
(2009) 05 AHC CK 0403
In the Allahabad High Court
Case No : Writ Petition No.2798 (M/S) of 2009

Rizwan Ullah

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Societies Registration Act, 1860 — Section 21

Citation : (2009) 05 AHC CK 0403

Hon'ble Judges : Devi Prasad Singh, J

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Mr. Rao Narendra Singh, learned counsel for the petitioner, Mr. Sanjay Kumar, learned counsel for the respondents and Mr. R.K. Srivastava, learned Standing Counsel.

2. The parties' counsel agree that this writ petition may be disposed of finally at admission stage.

3. In pursuance to the direction, passed by this Court, by the impugned order, the petitioner's representation has been decided. While deciding the representation, the Registrar, Firms, Societies, Chits and Funds has usurped the power of the Deputy Registrar and entered into merit of the controversy. It has been submitted by the petitioner's counsel that virtually, the Deputy Registrar by an order has accepted the list of elected body and submission of the representation to the Registrar amounts to review of the order, passed by the Deputy Registrar. In case this Court has directed to decide the representation, it does not mean that the Registrar shall usurp the power of the Deputy Registrar. Duty assigned by the statutory provisions should be exercised only by those authorities to whom power has been delegated and not by any one else.

4. In a case reported in 2006(24) LCD 1078, Fahim Ahmad and another v. The State of U.P. and others, it has been settled by this Court that since the State Government has delegated the power of the Registrar to the Deputy Registrar,

the Deputy Registrar concerned may decide the controversy. For convenience, relevant portion from the judgment of Fahim Ahmad (supra) is reproduced as below:

¶31. The State Government by the notifications dated 20th of July, 1981, 7th of January, 1982, 31st of July, 1985, 24th of January, 1987, 6th of July, 1991 followed by another notification dated 29th of October, 1991 has delegated the work of Registrar to the Deputy Registrar or Assistant Registrar of the respective regions or districts. In view of the delegation of power by the State Government in pursuance to the power conferred by Section 21 of the Societies Registration Act, the Deputy Registrar or the Assistant Registrar of the regions or districts or as the case may be, have got power to discharge all the statutory duties provided under the Societies Registration Act. Once the State Government has delegated the power to the Deputy Registrar or the Assistant Registrar of the respective regions or the districts then the Registrar, Firms, Societies and Chits, U.P. Lucknow has got no jurisdiction to interfere with the discharge of statutory duties by the Deputy Registrar or the Assistant Registrar while proceeding with the controversy. The supervisory power vested in the Registrar does not seem to include to pass an order staying the election process or to summon the record and usurp the power of the Deputy Registrar or the Assistant Registrar, of course. In case it is brought into the notice of the Registrar relating to some malpractice, fraud or the corrupt practice by the Deputy Registrar, then in such situation, Registrar, Firms, Societies and Chits may transfer the proceeding to some other Deputy Registrar or the Assistant Registrar having the jurisdiction to discharge duties under Section 21 of the Societies Registration Act.?

5. In view of above, it appears that while deciding the representation, the Registrar has entered into the merit of the controversy which should have been adjudicated by only the Deputy Registrar and not by the Registrar. It is very well settled law that the order passed without jurisdiction shall be nullity in law.

6. In the present case, the Registrar having no jurisdiction to decide the controversy with regard to the election in question, it could have been decided by the Deputy Registrar in pursuance to the power conferred by Section 25 of the Societies Registration Act.

7. In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 19.5.2009 with consequential benefits. However, liberty is given to the respondents to approach the Deputy Registrar of the region concerned who shall look into the matter and decide the respondents' representation in accordance with law by passing a speaking and reasoned order expeditiously and preferably within three months from the date of receipt of a certified copy of this order.

8. Subject to above, the writ petition is allowed. No order as to costs.

(Petition allowed)