

(2016) 01 AHC CK 0067

In the Allahabad High Court

Case No : Special Appeal Nos. 261 and 263 of 2015

Syed Akhtar Hasan Rizvi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226, Article 56, Article 83
Societies Registration Act, 1860 — Section 15, Section 4

Citation : (2016) 01 AHC CK 0067

Hon'ble Judges : S.S. Chauhan and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Apoorva Tewari, for the Appellant; C.S.C., Rajeev Singh and S.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—1. These two special appeals have been filed against the judgment and order dated 1.7.2015 passed by learned Single Judge by means of which two writ petitions filed by the respective petitioners were decided by means of a common judgment.

2. The facts giving rise to the present dispute is that a Society in the name of Board of Trustees of Shia College and School and other connected institutions (for short "the Society") was registered under the Societies Registration Act, 1860 (for short "the Act") on 6.3.1918. Annual general meeting of the Society was held on 15.11.2009 wherein election of office bearers of the Society was held for a term of five years. The list of office bearers elected on 15.11.2009 was filed before the Deputy Registrar, Firms, Societies and Chits (for short "the Deputy Registrar"), who filed the same on 31.3.2010. The Managing Committee of the Shia Post Graduate College (for short "the College") as provided by clause 14 of the bye laws was elected for a term of three years in the annual general meeting of the Society held on 14.11.2010.

3. On account of certain ongoing dispute between the members of the Society, the Society took a decision to cease the membership of three Members as they were not attending the annual general meetings for two consecutive years vide resolution dated 14.10.2011. The next annual general meeting was held on 30.10.2011, which was presided over by S.M. Raza Ali Khan in capacity as President and in the same meeting, the agenda regarding the re-election of members whose term was due to expire after the date of the said meeting was also considered. In the said meeting, it was made clear that all the members attending the meeting were valid members on 30.10.2011, but the term of some members was to come to an end shortly thereafter. Three members aggrieved by the resolution dated 14.10.2011 approached the Deputy Registrar, who vide order dated 17.10.2012 held the resolution dated 14.10.2011 to be illegal and the Deputy Registrar further referred an election dispute to the Prescribed Authority regarding to the election held on 15.11.2009 on the ground that the term of membership of the elected office bearers had expired on the date of the election and as such, they were ineligible to contest the election on 15.11.2009. The next annual general meeting of the Society was held on 21.10.2012, which was presided over by S.M. Raza Ali Khan in capacity as President and in the said meeting, agenda regarding the re-election of members whose term was due to expire after the date of the said meeting was also considered. The Society ultimately filed Writ Petition No. 6597 (MS) of 2012 assailing the order passed by the Deputy Registrar dated 17.10.2012 and during pendency of the said writ petition, no interim order was passed by this Court. The annual general meeting of the Society was again held on 20.10.2013, which was presided over by S.M. Raza Ali Khan in capacity as President. The election for the Managing Committee of the College was held for further term of three years. In the said meeting, the agenda regarding re-election of members whose term was due to expire after the date of the said meeting was also considered. An extraordinary annual general meeting of the Society was held on 28.6.2014 wherein the general body considered the difficulty arising out of the order dated 17.10.2012 and the consequent impasse regarding the membership of the Society. The General Body authorized the Secretary of the Society to withdraw the writ petition and to restore the membership of three members in whose favour order dated 17.10.2012 has been passed by the Deputy Registrar. It was further resolved that the list of members of the Society be filed before the Deputy Registrar for certification. The list of members of the General Body of the Society as existing on 28.6.2014 was filed before the Deputy Registrar by the Secretary of the Society on 3.9.2014. Writ Petition No. 6597 (MS) of 2012 was withdrawn on 5.9.2014 in pursuance to the resolution dated 28.6.2014.

4. The reference pending before the Deputy Registrar under Section 25 (1) of the Act, which was instituted in furtherance of the order dated 17.10.2012 was dismissed for want of prosecution on 10.7.2014. On 17.10.2014, various representations were received from various persons raising their objections to the list of members of the General Body, which were duly considered and by a

detailed order dated 17.10.2014, the list of Members of the General Body as filed by the Secretary of the Society was accepted after including the name of S. Mazhar Abbas by the Deputy Registrar. A restoration application was moved for recalling the order dated 10.7.2014 and the Prescribed Authority vide order dated 18.10.2014 recalled the order dated 10.7.2014 and restored the reference to its original number. Writ petition No. 7042 (MS) of 2014 was filed in the name of the Society by the President S.M. Raza Ali Khan assailing the order dated 17.10.2014 passed by the Deputy Registrar and sought a direction for the Deputy Registrar to take a decision on the application dated 17.10.2014. No interim order was passed in this writ petition. The annual general meeting of the Society was held on 14.11.2014 after due circulation of agenda wherein election of the office bearers of the Society was held and agenda regarding renewal of term of members whose terms was due to expire after the said meeting was also considered. List of office bearers of the Society was filed before the Deputy Registrar under Section 4 of the Act on 17.11.2014. The Deputy Registrar issued notice to Raza Ali Khan and Hidayat Husain on 25.11.2014 in view of their letter dated 17/18.10.2014. The Deputy Registrar vide order dated 3.1.2015 held that claim filed by Raza Ali Khan and Hidayat Husain was not bonafide inasmuch as in their own representation it has been admitted that the election alleged to have been held by them was held on the basis of the membership as existing on 15.11.2009 whereas the election filed by the appellant was held on the basis of the list finalized vide order dated 17.10.2014. Considering the aforesaid fact, the list of office bearers filed by the appellant was taken on record under Section 4 of the Act. Respondents No. 4 and 5 preferred Writ Petition No. 71 (MS) of 2015 assailing the order dated 3.1.2015 before this Court. Learned Single Judge by means of the impugned judgement disposed of Writ Petition No. 71 (MS) of 2015 and Writ Petition No. 7042 (MS) of 2014 and quashed the orders dated 17.10.2014 and 3.1.2015 and it has further been directed that membership as existing on 15.11.2009 be taken as the basic membership after excluding deceased members and members whose term has expired. It has further been directed that membership of members as on 15.11.2009 was extended for a further period of five years w.e.f. 10.10.2014 and members elected in the years 2010, 2011, 2012, 2013 or before 10.10.2014 be subjected to fresh election. A further direction has been given that a fresh election of office bearers be held by the Registrar under his own supervision and in the interregnum period, a high level committee comprising five members has been constituted to take charge of the affairs of the institution. The present special appeals have been preferred against the aforesaid judgement and order.

5. Submission of learned counsel for the appellant is that the Board of Trustees of Shia College and School and other connected Schools comprises of office bearers and the members. He has also submitted that bye laws of the amended constitution provides that the governing body shall be the Board of Trustees to be called the Board of Trustee of Shia College and other connected institutions comprising the President, two Vice Presidents, the Honorary Secretary, the Joint

Secretary and such number of Trustees as may be determined in the manner prescribed in the Amended Constitution. Learned counsel submits that all the members of the Board of Trustees cannot form the governing body, but the governing body carves out an exception of office bearers and such number of trustees be determined in the manner provided hereinafter. Clause-B of the Amended Constitution carves out an exception in respect of office bearers as enumerated in Clause (a), (b), (c) and (d) to be elected by the Board of Trustees from amongst its members and shall hold their offices for a term of five years and may be re-elected. On the aforesaid reasoning, it has been submitted that the Board of Trustees will hold their office for a period of five years and they will elect office bearers. Submission is that such number of Trustees to be included in the governing body has not been provided in the bye laws though it has been laid down that such number of Trustees may be nominated in the manner hereinafter provided. In absence of any such provision being made in the bye laws, the entire Board of Trustees cannot constitute the governing body. Learned counsel has further submitted that the number of Trustees shall not be less than seventy and shall not exceed one hundred and bye law-6 provides the ground on which a Trustee can be removed and it has been submitted that if a member of the Board of Trustees does not attend the meeting for two consecutive years without reason deemed sufficient by the Board or for some other reason deemed by two-third of the members of the Board being removed after the effected member be given opportunity to explain. Bye law-7 provides procedure for meeting. Bye law-4 (b) provides that except as otherwise provided hereinafter, a Trustee shall hold office for five years, but he shall be eligible for re-election. The procedure for holding meeting is provided under bye-law-7 wherein it is clear that the Board of Trustees will meet in a year and shall elect the office bearers as provided in bye law-1 and under clause (e) of bye law-7 the Board of Trustees are required to fill up vacancies on the Board or among its office bearers. Learned counsel submits that for electing the office bearers, it is necessary that electoral college must be complete and for that purpose the vacancies on the Board of Trustees shall be filled first and after electoral college is complete, then only office bearers can be elected. Submission is that last elections were held on 15.11.2009 and the list of office bearers was filed with the Deputy Registrar on 31.3.2010. The said list was accepted by the Deputy Registrar and the Board of Trustees came into power and started functioning. On account of non-attending the meeting for two consecutive years, a resolution was passed by the Board of Trustees on 14.10.2011 expelling three members. The next annual general meeting being held on 30.10.2011, which was presided over by the President S.M. Raza Ali Khan and in the said meeting, the agenda was put up regarding re-election of members whose term was to expire shortly after the date of said meeting. Submission is that term of some of the members was coming to an end and as such it was decided to fill up those vacancies as ordinarily the general body meeting as contemplated under the bye-laws has to take place in a year and normally, the annual general body meeting cannot be held in short span of time and since term of some of the members was expiring, so an agenda was put

up to elect those members whose term was expiring and they were accordingly elected. Submission is that there was nothing illegal and neither it can be said that the said election has curtailed the term of outgoing members as no annual general meeting was held at any point of time before expiring the term of those members. Term of those members had to expire on 14.12.2011 and 17.12.2011 and the argument that the election cannot be held before expiry of the term is baseless. Learned Single Judge has committed manifest error of law in directing the election to be held on the basis of the last election of the Board of Trustees held on 15.11.2009 as approved on 31.3.2010. Learned counsel submits that thereafter various vacancies have occurred and election has to take place of various Trustees and certain Trustees were not re-elected and certain Trustees died in whose place new Trustees were elected. Constitution of the Board has altogether changed, but the aforesaid fact was overlooked by the learned Single Judge while directing the election to be held on the basis of list of Board of Trustees of 15.11.2009. Learned counsel submits that once the elections were held and duly approved, then there was no occasion to direct that fresh election be held for the years 2010, 2011, 2012, 2013 or before 10.10.2014 by either of the parties. Fresh elections if at all are to be held, then direction given in clause-(i) of the judgment to hold the election on the basis of the list of 15.11.2009 would be contrary to each other. The new members, who are to be elected, their term will be prospective is also not acceptable in view of the fact that right of the members, who have been elected as and when the vacancy had fallen out, of which due information was given to the Deputy Registrar and no objection has been raised by the Deputy Registrar at any point of time, then they shall be deemed to have been validly elected members.

6. Learned counsel for the appellant has further submitted that the preliminary objections which were raised before the learned Single Judge were not addressed. Learned counsel submits that the finding recorded by the learned Single Judge are against the bye laws and the provisions of Section 4-B of the Act, which have been misinterpreted by the learned Single Judge by holding that the Deputy Registrar is not competent to decide the validity of the membership and the dispute ought to have been referred to the Prescribed Authority. The question of membership has to be decided in summery manner and the final membership list has to be prepared by the Deputy Registrar as contemplated under Section 4-B of the Act. The finding recorded by the learned Single Judge to the effect that individual Trustees are also office bearers is erroneous and the same is against the provisions contained in the bye laws. Learned Single Judge has committed error in assuming that the induction of membership also gave rise to the election dispute. The provisions of Section 25 (1) of the Act are for a limited purpose. The scrutiny is to be made by the Deputy Registrar and if there is no glaring illegality in the election, then the same has to be accepted. Learned Single Judge has committed illegality in recording a finding that the election dispute of the office bearers has to be referred by the Deputy Registrar on raising a dispute to the Prescribed Authority. Learned Single Judge also erred in

recording a finding that the dispute of membership of some trustees should also be referred to the Prescribed Authority is against the law. Learned Single Judge has also committed illegality in recording a finding that the Deputy Registrar vide order dated 17.10.2012 referred the dispute of membership of some Trustees to the prescribed authority whereas the Deputy Registrar vide order dated 17.10.2012 himself decided the membership dispute and the same was never referred to the Prescribed Authority, but the election dispute in regard to office bearers held on 15.11.2009 was referred to the Prescribed Authority. Learned Single Judge has also erred in recording a finding that the similar dispute was referred on 17.10.2012 to the prescribed authority by the Deputy Registrar, but the subsequent dispute was not referred whereas the subsequent dispute arose under Section 4-B of the Act. The dispute under Section 4-B is altogether different than the dispute in regard to election of office bearers of the Society. The finding to the effect that the Trustees election is to be considered first and they cannot exercise their voting right in the annual general meeting and the same was contrary to the bye laws whereas it is submitted that re-election has to take place first, thereafter the office bearers are to be elected. Learned Single Judge has proceeded to record the findings on the basis of old bye laws whereas the amended bye laws ought to have been taken into consideration. The dispute referred to the Prescribed Authority vide order dated 17.10.2012 which was dismissed for non- prosecution on 10.7.2014 and the same was restored on 18.10.2014 i.e. after passing of the order dated 17.10.2014. The orders dated 17.10.2014 and 3.1.2015 were wrongly held to be passed without jurisdiction. The election of the Society was held on 14.11.2014 and the list of office bearers was also submitted to the Deputy Registrar, who passed order on 3.1.2015 and therefore, there was no question of directing the Deputy Registrar to held a fresh election by the learned Single Judge. The finding in regard to rule of quorum is also erroneous as the Society is bound by the bye laws and the bye laws play an overriding effect unless and until there was any challenge to the bye laws. The finding recorded to the effect that Clause-8 of the bye laws threatened the democratic character of the general body of the Society was not in accordance with law. The rule of quorum has to prevail in accordance with the bye laws and the election has to take place in accordance with the said provision. Learned Single Judge has proceeded to re-write the bye laws which is not permissible under Article 226 of the Constitution of India. The direction to hold the election on the basis of membership of 15.11.2009 is also erroneous as in the meantime, various members have retired and died and in their place new members have been elected and inducted. Learned Single Judge could not have granted extension to the validity of the members of the year 2009 as the electoral college in the meantime has changed dimensionally from time to time on the basis of elections held of various Trustees. Various elections were held in the years 2010, 2011, 2012, 2013 and 2014, but the decision taken by the general body has been nullified by the learned Single Judge. Membership of the Society would be decreased dimensionally if the elections are to be held on the basis of membership of 2009. The election held by the respondents on 11.10.2014 was

not in accordance with law and one-fourth members of the general body approached the Prescribed Authority through the Deputy Registrar for referring the election dispute. On the aforesaid reasoning, it has been argued that the judgment passed by the learned Single Judge is not sustainable in the eye of law. Learned counsel for the appellant in support of his contention has relied upon the following case laws:--

"1. Nagri Pracharini Sabha and another v. Vth Additional District and Sessions Judge, Varanasi and others, , 1991 Supp (2) SCC 36.

2. Kanwar Singh Saini v. High Court of Delhi, , (2012) 4 SCC 307.

3. Abdul Kalam and another v. Prescribed Authority/S.D.M. Phoolpur and others, [, (2000) 3 UPLBEC 2499].

4. Mehendi Hassan (Dr.) and another v. State of U.P. and others, [(2007) 3 UPLBEC 2229].

5. Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another, [(1995) 2 UPLBEC 1242.

6. Committee of Management, Naldeo Kuldeo Purva Madhyamik Vidyalaya Belaon, District Jaunpur and another v. Assistant Registrar, Firms, Societies and Chits, Azamgarh and another, [, (1997) 2 UPLBEC 1009].

7. Committee of Management, Anjuman Madarsa Arabia Khairul Madaris & Ors. v. State of U.P. & Ors., 2011 (1) ALJ 83.

8. A.P. Aboobaker Musaliar v. Distt. Registrar (G), Kozhikode and others, (2004) 11 SCC 247.

9. Arulvelu and another v. State represented by the Public Prosecutor and another, , (2009) 10 SCC 206."

7. Countering the arguments of the learned counsel for the appellant, learned counsel for the respondents has referred to Article 56 and 83 of the Constitution of India and Sections 14, 15 and 47 of the Representation of the People Act and has submitted that the election cannot take place before expiry of the term of the office bearers and the valuable right of the members cannot be curtailed before the term comes to an end. Election of five Trustees took place before expiry of term and five Trustees were elected and inducted before expiry of term whereas no election was possible before expiry of the term. Therefore, the election held by the appellant on the basis of the aforesaid list would be a nullity in the eye of law. He has also submitted that the vacancies occurred from time to time, but those vacancies could not have been filled up in the manner as done by the appellant.

8. The respondent, who has put in appearance happens to be the Chairman of the Society and under his Chairmanship the elections were held. Learned Senior

Advocate has specifically referred to bye law-7 which contemplates occurrence of vacancy and it has been submitted that since vacancy had to be there for election, therefore, the election could not be held. Learned counsel has also submitted that the election on these principles was not legal as the Committee constituted by the President having no right to include them as members as he has referred to meeting dated 14.11.2010. The election of the office bearers as well as of the Trustees can be referred to the Prescribed Authority and there is no illegality in the same. Learned counsel has submitted that since no vacancy had occurred before expiry of the term, therefore, any election held in respect of those vacancies would be a nullity in the eye of law. Learned counsel has also submitted that no list was filed before the Deputy Registrar and no decision was taken in respect of list of 2010. He has also submitted that the entire Board of Trustees constitutes the governing body and there is no notion of members and office bearers and the general body in the context of the present bye laws. Learned counsel submits that Section 15 of the Act lays down conditions for being a valid member and those conditions were not fulfilled in the present case. The Society was renewed up to 10.10.2015 w.e.f. 10.10.2010 and the election was held on 14.11.2010. The order dated 17.10.2012 itself is indicative of the fact that the election of Trustees was not accepted. Last election was held on 15.11.2009 and before expiry of term i.e. 14.11.2014, the election was held by the respondents on 11.10.2014 and the appellant has held the election on 14.11.2014. It is submitted that fifty five members are common in both the lists, therefore, the order passed by the learned Single Judge is valid and does not require any interference. The election can be held by providing any method and there is no prescribed method for holding the election. Learned counsel has submitted that the appellant has not been fair in holding the elections from time to time and election of the appellant is a forged election and cannot be recognized under law. He has also demonstrated by way of counter affidavit that certain members' term had not expired and therefore, no election could have taken place. In support of his contention, learned counsel for the respondents has relied upon the following case laws:--

"1. Committee of Management, Anjuman Kherul Almin Allahganj and another v. State of U.P. and others, [, 2014 (1) ADJ 44 (DB)].

2. Gram Shiksha Sudhar Samiti, Junior High School, Sikandra District Kanpur Dehat and another v. Registrar, Firms, Societies and Chits, U.P. Lucknow and others, [2010 (7) ADJ 643 (DB)].

3. Mohammad Tayyab v. State of U.P. and others, [, (2015) 1 UPLBEC 423]."

9. We have heard Sri Anil Tiwari, Senior Advocate, assisted by Sri Apoorva Tewari, learned counsel for the appellant and Sri Vinod Kumar Singh, Senior Advocate, assisted by Sri Rajeev Singh, learned counsel for the respondents.

10. The present dispute arose when the Deputy Registrar passed an order dated 17.10.2014 and Writ Petition No. 7042 (MS) of 2014 was filed by the Board of

Trustees of Shia College and other connected institutions challenging the order passed by the Deputy Registrar dated 17.10.2014 whereas Writ Petition No. 71 (MS) of 2015 was filed by the Board of Trustees of Shia College and School and another challenging the order dated 3.1.2015.

11. Validity of both the orders were put under challenge before the learned Single Judge and the learned Single Judge vide judgment and order dated 1.7.2015 proceeded to give certain directions for holding a fresh election on the basis of list of 2009, which election was held undisputedly between the parties and approved by the Deputy Registrar on 31.3.2010. The elections held by both the parties have not been recognized and neither being given due effect as contemplated under law by the learned Single Judge while adjudicating the controversy in question regarding validity of the members and regarding holding of the elections. After the list was filed on 31.3.2010, renewal of the registration of the Society fell due and for renewal of registration of the Society, it was incumbent upon the Society to have filed the list of members of General Body as contemplated under Section 4-B of the Act. Section 4-B of the Act casts obligation upon the Society at the time of registration/renewal to submit the list of members of the General Body of that Society mentioning the name, father's name, address and occupation of the members. The Registrar is obliged to examine the correctness of the list of members of the General Body of such Society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank passbook of the Society. Section 4-B of the Act reads as under:--

"4-B (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (21), on account of induction, removal, resignation or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office-bearers and two executive members of the society."

12. Considering the fact that the renewal of the registration of the Society fell due after the election was held on 15.11.2009 and the list was approved by the Registrar on 31.3.2010. The parties i.e. the appellant and the President of the Society, who has subsequently taken a contrary stand in respect of the election held and also in respect of the Trustees elected from time to time when the

vacancy fell due on account of expiry of the term or death or resignation. Valid list of members was submitted as contemplated under Section 4-B of the Act at the time of renewal. Nobody raised any objection at any point of time in respect of the validity of the list of members which was submitted at the time of renewal of the Society. Registration of the Society was renewed on 30.10.2010. This itself is indicative of the fact that there was no dispute between the members up till 30.10.2010. Since the last elections were held on 15.11.2009, therefore, the next annual general meeting of the Society was required to be held within a period of one year as contemplated under bye law No. 7 (1), which contemplates holding of meeting of the Board of Trustees ordinarily within a year. Therefore, it was incumbent upon the Society to hold the next annual general meeting on 14.11.2010. In this meeting the Managing Committee of the Shia Post Graduate College as provided under Clause 14 of the bye laws was elected for a term of three years.

13. It is to be noted that the Society took a decision to cease the membership of three members, who were not attending the meeting for two consecutive years vide resolution dated 14.10.2011. The next annual general meeting of the Society was held on 30.10.2011, which was presided over by Sri S.M. Raza Ali Khan in capacity as President and in the said meeting agenda regarding re-election of the members whose term was shortly due to expire after the date of the said meeting was also considered. In the annual general meeting, which was held on 30.10.2011, certain new members were elected in place of the members whose term was going to expire on 14.12.2011 and 17.12.2011, looking to the fact that annual general body meeting of the Society was to be held after one year, therefore, it was not possible for the general body to meet again and hold a meeting for election of the members whose term was going to expire very shortly. The members, who were not elected, were Dr. S.M. Afsar Naqvi, Professor S. Masjud Hasan, Ameer Mohammad Askari, S. Qamar Wazahat and Syed Majhar Abbad Rizvi and in their place new members, namely, Abbas Haider Muztar, Dr. Qamar Abbas, Maulana Syed Faridul Hasan, Dr. Ali Haroon Rizvi and Abbas Murtaza Shamsi were elected. In respect of aforesaid election, counsel for the respondents has taken a ground and has vehemently argued that before expiry of the term, election could not have been held and their statutory right to continue upto the period they were elected for could not have been curtailed and any election which has been held prior to that expiry date would be nullity in the eye of law. Apart from it, counsel for the respondents has also argued that three members were introduced to the members of the Board and an endorsement has been made that they were elected by the Committee. The election by the Committee is neither here nor there and even if it is assumed for a moment that the election has taken place by the Committee, then the election of all the members was held by the General Body whereas certain recital was made by Maulana Athar that he was going to read out names of the members and they were having full right to elect them or not to elect them and thereafter, ten members were re-elected for a period of five years. Term of five members was

not extended on account of their involvement in the activities against the Society and in their place five new members were elected. Argument of the counsel for the respondents is that the Committee headed by the President elected the three members is altogether against the record. It is not that three members were elected, but in fact five members were elected and the narration in the resolution itself goes to indicate that the names were read out to all the members and liberty was given to them to elect or not to elect them and this exercise has been undertaken by the competent body and there is sufficient proof that the election was held in accordance with the bye laws and looking to the unwarranted situation prevailing wherein it was not possible to convene the general body within a month, it was decided that the new members would be elected and the right of the elected members whose term was expiring within a month would be effected, but there is no evidence on record to indicate that after the election any meeting of the general body was held prior to expiry of the term of those members. The election cannot be said to be illegal on the aforesaid ground as election is always held before expiry of the term and even the Society is required to hold the election of the office bearers before expiry of the term and situation is prevailing in respect of election of respondents as they have held election on 11.10.2014 though the term was to expire on 14.11.2014.

14. Reliance placed by the counsel for the respondents on various provisions of the Act i.e. Sections 14, 15 and 47 of the Representation of the People Act and Articles 56 and 83 of the Constitution of India and specially bye law-7, which refers to the vacancy. Clause-(2) (b) of bye laws-7 lays down that the office bearers are to be elected in the annual general meeting and annual general meeting is required to be held within a year, so if annual general meeting is held within a year, then term of the office bearers will not come to an end and will be effective only after the proceedings are submitted and recognized by the Registrar. Reliance placed on Clause (2) (e) of bye laws-7, which provides filling up of vacancies on the Board or among its office bearers. Emphasis has been laid on the word "vacancy". "Vacancy" has not been defined under the bye laws, but looking to the scheme of the bye laws, it has to be held that election of the Trustees whose term was going to expire shortly was required to be held as the vacancies which were going to fall within a short period were required to be filled up.

15. So far as reliance placed by the learned counsel for the respondents upon the provisions made under Articles 56 and 83 of the Constitution of India and Sections 14, 15 and 47 of the Representation of the People Act is concerned, in Article 56 of the Constitution of India, term of the President has been prescribed and a further caution has been taken that in case the successor is not elected, then he shall continue in his office. Time of five years is to start when he enters into the office. Under Article 83, similar provision has been made in respect of the House of Parliament wherein it has been provided that their term will continue from the date of first meeting. Reliance placed on Sections 14, 15 and 47 of the Representation of the People Act is also of identical lines, but it has to

be noted that looking to the extraordinary situation prevailing, it has to be seen as to whether it was possible for the general body to hold the election of the Trustees, whose term was expiring after one month, prior to expiry of their term. Normal functioning of the democratic process is that it does not suppose any vacuum and if the term expires and thereafter election is held, then vacuum will be created. The successive government is already elected in the like manner and administered oath accordingly as and when the term of five years expires. But, looking to the scheme of the bye laws, it is clear that the Trustees shall be elected for five years and they shall be eligible for re-election as contemplated under bye law-4 (b). The bye laws do not contemplate that election has to be held only after expiry of the term. Bye law-4 (b) clearly stipulates that a person shall be eligible for re-election. Re-election or election has to take place obviously before expiry of the term. Procedure of election has been provided under bye law-7 by means of the annual general body meeting of the Board of Trustees. Therefore, argument of the counsel for the respondents that the election would be deemed to be nullity on the ground that it was held before expiry of the term is rejected.

16. Three members were ousted from the membership of the Society vide resolution dated 14.10.2011. They approached the Deputy Registrar and one Maulana Ali Nasir Sayeed Abakati alias Aga Ruhi by means of letter dated 12.10.2011 informed the Deputy Registrar that Mirza Mohammad Atahar, who earlier happened Teacher of the Shia College and had retired from the College by conspiring had captured the Society and he was trying to induct his near relatives as members and certain members, who were continuing for years are sought to be ousted. He also expressed apprehension that he would also be ousted shortly in the next meeting and in case any such list is received from the office of the Society, the same may not be accepted. Another letter was given in the office of the Deputy Registrar by Raja Raza Ali Khan dated 14.10.2011 in which a reference was made of his letter dated 27.11.2010 and he also referred to the meeting dated 14.11.2010 requested that list of the year 2010-2011 may be registered. He also informed that membership of three members, namely, S. Kazim Zaheer, Maulana S. Kalbe Javad and Maulana S. Ali Nasir Sayeed has been terminated. Another joint complaint was moved by S. Mazhar Abbas, Dr. L. Ali Sadiq, Maulana S. Kalbe Javvad Naqvi, Dr. S.M. Afsar Naqvi and Maulana S. Ali Nasir Sayeed Abakati jointly signed in which it was stated that Mirza Mohammad Atahar was conspiring in respect of membership and the process was ongoing for their removal from the Society. Thereafter, notice was given to the Society on 3.11.2011 forwarding the copy of all the complaints to the Secretary to reply by 25.11.2011. On 15.11.2011, Syed Mazhar Abbas also got received letter dated 11.11.2011 in which he has referred to the proceedings dated 26.10.2011 signed by twelve senior members of the Society. The aforesaid dispute ultimately ended by means of order dated 17.10.2012 and the proceedings dated 14.11.2010, 14.10.2011 and 30.10.2011 were held to be illegal by the Deputy Registrar and the dispute was referred to the Prescribed Authority under Section 25 (1) of the

Act. The aforesaid dispute including the election dispute referred to the Prescribed Authority remained pending with the Prescribed Authority and the next annual general meeting of the Society was held on 21.10.2012 which again was presided over by Sri S.M. Raza Ali Khan in capacity as President and again in the identical manner, the agenda regarding re-election of certain members was taken up in respect of the members whose term was going to expire shortly in which again five members were not elected and in their place new members were elected.

17. The Society preferred Writ Petition No. 6597 (MS) of 2012 assailing the order dated 17.10.2012 passed by the Deputy Registrar. The said writ petition remained pending and no interim order was granted by this Court and in the meantime, the next annual general body meeting of the Society was held on 20.10.2013 and the said meeting was presided over by S.M. Raza Ali Khan in capacity as President and the election for managing committee of the Shia P.G. College was held for a further period of three years and in the said meeting agenda regarding members whose term was due to expire after the date of the said meeting was also considered. The same procedure was adopted and five members were not elected and in their place five new members were elected. The extraordinary general body meeting of the Society was again held on 28.6.2014 and the Society expressed its difficulty in wake of the order dated 17.10.2012 and the Society ultimately took a decision to authorize the Secretary to withdraw the writ petition and to restore the membership of the three members in whose favour order dated 17.10.2012 was existing and it was further resolved that the list of members of the Society be filed before the Deputy Registrar for certification. The list of the members of the general body of the Society as existing on 28.6.2014 was filed before the Deputy Registrar by the Secretary of the Society and in the meantime, Writ Petition No. 6597 (MS) of 2012 was withdrawn in furtherance to resolution dated 28.6.2014. The Reference before the Prescribed Authority which was made by means of order dated 17.10.2012 was dismissed for want of prosecution on 10.7.2014. After dismissal of the aforesaid Reference, various representations were received from various persons raising their objections to the list of members of the general body which was duly considered and by a detailed order dated 7.10.2014 list of the members of the general body as filed by the Secretary of the Society was directed to be filed after including the name of S. Mazhar Abbas. The Prescribed Authority vide order dated 18.10.2014 recalled its order dated 10.7.2014 dismissing the reference for non-prosecution and restored the same to its original number. The aforesaid reference was ultimately decided by the Prescribed Authority vide order dated 26.12.2014 whereby he dismissed the reference as having become infructuous by holding that new election has taken place and the term for which the challenge was made has come to an end. The order passed by the Prescribed Authority was not challenged by any of the parties and the same attained finality. The order of the Deputy Registrar dated 17.10.2014 by means of which the list of members of the general body as filed by the Secretary was accepted with a

direction to include the name of S. Mazhar Abbas was put to challenge by means of Writ Petition No. 7042 (MS) of 2014 filed by S.M. Raza Ali Khan, President, Board of Trustees of Shia College and other connected institutions. No interim order was passed in the aforesaid writ petition. In the meantime, the annual general body meeting of the Society was held on 14.11.2014 after due circulation of agenda wherein election of the office bearers was held and agenda regarding renewal of term of members which was due to expire after the said meeting was also considered. The agenda which was circulated by S.M. Raza Ali Khan, Ex-President of the Society, clearly goes to indicate that election was to take place on the basis of the approved list of 2009-10 of members of the Board of Trustees. The aforesaid notices were placed on record by means of Annexure No. 11 to the writ petition. In all the notices, specific stand has been taken by the respondents that they will be holding election on the basis of the approved list of members of the Board of Trustees of 2009-10. Even in the notice sent to the Deputy Registrar by means of letter dated 14.10.2014 in respect of holding the election, it has been specifically stated that the election would be held on the basis of the approved list of members of the Board of Trustees of 2009-10. Learned counsel for the appellant has also placed on record the list of 2009-10, which is at page 171 of the paper book, to establish that the list of the general body on the basis of which election of the respondents was based was of 2009-10 and in order to counter the aforesaid allegation, learned counsel for the respondents has drawn the attention of the Court towards the updated list of membership of the Board of Trustees of Shia College and connected institutions as on 11.10.2014. Elections on the basis of the said list have taken place and the agenda of the election is also very clear that first the election of the Board of Trustees would take place and thereafter election of the office bearers will take place. Membership of the Society has gone a drastic change from time to time; when the term of the members of the Board of Trustees had come to an end, it was incumbent upon the Society to elect the new members upon occurrence of such vacancies. It has been stated that two members were elected in 2010 and membership of one member was renewed as three vacancies occurred in the year 2010. In the year 2011, fifteen members were elected and in the year 2012, thirteen members were elected and in the year 2013, eleven members were elected and in the year 2014, thirty four members were elected. Learned counsel has submitted that it is within the domain of the Registrar to decide the membership dispute and the membership dispute is not referable as contemplated under Section 25(1) of the Act. He has argued that Section 25(1) of the Act contemplates only reference of dispute in respect of office bearers. Because induction of membership is dependent upon the election, therefore, it has not to be presumed that it is an election dispute. Learned Single Judge has failed to take into consideration the aforesaid distinction between the induction of the members and the election of office bearers. Election of office bearers is altogether a different exercise but before election is held, finalization of the electoral college is the duty of the Deputy Registrar and therefore, the Deputy Registrar proceeded to determine the electoral college first and thereafter,

considered the election which was held. The Deputy Registrar did not find any fault in respect of induction of the members which was held from time to time, but for a minor mistake he directed that name of S. Mazhar Abbas be included. The finding of the learned Single Judge to the effect that the same ought to have been referred to the Prescribed Authority cannot be accepted and the learned Single Judge has proceeded to confuse the two issues; one regarding induction of society members and the other election of office bearers. No doubt, induction is by way of election, but that does not go to indicate that the same can be termed to be an election dispute. The election dispute is in respect of office bearers. The Deputy Registrar is right in determining the question of membership and if any person is aggrieved by the determination of the question of membership by the Deputy Registrar, then remedy is available before the civil court. The finding recorded by the learned Single Judge that resolutions which were passed on 14.11.2010, 30.10.2011, 21.10.2012 and 20.10.2013 by means of which new members were elected against the resultant vacancies of those members whose term had not expired were short of clear majority. In what manner they were short of clear majority has not been indicated by the learned Single Judge. The election of the Board of Trustees has taken place in the annual general body meeting. In the annual general body meeting, quorum was complete and election of new Trustees has taken place. Election of new Trustees has to take place on account of the fact that their term was going to expire very shortly and general body meeting was required to be held under bye law-7 in a year. So, if the elections were not held on the date of the meeting, then the same vacancies would have remained vacant for a year and vacuum of office is not contemplated and neither is the vision of the Constitution.

18. The learned Single Judge while recording a finding about the election of the Board of Trustees and election of the officer bearers, has proceeded to rely upon Clauses 7, 8, 9, 13, 14, 15, 16 and 17 of the bye-laws, which have been quoted in the judgment extensively, but the learned Single Judge has failed to take into consideration the provisions contained in the bye-laws as Bye-law 1-B provides as under:

"1-B. The office-bearer mentioned in (a), (b), (c) and (d) above shall be elected by the Board of Trustees from amongst its members and, shall hold their offices for a term of five years and may be re-elected."

19. Clause 1-B does not refer to Clause 1-A(e). Clause 1-A(e) specifically refers to such number of Trustees as may be determined in the manner hereinafter provided. It does not refer to the election of Trustees. Clause 1-B refers to the election of office-bearers. Bye-law 4(b) deals with the election of the Trustees and it provides as under:

"4(b). except as otherwise hereinafter provided, a Trustee shall hold office for five years, but he shall be eligible for re-election."

20. This itself goes to indicate that the election of the Trustees has to take place

under Bye-law 4(b), whereas the election of the office-bearers has to take place under Bye-law 1-B.

21. Since the office-bearers are to be elected by the Trustees, the induction of Trustees on the basis of election is a sine-qua-non exercise and the office-bearers can be elected only after the election of Trustees is over as contemplated under Bye-law 4(b). It is thereafter that the election of the office-bearers takes place. As soon as the office-bearers are elected, the Trustees become the member of the General Body. Till election of the office-bearers does not take place, all the Trustees remain member of the General Body.

22. The finding recorded by the learned Single Judge in regard to co-extensiveness of the General Body and the office-bearers, therefore, is not substantiated either from the record nor from the reading of the bye-laws, which have been made the basis by the learned Single Judge. The learned Single Judge, therefore, was not right in saying that the election dispute was required to be referred to the prescribed authority. The peculiar nature of bye-laws itself goes to indicate that certain understanding has to be there in respect of transaction of the business of the Society in accordance with the scheme of the bye-laws.

23. The apprehension expressed by the learned Single Judge that the quorum of 12 will destroy the very democratic character of the Society is also beyond the pleading of the parties and such observation was not warranted under law, in view of the fact that it is the settled law that minimum quorum has to be prescribed of every meeting, which has to take place in accordance with the bye laws, irrespective of the fact that notice is given to all concerned to participate in the meeting, but if they do not turn up to attend the meeting, then it cannot be said that democratic character of the Society would be destroyed.

24. The rule of majority in the election has to be followed in the manner provided under law and as settled by law time and again. Special care has been taken with regard to removal of Trustees under Bye-law 6 by 2/3rd majority and this provision has been made cautiously so that a Trustee may not be easily removed from the office as he is an elected member of the General Body.

25. The majority is the rule of the democratic process and if any rule of practice to the contrary is not envisaged, either under the Constitution or under the bye-laws of the Society, the comparison of old and new bye-laws is altogether unwarranted under the context of the present case as the old bye-laws were not required to be taken into consideration. The election has been held on the basis of the amended bye-laws and so the amended bye-laws were required to be taken into consideration.

26. The learned Single Judge has misunderstood the provisions of Section 4 and 4-B of the Act. Section 4-B of the Act has been incorporated only in the year 2013 by Act No. 23 of 2013. The statement of objects and reasons of the said amended Act reads as under:

"STATEMENT OF OBJECTS AND REASONS

The Societies Registration Act, 1860 (Act No. 21 of 1860) has been enacted by the Parliament to provide for registration of literary, scientific and charitable societies. Section 4 of the said Act deals with the filing of annual list of managing Body of a society but there is no provision in the said Act for filing of list of General Body of the society. At present, a large number of societies are disputed due to non-existence of its correct list of General Body with the Registrar. In several cases, an illegal person, fraudulently, produces before the Registrar an incorrect list of General Body of the Society and claims to be the member of office bearer of such society. In order to avoid such situation, it has been decided to amend the said Act in its application to Uttar Pradesh, to insert a new section 4-B, to provide for filing of the list of General Body with the Registrar at the time of registration or renewal of such society."

27. The aforesaid statement of objects and reasons goes to indicate that in order to avoid any forge creation of General Body list and outsiders, who are trying to enter into the Society on such basis should be checked. The correctness of the list of General Body should be there in the office of the Registrar, which was missing at earlier point of time and there was no provision for filing the list of General Body prior to 2013.

28. The opening words of Section 4-B(1) of the Act prescribe that at the time of registration/renewal of a Society, list of members of General Body of that Society has to be filed with the Registrar mentioning the name, father's name, address and occupation of the members and, thereafter the Registrar is obliged to examine the correctness of the list of members of the General Body of such Society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the Society.

29. Sub-section (2) of Section 4-B of the Act casts an obligation upon the Society to inform the Registrar that if there is any change in the list of members of the General Body of the Society on account of induction, removal, resignation or death of any member, a modified list of members of General Body to be filed within a period of one month.

30. Whether the list furnished at the time of registration/renewal of the Society has to remain valid forever or if there is any change in the said list at any point of time, then that change has to be informed to the Registrar under sub-section (2) of Section 4-B of the Act on account of induction, removal, resignation or death of any member.

31. What was the intention of the legislature in enacting Section 4-B(1) and (2) of the Act. Section 4-B(1) operates in a given contingency at the time of registration/renewal of the Society, but the legislature contemplates that there should not be any loss of communication in regard to the validity of the members between the Registrar and the Society and so in its wisdom, the legislature in

sub-section (2) laid down that a continuous exercise should be undertaken by the Society, informing the change in the membership within a period of one month.

32. If the aforesaid interpretation is not given in such a harmonious manner, then the list of members filed at the time of registration/renewal of the Society will be there upto the next renewal, but if any change in the membership takes place within five years as the renewal of the Society falls due in five years, then whether that change is required to be informed to the Registrar or not. The Registrar will be clueless and will be lacking information, if in the meantime, various members in the General Body are inducted by the Society, though inducted in accordance with the provisions contained in the bye-laws. The Registrar can place a check on illegal induction in this manner.

33. The rider of one month imposed in sub-section (2) itself is indicative of the fact that if there is any change at any point of time, then the same should be informed to the Registrar within a period of one month, and this can be the only interpretation of sub-sections (1) and (2) of Section 4-B of the Act, keeping in view the statement of objects and reasons, which states that in order to curb the menace of fraudulent list being produced before the Registrar by unscrupulous persons, a check was required to be placed. Now the check, which is required to be placed, is to be placed in a continuous manner and if it is in piece-meal, then it is to be of no avail and the intention of the legislature will stand defeated in regard to validity of the list of members of the General Body being submitted before the Registrar at the time of registration/renewal. The mischief is required to be checked and if it is checked, then under sub-section (2) of Section 4-B of the Act, the Society must inform the Registrar regarding the change in the membership after the registration/renewal takes place upto the period of next renewal. The legislature does not presume vacuum and if there is any *causis omissus*, then the same can be supplied by the Court.

34. The learned Single Judge has recorded a finding that the Registrar has proceeded to exercise jurisdiction under Section 4-B of the Act and on account of overlapping feature, the election of the Trustees and office-bearers as contemplated under Clause 1-A(e) of the bye-laws, gave rise to the election dispute and the same ought to have been referred to the Registrar. But we fail to accept the view expressed by the learned Single Judge on account of the fact that the list of office-bearers is filed under Section 4, whereas the list of members of General Body is filed under Sections 4-B(1) and 4-B(2) of the Act. As indicated hereinabove, both the Sections operate in different fields.

35. The validity of the list of office-bearers is to be filed and approved by the Registrar by exercising jurisdiction under Section 4 of the Act, under which, the Registrar has to see as to whether the election held by rival parties gave rise to a general election dispute or not. If the Registrar came to the conclusion that the election has not given rise to an election dispute, then the Registrar can certainly proceed to approve the list filed under Section 4 of the Act. This is no

overlapping in this respect and the Registrar while exercising the jurisdiction, does not adjudicate anything about the validity of the election, but he only determines as to whether there is genuine dispute in regard to election or not.

36. The Registrar is not supposed to be a post-office and he is supposed to act administratively by applying his mind when facts are placed before him. Howsoever unreasonable and unnatural case may have been set-up before the Registrar, the Registrar is not supposed to refer the dispute, that is not the law and neither the function of the Registrar. It is only when the Registrar finds that if there is an election dispute, he will refer the dispute to the prescribed authority.

37. In the case of Nagri Pracharini Sabha and another v. Vth Additional District and Sessions Judge, Varanasi and others, , 1991 Supp (2) SCC 36, the apex court in Para-4 held as under:

"4..... We are of the view that provisions of Section 23 are confined to audit and have nothing to do with the relief of rendition of accounts. No more is necessary to be said about that relief. Section 25 deals with disputes regarding challenge to the eviction of office bearers. The maintainability of dispute within the purview of that Section is hedged with conditions and unless such requirement is fulfilled, a statutory dispute would not be maintainable. The present action in the Civil Court is by some of the members who perhaps would not satisfy the requirements laid down in Section 25. It cannot be contended that Section 25 having provided the pre-conditions on the satisfaction of which a dispute within the purview of that Section would be maintainable before the Registrar takes away the right of members of the Society to claim relief otherwise outside the purview of Section 25 on the basis of their right to seek remedy for their grievance. It is not the contention of Mr. Mukhoty that the relief claimed is not one which would come within the ambit of Section 9 of the Code of Civil Procedure. That being so, we are of the view that the bar of Section 25 is not applicable to the facts of the case. Therefore, the conclusion reached in the Courts below is correct and the suit is maintainable."

38. The aforesaid proposition of law itself goes to indicate that the election dispute within the purview of Section 25 is hedged with statutory conditions and unless such requirement is fulfilled, a statutory dispute would not be maintainable.

39. Similar view was expressed in the case of Abdul Kalam and another v. Prescribed Authority/S.D.M., Phoolpur and others , (2000) 3 UPLBEC 2499, wherein in Para-6, it has been held as under:

"6. Sub-section (1) in the proviso provides that an election of office-bearer can be held invalid if the prescribed authority is satisfied on the grounds mentioned in clauses (a), (b) and (c) of sub-section (1). The expression used in the sub-section clearly pre-supposes that unless these clauses are satisfied, the prescribed authority cannot assume jurisdiction to set aside the election on any other ground. So far as clause (b) is concerned it has not been a ground on

which the election has been proposed to be set aside by the prescribed authority. Similarly the grounds set out in clause (c) is also not as ground made out in the order contained in Annexure 6. At best, the ground on which the election was proposed to be set aside can be stretched to clause (a). In as much as it can be contended that non-circulation of notice is a corrupt practice."

40. In the case of Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another v. Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another (1995) 2 UPLBEC 1242, in Para-3, it has been observed as under:

"3. Having regard to the provisions of the Act, we see force in the submission of the learned Counsel for the Respondents. Section 4 of the Act provides that a list of members of the managing body of a Society shall be filed with the Registrar. That list is maintained by the Registrar for the purpose of performing his administrative functions as a Registrar. Section 25 of the Act provides that whenever any doubt or dispute is raised regarding the election of members of a managing body of a Society, the Registrar may refer such doubt or dispute to the Prescribed Authority for his decision. But when one fourth members of the Society raise a doubt or dispute relating to the election of the members of managing body or Society, the matter automatically goes to the Prescribed Authority for decision and in such a case the Registrar does not come into the picture. In exercising this power whether to refer or not any doubt or dispute relating to the election of members of the managing body of a Society to the Prescribed Authority, the Registrar has to apply his mind to the facts of the case and take a decision. In taking such a decision, the Registrar will be quite justified to take into account all the relevant circumstances, as he has done in the present case. If an objection is raised about the membership of a person. In our view, it is the duty of the Registrar, for his own administrative purpose, to enquire into whether the person concerned is a member of the Society or not. If the Registrar comes to the conclusion that such a person is not a member of the Society then he is under no obligation to refer the dispute or doubt relating to his election to the Prescribed Authority. In the present case, the Registrar has applied his mind to the facts of the case to find out whether the second appellant herein or was not a member of the Shiksha Sadan. He found that he was not even a member of a Society. It is a pure question of facts. If any person feels aggrieved by such a decision, the proper course open to him is to approach the Civil Court and seek appropriate relief. The Registrar is bound by the decision of the Civil Court and his decision will be subject to the decree passed by the Civil Court."

41. Similar view has been taken in the case reported in , (1997) 2 UPLBEC 1009: Committee of Management, Naldeo Kuldeo Purva Madhyamik Vidyalaya Belaon, District Jaunpur and another v. Assistant Registrar, Firms, Societies and Chits, Azamgarh and another, wherein in Para-6, it has been held as under:

"6. Section 25(1) of the Act requires that if there is a dispute with regard to the election of office bearer or continuance in office, then it is incumbent on the

Assistant Registrar to refer the same to the Prescribed Authority. The provision contained in the said Section postulate that the reference is to be made if there is existence of a dispute with regard to the election or to the continuance in office of the office bearers. Unless there is a dispute, the Assistant Registrar is not required to refer the same to the Prescribed Authority. The Assistant Registrar exercises a quasi judicial authority in the matter of grant of renewal. He cannot act mechanically as soon a dispute is raised. It has to apply its mind and find out as to whether there is in existence a dispute or not. Though in the garb of deciding the question of existence of dispute, he is not empowered to decide the dispute or address himself of the dispute itself, but still then he is authorised to look into the existence of a dispute. His such decision with regard to the existence of the dispute is subject to revision of challenge before the appropriate forum. In exercise of writ jurisdiction this Court can go into and examine whether the Assistant Registrar has overstepped his jurisdiction while coming to a finding that no dispute exists. If it is found that he has so over-stepped, this Court can set it right. In the aforesaid context, the question, therefore, arises as to whether the finding that no dispute exists as arrived at by the Assistant Registrar in the order dated 2nd December 1996 is justified or not. If it is found that the said finding is justified and is within the ambit and scope of the jurisdiction conferred on the Assistant Registrar, then it is not necessary to go into the other question raised by the learned counsels of either of the parties."

42. In Paras-9 and 10 of the judgment reported in 2011 (1) ALJ 83: Committee of Management, Anjuman Madarsa Arabia Khairul Madaris & others v. State of U.P. And others, it has been held as under:

"9. From the record, it appears that the last election was held in 2008 in which respondent-Committee of Management was recognized. The term of the Committee of Management is three years, therefore, the next election is due in 2011, but in the meantime, petitioners alleged to have enrolled members and a list of 378 members were produced and it was alleged that election in the month of March, 2010 was held. There is no dispute in law that if there is a bona fide dispute between two rival Committee of Management then it has to be referred to the Prescribed Authority under Section 25(1) of the Act, but it has to be established that it is a bona fide dispute. Unless and until from the record it is established that it is a bona fide dispute then the Assistant Registrar is not obliged to refer the matter to the Prescribed Authority. From the finding recorded by the Assistant Registrar it is clear that the case set up by the petitioners appears to be based on forged documents. It is clear from the record that the last election, held in 2008 of the Committee of Management of the Society, was recognized and term of the Committee of Management is three years, in such circumstances, the Assistant Registrar was of the view that there is no bona fide dispute, therefore, it is not necessary to refer the same.

10. From the perusal of the judgment, I am also of the opinion that unless and until it is established that there is a bona fide dispute, there is no obligation on

the part of the Assistant Registrar to refer the same. He can decide himself and finding recorded by the Assistant Registrar is based on evidence after consideration of relevant records, therefore, I am of the opinion that petitioners does not deserve any relief by this Court."

43. The aforesaid case itself goes to indicate that unless there is a genuine and bonafide dispute, there is no obligation on the part of the Assistant Registrar to refer the dispute.

44. The apex court in the case of A.P. Aboobaker Musaliar v. District Registrar (G), Kozhikode and others (2004) 11 SCC 247, in Para-3 held as under:

"3. In the order passed by the District Registrar, he has indicated reasons for accepting the list of members of the governing body filed by E.K. Aboobaker stating that he was filing the lists for the earlier years and, if the appellant was claiming on the basis that he was competent to file, he has to establish the same. Learned Single Judge has taken the view that under Section 4, the District Registrar has no power to adjudicate the controversy. The Division Bench of the High Court, in the impugned judgment, has observed thus:

"Thus, in the case of a dispute when more than one return is filed, the Registrar has got the power to find out as to which one he should accept. There may not be an elaborate enquiry. Prima facie he has to satisfy as to which return is to be accepted. In this case, we find that the list given by the appellant was accepted, because it had the support of court orders and also it was being followed for a large number of years. No doubt, such an enquiry made by the Registrar and the decision taken from it does not become final. The party can take up the matter before a competent court as to who are the members of the governing body."

It is clear from what is stated above by the Division Bench that the enquiry made by the Registrar and the decision taken did not become final and the party could take up the matter before a competent court as to who were the members of the governing body. When there were two lists, the District Registrar, prima facie, on being satisfied, accepted the list filed by E.K. Aboobaker as he was filing the lists for the previous years also. The District Registrar has only taken into consideration the limited question of accepting the list of members of the governing body. The Division Bench of the High Court was right in taking the view that the list accepted by the District Registrar did not become final; if the appellant was aggrieved, it was open to him to establish his claim in a competent court/forum. To us, it appears even the District Registrar did not adjudicate any dispute as such. It was only a question of accepting, prima facie, the list of members of the governing body. If the appellant's claim was right and justified, merely because the District Registrar accepted the list of the governing body of members given by E.R. Aboobaker, it did not prevent him from establishing his claim in a competent court. Be that as it may, the controversy relates to accepting the list of the governing body members for the year 1990-91, thereafter, every year such list must have been submitted to the Registrar as

required under the provisions of the Societies Registration Act. To us, it appears that the controversy raised in this appeal has become academic as of today. Thus, we find no merit in the appeal."

45. Thus, it is established from the above proposition of law that the dispute in regard to election has not to be referred mechanically, but there has to be genuine dispute and the Registrar is required to look into the prima facie case of the parties. The Registrar, in the present case, has looked into the prima facie case of the parties.

46. The term "membership" has been defined under Section 15 of the Act. The definition of membership itself goes to indicate that a member of a Society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations. It has also been indicated hereinabove that the continuous exercise of inducting members have been on from time to time in various years on account of the fact that the term of the Trustees came to an end after expiry of five years and so it was incumbent to elect those members as contemplated under Bye-law 4 of the Bye-laws of the Society and those elections have taken place from time to time.

47. The election of the Trustees held on 14.11.2010, 30.10.2011, 21.10.2012 and 20.10.2013 was never put to challenge and neither objected by any of the parties at any point of time. The information regarding the said membership was informed to the Registrar from time to time.

48. The statutory obligation cast upon the Society was discharged by informing the induction of those members by way of election in the respective years. The Registrar did not object to the said membership and neither any notice was issued nor any objection was raised by the Registrar, so in these circumstances, it has to be presumed that the membership of those Trustees was undisputed.

49. It appears that the whole dispute arose when the elections were to be held after 15.11.2009 i.e. before 15.11.2014. The Registrar came to the conclusion that the election, which was held by the respondents on 11.10.2014, was based on the membership list of 2009. Though there was dimensional change in the membership list of 2009 from time to time, but the learned Single Judge has proceeded to hold that the vacancies, which have arisen in the General Body may be filled up after the elections are held on the basis of the list of 2009.

50. The aforesaid finding itself amounts to putting a cot before the horse. First, there has to be an electoral roll and after the electoral roll is complete, the election can take place.

51. The election based on the list of 2009 was not found to be an election held in accordance with law as the membership of the General Body has taken dimensional change in the meantime, and those members duly participated in

the election held by the appellant and the said election was held after due circulation of agenda and notice to all the concerned members, who were the existing members of the Society till 14.11.2014.

52. The election of the Society does not take place each and every time when the members are inducted. It is incidental that after five years if there is any requirement, then the Trustees are elected first and thereafter, the election of the General Body takes place.

53. In the aforesaid circumstances, the Registrar was not obliged to refer the dispute to the Prescribed Authority and the Registrar has acted within his power in considering the rival claims of the parties in approving the list of office-bearers under Section 4 of the Act.

54. Since the dispute was raised in regard to membership, so the same was decided vide order dated 17.10.2014 under Section 4-B of the Act and the elections, which have taken place from time to time of the Trustees were accepted.

55. The original records were deposited by the appellant. The Deputy Registrar has undertaken exercise to verify the membership on the basis of agenda, proceedings, membership register and passbook of the bank account etc., and found that there was nothing illegal in the induction of those members and proceeded to accept the membership under Section 4-B of the Act on 17.10.2014.

56. We do not find any illegality in the aforesaid order and the Writ Petition No. 7042 (MS) of 2014 challenging the aforesaid order is hereby dismissed.

57. So far Writ Petition No. 71 (MS) of 2015 is concerned, the same has been filed challenging the order dated 03.01.2015 by means of which, the election of the appellant has been accepted finding that the same has been held on the basis of the list, which has been held to be valid under Section 4-B of the Act by means of order dated 17.10.2014 and that the election of the respondent is based on the membership list of 15.11.2009 and if the aforesaid list is accepted, then there were only 18 members from the registered list available so the quorum of 1/4th members was also not found to be established by the Deputy Registrar and he also found that the election was held on the basis of the membership list of 2009 whereas the membership has drastically changed from time to time on expiry of term of various members. Therefore, in these circumstances, challenge in the Writ Petition No. 71 (MS) of 2015 is baseless and the Registrar has acted well within his domain in accepting the election of office-bearers which was held on the basis of the meeting held on 14.11.2014. In this view of the matter, Writ Petition No. 71 (MS) of 2015 is dismissed.

58. Accordingly, both the special appeals are allowed and the order dated 01.07.2015 passed by the learned Single Judge is set aside.