
(2014) 08 PAT CK 0034

In the Patna High Court

Case No : Letters Patent Appeal No. 394 of 2014

S.M. Zaheer Alam Teachers Training College

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 13

Citation : AIR 2015 Patna 124

Hon'ble Judges : I.A. Ansari, J;Anjana Mishra, J

Bench : Division Bench

Advocate : Jai Prakash Verma and Sarva Deo Singh, Advocate for the Appellant; Pramod Kumar Singh, AC to SC 12, S.N. Pathak, Sr. S.C.G.G., Sarvadeo Singh, Sunil Kumar Karn, AC to SC 1, J.P. Karn, Senior Advocate, Ranjan Kumar and S.B.K. Mangalam, Advocate for the Respondent;

Final Decision : Allowed

Judgement

I.A. Ansari, J.

1. Both these appeals, being, admittedly, connected inextricably with each other, have been taken up, as has been sought for by the learned counsel for the parties concerned, for the purpose of final disposal, at the admission stage itself. Governing Body of Rauf Muslim Jamia (hereinafter referred to as "the said society") came with a writ petition, under Article 226 of the Constitution of India, to this Court claiming that S.M. Naiyer Imam, son of Late S.M. Zareef, was the Secretary of the said Society, registered, as a Society, under the Societies Registration Act, 1860.

2. With the help of the writ petition so filed, the writ petitioner, namely, S.M. Naiyer Imam, prayed for, inter alia, setting aside the instruction, dated 21-8-2012, of the 5 Branch Manager, Central Bank of India, Benipur Branch (respondent No. 3 in the first writ petition), whereby the Branch Manager aforementioned had permitted Sri S.M. Zafar Imam (respondent No. 4 in CWJC

No. 16119 of 2012) to operate the bank account of the said society maintained at the said branch of the Central Bank of India. The writ petition gave rise to CWJC No. 16119 of 2012 (hereinafter referred to as "the first writ petition"), which was disposed of on 4-10-2012.

3. The relevant observations made, conclusions reached and the directions given by the order, dated 4-10-2012, read as under:

"3. It is submitted on behalf of the petitioner that Governing Body of which petitioner is Secretary is the real Governing Body of the Society and respondent No. 4 is an usurper to the office of the Secretary of the Society.

4. Dispute about the genuineness of the Governing Body of the Society has to be adjudicated in the civil suit, as such, this Court is not inclined to interfere with the direction contained in letter dated 21-8-2012, Annexure-5. The writ petition, however, is disposed of observing that petitioner should file civil suit in the competent court of civil jurisdiction for seeking declaration about the genuineness of its Governing Body, if so advised. Meanwhile, respondent No. 4 is permitted to operate the account of the Society in the Benipur branch of the Bank but he must maintain the account of the amount withdrawn."

(Emphasis is added)

4. From a careful reading of the contents of paragraph Nos. 3 and 4 of the order, dated 4-10-2012, passed in CWJC No. , 16119 of 2012, it becomes evident that the writ petitioner, namely, S.M. Naiyer Imam, in the first writ petition, claimed that he was the Secretary of the real Governing Body of the said Society and respondent No. 4 of the first writ petition, namely, S.M. Zafar Imam, was a usurper of the Office of the Secretary of the said Society.

5. Reacting to the dispute with which the writ petitioner, namely, S.M. Naiyer Imam, had come to this Court, a learned single Judge of this Court observed, in the order, dated 4-10-2012, aforementioned, that the dispute about the genuineness of the Governing Body of the said society was required to be adjudicated in a civil suit and, hence, the writ court was not inclined to interfere with the impugned direction, contained in the letter, dated 21-8-2012, making it clear (in the order, dated 4-10-2012, aforementioned itself) that the writ petitioner, namely, S.M. Naiyer Imam, should file a civil suit, in the competent Court of civil jurisdiction, seeking, if so advised, declaration of the genuineness of the Governing Body, which the writ petitioner, namely, S.M. Naiyer Imam, was claiming to be the real Governing Body.

6. Inasmuch as the impugned instruction, dated 21-8-2012, issued by the Branch Manager, Central Bank of India, Benipur Branch, had not been interfered with, the learned single Judge made it further clear, under the order, dated 4-10-2012 aforementioned, that respondent No. 4, namely, S.M. Zafar Imam, in the first writ petition, was permitted to operate the account of the said Society, at the Benipur branch of the said Bank, but respondent No. 4 shall maintain the

account of the amounts withdrawn by him.

7. Aggrieved by the order, dated 4-10-2012, aforementioned, the writ petitioner preferred a Letters Patent Appeal, which gave rise to LPA No. 1791 of 2012 (hereinafter referred to as "the first LPA.").

8. Having found the first appeal, so preferred, devoid of merit, a Division Bench of this Court dismissed the first LPA on 7-11-2012.

9. While so dismissing the appeal, as indicated above, the Division Bench made it clear that the writ petitioner-appellant, namely, S.M. Naiyer Imam, may avail alternative remedy available under the law and, in case a suit is filed in the competent Court of civil jurisdiction by the writ petitioner-appellant, the same must be disposed of, in accordance with law, as expeditiously as possible and, preferably, within a period of six months. The order, dated 7-11-2012, is reproduced hereinbelow:

"This letters patent appeal being devoid of merit is dismissed.

However, petitioner appellant may avail alternative remedy as available under law. In case a suit is filed in the competent Court of civil jurisdiction by the appellant, the same may be disposed of in accordance with law as expeditiously as possible and preferably within a period of six months."

(Emphasis is supplied)

10. From a bare reading of the order, dated 7-11-2012, aforementioned passed in LPA No. 1791 of 2012, it becomes more than abundantly clear that the Division Bench upheld the learned single Judge's conclusion that resort to exercise of extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, was not the appropriate course for determination of a question as to whether the Governing Body, which S.M. Zafar Imam represented as Secretary, was the genuine Governing Body of the said Society or not. The learned single Judge also made it explicit that since the dispute required determination of the question as to whether the Governing Body, which S.M. Zafar Imam, claimed to represent as a Secretary of the said Society, was the genuine Governing Body or not and that such a dispute can be adjudicated in a civil suit and the writ petitioner-appellant can, therefore, take recourse to a competent Court of civil judgment for adjudication of the said dispute.

11. Admittedly, no civil suit has since been filed by the Governing Body of the said Society through S.M. Naiyer Imam as its Secretary.

12. Notwithstanding such a clearly pronounced position of law, involving the claim of S.M. Naiyer Imam that he, as Secretary, represented the real Governing Body of the said Society, the said S.M. Naiyer Imam, instead of instituting a civil suit, carried the controversy to the Assistant Inspector General Registration, Patna, with regard to the genuineness of the Governing Body, which S.M. Zafar Imam was claiming to represent as the Secretary of the said Society. This

controversy was raised, when S.M. Zafar Imam (respondent No. 4 in the first writ petition), issued a notice, dated 27-12-2013, as Secretary of the said Society, with regard to conducting of examination.

13. The Assistant Inspector General Registration, Patna, passed an order, on 22-1-2014, to the effect that until the time it was declared by a Court of competent jurisdiction as to which was the genuine Governing Body of the said Society, the Governing Body, which had Dr. S.M. Ali Imam as the Secretary, shall be treated as valid.

14. Following the directions, which were so given by the Assistant Inspector General Registration, Patna, in his order, dated 27-1-2014, a letter, under Memo No. 49, dated 27-1-2014, was issued to the Registrar, Bihar Nurses Registration Council, informing the latter that till further order of the competent court, the Governing Body, which had Dr. S.M. Ali Imam as the Secretary of the said Society, shall be treated as valid.

15. Aggrieved by the decision, dated 22-1-2014, of the Assistant Inspector General Registration, Patna, S.M. Naiyer Imam filed another writ petition, under Article 226 of the Constitution of India, which gave rise to CWJC No. 1983 of 2014 (hereinafter referred to as "the second writ petition").

16. In the second writ petition, S.M. Naiyer Imam put to challenge the legality of the order, dated 27-1-2014, passed by Assistant Inspector General Registration, Patna (respondent No. 6 of the second writ petition). The challenge was posed to the order, dated 22-1-2014, aforementioned, on the ground, inter alia, that the Government Body, represented by S.M. Zafar Imam, was not the genuine Governing Body of the said Society, rather, it was the Governing Body, represented by S.M. Naiyer Imam, as the Secretary of the Governing Body of the said Society, which was the real Governing Body, which was the precise issue raised in the first writ petition by S.M. Naiyer Imam and the aspect of the case we have already discussed above.

17. Reacting to the communication, dated 27-1-2014, issued by Assistant Inspector General of Registration and addressed to the Registrar of the Bihar Nurses Registration Council informing the latter that upon enquiry, the Inspector General Registration had accepted the Managing Committee of Dr. S.M. Ali Imam as valid and had found that he was the Secretary of the said Society, a learned single Judge of this Court has taken me view, in the second writ petition, that once the dispute was before the Inspector General Registration with regard to the validity of the Managing Committee of the said Society, it was necessary that the Inspector General of Registration should have, at least, passed a speaking order dealing with the stand of both the parties and since this had not been done, the matter needed to be heard afresh by Inspector General Registration.

18. The learned single Judge has, therefore, under the order, dated 14-2-2014, passed in CWJC No. 1983 of 2014 (i.e., the second writ petition), quashed the communication, dated 27-1-2014, aforementioned and directed the writ

petitioner, namely, S.M. Naiyer Imam, as well as respondent No. 7, in the second writ petition, namely, S.M. Ali Imam, to appear before the Inspector General Registration, produce materials in support of their respective claims within one week from the date of the order (i.e. 14-2-2014) with further direction that upon appearance of the parties, Inspector General Registration shall fix up a firm date for hearing the matter and shall hear the parties and shall, then, pass a speaking order, in accordance with law, as expeditiously as possible, and, in any case, not later than one month from the date of the appearance of the parties.

19. Aggrieved by the direction so given, S.M. Ali Imam (respondent No. 7 in CWJC No. 1983 of 2014, i.e., the second writ petition) has preferred an appeal, which has given rise to LPA No. 411 of 2014 (hereinafter referred to as "the second L.P.A.").

20. Appealing on behalf of the appellant, Mr. Shashi Anugarh Narayan, learned Senior Counsel, referring to the order, dated 4-10-2012, passed in the first writ petition, and also the order, dated 7-11-2012, passed in the first LPA, submits that in the case at hand, when a learned single Judge had already taken the view that the dispute between the parties required adjudication by a civil Court of competent jurisdiction and this view had been upheld by a Division Bench of this Court, on 7-11-2012, in the first LPA, it was not open to the learned single Judge to have directed, in the second writ petition, adjudication of the said dispute by the Inspector General Registration.

21. It has been further submitted, on behalf of the appellant, that the Inspector General Registration has no power to adjudicate such a dispute, because of the embargo, which, according to the appellant, Section 13 of the Societies Registration Act, 1860, imposes.

22. Resisting the appeal, Mr. S.B.K. Mangalam, learned counsel, appearing on behalf of respondent No. 7, namely, S.M. Naiyer Imam, submits that the learned single Judge has rightly passed the order.

23. While considering LPA No. 411 of 2014, it needs to be noted that by order, dated 4-10-2012, passed in the first writ petition, it had already been decided and concluded that the dispute needed adjudication by a civil Court of competent jurisdiction and this conclusion was upheld by the order, dated 7-11-2012, passed in the first LPA.

24. Hence, it was not really open to the Assistant Inspector General Registration, Patna, to adjudicate the dispute.

25. No wonder, therefore, that the Assistant Inspector General Registration, Patna, has not determined as to who between the two, namely, S.M. Ali Imam and S.M. Naiyer Imam, is the Secretary of the Governing Body of the said Society. The order, dated 27-1-2014, which has been passed by the Assistant Inspector General Registration, Patna, can neither be read independent of, nor divorced from, the order, dated 22-1-2014, aforementioned.

26. Consequently, when the order, dated 27-1-2014, is read, in the light of the order, dated 22-1-2014, it becomes abundantly clear that what the Assistant Inspector General Registration, Patna, has decided is that until the time it is declared by a Court of competent jurisdiction as to which is the genuine Governing Body of the said Society, the Governing Body, which had Dr. S.M. Ali Imam as its Secretary, shall be treated as valid.

27. Considered in the light of what has been discussed above, the impugned order, dated 27-1-2014, cannot be said to be bad in law, particularly, when the order, dated 27-1-2014, is merely a logical extension of what has already been decided in the first writ petition that until the time the dispute is resolved by a competent Court of civil jurisdiction, S.M. Zafar Imam is permitted to operate the account of the said society in the Benipur branch of Central Bank of India, but he shall maintain the account of the amount, which may be withdrawn.

28. It is, therefore, clear that the learned single Judge has fallen in error in passing the order, dated 14-2-2014, directing therein that the Inspector General Registration should hear the matter afresh. This decision, in the light of the decision, dated 4-10-2012, reached in the first writ petition, coupled with the decision arrived at, on 7-11-2012, in the first LPA, cannot be sustained and must be interfered with.

29. Coupled with the above, what cannot be ignored and must not be ignored is that the order, dated 27-1-2014, cannot be read independent of the order, dated 14-2-2014, and if read together, the order, dated 14-2-2014, allows the appellant, in LPA No. 411 of 2014, namely, S.M. Ali Imam, to continue to function as the Secretary of the said Society pending adjudication of the dispute by a civil Court of competent jurisdiction. Could such an order be passed by Inspector General Registration?

30. Turning to the question as to whether, Section 13 of the Societies Registration Act, 1860, applies to a case of present nature, it may be pointed out that a careful and cautious reading of Section 13 of the Societies Registration Act, 1860, makes it transparent that a dispute, as to whether a Governing Body, represented by a person, is or is not the genuine Governing Body, does not fall, within the competence of the Inspector General Registration, Bihar, for adjudication.

31. To the case at hand, Section 13 of the Societies Registration Act has no application inasmuch as Section 13 comes into play, when there is dissolution of a Society and there is a dispute with regard to adjudication of the affairs of the Society following its dissolution or in connection with its dissolution.

32. In other words, to the case at hand, Section 13 of the Societies of Registration Act, 1860, has no application inasmuch as Section 13 of the Societies Registration Act, 1860, comes into play, when there is dissolution of a Society and there is a dispute with regard to adjudication of the affairs of the Society following its dissolution or in connection with its dissolution. A dispute, as

to whether a Governing Body, represented by a person, is or is not the genuine Governing Body, does not fall, within the competence of the Inspector General Registration, Bihar, to adjudicate.

33. Considered in the light of what have been pointed out above, Inspector General Registration did not have the power to decide the dispute, which needed adjudication by a civil Court of competent jurisdiction. One cannot, however, ignore and must bear in mind that by order, dated 4-10-2012, passed in the first writ petition, S.M. Zafar Imam was allowed to operate the bank account of the said Society maintained at the said branch of Central Bank of India. Until, therefore, a civil Court of competent jurisdiction decides the question, which has been repeatedly raised by S.M. Ali Imam, as regards the genuineness of the Governing Body represented by S.M. Zafar Imam, as Secretary of the said Society, cannot be encouraged and must be given a quietus.

34. Consequently, until the time a civil Court of competent jurisdiction decides otherwise or passes any interim order otherwise, it is S.M. Zafar Imam, who shall be allowed to represent the said Society.

35. Besides what have been concluded above, let us, now, turn to the order, dated 27-1-2014, which stands impugned in LPA No. 394 of 2014, the order, dated 27-1-2014, having arisen out of a writ petition, which was filed under Article 226 of the Constitution of India, by the said Society through S.M. Naiyer Imam, as Secretary, and which gave rise to CWJC No. 17397 of 2013.

36. With the help of the writ petition, namely, CWJC No. 17397 of 2013, the appellant, as the writ petitioner, sought for issuance of a writ, in the nature of mandamus, commanding and directing the respondents to declare D.Ed., course provisional examination of Session 2011-13 conducted through S.M. Zaheer Alam Teacher's Training College, Bahera (Darbhanga) illegal and invalid and to conduct a fresh examination of D.Ed. course examination of Sessions 2011-13 with further prayer that a direction be issued to the respondents to get an enquiry made, in the matter, by a competent authority and submit report.

37. By the order, dated 27-1-2014, a learned single Judge of this Court has taken the view, in CWJC No. 17397 of 2013, that the dispute between the petitioner and the private respondents of the case was not required to be adjudicated upon in a summary proceedings like a writ jurisdiction inasmuch as the question as to who represents which institution can very well be adjudicated by a civil Court of competent jurisdiction and the issue of declaration of result, etc., is for the authorities of Bihar School Examination Board and the National Council for Teachers Education to decide.

38. For the reasons, which we have already indicated above, particularly, the fact that a Division Bench of this Court has already upheld the order, dated 4-10-2012, passed in CWJC No. 16119 of 2012, whereby the Court has concluded that the dispute between the parties needs adjudication by a competent Court of civil jurisdiction, we do not find that the impugned order,

dated 27-1-2014, whereby the writ petition has been dismissed, is an order, which can be treated to be an order suffering from any infirmity, legal or factual.

39. In the result and for the reasons discussed above, LPA No. 394 of 2014 stands dismissed; whereas LPA No. 411 of 2014 stands allowed. No order as to costs.

Anjana Mishra, J.

I agree.