

Court No. - 21

Case :- SPECIAL APPEAL No. - 667 of 2023

Appellant :- C/M Ganna Vikas Shiksha Samiti And Another

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

Counsel for Appellant :- Prabhakar Awasthi, Anand Tripathi

Counsel for Respondent :- C.S.C., Narendra Kumar Chaturvedi

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Donadi Ramesh, J.

1. The instant intra-court appeal is directed against the judgment and order dated 22.8.2023 passed by learned Single Judge in Writ - C No. 10467 of 2022, filed by the appellants, challenging the order of Assistant Registrar, Gorakhpur dated 23.2.2022 passed in purported exercise of power under Section 25(2) of the Societies Registration Act, 1860 (for short 'the Act'), directing for holding of elections of the Society, after recording a finding that the term of the previous committee had expired long back and no election had taken place within time specified in the bye-laws of the Society. In the writ petition, an interim order was passed on 19.4.2022 providing that elections, if held in pursuance of the impugned order of Assistant Registrar shall not be given effect to without leave of the court. The elections were held under Section 25(2) of the Act on 16.4.2022. As the writ petition filed by the appellants was dismissed by learned Single Judge by order impugned herein, he permitted the Committee elected on 16.4.2022 to function. Accordingly, it is admitted to both the parties that the said Committee is in control of the affairs of the Society.

2. The dispute arose before the Assistant Registrar on a complaint made to him by five persons, namely, Indrajeet Mishra, Amrendra Kumar Singh, Yugal Kishore Agrahari, Paras Nath Gupta and Subodh Kumar Sharma. According to them, they were life

members of the Society. The term of the Committee of Management as per the bye-laws is three years. The last valid election of the Society took place on 28.6.2015 and the term of the said Committee expired on 27.6.2018. In that election, one Vashisth Mani Rai was Secretary/Manager of the Society. He died on 7.4.2017. In his place, Shobhit Kumar Sharma was co-opted as Secretary/Manager. At the time of election held on 28.6.2015, there were fourteen members in the General Body. After death of Vashisth Mani Rai, only thirteen members remained. There were two ex officio members and thus the total strength of the General Body was fifteen. Out of them, only eleven members are alive. The Society was got renewed at that time for the period 10.10.2015 to 9.10.2020. Sri Shobhit Kumar Sharma (appellant no. 2) had forged election proceedings dated 24.6.2018 and submitted the same at the time of obtaining renewal of the Society in the year 2020. He had also illegally shown induction of eighteen new members on 4.4.2021, as well as election having taken place on 21.6.2021. Since no election had ever been held on 27.6.2018, therefore, the appellants were not having any power to enroll any new member, or to hold election on 21.6.2021. The complainants made request to the Assistant Registrar, to hold fresh elections under Section 25(2) of the Act.

3. The Assistant Registrar on receipt of the complaint, issued notices to the appellants and after hearing both the parties, passed the order dated 23.2.2022, impugned in the writ petition, specifically recording a finding to the effect that at the time of hearing on 1.12.2021, Balwant Kumar Chowdhary, Secretary, Sahkari Ganna Vikas Samiti, who is Ex Officio Secretary of the Society, specifically denied any election having taken place on 24.6.2018. Likewise, Indrajeet Mishra, Amrendra Kumar Singh,

Yugal Kishore Agrahari, Paras Nath Gupta and Subodh Kumar Sharma stated before him that no election was ever held on 24.6.2018. Appellant no. 2 could not produce the original register relating to the alleged proceedings held on 24.6.2018 (last election), 4.4.2021 (the date on which new members were inducted), 21.6.2021 (the date of fresh election), nor any agenda or information register to evidence that the agenda was duly circulated amongst the members. The Assistant Registrar, therefore concluded that the proceedings of election dated 24.6.2018 are fictitious and a manipulated one and consequently also discarded the proceedings dated 4.6.2021 relating to enrollment of new members and election held on 21.6.2021. The Committee of Management of the Society was accordingly declared as having exhausted its term long back and consequently direction was issued for holding of election in exercise of power under Section 25(2) of the Act.

4. The writ court has specifically examined the issue as to whether any election had taken place in the year 2018 and further in the year 2021. Apart from upholding the findings recorded by the Assistant Registrar as noted above, the learned Single Judge while examining the above issue, has also noted that there was no agenda for enrollment of new members in the meeting dated 4.4.2021 and the alleged meeting was held in absence of President and Vice President and also the fact that many of the members who were shown to be elected, have taken the stand before the Assistant Registrar that no such election had taken place.

5. Sri Prabhakar Awasthi, learned Senior Counsel, appearing for the appellants, submits that there was no issue relating to validity of the election held in the year 2018 as the Committee elected therein had already exhausted its three years term and therefore,

after new elections had taken place, it was not open to the Assistant Registrar to examine the validity of the election held on 24.6.2018. He further submits that the Assistant Registrar does not have any power to examine the validity of the election and he should have referred the dispute to the Prescribed Authority under Section 25(1) of the Act.

6. On the other hand, Sri Ashok Khare, learned Senior Counsel, assisted by Sri Narendra Kumar Chaturvedi, submits that the consistent findings of Assistant Registrar as well as the learned Single Judge are to the effect that the alleged elections of the year 2018 set up by the appellants had never taken place. The proceedings were a result of forgery and fabrication. In case the election is found not to have been held at all and the proceedings are found to be forged and fabricated, then the Assistant Registrar was well within his jurisdiction to direct for holding of election under Section 25(2) of the Act. He need not refer the matter to the Prescribed Authority.

7. He further submitted that the election proceedings of the year 2018 were never filed before the Assistant Registrar, as required under Section 4 of the Act. Since it was a forged proceeding, therefore its copy was sent to the Assistant Registrar for the first time in the year 2020 while seeking renewal of the registration certificate of the Society. He further submits that at the time of grant of renewal, the validity of the election proceedings was not examined. However, when the appellants had set up fresh election and it was challenged before the Assistant Registrar on the ground that the previous election of the year 2018 was in fact never held and the proceedings are a result of fraud and fabrication, it was well within his jurisdiction to examine the said issue as he cannot act as mere post office and refer the dispute to the Prescribed

Authority, even if the dispute, on the face of it, was a sham one. In support of his contention, he has placed reliance on the Division Bench judgment of this Court in **Shailendra Singh and Others vs. State of U.P. and Others; 2017 (6) ADJ 602 (DB)**.

8. We have examined the rival contentions and the material placed on record.

9. As noted above, the Assistant Registrar has recorded a specific finding that alleged election of year 2018 was in fact not held and the proceedings are nothing but a result of fraud and fabrication. The Assistant Registrar has also returned a finding that the Secretary of Sahkari Ganna Vikas Shiksha Samiti, who is ex-officio Secretary, made a statement before him that no election had taken place on 24.6.2018. All the complainants who were shown to be elected in the Committee allegedly constituted on 24.6.2018, had also denied holding of any such election. The original proceedings have not been produced before the Assistant Registrar. The agenda was not placed before him, nor any evidence as to how the agenda was circulated amongst the members. Apart from above, the learned Single Judge has also noted other irregularities in the meeting dated 4.4.2021 in which new members were inducted. Learned counsel for the appellants, except for making legal submissions, could not show before us that how these findings are incorrect or suffer from any perversity.

10. In fact, learned counsel for the appellants, admitted before us that the election of the year 2018 was never communicated to the Assistant Registrar. Copy of the said proceedings was filed before him for the first time in the year 2020 while seeking renewal of the registration certificate. Under Section 4 of the Act, the requirement is that once in every year, on or before the fourteenth day

succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list has to be filed with the Registrar intimating him of the name, addresses and occupation of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society. This supports the conclusion arrived at by the Assistant Registrar and the learned Single Judge that the elections of the year 2018 set up by the appellants are fake and fabricated.

11. On query made to learned counsel for the appellants as to how the election of the year 2018 was notified, learned counsel fairly concedes that no such evidence was produced before the Assistant Registrar, nor it was annexed with the writ petition despite specific finding of the Assistant Registrar that no such election was ever held.

12. In **Shailendra Singh** (supra), a Division Bench of this Court has held that if the Assistant Registrar finds that the dispute relating to validity of the election is not bonafide and genuine, but a frivolous one, he is not required to refer the same to the Prescribed Authority. In the instant case, since on basis of the material produced before the Assistant Registrar, he has arrived at a definite finding that the election of the year 2018 was never held and the entire proceedings are a result of fraud and fabrication, he was not required to refer the dispute to the Prescribed Authority. He was well within his power to examine whether any genuine dispute relating to election has been raised before him and since in the instant case the alleged election has been found to be a result of fraud and fabrication, therefore, in the eyes of law, no election dispute was in existence before him so as to divest him of his

jurisdiction.

13. Once the election of the year 2018 has been discarded, the enrollment of new members and the election set up for the year 2021 would automatically fail and thus, we find no illegality in the order of the Assistant Registrar in ordering holding of elections under Section 25(2) of the Act.

14. Moreover, in pursuance of order of the Assistant Registrar, fresh elections have already taken place and the Committee of Management so elected is functioning. Therefore, we find still less justification to interfere with the order of learned Single Judge.

15. The appeal lacks merit and is dismissed.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, J.)

Order Date :- 12.10.2023

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