
(2008) 01 AHC CK 0200
In the Allahabad High Court

Subodh Kumar

APPELLANT

Vs

State of Uttar Pradesh and Amba Sahai Rathore

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Societies Registration Act, 1860 — Section 4

Citation : (2008) 6 AWC 5939 : (2009) 122 FLR 409

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Jitendra Narain Rai, learned Counsel for the petitioner, learned Standing Counsel for respondent no. 1 and 2 and Sri A.K. Sachan, for respondent no. 3 and perused the record.

2. This petition has been filed for a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.1.2008 passed by the respondent no. 2, which has been appended as annexure no. 11 to the writ petition. A mandamus has also been sought for directing respondent no. 2 to register the list of Members of committee of Management of the petitioner, which is appended as annexure no. 12 to the writ petition. A further mandamus has been sought for directing respondent no. 2 to refer the dispute of election of the Committee of Management to respondent no.3 the Prescribed Authority and till then the petitioner Committee of Management be allowed to function accordingly.

3. By the impugned order dated 14.1.2008, the Assistant Registrar, Firms, Societies and Chits, Bareilly has disapproved the meeting of the General Body dated 25.4.2007, 26.4.2007 and 10.6.2007 as well as the list of office bearers, who are said to have been elected in the petitioner committee of management and on the contrary has also approved the election of the respondent no. 3 and list of the office bearers submitted of the rival committee of management in pursuance thereof direct that office bearers be registered u/s 4(1) of the Society

Registration Act, 1860.

4. The petitioner has relied upon Section 25 of the Society Registration Act, 1860 in support of his contention that the matter to have been referred by the Assistant Registrar to the Prescrib Authority for adjudication.

5. Section 25 of the Societies Registration Act, 1860 is as under:

The Prescribed Authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office bearer of such society, and may pass such orders in respect thereof as it deems fit.

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied:

- (a) that any corrupt practice has been committed by such office-bearer; or
- (b) that the nomination of any candidate has been improperly rejected; or
- (c) that the result of the election insofar it concerned such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions

Explanation I- A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person:

- (i) includes, or attempts or to include, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;
- (ii) with a view to including any elector to give or to refrain from giving a vote in favour of any candidate, or to including any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;
- (iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in Clauses (i) and (ii);
- (iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;
- (v) canvasses on grounds of caste, community, sect or religion ;
- (vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II-A promise of individual advantage or profit to a person " includes a promise for the benefit of the person himself, or of any one in whom he is interested. Explanation III.- The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society. -Inserted by Uttar Pradesh Act 13 of 1978, Section 4 (w.r.e.f. 27.2.1978).

(2) Where by an order made under Sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under Sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society

Explanation- For the purpose of this section, the expression "prescribed authority" means an officer or Court authorised in his behalf by the State Government by notification published in the Official Gazette.

6. Learned Counsel for the petitioner has also relied upon para 6 of the judgment rendered in *Kranti Kumar Chaturvedi and Anr. v. District Inspector of Schools, Kanpur Dehat and Ors.* 1995(3) ESC 166 (All.). The relevant paragraph 6 is extracted as under:

Section 25 of the Act contemplates different situation. It is attracted only when there is no dispute in respect of registration of society or its renewal of certificate of registration but there is dispute between two rival parties each of whom is claiming to be validly elected body. It such a situation the dispute between the two rival parties has to be referred for adjudication u/s 25 of the Act. Section 25 of the Act is also attracted when a party challenges the illegality or otherwise of the election of particular set of office bearers of society on the grounds enumerated in Section 25 of the Act. Thus the dispute u/s 25 of the Act can only be referred for adjudication only when it is found that the registration of the society or its renewal is intact. In the present case, since the objection was that the appellants are not legally elected body and have obtained renewal of certificate of registration by practicing fraud, it was well within the jurisdiction and power of the Registrar to entertain such objection and decide the same. The decisions relied upon by the learned Counsel for the appellants in the case of *Khapraha Educational society and Anr. (supra)* is not applicable to the facts of the present case and is distinguishable. We are of the view that the order passed by

the Registrar was well within his jurisdiction and the same is appealable u/s 12D of the Act.

7. A perusal of the aforesaid section shows that the Prescribed Authority may decide and resolve any dispute or doubt in respect of election or continuance of an office bearers of such societies and may pass such orders in respect of thereof as it deems fit. Therefore, the Prescribed Authority can exercise jurisdiction u/s 25 of the aforesaid Act- in circumstance (1) where a reference may be made to it by the Registrar and (2) where at least 1/4th of the members of a society registered in U.P. refer the matter to the Prescribed Authority for adjudication. The prescribed authority in the aforesaid two circumstance may adjudicate the dispute only when it is found that the registration of the society or its renewal is intact and not in a case where objection is that appellants are not legally elected body or have obtained renewal by practising fraud.

8. The proceedings before Prescribed Authority are summary in nature.

In the instant case the Assistant Registrar has decided dispute after considering the evidence on record produced before him holding that the petitioner had forged the documents of meetings in which this Committee of Management is said to have been elected and enrolling new members. He has also forged the signatures of Sri Amba Sahai, Rathore, Sri Rakshapal Singh, Sri Vijaipal Singh Yadav and Vijendra Singh Rathore etc. He also manipulated the records by showing them to elected member. After considering the entire records the Prescribed Authority has concluded as under:

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dqekj la[k/kj }kjk djkh xbZ cSBd fn0 25-4-07 fn0 26-4-07 iqjkus laLFkk ds e.My ds lnL; izcU/k lfevr ds lnL;] vkelHkk ds lnL;ksa dks mifLFkfr esa ugh djkh xbZ A bl izdkj euxar QthZ cSBd iathd`r lafo/kku ds foijhr cqykdi uohu lnL;ks dk p;u fd;k tkuk inkf/kdkjh @ izcU/k lfevr dk lnL; cukuk euxar QthZ ,oa dwVjfr gS A v/ kksgrLrk{kjh }kjk Li"V fofnr gqvk fd lqcks/k "ka[kk/kj lkslkbVh ij dCtk djus dk iw.kZ :i;s.k iz;kl fd;k A izcU/k lfevr dh lwph o"kZ 2007&08 Jh iqRrwyky] vEcklgk; jkBkSj j{kiky flag fot;iky flga ;kno fotsUnz flag jkBkSj] ds HkwriwoZ fy[kdj QthZ gLrk{kj Hkh cuk;k x;k A mDr QthZ dk;Zokgh;ks ds lECU/k esa loZJh jkenkl dFV;kj] j{kiky flag] vEcklgk; jkBkSj fotsUnz flag] f"kkqiky] fot;iky flag] vf[kys"kdqekj ikBd laLFkkid lnL; viuk "kiFk iwoZ esa izLrqr dj pqds gS A ftlds mYys[k iwoZ esa fd;k tk pqdk gS A Jh "kkfgn gqLsu ulhj vgen us vius&vius i=ksa ds }kjk mDr cSBd dk QthZ crkrs gq, gLrk{kj gksuk ugh crk;k gS A Jh iqRrwyky us Hkh vius "kiFki= fn0 4-8-07 esa dgk gS fd fn0 25@4@07 fn0% 26-4-07 fn0 10-6-07 dh dksbZ cSBd ugh gq;h gS laj{k d e.My vkelHkk izcU/k lfevr dh cSBd fn[kk;h xbZ gS A mDr cSBd dk u dksbZ ,ts.M feyk u dksbZ tkudkj izkIr gq;h izkIr jftLVj ij esjs gLrk{kj ugh gS A iathd`r lafo/kku dh /kkjk &8 dh lajpuk es fn;k x;k gS fd ^^fo/kku dh /kkjk &8 izcU/k lfevr 15 lnL;ksa dh txg de ls de 11 jgsxs ftudk dk;Zdky rhu o"kZ gksxk rFkk vkxkeh fuokZpu rd ogh lfevr dk;Zdkfj.kh dk;Z djrh jgsxh A

mi;qZDr ls Li"V gS fd Jh lqcks/k dqekj "ka[k/kj us i= fn0 16-5-07 ds lkFk izLrqr izcU/k lfevr dh lwph o"kZ 2007&08 lk/kkj.k lHkk dh lwph o"kZ 2007&08] mi;qZDr of.kZr iathd`r lafo/kku ds foijhr laj{k d e.My dh cSBd dh dk;Zokgh fn0 25-4-07 vkelHkk @ lnu lHkk dh cSBd dh dk;Zokgh fn0 26-4-2007 izcU/k lfevr dh cSBd dh dk;Zokgh fn0 26-4-07 izc0l0 dh cSBd dk;Zokgh fn0 10-6-07 vekU; fd;s tkus ;ksX; gS D;ksfd muds }kjk iathd`r lafo/kku ds vUrZxr dk;Zokghj ugha dh xbZ A iathd`r lafo/kku ds foijhr dk;Z fd;k x;k A

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lkslkbVh jft0 vf/kfu;e ds izkfo/kkuksa ds vUrZr Jh lqcks/k dqekj "ka[k/kkj ds i= fn0 16-6-07 ds lkFk izLrqr laj{k d e.My dh cSBd dk;Zokgh fn0 25-4-07 vkelHkk @ lnllHkk dh cSBd dk;Zokgh fn0 26-4-07] izcU/k lfevr dh cSBd dh dk;Zokgh fn0 26-4-07] izc0l0 dh cSBd dk;Zokgh fn0 10-6-07 izLrqr izcU/k lfevr dh lwph o"kZ 07&08 lk/kkj.k rFkk mlds lkFk izLrqr vU; i=ktkrksa dks rRdky izHkko ls vekU; ? kksf"kr fd;k tkrk gS A Jh vEck lgk; jkBkSj] v/;{k} xkWa/kh lsok lnu] ds i{k dks ekU; djrs gq, muds }kjk izcU/k lfevr dh lwph ,oa o"kZ 2007&08] lksl0 vf/kfu;e dh /kkjk 4 ?1? ds vUrZr iathd`r fd;s tkus ds vkns"kd ikfjr fd;k tkrk gS A

?fufftyaxIik? lgk;d jftLVkj]

9. Admittedly no doubt or dispute has been expressed by the Assistant Registrar which in its opinion might have to be referred to the Prescribed Authority. If the petitioner is aggrieved by the finding of facts regarding forgery, fraud and manipulated records for purpose of enrolment of new member and for registration of his alleged committee of management recorded by the Assistant Registrar, he can get the matter adjudicated in a civil court.

10. The Assistant Registrar has given a clear finding of facts against the petitioner and was not of the opinion that the matter requires adjudication by the Prescribed Authority u/s 25 (1) of the Act which also is summary in nature. The doors for adjudication in a civil court are still open for the petitioner against the impugned order passed by the Assistant Registrar.

11. As regards passing of the order on 14.1.2008 is concerned which according to the Makarsankranti Gazetted Holiday is suffice to say that Gazetted Holiday for Makarsankranti on 15.1.2008. Even otherwise the Court and authority can sign an order on holiday. Further more, since categorical finding of facts has been recorded that the election of office bearers of the Committee of Management represented by the petitioner is not accordance with law, hence there is no question of any doubt or dispute which may be referred to the Section 25 of the Society Registration Act. Even otherwise the dispute which requires findings of facts on the basis of oral and documentary evidence can only be adjudicated by civil court and not in a writ jurisdiction where it is not feasible to take oral evidence for deciding dispute of committee of Management.

12. For the reason stated above, the writ petition is dismissed. No order as to costs.