

(2017) 07 AHC CK 0052
In the Allahabad High Court
Case No : 15927 of 2017

Sarvendra Veer Vikram Singh And 33 Ors	APPELLANT
Vs	
State of U.P. Thru Prin.Secy. Institutional Finance Lko.& Ors	RESPONDENT

Date of Decision : 24-07-2017

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs
Societies Registration Act, 1860, Section 15, Section 25(2), Section 4-B, Section 4-B(2), Section 4-B(1), Section 4-B(3) - Member defined

Citation : (2017) 07 AHC CK 0052

Hon'ble Judges : Devendra Kumar Upadhyaya

Bench : Single Bench

Advocate : Sharad Pathak, Apoorv Tewari, Kshemendra Shukla, Shailendra Kumar Singh, Vikas Singh

Judgement

1. Heard Dr. L.P. Mishra and Sri Sharad Pathak, learned counsel appearing for the petitioners, Sri Anil Kumar Tiwari, learned Senior Advocate, assisted by Sri Kshemendra Shukla and Sri Apporva Tiwari, learned counsel appearing for respondent Nos. 5 and 6, Sri Vikas Singh, learned counsel appearing on behalf of respondent No.4 and learned Standing Counsel representing the respondent Nos. 1, 2 and 3. 2. Learned counsel appearing for the respective parties consent that this matter be decided finally at the admission stage itself. The Court proceeds accordingly. 3. The petitioners, who proclaim themselves to be the members of the General Body of a Society, known as Smarak Higher Secondary School, Ambedkar Nagar (herein after referred to the "Society"), by instituting these proceedings under Article 226 of the Constitution of India have assailed the validity of an order dated 21.06.2017, passed by the Deputy Registrar, Faizabad Region, Faizabad whereby the earlier order dated 20.12.2016, passed by him has been declared to be void and further direction has been issued to conduct the election of the executive body of the Society declaring the executive body to

have become barred by time under Section 25(2) of the Societies Registration Act, 1960. 4. At this juncture, it is observed that earlier on 20.12.2016, the Deputy Registrar had passed an order registering (taking on record) a list of 70 members of the General Body of the Society. On passing the impugned order, the Deputy Registrar has determined a list of 24 members of the General Body and has, thus, issued direction for holding election of the Committee of Management of the Society to be held from amongst these 24 members, vide the impugned order dated 21.06.2017. 5. Undisputedly, in the outgoing Committee of Management, one Sri Radhey Shyam Singh was elected as Manager. He is said to have expired on 19.09.2016. Before his death, as has been asserted by the learned counsel for the petitioners, two meetings of the General Body of the Society took place; firstly on 25.06.2015 and secondly on 25.05.2016. It has further been stated by the learned counsel for the petitioners that certificate of registration of the Society was renewed on 19.10.2015, w.e.f. 10.10.2015 and that after the last renewal of the registration of the certificate of the Society, membership of the General Body got increased as various individuals joined the Society as members of its General Body depositing subscription of Rs. 2,000/- each. In respect of this submission, the petitioners have annexed two resolutions of the General Body of the Society to the writ petition; one pertaining to the meeting held on 25.06.2015 and other, pertaining to the meeting held on 25.05.2016. He has also annexed the membership fee receipts issued to various individuals whereby the receipt of a sum of Rs. 2,000/- has been acknowledged by the then Manager, Sri Radhey Shyam Singh and Sri Har Govind Singh who according to the petitioners, was the president of the Society. It has further been stated that after the death of the Manager, Sri Radhey Shyam Singh, a list of 70 members of the General Body of the Society was submitted by one Sri Prem Narayan Singh, the treasurer of the Society, who has been arrayed as respondent No. 4 to this writ petition, to the Deputy Registrar and that the said list submitted to the Deputy Registrar was in terms of the requirement of Sub-section 2 of Section 4-B of the Societies Registration Act, 1860 and was submitted only for taking the said list on record. It is on the basis of the aforesaid list submitted by Sri Prem Narayan Singh that the Deputy Registrar passed the order dated 20.12.2016, which has been annexed as Annexure No.14 to the writ petition, stating therein that the list of the General Body of the Society, 2016-2017 is registered as per rules and further that in case any fact is found to have been concealed or certain fabricated documents are found to have been furnished while submitting the list, than the entire responsibility will be saddled with the treasurer-Prem Narayan Singh and the registration of the list shall become void w.e.f. the date of its registration. 6. Respondent Nos. 5 and 6, who were also the members of the General Body of the Society, had made some objection on 06.01.2017 which was accompanied by notarized affidavit. In the objection/complaint made by respondent No.5 to the Deputy Registrar, it was submitted that the papers submitted for registration of the list containing 70 members of the General Body of the Society are forged, concocted and fabricated. The complaint made by the respondent No.5 so received by the

Deputy Registrar was furnished to Sri Prem Narayan Singh-respondent No.4, at whose instance the list of 70 members was presented on which the order dated 20.12.2016 was passed. The complaint made by respondent No. 5-Abhimanyu Singh and 16 other persons was, thus, furnished to Sri Prem Narayan Singh by the Deputy Registrar requiring him to file his reply to the same. It is in this background that the impugned order has been passed by the Deputy Registrar on 21.06.2017 whereby the order dated 20.12.2016 passed earlier recognizing/registering/taking on record the list of 70 members of the General Body of the Society has been held to be void. 7. Detailed competing submissions have been made by learned counsel appearing for the respective parties. 8. Learned counsel for the petitioners while impeaching the impugned order has submitted that in fact the entire exercise conducted by the Deputy Registrar after passing of the order dated 20.12.2016 was not correct, whereas learned counsel representing the respondent Nos. 5 and 6 has contended that the order dated 20.12.2016 was a conditional order and further that once the correct facts were brought to the notice of the Deputy Registrar, he has passed the order on 21.06.2017 after giving opportunity of hearing and making representation to the person at whose instance the order dated 20.12.2016 was passed. 9. Emphasis has been laid by the learned counsel for the petitioners that the order dated 20.12.2016 was passed on the documentary evidence adduced by Sri Prem Narayan Singh, whereby the petitioners were inducted as members of the General Body of the Society and as such before passing the order dated 21.06.2017, it was incumbent upon the part of the Deputy Registrar to have given opportunity of hearing to the petitioners for the simple reason that by operation of the impugned order the petitioners have lost their membership with their valuable rights based on the subscription deposited by them for becoming the members of the Society. It has also been contended that the impugned order has resulted in depriving the petitioners of participating in the election of the Committee of Management of the Society. Thus, they, in fact, have been debarred from exercising their functions which they would have otherwise performed if they would be elected as members of the Executive Body of the Society on the basis of the list which was ordered to be taken on record by means of order dated 20.12.2016. His submission is that the impugned order is in flagrant violation of principles of natural justice and the list appended thereto can at best be treated to be a tentative list of members forming the electoral college for the purpose of holding election of the Executive Body of the Society under Section 25(2) of the Act and once it is held to be tentative list, the petitioners ought to be permitted to file their objection so that before holding the election, final electoral college is prepared and thereafter elections are held. 10. Sri Anil Kumar Tiwari, learned Senior Advocate on the other hand, has termed the submissions made by Dr. L.P. Mishra to be highly mis-conceived and has stated that in a situation where the claim of the membership of the petitioners has been found to be against the provision of bye-laws of the Society, the petitioners cannot complain of violation of principles of natural justice. It has further been submitted by Sri Tiwari that the petitioners will not suffer any prejudice for the reason that their entire case is

on record of this writ petition and this record, according to Sri Tiwari, does not confer membership on the petitioners. He, in this regard has drawn attention of this Court to minutes of two meetings of the General Body of the Society held on 25.06.2015 and again on 25.05.2016. He has also drawn attention of this Court to the subscription receipts which have been annexed along with this writ petition by the petitioners asserting their right of membership of the General Body of the Society. Taking the Court to the aforesaid documents, it has been submitted by Sri Tiwari that the resolutions dated 25.06.2015 and 25.05.2016, nowhere admit the petitioners to the membership of the Society. He has further contended that the subscription receipts which have been annexed by the petitioners and are being relied upon as proof of their membership, have not been issued by the appropriate authority in terms of the provisions contained in the bye-laws of the Society. In this view, the submission is that even if the petitioners were given opportunity of hearing in the matter by the Deputy Registrar, before passing the impugned order, that would have been nothing but a futile exercise and hence, the complaint of the petitioners that the impugned order has been passed to the detriment of the petitioners and in violation of principles of nature justice, is not sustainable. 11. Learned Standing Counsel appearing for the State-respondents has attempted to justify the impugned order and has submitted that the facts and circumstances of this case warranted passing of the impugned order dated 21.06.2017, which the Deputy Registrar in this case has passed. 12. So far as the factual aspects and the assertions regarding validity of the membership of the petitioners are concerned, at this juncture, the Court refrains itself from examining the same and giving any finding thereon for the reason that the matter at hand can be disposed of without dwelling upon these issues. 13. The dispute between the parties in this case primarily is in relation to new members said to have been inducted including the petitioners. There is no dispute in respect of 24 members of the General Body of the Society who have been recognized as such by the impugned order dated 21.06.2017. However, the dispute relates to other members who are said to have been inducted during the period 2015-2016. 14. Forming a Society for collectively promoting some cause with a common object is a voluntary act of any member of the society at large. The Societies Registration Act, 1860 has been enacted by Central Legislature not with a view to create any control or supervision or superintendence over the functions of a Society by the State or its authorities. Purpose of such a legislation is only to provide aid to the members of the Society so that objects of the Society are achieved and the Society functions smoothly. With this object alone there are certain powers and functions vested in the Registrar (which includes the Deputy Registrar as well) under the Societies Registration Act. The relevant provisions which concern this matter contained in the Societies Registration Act, 1860 are Sections 4-B, 15 and 25(2). Section 4-B has recently been enacted by the State Legislature with an object of avoiding a situation where the membership of a Society becomes subject matter of a dispute on account of non-existence of correct list of the members of the General Body of the Society with the Registrar. Object of this amendment further is to

check that illegal persons are not able to claim themselves to be the members or office bearers of such Society. In order to avoid these situations, Section 4-B has been enacted. 15. Section 4-B of the Act reads as under:- "4-B (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society. (2) If there is any change in the list of members of the General Body of the society referred to in subsection (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change. (3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society." 16. Section 4-B requires filing of list of members of the General Body with the Registrar at the time of registration and also at the time of renewal. It further mandates that on filing of the list of the members of the General Body of the Society, the Registrar shall examine the correctness of the list of the members of such Society on the basis of certain documents and records mentioned therein. 17. Sub-section (2) of Section 4-B further requires that if there is any change in the list of members of the General Body of the Society on account of various exigencies, namely, induction, removal, registration or death of any member, a modified list of members is to be filed with the Registrar within one month from the date of change. Sub-section (3) of Section 4-B mandates that list of members of the General Body to be filed with the Registrar needs to be signed by two office bearers and two executive members of the Society. 18. There cannot be any quarrel that Sub-section (3) of Section 4-B governs both the lists to be filed before the Registrar as has been envisaged under Sub-section (1) and (2) of Section 4-B i.e. list of members to be presented at the time of registration/renewal and filing of list of modified members which may be occasioned on account of induction of new members or their removal or their resignation or death etc. 19. The phrase "the Registrar shall examine the correctness of the list of members of the General Body of such Society" occurring in Sub-section (1) of Section 4-B of the Act requires interpretation by this Court, as to its applicability to sub section (2) of section 4-B of the Act, for resolving the issue which, on the basis of arguments advanced by the learned counsel appearing for the respective parties, has emerged for consideration of the Court. 20. On the one hand, learned counsel for the petitioners has stated that the aforesaid phrase does not occur in Sub-section (2), hence in every situation on filing a modified list of members under Sub-section (2), examination of its correctness will not be required to be made by the Registrar. Dr. L.P. Mishra has submitted that it is only in a situation where some objection is made or exception is taken by someone to the list furnished to the Registrar under Sub-section (2) that Registrar will be required to examine the correctness of such list on the basis of yardsticks and

documents which have been mentioned in Sub-section (1) of Section 4-B. 21. On the other hand, learned counsel representing the respondent Nos. 4 and 5, Sri Anil Kumar Tiwari, learned Senior Advocate has submitted that if the provisions of Sub-section (2) of Section 4-B are to be construed for the purpose for which the State Legislature has introduced the same in the principal Act, the necessary inference is that the Registrar is required to examine the correctness of modified list of the members submitted to him or filed before him under Subsection (2) each and every time. He has further stated that the purpose of enactment of Section 4-B is apparent from the Statement of Objects and Reasons of the amending Act by which Section 4-B was inserted in the Principal Act. 22. To examine the purpose for which section 4-B in the Act has been inserted by the State Legislature in the Principal Act, the Statement of Objects and Reasons of U.P. Act No. 23 of 2013 may be referred to which is quoted below: "Statement of Objects and Reasons The Societies Registration Act, 1860 (Act no.21 of 1860) has been enacted by the Parliament to provide for registration of literary, scientific and charitable societies. Section 4 of the said Act deals with the filing of annual list of managing Body of a society but there is no provision in the said Act for filing of list of General Body of the society. At present, a large number of societies are disputed due to non-existence of its correct list of General Body with the Registrar. In several cases, an illegal person, fraudulently, produces before the Registrar an incorrect list of General Body of the Society and claims to be the member of office bearer of such society. In order to avoid such situation, it has been decided to amend the said Act in its application to Uttar Pradesh, to insert a new section 4-B, to provide for filing of the list of General Body with the Registrar at the time of registration or renewal of such society." 23. The State Legislature while introducing section 4-B in the Principal Act was conscious of the fact that the functioning of the Societies registered under the Act many a times get hampered by nonavailability of correct list of the members of general body with the Registrar. It was also conscious of the fact that on various occasions incorrect list of members of general body of a Society is filed before the Registrar by some person/persons claiming himself/themselves to be the members or office bearers of such a Society. The Legislature has, thus, inserted section 4-B of the Act to avoid any such possibility and, thus, has made a provision for filing of list of members of general body at the time of registration or renewal of registration of such society. 24. Thus, a careful reading of the Statement of Objects and Reasons for enacting U.P. Act No.23 of 2013 suggests that section 4-B has been inserted primarily for providing for filing of list of general body members with the Registrar at the time of Registration and Renewal of a Society. (emphasis supplied by the Court) 25. Section 4-B (1) of the Act, thus, leaves no room of doubt that every time a new society is registered or its registration is sought to be renewed, the list of General Body members of the society is to be filed mentioning the name, father's name, address and occupation of the members and on every such occasion the Registrar is under statutory obligation to examine the correctness of such list of members of the General Body on the basis of certain documents and materials mentioned in section 4-B itself. There is

no escape for the Registrar from examining the correctness of list of members of General Body of a Society at the time of its registration or renewal of registration. 26. However, the phrase "the Registrar shall examine the correctness of list of members of General Body" does not occur in sub section 2 of section 4-B which requires submission of modified list of members of the General Body of a Society in case any change in such list takes place on account of induction, removal, registration or death of any member. This, however, in my considered opinion does not mean that correctness of modified list presented before the Registrar will never be examined or in other words, it will not be examined at all on any occasion even if the circumstances warrant such an examination by the Registrar. The occasion to file the modified list of members may arise during subsistence of the period of registration/renewed registration. In case some change takes place during the period of subsistence of registration/renewed registration of the Society, the same as per the requirement of sub section 2 of section 4-B of the Act is to be intimated to the Registrar and the modified list of members of General Body is to be filed with the Registrar within one month from the date of such change. A plain and simple reading of sub section 2 of section 4-B suggests that the only requirement given therein is filing of modified list of members of general body which is caused on account of induction/removal/resignation/death of any member. However, in case it is held that in every situation requirement is only to file such modified list, correctness of which need not be examined by the Registrar, would lead to a mischief. The mischief which may arise in case modified list of members is not examined by the Registrar is that after expiry of the term of the executive body of the society, elections will have to be held from amongst the members whose names figure in the modified list which remain un-scrutinized by the Registrar and in case there is any objection to such a modified list of the members of the general body, the sanctity of election of the executive body will be at stake. Similarly, there is a possibility of yet another mischief in case the modified list is not examined by the Registrar on each occasion when it is submitted. On expiry of the period of registration/renewed registration of a society, list of members of General Body is to be filed under section 4-B and at such an occasion the list which would be filed would be the modified list but unscrutinized. To avoid the aforesaid situations leading to mischief, sub section 2 of section 4-B of the Act is to be construed harmoniously, purposively and in consonance with the Statement of Objects and Reasons of U.P. Act No.23 of 2013. In my considered opinion, the correct interpretation of sub section 2 of section 4-B would be that the Registrar is required to examine the correctness of modified list of the members of general body of a society in case any objection is raised to such a modified list filed with him. In case no such objection is received by the Registrar against the modified list of the members of general body filed/presented before him, the correctness of the same need not be scrutinized/examined for the reason that burdening the Registrar with such an exercise without there being any objection to the modified list of members of general body can not be the purpose of enacting sub section 2 and that is why the phrase "the Registrar shall examine the correctness of the

list of members of the General Body" does not occur in sub section 2. Having said so, leaving the modified list of members of General Body submitted before the Registrar unscrutinized and unexamined in case of any objection to the same, may lead to anomalous situation at the time of election of the executive body of the Society on expiry of its term or at the time of renewal of registration when the period of registration/renewed registration of the society expires. 27. It is true that the Court while interpreting any provision of a Legislation is not permitted to interpolate or intrapolate any word in the provisions of the Act on its own. However, the Court can always provide an interpretation to any piece of Legislation or provision of an Act of Legislature to make the same workable which will be in tune with the objects of the provisions. The provisions of sub section 2 of section 4-B of the Act are thus to be interpreted by the Court, in this case, in a manner that the provisions of section 4-B of the Act are found workable in tune with the aims and objects for which entire section 4-B has been inserted in the Principal Act by the State Legislature. 28. Learned counsel representing the respondent nos.5 and 6 has relied upon a judgment of a Division Bench of this Court in the case of Dr. Syed Akhtar Hasan Rizvi v. State of U.P. and others, (Special Appeal No.261 of 2015) rendered on 07.01.2016 to emphasize that every time a modified list is submitted/filed with the Registrar under section 4-B(2), it is the duty of the Registrar to examine the same. 29. I have perused the aforesaid judgment in the case of Dr. Syed Akhtar Husain Rizvi (supra), a careful perusal of which does not indicate that the Division Bench has anywhere held that each and every time on submission of list of modified members of the General Body of a Society under sub section 2, the Registrar has to necessarily examine its correctness. The Division Bench has, however, held that the scheme of sub section 1 and sub section 2 of section 4-B of the Act is such that it requires that if there is any change at any point of time in the list of members of the General Body, the same should be informed to the Registrar within a period of one month. It has further been held by the Division Bench that list of modified members is to be placed in continuous manner and not in piecemeal as the same would defeat the purpose of legislating section 4-B of the Act. 30. The aforesaid judgment of the Division Bench of this Court in the case of Dr. Syed Akhtar Husain Rizvi (supra) does not, thus, help Shri Anil Kumar Tewari, learned Senior Advocate representing the respondent nos.5 and 6, in his submission that scrutiny/examination of modified list of the members of General Body of a society is necessary on each and every occasion. If a modified list is filed before the Registrar, in my considered opinion, its scrutiny or examination by the Registrar will be occasioned only in case there is any objection from any quarter or members of the society concerned. In case there is no objection to the modified list submitted to the Registrar, requiring him to scrutinize/examine the same would only be burdening the Registrar with an exercise without any purpose and the same would not bear any fruit as far as the aims and objects of insertion of section 4-B in the Principal Act are concerned. 31. Section 15 of the Act defines "member" of a society to mean a person who is admitted in the society according to the rules and regulations of the society and has paid a

subscription or has signed the roll or list of members of the society and has not resigned in accordance with rules and regulations of the Society. Section 15 of the Act runs as under:- "15. Member defined.-For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations." 32. Thus, the definition of the word "member" in terms of section 15 of the Act is helpful to the Registrar/ Deputy Registrar while he determines or examines or scrutinizes as to whether any person claiming to be a member of a society is its valid member or not. Such an occasion would arise at the time of examining the list of the members of the general body of a society which is required to be presented before the Registrar at the time of registration of the society or its renewal. This occasion would also arise before the Registrar at the time when he scrutinizes/examines the validity of modified list of members of General Body of a society in case it is presented before him in the exigencies enumerated in sub section 2 of section 4-B and objection to such a modified list is filed/presented before him. 33. Section 25(2) of the Act empowers the Registrar to call meeting of the General Body of a society for electing its office bearers in three situations; (i) if an election is set aside, (ii) an office bearer is held to be dis-entitled to continue in office and (iii) where the Registrar is satisfied that any election of the office- bearers has not been held within the time stipulated in the rules/bye laws of the Society. The Registrar is, thus, empowered to call the meeting of the General Body of such a society for electing the office-bearers and meeting of General Body is presided over and conducted by the Registrar or by any officer authorized by him in this behalf. Holding of meeting of the members of General Body of a Society under sub section 2 of section 25 of the Act for the purposes of electing office bearers necessarily involves preparation of electoral college. The process of preparation of electoral college requires publication of tentative list of the members inviting objections thereon and after deciding the objections, if any received, finalizing the same and holding the elections thereupon. However, preparation of tentative list of members of General Body and finalizing the electoral college for holding election under sub section 2 of section 25 is entirely different an exercise than the exercise which the Registrar is under obligation to undertake while scrutinizing or examining the list of members of General Body of a society, filed before him under section 4-B (1) or examining or scrutinizing the modified list of members of the General Body of a society presented before him under sub section 2 of section 4-B. These two processes contemplated and inherent in sub section 2 of section 25 and section 4-B(1) and (2) are not akin or similar to each other. At the time of preparation of final electoral college, consideration of objections to the tentative list of members of the General Body of a society is to be made on different yardsticks, whereas yardsticks on the basis of which scrutiny/examination of list of members of General Body of a society or that of modified list of General Body of members of a society under sub sections 1 and 2 of section 4-B are given in section 4-B (1) itself. The determination of

correctness or scrutiny or examination of the list or modified list submitted before the Registrar under sub section 1 and sub section 2 respectively of section 4-B of the Act is more rigorous than the exercise to be undertaken at the time of decision on objections to the tentative list of members of the General Body of a society for the purposes of finalizing the electoral college for holding the election under section 25 (2) of the Act. 34. Looking to the overall facts and circumstances of this case, which have been pleaded and argued by the learned counsel appearing for the respective parties, what needs to be determined by this Court, at this juncture, is as to whether the exercise undertaken by the Deputy Registrar while passing the impugned order dated 21.06.2017 is to be treated to be an exercise contemplated under sub section 2 of section 25 or under sub section 2 of section 4-B of the Act. In this regard, it is noticeable that the order dated 20.06.2016 was passed on a modified list of members of General Body presented to the Deputy Registrar which was occasioned on account of alleged induction of large number of members other than 24 original members. Thus, the Registrar was required to take on record the said list presented to him by Shri Prem Narayan Singh. It is true that outgoing executive body of the society has become barred by time w.e.f. 19.01.2017 and as such it was also required of the Deputy Registrar to have undertaken an exercise under sub section 2 of section 25 of the Act for holding the elections of the office-bearers of the executive body of the Society. However, before proceeding to call meeting of the General Body of the Society for the purposes of holding the election of office bearers under sub section 2 of section 25, the correctness of the modified list presented by Shri Prem Narayan Singh, in this case, was also warranted for the reason that against the said list which is said to have been registered by the Deputy Registrar on 20.12.2016, objections were filed by various individuals, including respondent nos.5 and 6 as it has already been held above that in case modified list of members of the general body of the Society is filed/presented before the Registrar under sub section 4-B(2) and some objections are raised then the Registrar/Deputy Registrar is under statutory legal obligation to examine the correctness of such modified list. 35. Accordingly, I have no hesitation to hold that the impugned order dated 21.06.2017 is referable to section 4-B (2) of the Act and not to sub section 2 of section 25 of the Act. 36. At this juncture, Shri Anil Kumar Tewari, learned Senior Advocate representing the respondents no.5 and 6, however, submits that the exercise undertaken by the Deputy Registrar which is reflected in the impugned order dated 21.06.2017, in fact, is a composite exercise as contemplated under section 4-B(2) and section 25 (2) of the Act. 37. The said submission made on behalf of the respondent nos.5 and 6 is not acceptable for the reason that here is a case where the modified list submitted by Shri Prem Narayan Singh under sub section 2 of section 4-B of the Act was admitted/taken on record/registered/acknowledged by the Registrar vide his order dated 20.12.2016, in respect of which objections have been filed by the respondent nos.5 and 6 and hence, the said objections were required to be dealt with in accordance with the requirement of sub section 2 of section 4-B as interpreted herein above in this judgment. This required

examination of the correctness of the modified list of members of the general body of the society which has been taken on record by means of the order dated 20.12.2016. The modified list presented by Shri Prem Narayan Singh, though has been taken on record/admitted/registered by means of the order dated 20.12.2016, however, while passing the impugned order dated 21.06.2017 though names of the petitioners and others have been struck off from the said modified list but the petitioners have been deprived of presenting their case before the Deputy Registrar. Merely issuance of notice on the objections presented before the Deputy Registrar to Shri Prem Narayan Singh would, in my considered opinion, in this case, not suffice to meet the requirement of principles of natural justice. It is not a case where modified list was merely presented; rather it is a case where the modified list was admitted by the Deputy Registrar by passing the order dated 20.12.2016. Since the impugned order dated 21.06.2017 deprives the petitioners and other individuals of the membership of the General Body of the society acknowledged by the Registrar vide his order dated 20.12.2016, as such the Deputy Registrar was under obligation to have provided an opportunity of presenting their cases to the petitioners and other such individuals. 38. So far as the reliance placed by learned counsel representing the respondent nos.5 and 6 on the law laid down by Hon'ble Supreme Court in the case of *Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others*, reported in [(2015) 8 SCC 519] is concerned, there is no quarrel on the principles laid down therein. It is trite in law that the principles of natural justice are flexible and they cannot be applied in any strait-jacketed formula. Application of this principle depends upon various factors including the extent to which the person is likely to be affected and it is for this reason that various exceptions have been carved out of this principle. The basic thought/consideration for exclusion of principles of natural justice is "hearing would make no difference". This principle has been laid down by Hon'ble Supreme Court in the case of *Dharampal Satyapal Limited (supra)*. In the instant case, what needs to be examined by this Court is as to whether any prejudice has been caused to the petitioners and others while the Deputy Registrar passed the impugned order. As has already observed above, the list of modified members, including the petitioners was taken on record/registered/acknowledged by the Deputy Registrar by passing the order dated 20.12.2016. Had the impugned order not been passed, the petitioners and the likes would have participated in the elections which would have been conducted for electing the office-bearers of the society. Membership of a society may not be a fundamental right or statutory but at the same time it confers on a member admitted to a society certain functions and in case the petitioners are being removed from the membership of the society, they will be deprived of the functions which they would have otherwise performed, had the impugned order not been passed. Even otherwise, if the modified list was not acknowledged/taken on record/registered/admitted by the Deputy Registrar by passing the order dated 20.12.2016, situation may have been different permitting exclusion of application of principles of natural justice. However, in this case after modified

list has been admitted/acknowledged by the Deputy Registrar by the order dated 20.12.2016, any alteration or change in the same could be permissible only after an opportunity of hearing/submitting their case would be provided to the petitioners. 39. In view of the aforesaid discussions made, the order dated 21.06.2017, passed by the Deputy Registrar, Faizabad Region, Faizabad, as is contained in Annexure No.1 to the writ petition and the consequent election programme scheduled on 25.07.2017 are hereby quashed. The Deputy Registrar is directed to consider the objection/representation made by respondent Nos. 5 and 6 or any other such person against the order dated 20.12.2016 afresh by issuing notices to all the members who are said to have been inducted except the members whose names figure in the list which was taken on record by the order dated 20.12.2016. However, no fresh representation or objection to the modified list appended to the order dated 20.12.2016 shall be permitted to be made. 40. Considering the limited scope of scrutiny/examination of list/modified list under Section 4-B(1) and (2), personal hearing would not be required to be given to the petitioners and others who are to be issued notice on the objections preferred against the order dated 20.12.2016 under this judgement. Only representations which may be received from such persons are required to be considered. However, if the Deputy Registrar feels any necessity of examining any of the original records being relied upon by any party to the proceedings to be drawn by him under this order, it will be lawful for him to do so. 41. The Deputy Registrar will complete this exercise within a period of 30 days from the date certified copy of this order is presented before him. 42. After conclusion of this exercise, he shall cause the elections of the Executive Body of the Society to be held within next 30 days in terms of the provisions contained in Section 25(2) of the Act. 43. The writ petition is allowed in the aforesaid terms. Cost made easy. Petition Allowed.