
(2004) 12 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 14760 of 1993

Raghubar Dayal

APPELLANT

Vs

Commissioner, Kanpur Division and Others

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Societies Registration Act, 1860 — Section 12, 12D, 12D(1), 12D(2), 3

Citation : (2005) 3 AWC 2230 : (2005) 1 ESC 204

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Vishnu Gupta, R.S. Parihar and Ramesh Upadhayay, for the Appellant; Ashok Khare, K.G. Khare and A.K. Dixit and Piyush Shukla, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Vishnu Gupta, learned Counsel for the petitioner, Sri Ashok Khare, Senior Advocate assisted by Sri A.K. Dixit, Sri K.G. Khare, learned Counsel for the Respondent. No. 4 and Sir Piyush Shukla, learned Standing Counsel for the Respondent Nos. 1 to 3.

2. There is a society duly registered under the Societies Registration Act, 1860 in the name and style of Janta Madhyamik Vidyalaya Samiti, Mohamadabad, Tehsil Bidhuna. Etawah. The said society has established a junior high school in the same name and style, and is recognised under the provisions of Uttar Pradesh Basic Education Act. The said society was originally registered in the aforesaid name on 18th August, 1964 bearing Registration No. 378/1964-65, File No. 1-13495. At the relevant time Sri Ram Murti was the President and Sri Raghubar Dayal was the life manager of the said society.

3. According to the petitioner, namely, Sri Raghubar Dayal, for the purposes of registration of certain changes in the aims and objects of the society, a letter was forwarded by the manager Sri Raghubar Dayal to the Registrar, Societies, Firms

and Chits, Lucknow Respondent No. 2. The Registrar in turn by his letter dated 2nd July, 1974 informed the petitioner that under the provisions of Societies Registration Act, 1860 as were applicable, no change was possible in the aims and objects of the Society and, therefore, advised the petitioner to get a new society registered in the same name and style with changed aims and objects. Accordingly, a new Society was got registered in the same name and style bearing No. 3687/] -2880 dated 9th January, 1973. The renewal to the said new society was granted from time to time and the last renewal was done for the period 10.10.1985 to 10.10.1990.

4. Respondent No. 4 Sri Maharaj Singh Yadav, however, moved an application before the Assistant Registrar, Societies, Firms and Chits, Kanpur, Respondent No. 3 claiming therein that the original registration of the said Society bearing Registration No. 378/1964-65 on File No. 1-13495 dated 18th August, 1964 be renewed and the new registration of the said society in the same name and style, as has been done under Registration No. 3687/1-2880 dated 9th January, 1973 be cancelled. The Assistant Registrar on receipt of the said application of the Respondent No. 4, Sri Maharaj Singh Yadav, issued notices to the parties and after affording opportunity of hearing to the parties concerned by means of the order dated 12th February, 1992 in exercise of power u/s 12-D(1) of the Societies Registration Act, 1860 revoked the registration of the new Society bearing Registration No. 3687/1-2880 dated 9th July, 1973 and directed that the original registration of the Society bearing Registration No. 378/1964-65, file No. 1-13495 dated 18th August, 1964 be renewed.

5. Feeling aggrieved by the aforesaid order, the petitioner Sri Raghubar Dayal filed an appeal being Appeal No. 1/2 of 1992 u/s 12-D (2) of the Societies Registration Act, 1860 before the Commissioner, Kanpur Division, Kanpur, Respondent No. 1, The Commissioner, by means of the order impugned dated 7th April, 1993 dismissed both the appeals so filed by the petitioner. Against the aforesaid order of the Commissioner, Respondent No. 1 dated 7th April, 1993, Sri Raghubar Dayal has filed the present writ petition.

6. On behalf of the petition it is contended that the orders, passed by the Assistant Registrar as also by the Commissioner proceed on misconception of facts as well as the law, inasmuch as at the time when the new society was registered in the same name and style as that of the earlier society, which was registered bearing Registration No. 378/1964-65 on File No. 1-13495 dated 18th August, 1964, there was no restriction for a second society being registered in the same name and style as that of earlier society. The restriction in that regard has been brought about by amendment to Section 3 whereby Sub-clause (2) (a) has been added vide Act No. 52 of 75 w.e.f 10.10.1975. It is, therefore, submitted that there was no illegality or infirmity in the registration of the new society in the same name and style as that of earlier society, which was registered on 18th August, 1964 bearing "Registration No. 378/1964-65 on File No. 1-13495 dated 18th August, 1964. It is, therefore, submitted that both the

authorities failed to appreciate the aforesaid aspect of the matter while passing the impugned orders.

7. On behalf of the Respondent No. 4, it is fairly conceded by Sri Ashok Khare, Senior Advocate that at the time of registration of the second society, there was no restriction in registration of two societies by the same name and style. Amendment in that regard has been enforced only vide Act No. 52/75. However, it is submitted that there is an inherent power in the jurisdiction to refuse to recognise the registration of the society in the same name and style inasmuch the same would necessarily lead to confusion and would seriously prejudice the activities of the earlier society and, therefore, under the said inherent power the Assistant Registrar has also a power to cancel the registration granted to the subsequent society in the same name and style as that of earlier society, which was registered in the year 1964.

8. In support of the said contention the learned Counsel for the Respondent No. 4 has placed reliance upon the judgment of Hon'ble Calcutta High Court in U. Srinivas Malliah and Another Vs. Krishna Kumar Chatterjee and Others, . Thus, the short controversy, which is up for consideration in the present writ petition, is as to whether in the year 1973 when the second society was registered in the same name and style as that of an earlier registered society, there was legality of infirmity in registering the subsequent society or not.

9. For the purposes of appreciating the controversy, it would be relevant to refer the provision of Section 3 of the Societies Registration Act, 1860 as were applicable in the year 1973, which are quoted herein below :

"3. Registration and fees.--Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act, There shall be paid to the Registrar for every such registration a fee of fifty rupees or such smaller fee as [the State Government] may, from time to time, direct ; and all fees so paid shall be accounted for to [the State Government]".

10. Reference may also be had to the provisions of Section 3 as were amended in the State of Uttar Pradesh vide Act No. 52/75 and the said amendments were enforced w.e.f. 10.10.1975. The said amended Section 3 in the State of U.P. reads as follows :

"In its application to the State of Uttar Pradesh, for Section 3, substitute the following section, namely :

"3. (1) Upon such memorandum and certified copy being filed along with particulars of the address of the Society's office which shall be in registered address, by the Secretary of the Society on behalf of the persons subscribing to the memorandum, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of one hundred rupees [or such smaller fee as the State

Government may notify in respect of any class of societies :

Provided that the Registrar may, in his discretion, issue public notice or issue notice to such persons as he thinks fit inviting objections, if any, against the proposed registration and consider all objections that may be received by him before registering the society.

(2) Notwithstanding anything in Sub-section (1) the Registrar shall refuse to register a society, if after giving it an opportunity of showing cause against such refusal, he is satisfied that--

(a) the name of the society is identical with that of any other society previously registered under this Act;

(b) the name of the society sought to be registered uses any of the words, namely, "union", "State", "Land Mortgage", "Land Development", "Co-operative Gandhi", "Reserve Bank" or any words expressing or implying the sanction, approval or patronage of the Central or any State Government or any word which suggests or is calculated to suggest any connection with any local authority or any corporation or body constituted by or under any law for the time being in force or is such as is otherwise likely to deceive the public or the members of any other society previously registered under this Act."

11. From the aforesaid amendment, it is apparently clear that in the year 1973 there was absolutely no restriction under the Societies Registration Act, 1860 with regard to the registration of a society with identical name and style as that of other society previously registered. In view of the aforesaid, there was no restriction under the Societies Registration Act, 1860 prohibiting the registration of a new society, in the year 1973 with the same name vis-a-vis the name of the society, which was earlier registered in the year 1964, Therefore, there was no occasion for the Assistant Registrar to exercise the power u/s 12-D(1) of the Societies Registration Act, 1860 for cancelling the registration of the petitioner society on the pretext that there was restriction for registration of a society in the same name and style as that of an earlier registered society. The amendments made in the Act vide Act No. 52/75 are prospective in nature. Prior to the date of aforesaid amendment Section 12-D(1) or Section 12 of the Act do not in any way confer a power upon the Assistant Registrar to cancel the registration, which has been granted to a society in the same name prior to the date of enforcement of Section 3(2)(a) under U.P. Act No. 52/75.

12. In the opinion of the Court, the aforesaid amended statutory provisions of Section 3(2)(a) read with Section 12-D have no application in the facts of the present case and as a consequent thereto to the orders passed by the Assistant Registrar dated 12.3.1992 and that of passed by the Commissioner dated 7.4.1993 cannot be legally sustained.

13. At this stage it would be appropriate to refer to the contention raised by the petitioner with regard to the inherent power of the Assistant Registrar to refuse

the registration to a society by the same name coupled with the incidental power to cancel the registration of a society, if granted, by him in the same name. In the opinion of the Court, no such incidental power can be culled out from the provisions of Section 3 as were applicable in the year 1973, nor any such inherent power can be read from any other provisions of the Societies Registration Act, 1860. Power to refuse the registration of the society cannot be enlarged to the extent so as to confer a power upon the Registrar to cancel the registration of the society with the same name. The contention of the respondents runs contrary to the law laid down by the Calcutta High Court in the case of U. Srinivas Malliah and another (supra). In the aforesaid judgment after referring to the various judgments of the Court of Appeal, Calcutta High Court and to the Halsbury laws, it was held as follows :

"It is true that apart from certain special statutes which entitle companies or persons to the exclusive use of a name or a mark, such as the Companies Act or the Trade Marks Act, a man has no exclusive proprietary rights in a fancy name or title, and normally and principally, it is in relation to the user of a name associated with a certain businesses or trading concern or some profession that the Court affords protection and grants an injunction restraining the adoption and use of such a name by another when the Court is satisfied that damage has been caused or there is tangible risk or possibility of a damage resulting from confusion caused in the public mind or in other words by reason of the public being deceived by the use of such name."

14. It is, thus, clear that only Courts of law have been conferred a power to grant an injunction restraining the adoption and use of the same name when the Court is satisfied that damage has been caused or there is tangible risk or, possibility of a damage resulting from confusion caused in public mind, or the public being deceived by the use of the identical name and style. This power to grant injunction against the use of same name and style as recognised by the Courts of law is based upon a cause established by the plaintiff of likelihood damage/confusion to be caused in the mind of the public. Thus, it is established beyond doubt that it is for the respondents to have initiated suitable Civil Injunction Proceedings, if they had any apprehension of misuse of the name of the respondent by the subsequent society being registered. The claim, if any, so pleaded would be adjudged by the Civil Court, on the basis of evidence led and the extent of damage/loss, which may be caused. However, they cannot be permitted to invoke the authority of the Registrar himself to cancel the registration.

15. In such circumstances, the orders passed by the Assistant Registrar, Firms, Societies and Chits, Kanpur dated 12th March, 1992 as well as passed by the Commissioner, Kanpur Division, Kanpur dated 7th April 1993 cannot be legally sustained and are, hereby, quashed.

16. Writ petition is accordingly allowed.

17. In view of the aforesaid judgment, the rights of the parties to manage the society as well as the institution shall be determined accordingly.