

(2013) 10 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42932 of 2010

Smt. Urmila Gaur and Another

APPELLANT

Vs

Khadi Avam Gramodyog Ayog and Others

RESPONDENT

Date of Decision : 05-10-2013

Acts Referred:

Citation : (2014) 3 ALJ 96 : (2013) 101 ALR 338 : (2014) 1 AWC 850 : (2013) 4 UPLBEC 3351

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : A.B.L. Gaur, Sri A.N. Agrawal and Sri Saurabh Gaur, for the Appellant; Ravi Kiran Jain, Sri Ramesh Singh, Sri K.L. Grover and Sri Rajiv Sharma, S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—There is a society known as Gramodyog Mandal in Kanpur, which is registered under the Societies Registration Act, 1860 (hereinafter referred to as the Act of 1860) and is dealing in khadi and village industrial products. The term of the Committee of Management is three years. In paragraph 8 of the writ petition it has been stated that elections were held on 10.4.1995, in which Chiranji Lal was appointed as the President and respondent No. 2 was elected as the Vice-President. This fact is admitted by respondent No. 2 in paragraph 12 of the counter-affidavit. The petitioner further contended that elections were again held on 10.9.1998, in which the petitioner No. 1 was elected as President and respondent No. 2 was elected as the Vice-President. These facts, are admitted by respondent No. 2 in view of the fact that respondent No. 2 filed a complaint dated 21.10.1994 before the Deputy Registrar questioning the legality of the election held on 10.9.1998. The Deputy Registrar by an order dated 11.2.2000 rejected the complaint. Thereafter, respondent No. 2 filed Suit No. 405 of 2005 before the Civil Judge (Junior Division) for a declaration that the election of 10.9.1998 be declared illegal. The said suit is still pending till date, in

which no injunction has been granted. It transpires that respondent No. 2 filed another Suit No. 279 of 2003, in which she obtained an interim injunction dated 4.2.2006, which was questioned by the petitioner in a Misc. appeal, in which an interim order was passed, but subsequently, the appeal was dismissed on merits by an order dated 16.11.2007. Thereafter, Writ Petition No. 58316 of 2007 was filed by the petitioner, in which an interim order was passed staying the operation of all the orders passed by the Court below. As a result of this interim order, it is alleged that the petitioner No. 1 continued to be the President.

2. In paragraph 36 of the writ petition, it is alleged that elections for the year 2003-2004 was held and was again held in 2007-2008, in which the petitioner No. 1 was elected as the President and petitioner No. 2 was elected as a Member. The election of 2003-2004 is admitted by respondent No. 2 in paragraph 28 of the counter-affidavit but the said respondent has not filed any document to show the list of office bearers of the election of 2007-2008 while denying the elections of 2007-2008.

3. It transpires that the petitioner while working as the President submitted her resignation on 1.6.2009 as President of the Committee of Management and also resigned from the membership of the society on account of failing health. On the basis of this information, respondent No. 2 withdrew her Suit No. 279 of 2003 and thereafter, filed an application alongwith a resolution of the society dated 24.3.2009 indicating election of the society and submitted a list of office bearers. This application was filed before the Deputy Registrar on 16.7.2009. Petitioners objected to this application contending that no such resolution had been made by the society and that the resolution was a forged document filed by respondent No. 2, who had already been expelled by the society in the year 2000. The petitioner No. 2 also filed a resolution dated 1.6.2009 indicating that no such election was held and in any case the election was not due to be held in March.

4. The Deputy Registrar, by an order dated 28.5.2010 has approved the list u/s 4 of the Act of 1860 on the ground that the petitioner No. 1 has resigned and that she was also removed by the society in March, 2009. The Deputy Registrar also observed that parties are at variance on the election held on 24.3.2009 but since petitioner No. 1 has resigned, the list of the office bearers submitted by respondent No. 2 is being approved. The petitioners", being aggrieved, has filed the present writ petition.

5. Heard Sri A.B.L. Gaur, the learned Senior Counsel assisted by Sri A.N. Agarwal, the learned Counsel for the petitioner and Sri Ravi Kiran Jain, the learned Senior Counsel assisted by Sri Ramesh Singh, the learned Counsel for the respondent and the learned Standing Counsel.

6. At the outset, a preliminary objection was raised with regard to the maintainability of the writ petition. The learned Counsel for the respondent contended that both the petitioners had resigned from the society and, therefore, had no locus to file the writ petition.

7. The Court finds that petitioner No. 1 admits that she had resigned but had filed the present writ petition contending that the alleged election, which is alleged to have been held by respondent No. 2 was prior to the date of her resignation, when she was working as the President and, therefore, to that extent had filed the writ petition bringing this fact to the knowledge of the Court and for setting the things right. Petitioner No. 2 contends that he had never submitted his resignation, whereas respondent No. 2 contends that the said resignation was submitted and accepted by the society. Proof of resignation is not before the Court nor such proof of resignation was filed before the Deputy Registrar.

8. Consequently, the Court is of the opinion that the petitioner No. 1 having resigned from the society, had no concern with the affairs of the society and had no right to challenge any resolution of the society in a writ petition.

9. However, the petition remains alive in so far as petitioner No. 2 is concerned. The petitioner No. 2 is a member and has a right to protest against the alleged order of the Deputy Registrar.

10. The Court finds that the Deputy Registrar has committed a manifest error in registering the list of office bearers u/s 4 of the Act of 1860 without adhering to the proviso, which is applicable in the State of Uttar Pradesh as amended on 30.4.1984. For facility, Section 4 of the Act of 1860 as applicable in the State of Uttar Pradesh is extracted hereunder:

4. Annual list of managing body to be filed.--(1) Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

(2) Together with list mentioned in sub-section (1) there shall be sent to the Registrar a copy of the memorandum of association including any alteration, extension or abridgement of purposes made u/s 12, and of the rules of the society corrected up to date and certified by not less than three of the members of the said governing body to be a correct copy and also a copy of the balance sheet for the proceeding year of account.

Provided that if the managing body is elected after the last submission of the list, the counter signature of the old members, shall, as far as possible, be obtained on the list. If the old office-bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

11. A perusal of the proviso indicates that where a list of office bearers is

submitted, the said list should be signed by the outgoing office bearers and, if they do not countersign the list, the Registrar has a discretion to issue a public notice inviting objections and decide such objections, if any. This procedure has not been followed. The Deputy Registrar has also not considered as to whether the election was due on 24.3.2009. The Deputy Registrar has also not considered the sequence of events, which have been happening since 1995. The Deputy Registrar should have considered the elections since 1995 and the list of office bearers and thereafter should have considered the application of respondent No. 2.

12. The election of 1995, 1998 and 2003 are admitted by respondent No. 2. The elections of 2007 is not admitted. The Deputy Registrar was, consequently, required to consider the list of 2007 as to whether it was registered u/s 4 of the Act of 1860 or not and on that basis should have proceeded with the application of respondent No. 2, which in the instant case has not been done.

13. The Court further finds that there is certain contradiction in the order of the Deputy Registrar. At one place the Deputy Registrar states that petitioner No. 1 has resigned and in the same breath the Deputy Registrar further holds that the petitioner No. 1 has been expelled from the society. Both these things cannot happen at the same time and without giving any finding on this aspect and without verification of the signatures of the outgoing office bearers in the list submitted by respondent No. 2, has wrongly accepted the list of office bearers submitted by respondent No. 2. Since the Deputy Registrar himself admitted in the impugned order that parties are at variance with regard to the holding of the election in March, 2009 the names could not have been entered u/s 4 of the Act of 1860 and such dispute should have been referred u/s 25 of the Act of 1860. In the light of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed.