
(2016) 02 AHC CK 0288
In the Allahabad High Court
Case No : Writ C. No. 7380 of 2016

Muslim Association, Kanpur Nagar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Citation : (2016) 9 ADJ 271

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Manish Goyal and Rohan Gupta, Advocates, for the Petitioners;
C.S.C, Suresh Chandra Dwivedi and Yogish Kumar Saxena, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.— Heard counsel for the petitioners, learned standing counsel for respondents 1 and 2 and Sri Yogish Kumar Saxena for the third respondent.

2. Muslim Association, Kanpur Nagar is a registered society under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as "the Act"). By an order dated 14.7.2015, the Deputy Registrar (second respondent) recognised the elections of the Committee of Management of the Society held on 26 and 27 February, 2015, wherein the third respondent was elected as a general secretary and directed for registration of the list of office bearers under Section 4 of the Act. The second petitioner, who claims that he was appointed as General Secretary of the Society on 11.4.2013 preferred an objection dated 28.7.2015 before the second respondent and prayed for revocation of the order dated 14.7.2015, whereby the list of office bearers elected on 26 and 27 February 2015 was directed to be registered. In the objection a specific plea was taken that the meeting dated 14.2.2015 in which decision was purportedly taken to hold elections on 26/27 February 2015 was illegal as it was convened by the expelled secretary and that quorum in the said meeting was not complete. Eleven

members were shown to have participated whereas signatures of five members was forged. Several other pleas have also been raised on the basis of which effort was made to demonstrate that the order dated 14.7.2015 was obtained by the contesting respondent by fraud and manipulation.

3. The second respondent taking cognizance of the complaint made by the petitioners issued a notice on 30.7.2015 to the third respondent fixing 10.8.2015. In response thereto, the third respondent filed detailed objection on 10.8.2015 raising various pleas, one of which was that the second petitioner is not a member of the general body. It was further contended that on 31.3.2015 an order was passed by the second respondent repelling all the contentions relating to the validity of the election proceedings and in such view of the matter, it is not open to the petitioners to set up any further claim. On 17.8.2015, the third respondent filed further objections.

4. The second respondent by impugned order dated 28.8.2015 rejected the objections filed by the petitioners on the ground that the petitioners had preferred writ petition no. 10347 of 2015 before this Court which was dismissed by order dated 11.8.2015 without granting any relief against the elections set up by the third respondent dated 26 and 27 February 2015. It is further noted in the impugned order that this Court had granted liberty to the petitioners to approach civil court challenging the elections dated 26.2.2015 and in such view of the matter, the remedy available to the petitioners is to approach the civil court. In the impugned order, the second respondent has also taken notice of the order passed by this Court on the same day in two other matters relating to the same Society although all these writ petitions were at the instance of other persons.

5. The writ petition no. 10347 of 2015 preferred by the petitioners was against the order of the Prescribed Authority dated 9.2.2015, whereby the Prescribed Authority had adjudicated upon the validity of the election held in the year 2012. The writ petition was dismissed as withdrawn on 11.8.2015 with the following clarification:-

"After some arguments, he submits that he may be permitted to withdraw the writ petition provide its dismissal does not come in his way in getting the validity of the elections of the Committee of Management of the Society dated 26.2.2015 challenged before the civil court.

The adjudication of any dispute about the elections of a Society by the Prescribed Authority under Section 25 of the Act is by way of summary proceedings and is always subject to decision by the competent court of civil jurisdiction.

In view of the above, the writ petition is dismissed with liberty to petitioner to challenge the said elections before the civil court where the dispute shall be decided on its merit without being influenced by the decision of Prescribed Authority or this order of the Court".

6. Sri Manish Goyal, learned counsel appearing on behalf of the petitioners

submitted that in the order of the court dated 11.8.2015, a reference to the election dated 26.2.2015 was inadvertently made, although the same was not subject matter of challenge in the said writ petition. He pointed out that subsequently, an application seeking correction/modification moved by the petitioners was allowed by order dated 27.1.2016. The Court disposed of the application with the following clarification :-

"Sri Rohan Gupta, learned counsel for the petitioner has moved an application for correction/clarification of the above order on the ground that the aforesaid order is creating confusion as it refers to elections dated 26.02.2015 the correctness of which was not adjudicated by the prescribed authority."

"In view of the above, the order dated 11.08.2015 is clarified and it is observed that the liberty granted to the petitioner while dismissing the writ petition is to challenge the dispute of membership of the Society by means of the civil suit which was the subject matter of adjudication by the prescribed authority vide order dated 09.02.2015 and not of the elections of the Society held on 26.02.2015."

7. It is urged that after the clarification application has been allowed by this Court, it is abundantly clear that this Court had not adjudicated upon the validity of the elections dated 26 February 2015 and consequently the order of the Deputy Registrar becomes vulnerable in so far as it refuses to adjudicate upon the complaint filed by the petitioners solely on the ground that this Court had refused to grant any relief to the petitioners in relation to the elections held in February 2015 and they were directed to approach the civil court.

8. On the other hand, Sri Yogish Kumar Saxena, learned counsel appearing on behalf of the third respondent submitted that the instant writ petition by the petitioners is not maintainable in as much as the second petitioner is not even a member of the general body. It is further urged that the order of the Deputy Registrar dated 31.3.2015 by which the claim of the petitioners was rejected in relation to the elections dated 26 and 27 February 2015 having not been challenged, the objections preferred by the petitioners before the Deputy Registrar itself was not maintainable. In other words, the contention of the learned counsel for the third respondent is that the Deputy Registrar does not have any power to review his earlier order. It is pointed out that these pleas were specifically raised by the third respondent in the objections preferred before the Deputy Registrar. It is further urged that in the companion writ petition, which was disposed of by this Court on the same day, the Court had refused to grant any relief to the petitioners of that case in reference to the subsequent elections as well.

9. I have considered the submissions made by learned counsel for the parties and perused the record.

10. Indisputably, the complaint which the petitioners had filed before the second respondent was taken cognizance of and notice was issued to the third

respondent to file objections thereto. The third respondent had also filed objections before the Deputy Registrar on various grounds including the locus of the petitioners to prefer such objections. A further plea was set up before the Deputy Registrar that in the face of the earlier adjudication by the Deputy Registrar by order dated 31.3.2015, the petitioners do not have right to prefer the complaint. However, the second respondent, without going into any of the pleas raised by the third respondent, has rejected the objection/claim solely on the ground that the petitioners in writ petition no.10347 of 2015 have failed to obtain any relief in relation to the elections of February 2015. It has been noted that this Court had granted liberty to the petitioner to approach the civil court challenging the elections held in February 2015 and consequently there remains no justification in law for hearing the complaints filed by the petitioners.

11. Concededly, the writ petition preferred by the petitioners was filed challenging the order of the Prescribed Authority dated 9.2.2015 rendered in reference to the elections held in February 2012. This Court while allowing the correction application by order dated 27.1.2016 has clarified that liberty granted to the petitioners to approach the civil court was in relation to adjudication made by the Prescribed Authority vide order dated 9.2.2015, meaning thereby, that it was in relation to the elections of the year 2012 and not the election of the Society held on 26 and 27 February 2015. The basic premise on which the impugned order is founded, thus, stands demolished.

12. The order of this Court of the same date passed in writ petition No.31141 of 2012 has also been noted in the impugned order. Although, the complaint filed by the petitioners was not rejected on the basis of the order passed in the said writ petition but it would be proper to note here that the aforesaid writ petition was at the instance of three persons who claimed themselves to be the valid members of the Society, but were not permitted to participate in the elections held in the year 2012. They challenged the election of the year 2012 directly in the writ petition. This Court declined to grant relief to them taking into consideration the fact that those elections of the year 2012 were upheld by the Prescribed Authority by order dated 9.2.2015 which had not been challenged by them nor the fresh elections held in the year 2015. In the opinion of the Court, the observations made by this Court in the said judgment would not come in the way of the petitioners herein to maintain their objections.

13. As notice above, in the impugned order, the second respondent has not gone into the plea as to whether the petitioner is the member of the general body; whether the objection preferred by him was maintainable in view of earlier objections having been rejected and whether the plea if entertained would amount to reviewing the earlier order. In such view of the matter, this Court is of the opinion that these pleas are required to be dealt with, in the first instance, by the second respondent.

14. Accordingly, this writ petition is allowed. The impugned order dated 28.8.2015 passed by the second respondent is quashed. He is directed to

consider the objections preferred by the petitioners afresh after giving opportunity of hearing to the third respondent. It shall be open to the third respondent to raise all pleas and contentions before the second respondent including the plea that the petitioner is not a member of the general body and that the objections preferred by him are not maintainable in view of previous adjudication by the same authority.

15. With the aforesaid clarifications, the writ petition stands allowed to the extent indicated above.