
(2009) 02 AHC CK 0108
In the Allahabad High Court
Case No : Writ Petition No. 371 (MS) of 2008

Veena Khurana and Others

APPELLANT

Vs

S.D.M.Sadar/Prescribed Authority, Under Societies
Registration Act, 1860, Lucknow and Others

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

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

Citation : (2009) 02 AHC CK 0108

Hon'ble Judges : S.S.Chauhan, J

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—The six ousted members pleading the cause of ouster of 267 members have come up before this Court challenging the orders of the Prescribed Authority dated 6.7.2007 and 24.8.2007 contained in Annexures 1 and 2 respectively to the writ petition.

2. The dispute in the present petition relates to the election of the Uttar Pradesh Council for Child Welfare, Moti Mahal, Lucknow (hereinafter referred to 1 as the "Council" for short). The Council in question is headed by His Excellency, the Governor as Chairman. The Council from the date of its inception i.e. 1953 has been continuing and acting in furtherance of its aims and objects. The Council was registered on 26.8.1953. The registration of the Council was lastly renewed on 10.10.2005 for a period of five years. The Council has its own registered byelaws and these byelaws prescribe the constitution and election of members of the office bearers of the Council and the Executive Committee. The election of the Executive Committee of the Council was held on 21.8.2001, in which the office bearers were elected. The Standing Committee of the Council constituted Screening Committee on 16.10.2001, which recommended the enrollment of the petitioners as life members of the Council vide resolution dated 30.7.2003 and 1.8.2003. The said membership was approved and petitioners and others were enrolled as life members of the Council in view of the recommendation made by

the Screening Committee. It is stated that the petitioners attended the meeting of the Executive Committee under the Chairmanship of His Excellency the Governor on 30.1.2004. The term of the Executive Committee was for three years and hence the Committee which was constituted vide election dated 21.8.2001 was to be reconstituted and with this view a fresh election was held on 30.9.2004. The election dated 30.9.2004 was challenged by opposite parties No. 3 and 4 through Writ Petition No. 4650 (MS) of 2004. The Registrar vide order dated 20.10.2004 appointed the Dy. Registrar to perform the duties of the Council as there was dispute in the election. The said order was made the subject matter of challenge by the office bearers of the Council through its Secretary. These petitions were clubbed and decided by a common judgment and order dated 27.5.2005. Writ Petition No. 4650 (MS) of 2004 filed by opposite parties No. 3 and 4 was dismissed and Writ Petition No. 4903 (MS) of 2004 filed by the Council was allowed and the order of the Registrar dated 20.10.2004 was quashed. The validity of the order dated 27.5.2005 was challenged by filing Special Appeal No. 361 of 2005 and the same was allowed and the judgment and order of Hon''ble Single Judge passed in Writ Petition No. 4650 (MS) of 2004 was set aside vide judgment and order dated 11.11.2005. The Council challenged the validity of the aforesaid judgment and order of the Division Bench by Special Leave to Appeal No. (C) 25489 of 2005 in the Supreme Court, in which interim order was passed staying the orders of this Court in special appeal. The said matter was converted into Civil Appeal No. 2525 of 2006. Before the Supreme Court opposite parties No. 3 and 4, after the matter was heard at length, prayed to withdraw the petition itself filed by them before the Hon''ble Single Judge and took leave from the Supreme Court to raise an election dispute under Section 25(1) of the Societies Registration Act (hereinafter referred to as the "Act" for short). With the aforesaid observations, the civil appeal was disposed of as withdrawn on 5.5.2006. The opposite parties No. 3 and 4 thereafter moved a motion under Section 25(1) of the Act before the Prescribed Authority on 1.6.2006. Objections were taken to the maintainability of the said petition/application before the Prescribed Authority. The Prescribed Authority vide order dated 24.8.2007 declared the elections held on 30.9.2004 as invalid and vide order dated 6.7.2007 rejected the objections regarding nonmaintainability of the petition/application before the Prescribed Authority. The orders dated 24.8.2007 and 6.7.2007 were challenged by filing Writ Petition No. 4653 (MS) of 2007 by opposite party No. 5. Writ Petition No. 4607 (MB) of 2007 was also filed by two persons namely, Naresh Chandra Bhargava and Mahabir Singh. This Court while considering the matter passed an order on 7.9.2007 that till the question of membership is decided, the opposite parties may not hold election till the next date of listing. The said order was made the subject matter of challenge in Special Appeal No. 796 of 2007 and in the special appeal the two petitioners who filed the writ petition and the opposite parties of that writ petition consented for an order for holding of the elections by the Registrar and it was also agreed that the President of the Council, His Excellency the Governor be requested to make an alternative arrangement for performing daytoday affairs of the Council. The

Division Bench in the order dated 28.9.2007 noted the fact that the term of the Committee of Management was coming to an end on 30.9.2007 and there was an order of the Prescribed Authority holding the present Committee as illegal, against which order a petition has been filed by the present Committee. The other writ petition was filed for holding the election and had challenged the inaction part of the Registrar. In the order passed on the agreement between the parties i.e. the two members and the opposite parties, the Registrar was directed to hold the election of the Committee of Management expeditiously, say, within a maximum period of two months. It was further directed that the President be requested to make alternative arrangement forthwith for running of the Council as both the counsel also agreed for such an arrangement during interregnum period of this election. It was also found that both the Writ Petitions No. 4604 (MS) of 2007 and 4653 (MS) of 2007 have lost their significance and so they were also disposed of accordingly. The parties were given liberty to challenge the election, which may be held in pursuance to the direction in special appeal, in accordance with law. Thereafter, the Dy. Registrar passed an order on 22.10.2007, notifying the schedule for holding of the election of Executive Council. Tentative list of the members was declared on 25.10.2007, showing the names of 204 members. Shiv Mohan Singh and others filed objections against the said tentative list, stating therein that the names of the petitioners and others were not included in the tentative list of members. The Dy. Registrar while considering some of the objections passed an order on 8.11.2007. The objections filed by Shiv Mohan Singh and others were not considered and neither any opportunity of hearing was given to them. Aggrieved with the order passed by Dy. Registrar dated 8.11.2007 Shiv Mohan Singh and others filed Writ Petition No. 6101 (MS) of 2007 and while hearing the said writ petition, the Hon'ble Single Judge of this Court vide order dated 22.11.2007 directed that the claim of membership of the Council while determining the valid membership of the Council for holding election may be held afresh in accordance with the rules of the Council and only then the Registrar should proceed with the election with valid members of the Council. It was also provided that the Registrar is empowered to consider the representation of all concerned and affected persons.

3. It is submitted that Shiv Mohan Singh and others from and are connected with 267 members who have been ousted at the behest of the order of the Prescribed Authority and are ousted members. The order passed by the learned Single Judge dated 22.11.2007 was subjected to challenge through Special Appeal No. 964 of 2007 and in the special appeal again an order was passed that another set of persons/members of that very Council cannot maintain another writ petition and also that the order of the Prescribed Authority passed under Section 25(1) of the Act had not been challenged in the said writ petition. It was also observed that the liberty has been given by the Court in the earlier special appeal to challenge the election in appropriate forum on the basis of a consented order and order under Section 25(1) of the Act is summary in nature and can be challenged in Civil Court for required declaration after the election.

4. The petitioners are the other set of members apart from the elected office bearers and other members who were ousted at the behest of the order of the Prescribed Authority dated 24.8.2007 and the subsequent Writ Petition No. 6101 (MS) of 2007 filed by Shiv Mohan Singh and others never challenged the order of the Prescribed Authority. It is on these reasoning that the petitioners have come forward before this Court for the cause of 267 members and pleading their ouster to be illegal.

5. Heard Shri Umesh Chandra, Senior Advocate, assisted by Shri Vikas Singh, learned counsel for the petitioners, and Shri Prashant Chandra, Senior Advocate, assisted by Shri Shishir Jain, learned counsel for opposite party No. 4.

6. The submission of Shri Umesh Chandra, learned counsel for the petitioners, is that initially the election held on 30.9.2004 was challenged by the elected office bearers and the said writ petition was dismissed by the Hon'ble Single Judge. Thereafter, the matter was taken up in special appeal and the special appeal was allowed, against which Special Leave to Appeal was preferred and before the Supreme Court the opposite parties No. 3 and 4 prayed to withdraw the writ petition filed before the Hon'ble Single Judge with liberty to approach the prescribed authority under Section 25(1) of the Act. Their prayer was acceded to by the Supreme Court. Thereafter, the opposite parties No. 3 and 4 challenged the election before the Prescribed Authority and the Tribunal has adjudicated upon the membership of the petitioners whereas the election dispute was required to be adjudicated by the Prescribed Authority. It is also submitted that the language employed under Section 25(1) of the Act empowers the Registrar to decide the election dispute in regard to office bearers. He has also submitted that the various heads under which and on the basis of which the election can be challenged have been mentioned in Section 25(1) of the Act and no part of the section contemplates or empowers the Registrar to decide the question of membership. Hence, the order of the Prescribed Authority is without jurisdiction.

7. Further submission is that the petitioners are the persons who comprise of 267 members whose membership has been set at naught by the Prescribed Authority and they have never challenged the order of the Prescribed Authority on any earlier occasion. If there was any compromise between the opposite parties No. 3 and 4 on one side and certain persons who do not belong and comprise the group of 267 members on the other side, then any consented order or any order passed on the basis of compromise or consensus between the parties inter se would not be binding upon the petitioners as the said compromise has been entered into between the parties inter se.

8. The next submission is that the Writ Petition No. 6101 (MS) of 2007 was filed by Shiv Mohan Singh and others and in the said writ petition no such challenge was ever made in regard to the order of the Prescribed Authority. Only challenge was that before holding of the election, the membership may be properly determined.

9. It has also been submitted in most humble manner that the special appeal against the judgment and order of the Hon"ble Single Judge was not maintainable and therefore no order could have been passed by the Division Bench while sitting in special appeal as the writ petition was filed against the order of the Prescribed Authority which acted as a Tribunal and under Chapter 8, Rule 5 of the Rules of the Court such appeal cannot be maintained.

10. Further submission is that the order dated 24.8.2007 has not been made the subject matter of challenge by the petitioners, who were ousted members, who were adversely affected, whose rights have been closed forever, and in such situation petition at their behest would be maintainable and they cannot be thrown out on the ground that some elected office bearers have earlier filed a writ petition challenging the order of the Prescribed Authority. The petitioners are not forming part of the other set of persons of the same group but in fact the group of petitioners is a distinct and separate group whose right and interest is not similar nor in any manner is to be protected or saved or defended by the said set of members who have their own individual interest and who are opposed to the interest of the petitioners.

11. The argument in sum and substance is that the election could have been set aside but the membership could not have been adjudicated upon by the Prescribed Authority. Even if the Prescribed Authority came to the conclusion that members were not properly inducted, then the election could have been set aside and no finding could have been recorded in regard to membership without allowing them opportunity.

12. The learned counsel for the petitioners has also submitted that the members were properly inducted after constitution of Screening Committee which got due approval from the Executive Committee from time to time and as the Executive Committee has approved the induction of the members, the Prescribed Authority could not have gone against the record by recording a perverse finding. The petitioners cannot be relegated to the Civil Court for adjudication of the membership as it is not efficacious remedy and no disputed question of fact is involved in the present case.

13. The learned counsel for opposite party No. 4 Shri Prashant Chandra assisted by Shri Shishir Jain, countering the arguments of learned counsel for the petitioners has submitted that it is a very prestigious Council formed in the year 1953 and from the year 1953 to 2001 only 280 members were inducted and within the 280 members the election was to be held but 267 members were surreptitiously and clandestinely inducted between 2001 and 2004 and were allowed to participate in the election. The submission is that the election of these members was altogether illegal as they are not men of status as the requirement under the byelaws is that the only men of status and having high reputation in the society should be inducted as members of the Council. He has also submitted that the order of the Prescribed Authority has already been challenged before this Court and that has been stayed in special appeal and the second order

passed by the another Hon''ble Single Judge in Writ Petition No. 6101 (MS) of 2007 directing determination of membership has also been stayed by this Court and so this Court will not enter into that field again and pass an order when the Hon''ble Division Bench has already taken a view that the Hon''ble Single Judge could not have passed the order in the wake of the earlier order of the Division Bench passed in special appeal.

14. Learned counsel for opposite party No. 4 has also submitted that at the time of holding of the election objection filed by the Committee of Management were disposed of by the Registrar before holding of election vide order dated 8.11.2007 and the membership in question was cancelled. The said order has not been challenged in any forum. The order dated 19.12.2007 holding the membership of the 267 members to be valid was only on account of collusion of the Registrar with the petitioners and the same was passed in a hurried manner and with a view to give benefit to the petitioners and others holding their membership to be valid.

15. Further submission is that the question of membership has rightly been decided by the Prescribed Authority and the petitioners have appropriate remedy of challenging the question of membership before the Civil Court. To support his argument, the learned counsel has placed reliance upon Division Bench decisions reported in (i) 1988 AWC 1154, All India Council, through Bharat Dharam Maha Mandal, Lahura Bir Varanasi and another v. Assistant Registrar, Firms, Societies and Chits, Varanasi Region, Varanasi and another, and (ii) 2008 (6) Supreme 15, Maharaj Krishan Bhatt and another v. State of J&K and others. The learned counsel has further submitted that it will amount sitting over the order of the special appeal passed by the Division Bench, which this Court would not like to enter into. Under the byelaws the remedy is before the Chairman, His Excellency the Governor by way of appeal and if the petitioners have any grievance as regards their induction they may approach accordingly for adjudication of their membership.

16. It has been further submitted that there is no approval of the Executive Committee of the enrollment of the members and therefore, the induction of these 267 members is wholly illegal. The initial writ petition was also filed challenging the order of the Prescribed Authority and therefore the question raised in this writ petition cannot be gone into and adjudicated as it also challenges the order of the Prescribed Authority.

17. I have heard learned counsel for the parties and gone through the record.

18. The first point which falls for consideration is as to whether the present petition would be maintainable. The argument of the learned counsel for the petitioners to the effect that out of the lot of 267 members none of the members have come forward to challenge the order of the Prescribed Authority appears to be correct. The 4 members out of the block of 267 members have filed Writ Petition No. 6101 (MS) of 2007 and in the said writ petition a direction was given

to the Registrar/Dy. Registrar to consider the claim of members of the Council while determining the valid membership of the Council for holding election afresh in accordance with the Rules of the Council and only thereafter the Registrar may proceed with the election with valid members of the Council. The liberty was also given to other members to make representations. The earlier Writ Petition No. 4604 (MS) of 2007 was filed by two persons namely, Naresh Chandra Bhargawa and Mahabir Singh belonging to the other block of members for implementation of the order of the Prescribed Authority whereas the other set of members challenged the order of the Prescribed Authority apart from the block of 267 members. So at any point of time there was no challenge to the order passed by the Prescribed Authority by the petitioners and their flock: The petitioners have been ousted and their membership has been put at naught by the order of the Prescribed Authority. They are directly affected persons and therefore they have every right to maintain a writ petition questioning the validity of the order of the Prescribed Authority. It is not necessary that the other set of persons equally and with same tenacity and diligence may pursue the cause of the petitioners. Every set of members in a society have their own interest interse against each other. This fact is also proved from the conduct of the parties as they agreed for a consented order on 28.9.2007 in special appeal No. 796 of 2007 but in the said special appeal nor in the writ petition there was any person representing the block of 267 members to challenge the ouster from membership. The petitioners being ousted have every right to challenge their ouster and also the order of the Prescribed Authority as the said order is binding upon them and has become final. The agreement entered into between another set of members in the special appeal No. 796 of 2007 will not be binding upon the petitioners as they are agitating their ouster and by agreement order their interest would be put in jeopardy forever and they will not be able to challenge their ouster in any manner. The elections are scheduled and the programme has been notified for 1.3.2009 vide order of the Dy. Registrar dated 21.1.2009. If the petitioners are relegated to the remedy of suit, it is common experience and there is every likelihood that the suit may take a long time for conclusion and in the meantime it may be possible that next election may also be held. By the time the legality of the membership is decided in suit, there may be sea change in the situation and by that time the petitioners would or may loose their interest in the functioning of the Council. The remedy available to a party should be efficacious and meaningful and result oriented. Relegating a party to a remedy which would not fetch any result within the required time amounts to denial of justice to the person concerned. In the case in hand the elections are scheduled for 1.3.2009 and the ouster of the 267 members having been challenged in this writ petition, I hold that the writ petition would be maintainable in such circumstances.

19. The next question which falls for consideration is as to whether the ouster of 267 members as ordered by the Prescribed Authority was legal and justified in the facts and circumstances of the case. The initial dispute arose when election was held on 30.9.2004 and the said election came to be challenged through Writ

Petition No. 4650 (MS) of 2004. The said writ petition was dismissed and Writ Petition No. 4903 (MS) of 2004 filed by the Council was allowed and the order dated 20.10.2004 passed by the Registrar was quashed. The validity of the aforesaid order was challenged in Special Appeal No. 361 of 2005. The said special appeal was allowed and the judgment and order of Hon"ble Single Judge passed in Writ Petition No. 4650 (MS) of 2004 was set aside vide judgment and order dated 11.11.2005. The aggrieved parties approached the Supreme Court by Special Leave to Appeal No. (C) 25489 of 2005 challenging the order of the Division Bench in special appeal dated 11.11.2005 and before the Supreme Court opposite parties No. 3 and 4 withdrew their petition with liberty to challenge the election dispute before the Prescribed Authority as provided under Section 25(1) of the Act. Thereafter the said election came to be challenged before the Prescribed Authority and the Prescribed Authority vide order dated 24.8.2007 set aside the election dated 30.9.2004. The order of the Prescribed Authority goes to indicate that without getting the approval from the Chairman of the Screening Committee, 267 members were enrolled by the Screening Committee and therefore the said enrollment was illegal for want of approval from the Chairman and further the new members were enrolled on 29.12.2001, 29.1.2002, 11.7.2002 and 30.7.2002 on the recommendation of the Standing Committee. The entire order passed by the Prescribed Authority does not indicate any other ground except that there was no approval from the Chairman in regard to enrollment of members by the Screening Committee.

20. Although an argument has been put forward that the action of the Standing Committee required approval from the Executive Committee and in absence of any approval from the Executive Committee the action of the Screening Committee was illegal, for appreciating this controversy one has to advert himself to the byelaws of the Council which have been placed on record. From a perusal of the byelaws of the Council, it is clear that byelaw 12 of the Council confers general control of the affairs of the Council in the Executive Committee to be the governing body of the Council.

21. Byelaw 1S reads as under:

"The Executive Committee shall be empowered to set up Committees and SubCommittees for conduct of business of the Council and delegate its powers and functions to such Committees and subCommittees and to any of its Officers, except those which are required to be performed by the Executive Committee itself under these rules."

22. Byelaw 17 provides that the Executive Committee shall be empowered to regulate its own procedure and the procedure of the Committees and SubCommittees set up by it and to specify the functions to be performed by the office bearers and the officers of the Council.

23. Byelaw 22 deals with the constitution of the Standing Committee, which provides that Executive Committee shall appoint a Standing Committee of not

exceeding 15 from amongst its Members, including the office bearers for a period of two years to look after the day to day work of the Council.

24. Byelaw 23 deals with the Standing Committee, which reads as under:

"The Standing Committee shall exercise such "powers and perform such unction"s as are laid down in these rules or the Standing Orders. In addition, the Executive Committee may, by resolution, delegate to the Standing Committee any of its powers and functions under the rules, save and except those which are required to be performed by the Executive Committee itself under these rules."

25. Byelaw 24 confers power upon the Standing Committee to appoint adhoc subcommittees for such purposes as it may think appropriate provided that Standing Committee shall receive for its own consideration the report of the SubCommittee. The said byelaw reads as under:

"The Standing Committee shall have powers to appoint ad hoc SubCommittees for such purposes as it may think appropriate, provided that Standing Committee shall receive for its own consideration the reports of the work of such SubCommittee."

26. Under byelaw 24 the requirement of seeking approval is not apparent and it only provides that the Standing Committee shall receive for its own consideration the report of SubCommittees.

27. No other byelaw has been pointed out by the learned counsel for opposite party No. 4 to give authenticity to his argument that the actions of the Standing Committee are required to be approved by the Executive Committee. Nothing can be read into an Act which is not otherwise provided. The golden rule of interpretation is that words should be read in their form and context as written and understood.

The byelaws of the Council only insist for creation of Committees or SubCommittees by the Executive Committee and the Standing Committee is also to be constituted by the Executive Committee and the Executive Committee can delegate to the Standing Committee any of its powers and functions under these rules. The finding of the Prescribed Authority that the enrollment of members by the Standing Committee required approval from the Chairman is not evident from any of the provisions of the byelaws. The Council comprises of Founder members, Life members, Honorary members, Representative members, Corporate members and Individual members. The petitioners have been enrolled as life members and byelaw 3(b) defines who may be the life members. The same reads as under:

"Life Members : Life members are those persons who are enrolled as such by the Standing Committee and who pay a minimum subscription of Rs. 300/"

28. If all the above byelaws are read conjointly, then from none of the provisions it comes out that approval from the Chairman is required after the members are

enrolled by the Standing Committee. However, the power to enroll is vested in the Standing Committee.

29. The learned counsel for the petitioners has also drawn the attention of the Court towards a meeting held on 16.10.2001 under the Chairmanship of His Excellency the Governor/Chairman and in item No. 8 of the said meeting in agenda No. 2 the Standing Committee has been constituted. A meeting of the Standing Committee was held on 16.10.2002, from which it is evident that certain members, who were enrolled on 28.1.2002 and 11.7.2002, were approved by the Standing Committee. Further meeting of the Standing Committee was held on 30.10.2003 and in the said meeting at agenda No. 7 the Screening Committee's report in regard to enrollment of membership dated 30.7.2003 and 1.8.2003 was accepted and approved. A meeting of the Executive Council was also held under the Chairmanship of His Excellency the Governor/Chairman on 30.1.2004 and in the said meeting action of the Standing Committee's meeting dated 30.10.2003 was approved by the Executive Committee. In the meeting of the Standing Committee dated 30.10.2003 the enrollment of members on 30.7.2003 and 1.8.2003 by the Standing SubCommittee was approved and the Executive Committee approved the action of the Standing Committee's meeting dated 30.10.2003. Thus, in my opinion, there was proper approval of the membership and the requirement under the byelaw being approved by the Standing Committee and the power being conferred on Standing Committee in regard to enrollment under byelaw 3(b), the inevitable conclusion is that all these 267 members were enrolled legally and no approval is required by the Chairman under the byelaws and so the finding recorded by the Prescribed Authority that in absence of approval from the Chairman the membership would be illegal, cannot be accepted.

30. Apart from the above legal position, learned counsel for the opposite party No. 4 has argued that an appeal lies to Chairman, His Excellency the Governor in regard to any dispute regarding membership and 24 members who were ousted by the Screening Committee filed an appeal before the Chairman His Excellency the Governor and the said appeal was allowed. So the finding of the Prescribed Authority that enrollment of membership by the Standing Committee requires approval from the Chairman is baseless, without any basis and against the provisions of the byelaws. The byelaw does not contemplate any approval from the Executive Committee. Byelaw 24 only requires the receiving of the report of the subcommittee in regard to work performed by subcommittees but approval from the Executive Committee as pleaded by the learned counsel for opposite parties does not find support from the byelaws of the Council.

31. Now I come to the legal position in such matters.

32. The learned counsel for the petitioners has relied upon 2005 (2) AWC1951, Managing Committee Shiksha Parishad, Nagawa, Ballia and another. Asstt. Registrar, Firms, Chits & Societies, Azamgarh and others, wherein no dispute was raised before the Prescribed Authority challenging the membership of the

petitioner under Section 25(1) of the Act and no opportunity of hearing was also given to the petitioner and so the order of the Prescribed Authority was set aside.

33. The Hon"ble Single Judge of this Court in a case reported in 2005 (2) AWC 2249, Committee of Management, Mahanth Vishwanath Yati Madhyamik Vidyalaya and another v. Prescribed Authority, A.D.M. and others has again considered the impact and import of the Division Bench and has observed in para 5 as under:

"So far as the issue with regard to maintainability of the present writ petition is concerned, it is true that the Division Bench of this Court has held that if an order has been passed by the Prescribed Authority after recording reasons and applying his mind to the fact and all relevant material on record with regard to present member of the general body, the aggrieved person can only seek remedy before the civil court of law. However, the said judgment does not lay down as proposition of law that even in the cases where the findings recorded by the Prescribed Authority are perverse and based on misreading of the provisions of the registered byelaws, no writ petition can be maintained."

34. But in para6 of the said judgment, the Hon"ble Single Judge has come to the conclusion that if any order is passed by the Prescribed Authority, which is perverse and based on misreading of the provisions of registered byelaws, this Court can always interfere with such a finding. For convenience, para 6 is quoted below:

"In opinion of the Court, Prescribed Authority is statutory authority and is under legal obligation to decide all issues after taking into account whether the dispute between the parties is genuine or not. If any order is passed by the Prescribed Authority, which is perverse and based on misreading of the provisions of registered byelaws, this Court can always interfere with such a finding. Accordingly, it is held that in case the order passed by the Prescribed Authority is perverse, the present writ petition as filed by the petitioner cannot be said to be not maintainable."

35. Therefore, the judgment reported in All India Council (supra) relied upon by the learned counsel for opposite party No. 4 will not stand as a complete bar for entertaining the present writ petition since the byelaw of the Council has been completely misread and on the basis of a perverse finding the 267 members have been ousted pleading approval from the Chairman although there is no such requirement under the byelaws for approval from the Chairman.

36. The learned counsel for the petitioners has further argued that Section 25(1) of the Act does not empower the Prescribed Authority to go into the question of validity of the members and only the validity of the election can be looked into. He has also argued that under Section 25(1) of the Act only corrupt practice has been pleaded but no instances of corrupt practices have been given. The argument of the learned counsel for the petitioners has some force and it has to be considered that when an election dispute is decided by the Prescribed

Authority, the Prescribed Authority can incidentally go into the question of validity of membership if specifically raised or he is supposed to remain a mute spectator with his hands tied over the question of issue of membership. There may be various situations where members would have been enrolled in clandestine manner illegally and without authority of law with a view to have upper hands in the election. The Prescribed Authority, in my opinion, has to certainly consider the question of membership if any election is held on the basis of such an enrollment. It may be that the Prescribed Authority may not undertake the issue of membership but if the challenge is based on the question of membership, then certainly the issue has to be undertaken on the basis of evidence adduced before the Prescribed Authority and thereafter a decision has to be given otherwise the validity of the election cannot be decided. If that argument is to be accepted, then the Prescribed Authority though may set aside an election but illegal members may continue to be on record. The argument of the learned counsel for the petitioners is, therefore, negatived.

37. The learned counsel for the petitioners has also relied upon certain decisions to give force to his argument in regard to maintainability of the petition reported in 1984 (1) SCC 391, *Nem Chandra Jain and Charan Singh and others v. Giani Zail Singh* and another to contend that if a petitioner has no locus standi to maintain the petition, none of his grounds of challenge are sustainable. The said issue does not arise in the present petition and the rigorous rules of pleadings do not apply in proceedings before the Prescribed Authority challenging election dispute.

38. It has also been submitted by the learned counsel for the petitioners that once the voter list was declared valid and the elections were held on the basis of said voter list, the election cannot be faulted on the basis of defective electoral roll. In support of his argument, the learned counsel has placed reliance upon *r* 1985 (4) SCC 722, *Indrajit Barua and others v. Election Commission of India and others*. In the said case, in paras 10 and 12 it has been observed as under:

"10. Challenge to the 1979 electoral rolls is on the basis that persons who are not citizens of India have been included in the electoral rolls. Infiltration of people from outside India into Assam and inclusion of their names in the electoral rolls constituted one of the main grounds for the agitation in Assam. Section 16 of the 1950 Act clearly provides that a person shall be disqualified for registration in an electoral roll if he is not a citizen of India. Detailed provision has been made in the Registration of Electors Rules to raise objection to the inclusion of the name of a disqualified person. Part III of the 1950 Act makes provision of electoral rolls for Assembly Constituencies. Section 21 deals with preparation and revision of electoral rolls; Section 22 provides for correction of entries in electoral rolls while Section 23 authorises inclusion of names in electoral rolls. Section 24 provides for an appeal to the Chief Electoral Officer from any order made by the Electoral Registration Officer under Sections 22 and 23. Section 21 making provisions for preparation and revision of electoral rolls

runs thus:

(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The said electoral roll

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date

(i) before each general election to the House of the People or to the Legislative Assembly of State; and

(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commissions:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3)****

The proviso, therefore, makes the position clear beyond doubt that if for some reason an electoral roll is not revised as required by subsection (2), the unrevised roll is not affected in any way and continues to be the electoral roll holding the field.

12. From the materials placed by the parties and the Election Commission, we have come to the conclusion that the Election Commission did not give directions contrary to the requirements of Section 16 of the Act and the revision of the 1979 electoral rolls could not be undertaken for reasons beyond the control of the Election Commission. As pointed out by us in our order of September 28, 1984, there was no dispute to the electoral roll of 1977 nor was any challenge advanced against the election of 1978 to the State Legislature held on the basis of such rolls. Admittedly, the 1979 rolls were the outcome of intensive revision of the rolls of 1977. That being the position and in view of the proviso to subsection (2) of Section 21 which we have extracted above the electoral rolls of 1979 were validly in existence and remained effective though the process contemplated in subsection (2) for revision had not neither been undertaken or completed. It has been indicated by a Constitution Bench decision of this Court in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, that preparation and revision of electoral rolls is a continuous process not connected with any particular election but when an election is to be held, the electoral roll which exists at the time when election is notified would form the foundation for holding of such election. That is why subsection (3) of Section 23 provides for suspension of any modification to the electoral roll after that last date of making of nominations for an election and

until completion of the election. We had, therefore, come to the conclusion that the electoral rolls of 1979 were not invalid and could provide the basis for holding of the elections in 1983. Whether preparation and publication of the electoral rolls are a part of the process of election within the meaning of Article 329 (b) of the Constitution is the next aspect to be considered. In *N.R. Ponnuswami v. Returning Officer, Namakkal Constituency*, this Court had to decide the amplitude of the term "election". *Fazal AH, J.* speaking for the Constitution Bench indicated:

It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage under the heading "Commencement of the Election":

39. Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is "reasonably imminent". Neither the issue of the writ nor the publication of the notice of election can be booked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any fixed criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when "the conduct and management of an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case.

40. The discussion in this passage makes it clear that the word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

41. We are not prepared to take the view that preparation of electoral rolls is also a process of election. We find support for our view from the observations of Chandrachud, C.J. In *Lakshmi Charan Sen* case that "it may be difficult, consistently with that view, to hold that preparation and revision of electoral roll, is a part of "election" within the meaning of Article 329(b). In a suitable case challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in *Ponnuswami* case. But the election of a candidate is not open to challenge on the score of the electoral roll

being defective. Holding the election to the Legislature and holding them according to law are both matters of paramount importance. Such elections have to be held also in accordance with a time bound programme contemplated in the Constitution and the Act. The proviso added in Section 22(2) of the Act of 1950 is intended to extend cover to the electoral rolls in eventualities which otherwise might have interfered with the smooth working of the programme. These are the reasons for which we came to the conclusion that the electoral roll of 1979 had not been vitiated and was not open to be attacked as invalid."

42. To the same effect is the case reported in 1985 (4) SCC 689, Lakshmi Charan Sen and others v. A.K.M. Hassan Uzzaman and others. Both the aforesaid judgments are Constitution Bench decisions but they are in different context. The law propounded in the aforesaid cases is to the effect if the electoral roll has not been revised that will not invalidate the election.

43. The next case relied upon by the learned counsel for the petitioners is reported in 1990 (2) SCC 173, LaxmiNarayan Nayakv. Ramratan Chaturvedi and others. This case has been relied upon to emphasize that the allegations made in the election petition should not be vague and the nature of pleadings should be very clear and specific. The allegations in regard to corrupt practice are quasicriminal in nature. The onus of proof of the allegations made in the election petition is on the person who assails an election. As I have already indicated in the earlier part of the judgment that strict rule of pleadings contemplated under the Representation of People Act do not apply in the proceedings under Section 25(1) of the Act and as these are summary proceedings and the procedure adopted by the Prescribed Authority must only be fair and reasonable. He is supposed to give adequate opportunity to the parties to adduce evidence and that having been done the decision cited by the learned counsel for the petitioners is not applicable in the present proceedings.

44. In the case reported in AIR 1998 All 386, Committee of Management Madrasa Islamia and another v. Asstt. Registrar, Firms, Societies and Chits, Varanasi and others it has been held that once the Assistant Registrar after giving opportunity of hearing to the rival parties has come to the conclusion that the election was valid, the reference to the Prescribed Authority was not necessary but in the present case the matter has been referred to the Prescribed Authority with the leave of the Apex Court and the proceedings have ensued after the withdrawal of the SLP by giving undertaking and so this case is also not applicable in the facts and circumstances of the present case.

45. The next case reported in 2006 (24) LCD 1078, Fahim Ahmad and another v. State of Uttar Pradesh and others has been relied upon to emphasize that the Registrar has got no power to rescind or modify the order passed by the Dy. Registrar or the Assistant Registrar while discharging the statutory duties. The Registrar does not possess the appellate power under the Act. The power to recall is not circumscribed under the Act and as such the order has been rightly recalled by the Registrar staying the election.

46. The election programme has been notified and therefore at this juncture it would not be proper for this Court to give any finding in regard to validity of the membership of 267 persons ousted under the orders of the Prescribed Authority. Since the very basis of the ouster of the 267 persons is the order of the Prescribed Authority and as I have already held that the order of the Prescribed Authority suffers from manifest illegality and perversity, the only proper remedy available to the petitioners would be to approach the appellate authority i.e. the Chairman who may take a decision in regard to the validity of the membership of 267 persons who have been ousted on the strength of the order of the Prescribed Authority dated 24.8.2007.

47. The argument of the learned counsel for opposite party No. 4 that at the behest of Registrar election were stayed on 29.9.2004 but on the very same day in the evening the order was withdrawn and the elections were held on 30.9.2004 is answered by saying that the order was recalled on the representation of certain members forming group of 267 members. It was recalled as Registrar was having no power to recall his order and, therefore, the said order was recalled by the Registrar and elections were held.

48. On a consideration of the aforesaid reasoning, the order of the Prescribed Authority dated 24.8.2007 cannot be sustained.

49. In the result, this writ petition is allowed and the order of the Prescribed Authority dated 24.8.2007 is hereby set aside. In order to facilitate the process of election, any order can be passed in the interregnum period when the election process is on and, in my opinion, since in this case an extraordinary situation has arisen by virtue of the fact that the order of the Prescribed Authority has been set aside by this Court and the factual aspect in regard to enrollment of the members can only be looked into by the Chairman, this Court feels it appropriate that the matter be placed before the Chairman, who is expected to take a decision, if possible before the holding of the election, in regard to the validity of the membership of 267 persons and if the petitioners are held to be valid members then they shall have a right to participate in the election.