

(1995) 08 AHC CK 0153
In the Allahabad High Court
Case No : Special Appeal No. 732 of 1994

Kranti Kumar Chaturvedi and Another	APPELLANT
Vs	
District Inspector of Schools and Others	RESPONDENT

Date of Decision : 22-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 12D, 12D(1), 25, 3, 3A

Citation : (1996) AWC 438 Supp

Hon'ble Judges : V.N. Khare, J; Palok Basu, J

Bench : Division Bench

Advocate : Uma Kant, for the Appellant;

Final Decision : Dismissed

Judgement

V.N. Khare, Adv.

1. This special appeal at the instance of the Appellants is directed against the judgment and order dated 13.9.1994 dismissing the writ petition on the ground that the Appellants have an alternative remedy available under the Societies Registration Act, (hereinafter referred to as the Act).

2. The Appellants allege that their society in the name and style of Bhartiya Vidya Prasar Sangh, Rajpur, Kanpur Dehat was registered under the provisions of the Act on 25th January, 1965. It is further alleged that the renewal of the registration certificate of the society was granted for a period of two years on 10.10.1977 and thereafter on 27.12.1980 for the period ending 10.10.1981 whereafter the Society became an unregistered society. It is also alleged that on their application for renewal, the Deputy Registrar, Firm Societies and Chits, U.P. Kanpur on 28.1.1994 granted renewal for a period of five years with effect from 10.10.1990. It appears, on coming to know about the said renewal of registration in favour of the Appellants, Respondent No. 3 filed an objection before Respondent No. 2 claiming that the Appellants have obtained renewal of

certificate of registration by misrepresentation and practising fraud. On receipt of that objection, Respondent No. 2 found that the claim of Respondent No. 3 is well-founded and as such, set aside the order granting renewal of certificate of registration in favour of the Appellants. This was challenged by means of a writ petition under Article 226 of the Constitution but the same was dismissed on the ground that Appellants have a statutory alternative remedy available under the Act.

3. Sri Uma Kant, learned Counsel for the Appellants urged that in fact Respondent No. 2 has no Jurisdiction to pass the impugned order u/s 12D of the Act and as such, Appellants have no alternative remedy available under the Act. Learned Counsel for the Appellants while elaborating his argument contended that in fact the dispute was between the two rival parties and each one was claiming to be the validly elected body and in such a situation, it was incumbent upon Respondent No. 2 to have referred the matter for adjudication u/s 25 of the Act and as such, the impugned order passed by Respondent No. 2 is void and without Jurisdiction and not appealable. In support of his argument, learned Counsel for the Appellants relied upon a decision of this Court in the case of *Khapraha Educational Society and Anr. v. Assistant Registrar, Firms, Chits and Societies and Anr.* 1993 E & SC 201.

4. Having heard learned Counsel for the Appellants, we are of the view that the argument of learned Counsel for the Appellants is devoid of merit. Section 3 of the Act provides for registration of a society. Section 3A of the Act provides for renewal of certificate of registration of a society. Section 4 of the Act provides for sending annual list of managing body to the Registrar. Section 12D of the Act provides for Registrar's power to cancel registration in certain circumstances. Section 25 of the Act provides for adjudication of dispute in respect of election of office-bearers of a society. A perusal of these provisions of the Act shows that Section 12D and Section 25 of the Act operate in different fields and contemplate different situation. Section 12D (1) (c) of the Act runs as follows:

12D. (1) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds.

(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud.

5. Section 12D (1) (c) comes into play when an allegation is made that a body, claiming office-bearers of a society, by misrepresenting facts or practising fraud, has obtained the registration of a society or its renewal. If such allegation is made, the Registrar necessarily has to go into the question of validity of the constitution of a society applied for renewal of certificate of registration. Entitlement of the office-bearers of a society who apply for renewal of certificate of registration depends upon their valid constitution. Otherwise any fake body claiming office-bearers of a society by misrepresenting facts may get renewal of

certificate of registration of society in its name. Thus, it is open to the Registrar to go incidentally to the question of validity of constitution of society which has been granted renewal of certificate of registration, if any objection is raised that the office-bearers who had applied for and has been granted renewal of certificate of registration is fake body and has obtained renewal by misrepresenting facts or by practising fraud. However, in such proceeding, an enquiry is limited to this extent, firstly, that office-bearers, who applied for and has been granted renewal of certificate of registration of society is legally entitled to it or not and secondly, whether the body who applied for, has obtained renewal of certificate of registration by misrepresentation or by practising fraud or not. If in this proceeding, it is found that the body, who applied for and has been granted renewal of certificate of registration, is not legally entitled to it and further it has obtained renewal by misrepresenting facts or by practising fraud, it is open to the Registrar to cancel the renewal of certificate of registration granted in favour of such a body.

6. Section 25 of the Act contemplates different situation. It is attracted only when there is no dispute in respect of registration of society or its renewal of certificate of registration but there is dispute between two rival parties each of whom is claiming to be validly elected body. in such a situation, the dispute between the two rival parties has to be referred for adjudication u/s 25 of the Act. Section 25 of the Act is also attracted when a party challenges the Illegality or otherwise of the election of particular set of office-bearers of society on the grounds enumerated in Section 25 of the Act, Thus, the dispute u/s 25 of the Act, can only be referred for adjudication only when it is found that the registration of the society or its renewal is intact. in the present case, since the objection was that the Appellants are not legally elected body and have obtained renewal of certificate of registration by practising fraud, it was well within the jurisdiction and power of the Registrar to entertain such objection and decide the same. The decisions relied upon by the learned Counsel for the Appellants in the case of Khapraha Educational Society and another (supra) is not applicable to the facts of the present case and is distinguishable. We are of the view that the order passed by the Registrar was well within his jurisdiction and the same is appealable u/s 12D of the Act.

7. In view of what has been stated above, we find no merit in this special appeal. The special appeal is accordingly dismissed.