
(2011) 07 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.8404 of 2006

Mahendra Pratap Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Societies Registration Act, 1860 — Section 25

Citation : (2011) 07 AHC CK 0120

Hon'ble Judges : Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.—I have heard Heard Sri Awadhesh Kumar Singh, learned counsel for petitioner, Sri H.K. Asthana, learned counsel for respondent no. 3 and learned Standing Counsel appearing for respondents 1 and 2.

2. Writ petition is directed against the order dated 10.1.2006 (Annexure 10 to writ petition) passed by Commissioner, Varanasi Division, Varanasi allowing the appeal under Section 12 (D)(3) of Societies Registration Act, 1860 (hereinafter referred to as ?Act 1860?) and setting aside the Assistant Registrar, Chits and Fund, Varanasi (hereinafter referred to as ?Assistant Registrar?)'s order dated 22.6.2000.

3. The factual matrix necessary for consideration of rival submissions advanced on behalf of the parties, is as under.

4. The Society under the name and style of English School Society, Karanda, Ghazipur was registered on 20.1.1947 and its registration continued till 20.10.1079. On 13.3.1980, the title of Society was changed as Uchhtar Madhyamik Vidyalaya, Karanda, Ghazipur which was accepted by Registrar and the renewal of Society was allowed with the new title. The undisputed renewal was made on 19.1.1986 which was valid upto 10.10.1990. An application for renewal of Society of registration was filed by one Kashi Nath Singh (respondent no. 3 in this writ petition) representing himself as Manager of the Society stating that the new Committee of Management was constituted in the elections held on 29.6.1989 wherein he was elected as Manager and, therefore, his application

may be accepted. This was opposed by Sri Dhananjay Singh, who claimed himself to be the Manager of Society. He contended that no election was held on 29.6.1989.

5. The Assistant Registrar by order dated 4.12.1993 rejected the application of renewal filed by Sri Kashi Nath Singh observing that he is not the Manager but Sri Dhananjay Singh. This order was appealed before Commissioner vide Appeal No. 27 of 1993. It was decided on 21.4.1997. In para 6 of the order, the Commissioner observed that there is no dispute between the parties that an election was held on 29.6.1989 wherein Sri Kashi Nath Singh was elected as Manager. The objection in effect of Sri Dhananjay Singh is that election was not held validly and entire proceedings are fictitious. In the circumstances, Commissioner took the view that matter deserve to be remanded back to Assistant Registrar so as to consider after giving opportunity to all parties, (1) whether the dispute between the parties can be adjudicated by Assistant Registrar, (2) whether the dispute between the parties justify cancellation of renewal of Society, (3) whether the election of society said to be held on 29.6.1989 in which Sri Kashi Nath Singh allegedly became Manager has been recognized by the High Court, and (4) whether other officials/offices have recognized Sri Kashi Nath Singh as Manager.

6. Assistant Registrar, after remand, considered the matter afresh and held vide order dated 22.6.2000 that the alleged election of 29.6.1989 said to have been conducted relates to election of Committee of Management of College and was held under Scheme of Administration. It was not election of the Society under byelaws of the Society and, therefore, the documents produced by Sri Mahendra Pratap Singh are reliable. He, consequently, accepted the documents produced by Sri Mahendra Pratap Singh, who claims to be elected as Manager due to illness of Sri Dhananjay Singh. Assistant Registrar rejected the claim of respondent no. 3, Sri Kashi Nath Singh. He, however, further observed that in case any party feels aggrieved, he may obtain appropriate decision from the competent Court.

7. This order dated 22.6.2000 of Assistant Registrar was assailed in Appeal No. 128 of 2000 which has been allowed by means of impugned order dated 10.1.2006 by Commissioner, who has set aside the order dated 22.6.2000.

8. Learned counsel for petitioner has filed two impleadment applications stating that during pendency of the matter, before the aforesaid two authorities as also this Court, further elections have been held wherein the persons constituting new Committee of Management be impleaded. A suggestion is also made that since new elections have been held which have not been challenged, therefore, new election be recognized by this Court and writ petition be decided accordingly.

9. However, to my mind, this request is neither justified nor would result in settling the dispute between the parties. The record shows that parties have approached this Court time and again and there has been multiplicity of litigation

between the parties, may be for the reason that the issue on merits appears to have not been decided once and all.

10. The only question up for consideration is, who was the competent person so as to represent Society in 1990 for its renewal. As a corollary, incidental question thereto is, whether the respondent no. 3 was elected as Manager so as to represent the Society for the purpose of renewal in 1990. In case, respondent no. 3 was not a person competent to get renewal; Sri Dhananjay Singh at the relevant time and thereafter petitioner no. 2 would be the rightful person. Thus, the question necessarily relates to the alleged election set up by respondent no. 3 held on 29.6.1989. In respect to the Management of the College, approval of signatures, or counter signatures by the educational authorities may not be of much importance to consider the question, who was the person competent to represent Society under 1860 Act having been validly elected as an Office Bearer of the Society in accordance with byelaws of the Society.

11. The first order of the Commissioner which has attained finality having not been challenged by either of the parties whereby the matter was remanded to Assistant Registrar clearly shows that he recorded a finding that holding of election on 29.6.1989 is admitted to both the parties and this is also admitted that Sri Kashi Nath Singh was elected as Manager in the said election. The other side, namely, Sri Dhananjay Singh, who objected and opposed Sri Kashi Nath Singh before Commissioner, had disputed only the procedure followed for election. Therefore, it was clearly a dispute relating to election. The Commissioner having appreciated this situation and probably having in his mind Section 25 of 1860 Act, directed the Registrar (Assistant Registrar) to consider whether the dispute is liable to be adjudicated by him under the statute or not. The other questions which were directed by Commissioner to be looked into by Assistant Registrar could have been gone only if the Assistant Registrar could have recorded a finding that he was competent to decide the dispute at all or not.

12. In the order of Assistant Registrar, this aspect, unfortunately, has not at all been addressed. Assistant Registrar has considered correctness of election set up by respondent no. 3 said to have held on 29.6.1989. He has recorded a finding on his own with respect to its correctness and, thereafter, in the last sentence of the order dated 22.6.2000 has said that parties, if so desire, may get adjudication of their dispute from the competent Court. The order of Assistant Registrar, therefore, in my view do not conform with statutory provision and deserved to be set aside. The Commissioner has set aside this order and in that way I do not find any error, legal or otherwise, but the reason appealed to Commissioner in my view is not correct. I find here he has fallen in error.

13. Section 25 of 1860 Act reads as under:

?25. Dispute regarding election of officebearers. (1) The prescribed authority may, on a reference made to it by the Registrar or by at least onefourth 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 officebearers of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an officebearer shall be set aside where the prescribed authority is satisfied

(a) that any corrupt practice has been committed by such officebearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such officebearer has been materially affected by the improper acceptance of any nomination of by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with the provisions of any rules of the society.

Explanation 1: A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person

(i) induces, or attempts to induce, by fraud, international misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election;

(ii) with a view to inducing any elector to give or refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (I) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he or any person, in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II. A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself or of any one in whom he is interested.

Explanation III. The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

(2) Where by an order made under subsection (1), an election is set aside or an officebearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of officebearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such officebearer or officebearers, 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 modifications.

(3) Where a meeting is called by the Registrar under subsection (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an officebearer of the society.

Explanation. For the purposes of this section, the expression 'prescribed authority' means an officer or Court authorised in this behalf by the State Government by notification published in the Official Gazette.

14. Whenever there is a dispute with respect to an election, the competent authority to decide the matter is the 'Prescribed Authority'. Therefore, the Assistant Registrar had no option but to refer the matter to Prescribed Authority for its adjudication. The election dated 29.6.1989 was in dispute. It was necessary to adjudicate thereon for the purpose of considering, who was the person competent to seek renewal of Society. The Assistant Registrar, therefore, ought to have referred the matter to the Prescribed Authority but he failed to do so. Same error has been committed by Commissioner also inasmuch instead of considering the jurisdiction vested in it, it has committed the same error and recorded a finding with regard to the election dated 29.6.1989. It has set aside the order of Assistant Registrar, but since there was a dispute with respect to said election, as contemplated under Section 25 of 1860 Act, the Commissioner should have remanded the matter to Assistant Registrar for following the procedure prescribed under Section 25 of 1860 Act, which he has failed.

15. Learned counsels for parties placed before this Court earlier litigation relating to Committee of Management of the College and the orders passed by Educational Authorities as also this Court in the follow up writ petitions, but, in my view, it would not be proper at this stage to look into all these orders and record a finding since this aspect also can be looked into by the competent Court under Section 25 of 1860 Act. It would be appropriate that the dispute between the parties be decided by an authority competent under the statute.

16. In view of above, writ petition is disposed of finally in the following manner:

(a) The impugned order dated 10.1.2006 (Annexure 10 to writ petition) passed by respondent no. 2 insofar as it set aside the order of Assistant Registrar dated 22.6.2000 is upheld but is modified to the extent that matter shall stand remanded to Assistant Registrar, who shall follow the procedure laid down under Section 25 of 1860 Act for having the dispute adjudicated by the Prescribed

Authority with respect to election held on 29.6.1989.

(b) The above exercise of making reference by Assistant Registrar shall be completed within two months from the date of production of certified copy of this order by any of the parties to this writ petition. This Court hope and trust that the Prescribed Authority shall decide the dispute expeditiously but not later than six months so as to set at rest this almost two decades dispute.

(c) No cost.