
(2008) 08 AHC CK 0068
In the Allahabad High Court

Ram Kalp Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

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

Citation : (2009) 1 AWC 972

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard Dr. L.P. Misra, learned Counsel for the petitioners as well as Sri S.K. Mehrotra, counsel for the contesting respondents and learned standing counsel.

2. In the instant writ petition, the petitioners have questioned the validity and correctness of the order dated 3.7.2008 passed by Deputy Registrar, Funds, Societies and Chits, Faizabad inter alia on the grounds that the order is without jurisdiction as Deputy Registrar has no power under law to review its own earlier order; the order has been passed on technicalities; and further has directed for holding an election under District Basic Shiksha Adhikari, Sultanpur, as Election Officer.

3. Brief facts of the case are that Lauhar Paschim Maharishi Dayanand Inter College, Lauhar Paschim, Sultanpur, is a recognized intermediate college, which is run by a society registered under the Societies Registration Act, 1860 in the name and style of Lauhar Paschim Maharishi Dayanand Junior High School Society. The college is on the grant-in-aid list of the State Government upto the level of Junior High School.

4. According to the petitioners, initially the society was formed in the year 1976 under the provisions of Societies Registration Act and bye-laws and

memorandum of association was also submitted in accordance with the provisions of Societies Registration Act. The said society was renewed from time to time. The governing body of the said society comprises of life members, ordinary members and special members. In the bye-laws of the society the life members have been defined as a person who deposits depositing Rs. 51 two times or in the alternative by depositing, Rs. 101, for becoming an ordinary member of the society, a person is required to deposit Rs. 2 per month.

5. Dr. L. P. Misra has submitted that last undisputed election was held on 9.7.1986 under the supervision of S.D.I. as Election Officer. In this election, 52 members participated, out of which, 45 were life members including the petitioners and 7 members were other than life members. On 15.8.1990, 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. In February, 1991, Raghunandan Singh opposite party No. 6 and six others were illegally included as members of the society. Petitioner No. 12-Virendra Pratap Singh filed a Writ Petition No. 43 of 1991 (M/S) before this Court against the illegal inclusion of members and this writ petition was disposed of with a direction for holding election.

6. Surprisingly, in the elections held on 3.3.1991, 104 members had participated whereas the valid members of the society were only 51. Against the election dated 3.3.1991, objections were filed by Rafique Ansari-opposite party No. 5 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 election.

7. The Assistant Registrar after examining the records and objections so filed, passed a detailed order on 15.6.1993 finalising in the list of 42 life members and 6 ordinary members. In this list, the names of the petitioners have been shown to be life members. Counsel for the petitioners also informed that the order dated 15.6.1993 has been upheld by this Court vide judgment and order dated 2.4.2008 passed in Writ Petition No. 1484 (M/S) of 1993. He also pointed out that the petitioners, except petitioner No. 12, were not the parties before the Registrar in the proceedings culminating in passing of the order dated 15.6.1993 nor these petitioners were parties before this Court in the aforesaid Writ Petition No. 1484 (M/S) 1993.

8. Consequent to the judgment and order dated 2.4.2008, the opposite party No. 4 moved an application before the Deputy Registrar-opposite party No. 3 requesting therein to issue directions for holding of the elections of the Committee of Management. Alongwith this application, a copy of the judgment passed in Writ Petition No. 1484 (M/S) of 1993 was also annexed. Thereafter, the Deputy Registrar passed an order dated 21.5.2008 declaring 27 persons 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. By this order, the elections were also notified. However, Raghunandan Singh and others filed objections, as such the Deputy Registrar on 28.5.2008, passed an order staying the election. In this order, it was observed that since there is no record in the college as to how many members have deposited membership fee for being declared as valid members and as such it would be proper if the elections may be conducted after ascertaining this fact also in view of the order dated 15.6.1993.

9. It is contended by the counsel for the petitioners that by the impugned order dated 3.7.2008, in a most illegal and arbitrary manner, the Deputy Registrar, without considering the proof of the membership presented by the petitioners, held that the petitioners are not the valid members of the general body of the society although the petitioners had deposited Rs. 101. Further, at no point of time any notice was sent to the petitioners requiring them to deposit Rs. 51. Further, the petitioners were not given any notice of the proceedings culminating in the order dated 15.6.1993. He further contended that in the list dated 15.8.1990 submitted by opposite party No. 6, the petitioners and the opposite parties Nos. 4 and 5 were shown as life members, therefore, it could not be alleged at all that any amount towards life members was any more due to be paid by them. The sole question involved in the proceedings before the Registrar was about the fraudulent induction of 54 members by the opposite party No. 6 because of which the opposite party No. 6 shown the strength of the general body members of the society as 104. The impugned order is also bad for the reason that once the opposite party No. 3 had passed an order dated 21.5.2008 directing the elections to be held amongst the 27 life members, it is not open to the Deputy Registrar to pass the subsequent order reviewing his own earlier order as no provision of the Act or Rules gives such a power to him as such the impugned order is not sustainable. To give strength to this argument reliance has been placed on (1991) 4 SCC 484 , H. C. Suman and Anr. v. Rehabilitation Ministry Employee's Cooperative House Building Society Ltd.; Dr. (Smt.) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji,

10. Learned Counsel for the petitioners next contended that the impugned order dated 3.7.2008 is illegal and unjustified as it intended to aid the opposite parties to get their exclusive hold of the management of the institution for their personal gains. He also submitted that as the petitioners have been debarred from the status of being members of the society, as such the petitioners are being punished for the fault of opposite parties Nos. 4, 5 and 6, who were under an obligation to send notice to them for deposit of Rs. 51. In support of this argument reliance has been placed on Excise Commissioner and Others Vs. Ajith Kumar and Another,

11. The next argument advanced by the counsel for the petitioner is that the alleged deposit of Rs. 51 for 20 persons on 20.4.1973 is fraudulent one as the cash book has been manipulated which is evidence on the face of it. In fact the contesting respondents have played fraud and it is settled law that fraud vitiates every solemn right. In support of his arguments of fraud, the petitioners have placed reliance on various cases like Mritunjoy Pani and Another Vs. Narmanda Bala Sasmal and Another, Tanna and Modi v. C.I.T., Mumbai XXV 2007 (7) SCC 434 and A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,

12. Sri S. K. Mehrotra appearing for the contesting respondents has submitted that there is no illegality or infirmity in the impugned order dated 3.7.2008 contained in Annexure-1 as the said order has been passed by the Deputy Registrar purportedly in exercise of powers as u/s 4 of the Societies Registration Act, 1860 after considering the relevant records available before him. The present writ petition is not the proper remedy for which the petitioners have to approach the civil court in view of the law laid down in various decisions. Now, when the elections have been notified, the petitioners have approached this Court just to install the election process. He also contended that after appreciating the documentary evidence available on record a finding of fact has been recorded by the concerned authority and the same cannot be interfered under Article 226 of the Constitution of India. Further, in case the petitioners have any grievance they can agitate the same before the appropriate forum provided under the law.

13. Sri S. K. Mehrotra, counsel for the contesting respondents further argued that in the order dated 15.6.1993 passed by the Assistant Registrar, a condition was laid down that the members, whose names are noted in the list from serial Nos. 1 to 41 on depositing Rs. 51 each within a period of 15 days as membership in the account of the institution will be deemed to be the life members of the above society from the date of depositing the above amount. The said order had attained finality after the dismissal of Writ Petition No. 1484 (M/S) of 1993 vide judgment and order dated 2.4.2008. In compliance of the said judgment, the Deputy Registrar erroneously declared 27 persons from the above list as the life members vide order dated 21.5.2008. This order was passed due to inadvertence without examining the payment of the above referred membership fee of Rs. 51 each, which was the condition provided in the order dated 15.6.1993. When this procedural error was brought to the notice of the Deputy Registrar Firms, Societies and Chits (opposite party No. 3), he again examined the matter and before passing the order, he called upon the petitioners and others to establish the payment of the membership fee. After giving opportunity to all the petitioners and other concerned persons, it was found by the opposite party No. 3 that only 20 persons from the above referred list had deposited their membership within the stipulated period. Accordingly, the opposite party No. 3 passed the order dated 3.7.2008 declaring 20 members as life members. Out of these 20 life members only 10 members are alive, who are the life members of the society at present. Placing reliance on Supreme Court decision in Kapra

Mazdoor Ekta Union Vs. Management of Birla Cotton Spinning and Weaving Mills Ltd. and Another, Sri S.K. Mehrotra vehemently argued that the quasi-judicial authority has ample power to correct itself when a procedural illegality is committed by him which goes to the root of the matter.

14. As regard the assertion of the petitioners that they were not the parties before the Registrar in the proceedings which culminated in passing of the order dated 15.6.1993 nor these petitioners were parties before this Court in Writ Petition No. 1484 (M/S) of 1993, I would like to mention that the Registrar had passed the order dated 15.6.1993 after hearing all the persons, which includes the representatives authorized by the members, therefore, the assertion of the petitioners that they were not afforded opportunity of hearing, or they had not participated in the proceedings, is absolutely incorrect and misconceived. In the judgment passed in Writ Petition No. 1484 (M/S) of 1993 it has been clearly observed 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 was 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.

15. After examining the submissions made by the counsel for the parties, I am of the view that there is no illegality in the impugned order, which according to the petitioners is without jurisdiction for the reason that the authority has no power to review. The Deputy Registrar has passed the order dated 3.7.2008 and when the relevant fact regarding payment of membership fee dated 15.6.1993 was brought to his notice, he again examined the matter in light of the order dated 15.7.1993 and thereafter gave reasonable opportunity of hearing to the petitioners and other concerned persons and requiring all of them to establish the payment of the membership fee as provided in the order dated 15.7.1993 vide order dated 29.5.2008. (Annexure-8). In Kapra Mazdoor's case, on which respondents have placed reliance, the Hon'ble Supreme Court held as under:

Procedural review, however, belongs to a different category. In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so ascertains whether it has committed a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently, the order passed therein.

16. Thus, from the above proposition, it is eminently clear that if any mistake is brought to the notice of the authority concerned, which he has committed either inadvertently or by slip of eyes, then the order passed is liable to be recalled and

reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter. It may be added that a judicial or quasi-judicial authority has inherent power to correct its own proceeding when it is satisfied that in passing a particular order, it was misled by one of the parties or there is inadvertent error. It is also settled position of law that there is a clear distinction between a statutory review and a review under the inherent powers of the Court or Tribunal to rectify the wrong that has been committed by itself. Thus, the contention of the petitioners" counsel that the Deputy Registrar has reviewed its order is not correct for the reasons enumerated hereinabove.

17. Sri S. K. Mehrotra, counsel for the contesting respondents has strenuously argued that the election process has been notified vide notification and as such the writ petition is not maintainable in view of the decisions rendered by the Hon"ble Supreme Court as well as by this Court in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, Tapash Majumdar v. Pranab Dasgupta (2004) 13 SCC 574 ; Sardar Jagat Singh Chhabra v. Deputy Registrar, Firms, Societies and Chits (2008) 28 LCD 1014; Committee of Management, Shiksha Prasar Samiti and Anr. v. State of U.P. and Ors. 2008 (28) LCD 407 and Suresh Kumar Modi Vs. State of U.P. and Sri Rati Ram Agrawal, Director, Status Mark Finvest Ltd.,

18. In number of decisions, the Hon"ble Supreme Court as also this Court has reiterated in clear words and held that a question relating to the non-payment of dues of the society should be raised at the appropriate stage and the election process may not be interfered. It would be useful to refer some of the cases, which are as follows:

19. In the case of Basant Prasad Srivastava, Manager, Gandhi Smarak Uchchatar Madhyamik Vidyalya, Kauriya, Azamgarh v. State of U.P. and Ors. 1994 ACJ 162, a Division Bench of this Court has proceeded to hold as under:

7. In our opinion the judgment of the learned single (Judge) does not suffer from any infirmity. The election process having started it must come to its logical conclusion. Once, it has come to its logical conclusion by declaration of result of the election the aggrieved person may challenge the election by filing election petition or civil suit in accordance with law. In such a proceeding the election may not be set aside if the alleged illegality or irregularity has not materially affected the result of the election. Approach to Court at intermediate stages 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. Neither is a happy situation. It is, therefore, desirable that the election process should end as early as possible and the declaration of result should not be deferred through repeated interim orders passed from time to time. In taking this view we have the support of authorities which may be immediately noticed.

13. ...It has been settled by this Court more than once that election of the Committee of Management of an educational institution can be challenged before civil court. A dispute with respect to the management of such institution can also be agitated before Deputy Director of Education u/s 16A (7) of the Intermediate Education Act and the decision of the Deputy Director given under the above provision is subject to the decision of a competent court. Neither Intermediate Education Act nor the scheme of administration limits/restricts the ground on which the election of the Committee of Management can be challenged. Election of such a committee, as such, can be challenged, both on merits as well as on the ground that the persons who were not entitled to vote were permitted to vote or the persons who were entitled to vote were excluded. The order of any person or authority limiting the right to vote in the election to certain persons only is liable to be challenged, while challenging the election and competent authority or the Court can set aside the election of the committee of management on that ground. Under these circumstances, it is not open to challenge any order at the intermediate stage. The position would have been different had the law excluded the challenge to the election on the ground of defective electoral roll. But, as mentioned above, this is not the position in the instant case.

20. In the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, Hon''ble Supreme Court held that breach or non-compliance with the mandatory provisions of Rules during the preparation of electoral roll can be challenged in an election petition. It has been further held by the Hon''ble Supreme Court that the preparation of voter list is a part of the election process for constituting Managing Committee of a specified society, accordingly, the Court should not interfere with the election process at the intermediate stage. For convenience, relevant portion from the judgment of Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and Ors. (supra) is reproduced as under:

9. If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that the preparation of electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election means of an election petition before the Tribunal.

12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, it is well-settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question

has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.

[Emphasis supplied]

In another case in *Tapash Majumder v. Pranab Dasgupta* (2004) 13 SCC 574, Hon"ble Supreme Court held that when the election process is started, the Court should not interfere with it.

21. In *Suresh Kumar Modi Vs. State of U.P. and Sri Rati Ram Agrawal, Director, Status Mark Finvest Ltd.*, on which reliance has been placed by Sri S.K. Mehrotra, appearing for the respondents, this Court following the decisions, referred to above, refused to interfere with the order of the Deputy Registrar finalizing the voter list and notifying the election on the ground that writ petition is not maintainable in such matter and held in paragraphs 28 and 29 as under:

28. The law emerges from the discussion made hereinabove is that once the election process is started which includes the preparation of electoral roll, then ordinarily High Court should not invoke extraordinary jurisdiction of Article 226 of the Constitution of India and the aggrieved party shall have a right to challenge the outcome of the election in pursuance to the provisions contained in the Societies Registration Act or any other law time being enforced. The outcome of the election may also not be impugned under extraordinary jurisdiction of Article 226 of the Constitution of India in case the remedy to file an election petition or any other remedy under the Act or statutes is available to an aggrieved person.

29. In view of above, since, by the impugned order the Deputy Registrar, has finalized the voter list and notified the election, the present writ petition shall not be maintainable.

22. On the strength of the decision rendered in *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, Sri Mishra has argued that even a writ petition involving highly disputed questions of fact can be entertained and decided by the High Court. In this regard, it may be mentioned that by catena of decisions, a principle has been enunciated that whenever a controversy involved is a disputed question of fact then ordinarily it should not be adjudicated under extraordinary remedy of Article 226 of the Constitution. In a recent judgment in *Sanjay Sitaram Khemka v. State of Maharashtra and Ors.* JT 2006 (4) SC 373 : 2006 (5) AWC 5019 (SC), the Hon"ble Supreme Court observed as under:

A writ petition, as has rightly been pointed out by the High Court, for grant of the said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of the controversy as also the disputed questions of fact, go into the merit of the

matter, evidently no relief can be granted to the petitioner at this stage.

23. In the instant case, the case of the petitioners is that they were the bona fide members of the society whereas the Deputy Registrar on the basis of evidence and material on record has held that the petitioners are not the valid members of the society. The disputed questions of fact cannot be decided in a writ jurisdiction under Article 226 of the Constitution of India. It may be added that cases relied by Mr. L. P. Mishra are not attracted in the facts and circumstances of the present case.

24. Furthermore, it is a settled proposition of law that Courts ordinarily should not stall the election process. After examining the record, I also do not find that any fraud has been played as alleged by the petitioners. Moreover, mere saying, that fraud has been committed is not enough. The parties pleading it must set forth full particulars. Omnibus allegations are insufficient even to an averment of fraud, of which any Court should take notice irrespective of howsoever strong the language in which those allegations are couched may be. Further, frauds like any other charge of a criminal offence whether made in civil or criminal proceedings must be established beyond reasonable doubt.

25. In view of above, I find force in the submissions advanced by the counsel for the respondents that after the election process has started, party aggrieved has a right to challenge the election by approaching the appropriate forum. The Hon'ble Supreme Court in the case of Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, has observed that once the election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere in the elections under Article 226 of the Constitution of India.

26. Thus, from the aforesaid principles and facts it clearly emerges out that once the election process starts, 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.

For the reasons stated hereinabove, I do not find any good ground for interference under Article 226 of the Constitution. Accordingly, the writ petition is dismissed.

Costs easy.