
(2009) 08 AHC CK 0066
In the Allahabad High Court

Prabha Shankar Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Societies Registration Act, 1860 — Section 4A

Citation : (2010) 1 AWC 1008

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The present writ petition has been filed by four members of the High Court Bar Association (hereinafter referred to as the Association) praying for the quashing of the order dated 10th February, 2009, passed by the Assistant Registrar, Societies, Firms and Chits, Allahabad, by which new bye-laws/ rules of the Association has been registered u/s 4A of the Societies Registration Act, 1860. The petitioners have also prayed that a mandamus be issued to the office bearers of the Bar Association to run the affairs of the Association in accordance with the previous bye-laws which were existing prior to the issuance of the impugned order. The petitioners have further prayed for any other writ, order or direction which the Court may deem fit and proper in the circumstances of the case.

2. At the very outset, it was stated by Shri R.K. Ojha as well as by Shri Rishi Kant Rai, the learned Counsels for the petitioners that the writ petition may be disposed of finally at the admission stage itself and that the Court may decide the issue finally and that the matter may not be relegated again to the Assistant Registrar who has passed the impugned order. The learned Counsel for the petitioners further submitted that time is the essence and that the matter may be decided at the earliest inasmuch as the office bearers have proposed to hold the election of the Association on 9th of October, 2009 and that the result of the writ petition would have a direct bearing on the election which are going to be

held in the near future.

3. Shri V.C. Mishra, the learned senior counsel and President of the Bar Association and Shri T.P. Singh, the learned senior counsel have appeared on behalf of the Bar Association, and other office bearers of the Association and submitted that they have no problem if the Court decides the matter finally. Accordingly, as agreed between the parties, and without calling for a counter-affidavit, and since the original records of the Registrar of Societies and two registers and one file containing the minutes of the Bar Association, have been produced by the Bar Association, this Court is proceeding to decide the matter finally.

4. The petitioners are the members of the Bar Association. The petitioner No. 1 is the Ex-Joint Secretary and petitioner No. 2 is the Vice-President of the present set of office bearers of the Association. Petitioner Nos. 3 and 4 are members of the Bar Association. All the four petitioners are aspiring to hold a post in the ensuing election of the Association. The present controversy triggers" from an order passed by a Division Bench of this Court in Writ Petition No. 40101 of 2007, Harbansh Singh and Ors. v. State of U.P. and Ors.. The petitioners in that petition had prayed that the Assistant Registrar, Societies be directed to ensure that the election of the High Court Bar Association be held within a stipulated period after preparing the voter list in accordance with the model bye-laws or the bye-laws of the Society. The petitioners had also prayed for a writ of mandamus commanding the Bar Council of Uttar Pradesh to ensure compliance of their model bye-laws by the High Court Bar Association. In this writ petition, the Court passed a set of directions on various dates. On 29th August, 2007, the Court directed the Bar Association to hold a meeting of the general body of the Association for consideration of the model bye-laws. For facility, the order dated 29th August, 2007 is quoted hereunder:

Heard Shri T.P. Singh, learned senior counsel for the petitioners. At this stage we are concerned as to whether the election of the Allahabad High Court Bar Association be conducted as per the model bye-laws framed by the Bar Council of Uttar Pradesh. Such an issue can be decided by the general body of the High Court Bar Association, as it requires amendment of the existing bye-laws. For that purpose, the parties have agreed that the meeting of the general body, High Court Bar Association shall be convened before the end of 3rd week of September, 2007 for this agenda only.

Let a general body meeting be held within the said stipulated period and the amendment in the bye-laws be put before the house and an appropriate resolution be passed giving strict adherence to the mode of voting as provided in the bye-laws.

List the matter in the 1st week of October, 2007.

5. Based on the aforesaid order, the then Secretary of the Association, issued a notice dated 17th September, 2007, intimating the members that an emergent

meeting of the general body would be held on 20th September, 2007 to consider the model bye-laws/amendment in the bye-laws. It transpires that the meeting of 20th September, 2007 was adjourned, and consequently, an adjourned meeting of the general body of the Bar Association was held on 27th September, 2007, on which date, the model bye-laws/amendment in the bye-laws was placed before the general house for its consideration. The said meeting was chaired by the then President and conducted by the then Secretary. The record of the Bar Association indicates that two sets of minutes dated 27th September, 2007 were drawn up, one by the President, and the other by the Secretary of the Association. In the minutes drawn and signed by the President, it was recorded that no resolution on the proposed model bye-laws could be passed as some rowdy elements disrupted the meeting, and consequently, the meeting of the general body of the Association was adjourned. On the other hand, the Secretary of the Association, in its minutes recorded that more than 3/4th of the majority of the members voted for the adoption of the model bye-laws.

6. When the matter came up before the Division Bench, these two minutes alongwith the respective affidavits were placed before the Court. The Division Bench noted that the parties were at variance on the issue of the adoption of the model bye-laws, and proceeded with the matter, and by an order dated 5th October, 2007, directed for the constitution of a 5 member committee of senior counsels to verify the list of the members of the Bar Association. By another order dated 10th of January, 2008, the Court directed the 5 member committee to hold the elections of the Bar Association, pursuant to which, the elections were held on 5th of March, 2008.

7. The then Secretary of the Association circulated a notice dated 18th of March, 2008 for holding the meeting of the general body of the Association on 19.3.2008, for the purpose of the declaration of the result of the election, by the Returning Officer. The general body of the Association met on 19th of March on which date the results of the elections were declared and the budget and audit report was passed unanimously and the meeting was closed. Immediately thereafter, the new office bearers called a fresh meeting of the general house of the Association and the two minutes of 27th September, 2007 were placed before the house for its consideration. The minutes of 19th March, 2008 records that the house unanimously, in one voice, resolved that the minutes recorded by the Secretary adopting the model bye-laws should be accepted and that the minutes prepared by the then President should be rejected. Accordingly, an unanimous resolution was passed accepting the minutes prepared by the then Secretary for the adoption of the model bye-laws.

8. At this stage, the house further proposed certain amendments in the rules, namely--

1. Instead of four Vice-Presidents it should be five.
2. New post of Joint Secretary Women voted by all the voters be created to look

after the problems of increased number of women members and only women candidate be eligible to contest the election for the same.

3. Instead of twelve members of the Governing Council there should be fifteen members of Governing Council.

4. The President and Hony. Secretaries are authorised to make necessary amendments so as to make the bye-laws workable. The President put to vote before the general body meeting the proposed above proposals and they are passed unanimously.

9. The said amendment was also unanimously passed by the house on 19th March, 2008. It transpires that the minutes of 19th March, 2008 was subsequently confirmed by the house on 30th April, 2008. In the meantime, a copy of the model bye-laws alongwith the letter was sent to the Deputy Registrar on 16th of April, 2008 for intimation and for necessary registration. On 28th April, 2008, the model bye-laws was sent to the Bar Council of Uttar Pradesh for its approval which was approved by the letter dated 30th of April, 2008.

10. The petitioner No. 2 alleges that he had filed objections on 5th May, 2008 before the Registrar intimating that the amendment in the bye-laws was still under consideration with the Bar Association, and therefore, the bye-laws sent by the Bar Association should not be registered. Further, 20 members of the Bar Association filed an objection dated 25th of July, 2008 alleging that no resolution was passed. A perusal of this objection indicates that only 11 members out of 20 had sent the said representation. Another objection alleged to have been sent by 108 members was sent to the Registrar on 8th May, 2008 alleging that the model bye-laws was wrongly adopted on 19th March since there "was no agenda, nor the said meeting was presided by any person, and that, the resolution was not passed by 2/3rd majority of the members. Another objection was alleged to have been filed by 25 members on 3rd of October, 2008.

11. The record of the Assistant Registrar indicates the receipt of these objections. The record further indicates some correspondence on this issue with the Bar Association. The record also indicates that certain members had withdrawn their objections, and eventually, the Assistant Registrar by its order dated 10th February, 2009, registered the model bye-laws of the Association u/s 4A of the Act. The impugned order indicates that the model bye-laws had been approved by the Bar Council and further directed the objectors that if they are aggrieved by any provisions of the bye-laws, it would be open to such members to object before the Bar Council. The Registrar, accordingly, rejected the objections and registered the model bye-laws.

12. Heard Shri R.K. Ojha and Shri Rishi Kant Rai for the petitioners, Shri V.C. Mishra, the learned senior counsel and President of the Bar Association, Shri T.P. Singh, the learned senior counsel for the Bar Association, and the office bearers, the learned standing counsel for the Assistant Registrar, and on the request of the Court, Shri Rakesh Pandey, the Ex. Secretary of the Bar Association was also

heard. Today, before the start of the dictation of the judgment, Smt. Pushpa Singh, a member of the Bar Association also placed her grievance.

13. Shri R.K. Ojha, the learned Counsel for the petitioners has assailed the impugned order on a variety of grounds which can be summarised as under:

(1) No valid resolution was passed on 27th September, 2007, by the general house of the Bar Association for adopting the model bye-laws.

(2) The minutes recorded by the Secretary dated 27th September, 2007, being signed only by the Secretary and not signed by the President could not have been accepted by the house on 19th of March, 2008.

(3) No agenda for acceptance of the minutes of 27th September, 2007 was circulated for 19th March and therefore the house could not consider the minutes on 27th September, 2007 nor could the house accept the said minutes.

(4) The amendments passed by the house on 19th March, 2008 was illegal, without following the procedure for the amendment of the bye-laws. The amendments passed on 19th March, 2008 was in violation of Clause 55 of the old bye-laws or under Clause 54 of the new model bye-laws.

(5) Assuming without admitting that the model bye-laws had been accepted by the house, the model bye-laws which has been certified by the Registrar, indicates many changes, which is not there in the model bye-laws prepared by the Bar Council of Uttar Pradesh. The submission is that only model bye-laws of the Bar Council was accepted/ adopted by the Association, and therefore, the changes recorded in the model bye-laws was wholly illegal.

(6) Section 4A of the Act prescribes a period of 30 days under which the amendment passed by the house is required to be filed before the Registrar. This period is mandatory and since the Association filed the said bye-laws after the expiry of 30 days, the same cannot be accepted or registered by the Registrar.

(7) Objections raised by the petitioners was not considered by the authority while passing the impugned order. It was obligatory for the Registrar to give an opportunity of hearing before passing the impugned order which had not been done in the present case.

14. The submission of Shri T.P. Singh, the learned senior counsel is summarised as under:

(1) The existing bye-laws of the Association had become out dated and had outlived its utility and there was a need to substitute the bye-laws with new rules.

(2) The Bar Council had framed model bye-laws and had directed all the Bar Associations constituted in the State of U.P. to adopt the model bye-laws, failing which, the said Associations would be de-recognised by the Bar Council.

(3) These model bye-laws were prepared to bring uniformity and to ensure that there was not only validly passed one set of procedure for all the advocates

practising in the State of U.P.

(4) The resolution of 19th March, 2008 was validly passed by the house and had rightly adopted the minutes prepared by the then Secretary of the Association and that the resolution of 19th March, 2008 was not only validly passed by the majority of the members but was subsequently confirmed by the house again on 30th of April.

(5) The bye-laws adopted by the Association with minor variation had been approved by the Bar Council.

(6) The Registrar of Societies has no power to adjudicate on the changes made in the bye-laws u/s 4A of the Act and that only an intimation was required to be sent. Consequently, no adjudication was required, and therefore, the question of violation of the principles of natural justice or affording an opportunity of hearing to the petitioners does not arise.

(7) The learned Counsel fairly conceded that the amendments carried out by the house of 19th March, 2008 was irregular and against the procedure prescribed under the bye-laws. But the irregularity so committed was not fatal since the amendments were duly ratified by the house subsequently when the minutes were confirmed on 30th April, 2008.

15. The submission of Shri V.C. Mishra, the learned senior counsel and President of the Bar Association is summarised as under:

(1) The office bearers took charge on 19th March, 2008 and the resolution was passed unanimously by the house for which no agenda was required.

(2) The minutes of the Secretary dated 27th September, 2007 was validly adopted and was passed by a majority of the members of the house.

(3) The resolution cannot be set aside merely because four disgruntled members of the Association have filed the present writ petition who have their personal grudge and axe to grind which has led them to file the present writ petition. This is on account of the fact that the new rules excludes them from contesting the election as they go out of the eligibility criteria.

(4) Many members of the Bar who had raised their objections before the Registrar had subsequently withdrawn their objections.

(5) And, lastly, Shri V.C. Mishra, submitted that he had no problems if the elections are held under the old bye-laws or under the new rules.

16. In the light of the submissions made by the learned Counsel for the parties and other members of the Bar, the Court proceeds to decide these issues point by point.

17. Under Clause 23 of the old bye-laws, the functions of the Secretary has been enumerated. Sub-clause (d) of Clause 23 indicates that the one of the functions of the Secretary is "keeping and maintenance of the account and minutes of the

meetings of the Association and of the Governing Council". The word "keeping" denotes that the Secretary is required to draw up the minutes, and therefore, the Secretary is the sole person who is vested with the task of not only recording the minutes of the meeting but also keeping the same in safe custody. The Secretary is the person who is required to sign the minutes. There is nothing in the old bye-laws to indicate that the Secretary as well as the President are simultaneously required to sign the minutes of the general house of the Association.

18. In the light of the aforesaid, the submission of the learned Counsel for the petitioners that the minutes drawn by the then Secretary dated 27th of September, 2007 and, having not been signed by the President, could not be given effect to nor could it be accepted by the house is patently erroneous. The minutes having been signed by the Secretary, who was authorised to do so, could be placed before the house for its consideration.

19. The contention that the resolution for the adoption of the model bye-laws, as recorded in the minutes of 27th September, 2003, was not in consonance with Clause 55 of the old bye-laws, is erroneous. The minutes records that 2/3rd of the members had voted for the adoption of the model bye-laws. There is nothing to indicate before the Court that this minutes prepared by the then Secretary, was perverse or was against the material evidence on the record. On the other hand, there is ample proof that the minutes of 27th September, 2007 was rightly recorded since it was unanimously adopted again on 19th March, 2008 by the house which was again confirmed by the house on 30th April, 2008.

20. The contention that the model bye-laws adopted by the house could not be registered u/s 4A because it was sent to the Registrar after the mandatory period of 30 days, is patently erroneous. A Division Bench of this Court in *Shri Sri Sanatan Dharm Sabha (Regd.), Kothi Gate, Ghaziabad and Anr. v. Registrar, Firms Societies and Chits, U.P., Lucknow and Ors.* 1989 (1) UPLBEC 571, has held that the provision of Section 4A for filing the amendments before the Registrar within 30 days was not mandatory, and that the amendments made and communicated to the Registrar, after the expiry of 30 days, would not invalidate the amendments or the alteration sought in the rules or bye-laws of the Society. Consequently, the contention of the petitioners on this aspect of the matter fails.

21. The Court, upon a perusal of the various provisions of the Societies Registration Act, is of the opinion that the Registrar has no authority or power to adjudicate upon the validity of the amendments made in the rules/bye-laws of the Society u/s 4A of the Act. Any amendment made by the Societies in their rules/bye-laws are only required to be intimated to the Registrar. The said provision does not give any power to the Registrar to adjudicate or decide the objections. But, before registering the consequential changes in the bye-laws, the authority is required to give its subjective satisfaction as to whether the procedure, as per rules of the Society, was adopted or not and whether the changes/amendments was in accordance with Rule 4 of the U.P. Societies Registration Rules, 1976. In the course of its subjective satisfaction, the

authority could consider the objections raised by any member of the Association, but beyond that, the Registrar has no power to adjudicate upon an objection filed by a member or provide an opportunity of hearing to the objector. This view of mine is fortified by the following reasoning.

22. Section 12 of the Act provides alteration, abridgement of the purpose of the Society or to amalgamate such Society partially, or wholly with another Society, and for such purpose, a special meeting is required to be considered which has to be passed by 3/5th of the members and reconfirmed in another meeting. u/s 12A, any change in the name of the Society is required to be passed by 2/3rd of the total number of its members and with the previous approval of the Registrar in writing. The procedure is contemplated under Sections 12B and 12C, read with Rule 12 of the Rules of 1976. Where a Society is required to be registered for the first time, the Registrar has been given a power u/s 2 to register the said Society or refuse to register u/s 3(2) of the said Act. u/s 24, the Registrar has been given the power to investigate the affairs of the Society, and u/s 25, the Registrar has the power to refer disputes regarding elections of the office bearers to the prescribed authority. A perusal of these provisions indicates that specific powers have been provided to the Registrar to adjudicate on certain aspects of the matter.

23. Section 4A provides that any change made in the Rules of the Society is required to be intimated to the Registrar. In *Managing Committee, Khalsa Middle School and Anr. v. Mahinder Kaur (Smt.) and Anr.* 1993 Supp (4) SCC 26, the Supreme Court, after considering the provisions, held that there was no requirement for the registration of the amendment in the Rules by the Registrar and that only an intimation was required to be sent. The Supreme Court after considering the provisions of Sections 12 and 12A of the Act held:

Apart from the requirement contained in Section 12A for registration of the change of name of a Society with the Registrar, there is no requirement in the Societies Registration Act which requires registration of any amendment in the Memorandum of Association or the Rules and Regulations of a Society to be registered with the Registrar. Even in the Companies Act, 1956 a distinction is made in the matter of alteration of the Memorandum of Association and alteration of the Articles of Association. u/s 18 of the Companies Act, it is necessary that the alteration of Memorandum of Association be registered with the Registrar of Companies within the prescribed period and the alteration takes effect from the date of its registration and u/s 19(1), it is provided that the alteration shall have effect only if it has been duly registered in accordance with the provisions of Section 18. There is no such requirement with regard to registration of the alteration in the Articles of Association of the Company. Here we are concerned with the amendment in the Rules and Regulations of the Society. In the absence of any requirement in the Societies Registration Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for

such an alteration to come into effect.

24. In the light of the aforesaid, it is clear that the Registrar was not required to adjudicate upon the objections raised by the members with regard to the adoption of the model bye-laws. Consequently, the question of giving an opportunity of hearing also does not arise. From a perusal of the record of the Assistant Registrar, the Court finds that none of the objectors had given their address, and therefore, it was not possible for the Registrar to issue notice to the objectors and give an opportunity of hearing.

25. The Court finds that the question as to whether a valid resolution was passed on 27th September, 2007 and whether the said resolution was validly adopted on 19th March, 2008 and whether the minutes of 19th March, 2008 was validly confirmed on 30th April, 2008 and whether the bye-laws were validly approved by the Bar Council and whether the amendments made by the general body on 19th March, 2008 was validly ratified or not are such questions which cannot be adjudicated in a writ jurisdiction. Whether the resolution was passed by 3/4th majority of the members and whether the procedure in the bye-laws was followed or not are questions which could only be decided in a suit where evidence can be led and factual controversy could be decided. In this regard, the Court is of the opinion that the realm of the writ jurisdiction is limited.

26. During the course of the hearing of the petition, the learned Counsel for the petitioners brought to the notice of the Court that the rules certified by the Registrar is different from the model bye-laws framed by the Bar Council of U.P. The learned Counsels, therefore, contended that the general body had adopted the model bye-laws, and therefore, the changes indicated in the rules certified by the Registrar was illegal. The Court was shown these changes in various provisions of the new rules. The Court finds that no such averments have been made in the writ petition nor such objections were raised by any objector before the Registrar. Further, it is not known as to whether the model bye-laws framed by the Bar Council was adopted in toto by the house or the model bye-laws placed before the house had contained the changes. Such factual controversy is not indicated in the writ petition, and therefore, this Court is not in a position to delve into this controversy as to how these changes found place in the rules, which has been certified by the Registrar. But, the Court can only make an observation that the model bye-laws adopted by the general house was subsequently approved by the Bar Council on 30th April, 2008.

27. Consequently, the Court is not inclined to interfere on this issue and further observes that the changes made in the Rules are minor changes which does not change the basic structure of the rules. The contents remain more or less the same. Further, while hearing this matter, the Court requested the then Secretary to address on this issue, who submitted that the model bye-laws with certain variations were circulated to the members of the Association. In the light of the aforesaid, the Court is not inclined to delve into these matters and leave it to the members to challenge the same, if any, before the appropriate forum.

28. In view of the aforesaid, the Court finds that new rules of the Association has been adopted and has been certified by the Registrar u/s 4A of the Act, and till such time as these rules operate, or till such time as the resolution of the house passed on 27th September, 2007, which was adopted on 19th of March, 2008 and confirmed on 30th April, 2008, is not set aside by a competent court of jurisdiction, and till such time the registration of the new bye-laws/rules of the Association continue to operate, the Court, in accordance with the wishes of the large number of members of the Association of the Bar who have appeared and made their submissions, directs the Association and its office bearers to hold the election on 9th of October, 2009, as intimated to the Court by the President of the Bar Association.

29. The learned Counsel for the petitioners also brought to the notice of the Court with regard to an amendment made by the house on 30th of July, 2009, wherein, Clause 17(1) was amended. Clause 17(1) contemplates that a member having rendered 20 years of regular and active practice is eligible to contest the post of the President. By the resolution of 30th July, 2009, the house has amended this provision from 20 years to 25 years on the ground that it was a typographical error and that the model bye-laws framed by the Bar Council contemplated 25 years.

30. This Court is not in a position to gauge as to whether the provision relating to the post of the President, with regard to 20 years or 25 years, was a typographical error or was consciously made at the time when the bye-laws was circulated. The Court, however, finds that the house had passed a unanimous resolution for amending the said provision.

31. Having considered the submissions, the Court is of the opinion that the ensuing election which is going to be held will not take into consideration the resolution of the Bar Association dated 30th of July, 2009, by which it has amended Clause 17(1) of the Rules. The Rules which has been certified by the Registrar will operate. This is on account of the fact that the amendment proposed and adopted by the house was done after the term of the Association had expired, and consequently, this resolution can only be brought into effect after new office bearers take charge and that this resolution is placed again before the house and ratified, and only thereafter the Registrar will proceed on this amendment.

32. The writ petition is dismissed with the aforesaid observations.