

(2013) 05 AHC CK 0201**Allahabad High Court**

Case No: Civil Miscellaneous Writ Petition No. 18636 of 2013 & With Civil Miscellaneous Writ Petition No. 36634 of 1997

Committee of Management
Shiksha Parishad Nawa District
Ballia and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 7, 2013

Acts Referred:

- Societies Registration Act, 1860 - Section 15, 25(1), 25(2), 4

Hon'ble Judges: Arun Tandon, J

Final Decision: Dismissed

Judgement

Arun Tandon, J.

Heard Sri G.K. Singh, Advocate on behalf of Brikesh Kumar Pathak and the faction led by him, Sri Rajeev Mishra, Advocate on behalf of Pradeep Kumar Pathak and the faction led by him and the Standing Counsel on behalf of respondent nos. 1 to 4.

Sri Rajeev Mishra, counsel for the applicant seeking impleadment, namely Madan Mohan Pandey in both the writ petition has informed the Court that Rama Shankar Singh and Amar Nath Mishra have been expired.

Shiksha Parishad, Nagwa, District Ballia is a society duly registered under the Societies Registration Act. The society runs and manages an institution in the name and style of Shaheed Mangal Pandey Inter College, Nagwa, Ballia. The society has been running the institution peacefully till the issuance of an order by the Assistant Registrar dated 23.04.1977, whereby 6 societies were amalgamated. The order of amalgamation was withdrawn on 25.08.1992. At this stage three sets of claims for renewal of the registration of the original society were set up by (a) Nagendra Kumar Pathak (in short N.K. Pathak), (b) Shambhu Narayan Pathak (in short S.N. Pathak) and (c) Pradeep Kumar Pathak (in short P.K. Pathak).

Writ Petition No. 32640 of 1992 was filed by one Manager Singh challenging the order of Assistant Registrar, whereby amalgamation was withdrawn. The writ petition was allowed on 21.07.1993 and the matter was directed to be examined by the Assistant Registrar afresh. The Assistant Registrar under order dated 04.04.1995 held that the amalgamation was bad. He proceeded to renew the registration of the original societies. An appeal was filed against the said order by Amar Nath Mishra before the Commissioner, which was allowed vide order dated 23.08.1995 and the matter was remanded to the Assistant Registrar. This resulted in Writ Petition No. 26515 of 1995 being filed by N.K. Pathak. Another Writ Petition No. 29192 of 1995 was filed by Amar Nath Mishra against the order of the Assistant Registrar dated 04.04.1995 holding the amalgamation to be bad.

Both the writ petition were clubbed and decided under a common judgment dated 07.12.1995. writ petition challenging the order of the Assistant Registrar dated 04.04.1994, holding the amalgamation to be bad, was dismissed, while the writ petition challenging the order of the Commissioner dated 23.08.1995 was allowed and his order was set aside. Meaning thereby that the order of revocation of amalgamation stood affirmed up to High Court.

Against the said order dated 07.12.1995 an special appeal was filed by Amar Nath Mishra, being Special Appeal No. 22 of 1996, which was dismissed by the Division Bench on 28.10.1997. The chapter of amalgamation stood closed accordingly.

However, the Assistant Registrar on 10.07.1997 passed an order for renewal of the registration of the society in favour of N.K. Pathak. This resulted in filing of two writ petitions, one being Writ Petition No. 26526 of 1997 by N.K. Pathak for the list of general body members being supplied by the Assistant Registrar and other being Writ Petition No. 27754 of 1997 by Amar Nath Mishra for registration of the list of office bearers under Section 4 of the Societies Registration Act. Both the writ petitions were decided under the different orders but with the same direction that the matter may be examined by the Assistant Registrar.

Before the Assistant Registrar there were three list, one submitted by N.K. Pathak, second by Amar Nath Mishra and third by P.K. Pathak. The Assistant Registrar vide order dated 13.10.1997 held that the list submitted by Amar Nath Mishra was the valid list of members of the general body and forwarded the same to the District Inspector of Schools for holding fresh elections.

Sri N.K. Pathak filed Writ Petition No. 36634 of 1997 challenging the order of the Assistant Registrar dated 13.10.1997. This writ petition was allowed on 08.12.2004 and the order of the Assistant Registrar dated 13.10.1997 was set aside. Not being satisfied Amar Nath Mishra filed Special Appeal No. 50 of 2005, which was allowed on 10.02.2009. The order of the Single Judge has been set aside and the writ petition has been restored to its original number. This writ petition has been placed before this Court today for hearing.

In between it appears that N.K. Pathak made a complaint before the Assistant Registrar pointing out that the meetings, on the basis whereof the order dated 13.10.1997 was passed by the Assistant Registrar, themselves were forged. The Assistant Registrar, acting on the said complaint, directed an enquiry. After getting handwriting verified from the Hand Writing Expert, he came to a conclusion that the basis for passing of the order dated 13.10.1997 were nonexistence being based on forged proceedings of the body concerned. He accordingly passed an order on 09.11.1998.

It is clarified that the various proceedings, which had taken place in between, have not been reproduced, as they are of not much relevance. Filing of the first information report and filing of final report will not in any way conclude the matter either way.

However, despite the said findings, the order dated 13.10.1997 was not interfered with. This resulted in fresh writ petition being filed by N.K. Pathak, being Writ Petition No. 148 of 2004 and 2139 of 2004, which have been decided and the matter was directed to be examined by the Registrar. The Registrar vide order dated 11.03.2008 for the first time held that the order passed by the Assistant Registrar dated 13.10.1997 was bad because being based on proceedings which were fraudulent.

This order dated 11.03.2008 passed by the Registrar has been recalled under the impugned order dated 20.03.2013 on the ground that the earlier order dated 11.03.2008 was based upon the order of the High Court dated 08.12.2004 passed in Writ Petition No. 36634 of 1997, which order does not subsist in the eyes of law in view of the order passed in Special Appeal No. 50 of 2005. It is against this order that the second writ petition has been filed.

From the history of litigation, as noticed herein above, this Court has no hesitation to record that the issue of membership of the general body of the society could not be finalized because of repeated litigations for last more than 16 years. The dispute must be resolved at some point of time and in my opinion the stage has been reached. The society and the institution cannot be permitted to suffer prolong litigation thereby jeopardizing the very growth of the institution.

From what has been noticed above, it is apparently clear that the Assistant Registrar has been examining the issue of valid members of the general body without there being any such provision under the Societies Registration Act. Section 15 of the Societies Registration Act deals with the member of the general body and contemplates that any person, whose name is recorded in the register maintained for the purpose and whose membership fee has been deposited and has not been removed from the membership, will be a valid member of the general body entitled to participate in the elections. There is no other provision authorizing the Assistant Registrar to look into the correctness or otherwise of the members entitled to

participate in the elections. There is one rider to the aforesaid general proposition i. e. when the Assistant Registrar proceeds to hold fresh elections under Section 25(2) of the Societies Registration Act, inasmuch as while holding fresh elections of the office bearers of the society it is but necessary that valid electoral college be determined first. Therefore, power to hold the fresh elections includes the power to determine the electoral college.

This Court is of the opinion that the litigation between the parties must be brought to an end and it would be appropriate in the facts of the case that the fresh elections of the office bearers of the society in the name and style of Shiksha Parishad, Negwa be got conducted by the Assistant Registrar himself under Section 25(2) of the Societies Registration Act.

Accordingly, following directions are being issued:

The Assistant Registrar shall issue orders for holding fresh elections under Section 25(2) of the Societies Registration Act. For the purposes of said elections he shall publish a tentative list of members entitled to participate in the elections which shall include the names of members as the list supplied by Brikes Kumar Pathak as well as by Sri Pradeep Kumar Pathak. Notices shall be published in the newspaper as well as on the notice board of the institution inviting objections to the said tentative list. The petitioners as well as any other member of the general body will have a right to file objections. The objections, if any filed, shall be decided by means of a reasoned order. This exercise shall be completed by the Assistant Registrar within four weeks of the receipt of the certified copy of this order. After the electoral college is determined, he shall publish an agenda for holding the elections which shall take place within one month of the finalization of the electoral college. Any person aggrieved by the electoral college or from the elections so held will be at liberty to approach the Prescribed Authority under Section 25(1) of the Societies Registration Act after the elections are over and not at any stage prior to it. All the consequential action shall be taken immediately thereafter.

With the aforesaid observation/direction both the writ petitions are disposed of.

It is further clarified that the Assistant Registrar shall not be influenced by any of the findings recorded in the order dated 13.10.1997, dated 11.03.2008 and dated 20.03.2013. He shall decide the issue of membership on the basis of the evidence to be produced by the parties having due regard to the provisions of the byelaws of the society. It is clarified that any election held in between shall also not prejudice the decision in respect of the issue of membership, as indicated above.