

Court No. - 10

Case :- WRIT - C No. - 26679 of 2023

Petitioner :- Hari Lal

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Alok Dubey

Counsel for Respondent :- C.S.C., Satyendra Pandey

Hon'ble Kshitij Shailendra, J.

1. Pursuant to the notice issued on the previous occasion, Shri Satyendra Pandey, learned counsel has put in appearance on behalf of respondent no.4 who is elected President of the Tax Advocate Association, Gorakhpur.

2. Preliminary objections have been raised by Shri Pandey to the following effect:-

(a). Direct challenge made to the elections in absence of any adjudication made by the Statutory Authority cannot be sustained;

(b). The term of the elections being one year, more than 11 months have already expired and, therefore, the cause of action substantially stands vanished;

(c). The petitioner being a participant in the concerned elections has no locus to challenge the same;

(d). The petitioner being a single member, even otherwise, has no locus either to approach the Assistant Registrar or the Prescribed Authority or even to file a writ petition.

3. Answering the aforesaid objections, Shri Alok Dubey, learned counsel for the petitioner submits that there is no statutory bar if a

single member of the registered Society approaches the Assistant Registrar and the requirement of quorum comes into picture only when certain members directly approach the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860 (hereinafter referred to as 'the Act, 1860') and, hence, the petitioner's representation before the Assistant Registrar is maintainable.

4. With regard to other objections, it is submitted that merely because the petitioner has participated in the elections, no law prohibits assailing the election process or result, particularly when, there are allegations of not holding elections strictly in accordance with law or the Bye-laws of the Society.

5. Considering the facts and circumstances of the case, this Court finds that though the elections cannot be set aside directly in Writ Jurisdiction, certainly Assistant Registrar is competent to look into the matter even at the instance of a single member. However, if he arrives at a conclusion that the elections were held contrary to the bye-laws, he may refer the dispute to the Prescribed Authority under Section 25(1) of the Act, 1860.

6. The petitioner having already approached the Assistant Registrar by filing representation dated 31.03.2023, the writ petition stands **disposed off** in the following terms:-

(a). The petitioner is directed to file a certified copy of this order before the Assistant Registrar, Firms, Societies and Chits, Gorakhpur (respondent no.2) as soon as it is made available to him;

(b). The respondent no.2 shall issue notice to the respondent No.4-

Prabha Shankar Pathak, President Tax Advocate Association Gorakhpur, 7 Park Road Gorakhpur and, after exchange of response, shall deal with the issue but strictly within his jurisdiction as per the Scheme of the Act, 1860 and shall pass appropriate orders in accordance with law **by the end of January 2024.**

7. It is made clear that mere passing of this order will not amount to stay of any further proceedings in relation to the Association.

Order Date :- 6.12.2023

Jyotsana