

Dr. Mohammed Usman Khan and Others Vs Registrar, Firms, Societies and Chits and Others

Court: Allahabad High Court

Date of Decision: Dec. 15, 2004

Acts Referred: Societies Registration Act, 1860 " Section 24, 25(1), 25(2)

Citation: AIR 2005 All 121 : (2005) 3 AWC 2324 : (2005) 2 UPLBEC 1358

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: A.K. Gupta, I.B. Singh, Pradeep Upadhyaya, Manoj Misra, Seema Afroz, K.M. Tripathi, D. Singhal, R.K. Garg, Anil Kumar, I.U. Huda, Gyanendra Kumar and Ramjeet Yadav, for the Appellant; S.A. Gilani and Iqbal Ahmad and Wasim Alam, S.C., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Arun Tandon, J.

All these 14 writ petitions pertain to the dispute of the office-bearers of Jamia Urdu, Aligarh and as such are being

disposed of by this common judgment.

2. Heard S/Sri A. K. Gupta, I. B. Singh, Pradeep Upadhyaya, Manoj Misra, Wasim Alam, Seema Afroz, K. M. Tripathi, D. Singhal, R. K. Garg,

Anil Kumar, Gyanendra Kumar, Iqbal Ahmad, S. A. Gilani, Ramjeet Yadav and I. U. Huda Advocates, counsel for the parties in all the above

mentioned writ petitions.

3. Jamia Urdu, Aligarh, is a Society duly registered under the Societies Registration Act (hereinafter referred to as the Act). The said society has

established various institutions for imparting education from primary school to higher education in the subject of Urdu. It is not in dispute between

the parties that in Writ Petition No. 28840 of 1997 (Sri Anjum v. State of U.P. and others) filed by Sri Anjum against the order registering the

amendment in the bye-laws of the society dated 26-6-1997 this Court vide judgment and order dated 2-9-1997 issued a direction to the Assistant

Registrar to decide as to whether the amendments which have been incorporated in the bye-laws of the society have been approved in a meeting

of the general body of the members of the society and further the persons who have participated in the said meeting were valid members of the

general body of the society or not. In compliance of the aforesaid order of this Court the Assistant Registrar vide order dated 15-11-1997 held

that the amendments as proposed have been resolved in a valid meeting of the general body and valid members of the general body had

participated in the said meeting. The said order dated 15-11-1997 passed by the Assistant Registrar has become final and is not under challenge.

4. Dr. Mohd. Usman Khan claiming himself to be the Registrar of the petitioner-society filed Writ Petition No. 44938 of 2000 wherein an interim

order was passed by this Court on 22-11-2000. Under the interim order the petitioner was required to move two applications; one u/s 24 and the

other u/s 25(2) of the Societies Registration Act. The first application pertains to the embezzlement of the funds of the society by the earlier

Registrar of the petitioner-Society. The second application was for holding fresh elections of office-bearers held u/s 25(2) of the Act. It is stated on

behalf of the petitioner that in compliance of the aforesaid interim order of this Court dated 22-11-2000 the Deputy Registrar Firms, Societies and

Chits, Lucknow passed an order dated 4-4-2003 whereby he held that fresh elections have not been held since 1997 and directed that fresh

elections may take place from the list of the members who were present in the meeting held in the year 1997. The Assistant Registrar also passed

an order u/s 24 of the Act recording therein that the Secretary of the Society, namely Syed Anwar Saeed has embezzled a sum of Rs. 10.77

crores. Ultimately on 19-6-2003 the Deputy Registrar Firms, Societies and Chits, Agra, for the purposes of getting fresh elections held, again

directed that the members of the general body who were present in the elections of 1997 alone would be entitled to participate in the elections and

the District Magistrate, Agra was directed to conduct the elections accordingly. However, the Secretary of the Society, Syed Anwar Saeed,

submitted a list of 9 members said to be valid members of the general body who had participated in the elections of 1997. The District Magistrate,

on the basis of the list so submitted held fresh elections of the office-bearers of the society on 6-7-2003. The list of office-bearers of the society so

elected was registered by the Deputy Registrar Firms, Societies and Chits, Lucknow on 8-7-2003. The order of the Deputy Registrar Firms,

Societies and Chits, Lucknow dated 8-7-2003 registering the list of the office-bearers of the society has been challenged by Dr. Mohd. Usman

Khan in Writ Petition No. 33613 of 2003 wherein this Court vide interim order dated 6-8-2003 has stayed the operation of the order dated 8-7-

2003 passed by the Deputy Registrar, Firms, Societies and Chits, Lucknow.

5. While the aforesaid writ petition was still pending before this Court the Registrar Firms, Societies and Chits, Lucknow has intervened in the

matter and passed an order dated 4-8-2003 whereby he held that the elections of the office-bearers of the society which had taken place on 6-7-

2003 were illegal and the Deputy Registrar Firms, Societies and Chits, Agra was directed to hold fresh elections after finalizing the list of members

of the general body afresh. The Deputy Registrar, by means of the order dated 4-8-2003 finalized a list of 12 members and published an agenda

for holding fresh elections of the office-bearers of the society. The said order of the Deputy Registrar Firms, Societies and Chits, Agra is under

challenge,

6. On behalf of the petitioner it is contended that the said list has been finalized by the Deputy Registrar without inviting objections and without

affording opportunity of hearing to the parties. In the Writ Petition No. 35270 of 2003 an interim order has been granted by this Court on 19-8-

2003 as a consequence thereto the entire elections have been withheld.

7. While the aforesaid controversy was being agitated by the petitioner-Dr. Mohd. Usman Khan, the outgoing office-bearers of the society with Sri

Syed Anwar Saeed as Secretary, have claimed to have held fresh elections on 18-6-2000 and in the said elections Sri Syed Anwar Seed again

claims to have been elected as Secretary and Dr. Mohd. Usman Khan as President of the Society. In the meeting held on 8-6-2001 Sri Syed

Anwar Saeed, Secretary and Professor A. F. Usmani, President were removed from the office of Secretary and President as well as from the

primary membership of the society and in their place of Ms Rafat Sherwani and Sri Abad Hasan Khan was elected as President and Secretary of

the society. The Deputy Registrar Firms, Societies and Chits, Agra registered the said list of office-bearers of the society on 22-6-2001 with Sri

Abad Hasan Khan as Secretary and Ms Rafat Sherwani as President of the society. The said order of the Assistant Registrar has been challenged

by means of two writ petitions, the first writ petition being W.P.No. 24554 of 2001 filed by Syed Anwar Saeed and others; and the other writ

petition being W.P. No. 12729 of 2003 filed by Dr. Mohd. Usman Khan. In the writ petition filed by Syed Anwar Saeed (W.P. No. 24554 of

2001) an interim order has been granted by this Court on 20-7-2001.

8. On behalf of Syed Anwar Saeed it is stated by Sri Manoj Misra Advocate that registration of the list of office-bearers by the Deputy Registrar

Firms, Societies and Chits, Agra vide order dated 22-6-2001 is wholly without jurisdiction inasmuch as before the Deputy Registrar a specific

objection was raised by Sri Sri Syed Anwar Saeed (the elected Secretary) that no meeting dated 8-6-2001 had taken place and the documents

submitted were the outcome of a fraud. In such circumstances it is submitted that there was a bona fide dispute with regard to continuance of Sri

Syed Anwar Saeed and Professor A. F. Usmani as office-bearers of the society. Such a dispute could not have been adjudicated upon by the

Deputy Registrar Firms, Societies and Chits, Agra and the matter should have been referred to the prescribed authority u/s 25(1) of the Act.

9. So far as Sri Abad Hasan Khan is concerned he has filed Writ Petition No. 35415 of 2003 challenging the order dated 4-4-2003 passed by the

Deputy Registrar, Firms, Societies and Chits, Lucknow on the ground that the said order is wholly without jurisdiction inasmuch as the territorial

jurisdiction having regard to the registered office of the society was with Deputy Registrar Firms, Societies and Chits, Agra only and since the

Deputy Registrar Firms, Societies and Chits, Agra had registered the list of office-bearers of the society on 22-6-2001 on the basis of the elections

held on 18-6-2000, there was no occasion for the Deputy Registrar Firms, Societies and Chits, Lucknow to have held that no elections have taken

place since 1997 and that fresh elections be held u/s 25(2) of the Act. It is further submitted that the Deputy Registrar Firms, Societies and Chits,

Agra by means of order dated 29-12-2002, passed in compliance of the orders of this Court dated 22-11-2000 passed in Writ Petition No.

49938 of 2000 filed by Dr. Mohd. Usman Khan, has specifically held that the term of the earlier Committee of Management had not expired and,

therefore, there is no occasion for holding fresh elections u/s 25(2) of the Act.

10. From the facts as have been noticed hereinabove it is apparently clear that there is serious dispute between the parties with regard to (a) the

order dated 22-6-2001 passed by the Deputy Registrar Firms, Societies and Chits, Agra registering the list of office-bearers of the society on the

basis of alleged elections dated 18-6-2000 and subsequent meeting held on 8-6-2001, and (b) the order passed by the Deputy Registrar Firms,

Societies and Chits, Lucknow dated 4-4-2003 directing that fresh elections of office-bearers of the Society be held u/s 25(2) of the Act.

(a) Order dated 22-6-2001 :

11. It is not in dispute between the parties that the Deputy Registrar Firms, Societies and Chits, Agra vide order dated 22-6-2001 has registered

the list of office-bearers of the society on the basis of alleged meeting dated 8-6-2001 whereby the elected Secretary Syed Anwar Saeed and the

elected President A. F. Usmani had been removed from the office and in their place Ms. Rafat Sherwani and Sri Abad Hasan Khan are alleged to

have been elected as President and Secretary of the society. Before the Deputy Registrar Firms, Societies and Chits, Agra there was a specific

issue i.e. as to whether the meeting dated 8-6-2001 was held or not and whether valid members had participated in that meeting. In the opinion of

the Court there was a bona fide dispute with regard to continuance of Sri Syed Anwar Saeed and Professor A. F. Usmani as Secretary and

President of the society respectively and in such circumstances the Deputy Registrar Firms, Societies and Chits, Agra was under legal obligation to

have referred the dispute for adjudication to the Prescribed Authority u/s 25(1) of the Act.

12. In view of the aforesaid legal position and in view of the fact that there was a bona fide dispute with regard to continuance of the office-bearers

of the society, the order passed by the Deputy Registrar Firms, Societies and Chits, Agra dated 22-6-2001 cannot be legally sustained and is

hereby quashed. Normally, the matter would have been referred u/s 25(2) of the Act, however, such a direction is riot being issued for the reasons

stated hereinafter.

(b) Order dated 4-4-2003 :

13. So far as the order dated 4-4-2003 passed by the Deputy Registrar Firms, Societies and Chits, Lucknow is concerned the Deputy Registrar

Firms, Societies and Chits, Lucknow could not have interfered in the matter once the controversy with regard to the elections held on 18-6-2000,

and the resolutions passed in the meeting dated 8-6-2001 was engaging attention of the Deputy Registrar Firms, Societies and Chits, Agra. It may

be pointed out that the powers which are required to be exercised by the Registrar under the Societies Registration Act, 1860 have specifically

been delegated under the statutory provisions to the Deputy Registrars of the respective regions. Once the delegatee has exercised the powers the

Registrar loses competence to interfere with the said order; both by way of review or by way of appeal against the same.

14. In view of the aforesaid this Court has no hesitation to hold that the order dated 4-4-2003 passed by the Deputy Registrar Firms, Societies

and Chits, Lucknow is wholly without jurisdiction and legally not sustainable and is hereby quashed.

15. From the facts which have been noticed hereinabove it is apparently clear that the aforesaid 14 writ petitions have been filed by the parties

claiming a right to manage the affairs of the society. The litigation has started since the year 2000. There is no order of any competent authority

recognising the elections dated 18-6-2000. In view of the statement made at bar, by the learned counsel appearing on behalf of the respective

parties to the effect that the Secretary of the Society said to have been elected in the elections dated 18-6-2000, namely Sri Syed Anwar Saeed, is

wanted in a criminal case, no purpose would be served in remanding the matter to the Prescribed Authority u/s 25(2) of the Act for adjudicating

upon the legality or otherwise of the elections dated 18-6-2000 as well as upon the proceedings of the meeting which is said to have taken place

on 8-6-2001. In the opinion of the Court the litigation between the parties must be brought to an end in order to save the society from unnecessary

litigation. In totality of the circumstances as borne out from the record it would be fair that fresh elections of the office-bearers of the society may

be held by the Deputy Registrar Firms, Societies and Chits, Agra, u/s 25(2) of the Act.

16. Accordingly it is directed that the Deputy Registrar Firms, Societies and Chits, Agra shall hold fresh elections of the office-bearers of the

society in exercise of powers u/s 25(2) of the Act. Before holding such elections the Deputy Registrar Firms, Societies and Chits, Agra shall

publish a tentative list of members of the general body of the society and shall invite objections in respect thereto. The objections, if any received,

shall be decided by a reasoned speaking order. After finalizing the electoral college of the society the Deputy Registrar shall conduct the elections

of the office-bearers of the society strictly in accordance with the registered bye-laws of the society and shall take all consequential actions

thereafter. The entire exercise as aforesaid may be completed by the Deputy Registrar Firms, Societies and Chits, Agra within two months from

the date of receipt of a certified copy of this order.

17. Till the elections are so held the District Magistrate, Aligarh shall look after the day to day affairs of the Society. However, he shall not incur any

major expenditure without the leave of the Court.

18. Counsel for the parties agree that all other writ petitions are rendered infructuous in view of the order passed by this Court today. In view of

the aforesaid all the writ petitions stand disposed of finally subject to the directions given hereinabove.