
(2005) 1 AWC 99

Allahabad High Court

Case No: C.M.W.P. No. 34977 of 2004

Committee of
Management, Shiksha
Pracharini Sangh and
Another

APPELLANT

Vs

Assistant Registrar,
Firms, Societies and
Chits and Others

RESPONDENT

Date of Decision: Sept. 14, 2004

Acts Referred:

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

Citation: (2005) 1 AWC 99

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: H.K. Singh, for the Appellant; A.S. Diwakar and P.K. Singh, S.C., for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon, J.

Heard Sri H.K. Singh, learned counsel for the petitioners, Sri A.S. Diwakar, learned counsel for the respondent No. 4 and learned standing counsel for the respondent Nos. 1 to 3.

2. The Committee of Management of Shiksha Pracharini Sangh, Isari Salempur, Ballia, which is a society duly registered under the Societies Registration Act, 1860 (hereinafter referred to as the Act) through its alleged Secretary/Manager Sri Jaishankar Singh has filed this writ petition against the order of the Assistant Registrar, Firms, Societies and Chits, Azamgarh, dated 11th August, 2004, whereby the Assistant Registrar has provided for fresh elections of the office bearers to be held in accordance with the provisions of

Section 25(2) of the Act by the Assistant Registrar and the electoral college in respect of the aforesaid elections has also been determined.

3. On behalf of the petitioners it is contended that the aforesaid order of the Assistant Registrar is not in conformity with the provisions of Section 25(2) of the Act inasmuch as the Assistant Registrar has not recorded any finding with regard to the elections set up by the petitioners of the years 1993, 1997, 2000 and 2003. No authority has declared the same is illegal and consequently it cannot be said that valid elections of the Committee of Management have not taken place within the specified time. It is further contended that the Assistant Registrar has no jurisdiction to determine the voter list in view of the Division Bench judgment of this Court dated 5th March, 1990 passed in Civil Misc. Writ Petition No. 21398 of 1987, Ram Nath Shukla and Anr. v. Assistant Registrar, Firms, Societies and Chits, Varanasi and Ors.

4. The contentions raised on behalf of the petitioners are not sustainable in the eyes of law for the following reasons, namely,-

(a) the Assistant Registrar has made specific reference to the order passed by the prescribed authority in exercise of jurisdiction u/s 25(1) of the Act dated 6th April, 2004, wherein the prescribed authority has held that the dispute of elections between the parties as referred under order of the Assistant Registrar dated 2nd April, 1992, has become redundant and, as such, he has refused to answer the said reference. Reference in that regard may be made upon the judgment of the Hon"ble-Supreme Court in [Qamar Rashid Khan Vs. Committee of Management, Azamgarh Muslim Education Society, Azamgarh and others](#), wherein it has been held as follows :

"In these appeals, we are not concerned with the legality of the fresh elections, if any that has been held and if there has been an election, the legality of the same had to be assailed in an appropriate forum by the party concerned. Since the period of tenure is already over, it is not necessary for us to examine the correctness of the conclusion arrived at by the Division Bench of Allahabad High Court. In our view,, the appeals have become infructuous."

(b) against the order dated 6th April, 2004, the petitioner has filed the writ petition being Civil Misc. Writ Petition No. 17203 of 2004, which has been dismissed today,

(c) in view of the aforesaid order, the Assistant Registrar did not recognize any of the two rival sets of elections and,

(d) it cannot be successfully contended by the petitioners that they had any right of holding fresh elections of the Committee of Management, subsequently in the years 1993, 1997, 2000 and 2003 and that there is only lawful Committee of Management, which is entitled to hold elections of the office bearers.

5. It is admitted to the petitioner that at no point of time any list of office bearers submitted by the petitioners in pursuance to the alleged elections subsequent to the year 1993, was ever registered u/s 4 of the Societies Registration Act. In such circumstances the petitioner cannot claim any right to hold fresh elections of the office bearers of the Committee of Management. It is not necessary for the Assistant Registrar to have looked into the alleged elections pleaded by the petitioner in respect of the aforesaid years.

6. In the opinion of the Court there is no illegality or infirmity in the order of the Assistant Registrar, which calls for any interference under Article 226 of the Constitution of India, in so far as it directs that fresh elections of the Committee of Management are to be held u/s 25 (2) in view of the order of the prescribed authority dated 6th April, 2004.

7. Since the Assistant Registrar is proceeding to hold fresh elections of the office bearers in accordance with the provisions of Section 25 (2) of the Act, he has necessarily to determine the electoral college. For the purpose, the Assistant Registrar had issued notices to the petitioners as well as other respondents-claimants. After affording opportunity of hearing to the parties concerned and after looking into the records so produced, the Assistant Registrar by means of the order dated 11th August, 2004, which is under challenge in the present writ petition has finalised the list of members entitled to participate in the elections.

8. The order so passed by the Assistant Registrar is based on considerations of material evidence led by the parties. The said finding recorded by the Assistant Registrar cannot be said to be perverse. Even if this Court is of the opinion that some other conclusion is also possible on the basis of the evidence led by the parties, this Court under Article 226 of the Constitution of India cannot sit in appeal over the findings recorded by the Assistant Registrar and as such no case for interference under Article 226 of the Constitution of India is made out.

9. So far as the Division Bench judgment of this Court relied upon by the petitioner dated 5th March, 1990, passed in Civil Misc. Writ Petition No. 21398 of 1987 is concerned, suffice it to point out that the said judgment has no application in the facts of the present case inasmuch as in the aforesaid case, the Assistant Registrar had not proceeded u/s 25 (2) of the Societies Registration Act, 1860, nor he was holding any fresh elections of the office bearers of the society. As already stated above, the right to hold fresh elections of the office bearers of the society necessarily includes the power to determine the electoral college.

10. It is, however, needless to point out that the order passed by the Prescribed Authority u/s 25 (1) of the Act and that passed by the Assistant Registrar u/s 25 (2) of the Act are summary in nature and always subject to the orders to be passed in a regular civil proceedings.

11. In view of the above, the present writ petition is dismissed. No order as to cost.