
(2006) 07 AHC CK 0028
In the Allahabad High Court
Case No : C.M.W.P. No. 46266 of 2004

Prashant Shukla	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 3, 4

Citation : (2006) 4 AWC 4213

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Radha Kant Ojha and Satyanshu Ojha, for the Appellant; Y.K. Saxena, A.N. Srivastava, Ranjit Saxena, Piyush Shukla and Tarun Saxena, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—By means of the present writ petition under Article 226 of the Constitution of India the Petitioner has challenged the impugned order dated 13.9.2004, passed by the Respondent No. 2 and the resolution of the Committee of Management dated 29.3.2004, passed by Respondent No. 3.

2. The brief facts of the case giving rise to the present writ petition are that there is a registered Society in the name of National Degree College, Bhongaon registered under the Societies Registration Act, 1860. It has its own bye-laws and there is no dispute in this regard. The bye-laws provide that there will be eleven members of Board of Trustee and paragraph 2 provides that the trustee member of the society will cease the right of member trustee due to the death, resignation, conviction of an offence or involved in a criminal case of moral turpitude and unsoundness of mind. It further provides that trustee member will cease to function if he is found to act against the interest of the institution. Paragraph 2 (iii) provides in case of death or unsoundness of mind the vacancies will be filled up by his worthy son. Paragraph 2 (iv) provides, in case of

resignation or removal the vacancy will be filled up by electing a suitable person from amongst life members, if any otherwise by any other person either a good educationist or a sympathizer with the institution.

3. Late Shyam Lal Shukla was the member trustee. He expired in the year 1981 causing vacancy. At that time his son Sri Santosh Kumar Shukla was engineer in the U.P., Electricity Board, therefore, he could not be appointed as member trustee and as such vide letter dated 1.12.1981, he desired for the appointment of his brother Sri Ram Autar Shukla as a member trustee. On 13.12.1981. Committee of Management has passed resolution in which it has been resolved to appoint Sri Ram Autar Shukla as a member trustee in place of late Shyam Lal Shukla. Sri Ram Autar Shukla died on 13.11.2003, causing vacancy. Petitioner being the son of late Ram Autar Shukla moved an application dated 3.3.2004, for being nominated as member trustee as per Clause (2) (iii) of the bye-laws. It is alleged that since no heed was taken by the members of the Board, therefore, Petitioner moved an application before the Assistant Registrar Societies, Agra, on 13.4.2004 through speed post. On the application of the Petitioner, notices were issued to the Secretary and the reply was sought. Secretary has submitted the reply on 16.6.2004. In the reply, Secretary has annexed the resolution dated 29.3.2004, in which it has been stated that the application of the Petitioner moved for the nomination of member of trustee has already been rejected by the resolution of the Board of Trustee dated 29.3.2004. On the consideration of the claim of the Petitioner and the reply of the Secretary, the Assistant Registrar vide impugned order dated 13.9.2004, rejected the claim of the Petitioner and allowed Sri Santosh Kumar Shukla to be the member of the trustee.

4. Heard Sri R.K. Ojha, learned Counsel for the Petitioner assisted by Sri Satyanshu Ojha, advocate, Sri Y. K. Saxena, learned Counsel for Respondent No. 3 and Sri A. N. Srivastava, advocate assisted by Sri Ranjit Saxena appearing on behalf of Respondent No. 4.

5. Learned Counsel for the Petitioner submitted that late Sri Ram Autar Shukla, the father of the Petitioner has been nominated as the member of Board of Trustee vide resolution dated 13.12.1981, copy of the resolution is Annexure-2 to the writ petition. He submitted that the nomination of Ram Autar Shukla was not conditional as claimed by Respondent No. 3 and thus, on the death of Ram Autar Shukla as per Clause (2) (iii), being a son, Petitioner was entitled to be nominated as a trustee member. He submitted that Sri Santosh Kumar Shukla had no right to claim his nomination as a trustee member in place of late Sri Ram Autar Shukla because he was not son of late Sri Ram Autar Shukla. He submitted that Sri Santosh Kumar Shukla cannot claim his membership being a son of Shyam Lal Shukla, who died in the year, 1981, once he waived his right to become a member and expressed his desire for the nomination of late Sri Ram Autar Shukla. He submitted that none of the clause of bye-laws give right to Sri Santosh Kumar Shukla, Respondent No. 3 to claim nomination in place of late Sri Ram Autar Shukla. He submitted that the resolution dated 13.12.1981, annexed

alongwith the counter-affidavit filed by the Respondent No. 3 as Annexure-C.A. 2 is forged. He submitted that in the resolution, there is no mention that in future if there will be any vacancy, Sri Santosh Kumar Shukla or his heir will be the member. He submitted that Santosh Kumar Shukla has been illegally nominated as a member trustee vide resolution dated 29.3.2004, against the bye-laws and the Assistant Registrar has illegally vide impugned order dated 13.9.2004, has accepted the nomination of Sri Santosh Kumar Shukla as a member trustee rejecting the claim of the Petitioner.

6. Sri Y. K. Saxena, learned Counsel for Respondent No. 3 submitted that in the letter dated 1.12.1981, by virtue of which late Sri Ram Autar Shukla became the member, it has been clearly mentioned that after the vacancy, he would be nominated as a member trustee. He submitted that in Board's resolution dated 13.12.1981, it is clearly mentioned that in case if there would be any vacancy in future. Santosh Kumar Shukla or his heir would be nominated as a member. He submitted that on the death of late Sri Shyam Lal, Ram Autar Shukla became the member on the recommendation of Respondent No. 4 on condition. He relied upon the decisions in the case of Vijay Bihari Srivastava Vs. U.P. Postal Primary Co-operative Bank Ltd. and Another, Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, Madhav Pandey and Others Vs. Board of Revenue and Others, Nishi Dobriyal and Another Vs. Director General, C.R.P.F. and Others, Basant Prasad Srivastava and Anr. v. State of U .P. and Anr. (1993) 2 UPLBEC 1333 ; Civil Misc. Writ Petition No. 20719 of 2006, Uttam Nisad v. State of U.P. and Ors. decided on 18.4.2006 ; U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, Apparel Export Promotion Council Vs. A.K. Chopra, and Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.,

7. Sri A. N. Srivastava, learned Counsel for the Respondent No. 4 submitted that Clause (2) (iii) provides that the vacancy caused due to the death will be filled up by his worthy son. He submitted that who is the worthy son is the wisdom of the Board and in the present case Board did not find the Petitioner his worthy son and has rejected the induction as a member. He submitted that in fact the Assistant Registrar Societies should not have gone into the dispute as the dispute could not be adjudicated by him inasmuch as he has no jurisdiction to do so. However, he supports the order of Assistant Registrar Societies and the resolution of the board nominating Sri Santosh Kumar Shukla as the member and rejecting the claim of the Petitioner.

8. Having heard learned Counsel for the parties, I have gone through the impugned order and the materials on record.

9. Record of the Assistant Registrar Societies has also been called upon to verify the correctness of the resolution dated 13.12.1981. From the perusal of the original resolution, it is clear that there is no condition in the resolution namely, that in future if there would be any vacancy, Santosh Kumar Shukla or his heirs would be member. This part appears to have been fabricated subsequently.

Original resolution simply says that atah samvidhan ki dhara 2:2 (iii) ke antargat sarvsamatti se nirnai liya gaya ki Santosh Kumar Shukla ke patranusar Shri Ram Autar Shukla ki late Shri Shyam Lal Shukla ke sthan par board of trustees ka sadasya banaya jai". Thus, the resolution dated 13.12.1981, annexed with the counter-affidavit filed by Respondent No. 3 as Annexure-C.A. 2 is forged and is manipulated. Clause (2) (iii) clearly provides that the vacancy in the case of death will be filled up by his worthy son. There is no dispute that the Petitioner is the son of late Sri Ram Autar Shukla and Sri Santosh Kumar Shukla is not the son. Hence, as per bye-laws Petitioner had a right to claim for the nomination of his name as a member trustee in place of his father, late Sri Ram Autar Shukla. The claim of the Respondent No. 4 is that after the death of his father, late Sri Shyam Lal Shukla, vide letter dated 1.12.1981, he had desired for the nomination of late Sri Ram Autar Shukla on a condition that in future when there was a vacancy he and his heirs would only be made member has no substance. On the death of late Sri Shyam Lal Shukla, Sri Santosh Kumar Shukla, had waived his right to be nominated as members because he was working as Engineer in the U.P. State Electricity Board and could not be nominated as member trustee. By the Board's resolution dated 13.12.1981 late Sri Ram Autar Shukla was appointed as full-fledged member trustee and his nomination was not conditional as stated above. Thus, Sri Santosh Kumar Shukla ceased to have any right to claim his membership on the death of late Sri Ram Autar Shukla as per Clause (2) (iii). The Petitioner being the son of late Sri Ram Autar Shukla is only entitled to claim the membership. Thus, the resolution dated 29.3.2004, passed by the Committee of Management, Respondent No. 3 and impugned order dated 13.9.2004, passed by Respondent No. 2 rejecting the claim of the Petitioner for the nomination as member trustee and approving the nomination of Shri Santosh Kumar Shukla as member trustee is erroneous and contrary to the bye-laws and thus liable to be set aside.

10. I have gone through the cases cited by the learned Counsel for the Respondent. These cases are not relevant and distinguishable and not applicable to the present case. They are not on the issue involved, thus, I do not think necessary to deal each individual cases.

11. In the result, writ petition is allowed with cost which is assessed to Rs. 1,000. The resolution dated 29.3.2004, passed by Respondent No. 3 and order dated 13.9.2004, passed by Respondent No. 2 are set aside. The Board of Trustee is directed to nominate the Petitioner as member trustee.