

(2015) 08 MP CK 0018

In the Madhya Pradesh High Court

Case No : W.A. Nos. 374, 375, 376, 377 and 378/2015

Mohan Maheshwari and Others

APPELLANT

Vs

Awadh Singh Dhakre and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Society Registrikaran Adhiniyam, 1973 — Section 11, 27, 32, 33, 4(2)

Citation : (2015) 3 MPJR 142 : (2015) 4 MPLJ 468

Hon'ble Judges : A.M. Khanwilkar, C.J. and K.K. Trivedi, J.

Bench : Division Bench

Advocate : Siddharth Gupta, Amit Garg and Gaurav Singh, Advocates, for the Appellant; Samdarshi Tiwari, Dy. Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

A.M. Khanwilkar, C.J.

1. These appeals pertain to the same Society (Madhya Pradesh Chambers of Commerce and Industries) and in relation to the matter of elections to be held to constitute newly elected Managing Committee. Before institution of writ petitions, from which the present appeals emanate, Writ Petition No. 5770/2012 was filed for directing the concerned Authorities including the Society to prepare valid voters list in anticipation of the elections which were due to be held in or around 11.01.2014 upon expiry of the term of the existing Managing Committee. That writ petition was disposed of vide order dated 13.02.2014 on the following terms:--

"This petition under Article 226 of the Constitution of India filed by the petitioner claiming himself to be a member of the Society, respondent No. 5 registered under the M.P. Societies Registration Act has raised certain grievance regarding the validity of membership of the society by preferring a legal notice to the Registrar, Cooperative Society.

This Court refrains from going into the merits of the tenability of the said notice or in regard to the validity of the membership of respondent society as the same would involve the exercise of deciding the disputed questions of facts.

The petitioner is thus free to approach the competent authority i.e. Registrar/Deputy Registrar/Assistant Registrar as the case may be, by preferring appropriate application in terms of the provisions of M.P. Societies Registration Act.

Needless to emphasize that if the petitioner does so, the authority concerned is expected to consider and decide the same after adjudicating the entitlement of the petitioner to file the said representation/appeal as expeditiously as possible."

Thereafter, another writ petition was filed by one Ravi Gupta and others being W.P. No. 1370/2015 which was disposed of on 05.03.2015 on the following terms:--

"Though by filing this petition challenge is made to the order passed by Assistant Registrar, Gwalior dated 25/2/2015; whereby, direction is issued to the Chairman, M.P. Chambers of Commerce and Industries, Gwalior to conduct the elections in accordance with Act of 1973 and amended Rules of 1998 and the provisions of registered constitution of the society.

Learned counsel, for the petitioner submits that the Assistant Registrar, Firms and Societies, Gwalior in compliance of the order dated 13/2/2014 passed by this Court in W.P. No. 5770/2012 has passed a detailed order (Annexure P/5) dated 7/1/2015, therefore, it is prayed that direction is also required to be issued to hold the elections keeping in mind the directions issued by Assistant Registrar vide order dated 7/1/2015.

Without commending upon the merits of the submissions advanced, it is considered apposite to direct the Assistant Registrar, Firms and Societies, Gwalior to ensure the compliance of order passed by it on 7/1/2015 in the matter of compliance of the order impugned dated 25/2/2015.

With the aforesaid direction, petition stands disposed of. It is made clear that this Court has not expressed any opinion on the merits of the case."

2. Consequent to the liberty given to the aggrieved parties by the High Court to approach the Registrar, an application was moved by one Ravi Gupta before the Assistant Registrar on the basis of which the Assistant Registrar issued directions to the Society vide communication dated 07.01.2015 which reads thus:--

3. The directions contained in this communication, it is stated, have been issued in exercise of powers under Section 32 and/or Section 11 of the Madhya Pradesh Society Registrikaran Adhiniyam, 1973.

4. The jurisdiction of the Assistant Registrar to issue such directions was put in issue by the petitioners in the new set of writ petitions filed before the High Court, Bench at Gwalior. Those writ petitions and review petition have been

disposed of by the learned Single Judge by a common judgment dated 11.05.2015 which is impugned in these appeals. The operative directions issued by the learned Single Judge in the said decision reads thus:--

"(i) the Assistant Registrar, Firms and Societies, Chambal Division, Gwalior (respondent No. 2) shall issue notice to the executive body of Chamber of Commerce through its Secretary/President for convening a meeting on 18/05/2015 or on such other date convenient to him/her and the executive body of the Chamber of Commerce but not later than 22/05/2015 at his/her office;

(ii) the executive body through its authorized representative shall appear before the Assistant Registrar on the date so fixed along with complete record relating to members of the Chamber of Commerce as existed as on 11/04/2014;

(iii) the executive body shall comply with all the directions of Assistant Registrar in the matter of summoning of any other record required in relation to finalization of membership of Chamber of Commerce;

(iv) the executive body shall extend full cooperation to the Assistant Registrar;

(v) it is appropriate to mention that the directions issued by the Assistant Registrar in the communication dated 07/01/2015 claimed to be without affording opportunity to the executive body as complained by learned counsel for the Chamber of Commerce during the course of arguments, the same either shall not be insisted or used in the matter of finalization of list of eligible members and voters list of Chamber of Commerce;

(vi) list of eligible members shall be prepared strictly in accordance with the provisions relating to membership in the byelaws of the Chamber of Commerce;

(vii) in the process of finalisation of list of eligible members, the Assistant Registrar shall ensure that the membership of each member is properly verified with due advertence to the record maintained by the executive body;

(viii) further dates of meeting for the purpose of finalisation of list of eligible members shall be fixed by the Assistant Registrar in consultation with the authorised representative of the executive body;

(ix) the process of finalization of eligible members shall be completed on or before 30/05/2015;

(x) thereafter, the Assistant Registrar shall take recourse to hold elections strictly in accordance with election rules appended as Schedule I to the byelaws and after election so held shall notify the list of elected office bearers to function as lawful members of the executive body of the Chamber of Commerce. This exercise be completed by 20/06/2015; and

(xi) the Assistant Registrar, Firms and Societies, Gwalior shall be at liberty to approach this Court for any direction (if necessary) by filing appropriate application/proceedings."

5. After having considered the rival submissions advanced by the counsel for the respective parties, it is noticed that one set of Members of the Society have serious grievance about the manner of preparation of voters list, who would be participating in the ensuing elections to be held for constituting the newly elected Managing Committee of the Society. Besides, the said Members apprehend that the elections may not be free and fair. The Managing Committee and other set of Members, however, have questioned the authority of the Assistant Registrar to issue direction to the Society not only to conduct the elections in the manner directed, but to do so after amending the relevant byelaws. The grievance of these Members is that the Assistant Registrar has no jurisdiction to issue such directions. Secondly, the exercise of power by the Assistant Registrar is not in accordance with the requirements of Section 32 or Section 11 of the Act, as the case may be. Further, the Assistant Registrar cannot act as an Administrator of the Society in absence of any express provision in that behalf in the Act or for that matter in the byelaws of the Society. The Society being unaided Society (not State aided Society), Section 33 of the Act will have no application; and for which reason, it must follow that in absence of any other dispensation provided in respect of unaided Society, the existing Managing Committee can legitimately continue in the office until the newly elected Committee takes over the charge.

6. These are the broad issues that have been raised by the respective parties. The first question that we may take up is about the authority of the Assistant Registrar to issue directions vide communication dated 07.01.2015. Further, can such direction be issued under Section 32 or Section 11 of the Act, as the case may be. The directions issued by the Assistant Registrar by the impugned communication are multiple and on matters not only concerning the procedure for conducting the election to constitute the newly elected Managing Committee, but also to amend the byelaws of the Society.

7. Indeed, on a bare reading of the communication, it is noticed that the same has been issued on the application filed before him by a member as per the liberty given by the High Court to approach the Registrar by way of appropriate application regarding the grievance set up in Writ Petition No. 5770/2012 decided on 13.02.2014. For that, we may revert to the order passed by the High Court in W.P. No. 5770/2012. The order, in no way, directs initiation of suo motu action by the Registrar/Deputy Registrar/Assistant Registrar, as the case may be. It only predicates that the concerned parties may prefer appropriate application in terms of the provisions of the Madhya Pradesh Society Registrickaran Adhiniyam, 1973 to the concerned Authority, which would then be decided in accordance with law, expeditiously. No more and no less. Consequent to that liberty, application was filed by Ravi Gupta before the Assistant Registrar on the basis of which the said communication-cum-direction was issued by the Assistant Registrar on 07.01.2015.

8. Section 32 of the Act postulates that - the Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person

authorised by him, by order in writing, hold an enquiry into the constitution, working and financial condition of a society. This is an enabling provision authorising the Registrar to enquire into and settle the disputes with regard to constitution, working and financial conditions of a Society. Indeed, this power can be exercised by the Registrar suo motu. The communication dated 07.01.2015, however, does not indicate that the action taken by the Registrar is suo motu, as such. It is issued under the signature and name of the Assistant Registrar. Whether the Assistant Registrar has been notified and authorised to discharge the powers under Section 32 of the Act, has not been brought to our notice during the hearing. Indeed, that was not the issue pursued before the learned Single Judge. We will assume that such notification has been issued in favour of the Assistant Registrar, who has issued directions vide communication dated 07.01.2015, under Section 4(2) of the Act to treat him as Registrar and entitled to exercise or perform all or any powers/duties of the Registrar. However, it is certainly not a suo motu action taken by the Assistant Registrar. Further, directions have been issued by him on the basis of application of one Ravi Gupta and not on the application together with affidavit in support of its contents filed either by a majority of the Members of the Governing Body of the Society or not less than one-third of the total Members of the Society. Thus understood, the directions issued by the Assistant Registrar, as manifest from the communication dated 07.01.2015, will have to be held as in excess of jurisdiction.

9. Be that as it may, the Competent Authority could have issued directions to the Society only to conduct the elections which had become due in January, 2014 with utmost dispatch by following procedure prescribed in the byelaws of the Society and the Act, Regulations and Rules, as may be applicable to the Society. The Assistant Registrar cannot act as Administrator or take over the process of conducting election of the Society, which is admittedly unaided (not State aided) Society. The Registrar may intervene, if the Society fails to discharge that obligation to conduct elections within specified time, but in the manner specified under Section 32 of the Act for initiation of action thereunder and after enquiry.

10. The Assistant Registrar, however, by the impugned communication has issued directions without giving opportunity to the Society - be it on the matter of preparing voter list and completing election process within reasonable time or for amending the Byelaws of the Society as suggested. The directions have been issued without affording opportunity to the Society though necessary to do so in terms of Section 32 itself. For which reason also, the impugned communication cannot be sustained in law.

11. That takes us to the central issue which is relevant to both the sides namely; how the voters list should be prepared. With regard to this contention, we may hold that there is enough guidance in the byelaws of the Society. Inasmuch as, Byelaw No. 4 of Schedule-I refers to the qualification, eligibility to be a Member of the Society. Indeed, validly enrolled Members alone can be eligible voters, unless have incurred disqualified as provided in bylaw No. 15 of Schedule-I. That

byelaw provides for qualification to be a voter. The voters list will have to be prepared in anticipation of the election before the time frame specified in Schedule-I, in particular, clause 5 read with clause 15 of Schedule-I. Since ordinarily, elections are held within 45 days from the date of initiating process for preparation of voters list (around October, 2015 in this case), the cut off date for preparation of voter list must be reckoned as 31.03.2015 - being 31st March of the previous financial year as per clause 5 and clause 15.2. The list of members as per Section 27 of the Act of 1973 is required to be submitted to the Registrar periodically. That list can be treated as the base list or draft voters list and additions, deletions from that list can be done after inviting objections, by the Election Officer as per clause 3 of Schedule-I.

12. Suffice it to observe that in absence of any express provision in the Act or the byelaws that the election must be conducted under the supervision of the Registrar or by an independent Authority in respect of unaided Society, there is no reason why some third person must be trusted on the Society for managing its own affairs, so long as allegation of arbitrariness, bias or malafide exercise of power is not pressed into service against any particular office bearer. Similarly, since there is no provision to deal with the hiatus likely to be created after the expiry of three months of extended period from the last date of the tenure of the outgoing Committee, the just approach would be to allow the existing Managing Committee to take further steps, however, with direction to conclude the election process not later than 60 days from today.

13. Needless to observe that this decision will not preclude the Members of the Society to approach the Competent Authority for issuance of appropriate directions in exercise of the powers under Section 11 of the Act for amendment of byelaws or any other direction as may be permissible in law. That application will be decided in accordance with law, on its own merits, expeditiously. Notably, there is nothing to indicate that byelaws of the Society have in fact been amended in terms of the directions issued by the Assistant Registrar vide communication dated 07.01.2015. Moreover, giving effect to the amended provisions of the byelaws can only be prospective and for which reason the Members who may claim to be benefited by the proposed amendment of the byelaws, no right would accrue to such persons in respect of ensuing elections, which will have to proceed on the basis of eligible voters from amongst the Members of the Society as on 31.03.2015. In view of the above, we not only set aside the communication dated 07.01.2015 issued under the signature and in the name of Assistant Registrar, but also the impugned common judgment of the learned Single Judge dated 11.05.2015 and dispose of all the appeals on the above terms. No order as to costs.

Ordered accordingly.