
(2019) 05 UK CK 0211

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2101 Of 2012

Naida Akhtar & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Societies Registration Act, 1860 — Section 25
Constitution Of India, 1950 — Article 227

Citation : (2019) 05 UK CK 0211

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : Siddartha Sah, Vinod Nautiyal, B.C. Pande, Gopal K. Verma

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, J

1. Heard learned counsel for the parties and perused the record.
2. Petitioners are aggrieved by the order dated 5.09.2012 passed by Prescribed Authority/S.D.M., Mussorie, Camp, Dehradun in exercise of power under Section 25 of the Societies Registration Act. By the said order, the Prescribed Authority has refused to entertain the reference made by the petitioners on the ground that the reference was not made by at least 1/4th of the members of the society.
3. It transpires that petitioners had earlier filed Writ Petition (M/S) No. 950 of 2010 seeking direction to the Registrar, Funds, Societies and Chits, Uttarakhand to conduct fresh elections for the society in question. The said writ petition was disposed of by coordinate Bench of this Court vide order dated 29.07.2010 with a direction to the Registrar, Funds, Societies and Chits, Uttarakhand to conduct fresh election, within a period of three months.
4. The dispute is in respect of a society known as Audyogik Evam Shikshik Sansthan, which is duly registered under Societies Registration Act, 1860.

5. It transpires that there were three rival groups, which wanted to get control over the society. The Registrar summoned members of all the groups and asked them to produce the original documents with them to substantiate their claim that they are members of the society. After examining the documents produced by the members of three groups, the Registrar issued a tentative membership list on 02.11.2010 in which names of only nine members were included and names of the petitioners were not included. Subsequently, final list was issued by the Registrar on 10.12.2010 in which also nine persons were shown as member and none of the petitioners was included in the said list. Pursuant to the directions of coordinate Bench of this Court, Registrar conducted elections on 04.11.2010 in which only nine persons voted, who were included in the list of members issued vide order dated 10.12.2010.

6. Petitioner No. 6 - Mohammad Yamin Ali challenged the election held on 04.11.2010 by filing Writ Petition (M/S) No. 2206 of 2010. The said writ petition was, however, dismissed on 28.12.2010 by coordinate Bench of this Court on the ground that alternative remedy is available to him under Section 25 of the Registration of Societies Act.

7. Thereafter, Mohammad Yamin along with five other persons approached the Prescribed Authority under Section 25 of the Societies Registration Act for challenging the elections of the Society held on 04.11.2010. The Registrar refused to entertain the reference made by the petitioners, vide impugned order dated 05.09.2012. Thus, feeling aggrieved, petitioners have approached this Court.

8. A perusal of the impugned order dated 05.09.2012 would indicate that the Registrar considered the question as to whether petitioners are duly inducted member of the society and held that petitioners could not produce any evidence to substantiate their stand that they are duly inducted member of the society. Although another reason assigned by the Registrar is that the reference is not sponsored by 1/4th members of the Society, however, the question whether petitioners are duly inducted members of the Society or not, is the primary question, which goes to the root of the matter. In such view of the matter, the Registrar has declined to answer the reference.

9. Petitioners have challenged the order passed by the Prescribed Authority by filing this writ petition, under Article 227 of the Constitution of India, however, this Court is not inclined to go into the disputed question of fact, as to whether petitioners are members of the concerned Society or not, while exercising power under Article 227 of the Constitution of India.

10. Accordingly, the writ petition is dismissed.

11. However, the petitioners shall be at liberty to approach the Competent Civil Court for adjudication of their rights. The civil court shall decide the suit on its merit without being influenced by any observation made by this Court in this order.