
(2012) 03 AHC CK 0240

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 5812 of 2012

Rajesh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 21, 2012

Citation: (2012) 5 ADJ 450

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Advocate: Gajendra Pratap and Pranav Kumar Srivastava, for the Appellant; Durga Prasad Singh, H.N. Singh, V.K. Singh and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble Rajes Kumar, J.

By means of the present petition, the petitioner is challenging the order dated 5th November, 2011 by which the respondent No. 2 has finalised the electoral list and also prayed for quashing of the result and proceedings of the election dated 28.1.2011 and further is seeking a mandamus declaring the election dated 28th April, 2008 as null and void. The brief facts of the case are that there is a society in the name of Gram Vikas Samiti, Ganiyawali at Aligarh. It is an educational society registered under the Societies Registration Act. It has registered bye-laws. The last undisputed election of the committee of management of the society was held on 24th August, 2006 by the Deputy Registrar in accordance with the direction given by this Court vide order dated 6th March, 2006. In the said election, the petitioner was elected as the Pradhan and one Ram Kumar Sharma was elected as the Secretary and the respondent No. 3, Champa Lal Sharma was elected as the Deputy Secretary. In the bye-laws, the term of the committee is not prescribed.

2. By the resolution dated 25th August, 2007, Ram Kumar Sharma has been removed from the post of Secretary and also from the membership of the society. Ram Kumar Sharma challenged the said resolution before the Deputy Registrar, Societies, who by the order dated 9th October, 2007, has upheld the removal of Ram

Kumar Sharma. It was held by the Deputy Registrar that the meeting convened and held on 25th August, 2007 by the respondent No. 7 was a valid meeting and the resolution passed therein was also valid. Consequently, Champa Lal Sharma has been elected as the Secretary. The Deputy Registrar has registered the list of the office bearers submitted by Champa Lal Sharma, Secretary, on 9th October, 2007. By the order dated 9th October, 2007, the Deputy Registrar has accepted the list of the office bearers as per the resolution dated 25th August, 2007 wherein the name of Champa Lal Sharma was included as the Secretary in place of Ram Kumar Sharma. Against the order of the Deputy Registrar dated 9th October, 2007, Ram Kumar Sharma filed Civil Misc. Writ Petition No. 51976 of 2007, which was dismissed against which Special Appeal No. 438 of 2008 was filed by Ram Kumar Sharma in which no interim order was granted. The said Special Appeal has now been dismissed on 19th January, 2012.

3. Since no term of the committee was prescribed in the bye-laws and in the order dated 21st February, 2008, passed in Writ Petition No. 56228 of 2006, Committee of Management v. State of U.P. And others, there was an observation that the term of the committee of management is one year. Learned counsel for the respondent submitted that as a result of aforesaid observation, fresh election was held on 28th April, 2008 in which Champa Lal Sharma has been elected as the Manager.

4. By the resolution dated 30th September, 2007, 21 new members have been inducted and by the resolution dated 3rd February, 2008 again 40 new members have been inducted. In all 61 members were inducted.

5. A resolution for amendment in the bye-laws of the society was passed by the general body on 11th August, 2008 whereby several amendments were made in the bye-laws, including the amendment regarding term of the committee of management. The term of the committee of management has been fixed as five years. The said amendment has been approved by the Deputy Registrar vide order dated 16th June, 2009. The Deputy Registrar has approved the election dated 28th April, 2008 by its order dated 3rd June, 2008.

6. The aforesaid order of the Deputy Registrar has been challenged by the petitioner by way of Writ Petition No. 52595 of 2008, which has been disposed of by setting aside the order dated 3rd June, 2008 and remanding back the matter to the Deputy Registrar to pass a fresh order. While disposing of the writ petition, this Court has directed that the committee of management under the Secretaryship of Champa Lal Sharma, who are in office, shall continue to work till the decision of the Assistant Registrar.

7. The Deputy Registrar vide its order dated 22nd September, 2010 again upheld the validity of the election dated 28th April, 2008. The petitioner filed Writ Petition No. 2085 of 2011 against the order dated 22nd September, 2010. The said writ petition has been disposed of by the learned Single Judge vide its order dated 20th January,

2011. While disposing of the writ petition, this Court observed that as per the case set up by either of the parties, the term of the committee of management either elected on 24th August, 2006 or on 28th April, 2008, has come to an end and now only option left is to hold fresh election u/s 25(2) of the Societies Registration Act. This Court has directed the Deputy Registrar to decide the validity of the amendment to avoid the future litigation in respect of the term of the committee of management.

8. In pursuance of the order dated 20th January, 2011, the Deputy Registrar decided the membership as well as the validity of the amendment vide order dated 5th November, 2011 and thereafter the election was held on 28th November, 2011, which are being challenged by way of the present writ petition.

9. Heard Sri Gajendra Pratap, learned Senior Advocate, appearing on behalf of the petitioner and Sri H.N. Singh, learned counsel appearing on behalf of the respondent Nos. 3, 4 and 5 as well as Sri Durga Prasad, who appears on behalf of respondent No. 6. Learned Standing Counsel appears on behalf of the respondent Nos. 1 and 2.

10. Learned counsel for the petitioner submitted that the impugned order is not in accordance with the directions given by this Court in the order dated 20th January, 2011. The Deputy Registrar has not recorded any finding with regard to the term of the committee in pursuance of the direction of this Court that whether it was one year or four years. He further submitted that if the term of the committee of management was one year, then the term of the committee elected on 24th August, 2006 expired on 23rd August, 2007 and any proceeding thereafter would not be a valid proceeding. Therefore, the resolution dated 25th August, 2007, removing Ram Kumar Sharma from the post of Secretary and thereafter inducting 61 new members on 30th September, 2007 and 3rd February, 2008 and further amendment in the bye-laws by the resolution, dated 11th August, 2008, passed by the general body were not justified and in the circumstances, the order dated 5th November, 2011, finalising the electoral list and the election held on 28th November, 2011 on the basis of the said electoral list is illegal and is liable to be set aside.

11. Sri H.N. Singh, learned counsel for the respondents, submitted that as per the petitioner's own case, the term of the committee was four years. Since in the order passed in Writ Petition No. 56228 of 2006, there was an observation that the term of the committee was one year, the election was held on 28th April, 2008. He submitted that it is true that earlier, the term of the committee has been taken as four years. He further submitted that this Court vide order dated 20th January, 2011 has not declared the election held on 28th April, 2008 as illegal, vide order dated 3rd June, 2008, this Court, while disposing of the writ petition and remanding back the matter, allowed the committee of management in which Champa Lal Sharma was the Secretary to continue. Therefore, the meeting called by Champa Lal Sharma as the Secretary was valid and any resolution passed by the general body relating to

induction of the members and amendments in the bye-laws were justified. He also submitted that in order to end the litigation, this Court in its order dated 20th January, 2011 has directed the Deputy Registrar to hold the fresh election and settle the term of the committee. In pursuance of the directions of this Court, the Deputy Registrar has finalised the electoral list and held the election and also decided the term of the committee as five years. Therefore, it is wrong to say that the term of the committee has not been decided and the impugned order is not in consonance with the directions of this Court. He further submitted that the writ petition is not maintainable as the petitioner has an alternative remedy to approach the Prescribed Authority u/s 25(1) of the Act as the dispute relates to the election, consequently, writ petition is not maintainable by the individual member as the election of the committee of management, under the Statute, may be challenged only by 1/4th members of the general body.

12. I have considered rival submissions and perused the order dated 5th November, 2011, passed by the respondent No. 2.

13. The petitioner has already challenged the election dated 28th April, 2008 in the earlier writ petitions. On consideration of the entire facts and circumstances, this Court, in Writ Petition No. 2085 of 2011, vide order dated 20th January, 2011, has directed the Deputy Registrar to hold fresh election and also decide the validity of the amendments in the bye-laws and also term of the committee of management to end the litigation. The direction to hold fresh election was given by the Court in view of the fact that the term of the committee, whether it was one year or four years, had expired. It is the case of the petitioner that the term of the committee of management was four years and respondents also state that earlier the term of the committee of management was taken as four years, in the absence of any term of the committee mentioned in the bye-laws. There is no dispute that the committee of management in which Champa Lal Sharma was elected as the Secretary has been allowed to continue by this Court. Therefore, any meeting called by Champa Lal Sharma cannot be said to be illegal 61 members have been inducted by the resolution dated 30th September, 2007 and 3rd February, 2008 and the amendments in the bye-laws were made by the resolution dated 11th August, 2008 passed by the general body which has been approved by the Deputy Registrar vide its order 16.6.2009. Said order has not been challenged.

14. I find substance in the argument of learned counsel for the respondents that the writ petition filed by the individual member of the general body disputing the formation of the committee of management is not maintainable. My view is supported by the decision of the Division Bench in Civil Misc. Review Application No. Nil of 1996, Dr. P.P. Rastogi and others v. Meerut University, Meerut and another and decision of the learned Single Judge in the case of Committee of Management, Sri Kachchababa Inter College, Varanasi and others v. Regional Committee, Pancham Mandal, Varanasi and others, 2007 (4) ESC 2500.

15. I also find substance in the submission of learned counsel for the respondents that the petitioner has an alternative remedy to approach the Prescribed Authority, u/s 25(1) of the Act. In view of the above, I do not see any reason to interfere in the matter. In the result the writ petition fails and is dismissed.