
(2010) 07 AHC CK 0415

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27541 of 2010

Surendra Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Societies Registration Act, 1860 — Section 25(1), 25(2), 4(1)

Citation : (2010) 07 AHC CK 0415

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—Surendra Singh and 81 others, claiming themselves to be life members of the Gramopyogi Shiksha Pracharini Samiti, Bakarganj, Goraju, Kaushambi (hereinafter referred to as the "Society") have filed this petition for setting aside the order dated 20th March, 2010 passed by the Assistant Registrar, Firms, Societies and Chits, Allahabad (hereinafter referred to as the "Assistant Registrar") by which he has registered the list of office bearers and members of the Committee of Management of the Society u/s 4(1) of the Societies Registration Act, 1860 (hereinafter referred to as the "Act").

2. It needs to be noticed that earlier Surendra Singh alone had filed Writ Petition No. 19012 of 2010 for assailing the same order dated 20th March, 2010 passed by the Assistant Registrar and this petition was dismissed by the judgment and order dated 13th April, 2010 with the following observations:

Sri P.N. Saxena, learned Senior Counsel appearing for the Petitioner submitted that the Committee of Management could not have held the elections pursuant to the notice dated 27th August, 2008 published in the newspaper since the elections could have been conducted only by the Assistant Registrar u/s 25(2) of the Act as the Committee of Management of the Society had become time barred and in support of his contention he has placed reliance upon the judgment of this

Court in Committee of Management and another Vs. Assistant Registrar Firms Societies and Chits and others, . He further submitted that on 8th February, 2008, prior to the holding of the elections, the President of the Society had written a letter to the Assistant Registrar to hold the elections of the Committee of Management u/s 25(2) of the Act and the Assistant Registrar had also written a letter for submission of the list of office bearers so that the elections could be held, but despite such objections, the erstwhile Committee of Management of the Society proceeded to hold the elections. He has further submitted that despite such objections having been filed by the Petitioner and certain other life members, the Assistant Registrar registered the list of office bearers and the members of the Committee of Management of the Society.

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The preliminary objection raised by the learned Counsel for the Respondents needs to be considered first. u/s 25(1) of the Act, 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, 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.

In the instant case, the Assistant Registrar, on the basis of the election held on 14th September, 2008, registered the list of office bearers and members of the Committee of Management of the Society. Only one life member has challenged the order passed by the Assistant Registrar. It has, therefore, to be seen whether, at the instance of one life member, in view of the aforesaid provisions of Section 25(1) of the Act, it is a fit case for exercising the powers of judicial review under Article 226 of the Constitution.

3. After referring the Division Bench judgment of this Court in Special Appeal No. 580 of 2009 (Kalrav Agarwal and Anr. v. State of U.P. and Ors.) decided on 12th May, 2009, the Court dismissed the said petition holding:

In the present case also, only one life member of the General Body has sought the quashing of the order passed by the Assistant Registrar. It is, therefore, not a fit case, in view of the provisions of Section 25(1) of the Act, for exercising powers of judicial review under Article 226 of the Constitution at the instance of the Petitioner.

4. It is the submission of Sri P.N. Saxena, learned Senior Counsel appearing for the Petitioners that this petition has been filed by more than 1/4th members of the General Body of the Society and, therefore, the Court should entertain this petition. The submissions for setting aside the order dated 20th March, 2010 passed by the Assistant Registrar are almost the same. He has further submitted that before the Deputy Registrar, there was no material to hold that the elections had been held and in any case the elections have not been held by the outgoing Committee of Management.

5. Learned Standing Counsel has appeared for Respondent Nos. 1, 2 and 3. Sri Gautam Baghel has put in appearance on behalf of Respondent No. 4. They has stated that it is not necessary to file any counter affidavit and the petition may be disposed of at this stage.

6. A supplementary affidavit has been filed on behalf of the Respondent No. 4 pointing out that the nine Petitioners have submitted notarized affidavit that they have not filed the present petition and they have been arrayed as Respondent Nos. 19, 20, 21, 37, 38, 44, 45, 52 and 74 without their consent. Learned Counsel for the Respondents further submitted that the Petitioners can approach the Prescribed Authority u/s 25(1) of the Act which can examine the factual disputes raised in the petition.

7. I have considered the submissions advanced by the learned Counsel for the parties.

8. As noticed hereinabove, earlier only Petitioner No. 1-Surendra Singh had filed Writ Petition No. 19012 of 2010 for assailing the order dated 20th March, 2010 passed by the Assistant Registrar. The said petition was dismissed as at the instance of one life member it was found not to be a fit case, in view of the provisions of Section 25(1) of the Act, for exercising power of judicial review under Article 226 of the Constitution. The present petition has been filed by 82 persons claiming to be life members of the General Body of the Society though it is asserted by Respondent No. 4 that nine Petitioners have actually not given their consent for filing the writ petition. The issues raised by the Petitioners are factual in nature and can best be determined by the Prescribed Authority u/s 25(1) of the Act. It will, therefore, not appropriate for this Court to examine the factual issues in this petition.

9. The Court, therefore, declines to entertain this petition but leaves it open to the Petitioners to avail the alternative remedy provided u/s 25(1) of the Act in accordance with the procedure prescribed therein. It is, however, ordered that in case the matter is entertained by the Prescribed Authority, the same shall be decided after hearing the parties concerned expeditiously, preferably within a period of three months.

10. The writ petition is dismissed subject to the aforesaid observations.