
(2009) 11 UK CK 0026
In the Uttarakhand High Court

V.P. Vaish

APPELLANT

Vs

The Deputy Registrar and Others

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 25(1), 35

Citation : (2009) 11 UK CK 0026

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. M.C. Pande, Advocate for the petitioner and Mr. K.P. Upadhyay, Addl. Chief Standing Counsel for State of Uttarakhand/respondent No. 1, 2 and 5. None appears on behalf of respondent No. 3 and 4.

2. This writ petition was filed by the petitioner in the year 1997 in the High Court of Judicature at Allahabad and after the creation of the State of Uttarakhand, it has been transferred to this Court u/s 35 of the Uttar Pradesh Reorganisation Act, 2000. It is an extremely old matter and therefore, must not remain on the Board.

3. The petitioner was a secretary of a Society namely Kanhaiya Lal D.A.V. College, Roorkee at Haridwar. He is challenging the order of the prescribed authority i.e. S.D.M., which has been passed u/s 25(1) of the Societies Registration Act, 1860 as it is applicable to the State of U.P. Apart from this, the petitioner has also prayed for a writ of Mandamus commanding the respondents not to interfere in the functioning of the petitioner as a Secretary of the said society.

4. The brief facts of this case are that there is a society in Roorkee, Haridwar, which was established in the year 1962 and registered on 31st March, 1962 under the Societies Registration Act, 1860. The main purpose of the society was to provide means for giving scientific education of a higher standard to the

youngmen of neighbourhood and to make students good citizens of the State and useful to the society. The petitioner was elected for the first time as a Secretary of this Society in the year, 1987, for a period of three years. Thereafter the term of the petitioner came to an end in the year, 1990, and he was again elected for a further period of three years. Thereafter when the second term came to an end in the year, 1993, the term of the petitioner was not extended, meaning thereby he was not elected further and in place of the petitioner, respondent No. 3 Sri Surendra Kumar was elected as a Secretary of the Society. It is this election of respondent No. 3, which the petitioner is presently challenging. Since a dispute was raised by the petitioner, the matter was referred by the Registrar to the Prescribed Authority and the Prescribed Authority consequently adjudicated upon the matter and passed an order on 10th March, 1997 rejecting the objection of the petitioner and holding that there was no anomaly in the election of respondent No. 3 as a secretary of the Society. Against this order, the petitioner has filed this writ petition.

5. The main ground for challenging the order of the Prescribed Authority and in fact the election of respondent No. 3 by the petitioner is that the bylaws of the society clearly stipulate that the appointment of the office bearers shall be for lifetime. Clause (2) of the Memorandum of Association on which the petitioner relies upon, reads as under:

The constitution of the committee. The committee constitutes of persons named in the memorandum of Association. These members will continue to hold office during their lifetime.

6. Further, the Memorandum of Association states that the Committee of Management shall have not less than ten and not more than fifteen members and following office bearers shall be the members of the committee:

A) President

B) Vice President

C) Secretary.

7. Apart from the above, there are other Ex-office members i.e. Principal, one member nominated by Agra University and one teacher by rotation according to seniority.

8. The petitioner contends that since the byelaws of the society clearly stipulate that the members of the Management Committee shall continue to hold their office for lifetime, the petitioner was liable to continue as a secretary of the society for his lifetime and the election of respondent No. 3 being dehors the rules, is not valid. Since this is the core issue raised by the petitioner, the same is being adjudicated by this Court as below:

9. First and foremost in such societies making the post of the office bearers for lifetime is ordinarily unheard of. It is a settled principle of law that the principles

governing a society, which is registered under the Societies Registration Act shall be the same as it relates to a club or any other democratically run institution. Therefore, to contend that an office bearer of a Management Committee shall continue for lifetime does not appear to be reasonable. Secondly, even if it is assumed for the sake of argument that the provision in the byelaws making office bearers for life are valid byelaws as they have been registered, the same shall be applicable in the case of the present petitioner inasmuch as the byelaws clearly state that the committee constitutes of persons ?named in the memorandum of Association?, meaning thereby only those persons shall continue to hold office for their lifetime, who have been named in the Memorandum of Association i.e. the members as they were elected or nominated in the year, 1962 and their names went with the memorandum of association for registration. In other words, the provision was applicable only for the original and founder office bearers. The petitioner was not one of them as he was elected, for a period of 3 years for the first time in the year 1987. It is only logical that when an office bearer resigns or passes away then consequent to such a contingency an election or nomination of another member has to be made to fill that vacancy. Therefore the continuation of office bearer for lifetime, even if it was applicable was applicable only for those persons who were named in the Memorandum of Association when it was registered on 31.3.1962 i.e. the founder office bearer. It is an admitted case that the petitioner was not an office bearer at the time when the Society was registered in the year 1962. Therefore, in any case, the provision on which the petitioner so heavily relies upon will not be applicable in his case.

10. Thirdly, it is also an admitted case that petitioner was elected as a Secretary of the Society for the first time on 17.8.1987 when the said post was vacated by resignation of the erstwhile Secretary namely Mr. Raghukul Tilak. It is again an admitted case that when the petitioner was first elected on 17.8.1987, he completed his term and his term came to an end on 16.8.1990. Meaning thereby that the petitioner accepted to hold the post of Secretary with his eyes and ears open and fully understanding that he shall be on this post for only three years. He did not agitate or move any objection that the term would be applicable for life in his case as well. Consequently, before his term could come to an end, his term was extended for another three years by meeting of the Management Committee on 12.8.1990. However, when this term had come to an end on 16.8.1993, his term was not extended and instead of the petitioner, respondent No. 3 was elected as a Secretary, the petitioner quickly raised a dispute, that he is actually the Secretary of the Society for lifetime! Now this is wholly inappropriate.

11. Once the petitioner had accepted the term for three years not once but twice, it is not open for the petitioner at a later stage to rake up this issue and raise the grounds that the office of the Secretary is for lifetime. This argument does not stand on its legs and is wholly misconceived. It has also been held by this Court that even if it is assumed that such a provision is correct, it would not be applicable in the case of the present petitioner.

12. Moreover, there is another aspect to this, which is that the Committee of Management have got powers under Clause 5 (h) of the byelaws to remove any of the office bearers by majority of not less than half the members of the committee for the time being in case of misuse of powers, etc. Since the Committee of Management do have powers to remove the office bearer, by implication it can also be said that the petitioner has been removed under the Clause which gives power to the Management Committee to remove the petitioner inasmuch as once the term has not been extended, it would amount to his removal more particularly since respondent No. 3 has been elected as a new Secretary of the society.

13. The Prescribed Authority after giving full hearing to the petitioner and respondent No. 3 has come to the conclusion that the petitioner was only elected on the post for a period of three years and had earlier never objected to it, therefore, at this stage to raise grounds when he is not elected that he was elected for lifetime is wholly illogical and therefore, there is no anomaly in removing the petitioner or electing respondent No. 3 as Secretary of the Society. The prescribed Authority has rightly rejected the objection of the petitioner and has held the election of respondent No. 3 to be valid.

14. It has come in the order of the Prescribed Authority itself that during the pendency of the matter before the prescribed authority, the term of respondent No. 3 has also come to an end and new incumbent has come as a Secretary of the society w.e.f. 17.8.1996. This Court has also been informed by Mr. M.C. Pande, learned Counsel for the petitioner that consequent to the election in the year, 1993, the byelaws of the society have also been amended and a provision has been made in the byelaws for holding periodic elections for the office bearers.

15. In the opinion of this Court, there is no ground for interference in the present writ petition. The grounds raised by the petitioner are wholly misconceived and the writ petition is liable to be dismissed and is being dismissed as such. No order as to costs.