
(2010) 05 AHC CK 0103
In the Allahabad High Court

Mohd. Imran

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 4
Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 4
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Societies Registration Act, 1860 — Section 4

Citation : (2010) 05 AHC CK 0103

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner who claims to be a life member of the Muslim Association, Kanpur (hereinafter referred to as the 'Society?') has filed this petition for setting aside the order dated 24th December, 2009 passed by the Deputy Registrar, Firms, Societies and Chits, Kanpur (hereinafter referred to as the 'Deputy Registrar?') by which he has rejected the representation filed by the petitioner and has further ordered that there is no infirmity in the order dated 29th May, 2008 by which the list of office bearers and members of the Committee of Management of the Society for the year 2008-09 was registered u/s 4(1) of the Societies Registration Act, 1860 (hereinafter referred to as the 'Act?').

2. Learned Counsel for the petitioner has raised a number of submissions for setting aside the order but it is submitted by the learned Standing Counsel that the present petition which has been filed by one life member only should not be entertained and if the members of the General Body of the Society have any grievance against the registration of the list of office bearers of the Committee of Management of the Society, then they can move the Prescribed Authority u/s

25(1) of the Act in accordance with the procedure prescribed therein.

3. The preliminary objection raised by the learned Standing Counsel needs to be considered. u/s 25(1) of the Act, 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, 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.

4. In the instant case, the Deputy Registrar rejected the objections filed by the petitioner regarding the post of the President of the Committee of Management of the Society and registered the list of office bearers and members of the Committee of Management of the Society. Only one life member has challenged the order passed by the Deputy Registrar. It has, therefore, to be seen whether, at the instance of one life member, in view of the aforesaid provisions of Section 25(1) of the Act, it is a fit case for exercising the powers of judicial review under Article 226 of the Constitution.

5. A Division Bench of this Court in Special Appeal No. 580 of 2009 (Kalrav Agarwal and Anr. v. State of U.P. and Ors.) decided on 12th May, 2009 considered this issue and observed as follows:

Short facts giving rise to the present appeal are that the writ petitioners-appellants are members of a Society known as Dharm Samaj Society Inter College and Sanskrit Pathshala, Aligarh registered under the Societies Registration Act, 1860.

The Deputy Registrar, Firms, Societies and Chits, Agra by order dated 3rd of May, 2008 registered the office bearers of the Society in exercise of the power u/s 4 of the Societies Registration Act. The writ petitioners-appellants challenged the same, inter-alia, contending that the election of office bearers is vitiated by fraud and various illegality. The learned Single Judge dismissed the writ petition as not maintainable, inter-alia, observing that the members who do not represent 1/4 members of the Society, cannot approach this Court for exercise of its writ jurisdiction. In this connection, the learned Single Judge has observed as follows:

In my opinion, the judgment in Yogendra Singh (supra) is not applicable since the judgment is not under the Societies Registration Act nor the Court had noticed the provision of Section 25(1) of the said Act. u/s 25 of the Act, 1/4 members of a Society can make a reference to the Registrar challenging the election of the office bearers of the managing body. The law recognizes a right to raise a dispute and such dispute can only be raised by 1/4 members of the Society. The same principle would equally apply if a writ is entertained questioning a dispute with regard to the election of the Managing Committee and individual member of the general body cannot be allowed to raise a dispute, inasmuch if it is allowed, it would open a flood gate of litigation.

In Dr. P.P. Rastogi and Others Vs. Meerut University and Another, a Division Bench of this Court held that an individual member of the Committee of

Management had no locus standi to file an application and that if every member of the Committee of Management was permitted to file such application, it would create a lot of problems.

Consequently, this Court is of the opinion that a writ petition filed by an individual member which does not represent 1/4 members of the Society cannot be entertained. The judgments cited by the learned Counsel for the petitioner has no application with regard to the maintainability of the writ petition. The said judgment talks about the validity of the election conducted by a Committee after the expiry of the stipulated period contemplated under its rule or bye laws.

Mr. Anoop Trivedi appearing on behalf of the appellants contends that the provisions of Section 25(1) of the Societies Registration Act cannot curtail the power of this Court as conferred under Article 226 of the Constitution of India. He submits that the office bearers of the Society were registered u/s 4 of the Act and the provisions of Section 25 of the Act shall not come in the petitioners' way. In support of his submission, he has placed reliance on an order dated 7.5.2007 passed by this Court in Civil Misc. Writ Petition No. 43508 of 2006 (Yogendra Singh and Anr. v. State of U.P. and Ors.).

We do not have the slightest hesitation in accepting the broad submission of Mr. Tripathi that the provisions of Section 25(1) of the Act cannot curtail the powers of this Court under Article 226 of the Constitution of India but the question in the present case is as to whether in the face of it, it was a fit case, for exercise of jurisdiction under Article 226 of the Constitution of India. Section 25(1) of the Act, inter-alia provides for resolution of the dispute of office bearers of a society and it contemplates that 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, hear and decide any dispute in respect of the election or continuance in office of an office bearer of such society.

Admittedly, the petitioners do not present 1/4 members of the Society. In the face of it, we are of the opinion that the power of judicial review under Article 226 of the Constitution of India was not fit to be exercised at the instance of the petitioners.

We do not find any merit in the appeal and it is dismissed accordingly.

(emphasis supplied)

6. In the present case also, only one life member of the General Body has sought the quashing of the order passed by the Deputy Registrar. It is, therefore, not a fit case, in view of the provisions of Section 25(1) of the Act, for exercising powers of judicial review under Article 226 of the Constitution at the instance of the petitioner. The petitioner may, if so advised, approach the Prescribed Authority in accordance with the procedure prescribed u/s 25(1) of the Act.

7. The writ petition is, accordingly, dismissed.