
(2004) 02 AHC CK 0206

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29266 of 2001

Obaidur-Rahman

APPELLANT

Vs

Assistant Registrar, Firms, Societies and Chits and Another

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Societies Registration Act, 1860 — Section 12D, 25, 25(1), 4, 4A

Citation : (2004) 2 UPLBEC 1816

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.S. Diwekar and Vinod Kumar Srivastava, for the Appellant;
Blawant Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the Counsel for the parties and perused the record.

2. By means of this writ petition the petitioner has, inter-alia, prayed for issuance of a writ, direction or order in the nature of certiorari quashing the impugned order dated 27.7.2001 (Annexure 4 to the writ petition) passed by respondent No. 1 and praying to cancel the list of members of the Committee of Management.

3. The case, in brief, is that the Society by the name of Sewa Ashram, Maghar, Tehsil Khalilabad, District Basti was initially registered on 14.10.1992 and was renewed on 13.10.1997. On 28.2.2001 the election of the Society is alleged to have taken place and on 7.3.2001 the petitioner, who is the Secretary of the Society, furnished the papers relating to proceedings of the election held on 28.2.2001 to respondent No. 1 along with the list of office bearers for the year 2000-01. On 13.3.2001 respondent No. 1 registered the list of the office bearers submitted by the petitioner. On 28.3.2001 respondent No. 2 along with some office bearers and members of the Committee of Management made a complaint to respondent No. 1 that no election of the Committee of Management was held

on 28.2.2001. On 21.4.2001 notice was issued to the petitioner. On 1.7.2001 the Committee of Management is alleged to have been elected. However, respondent No. 1 passed an order on 27.7.2001 that the election held on 28.2.2001 was based on false documentation and cancelled the list of the office bearers submitted by the petitioner and held the election taken place on 1.7.2001 as valid.

4. The Counsel for the petitioner contends that respondent No. 1 failed to appreciate that respondent No. 2 and other complainants were expelled from the Society for not depositing the membership fee. He further contends that the present is a case covered u/s 25 and not u/s 12-D of the Act, as there is a dispute between two rival societies claiming each other to be fictitious.

5. The question for determination in this case is whether the dispute or doubt election and cancellation of list of office bearers will fall under Sections 4 and 12-D or u/s 25 of the Societies Registration Act, 1860.

6. The Counsel for the petitioner placed reliance on the decision rendered in All India Council and Another Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and Another, which followed the decision rendered in 1981 UPLBEC 308 wherein it was held that Section 4(1) of the Societies Registration Act, 1860 relates to registration of society and office bearers. It was further held that forum for adjudication of all disputes or doubts in respect of election or continuation in office of office bearers of society falls u/s 25 of the Societies Registration Act and not u/s 4(I) of the said Act. He has further relied upon the decision rendered in Committee of Management, Baba Saheb Dr. Bhimrao Ambedkar Primary Pathshala, Azamgarh and Anr. v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur and Ors. (1996) 2 UPLBEC 884 wherein it was held that Section 12-D of the Societies Registration Act, 1860 deals with cancellation of registration but does not deal with cancellation of registration of election of members or office bearers. It was further held in Committee of Management, Baba Saheb Dr. Bhimrao Ambedkar Primary Pathshala (supra) that once the Assistant Registrar had recognized one or other person to be elected and eligible to continue as office bearer, it cannot be cancelled u/s 12-D of the Societies Registration Act, 1860.

7. It appears from the record that the petitioner had challenged the order of respondent No. 1 dated 27.7.2001 claiming himself to be the Secretary of the Society by filing Writ Petition No. 29266 of 2001. This Court granted no interim order to him. Thereafter another writ petition was filed on behalf of the Committee of Management through its President Dr. Ahmad Ullah and one Iqbal Ahmad against the same the same order of respondent No. 1 dated 27.7.2001 without disclosing the fact of filing of the earlier writ petition.

8. The Counsel for the respondents urged that at no point of time any meeting either of the General Body of the Society or of the Committee of Management of the Society was held on 28.2.2001 and the entire documentation in regard to the

meeting dated 28.2.2001 is forged and fabricated. It is further urged that the aforesaid meeting is said to have been held under the Presidentship of Vice-President Smt. Mithlesh Srivastava. She has disowned holding of the said meeting in categorical terms by filing affidavits before the Registrar. On 13.3.2001 respondent No. 1 approved the alleged election proceeding dated 28.2.2001 without inviting any objection. The Counsel for the respondents further contends that respondent No. 1 has exercised the power vested in it u/s 4 of the Societies Registration Act, 1860 and the provisions of Sections 12-D and 25 (1) of the Societies Registration Act, 1860 which are not attracted to the facts and circumstances of the present case.

9. In a series of decisions this Court has consistently held that Section 12-D of the Act deals with cancellation of registration on grounds mentioned therein and Sections 4, 4-A and 4-B deal with registration or renewal of a society. These Sections do not deal with disputes about the election of office bearers or members of the society. The Registrar has no power to decide election disputes and has to refer the same to the Prescribed Authority u/s 25 of the Act. The Registrar in this case had declared that elections held on 28.2.2001 were valid and elections of office bearers held on 1.7.2001 were invalid.

10. A Division Bench of this Court in the case of All India Council v. Asstt. Registrar, AIR 1988 Allahabad 236, relying on the case of 1981 UPLBEC 308 and 1984 ALJ 583, held thus :

"If 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 u/s 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. If such a dispute is raised before or is brought to the notice of the Registrar, he should refer the same for adjudication to the Prescribed Authority and he cannot claim to decide that dispute himself."

11. Similarly in later case of Sri Ram Laxmi Narain Marvari Hindu Hospital and another Vs. Assistant Registrar, Firm's, Societies and Chits and another, the case law was reviewed in details and the Court held thus :

"It is an indubitable fact that the scope and object of the provisions of Section 4(1) on the one hand and Section 25 on the other are quite separate and distinct. They are invocable and are operational in entirely varying facts and circumstances. The two provisions are mutually exclusive. There is no quarrel about the proposition of law that the Registrar, or for that matter, a Deputy or Assistant Registrar who has been invested with the power to pass orders u/s 4(1) has absolutely no authority to decide the dispute or doubt with regard to the elections of rival Committee of Management. Such type of dispute has, of necessity, to be decided by the Prescribed Authority u/s 25 of the Act. Power of the Registrar are limited and are exercisable within the ambit of Section 4(1) of the Act. Registrar cannot usurp the power of the Prescribed Authority u/s 25 of

the Act in any circumstance. Therefore, any decision given by him in this regard will be wholly without jurisdiction. He is in law bound to refer any such dispute to the Prescribed Authority.

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The Registrar has the power u/s 4 to enquire into the question whether the person concerned is member of the society or not. If the Registrar comes to the conclusion that such a person is not a member of the society, then he is not under any obligation or duty to refer the dispute or doubt relating to his election to the Prescribed Authority for decision.

The law as it stands is that the Registrar to take workable administrative decision to recognize the newly constituted Committee of Management or its office bearers so that smooth functioning of the Society is not hampered. This determination is, of course, subject to the ultimate decision by the Civil Court, Nevertheless, if a bona fide dispute or doubt with regard to the election of the rival Committee of Management of the office bearers is raised, in that event the Registrar would keep his hands off and relieve himself by performing statutory duty of making a reference u/s 25 of the Act. Should the Registrar fail to make a reference on account of his callousness, obstinacy or on account of his being imbued with a feeling to usurp the jurisdiction of another authority, in that event the legislature has, with a view to guard against such arbitrary action, made a provision that the dispute, apart from the power of reference by the Registrar, may be taken by rival claimants before the Prescribed Authority for decision provided the aggrieved persons are in a position to master the strength of one fourth of the members of the registered society. If the dispute raised by the petitioners is really bona fide in that event, there is nothing to prevent them from approaching the Prescribed Authority to decide the dispute between the rival parties."

12. In the present case the complaint was that the elections held on 7.3.2001 was fake. The Registrar either u/s 4-B or Section 12-D of the Act had no jurisdiction to set aside the election after it had been registered.

13. In view of the settled law the order of the Assistant Registrar dated 27.7.2001 is liable to be set aside being without jurisdiction.

14. For the reasons stated above, the writ petition is allowed and the order dated 27.7.2001 is quashed. No order as to costs.