the respondent No. 1 is set aside. Writ Petition No. 42959 of 2001, 19874 of 2002 and 47239 of 2003 are dismissed. There shall be no order as to costs.