

Neutral Citation No. - 2023:AHC:211373

Court No. - 10

Case :- WRIT - C No. - 14951 of 2023

Petitioner :- Rashmi Devi And 19 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Saurabh Sachan, Sankalp Narain, Sr.
Advocate

Counsel for Respondent :- C.S.C., Namit Srivastava

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Sankalp Narain alongwith Shri Saurabh Sachan, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Shri Ashok Khare, learned Senior Counsel assisted by Shri Namit Srivastava, learned counsel for respondent no.5.

2. Two orders have been challenged by means of the present writ petition. By the first order dated 22.03.2022, the Deputy Registrar, Firms, Societies & Chits, Meerut has held that the elections dated 30.04.2021 were hypothetical and not actual and in view of the last elections dated 10.05.2016, the Society has become defunct/time barred and, therefore, he would proceed to issue directions for holding fresh elections after due verification of valid membership under Section 4-B of the Societies Registration Act, 1860 (hereinafter referred to 'the Act, 1860') while exercising powers under Section 25(2) of the Act, 1860. By the second order impugned dated 01.03.2023, the Deputy Registrar has determined the membership observing that only two members remained existent after the death of certain persons and, insofar as others are

concerned, after examining the receipts and other documents, their membership could not be established.

3. By assailing the aforesaid two orders, it has been argued by learned counsel for the petitioners that undisputed elections of the Society were held on 10.05.2016, in which, one Harbhajan Singh was elected as President and Shyam Singh (respondent no.5) was elected as Manager and when Harbhanjan Singh expired on 08.10.2017, his son Dhamdeep Singh (petitioner No.20) became President for the remaining term and when the next elections were held on 30.04.2021, again, petitioner No.20 was elected as President and Shyam Singh as Manager. It is contended that when the documents were placed for approval of list of office-bearers pursuant to the elections dated 30.04.2021, Shyam Singh (respondent no.5) took somersault and challenged the validity of the elections, in which, he himself had been elected as Manager and the grounds contained in certain complaints moved by him are that the election proceedings were fabricated, some were not signed by the respondent no.5, most of the office-bearers shown in the list of members of General Body being Government servants were outside the city of Meerut on the date of elections, quorum of the meeting was incomplete, signatures of authorized persons were fabricated, no copies of the agenda of the meeting was served upon the complainants and other members, nor was it affixed on the Notice Board, no meeting was held in the premises on 15.01.2021. Certain other allegations of causing financial embezzlement were levelled against the petitioners.

4. The first order impugned has been passed by the Deputy Registrar mainly on the ground that despite opportunity provided to the petitioner, neither agenda register, nor proceedings registered, nor any evidence with regard to membership, nor the documents establishing presence of members who were government servants and allegedly outside the city of Meerut were produced. The Deputy Registrar further observed that since, the objections with regard to valid membership were also received, there is no occasion to refer the matter to the Prescribed Authority under Section 25(1) of the Act, 1860. He, therefore, discarded the elections by recording the following observations:-

"अध्यक्ष का यह कथन कि वर्ष 2016 में इसी सूची के आधार पर प्रबन्ध समिति का चुनाव कराया गया था उसके बाद नये सदस्य नहीं बनाये गये हैं इस सम्बन्ध में स्पष्ट करना है कि वर्ष 2016 के चुनाव में कार्यालय में आपत्ति प्राप्त नहीं हुई थी। वर्ष 2021 के चुनाव पर सदस्यों की वैधता का सम्बन्ध में आपत्ति प्राप्त नहीं हुई थी। सदस्यों की वैधता का निर्धारण सोसाइटीज रजिस्ट्रेशन एक्ट 1860 की धारा-4(ख) के अन्तर्गत किया जाना है। धारा-4(ख) के अन्तर्गत सदस्यता के निर्धारण का अधिकार अधोहस्ताक्षरी में निहित है। इसलिए प्रकरण सोसाइटीज रजिस्ट्रेशन एक्ट 1860 की धारा-25(1) के अन्तर्गत विहित प्राधिकारी को सन्दर्भित किये जाने का औचित्य नहीं है। अध्यक्ष को पर्याप्त अवसर प्रदान करने के पश्चात भी वे निर्वाचन सम्बन्धी ठोस साक्ष्य व सदस्यता सम्बन्धी अभिलेख प्रस्तुत करने में असफल रहे, जिससे स्पष्ट है कि दिनांक 30.4.2021 को प्रबन्ध समिति का दर्शाया गया निर्वाचन वास्तविक न होकर काल्पनिक है। प्रबन्ध समिति का पिछला निर्वाचन दिनांक 10.5.2016 में किया था। प्रबन्ध समिति का कार्यकाल 05

वर्ष है। समय से निर्वाचन न होने के कारण प्रबन्ध समिति कालातीत हो चुकी है।

अध्यक्ष-प्रबन्धक ने एक दूसरे पर वित्तीय अनियमितताओं के आरोप लगाये हैं। वित्तीय अनियमितताओं की जांच सोसाइटीज रजिस्ट्रेशन एक्ट 1860 की धारा-24 के अन्तर्गत पृथक से की जायेगी।"

5. It appears that after this order was passed, the contesting parties again appeared before the Deputy Registrar and produced documents establishing validity to the elections held and also submitted proof of membership. The second order impugned decides the membership either-way.

6. Learned counsel for the petitioners while addressing the Court on the jurisdiction of Deputy Registrar to invalidate any election has placed reliance upon the following Authorities:-

(a). Katar Singh Baliyan v. State of U.P. And Others reported in 2019 (5) ADJ 492 (DB);

(b). Order dated 18.12.2013 passed in Special Appeal Defective No.1286 of 2013 (C/M, Anjuman Kherul Almin and Others v. State of U.P. And Others);

(c). Order dated 16.08.2023 passed in Writ C No.13576 of 2023 (The C/M Kshetriya Shri Gandhi Ashram Garh Road And Another v. State of U.P. And 3 Others);

(d). Order dated 16.03.2018 passed in Writ C No.1069 of 2018 (Sri Vidur Sewa Ashram and Others v. State of U.P. and Others).

7. By relying upon the aforesaid Authorities, it has been argued that the power to set aside elections exclusively vests in the Prescribed Authority under Section 25(1) of the Act, 1860 as well as its proviso and the dispute which was decided by the Deputy Registrar with regard to the membership is also an issue which can be incidentally decided by the Prescribed Authority. Learned counsel has emphasized on the words "hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of any office-bearer of such Society" with further emphasis on the proviso which is in relation to recording of satisfaction by the Prescribed Authority while setting aside the elections.

8. It is, therefore, contented that once the basic order is without jurisdiction, the exercise undertaken by the Deputy Registrar under the second order impugned being consequential to the earlier order also stands nullified.

9. On the other hand, Shri Ashok Khare, learned Senior Counsel has vehemently opposed the writ petition and has argued that the Deputy Registrar cannot be treated as merely a post-office to receive whatever is produced before him and to keep mum in the matter and, in the present case, once, specific complaints were received by him, he proceeded to examine the validity of the said proceedings and found that the membership was seriously disputed and, therefore, he rightly proceeded to carry out an exercise under Section 4-B of the Act, 1860. It is further argued that under Section 25(2) of the Act, 1860, where the Registrar is satisfied that any elections of office-bearers of the Society has not been held within

the time specified in the Rules of the Society, he shall proceed to hold elections under Section 25(2) of the Act, 1860. In the present case, once the President failed to produce any documentary evidence before the Deputy Registrar with regard to elections dated 30.04.2021, despite order, the Deputy Registrar has rightly proceeded to go ahead step-by-step and first order impugned says that the validity of the membership would be examined under Section 4-B of the Act, 1860 and, then, second order impugned also speaks of another step i.e. determination of valid Electoral College and the third step of actual holding of elections under Section 25(2) of the Act, 1860 is yet to be taken.

10. Shri Khare further submits that one of the members namely Mamchand being aggrieved by the second order impugned preferred an appeal before the Commissioner of the Division who passed an interim order against which, the respondent no.5 filed a Writ C No.13493 of 2023 (Shyam Singh v. State of U.P. And 5 Others) which was disposed off by setting aside the interim order dated 17.03.2023 and the Appellate Authority was directed to rehear the matter at the admission stage after issuing notice to Shyam Singh. Shri Khare has referred to an order dated 09.06.2023 passed by the Commissioner pursuant to the order of the Writ Court dated 21.04.2023 and the operative portion of the said order reads as follows:-

“उपरोक्त विवेचना अनुसार मा० उच्च न्यायालय द्वारा रिट याचिका सं०-14951/2023 में अंतिम आदेश पारित करने तक प्रश्नगत अपील की कार्यवाही समाप्त की जाती हैं। प्रकरण में रिट याचिका सं०-14951/2023 में मा० उच्च न्यायालय द्वारा पारित

अंतिम आदेश प्रभावी होगा। आदेश की सत्यापित प्रति सहित कार्यालय डिप्टी रजिस्ट्रार, फर्मस सोसाईटीज एवं चिटस, मेरठ की पत्रावली आवश्यक कार्यवाही हेतु प्रेषित की जाएं। आवश्यक कार्यवाही उपरान्त इस न्यायालय की पत्रावली अभिलेखागार में संचित की जाएं।”

11. It is, therefore, clear that Commissioner has withheld the proceedings of appeal, awaiting the decision of this Court in the present writ petition.

12. Having heard learned counsel for the parties, the Court is of the opinion that though the Deputy Registrar cannot be treated as merely as post-office, he has to exercise powers expressly conferred upon him under Section 25(2) of the Act, 1860. There is no dispute about the competence of the Deputy Registrar under Section 4 or 4(1) or 4-B of the Act or its various sub-clauses, however, once the question arises with regard to validity of any elections or doubt or dispute, he cannot record a finding that the elections were hypothetical, not actual or were fabricated or there was some flaw in relation to publication of agenda or participation of members on the date of elections. It appears that, though respondent no.5 himself was elected as Manager in the elections dated 30.04.2021 and the petitioner as President, there is a dispute in between the petitioner and the respondent no.5 with regard to the validity of elections and, ultimately, the membership has been determined either-way under the second order impugned. The second order certainly is an exercise undertaken in consequence to the previous order and, even if, the parties proceeded to address the Deputy Registrar in support of documents relied upon by them

after the first order impugned was passed, the validity of first order impugned cannot be ignored and it cannot be said that, merely, because an exercise under Section 4-B of the Act, 1860 has been carried out either-way, setting aside of elections dated 30.04.2021 would become an ignorable issue.

13. At the same time, it is observed in view of the decisions cited at the Bar, that the Prescribed Authority is quite competent to incidentally determine the question of membership.

14. In view of the above discussion, the writ petition is being **disposed off** in the following terms:-

(a). The orders impugned dated **22.03.2022** and consequential order dated **01.03.2023** passed by the Deputy Registrar, Firms, Societies and Chits, Meerut are hereby **quashed**;

(b). The Deputy Registrar is directed to make a reference to the Prescribed Authority to determine the validity of elections dated 30.04.2021 after hearing both the sides and after providing them full opportunity to produce documents in relation to the said elections;

(c). Such reference shall be made **in the month of November 2023 itself**, provided a certified copy of this order is produced before the Deputy Registrar **before 20.11.2023**;

(d). The Prescribed Authority shall decide the reference by the **end of February 2024**;

(e). The Prescribed Authority shall also incidentally decide the question of valid membership, inasmuch as, the exercise which has

been undertaken by the Deputy Registrar is in pursuance of the order which is without jurisdiction.

Order Date :- 3.11.2023

Jyotsana