
(2009) 03 AHC CK 0036
In the Allahabad High Court

Kisan Educational Society and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Societies Registration Act, 1860 — Section 25(1)
Uttar Pradesh State Universities Act, 1973 — Section 58

Citation : (2009) 3 AWC 2196

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This writ petition has been filed by Kisan Educational Society, Basti through its Secretary Vishnu Pratap Singh son of late Pratap Narain Singh, resident of Babhanganwan, Gandhi Nagar, District Basti, which was initially registered in the year 1950 bearing registration No. 639/I-4531. It is claimed that the petitioner society runs an educational institution known as Shiv Harsh Kisan Post Graduate College, Basti which is affiliated to Gorakhpur University, Gorakhpur and also runs an Intermediate College, namely, Kisan Intermediate College, Basti.

3. It is claimed that for the purpose of establishment and running of a degree college the Kisan Educational Society, Basti was registered.

4. It is further claimed that the Management of the Kisan Degree College, Basti was superseded in the year 1982 by the State Government by appointing the District Magistrate as its authorized controller u/s 58 of the U.P. State Universities Act to manage the affairs of the institution till 1989.

5. The dispute arose between the petitioners and the respondents when one Shri Shiv Murat Upadhyaya is said to have manipulated records to get hold of the management through another set of management namely, Kisan Shiksha Samiti, Basti, which established the college, which is not the society and is not entitled to manage the affairs of the Kisan Degree College, Basti.

6. The main contestants in the dispute were Shri Shiv Murat Upadhyaya and Sri Ashwani Kumar Pandey before the Assistant Registrar, Firms, Societies and Chits, Gorakhpur for the purpose of renewal of the society. They also claimed that they are entitled to hold elections.

7. It is stated that the Assistant Registrar, Firms, Societies and Chits, Gorakhpur vide his orders dated 29th April, 1995 and 5th September, 1995 directed that since the elections of the committee of management of the Kisan Shiksha Samiti, Basti had not been held in time, they had become functus officio, as such fresh elections of the society namely Kisan Shiksha Samiti, Basti were ordered to be held u/s 25 (2) of the Act by the Finance Officer, Gorakhpur University, Gorakhpur on the basis of the list submitted by Sri Shiv Murat Upadhyaya. The petitioners also applied for renewal of the Kisan Educational Society, Basti through their erstwhile Secretary against which an objection was filed by Sri Shiv Murat Upadhyaya on which Assistant Registrar, Firms, Societies and Chits, Gorakhpur issued a notice on 20th July, 1996 asking the parties to appear before him and produce their documents in this regard. Thereafter he vide his letter dated 5.10.1996 referred the dispute before the District Magistrate for getting the dispute adjudicated with regard to the society empowered to supervise and manage the affairs of the institution so that renewal certificate may be issued accordingly. The District Magistrate in turn referred the same before respondent No. 2, Prescribed Authority, Sub-Divisional Magistrate, Sadar, District Basti for adjudication of the dispute. The reference order is said to have been made only in respect of Kisan Educational Society as to who amongst Sri Dubey and Upadhyaya was the real Secretary.

8. In the meantime, the Finance Officer, Gorakhpur University, Gorakhpur in the capacity of Election Officer, proceeded to hold the elections of the society by issuing notice dated 16.9.1995 pursuant to the order of the High Court dated 23.1.1995 against which the petitioners filed representation but in vain.

9. It is in the above background that the petitioners filed Civil Misc. Writ Petition No. 33118 of 1996, Kisan Educational Society, Basti and Ors. v. Gorakhpur University, Gorakhpur and Ors. before the High Court seeking a writ of mandamus directing the respondents not to hold the elections of Committee of Management of Shiv Harsh Kisan Post Graduate College, Basti i.e., the Kisan Educational Society, Basti through any person except the petitioners.

10. The Court vide interim order dated 11.10.1996 considering the facts and circumstances of the case directed that the Election Officer shall ensure that the election is held according to the bye-laws of Kisan Educational Society pursuant to the direction issued by the High Court under the order dated 23.1.1995 while disposing of the Writ Petition No. 4117 of 1992.

11. In the meeting of the general body of Kisan Educational Society, Basti held on 22.11.2006, which was presided over by the District Magistrate, Basti a resolution was passed resolving to hold the election of the Kisan Educational

Society, Basti on 3.12.2006 and one Sri Ganesh Prasad Pandey, a member of the Executive Council of Gorakhpur University, Gorakhpur was appointed as the Election Officer. Apart from the above the District Cane Officer was appointed as an observer to supervise the elections which were scheduled to be held on 3.12.2006. On the scheduled date, i.e., on 3.12.2006 the election of the Committee of Management of the institution had been held in which petitioner No. 2 claims to have elected as the Secretary and one Banshi Dhar was elected as the joint Secretary apart from other office bearers.

12. After the elections held on 3.12.2006, the erstwhile Secretary Sri Banshidhar Dubey of the Kisan Educational Society, Basti submitted an application dated 7.12.2006 before respondent No. 2 to the effect that as the elections of the Kisan Educational Society, Basti have been conducted in accordance with law in which petitioner Nos. 2 and 3 have been elected, hence there is no dispute with regard to elections and management of the institution now. Accordingly a request was made by him that the matter be finalized so that the renewal of the registration of the Kisan Educational Society, Basti may be made by the authority competent.

13. In the meantime, case No. 3 u/s 25 (1) of the Societies Registration Act had been registered before respondent No. 2. In the said case respondent No. 2 had issued notices and summons to the Sri Shiv Murat Upadhyaya through the process server as well as by registered post. They were also published in the newspaper, yet Sri Shiv Murat Upadhyaya did not put in appearance in the case.

14. Respondent No. 2 after considering the facts and circumstances and material on record by its order dated 23.12.2006 held that elections held on 3.12.2006 to be valid in which petitioner Nos. 2 and 3 were elected as Secretary and Joint Secretary. Accordingly, the file was directed to be remitted before the Assistant Registrar, Firms, Societies and Chits, Gorakhpur. After remitting the matter before the Assistant Registrar, Firms Societies and Chits, Gorakhpur the renewal of the registration of the society Kisan Educational Society, Basti was made by him on the application of the petitioners with effect from 10.10.2005 for a period of five years vide Renewal Certificate dated 31.1.2007. Keeping in view the dispute between the two rival Committees of Managements the State of U. P. vide order dated 11.2.2004 appointed the District Magistrate, Basti as an authorized controller of the institution for a period of one year which was extended thereafter.

15. In the above circumstances, petitioner No. 2 filed an application dated 4.1.2007 before the High Court in Civil Misc. Writ Petition No. 33118 of 1996, Kisan Educational Society, Basti and Ors. v. Gorakhpur University, Gorakhpur and others bringing on record the elections held on 3.12.2006, order passed by the Prescribed Authority, Sub-Divisional Magistrate, Sadar, District Basti dated 23.12.2006 and prayed that he be substituted in place of erstwhile secretary and that the management of the Committee of Management of the institution be handed over to the petitioners.

16. At this juncture Sri Shiv Murat Upadhyaya filed a recall application dated 7.3.2007 for recalling and setting aside the order dated 23.12.2006 passed by Prescribed Authority, Sub-Divisional Magistrate, Sadar, District Basti.

17. The Court disposed of Civil Misc. Writ Petition No. 33118 of 1996, Kisan Educational Society, Basti and Ors. v. Gorakhpur University, Gorakhpur and Ors. vide judgment and order dated 29.11.2007 with a direction that if the recall application has been filed the Prescribed Authority, Sub-Divisional Magistrate, Sadar, District Basti, shall decide the same and as the order dated 23.12.2006 has been passed in favour of the petitioners they are entitled to function or manage the institution on the basis of the election recognized by the Prescribed Authority/Sub-Divisional Magistrate, Sadar, District Basti. It was further directed that the District Magistrate will see that the order of the prescribed authority dated 23.12.2006 is implemented according to law. The order and judgment dated 23.12.2006 is as under:

Heard the learned Counsel for the petitioners and Sri B.D. Pandey, learned Counsel appearing for respondent No. 1.

The writ petition was filed for the following reliefs:

(i) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to hold the elections of the committee of management of Shivharsh Kisan Post Graduate College except through the petitioner and be further pleased to restrain the respondents from proceeding to hold any elections in consultation either with Ashwani Kumar Pandey or Shri Shiva Murat Upadhaya, who are rank outsiders.

(ii) To issue any other writ, order or directions this Hon''ble Court may deem fit and proper in the circumstances of this case.

The matter was kept pending and counter and rejoinder-affidavits have been exchanged. Now an application has been filed by the petitioners that election has already been held under the supervision of the District Magistrate and the prescribed authority has attested the signatures and validated the election of the petitioners. Therefore, this application has been filed by the petitioners to this effect.

It has been informed by the learned Counsel for the respondents that as the order of the prescribed authority was ex parte and without giving any opportunity to them, therefore, they have filed an application for recall and that is still pending. If such application is filed, it is always open to the prescribed authority to consider and decide it as the prescribed authority has already held in favour of petitioners. Therefore, legally the petitioners are entitled to function or manage the institution on the basis of the election recognized by the prescribed authority. The respondent District Magistrate will take into consideration this fact and see that the order of the prescribed authority dated 23.12.2006 is implemented according to law.

The writ petition is disposed of accordingly.

No order as to costs.

18. Aggrieved by the judgment and order dated 29.11.2007 Sri Shiv Murat Upadhyaya filed Special Appeal No. 77 of 2008, Sri Shiv Murat Upadhyaya v. Gorakhpur University, Gorakhpur and Ors. before the Hon''ble High Court. However, the Division Bench of the High Court comprising of Hon''ble Mr. Justice H. L. Gokhle C.J. and Hon''ble Mr. Justice Vineet Saran, J., vide judgment and order dated 24.1.2008 dismissed the special appeal. The judgment dated 24.1.2008 is as under:

1. Heard Sri S.D. Shukla, learned Counsel for the appellant. Mr. G.K. Singh, appears for the private respondents.

2. The private respondents had filed a writ petition with a prayer, not to hold the election of the Committee of Management of an Educational Institution. The appellant herein was a respondent to that writ petition. The learned single Judge has noted that the prescribed authority has attested the signatures of the respondents herein, as the elected representatives. The appellant has filed an application for recall. That application has been pending. That being so, all that the learned single Judge has said is that the said recall application be decided and in the meanwhile, the respondents will continue to manage the Institution since there will not be vacuum, and when the application for recall succeeds, the consequences will follow. No reason to interfere.

3. The appeal is dismissed.

19. After the above judgment and order dated 29.11.2007 was upheld in special appeal vide judgment and order dated 24.1.2008 petitioner No. 2 filed preliminary objections dated 18.2.2008 against the maintainability of the said recall application dated 7.3.2007 on the ground that the said application is not maintainable since the order dated 23.12.2006 has already been implemented and the term of the Kisan Educational Society, Basti has been renewed. Petitioner No. 2 also filed objections against the recall application dated 7.3.2007 filed by Sri Shiv Murat Upadhyaya before the Prescribed Authority/Sub-Divisional Magistrate, Sadar, District Basti.

20. Sri Shiv Murat Upadhyaya died on 3.6.2008 and respondent No. 5 Narendra Kumar Bhatiya submitted an application dated 7.6.2008 that the Kisan Shiksha Samiti, Basti in the absence of Sri Shiv Murat Upadhyaya has authorized him to contest the said application for recall. Thereafter, petitioner No. 2 submitted an objection against the application of Sri Narendra Kumar Bhatiya to the effect that with the death of Sri Shiv Murat Upadhyaya the application for recall has become infructuous and Sri Narendra Kumar Bhatiya has no authority to contest the same.

21. The Prescribed Authority/Sub-Divisional Magistrate, Sadar, District Basti vide impugned order dated 31.7.2008 without considering the facts and

circumstances and material on record illegally and arbitrarily held that the order dated 23.12.2006 is ex parte and accordingly he recalled the same and restored the case at its original number and place and for its decision.

22. Sri R. K. Ojha, learned Counsel for respondent Nos. 4 and 5 submits that only moot question involved in this writ petition is with regard to its maintainability and locus standi of the petitioners. He further submits that the impugned order has been passed in pursuance to the judgment of the Division Bench dated 24.1.2008 in Special Appeal No. 77 of 2008, Shri Shiv Murat Upadhyaya v. Gorakhpur University, Gorakhpur and Ors..

23. It is urged that application for recall mentioned in the aforesaid judgment dated 24.1.2008 was decided on 31.7.2008 by which the recall application had been allowed ex parte and the case was directed to be heard on merit. The relevant portion of the order dated 31.7.2008 is as under:

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24. Perusal of the aforesaid order dated 31.7.2008 would show that the authority was of the view that the order dated 23.12.2006 has been passed ex parte without hearing respondent Nos. 4 and 5, as such the same is liable to be recalled.

25. I have heard learned Counsel for the parties and have considered their arguments. In my opinion, the order impugned only refers to ex parte order, which has been passed without hearing respondent Nos. 4 and 5. It does not decide the case on merit which can be decided only after the ex parte order is recalled. It is still open to the authority to decide all the questions regarding non-application of mind, jurisdiction and locus standi etc. raised in the objections by the parties. The questions as to whether Sri Narendra Kumar Bhatia had right to move an application shall be decided including whether Kisan Shiksha Samiti, Basti which has been registered vide registration No. 444/21.10.62 is the same society, i.e., Kisan Educational Society registered in 1950 or not. It will be open

to the parties to take all the grounds taken in the writ petition as well as in the counter-affidavit by them respectively before the S.D.M./Prescribed Authority, who is directed to decide the dispute by a reasoned and speaking order, in accordance with law within a period of 3 months from the date of production of a certified copy of this order after affording an opportunity of hearing to both the parties concerned.

26. The writ petition is accordingly, disposed of. The interim order is vacated. No order as to costs.