

(2004) 08 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20283 of 2004

Karya Samiti Carmichael Library Association and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 25, 4

Citation : AIR 2005 All 51 : (2005) 2 AWC 1165 : (2004) 3 UPLBEC 2603

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : A.P. Sahi, G.K. Singh and P.K. Upadhyay, for the Appellant; Gajendra Pratap, Rahul Kakkar, A. Bhanot and S.C., for the Respondent

Judgement

Ashok Bhushan, J.—Head Sri A.P. Sahi, learned Counsel for the petitioners and Sri Gajendra Pratap appearing for the respondent No. 3 and the learned Standing Counsel. Counter and rejoinder affidavits have been exchanged and with the consent of the parties this writ petition is being finally decided.

2. By this writ petition the petitioners have prayed for quashing the order dated 17.5.2004 passed by the Assistant Registrar, Firms, Societies and Chits, Varanasi and a writ of mandamus has also been sought commanding the respondents not to interfere with the petitioner's functioning in any manner whatsoever.

3. Brief facts which emerge from the pleadings of the parties are : Carmichael Library Association, Varanasi is a registered Society under the Societies Registration Act, 1860 registered in the year 1889. Bye-laws of the registered Society has been filed as Annexure-1 to the writ petition. According to the bye-laws a Karya Samiti is elected every three year for managing the General Administration of the Society. The Karya Samiti which is managing body of the Association consists of seven office bearers and sixteen members. The last undisputed election was held on 15.7.2001 in which petitioner No. 2 Kapil Narain Pandey was elected as Secretary and Sri Rishi Kumar was elected as President.

The list of the office bearers as elected on 15.7.2001 was registered by the Assistant Registrar, Firms, Societies and Chits vide its letter dated 14.8.2001. It appears that soon after the election allegations were made against the Secretary and certain other members. The Secretary was also suspended which suspension is said to have been subsequently withdrawn. Twenty two members gave a request to the Secretary on 1.12.2001 for calling a meeting of General Body. According to the registered By laws the meeting of the General Body is to take place in first week of January. The Assistant Registrar issued a letter dated 31.1.2002 to the Secretary/President referring to the said provision of registered By Laws. The letter stated that the meeting be called and the list of the members of the General Body be submitted to the Assistant Registrar. The Assistant Registrar again issued a letter dated 11.3.2002 to the same effect. The Assistant Registrar wrote to the President on 11.3.2002 for being present on 18.3.2002 on which date investigation is to be made by the Assistant Registrar.. The Assistant Registrar also again wrote on 2.7,2002 to the President for convening the meeting on 21.4.2002. No meeting of the General Body was called as suggested by the Assistant Registrar. However, a meeting was convened by the Secretary on 12.05.2002. The agenda of the meeting included only one specific item i.e., passing of Budget of 2002-2003. On 12.5.2002 meeting of the General Body of the Association started under the Chairmanship of the President. Both the parties are giving different versions of what happened in the meeting dated 12.5.2002. According to the petitioners on 12.5.2002 the meeting was held in which Budget was passed and no other item was discussed and meeting was closed thereafter. According to the case of the respondents on 12.5.2002 issue of misdeeds and financial irregularities and other arbitrary acts committed by the office bearers and members of the Karya Samiti were raised and General Body unanimously dissolved the Karya Samiti and resolution to that effect was passed removing the entire Karya Samiti and on the said resolution being passed the office bearers and the members of the Karya Samiti went away. The General Body elected from amongst themselves one Sri Ram Nazar Pandey as Chair-person and meeting was carried further and a Sanchalan Samiti of eleven members was constituted to run the day to day affairs of the Association. On 27.5.2002 office bearers elected on 15.7.2001 locked the premises of the Library on which serious protest was made by the citizens, members, residents and other affected persons. A suit No. 541 of 2002 was also filed by the petitioners seeking relief of permanent injunction, which suit is still pending and no order in favour of the plaintiff has yet been passed. The respondents further claimed that on 9.3.2003 the Sanchalan Samiti held fresh election in which Committee of Management headed by Ram Nazar Pandey was elected and the list of the office bearers was submitted to the Assistant Registrar u/s 4 of the Society Registration Act: The Assistant Registrar issued notice to both the parties and after hearing both the parties has passed the impugned order registering the list of the office bearers on 9.3.2003. This writ petition has been filed challenging the order of the Assistant Registrar dated 17th May, 2004 registering the list dated 9.3.2003.

4. Sri A.P. Sahi learned Counsel for the petitioner challenging the impugned order has raised following submission in support of the writ petition :

1. That the Assistant Registrar has no jurisdiction to register the list of the office bearers alleged to have been elected on 9.3.2003 since the tenure of petitioners' Karya Samiti elected on 15.7.2001 being three years, has not come to an end and no resolution was passed on 12.5.2002 dissolving the Karya Samiti.

2. The election dated 9.3.2003 has been held by unauthorised persons which could not have been registered by the Assistant Registrar. Before the Assistant Registrar the petitioners have challenged the alleged resolution dated 12.5.2002 dissolving the existing Karya Samiti hence the dispute within the meaning of Section 25 of the Society Registration Act, had arisen and the Assistant Registrar had no jurisdiction to adjudicate the dispute and register the list.

3. Under the bye-laws there is no by law for removal of an office bearer hence the resolution dated 12.5.2002 could not have been passed.

5. Sri Gajendra Pratap, learned Counsel for the respondents refuting the submissions of the Counsel for the petitioners supported the impugned order and raised following submissions :

1. The question as to whether the resolution was passed on 12.5.2002 dissolving the Karya Samiti is an internal matter of the Society and the same could have been challenged only by way of civil suit and neither this Court nor the Assistant Registrar was required to enter into the validity of the said resolution. Petitioners if aggrieved could have filed a civil suit in a Civil Court and in fact they had filed suit which is still pending without any order of interim injunction in their favour.

2. There were serious complaint of financial irregularities and other illegalities against the petitioner No. 2 and certain other office bearers. In spite of requests having been given by several members meeting was not being called then the intervention of the Assistant Registrar was sought and the direction of the Assistant Registrar were not complied by the petitioners. The meeting of the General Body dated 12.5.2002 was validly called and resolution was passed removing the entire Karya Samiti. The entire Karya Samiti having been removed a fresh election had rightly been held on 9.3.2003 by the Sanchalan Samiti and the Assistant Registrar has rightly recognised the said election.

3. The tenure of the petitioner's Committee of Management claimed to have been elected on 15.7.2001 has come to an end and the Writ petition itself has become infructuous.

4. That the General Body of the Society has inherent jurisdiction to pass any resolution including the resolution of dissolution of the entire Karya Samiti.

6. I have considered the submissions raised by the Counsel for both parties and have perused the record.

7. Before considering the submissions of the parties the submission of Sri

Gajendra Pratap, Counsel for the respondents that the writ petition has become infructuous needs consideration. It is true that the election of the petitioner's Committee of Management was held on 15.7.2001 and tenure is three years. The said tenure has admittedly come to an end. The petitioner's Karya Samiti cannot claim any functioning after expiry of the tenure hence with regard to above relief the writ petition has become infructuous; However, by the impugned order dated 17.5.2004 the election dated 9.3.2002 has been registered and if the order is allowed to stand the said Committee can claim continuance for further period of three years. The order by which the election dated 9.3.2003 has been registered still survives and the writ petition cannot be said to have become infructuous. The contention of Sri Gajendra Pratap that the writ petition has become infructuous, thus cannot be accepted.

8. The first question which needs consideration is as to whether the Assistant Registrar has jurisdiction to pass the impugned order registering the list of the office bearers as submitted by the respondent No. 3 on the basis of the election dated 9.3.2003. There is no dispute between the parties that in the election held on 15.7.2001 the petitioner No. 2 was elected as Secretary and Rishi Kumar was elected as President. The term of the Karya Samiti is three years which was upto 15.7.2004. The basis for fresh election dated 9.3.2003 as claimed by respondent is the resolution dated 12.5.2002 passed by the General Body of the Association dissolving the entire Karya Samiti. The claim of the respondents is thus that the petitioner's Karya Samiti is not continuing in view of the resolution dated 12.5.2002 hence the fresh election has rightly been held by the Sanchalan Samiti. The list which has been submitted by the respondent No. 3 is u/s 4 of the Societies Registration Act (as applicable in Uttar Pradesh) is extracted below:

"4. Annual list of Managing Body to be filed.-(1) Once in every year, on or before the fourteenth day succeeding the day which, according to the rules of the Society, the annual general meeting of the Society is held, or, if the rules do not provide for an annual general meeting in the month of January, a list shall be filed with the (Registrar) of the names, addresses and occupations, of the governors, council, directors, Committee or other governing body then entrusted with the Management of the affairs of the Society :

Provided that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible, be obtained on the list. If the old office bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in sub-section (1) there shall be sent to the Registrar a copy of the memorandum of Association including any alteration, extension, or abridgement of purposes made u/s 12, and of the rules of the Society corrected upto date and certified by not less three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for

the preceding year of account."

9. Another provision relevant for the present case is Section 25 of the Societies Registration Act which is quoted below:

"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, hear 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 it concerns such office bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote of the reception of any vote which is void or by any non-compliance with the provisions of any rules of the Society.

Explanation I Explanation II
Explanation III

(2) Where by an order made under sub-section (1), an election is set aside or an office bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office bearers of a Society has not been held within the time specified in the rules of that Society, he may call meeting of the General Body of such Society for electing such office bearer or office bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the Society relating to meetings and elections shall apply to such meeting and election with necessary modification.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority "or by any person claiming to be an office bearer of the Society.

Explanation,"

10. Section 4 provides that the list of the governing body be submitted in the month of January. Proviso to Section 4(1) provides that if the managing body is elected after the submission of the list, the counter signatures of the old members shall as far as possible, be obtained on the list. If the old office bearers do not counter sign the list, the Registrar may in his discretion issue a public notice or notice to such persons as he thinks fit inviting objection within the

specified period or decide all objections received within the said period. The question as to what is the scope of the enquiry u/s 4 of the Act has come for consideration before this Court in several cases. The order u/s 4 is administrative order registering the list of the governing body. Section 25 of the Act on the other hand is a decision by the Prescribed Authority of any doubt or dispute in respect of the election or continuance of an office bearer of a Society. The issue in the present case is as to whether when before the Registrar while proceeding u/s 4 of the Act the dispute or doubt with regard to any election or continuance by an office bearer came to existence whether he has to stay his hand and refer the dispute u/s 25 or can proceed to decide the matter. The Division Bench of this Court in 1984 ALJ 583, *Maha Narayan Pandey and others v. Registrar, Chit Funds, Firms and Societies, U.P., Lucknow and others*, held that whenever it comes to the notice of the Registrar that a dispute which can be decided by the Prescribed Authority has arisen between the parties he should refer the matter to the Prescribed Authority instead of assuming jurisdiction in himself in Paragraph 8 following was held :

"8.....In other words, point No. 4 formulated by the Registrar required determination of the question whether the petitioner No. 1 continued to hold office of the Manager or he ceased to hold that office. This question was clearly covered by sub-section (1) of Section 25. The Registrar, of course, held that it was not necessary to decide the question of resignation, but if he had entered into the factual controversy raised in this regard by the parties, it would have involved determination of the question whether petitioner No. 1 continued to hold office of the Manager or ceased to hold the office by resigning from the office and nominating opposite party No. 2 as his successor. This question was also necessary to be decided as even after amendment of the Rules petitioner No. 1 would continue to hold the office till fresh elections took place, unless he resigned. In view of the discussion herein the Registrar proceeded to decide a part of the dispute which did not fall within his jurisdiction, Reference; under sub-section (1) of Section 25 could be made by one-fourth, of the members of the Society as well as by the Registrar. In the present case no reference was made to the Prescribed Authority by the members of the Society. But once it came to the notice of the Registrar that a dispute which would be decided by the Prescribed Authority alone had arisen between the parties, he should have referred the matter to the Prescribed Authority instead of assuming jurisdiction in himself to decide the said dispute."

11. Similar view was taken by the Division Bench of this Court in the case of *All India Council and another v. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another*, reported in AIR 1988 All. 236, in which following observations were made :

"11. It was urged that the Registrar derives jurisdiction under this provision to determine the dispute. We are unable to agree. In the first place, the dispute has not arisen in the context of the submission of the annual list of the managing

body, which is required to be filed u/s 4(1). Secondly, the power of the Registrar to decide objections filed under the proviso to Section 4(1) must be held to operate in a field not covered by Section 25 of the Act. Under the proviso to Section 4(1), the Registrar deals only such matters as may arise in the context of the submission of the annual list of the managing body. Further in the present case we are concerned here not with the election of the managing body but with the election of the office-bearers of the Society. The managing body here is the All India Council which is different from the Pratinidni Sabha. In any case, insofar as the disputes relating to the election of the office-bearers, of a Society registered in Uttar Pradesh is concerned, the same has to be decided only in the manner prescribed u/s 25(1) on the principle that the "special excludes the general" proviso to Section 4 can be harmonised with Section 25. Consequently if a dispute of the nature covered by Section 25 is raised before the Registrar in connection with the submission of the annual list u/s 4(1) of the Act the same must. In view of the Legislative mandate embodied in Section 25(1), be referred by him to the Prescribed Authority. The Bench deciding Writ Petition No. 14879 of 1986 referred to above was also of the opinion that the proviso to Section 4(1) does not have the effect of whitthing down the scope of Section 25(1)."

12. From the facts of the present case as noted above, the bone of contention between the parties is as to whether on 12.5.2002 the General Body passed resolution dissolving the entire Karya Samiti or not. The Counsel for the petitioner has invited my attention to the detailed submission submitted by the petitioner before the Assistant Registrar in which it was specifically contended that no resolution was passed on 12.5.2002 as claimed by the respondent No. 3 and in the meeting held on 12.5,2002 only Budget was passed for the year 2002-2003. Before the Assistant Registrar thus a dispute had arisen with regard to continuance of the office bearers elected on 15.7.2001. The respondents case is that they did not continue with effect from 12.5.2002 in view of the resolution dissolving the entire Karya Samiti whereas the petitioner on the other hand claims that no such decision was taken and they are continuing. The election dated 9.3.2003 was consequent act based on the resolution dated 12.5.2002 as claimed by the respondent. There would have been occasion to hold fresh election in 2003 only when it is held that the resolution was passed on 12.5.2002 dissolving the entire Karya Samiti. The above dispute between the parties was very much pressed before the Assistant Registrar and the Assistant Registrar ought to have referred the dispute to the Prescribed Authority u/s 25 of the Societies Registration Act which dispute could not have been decided in exercise of administrative power u/s 4. The Assistant Registrar has noted the contention of the parties with regard to 12.5.2002 and has registered the election dated 9.3.2003. The Assistant Registrar has not recorded any finding with regard to claim of the parties with regard to the meeting dated 12.5.2002. The list of the office bearers claimed to be elected on 9.3.2003 could have been issued only when it was found that the entire Karya Samiti was dissolved and there was any occasion to hold election on 9.3.2003.

13. Sri Gajendra Pratap, learned Counsel for the respondents has laid much emphasis on the submission that the resolution dated 12.5.2002 was internal matter of the Society and aggrieved party should have approached the Civil Court and this Court need not advert to the said controversy in this writ petition. In this writ petition this Court is not called upon to decide the validity of the resolution dated 12.5.2002 but certainly the Assistant Registrar who registered the election dated 9.3.2003 which was consequential action on the basis of the resolution dated 12.5.2003 as claimed by the respondents, was required to first consider the nature of dispute between the parties. As observed above, the dispute regarding the continuance of the office bearers being matter covered u/s 25 of the Societies Registration Act, the Assistant Registrar should not have proceeded to decide the matter. The Assistant Registrar has passed the order registering the list without there being any decision by any competent authority regarding the validity of the resolution dated 12.5.2002. The order of the Assistant Registrar having been passed purporting to be u/s 4 of the Act and this Court can scrutinise the correctness of the orders. When the order is passed in exercise of statutory jurisdiction, the question as to whether the order is within the jurisdiction of the authority can be looked into by this Court in exercise of its jurisdiction under Article 226 of the Constitution. The Assistant Registrar exceeded its jurisdiction in passing the impugned order hence the order impugned cannot be sustained. .

14. In above view of the matter the Assistant Registrar was required to refer the dispute with regard to continuance of petitioner's Karya Samiti to the Prescribed Authority but the tenure of the petitioner's Committee of Management having come to end no useful purpose will be served in directing for making reference to the Prescribed Authority. Moreover, serious dispute had arise with regard to administration of library which is more than hundred years old. It cannot be doubted that on account of the serious dispute raised between the parties regarding Management of the Association the functioning of the Library of great repute is being adversely affected. The petitioner in the rejoinder affidavit has stated that fresh election has taken place on 15.7.2004. The consideration of the fresh election can only be done when the dispute as to whether on 12.5.2002 the petitioner's Karya Samiti was dissolved or not, is decided. Sri A.P. Sahi learned Counsel for the petitioner has submitted that there is no provision in the bye-laws to remove an office bearer. He placed reliance on the judgment of the Division Bench of this Court on the case of Riaz Uddin v. The State of U.P and others, passed in Special Appeal No. 1171 of 2003 in which this Court took the view that unless there is provision in the Scheme of Administration for passing of no confidence motion the Manager of the Committee, of Management cannot be removed. In the present case the Association is run by the Registration bye-laws, copy of which has been filed as Annexure- I to the writ petition. Bye-Law 20 is with regard to removal from the membership. Bye-Law 23 (Jha) if read together alongwith the bye-law 22 makes it clear that the removal of the member or an office bearer is contemplated under the bye-law. The member or an office bearer

can be removed by the General Body of the Association provided the opportunity as mentioned in bye-law 22 is given. The present bye-law thus contemplated removal of an office bearer/member of the Karya Samiti hence the decision cited by the Counsel for the petitioner has no application.

15. In view of the foregoing discussion end of justice be served in directing for fresh election of the Association to be conducted by the Assistant Registrar, Firms, Societies and Chits. The Assistant Registrar, Firms, Societies and Chits shall himself convene the meeting of the members of the Association after first determining as to who are the valid members entitled to the notice and thereafter proceed to hold fresh election for electing the office bearers and members of the Karya Samiti. In the result the writ petition is partly allowed. The order dated 17.5.2004 is quashed and the Assistant Registrar is directed to hold fresh election as indicated above. Parties shall bear their own costs.