
(2019) 07 UK CK 0229

In the Uttarakhand High Court

Case No : Special Appeal No. 707 Of 2019

Naida Akhtar And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Societies Registration Act, 1860 — Section 25, 25(1), 25(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)
Allahabad High Court Rules, 1952 — Rule 5
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 UK CK 0229

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : S.K. Mandal, B.S. Parihar, G.K. Verma

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 2101 of 2012 dated 20.05.2019.
2. The appellants herein had filed Writ Petition (M/S) No. 2101 of 2012 seeking a writ of certiorari to quash the order passed by the second respondent dated 05.09.2012 in Case No. 1 of 2011 whereby the appellants-writ petitioners' application was rejected construing the application to have been filed by only one member; and for an order to allow the application dated 12.01.2011, filed by all the appellants-writ petitioners, or in the alternative to issue a mandamus commanding the respondent authority to decide the application, filed by all the appellants-writ petitioners, afresh on merits.
3. The dispute in the writ petition relates to the constitution of a Managing Committee of the Society registered under the Societies Registration Act.
4. In exercise of his powers under Section 25(1) of the Societies Registration Act,

the Sub-Divisional Magistrate (the prescribed authority) rejected the application on the ground that it was not filed by 1/4 of the members of the Society. Aggrieved thereby, the appellants-writ petitioners invoked the jurisdiction of this Court. The learned Single Judge dismissed the writ petition, by the order under appeal, holding that the prescribed authority had considered the question whether the appellants-writ petitioners had been duly inducted as the members of the Society, and had held that the appellants-writ petitioners could not produce any evidence to substantiate their stand that they were duly inducted members of the Society; the reference was not sponsored by 1/4th of the members of the Society; however, the primary question was whether the appellants-writ petitioners were duly inducted members; this question went to the root of the matter; and in such a view of the matter, the Registrar had declined to answer the reference. While refusing to examine disputed questions of facts in proceedings under Article 227 of the Constitution of India, the learned Single Judge granted the appellants-writ petitioners liberty to approach the Competent Civil Court for adjudication of their rights, and the Civil Court was directed to decide the Suit on its merits without being influenced by any observations made by the Court in the order under appeal. Aggrieved thereby, the petitioners in the writ petition have invoked the appellate jurisdiction of this Court under Chapter VIII Rule 5 of the Allahabad High Court Rules.

5. Since Sri Gopal K. Verma, learned counsel for the respondent no. 6, has raised an objection to the maintainability of the appeal, we asked Sri S.K. Mandal, learned counsel for the appellants-writ petitioners, to satisfy us that an intra-Court Appeal would lie against an order passed by the learned Single Judge exercising jurisdiction under Article 227 of the Constitution of India, in the light of the limited scope of an intra-Court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules. Sri S.K. Mandal, learned counsel for the appellants-writ petitioners, would place reliance on a Division Bench judgment of the Allahabad High Court, in Committee of Management, Adarsh Shiksha Niketan and another vs. The Assistant Registrar, Firms, Societies and Chits, Varanasi Division and others : AIR 2000 All 288. In the aforesaid judgment, while the Division Bench of the Allahabad High Court had, no doubt, examined the scope of Section 25(1) of the Societies Registration Act, the maintainability of an intra-Court Appeal was not examined therein.

6. Sri S.K. Mandal, learned counsel for the appellants-writ petitioners, would contend that the very fact that an intra-Court Appeal was entertained, by the Allahabad High Court, would itself show that such an appeal is maintainable. We must express our inability to agree with this contention.

7. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not any other observations found therein nor what logically follows from the various observations made in it. (Quin v. Leathem : (1901) AC 495 : State of Orissa vs. Sudhanshu Sekhar Mishra : AIR 1968 SC 647).

8. Since the question regarding maintainability was not even raised therein, much less considered by the Division Bench of the Allahabad High Court in Committee of Management, Adarsh Shiksha Niketan and another, the said judgment would not constitute a precedent, much less one binding on a co-ordinate Bench, on the question regarding maintainability of an intra-Court Appeal.

9. The very same question was answered in Jai Prakash Agarwal vs. Prescribed Authority : (1999) 1 UPLBEC 697, wherein a Division Bench of the Allahabad High Court, while examining an identical question, held thus:-

".....We have thoroughly considered the submissions made by the learned counsel for the parties. A Full Bench of this Court in case of Committee of Management, Shri Kashi Raj Mahavidyalaya, Aurai District Bhadohi, Varanasi and others: (1996) 3 UPLBEC 1617 (FB), while considering as to whether the Deputy Director of Education deciding a dispute under Section 16A (7) of U. P. Intermediate Education Act, 1921, is a tribunal or not, after examining various authorities, held in paragraph No. 16 as under :

"It would appear that to determine the question whether an authority is a tribunal, the nature of the order passed by the authority and also the characteristic of the body which is called upon to adjudicate upon the matter in dispute are material consideration. Even a judicial authority may. In a given situation act in administrative or executive capacity. In that situation the authority would not be a tribunal. Likewise an administrative authority, even if required to act judicially would not be a tribunal if it is not invested with the inherent judicial power of the State. As pointed out earlier, under Section 16A (7), the Regional Deputy Director of Education may find the person who are in actual control of the affairs of an institution, yet those persons may not be recognised as constituting the Committee of Management. By way of illustration, such a situation may obtain where valid election has been held, but the previous Committee of Management has not allowed the newly elected persons to have actual control of affairs of the institution. In such a case, even though members of previous Committee of Management may be in actual control of the affairs of the authority, they may not be recognised as constituting the committee of management. Whether the persons who are found to be in actual control of the affairs of an institution are to be recognised as constituting, the Committee of Management of the institution under sub-section (7) of Section 16A is essentially administrative in character. The finding of the Deputy Director of . ' Education as to the persons in actual control of affairs of the institution does not decide the dispute as to the entitlement to be members of the Committee of Management. He is not entrusted with the duty to act judicially, though he must act fairly. He has no trappings of the Court. This finding as to the persons in actual control of the affairs of an institution lacks in finality or conclusiveness and binding nature, which is associated with the decisions of a court or a tribunal.

Now if the aforesaid test is applied to the prescribed authority under Section 25

of the Act. there remains no doubt that it is a tribunal. Under Section 25 prescribed authority decides important dispute of election and continuance in office of an office-bearer, which is essentially a dispute of civil nature. The order passed by the prescribed authority though has not been said to be final in specific words but sub-section (2) of Section 25 of the Act specifically provides that where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call meeting of the general body of such society for electing such office bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officers 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. Thus, the provisions contained in sub-section (2) of Section 25 of the Act provide that if the election is set aside by the prescribed authority a fresh election is required to be held by the Registrar. This is sufficient indication that the order is final. The prescribed authority is also required to hear and decide in summary manner any doubt or dispute in respect of the election. Thus, the order has to be passed after hearing parties and giving them opportunity to adduce evidence. From the provisions contained in proviso, it is clear that he decides the dispute in exercise of inherent judicial powers of the State vested in him by the notification.

Learned counsel for the appellant submitted that the order of the Prescribed authority is not final and suit can be filed challenging the same, hence he decides the dispute administratively and not judicially. We are not prepared to accept this submission. Prescribed authority under Section 25 of the Act decides the dispute judicially and in exercise of the inherent judicial powers of the State. This position is not in any way diluted because against the order of the Prescribed authority, a suit may be filed in the civil court. If this test is accepted, then no Court can exercise inherent judicial power of the State because orders can be challenged in appeal or revision or before this Court under Article 226 of the Constitution. Finality of the order has to be judged from the effect of it on the rights of parties, if the order is not challenged further. In such a situation, it should finally resolve the dispute between parties. In our considered opinion, the Prescribed authority is a tribunal and possesses the trappings of the Court. A Division Bench of this Court in *All India Council and another* (supra) held in paragraph Nos. 6 and 7 as under :

"The petitioners are clearly right. Section 25 of the Societies Registration Act as amended by the State Legislature enacts a comprehensive Code and creates a designated forum or tribunal for adjudication in a summary manner of all disputes or doubts in respect of the election or continuance in office of an office-bearer of such society. It also provides the grounds upon which the election of an office bearer can be set aside. The procedure to be followed for filling up of the vacancies arising from the decisions rendered by the Prescribed authority under

subsection (1) of Section 25 has also been laid down (Section 25 (2)).

It will, therefore, be seen that insofar as disputes or doubts in respect of the election or continuance in office of the office-bearers of a Society registered in Uttar Pradesh are concerned the Legislature has created a specific forum and laid down an exhaustive procedure for determination of the same under Section 25. There is no other provisions, express or otherwise, providing for determination of such disputes specifically. It is settled law that where, as here, the Legislature creates a specific forum and lays an exhaustive procedure for determination of a particular class of disputes in respect of matters covered by the statute. Such disputes can be determined only in that forum and in the manner prescribed thereunder and not otherwise. If, therefore, a dispute is raised with regard to the election or continuance in office of an office -bearer of a society registered in Uttar Pradesh, the same has to be decided only by the Prescribed authority under Section 25 (1) and not by the Registrar, save, of course, to the decision of the Prescribed authority being subject to the result of a civil suit."

In case of Prabhat Mishra and others (supra) relied on by learned counsel for appellant, the learned single Judge was examining the question whether Section 25 has taken away the jurisdiction to adjudicate the dispute relating to election of office-bearers of the society and in that connection, the learned single Judge held that the suit is maintainable. The question whether the Prescribed authority is a tribunal or not was not involved before the learned single Judge and the judgment does not help appellant in any manner. What we have held above, we also find support from the Division Bench judgment of this Court in case of Sudarsan Singh Bedi (supra). In fact by substituting Section 25 in the Act in present form. Legislature has constituted an election tribunal for resolving the election disputes of societies registered under the Act and disputes regarding continuance of the office-bearers of such societies : though nomenclature given is Prescribed authority. The jurisdiction of this tribunal can be invoked either under a reference made by Registrar or by 1/4 members of general body of society, as provided under Section 25 (1) of the Act. Individual members of the society have been, it appears, intentionally excluded and have not been given right to invoke the jurisdiction of tribunal, only to avoid multiplicity of proceedings and frivolous litigation. Considering the fact that generally societies consist of large number of members, such a step was very necessary. Considered from all possible angles, the conclusion, which appears just and proper, is that Prescribed authority is a tribunal...." (emphasis supplied)

10. Since the said judgment was delivered on 26.11.1998, before the State of Uttarakhand was created on 09.11.2000, the law declared by the Division Bench of the Allahabad High Court, in the aforesaid judgment, is binding on this Court. It is evident, therefore, that the Sub Divisional Magistrate, exercising jurisdiction under Section 25(1) of the Societies Registration Act, is a Tribunal; and, consequently, an intra-Court Appeal against the order passed by the learned Single Judge dismissing a writ petition, questioning such an order of the Tribunal

constituted under a Central or a State Act, would not lie under Chapter VIII Rule 5 of the High Court Rules.

11. While dismissing the Appeal as not maintainable, we make it clear that we have not interfered with the order under appeal, and it is always open to the appellants-writ petitioners to avail the remedies in terms of the liberty granted by the learned Single Judge in the order under appeal.

12. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.