
(2010) 11 AHC CK 0146
In the Allahabad High Court
Case No : Special Appeal No. 676 of 2005

Shiksha Parishad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Societies Registration Act, 1860 — Section 12D, 21

Citation : (2010) 11 AHC CK 0146

Hon'ble Judges : Yogesh Chandra Gupta, J; Rakesh Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties and perused the record.
2. This special appeal is directed against the judgment and order dated 29.4.2005 in Civil Misc. Writ Petition No. 35043 of 2005, Shiksha Parishad v. State of U.P. and Ors. passed by His Lordship sitting singly dismissing the writ petition.
3. It is argued that His Lordship has failed to notice that under the Societies Registration Act, 1860 there exist no limitation for filing an application seeking recall/restoration of orders and even otherwise provisions of Limitation Act are strictly not applicable to proceedings under the Act of 1860.
4. The judgment impugned is assailed on the grounds that while dismissing the writ petition without appreciating the grievance of the Appellant as contained in the writ petition the Court has failed to notice the facts which clearly demonstrate that the appeal had been withdrawn even in the absence of any authorization in this regard by the Appellant. It is lastly submitted that the effect of judgment is to permit the perpetuation of a fraud against the Appellant even though he has throughout been vigilant about his rights.
5. The admitted facts are that Appeal No. 1 of 1988-89, u/s 12-D of the Societies

Registration Act, 1860 filed by the Petitioner Appellant before the Commissioner was dismissed by order dated 28.10.92 as not pressed, on the statement made by the counsel appearing for the Petitioner. An application for recall of the order was filed by the Petitioner after more than 8 years on the ground that the counsel had not been instructed by him to make any statement to withdraw the appeal. This application for recall of order dated 28.10.92 was also dismissed by the Commissioner on the ground of laches by order dated 16.2.2005. The order dismissing the application was challenged in Civil Misc. Writ Petition No. 35043 of 2005 wherein his Lordship after noting that the application was beyond the prescribed period and not supported by any application for condonation of delay u/s 5 Limitation Act dismissed the petition. It is in this backdrop that the present special appeal has been filed challenging the validity and correctness of order and judgment dated 29.4.2005.

5. After hearing the counsel for the parties we find that the application for setting aside the order dated 28.10.92 passed by the Commissioner, of course, suffers from laches. The counsel for the Appellant has miserably failed to convince us by any Rule, Regulation or law that there is no limitation for moving an application before the Commissioner, hence we do not find any illegality or infirmity in the impugned judgment in so far as this argument is concerned.

6. The Petitioner Appellant has not challenged the findings recorded by the Commissioner in the writ petition and he has only assailed the order rejecting the appeal on the ground of limitation. However, in the interest of justice, we have considered the merits of the matter also.

7. The contention of learned Counsel for the Appellant that by the order dated 30.11.88 the Assistant Registrar, Firms, Societies & Chits, Agra has no authority or power to decide the dispute of Committee of Management u/s 21 of the Societies Registration Act, 1860.

8. In support of his contention, learned Counsel for the Appellant has relied upon paragraphs 5 and 6 of the judgment rendered in (2008) 17 SCC 73 *Abhimanyoo Ram v. State of U.P. and Anr.*

5. The assumption of the Appellant that the High Court has made any unwanted or unwarranted observation or issued any direction which is uncalled for, while dismissing his petition as not pressed, is not correct. The High Court has merely spelt out expressly, the consequences of the dismissal of the writ petition. Such explicit directions have become necessary to check a raising trend among litigants to secure the relief as an interim measure, and then avoid adjudication on merits, particularly in matters relating to examinations and recruitment. The modus operandi adopted in such matters is as follows: The litigant approaches the court in the last minute for relief with an interim prayer. He persuades the court to grant the interim relief by highlighting the urgency, irreparable loss and balance of convenience. He obtains interim relief and secures the desired benefit with the help of such interim order. Once the purpose of securing the interim

order is achieved (particularly where the interim order granted is the same as the final relief prayed), he makes an innocuous submission to the court that he does not want to press the petition and gets the matter disposed of, thereby achieving the goal of securing relief without adjudication. He takes advantage of the fact that invariably courts do not spell out the consequences, when dismissing the petitions as not pressed. The result is that in many cases, a litigant who would not get the relief on detailed scrutiny of his claim during a contested final hearing, gets away with undeserved relief secured by way of an interim order.

6. Any attempt by a litigant to retain the benefit of the interim order by avoiding final adjudication, requires to be deprecated. In fact, it requires to be dealt with sternly. Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn. The courts cannot proceed on the assumption that all concerned would know about the legal consequences of dismissal and therefore, it is not necessary to make any order in regard to the interim relief already granted. Even though the legal effect of dismissal on withdrawal, is vacation of the interim order, the concerned Respondents not being aware of the legal consequences, will not take consequential action but continue the benefit extended to the Petitioner by the interim order, unless there is a specific direction spelling out the consequences. Sometimes, the concerned departmental officials, on account of collusion with the Petitioners who had obtained the interim relief, will not withdraw or reverse the benefit granted to the Petitioner in pursuance of the interim order, when the petition is withdrawn or dismissed is not pressed. Therefore, appropriate consequential directions cancelling or vacating the interim order should be passed so as to restore status quo ante. In cases where the prayer for dismissal (as not pressed or withdrawn) is made even before the Respondent is served, then the order vacating the interim order should be communicated to the authority against whom the interim order was issued, so that any benefit extended as a consequence of the interim order, can be withdrawn or reversed. The only exception is where the Respondents agree for the continuance of the interim order as a final relief, or agree that the benefit of the interim order already granted need not be disturbed, in which event, the court should record such submission and pass appropriate consequential orders.

9. Apparently the facts of this case are different as in that case the High Court has merely spelt out expressly the consequences of the dismissal of the writ petition whereas the contention of learned Counsel for the Appellant in the instant case is with regard to the power and jurisdiction of the Assistant Registrar u/s 12(d) of the Societies Registration Act, 1860.

10. A perusal of order dated 30.11.1988 shows that Sri Ranveer Singh, Appellant in the present appeal has concealed the material facts from the office for getting renewal of the society and the Appellant was ordered to handover the renewal certificate to the recognized Manager Sri Raj Bahadur Singh.

11. The relevant portion of the order dated 30.11.1988 is thus:

laLFkk ds pquko ds laca/k esa Jh eqjkjh flag dqN Jh Li"V djus esa vleFkZ jgs A Jh eqjkjh flag ds }kjk izLrqr pquko fnukad 12- 8- 86 lansgkLin,oa vlaoS/kkfud gS D;ksafd iathd`r fu;ekoyh dh /kkjk & 4 ds vuqlkj lk/kkj.k lHkk dh cSBd cpykus dk vf/kdkj izcU/kd dks gS vU; dks ugha] fu;ekoyh ds fu;e & 6 cSBd dh lwpu nsus dk vf/kdkj izca/kd dks gSa Jh eqjkjh flag }kjk izLrqr pquko dk;Zokgh fnukad 12-8-86 esa mu lHkh ckrksa dk mYya?ku fd;k x;k gSa fu;ekoyh ds fu;e & ?k ds vuqlkj pquko izR;sd rhu o"kZ dh lekIr ij gksxk tks ebZ ;k twu esa gqvk djsxk A Jh jktcgknqj flag us fnukad 23- 6- 85 dks pquko fn[kk;k gS tks 10- 5- 82 dks gq;s pquko ds ckn 3 o"kZ ckn gqvk gS A Jh eqjkjh flag }kjk izLrqr pquko 12- 8- 86 esa gqvk gS fnukad 18- 6- 82 dks pquko izekf.kr gS D;ksafd mDr esa Jh eqjkjh flag mi izcU/kd pqus x;s Fks rFkk iath;u gsrq izLrqr Le`fr i= ij crkSj dk izcU/kd Jh eqjkjh flag us gLrk{kj fd, gSa bl izdkj fnukad 23- 6- 85 dks gqvk pquko iathd`r fu;ekoyh ds vuqlkj gS A Jh jkt cgknqj flag }kjk izLrqr pquko dk dk;Zdky twu & 98 esa lekIr gks gkus ds dkj.k Jh jkt cgknqj flag }kjk iqu% fnukad 30- 10- 98 dks f"kk{k ifj"kn nqYgkj dk uohu pquko djkdj pquko dk;Zokgh o izcU/k lfeFr dh lwph o"kZ 88 & 89 bl dk;kZy; esa izLrqr dh x;h gS A mDr pquko oS/kkfud :i ls 23- 6- 85 dks lEiUu gq, pquko ds rkjrE; esa dj;k x;k gS A

vr% Jh jkt cgknqj flag }kjk izLrqr lwph o"kZ 88&89 fookn jfgr gS A mlds Qkby fd, tkus ds vkns"kk fn, tkrs gSa A mDr fookn dh lqukbZ lkslkbVh jftLV~s"ku,DV dh /kkjk 12 Mh ds vUrxZr dh x;h gSA dk;kZy; esa izkIr lk{;ksa,oa vfHkys[ksa ds vuqlkj Jh eqjkjh flag o Jh juohj flag us rF;ksa dks fNikdj,oa dk;kZy; dks xqejkg dj uohuhdj.k izek.k i= izkIr fd;k Fkk A vr% mUgSa ;g vkns"kk fn;k tkrk gS fd lkslkbVh dk uohuhdj.k izek.k i= dk;kZy; }kjk oS/kkfud :i ls ekU; izcU/kd Jh jkt cgknqj flag dks gLrxr dj nsA A

?dY;k.k flag? lgk;d jftLV~kj A

12. The application for renewal of the society was moved u/s 12(d) of the Societies Registration Act, 1860 and not u/s 21 of the Act. Even otherwise, from perusal of the order aforesaid it is established that the Assistant Registrar has not decided any dispute of Committee of Management in exercise of its powers u/s 21 of the Societies Registration Act. He has renewed the certificate of the society in exercise of its powers u/s 12(d) of Societies Registration Act and since the renewal certificate has been obtained by the Appellant by fraud, the Assistant Registrar has only directed the same to be handed over to Sri Raj Bahadur Singh, the Incharge of the society. The argument of learned Counsel for the Petitioner that the dispute of Committee of Management has been decided by the Assistant Registrar u/s 21 of the Societies Registration Act is wholly misconceived.

13. For all the reasons stated above, we are of the considered view that the judgment impugned in this special appeal does not suffer from any illegality or infirmity, hence no interference is called for. The appeal is accordingly, dismissed. No order as to costs. Dated 20.11.2010 CPP/