
(2010) 02 AHC CK 0213
In the Allahabad High Court
Case No : Special Appeal No. 516 of 2008

Ram Kalp Yadav and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0213

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

Pradeep Kant, J

1. This special appeal challenges the order dated 11th August 2008 passed by the learned Single Judge by means of which the writ petition preferred by the appellants challenging the order dated 3rd July 2008 passed by the Deputy Registrar, Firms, Societies and Chits Faizabad, by means of which they have not been treated as validly enrolled members, so to say, life members of the society, has been dismissed.

2. The relevant facts and the chronology of events is as follows.

3. Lauhar Paschim Maharishi Dayanand Junior High School Society, is a society registered under the provisions of the Societies Registration Act, 1860, which runs an institution known as Paschim Maharishi Dayanand Junior High School, Sultanpur which is recognized Intermediate College. The appellants' case is that the said society was formed in the year 1976 and was duly registered under the provisions of the Societies Registration Act, 1860 (hereinafter referred to as "the Act") with its own byelaws and memorandum of association. The society was renewed from time to time. The Governingbody of the said society comprises of life members, ordinary members and special members.

4. The appellants claim themselves as life members who have been illegally ousted from the list of valid members, by the Deputy Registrar, Faizabad under

the impugned order which gave a cause of action to file the writ petition.

5. According to the appellants, the last undisputed election was held on 9th July 1986 under the supervision of Sub Divisional Inspector as Election Officer. In this election 52 members participated, out of which, 45 were life members including the appellants and 7 members were other than life members. On 15th August 1990, a list was prepared containing 45 members, out of which 42 were life members as three members had died. The said list was certified by Manager and Principal of the college. On 14.10.1984, a resolution was passed by the Committee of Management for not including new members in the General Body of the society and 51 total members remained the members of General Body of the Society.

6. In February, 1991, Raghunandan Singh respondent no. 6 and six others were illegally included as members of the society. The appellant no. 12 Virendra Pratap Singh filed a writ petition No. 43 of 1991 (MS) before this Court against the illegal inclusion of members and this writ petition was disposed of with a direction for holding election.

7. In the election held on 3rd March 1991, 104 members had participated whereas the valid members of the society were only 51. Against the election dated 3rd March 1991, objections were filed by Sri Rafiq Ansari before the Assistant Registrar, Firms, Societies and Chits, Faizabad asserting that the election was held with the list of fraudulent members and the election so held cannot be said to be valid.

8. It is not in dispute that the Assistant Registrar after examining the record passed a detailed order dated 15th June 1993 finalizing the list of 42 life members and 6 ordinary members. In this list, the names of the appellants were also shown as life members. The order passed by the Assistant Registrar on 15th June 1993 became the subject matter of challenge in Writ Petition No. 1484 (MS) of 1993 and ultimately the same was upheld by the High Court.

9. As a consequence to the order passed by the High Court on 2nd April 2008 the respondent no. 4 moved an application before the Deputy Registrar requesting for him to issue direction for holding elections of the Committee of Management. A copy of the order passed in Writ Petition No. 1484(MS) of 1993 was also supplied to the Deputy Registrar. The Deputy Registrar, therefore, conducted an exercise for finding out the list of valid members and by an order dated 21st May 2008 declared 27 members as life members of the society, who were alive, as 14 life members had expired. Out of 6 ordinary members, three general members expired and other three members failed to produce the membership receipts.

10. The Deputy Registrar also notified the elections but before the elections could be held Sri Raghunandan Singh the present respondent no. 6 filed objections against the declaration of the list of life members upon which the Deputy Registrar on 28th May 2008 passed an order staying the elections. The Deputy Registrar also in this order observed that since there is no record in the college

as to how many members have deposited membership fee for treating them as valid members and as such it would be proper that the elections are conducted after ascertaining this fact keeping in view the order dated 15th June 1993 by means of which the Assistant Registrar had finalized the list of 42 members in which the names of the appellants were also present.

11. The Deputy Registrar, thereafter vide order dated 3rd July 2008 held that the appellants were not the valid members of the Generalbody, although they had deposited Rs.101/. The Deputy Registrar had come to the conclusion that only those persons/members who have deposited Rs.51/ within 15 days from the date of passing of the order dated 15th June 1993, were the validly enrolled life members and those persons who had not deposited the said amount within the aforesaid time, cannot be treated to be the life members. On the list of such members who were 20 in numbers namely; who have deposited Rs.51/ within the aforesaid period of 15 days from the date of passing of the order dated 15th June 1993, their membership fee having been deposited on 30.6.1993 with the Kshetriya Gramin Bank, were thus declared as duly enrolled as alive members excluding those who had died in the meantime.

12. The effect of the order passed by the Deputy Registrar on 3rd July 2008 that the appellants were not treated as life members and those also could not participate in the election.

13. Assailing the aforesaid order passed by the Deputy Registrar dated 3rd July 2008, Dr. L.P. Mishra mainly raised the following points; (1) no opportunity was afforded to the appellants while passing the order dated 15th June 1993 by the Assistant Registrar and therefore, the appellants could never know that they were to deposit Rs.51/ within 15 days from the date of the order so as to protect their life membership; (2) none of the appellants but for Virendra Pratap Singh was the party before the Registrar on the date of passing of the order dated 15th June 1993 nor they were parties in the Writ Petition No. 1484(MS) of 1993 and therefore, the order so passed was not binding on them and in any case since they adversely effect their rights as being continued as life members they have a right to challenge the same, and (3) the Deputy Registrar did not consider that they have deposited Rs.101/ and that since in the list dated 15th August 1990 furnished by Sri Raghunandan Singh himself, the appellants and the respondents 4 and 5 namely; Ram Bhajan Singh and Rafiq Ansari were shown as life members, therefore, it cannot be said that any amount towards life membership fee was due to be paid by them.

14. It was also contended that before the Registrar, the dispute was only with respect to 42 members who were fraudulently inducted members, which enhanced the strength of Generalbody to 104, was in issue, where the life membership of the appellants could not have been seen and lastly it was contended that the Deputy Registrar having once declared in his order dated 21st May 2008, 27 persons were the life members, including the appellants and has directed for holding the elections from amongst the members. It was not open to

him to pass subsequent order on 3rd July 2008 nullifying the said membership of the appellants which in fact amounted to review of his own order for which he was not vested with any power under the Act.

15. Sri S.K. Mehrotra, learned counsel for the private respondents in response submitted that the order passed by the Deputy Registrar dated 3rd July 2008 does not suffer from any illegality as it has been passed by the Deputy Registrar after considering the relevant record and that the order aforesaid cannot mean review of the order dated 21st May 2008 but in fact, it was an order which rectifies the mistake which occurred while declaring membership and when such a mistake was brought to the notice of Sri Raghunandan Singh, the same was corrected; submission is that such correction/rectification of the order is always permissible and therefore, no illegality or infirmity has been committed by the Deputy Registrar in passing the said order.

16. Sri S.K. Mehrotra further submitted that due opportunity was afforded to all the members who were represented by their representatives when the order dated 15th June 1993 was passed and if the appellants failed to comply with the terms of the aforesaid order it cannot be said that they have caused prejudice by the impugned order or their valid membership has been annulled by the said order.

17. Reliance has been placed upon various judgments of this Court and of the Supreme Court, which were also cited before the learned Single Judge and in the order passed by the Deputy Registrar, Dr. L.P. Mishra submitted that the Deputy Registrar does not have power to review his own order. The cases cited are as under:

(a) (1991) 4 SCC 485; H.C. Suman and another v. Rehabilitation Ministry Employee's Cooperative House Building Society Ltd.,

(b) (1987) 4 SCC 525; Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur,

(c) (1985) LCD 16; Parash Nath Singh v. DDC and; AIR 1970 SC 1273.

(d) (2008) 5 SCC 495; Excise Commissioner and others v. Ajith Kumar and another;

(e) AIR 1961 SC 1353; Mritunjay Pani v. Narmada Bala,

(f) (2007)7 SCC 434; Tanna and Modi v. CIT Mumbai XXV

(g) (2007)4 SCC 221; AV Papaih Shastri and others v. Government of A.P. And others.

18. It has also been contended that the deposit of Rs.51/ for 20 persons on 20.4.1973 is fraudulent one as the cash book has been manipulated. It is clear in the order dated 15th June 1993 passed by the Assistant Registrar and a fact which could not be disputed by the appellants that the said Assistant Registrar

did lay down a condition in his order saying that the members whose names are mentioned in the list from serial no. 1 to 41 on depositing Rs.51/ each within a period of 15 days from the date of the order passed by the Assistant Registrar on 15th June 1993, will be the life members of the society from the date of deposit of the above amount and admittedly the appellants did not deposit the aforesaid amount.

19. The said order dated 15th June 1993 though was challenged in Writ Petition No. 1484(MS) of 1993 but was upheld by the Court vide its judgment and order dated 2nd April 2008. Thus, it cannot be said that the Deputy Registrar while proceeding to hold the election, was in any way in error in following the said judgment of the High Court and the order passed by the Assistant Registrar which had the seal of the High Court.

20. In regard to the plea that the Deputy Registrar was having no power to review his own order dated 21st May 2008 wherein while directing to declare 27 persons as life members for the purpose of election vide his order dated 3rd July 2008, suffice would be to mention that it cannot be treated to be a case of review of the order but as a matter of fact it was a case where the Deputy Registrar corrected the mistake committed by him while declaring the list of validly enrolled life members.

21. The Deputy Registrar could not go beyond the order dated 15th June 1993 which declared the life members nor could have ignored the condition imposed by the Assistant Registrar in the said order for finding out as to who are the validly enrolled life members. Even by mistake 27 members including the appellants were declared as life members before holding of the actual elections and in the meantime the objections having been filed by some members (Sri Raghunandan Singh) bringing this fact to the notice of the Deputy Registrar has corrected this mistake, is an action which cannot be assailed.

22. In case the Deputy Registrar has proceeded to hold the election with the members, who could not be said to be the validly enrolled members in pursuance of the order passed by the Assistant Registrar dated 15th June 1993 upheld by the High Court vide its order dated 2nd April 2008, the entire election would have been vitiated on the face of it as persons who could not be declared as validly enrolled or life members, would have participated in the election.

23. It is also to be taken note of that when this error was brought to the notice of the Deputy Registrar, he before passing any order, gave an opportunity of hearing to the appellants also alongwith other to establish the payment of membership fee as per the terms of the order dated 15th June 1993 and therefore, only after giving opportunity to the appellants and other concerned persons when he found that only 20 members of the above referred list for deposit of their fee within the stipulated period, he passed the order dated 3rd July 2008 declaring 20 members as life members. Incidentally out of these 20 life members 10 are alive who are the life members of the society.

24. Sri S.K. Mehrotra has placed reliance upon the case of Kapra Mazdoor Ekta Union v. Birla Cotton, Spinning and Weaving Mills Ltd and another, (2005) 13 SCC 777 in support of his submission that quasi judicial authority has ample power to correct itself when a procedural error is committed by him which goes to the root of the matter.

25. In our considered opinion the Deputy Registrar was well within his jurisdiction to correct the aforesaid mistake moreso when he was not himself determining the membership but was only entrusted with the work of finding out as to who are those persons who could be treated/declared as validly enrolled members in terms of the order passed by the Assistant Registrar as far back as on 15th June 1993 which was upheld by the High Court later on vide judgment and order dated 2nd April 2008. It was a simple case of ascertaining as to whether those persons who could have been enrolled as life members, whether have complied with the terms of deposit of membership fee as directed vide order dated 15th June 1993 or not and therefore, the scope of the Deputy Registrar was very limited in finding out the dispute of the life members.

26. On the plea that the appellants were not afforded any opportunity by the Assistant Registrar while passing the order dated 15th June 1993, the learned Single Judge has rightly observed that the Assistant Registrar had passed an order dated 15th June 1993 after affording opportunity to all the persons which includes the representatives, therefore, the submission that they were not afforded opportunity, is absolutely incorrect and misconceived.

27. The learned Single Judge, quoted an observation made in the judgment passed in Writ Petition No. 1484(MS) of 1993 with respect to the plea of lack of opportunity to the appellants, while passing the order dated 15th June 1993, was not tenable. The relevant portion of the said judgment reads as under:

? I do not find any force in the submission advanced by the learned counsel for the petitioners that the petitioners were not given opportunity of hearing. When the representative authorized by the petitioners were heard, it is not open for the petitioners to come with the case that they were not heard. From the record, it is revealed that the petitioners were fully aware of the proceedings going on before the opposite party no. 1 but chooses neither to appear nor move any application for giving hearing to them as they have given authorization to one person. Thus, the contention of the petitioners is misconceived and afterthought. Reliance placed by the petitioners on 2006(24) LCD 1373 is of no avail to them.?

28. In view of the observation made by the Court in the aforesaid writ petition regarding affording of opportunity to the person concerned, the aforesaid plea is not open any more to the appellants.

29. It thus stands concluded that the appellants did not deposit the amount what was directed vide order dated 15th June 1993 and in case they failed to give proof before the Deputy Registrar, the order passed by the Deputy Registrar cannot be faulted with.

30. Apart from the aforesaid pleas, the learned counsel for the respondents has also contended that since the election process has started and the election has been notified, the writ petition is not maintainable and the remedy lies to the persons aggrieved to challenge the said election by filing election petition or civil suit as may be permissible under law, before appropriate forum where the same can be challenged on various grounds including the plea as raised in the writ petition.

31. The learned Single Judge on consideration of various cases cited before him has observed that once the election process has started, it must come to its logical conclusion by declaration of result. The aggrieved person may challenge the election by filing election petition before the appropriate forum or the civil suit in accordance with law. Approach to court at an intermediate stage in the election is bound to result in an office either remaining vacant or being occupied by a person whose entitlement to hold the office has ceased. It is therefore, desirable that the election should end as early as possible and for reaching this conclusion, he has considered the case of *Basant Prasad Srivastava, Manager, Gandhi Smarak Uchchar Madhyamik Vidyalaya, Kauria, Azamgarh v. State of U.P. and others*, 1994 All. C.J. 162 and *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahkari Dudgha Utpadak Sanstha and Another v. State of Maharashtra and others*, (2001) 8 SCC 509.

32. We are in respectful agreement with the view expressed by the learned Single Judge.

33. We, thus, do not find any error in the judgment and order passed by the learned Single Judge, so as to interfere in the instant appeal. The appeal has no force, which is hereby dismissed. However the aggrieved persons would be at liberty to challenge the election in appropriate forum as may be provided under law.

34. We further clarify that any observation made by us or in the order passed by the learned Single Judge, with respect to membership (life members) of the appellants or any other person, who is aggrieved by the election, would not have any effect when the said issues are to be decided in the appropriate forum as may be provided under law by filing election petition or civil suit, where the parties are also at liberty to adduce their evidence and the concerned forum would be at liberty to decide the issue as per its own discretion as per record.

The special appeal is dismissed.