

Neutral Citation No. - 2023:AHC:229910

Reserved on 22.11.2023.

Delivered on 05.12.2023.

A.F.R.

Court No. - 10

Case :- WRIT - C No. - 28369 of 2023

Petitioner :- Nishith Verma And 2 Others

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

Counsel for Petitioner :- Vineet Kumar Singh, Anup Kumar
Srivastava, Sr. Advocate

Counsel for Respondent :- C.S.C., Kartikeya Saran, Ram M.
Kaushik, Satyavrat Sahai

Hon'ble Kshitij Shailendra, J.

1. Heard Shri H.N. Singh, learned Senior Counsel assisted by Shri Neeraj Sinha, learned counsel for the petitioners, Shri I.P. Srivastava, learned Additional Chief Standing Counsel for respondent nos.1 and 2 and Shri Radha Kant Ojha, learned Senior Counsel assisted by Shri Satyavrat Sahai and Shri Ram Kaushik for respondent no.3.

2. This Court passed following order on 21.11.2023:-

“1. Shri R.K. Ojha, learned Senior Counsel appearing for the respondents has referred to certain orders passed by the Hon'ble Supreme Court and submits that in view thereof, this petition cannot be heard as the matter is engaging attention of Apex Court.

2. Shri H.N. Singh, learned Senior Counsel for the petitioners submits that he has not seen the said orders.

3. Put up this case tomorrow i.e. 22.11.2023 as fresh at 10:00 a.m.

4. In the meantime, Shri Ojha shall supply the copies of all the relevant orders to the learned counsel for the petitioners. ”

3. Shri H.N. Singh, learned Senior Counsel has elaborately explained the

effect of the orders passed by Hon'ble Supreme Court by submitting that pendency of proceedings before the Apex Court or the said orders would not affect adjudication of the controversy involved in the present writ petition. In view of the above, it is necessary to refer the proceedings pending before the Hon'ble Supreme Court and the orders passed.

4. In 2016, one Shri T.P. Singh, a member of the Kayastha Pathshala Prayag, Allahabad, was expelled/removed from the membership. The matter reached before the Assistant Registrar, Firms, Societies and Chits, Teliyarganj, Prayagraj who passed an order dated 26.08.2017 observing that expulsion/removal of a member of the General Body was beyond the scope of adjudication by him under Section 4-B of the Societies Registration Act, 1860 (hereinafter referred to 'the Act, 1860'). The said order was examined by the Division Bench of this Court which allowed Writ C No.58426 of 2017 [T.P. Singh (En. No.2473), Senior Advocate v. Registrar/Assistant Registrar, Firms Societies & Chits, Teliyarganj & 4 Ors.] by order dated 10.10.2018 setting aside the order dated 26.08.2017 to the extent it was held by the Assistant Registrar that he had no jurisdiction to examine the objections raised by the petitioner (Shri T.P. Singh) and the Assistant Registrar was, accordingly, directed to examine the said objections with regard to Shri Singh's removal from membership.
5. It is against the aforesaid judgement dated 10.10.2018 that Kayastha Pathshala, Prayag and Anr. filed Special Leave to Appeal (C) No.29541 of 2018 (Kayastha Pathshala, Prayag & Anr. v. T.P. Singh & Ors.) before the Hon'ble Supreme Court in which following order was passed on 13.11.2018:-

“Leave granted.

To be heard along with C.A. No.5420-21/2017.

Issue notice in the prayer for interim relief, returnable
in two weeks.

Dasti, in addition, is permitted.”

6. Thereafter, another order was passed by the Supreme Court on 03.12.2018 in the following terms:-

“Having regard to the direction given in the impugned judgment we are of the opinion that Assistant Registrar may decide the dispute about the removal of respondent no.1 from membership of General Body of the Society as directed by the High Court. However, the decision taken by the Assistant Registrar in this behalf shall not be given effect and shall be produced before this Court in a sealed cover in terms of the direction given by the High Court.

List after four weeks.”

7. It is contended by Shri H.N. Singh that the matter pending before Hon’ble Supreme Court is only in relation to removal of Shri T.P. Singh from membership and has nothing to do with the present writ petition which has been filed by three petitioners claiming a relief that the elections of the Trust which are going to be held shortly, be held after examining the correctness of membership of existing and newly inducted members of the Governing Council at the level of the Assistant Registrar under Section 4-B of the Act, 1860 after providing opportunity of hearing to the petitioners. Shri Singh further submits that pursuant to directions issued by the Apex Court in the order dated 03.12.2018, the Assisting Registrar has already decided the question of removal of Shri T.P. Singh from membership, however, the decision has not seen light of the day as it has been kept in a sealed cover in terms of the order of the Apex Court.

8. Shri R.K. Ojha, learned Senior Counsel appearing for respondent no.3, on the other hand, submits that there are two other orders dated 09.05.2016 and 12.05.2016 passed by

Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.3811-3812/2016, Board of Trustees of The Shia College And The School And other Connected Institutions And Anr. v. Dr. Syed Akhtar Hasan Rizvi And Others). The said orders are quoted hereinbelow:-

“Order dated 09.05.2016

Issue notice.

Mr. Anupam Lal Das, learned counsel accepts notice on behalf of respondents.

Counter affidavit be filed within six weeks.

Rejoinder affidavit, if any, be filed within another two weeks.

List thereafter.”

Order dated 12.05.2016

The order dated 09.05.2016 is clarified that any direction taken by the Governing Body during the pendency of the matters before this Court will be subject to the final outcome of those matters.”

9. It is further contended by Shri Ojha that though the aforesaid two orders have been passed in a different case but since the S.L.P. of Kayastha Pathshala, Prayag has been connected alongwith the said case, no direction can be issued to the Assistant Registrar to exercise powers under Section 4-B of the Act, 1860.

10. Having heard the learned counsel for the parties on the effect of the orders passed by Hon'ble Supreme Court, I find that insofar as the Kayastha Pathshala, Prayag is concerned, the *lis* brought before the Apex Court was in respect of expulsion/removal of Shri T.P. Singh, Senior Advocate from membership of the Trust and, infact, the order dated 03.12.2018 passed by the Apex Court has already been complied with by the Assistant Registrar whose

decision, though not perused by any of the parties, has been kept in a sealed cover. The orders passed in the case of Board of Trustees of The Shia College (supra), in the opinion of the Court, with due respect, would not be obstructive in hearing of this petition as the Hon'ble Supreme Court too has not restrained holding of periodical elections in any of its orders. In view of the above, this Court proceeds to hear this petition on merits.

11. This writ petition has been filed by three petitioners seeking a Writ of Mandamus commanding the Assistant Registrar, Firms, Societies & Chits, Prayagraj to decide the correctness of membership of the existing and newly inducted members of the Governing Council of Kayastha Pathshala, Prayag in accordance the provisions of Section 4-B of the Act,1860 before conducting the elections of President and 20 members of the Executive Council of the Society with a further prayer directing the Assistant Registrar to finalize the list of General Body and decide the petitioners' representation in that regard.

12. Shorn of unnecessary details, the facts pleaded in the writ petition are substantially to the effect that Kayastha Pathshala, Prayag (in short 'the Society') is a Society registered under the provisions of the Act, 1860 and is governed by its registered bye-laws. The petitioners, claiming themselves to be members of the Governing Council of the Society, have pressed their right to contest elections and by referring to various clauses of the bye-laws including Clause Nos.5, 6, 7, 8, 9, 14 and 47, it has been pleaded in the petition and contended during the course of arguments that elections of the Governing Body can be held strictly in accordance with the provisions of the said bye-laws and not otherwise. Specific reference to Clauses 8, 9 and 14 has been made with regard to enrolment of various members in the Society and the procedure prescribed for that purpose.

13. The submission of Shri H.N. Singh, learned Senior Counsel, is that various members were induced in the Society from time-to-time, total newly added members being 2182 upto 03.09.2022 and by referring to the lists of newly enrolled members, it has been argued that their enrolment corresponding to serial numbers and enrolment numbers and the manner in which their details have been incorporated in the lists, is of much significance considering the death of various members and other aspects. The submission is that in view of Section 4-B of the Act, 1860, the Assistant Registrar is under statutory obligation to examine the correctness of the list of members of the General Body of the Society on the basis of register of members, minutes book, cash book, receipt book of the membership fees and bank passbook of the Society and that in case of induction, removal, resignation or death of any member, a modified list of members of General Body has to be filed with the Registrar within one month from the date of change. He, therefore, submits that petitioners, objecting to the said enrolment, have already filed a representation dated 10.06.2023 before the Assistant Registrar, however, no order has been passed by him and, in the meantime, elections have been notified by the respondent no.3.

14. It is further argued that the Trust runs various organisations and Educational Institutions, in which, there is involvement of public money and, hence, before any elections are held, exercise under Section 4-B of the Act, 1860 has to be carried out but the Assistant Registrar is not adhering to the petitioners' request contained in the representation and, hence, elections notified should not be held unless such an exercise is completed. Shri Singh has emphatically argued on the amendments incorporated in the Act, 1860 and submits that such incorporation in the Statute Book was made to attach sanctity and purity to elections.

15. *Per contra*, Shri R.K. Ojha, learned Senior Counsel appearing

for respondent no.3, submits that there being thousands of members in the Trust, the writ petition having been filed only by three members is not maintainable, particularly when they are not the contestants in election programme already notified; that the nomination process has already been finalized on 03.10.2023 and the elections would be held on 25.12.2023. He has further placed before this Court the notification published in the newspaper regarding holding of elections. The notification is kept on record as the same has not been disputed by the petitioners side. Shri Ojha further submits that insofar as the power of Assistant Registrar under Section 4-B is concerned, it is nowhere provided that whenever elections are to be held, the Assistant Registrar would carry out the exercise, as suggested by the petitioners, and that the plain language used in Section 4-B of the Act, 1860 shows that such an exercise can be carried out at the time of registration/renewal of a Society and not otherwise. He further submits that Section 4-B (2) of the Act, 1860 only provides that in case of induction, removal, resignation or death of any member, the only requirement is to submit a modified list of members of the General Body with the Registrar which exercise has already been carried out by the respondent no.3. Shri Ojha has also placed reliance upon order dated 14.09.2018 passed by this Court in Writ C No.29593 of 2018 (Kumar Narayan And 4 Others v. State of U.P. And 2 Others) and has argued that in the year 2018 also, an identical dispute was raised by few members, however, this Court, while declining to interfere in the matter, disposed off the writ petition by order dated 14.09.2018 in the following terms:-

“8. This Court cannot go into the merits of the arguments raised by either of the parties as this Court has only a limited jurisdiction to show interference in this matter since this writ petition has

been filed only with the following main prayer:-

“I. Issue a writ, order or direction in the nature of Mandamus directing the Respondent No. 2 to decide the objection dated 14.5.2018 filed by the Petitioner against the proposed amendments with a time bound period and not to permit the present management to implement the same in the forthcoming election and include the name of newly enrolled members in the list of electorate.”

9. The direction has been prayed for only to the respondent No. 2 to decide the objections dated 14.05.2018 within a time bound period and if such objections are allowed, then, not to permit the present management to implement the same in the forthcoming election and include the name of newly enrolled members in the list of electorate.

10. This Court cannot go into the question whether the election process which has already been set in motion is being vitiated by the amended bye-laws if they are enforced, the Registrar has to look into the amended bye-laws first. This Court exercises only secondary review thereafter. Since the Registrar has not yet decided the objections, the suggestion made by the learned Senior Counsel for the respondents regarding the elections being carried out either as per the amended bye-laws or as per the original unamended but registered bye-laws, cannot be looked into by this Court also as it would amount to preemption of the jurisdiction of the Registrar in this regard.

11. In view of the settled law settled by a Division Bench of this Court in Special Appeal No. 1355 of 2013: Vineet Agnihotri And Anr. vs State Of U.P.

And 6 Others decided on 25 April, 2014, this Court does not find it appropriate to pass any order at this stage directing the Registrar to decide the objections dated 14.05.2018.

12. This writ petition is disposed off with a liberty to the petitioners to challenge the result of the elections either before the Prescribed Authority under Section 25(1) of the Act on the grounds as mentioned in the Act or they may raise their objections at the time when the list of elected members is submitted for registration before the Registrar. It shall be open for the Registrar to look into the procedural aspects of the amendments carried out by the Respondent No. 3 in the bye-laws and in case he finds that the amendments were not permissible, he may pass appropriate orders and may refer the matter to the Prescribed Authority for decision regarding the election of the office-bearers of the Society. The Prescribed Authority may strictly follow the provisions of Section 25(1) and the proviso thereof in determining the dispute, if any, which is referred either by the Assistant Registrar or application, if any, filed by the petitioners before him in accordance with law.”

16. Shri Ojha, therefore, submits that the elections may be directed to be held and, in case, the petitioners are aggrieved by the result of elections in any manner whatsoever, they have a remedy to agitate their grievances before the Prescribed Authority under Section 25(1) of the Act, 1860 after satisfying statutory requirement of 1/4th quorum. He further submits that the registration of the Society, having been renewed in 2020 for a period of five years, even if, certain exercise under Section 4-B of the Act, 1860 is to be carried out by the Assistant Registrar, such

occasion may arise in year 2025 when further renewal is sought and not at the stage when elections have already been notified.

17. Shri I.P. Srivastava, learned Additional Chief Standing Counsel appearing for the respondent nos.1 and 2 submits that the State Authorities act strictly in accordance with the provisions of the Act, 1860 and, as on today, no law obliges the Assistant Registrar to decide the representation of three members out of around 31000 members, otherwise there would be no end to such litigation and exercise and the result would be that the election process would come to a standstill.

18. Having heard the learned counsel for the parties, before dealing with the merits of the rival contentions, it is necessary to refer to Section 4-B of the Act, 1860 which is quoted as follows:-

“4-B. (1) At the time of registration/ renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change. Any change in the list of General Body shall not be valid unless it is approved by the Managing Body.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office-bearers and two executive members of the society."

19. The aforesaid provision is self-explanatory and the court cannot attach any other meaning to a provision of law which it does not provide.

20. It is well settled that Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it. (See *Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr.*, AIR 1998 SC 74). The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, (1846) 6 Moore PC 1, Courts, cannot aid the Legislatures, defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (Also See *State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr.*, JT 1998 (2) SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Tiptan) Ltd.*, 1978 (1) All ER 948 (HL)). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, (1910) AC 445 (HL), quoted in *Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.*, AIR

1962 SC 847.

21. The question is not what may be supposed and has been intended, but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage*, 218 FR 547). The view was re-iterated in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama*, AIR 1990 SC 981. In *D.R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. Etc.*, AIR 1977 SC 842, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

22. While interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain*, 2000 (5) SCC 515. The legislative *casus omissus* cannot be supplied by judicial interpretative process. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See *Grey v. Pearson* 6 H.L. Case 61). Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See

Abley v. Dale 11, C.B. 378).

23. Coming to the rival contentions, it is apparent on the face of the record that election process has already been set into motion and elections shall be held on 25.12.2023. The General Secretary of respondent no.3 has already submitted a list alongwith application dated 06.03.2023 before the Assistant Registrar that reads as follows:-

“ To

Dated: 06.03.2023

The Asstt. Registrar,

Firms, Societies & Chits,

Mehdauri,

Allahabad.

Sub: Information required under Section 4B(2) of Societies Registration Act, 1860-submitting information duly modified list of the members of General Body.

Sir,

As required under Section 4B(2) of Societies Registration Act, 1860, we are furnishing herewith the list of newly enrolled members of Kayastha Pathshala under Rule 9 of Kayastha Pathshala Rules alongwith members died.

It is humbly submitted that all the members are enrolled in strict compliance of the Rule 9 of Kayastha Pathshala Rules and the same has been approved by the Executive Council of Kayastha Pathshala.

It is clarified that membership of Kayastha based on one time donation and as such there is no requirement for the removal of existing members. In this view, it is submitted before your honor that the list is now being submitted in continuation of the earlier list of membership duly submitted to your office

Kindly take a note of it and acknowledge the same.

Yours Sincerely,

Encl: As above

(S.D. Kautilya)

General Secretary”

24. Apparently, the information furnished upon Assistant

Registrar, according to the respondent no.3, is in consonance with the bye-laws/rules of the Society and, therefore, the Court is satisfied that at this stage, the requirements of Section 4-B of the Act, 1860 stand fulfilled at the end of respondent no.3. As already held by this Court in the order dated 14.09.2018 passed in Writ C No.29593 of 2018 that after the election process has already been set into motion, the Court cannot issue a direction to the Assistant Registrar to adjudicate the issue of enrolment of members or otherwise. This Court has already left the parties with liberty to challenge the result of election either before the Prescribed Authority or at the time when the list of elected members is submitted before the Registrar.

25. From a plain reading of sub-Sections (1) and (2) of Section 4-B of the Act, 1860 it is apparently clear that examination of correctness of the list of members of the General Body of a Society on the basis of documents referred to in sub-Section (1) can be made only at the time of registration/renewal of a Society and in the event of induction of new members, the only requirement is to submit a modified list of members with the registrar. Admittedly, it is not a stage of registration/renewal of the Society but a stage when elections have already been notified and are going to be held very shortly. In view of the above discussion, this Court is of the considered opinion that the stage at which the petitioners want an adjudication by the Assistant Registrar, does not oblige the said Officer to exercise the power under Section 4-B of the Act, 1860 and, hence, no mandamus, as sought for, can be issued as it is well-settled that a mandamus cannot be issued to violate the law or to act in-violation of the law but a Writ of such nature can be issued only when the statutorily Authorized Officer is under statutory obligation to exercise such power, which, in the present case does not stand reflected in view of the above discussion.

26. It is well-settled that a Writ of mandamus cannot lie unless petitioner is seeking enforcement of any statutory right and respondents have a corresponding statutory obligation in the matter petitioner is seeking enforcement and have failed to discharge their obligation.

27. In Oriental Bank of Commerce Vs. Sunder Lal Jain and another (2008) 2 SCC 280 the Apex Court, after referring to its earlier judgments in Bihar Eastern Gangetic Fisherman Cooperative Society Ltd. Vs. Sipahi Singh (1977) 4 SCC 145; Lekhraj Sathramdas Lalvani Vs. N.M. Shah, AIR 1966 SC 334, Dr. Uma Kant Saran Vs. State of Bihar 1993(1) SCC 485, observed that there is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation."

28. The above exposition of law makes it clear that writ of mandamus cannot be issued on mere asking unless the pre-conditions are satisfied. Such well-defined conditions are not satisfied in the present case.

29. The writ petition is, accordingly, **dismissed** with liberty to the petitioners to approach the Prescribed Authority under Section 25 of the Act, 1860, after the election result is declared but certainly after satisfying the statutory requirements contained under the said provision itself.

Order Date :-5.12.2023

Jyotsana

(Kshitij Shailendra, J.)