
(2005) 08 AHC CK 0220

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 52764 of 2005

Mahipal Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 1, 2005

Acts Referred:

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

Citation: (2006) 1 AWC 375

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Ashok Khare and S.D. Shukla, for the Appellant; R.N. Singh and P.K. Sinha and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Arun Tandon, J.

Heard Sri Ashok Khare, Senior Advocate, assisted by Sri S.D. Shukla, Advocate on behalf of petitioner, Sri R.N. Singh, Senior Advocate, assisted by Sri P.K. Sinha, Advocate on behalf of respondent No. 4 and learned Standing Counsel on behalf of respondent Nos. 1 to 3.

2. Akhil Bhartiya Gujar Vidya Pracharini Sabha, Saharanpur is a society duly registered under the Societies Registration Act, 1860. The said society has its own registered bye-laws. The election for the office of the President and Secretary of the society alone are held from amongst members of the General Body and aforesaid two office bearers thereafter co-opt the other office bearers of the society. The elections for the purposes of electing the President and Secretary of the society, took place on 15th June, 2005. In the result of the elections declared by the election officer, whereby it was recorded that Sri Mahipal Singh (petitioner) has secured 1342 votes while Sri Bhupendra Singh (respondent No. 4) has received only 1283 votes. Accordingly Sri Mahipal Singh (petitioner) was declared elected as President.

3. On 21st June, 2005 the election officer on a complaint made by Sri Bhupendra Singh to the effect that he received 1282 votes while Sri Mahipal Singh received 1223 votes only, an order of recounting of votes was passed. The said order of the election officer was challenged before this Court by means of the writ petition No. 46925 of 2005. The writ petition was dismissed by the Division Bench of this Court vide order dated 18th July, 2005 with liberty to the petitioner to file a fresh petition, if need, so arises. Even prior to the passing of the order of the Division Bench of this Court dated 18th July, 2005, the Election Officer by means of the order dated 27th June, 2005, has in fact affected the recounting of votes and declared that Sri Bhupendra Singh has secured 1282 votes in recounting while Sri Mahipal Singh (petitioner) has secured only 1223 votes. Accordingly Sri Bhupendra Singh was declared elected as President.

4. The relevant papers in respect of the aforesaid elections were transmitted to the office of the Assistant Registrar, Firms, Societies and Chits, Saharanpur for the list of office bearers being registered u/s 4(1) of the Societies Registration Act, 1860. No orders of the Assistant Registrar has been brought on record.

5. The Registrar, Firms, Societies and Chits, U.P. Lucknow, however, passed an order dated 13th July, 2005, whereby it has been provided that the elections of Sri Bhupendra Singh for the post of President and Sri Ishwar Pal Singh for the post of Secretary are legal and valid and are being recognized. It has been further provided that the said order would be subject to the final order, which may be passed in Civil Misc. Writ Petition No. 46925 of 2005. The said order of the Registrar, Firms, Societies and Chits, Lucknow has been challenged by the petitioner by means of this petition on the following grounds:

(a) The Registrar, Firms, Societies and Chits, Lucknow had no authority of law to pass the impugned order, inasmuch as there being a bona fide dispute with regard to the elections of the office bearer for the post of President of a registered society, therefore, the said dispute was liable to be referred to the Prescribed Authority u/s 25(1) of the Societies Registration Act, 1860.

(b) The election officer, having declared the results of the office bearers for the post of President and Secretary on 15th June, 2005, becomes functus officio, therefore, could not have directed recounting of votes vide order dated 21st June, 2005, as a result whereof subsequent declaration of results on the basis of recounting of votes is a nullity in the eyes of law.

6. On behalf of the respondents it is contended that the order of the election officer dated 21st June, 2005 directing recounting of votes, was challenged by the petitioner by means of the Civil Misc. Writ Petition No. 46825 of 2005 before this Court. The writ petition was dismissed with liberty to the petitioner to file a fresh petition, if need, so arises. Further the petitioner has not challenged the order of the election officer dated 21st June, 2005 directing recounting of votes by means of the

present writ petition, and therefore, the said order of the election officer has become final between the parties and the result so declared after recounting of votes, cannot be objected to. It is further pointed out that the order passed by the Registrar, Firms, Societies and Chits, Lucknow is with reference to the provisions of Clause-6 (ka) of the registered bye laws of the society and therefore, there is no question of any dispute being referred to the Assistant Registrar, Firms Societies and Chits, Saharanpur u/s 25(1) of the Societies Registration Act, 1860.

7. I have heard learned counsel for the parties and have gone through the records.

8. This Court may record that a letter dated 9th July, 2005 has been produced before this Court on behalf of the respondents issued by the Sub Divisional Magistrate (Prescribed Authority), Deoband, Saharanpur with reference to Section 25 (1) of the Societies Registration Act, 1860. The said letter is addressed to the Assistant Registrar, Firms, Societies and Chits, Saharanpur, wherein it has been mentioned that the dispute as referred under the letter of the Assistant Registrar dated 8th July, 2005 does not require any adjudication by the Prescribed Authority, it is for the Assistant Registrar to examine as to whether the elections have been held in accordance with the registered bye-laws of the society or not. Accordingly the said reference has been returned unanswered.

9. The contentions raised on behalf of the petitioner to the effect that the Registrar has no jurisdiction to interfere in the matter is liable to be accepted for following reasons:

(a) if the dispute in respect of the elections of the office bearers or their continuance, qua a registered society, such dispute must necessarily be referred to the Prescribed Authority u/s 25(1) of the Societies Registration Act, 1860, and therefore, the Registrar, Firms, Societies and Chits, Lucknow could not have interfered in the matter. The legal position in that regard has been settled in the judgment reported in (1999) 2 UPLBEC 77; Committee of Management v. Secretary, Arya Kanya Inter College as well as in the judgment reported in 2003 (3) E.S.C. (All.) 1617; Sitaram Rai and Ors. v. Additional Registrar, Firms, Societies and Chits, Gorakhpur Division, Gorakhpur.

(b) the order passed by the Registrar, Firms, Societies and Chits, Lucknow is with reference to the power conferred under Clause-6 (ka) of the registered bye-laws of the society. It may be recorded that under the said provisions it is the Deputy Registrar, who has been conferred a power to register and recognize the elected office bearers of the society.

10. Admittedly the registered bye-laws of the society do not provide for any such power upon the Registrar, Firms, Societies and Chits, Lucknow. The registered bye-laws of the society are required to be read independently and the powers conferred on various persons mentioned in bye-laws of the society do not require any enlargement with reference to any powers which may be vested in the Registrar

under the Societies Registration Act, 1860. The Registrar as such had no authority to recognize or register the list of elected office bearers or to interfere in the same in any manner.

11. In view of the aforesaid, the order passed by the Registrar, Firms, Societies and Chits, Lucknow dated 13th July, 2005 impugned in the present writ petition cannot be legally sustained and is hereby quashed.

12. The other issue raised on behalf of the petitioner with reference to the letter of the Prescribed Authority dated 9th July, 2005 does not required any further consideration, inasmuch as this Court is of the opinion that there being a bona fide dispute with regard to the elected office bearers of the society and further the legal position in respect of decision of such bona fide dispute being adjudicated by the Prescribed Authority u/s 25(1) of the Societies Registration Act, 1860. It is but necessary that the Prescribed Authority may be called upon to decide the reference as made by the Assistant Registrar, Firms, Societies and Chits, Saharanpur vide letter dated 8th July, 2005 in respect of the elections of the office bearers for the post of President and Secretary of the society, which took place on 15th June, 2005, strictly in accordance with the provision of Section 25 (1) of the Societies Registration Act, 1860. It is ordered accordingly.

13. The Prescribed Authority shall afford opportunity of hearing to the parties and shall permit exchange of documents. The Prescribed Authority shall pass a reasoned speaking order. The aforesaid exercise may be completed, within six weeks from the date a certified copy of this order is filed before the Prescribed Authority. The Prescribed Authority shall also call for relevant records from the office of the Assistant Registrar, Firms, Societies and Chits, Saharanpur.

14. It is clarified that this Court has not expressed any opinion with regard to the decision of election officer to direct recounting of votes.

15. The present writ petition is allowed subject to the observations made herein above.