

(1984) 01 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 689 of 1982

Managing Committee, Shree Sanathan Dharm Sanaskrit
Pathshala and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:

Societies Registration Act, 1860 — Section 12D, 3, 3A

Citation : AIR 1984 All 310

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Advocate : P.L. Misra, B.K. Srivastava, Kapil Deo, P. Misra and I.H. Faruqui, for the Appellant; L.P. Misra, I.A. Saddqi and Raben Mitra, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mathur, J.—The only question arising in this writ petition is whether the dispute that was decided by the Registrar, Firms and Societies was covered by Section 12-D of the Societies Registration Act. 1860 (Act 21 of 1860) (for short the Act) or was covered by Section 25 thereof? The question has arisen in the circumstances hereinafter indicated.

2. There is a society known as Shree Sanatan Dharm Sanskrit Pathshala Rupadiha, District Bahraich. This Society was registered in the year 1956 under the provisions of the Act. At the time of this registration Sri Shiv Ram Srivastava was the Manager of the Society. On 6-9-1979 Sri Ram Chandra Agarwal, opposite party Nil. 3 made an application for renewal of registration. This renewal, it appears was granted on 12-10-1979 and was to be in respect of the period commencing on 10-10-1977 and ending on 10-10-1979. On 6-11-1979 opposite-party No. 3 again applied for renewal and renewal certificate valid up to 10-10-1981 was issued on 4-1-80. Thereafter on 27-6- 1980 an objection was filed on behalf of Sri Sheo Ram Srivastava who stated that he continued to be the Manager of the Society and opposite-party No. 3 had no right to act on

behalf of the Society and to obtain the registration. The objection of Sri Shiv Ram Srivastava was upheld by the Deputy Registrar who by his order dt. 3-9-1981, Annexure-1. held that Sri Shiv Ram Srivastava never resigned from the office as was pleaded by opposite party No. 3 and therefore, he continued to be the Manager. On this basis the renewal of registration that was made at the instance of opposite party No. 3 was cancelled, and a fresh certificate was issued to Sri Shiv Ram Srivastava on 31-10-1981. This order was appealed against by opposite party No. 3 before the State Government, Before the State Government the case of opposite-party No. 3 was that the Deputy Registrar wrongly treated the dispute as one u/s 12-D of the Act and that the dispute raised by Sri Shiv Ram Srivastava was actually covered by Section 25 under which the dispute could be resolved by the Prescribed Authority and not by the Deputy Registrar. On this basis it was pleaded by opposite party No. 3 that the order passed by the Deputy Registrar was without jurisdiction and was liable to be quashed, The State Government by its order dated 20-4-1982 Annexure 8, upheld the contention of opposite party No. 3 and held that the dispute was covered by Section 25 of the Act and not by Section 12-D. After holding thus, the State Government quashed the order of the Deputy Registrar and directed that it would be open to the Registrar to take action u/s 25 of the Act. This is the order which is under challenge in the present writ petition.

3. In support of the writ petition it has been argued by Sri Kapil Deo that the matter was squarely covered by Section 12-D and, therefore, the direction given by the State Government is erroneous. In order to appreciate the submission of the learned counsel relevant portions of Section 12-D and Section 25 may be reproduced :--

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

(a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act or any other law for the time being in force;

(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy.

25. (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"

4. The learned counsel for the petitioners submitted that the dispute involved in the petition was covered by Clause (a) of Section 12-D (1). Under this clause the Registrar is competent to take action only in two circumstances-- (1) when the registration of the society or of its name or change of name is contrary to the provisions of the Act; and (2) when the said registration is contrary to the

provisions of any other law for the time being in force. A distinction has to be drawn between registration of a society and change in the office-bearers of a registered society. Section 12-D does not speak of change in the office-bearers of the society but it refers to the registration of a society and change of its name. The registration of the society is done u/s 3 of the Act and renewal is made u/s 3-A thereof. On the registration of a society a certificate is issued in Form VIII prescribed by the Uttar Pradesh Societies Registration Rules, 1976. The proforma in which the certificate is issued reads as follows :--

"FORM VIII (See rule 7 (2)) No. ... /1 ... dated ... 19 Seal.
CERTIFICATE OF REGISTRATION OF SOCIETIES (Under Act XXI of 1860)

No. ... of 19 ... 19 it is hereby certified that has this day been duly registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) as amended in its application to Uttar Pradesh. This certificate shall remain valid till,

Given under my hand at this day of one thousand nine hundred and

Registrar of Societies

Uttar Pradesh

Name of the Society"

Certificate of renewal is issued in Form No. EX which is as follows :--

"FORM IX (See Rule 8 (2)) No. ... /I. ... dated ... Seal
CERTIFICATE OF RENEWAL OF SOCIETIES (Under Act XXI of 1860)

Renewal No. ... of ... 19... It is hereby certified that the Certificate of Registration No. ... dated ... granted to has been renewed for a period of two years with effect from Renewal "fee amounting to Rs..... has been duly received.

Registrar of Societies Uttar Pradesh".

In none of the proformas the names of the office-bearers are required to be mentioned. Of course, in view of the provision contained in Section 4 a list of the office bearers is required to be filed with the Registrar. If there is any change in the list of office-bearers, that too has to be communicated to the Registrar. Such a change does not call for any alteration in the certificate of registration or renewal. Section 3A under which certificate of registration is renewed does not specify the person who may apply for renewal. Therefore, even if it is found that opposite party No. 3 was not the Manager of the Society, the renewal will not get vitiated and the renewal certificate will not become illegal so as to require its cancellation. In such a case, therefore, the provisions of the Act cannot be said to be violated even by reference to Section 3-A

5. Now, when it will be possible to say that "the registration of the Society or of

its name or change of name is contrary to the provisions of this Act"? Section 1 prescribes the manner of forming a society. It lays down that a Society may be formed for literary, scientific or charitable purpose. Section 20 illustrates the types of societies which may be registered under the Act. Section 3(2) prescribes the circumstances in which registration may be refused. Section 12A lays down the procedure for changing the name of a registered society. It is when there is violation of these provisions that the clause herein reproduced may be attracted. In the present case no violation is alleged in respect of these or similar provisions. The learned counsel for the petitioners was unable to draw my attention to any provisions in the Act exposing the registration or renewal to action for cancellation when the renewal was obtained by a person who under the rules of the society was not competent to act on behalf of the Society. In the circumstances the present case does not fall within the mischief of the first part of Clause (a) of Section 12D (1). So far as the latter part of the clause is concerned, the learned counsel for the petitioners, could not point out that the renewal obtained by opposite-party No. 3 infringed the provisions of any other law for the time being, in force. Clause (b) was neither relied upon nor it could be attracted.

6. In view of the above discussion, the State Government was right in holding that Section 12-D was not attracted in the present case

7. Now it may be examined whether the dispute is covered by Section 25. This examination requires ascertainment of the nature of the dispute raised by the parties. There is no dispute between the parties, that Shri Shiv Ram Srivastava was the Manager. The opposite-party No. 3, however, asserts that on 10-7-1979 Sri Shiv Ram Srivastava submitted his resignation from the said office which was accepted by the general body on 2-8-1979 and thereafter on 20-8-1979 the Committee of Management elected opposite-party No. 3 as the Manager. , As against this claim of opposite party number 3, the claim of the petitioners is that Sri Srivastava never resigned and he continued to be the Manager throughout. These pleadings raise two questions (1) Whether Sri Shiv Ram Srivastava continued to hold the office of Manager? and (2) whether opposite-party No. 3 had been elected as the Manager in place of Sri Srivastava? Both these disputes are covered by the clause "doubt or dispute in respect of election or continuance in office of an office-bearer" in Section 25. The pleading of opposite-party number 3 raises dispute regarding his alleged election and the pleading of the petitioners raises the dispute regarding his alleged continuance in office as Manager. Both these disputes u/s 25 are required to be decided by the Prescribed Authority. When such a dispute arises, the Registrar cannot decide the same himself. He can only refer the dispute to the Prescribed Authority.

8. The learned counsel for the petitioners, however, submitted that Section 25 would be attracted only when a dispute regarding election arises. In support of the submission he placed reliance upon an unreported decision rendered by the Lordships of the Supreme Court in SLP (Civil) Number 3250 of 1979 decided on

6-4-1979. As noticed earlier, a dispute regarding election is also involved in the present case, apart from the dispute relating to continuance of Sri Shiv Ram Srivastava in the office of Manager. In the authority relied upon by the learned counsel Their Lordships have made no observation regarding the dispute relating to continuance in office of an office-bearers. Thus authority is, therefore, of no assistance to the learned counsel.

9. The learned counsel for the petitioners, however, submitted that in an earlier writ petition between the parties filed by opposite party No. 3 this Court has already decided that the present dispute was covered by Section 12-D. It appears that when the matter was pending before the Deputy Registrar, he passed an interim order by which he restrained opposite-party No. 3 from acting as the Manager of the institution. With this interim order further direction was issued to relevant authorities for

not recognising him as Manager. The consequence of this interim order was that the institution was unable to draw the grant-in-aid. Opposite party No. 3 filed Writ Petition No. 2668 of 1980 to challenge this interim order on the ground that the Registrar had no jurisdiction in those proceedings to pass an interim order. In that context, it appears from the judgment rendered on 21-7-81, that arguments were canvassed regarding the applicability of Section 12-D and Section 25 but the Bench did not go into this question as is apparent from the following observations made by the Bench:--

"The petitioners" contention was that the real dispute related to the validity of the election of petitioner No. 2 or the continuance of. opposite-party No, 5 as Secretary-cum-Manager of the Society and institution and, therefore, a reference should have been made by the Registrar to the Prescribed Authority u/s 25.....The learned counsel for opposite-party No. 5, however, contended that Section 12-D was equally attracted if not more and it was open to the Registrar to initiate proceedings for cancellation of the registration of the society if it was found that the registration of the said society was contrary to the provisions of the Act.....We do not propose to express any view on this controversy because the matter is already pending before the Registrar and before whom both these views should be canvassed for his consideration.""

In my opinion on the basis of the judgment in re; Managing Committee v. Registrar, Finns, Societies and Chits. Writ Petition No. 2668 of 1980 decided on 21-7-1981 it cannot be said that this Court has already held that the present dispute was covered by Section 12-D of the Act.

10. In my opinion the State Government was correct in taking the view that the present dispute was covered by Section 25 of the Act. The learned counsel for the opposite-party has pointed out that the Registrar has already referred the matter to the Prescribed Authority. Correct course has now been adopted in the present case.

11. The learned counsel for the petitioners, however, submitted that in view of

Statute 13.07 of the Sampurnanand Sanskrit Vishvavidyalaya the dispute of the present nature is to be decided by the Vice-Chancellor. On this basis it was pressed that the present dispute could not be decided by the Prescribed Authority. Clause (f) of the said Statute reads as follows:--

"(f) if any question arises whether any person has been duly chose" as, or is entitled to be a member or office bearer of the management or whether the management is legally constituted, the decision of the Vice-Chancellor shall be final."

In this connection it may be pointed out that approach to the Registrar was made by the petitioners and not by opposite-party No. 3. Once the Registrar is approached, he has to act under the provisions of the Act. The provisions of the Act require that when a dispute relating to election of an office bearer to continuance in office of an office bearer arises. he has to stay his hands and refer the dispute to the Prescribed Authority. There is no provision in the Act under which the Registrar could send or refer the dispute to the Vice-Chancellor. The reliance placed on the Statute is therefore, misconceived.

12. In view of the above, the writ petition fails and is hereby dismissed with costs Opposite parties Nos. 1 and 2 will get one set of costs and opposite-party No. 3 will get separate costs.