

(2011) 03 AHC CK 0397

Allahabad High Court (Lucknow Bench)

Case No: Special Appeal No. 145 of 2011

Kalyan Sansthan Uttar Pradesh
and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 8, 2011

Acts Referred:

- Societies Registration Act, 1860 - Section 12D, 13B, 22, 23(3), 24

Citation: (2011) 4 ADJ 167 : (2011) 6 AWC 6214

Hon'ble Judges: Vedpal, J; Pradeep Kant, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard the counsel for the Appellants Sri Ram Avtar Verma and Sri D.K. Upadhyaya, learned Chief Standing Counsel for the Respondents.
2. The Appellant No. 1, a society registered under the provisions of Societies Registration Act, 1860, and the Appellant No. 2 its founder, feeling aggrieved by the order of dismissal of their writ petition challenging the show-cause notice dated 14.2.2011 issued by the Deputy Registrar u/s 12D of the Act, have preferred the present special appeal.
3. Assailing the order passed by the learned Single Judge, learned Counsel submitted that the show-cause notice has been issued mala fide and against the provisions of Section 24(5) of the Act.
4. His submission is that before issuance of the notice aforesaid, opportunity ought to have been afforded to the Appellant society for getting the shortcomings removed, if at all had been pointed out by the Registrar and only on failure to make good the deficiencies so pointed out, any action u/s 12-D could have been initiated.

5. Sri D.K. Upadhyaya, learned Chief Standing Counsel, submitted that the order passed by the learned Single Judge does not call for any interference in special appeal, as it is only the show-cause notice, which gives ample opportunity to the Appellants to furnish their reply, wherein pleas, both legal as well as factual, can be taken. He further says that whatever pleas shall be taken by the Appellants, they will have to be considered by the Deputy Registrar and, therefore, at this stage, the writ petition was not maintainable and has rightly been dismissed.

6. Another argument has been raised by the learned Counsel for the State that there is no substance in the ground of mala fide and simply because the Appellants have moved some petition against some police officers leveling charges of corruption and misappropriation of funds, that would not be sufficient to conclude that the notice has been issued, mala fide just to victimize them, unless it is proved by cogent evidence that the notice is without any authority and is based on reckless allegations.

7. We have considered the arguments aforesaid and we find that on the ground of mala fide, notice cannot be discharged, unless it is established that notice has been issued by an officer, who was allegedly implicated by the Appellants in their complaint or that he has any role in the matter of issuance of notice or on the face of it, the grounds in the notice are wholly baseless, contrary to law and there is no material or evidence even to support such ground. May be that, in a case where the notice contains absolutely incorrect facts designed just to implicate any society or person, such a presumption may be drawn but in the absence of any cogent evidence in this regard to establish mala fide and designed act in issuing notice, the Court would not discharge the notice on such a vague ground.

8. In the writ petition filed by the Appellants, some police officers have been indicted, but the notice has been issued by the Deputy Registrar under the Societies Registration Act, who has nothing to do with the aforesaid writ petition or the scam so alleged by the Appellants. The ground of mala fide, thus, cannot be sustained.

9. The next plea which is a legal plea raised by the Appellants, is that in the absence of any action being taken under sub Clause (5) of Section 24, the proceedings u/s 12D could not have been initiated.

10. Section 24 of Societies Registration Act, 1860 has the heading "investigation of affairs of a society". A perusal of the aforesaid section clearly reveals that it is a provision made for having control over affairs of the society by the Registrar in its functioning.

11. Sub-section (1) of Section 24 says that where on information received u/s 22 or otherwise, or in circumstances referred to in Sub-section (3) of Section 23, the Registrar is of opinion that there is apprehension that the affairs of a society registered under this Act are being so conducted as to defeat the objects of the society or that the society or its governing body by whatever name called, or any

officer thereof in actual effective control of the society is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations, the Registrar may, either himself or by any person appointed by him in that behalf, inspect or investigate into the affairs of the society or inspect any institution managed by the society.

12. Sub-clause (2) makes it obligatory upon the society to produce the books of account and other records of or relating to the society which are in his custody and to give him all assistance in connection with such inspection or investigation.

Sub-clauses 3, 4 and 5 of Section 24 reads as under:

(3) The Registrar or other person appointed under Sub-section (1) may call upon and examine on oath any officer, member or employee of the society in relation to the affairs of the society and it shall be the duty of every officer, member or employee, when called upon, to appear before him for such examination.

(3-A) The Registrar or other person appointed under Sub-section (1) may, if in his opinion it is necessary for the purpose of inspection or investigation, seize any or all the records including account books of the society;

Provided that any person from whose custody such records are seized shall be entitled to make copies thereof or to take extracts there from in the presence of the person having the custody of such records.

(4) On the conclusion of the inspection or investigation, as the case may be, the person, if any, appointed by the Registrar to inspect or investigate shall make a report to the Registrar on the result of his inspection or investigation.

(5) The Registrar may, after such inspection or investigation, give such directions to the society or to its governing body or any officer thereof as he may think fit, for the removal of any defects or irregularities within such time as may be specified and in the event of default in taking action according to such directions, the Registrar may proceed to take action u/s 12D or Section 13B, as the case may be.

13. The provision of Sub-section (5) thus, would be attracted only if an investigation is being made by the Registrar with respect to the management of the society and its affairs and if any shortcomings are detected.

14. Sub-section (5) says that after such an inspection or investigation, as is given in Sub-section (1), is made, then, of course, if any defect or irregularity is found, opportunity is to be given for removal of such defects, and/or irregularities, within a stipulated period, failing which action may be taken u/s 12D or Section 13B, as the case may be, which means either registration can be cancelled or society be dissolved by the Court.

15. Section 12D is an independent provision, not dependent upon Section 24.

16. May be, that in a proceedings initiated u/s 24, the ultimate outcome may be an order u/s 12D or Section 13B of the Act, as the case may be, but that does not mean that Section 12D is dependent upon action being taken u/s 24.

17. Section 12-D which gives power to the Registrar to cancel the registration in certain circumstances, clearly provides that notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds:

(a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act, or of any other law for the time being in force;

(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy;

(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud:

Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken in regard to it.

18. The provision aforesaid starts with a non-obstante clause and, therefore, it has overriding effect upon other provisions of the Act.

19. Apart from this, the grounds on which registration of a society may be cancelled have also been specifically provided and one of the grounds is that the registration or the certificate of renewal has been obtained by misrepresentation or fraud.

20. The only requirement is that before cancellation of registration of the society, it has to be given reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken.

21. A perusal of the show-cause notice shows that grounds have been given for cancellation of registration in it and one of the grounds is misrepresentation at the time of approaching the Registrar for registration.

22. We do not intend to deal with any of the grounds in notice, as any order from us may prejudice the cause of either parties.

23. Under the circumstances, after going through the notice, we come to the conclusion that it is a case where the Appellants may submit their reply to the show-cause notice and this Court is not supposed to entertain the petition at this stage.

24. The special appeal is, therefore, dismissed. The Appellants are provided three weeks" further time from today to submit their reply to the show-cause notice. The matter shall be considered and decided by the Deputy Registrar by giving reasons to the pleas raised by the Appellants.

25. Learned Chief Standing Counsel shall inform the Deputy Registrar that the aforesaid time has been provided by the Court and, therefore, proceedings be scheduled accordingly.