
(2015) 04 AHC CK 0267
In the Allahabad High Court
Case No : Special Appeal (D) No. 261 of 2014

Vijay Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 4

Citation : (2015) 113 ALR 114

Hon'ble Judges : Rajiv Sharma and Rakesh Srivastava, JJ.

Bench : Division Bench

Advocate : Vishal Singh, for the Appellant; Chandra Bhushan Pandey and Rohit Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma and Rakesh Srivastava, JJ.

1. At the outset, learned Counsel for the opposite parties submits that they have no objection in case delay in filing the appeal is condoned and the appeal is heard finally. Since cause shown in the affidavit filed in support of application for condonation of delay in filing the appeal is satisfactorily explained, as such, CM. Application No. 48461 of 2014 (application for condonation of delay) is allowed and the delay is condoned.

2. With the consent of learned Counsel for the parties, we proceed to hear the appeal finally.

3. Heard learned Counsel for the parties to the lis and perused the record.

4. The instant special appeal arises out of the judgment and order dated 9.12.2013 passed in Writ Petition No. 7513 (M/S) of 2013, whereby the learned Single Judge dismissed the writ petition.

5. According to the appellant, the election of Society, namely, Kalakar Association

Lucknow, registered under the Societies Registration Act, 1860, was held on 21.12.2012. On account of some irregularities in conducting the said election, the appellant had approached the Registrar, Firms, Societies and Chits, Lucknow by filing an election petition and requested the Registrar to refer it to the Prescribed Authority. The Registrar, instead of referring the matter to the Prescribed Authority, passed an order dated 1.2.2013, wherein it has been indicated that the writ petitioner/appellant can get relief only from the High Court on the points which have been raised by him in the election petition.

6. Not being satisfied with the order dated 1.2.2013, writ petitioner/appellant has approached this Court by filing writ petition No. 1196 of 2013 (M/S). Learned Single Judge, after hearing the parties and examining the materials on record, vide judgment and order dated 19.3.2013, allowed the writ petition partly and quashed the order dated 1.2.2013 with the direction to the Registrar, Firms, Societies and Chits, Lucknow to take appropriate fresh decision on the application/election petition No. NIL of 2012 dated 24.12.2012 contained in Annexure No. 16 to the writ petition, in accordance with law and pass necessary orders.

7. In compliance of the judgment and order dated 19.3.2013, the Registrar had considered the application preferred by the appellant/writ petitioner and rejected it vide order dated 12.8.2013. Feeling aggrieved, the writ petitioner/appellant has again approached this Court by filing another writ petition, namely, writ petition No. 7513 (M/S) of 2013 and the learned Single Judge, vide judgment and order dated 9.12.2013, dismissed the writ petition.

8. Hence the instant special appeal.

9. Mr. Vishal Singh, learned Counsel for the appellant submits that the order of any person or authority limiting the right to vote of election by certain person can be challenged before the competent authority or Court. The defective electoral roll can also be challenged before the competent authority or by filing a regular suit. There is no bar under the law to challenge the defective electoral roll as it affects the outcome of election. Sub-clause (c) of sub-section (1) of section 25 of the Societies Registration Act provides that in case the result of any election is materially affected by the improper refusal or rejection of any vote or by non-compliance with the provisions of rules of the society, then the dispute can be referred to the prescribed authority by the Registrar. The Explanation I of section 25 of the Act further provides that in case there is fraud, intentional misrepresentation of facts or to do a certain thing which may amount to corrupt practice may also be a ground for dispute before the Registrar. Accordingly, after the declaration of the result, the appellant has challenged the outcome of the election including the alleged faulty electoral roll but instead of referring the dispute to the Prescribed Authority, the Register had passed an order dated 1.2.2013, wherein it has been indicated that the writ petitioner/appellant can get relief only from the High Court on the points which have been raised by him. Feeling aggrieved, the writ petitioner filed writ petition No. 1196 of 2013 (M/S).

The learned Single Judge, after considering section 25 of the Act, allowed the writ petition and remitted the matter to the Registrar to pass appropriate order on the election petition. Again instead of passing orders in light of the order of learned Single Judge, the Registrar did not refer the matter to the Prescribed Authority and itself decided it by holding that there is no question to refer the matter to the Prescribed Authority being not in consonance of the provisions of section 25 of the Act and the Rules framed thereunder.

10. Elaborating his submission, Mr. Singh has submitted that the learned Single Judge, while passing the impugned order, has erred in observing that since writ petitioner himself participated in the election process after the final list of electoral was declared without any objection and as such, he lost his right to challenge the same on the ground that the list was not properly constituted. His submission is that mere participation in the election cannot be a ground for not allowing the appellant to challenge the election. Therefore, the findings recorded by the learned Single Judge while dismissing the writ petition is per se illegal and hit the provisions of section 25 of the Act.

11. Per contra, Mr. C.B. Pandey, learned Counsel for the respondents submits that during the election process, the appellant has not raised any objection or file any petition challenging the election process but after completion of the election process i.e., after declaration of result, in which the appellant participated and was declared unsuccessful, has questioned the election result before the Registrar by filing election petition. The Registrar, after considering all the facts and circumstances, has rightly passed the order, rejecting the plea of the writ petitioner for referring the matter to the Prescribed Authority. The said order of Registrar was challenged by the appellant by filing writ petition, which was rightly dismissed by the learned Single Judge vide impugned order. Thereafter, there is no illegality and infirmity in the impugned order.

12. We have heard learned Counsel for the parties and peruse the record.

13. Under section 25 of the Societies Registration Act, wide power has been given to the Registrar to refer an election controversy to the Prescribed Authority for adjudication which seems to include the dispute relating to electoral process. For reference, section 25 of the Societies Registration Act is reproduced as under:

"25. Disputes regarding election of office-bearers.--(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit:

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

(a) that any corrupt practice has been committed by such office bearers; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far it concerns such office bearer has been materially affected by the improper acceptance of any nomination or by the improper reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

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

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;

(ii) with a view to inducing any elector to vote or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand, as or to withdraw or not to withdraw from being, a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in Clauses (i) and (ii);

(iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II.--A "promise of individual advantage or profit to a person" includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Explanation III.--The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society.

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

meeting and election with necessary modifications.

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

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

14. A plain reading of section 25 referred hereinabove indicates that almost all the controversies relating to election dispute may be referred to the Registrar of the Society which affects the outcome of the election. Sub-clause (c) of sub-section (1) of section 25 of the Societies Registration Act provides that in case the result of any election is materially affected by the improper refusal or rejection of any vote or by non-compliance with the provisions of rules of the Society, then the dispute is to be referred to the Prescribed Authority by the Registrar of the Society. The Explanation I of section 25 of the Act further provides that in case there is fraud, intentional misrepresentation of facts or to do a certain thing which may amount to corrupt practice can also be a ground for dispute before the Registrar. Sub-section (2) of section 25 of the Societies Registration Act further provides that in case the election is set aside under sub-section (1) of section 25 of the Act or in case the office-bearers are no longer entitled to continue in office and the election has not been held within the specified time provided under the rules of the society, then, the Registrar has got power to call a meeting of the general body of the society for electing new office bearers of the society. Sub-section (3) of section 25 of the Act further creates a bar and prohibits by providing that in case the Registrar proceeds to call for a meeting of the general body in pursuance to the power conferred by sub-section (2) of section 25 of the Act, then any other meeting shall not be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the society.

15. The law emerges from the discussion made hereinabove is that once the election process is started which includes the preparation of electoral roll, then ordinarily High Court should not invoke extraordinary jurisdiction under Article 226 of the Constitution of India and the aggrieved party shall have a right to challenge the outcome of the election in pursuance to the provisions contained in the Societies Registration Act or any other law time being enforced. The outcome of the election may also not be impugned under extraordinary jurisdiction of Article 226 of the Constitution of India in case the remedy to file an election petition or any other remedy under the Act or Statutes is available to an aggrieved person.

16. In the instant case, as referred hereinabove, the appellant had preferred election petition challenging the election dated 21.12.2012 before the Registrar. However, the Registrar, instead of referring it to the Prescribed Authority, has

passed an order dated 1.2.2013, whereby it is said that the appellant can get relief only from the High Court on the points, which have been raised by him in the election petition. Feeling aggrieved, the appellant approached this Court under Article 226 of the Constitution of India by filing writ petition No. 1196 (M/S) of 2013. Learned Single Judge, after hearing the learned Counsel for the parties and analyzing the provisions of section 25 of the Act, recorded specific finding that in case the appellant had preferred the election petition challenging the election held on 21.12.2012, the Registrar was required to apply its mind and take a decision for referring the matter to the Prescribed Authority for deciding any doubt or dispute in the matter. In these backgrounds, learned Single Judge, vide order dated 19.3.2013, allowed the aforesaid writ petition; quashed the order dated 1.2.2013; and remitted the matter to the Registrar to take appropriate fresh decision on the application/election petition No. NIL of 2012 dated 24.12.2012, in accordance with law and pass appropriate orders.

17. From perusal of the order impugned in the writ petition, it comes out that the Registrar, in compliance of the judgment and order dated 19.3.2013, though noted the fact that the appellant/applicant has prayed in the election petition dated 24.12.2012 that election of the Society held on 21.12.2012 be quashed in view of the provision of section 25(1) of the Act and election of valid members of the Society be directed to be held, but the Registrar, instead of referring the dispute raised in the election petition to the prescribed authority as provided under section 25 of the Act, had rejected the plea of the appellant on the grounds that since after conducting election of delayed Committee of Management under section 25(2) of the Act, in which appellant himself participated in the election and was declared unsuccessful, had filed the election petition dated 24.12.2012, therefore, there is no occasion to entertain the election petition under section 25(1) of the Act.

18. Submission of the learned Counsel for the appellant is that against the order dated 12.8.2013, the appellant had filed writ petition No. 7513 (M/S) of 2013, stating specifically therein that the dispute raised by the appellant in the election petition can only be settled through summary proceeding before the Prescribed Authority but the Registrar, while passing the order dated 12.8.2013, usurped the powers of the Prescribed Authority and passed the order dated 12.8.2013 in a mechanical and cursory manner, therefore, the act of the Registrar in itself deciding the dispute is arbitrary illegal and complete non-application of mind and also against the statute. But surprisingly, the learned Single Judge dismissed the writ petition vide order dated 9.12.2013, observing therein that there was no election dispute and as such, the matter could not have been referred under section 25(1) to the Prescribed Authority. His submission is that the question relating to faulty electoral roll or the outcome of the election under the Societies Registration Act may also not be a ground for interference under extraordinary jurisdiction of this Court. The outcome of the election under the Societies Registration Act may be interfered at the time of renewal of the society under sections 3A, 3-B read with section 4 of the Societies Registration Act or under

section 25 of the Societies Registration Act, as the case may be. Thus, the learned Single Judge erred in dismissing the writ petition.

19. In contrast, the submission of learned Counsel for the respondents is that since the appellant had not raised any plea during the election process and after declaration of result, in which he was declared unsuccessful, he had questioned the election result, therefore, the Registrar has rightly rejected the election petition and the learned Single Judge, after taking into consideration entire facts and circumstances of the case, has rightly dismissed the writ petition.

20. From the above discussion and careful scrutiny of the facts and circumstances of the case, one thing is clear that learned Single Judge as well as the Registrar had rejected the plea of the appellant only on the ground that there is no election dispute and the appellant had preferred the election petition only when he got a defeat in the election. In our opinion, in the facts and circumstances of the case, it is established that there is a bona fide dispute in respect of the election and the Registrar could not have decided the same on his own. The Registrar was under legal obligations to refer the dispute for adjudication under section 25(1) of the Societies Registration Act as has been repeatedly held by this Court in series of judgments like Committee of Management, Arya Kanya Inter College, Secundra Rau, Aligarh Vs. Secretary, Arya Kanya Inter College, Secundra Rau, Aligarh and others, and Sita Ram Rai and Others Vs. Additional Registrar, Firms, Societies and Chits, and Others, . The relevant portion of the judgment in the case of Sita Ram Rai (supra) read as follows:

"The election disputes, if any, including validity of members entitled to vote can only be decided under section 25(1) by the prescribed authority and that any person aggrieved thereafter has a right to approach Civil Court."

21. No provision has been shown which debars a person who has participated in the election from questioning the correctness of result of an election. A perusal of the record reveals that the appellant has raised objection regarding correctness of list of 249 members but it was ignored by the respondents on whims. Normally, the membership dispute is decided prior to commencement of election. Thus, the order passed by the Registrar, Firms, Societies and Chits, is wholly non est and bad in law. Therefore, the learned Single Judge has erred in dismissing the writ petition.

22. The Registrar, Firms, Societies and Chits, Lucknow Division, Lucknow, is directed to refer the dispute for adjudication to the Prescribed Authority under section 25(1) of the Societies Registration Act within one month from the date a certified copy of this order is produced before him. It is further provided that the Prescribed Authority shall proceed to decide the dispute so referred within four months after affording opportunity of hearing to the parties and exchange of documents within a maximum period of three months from the date of such reference. For the reasons aforesaid, the special appeal is allowed. The order

dated 9.12.2013 passed by the learned Single Judge and the order dated 12.8.2013 passed by the Registrar, Firms, Societies and Chits, Lucknow are hereby set-aside and the writ petition No. 7513 (M/S) of 2013 stands allowed in above terms.