

**Court No. - 10**

**Case :-** WRIT - C No. - 36135 of 2023

**Petitioner :-** Akhil Bhartiya Shri Krishna Chetna Sansthan And Another

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

**Counsel for Petitioner :-** Prabhakar Awasthi, Adarsh Shukla

**Counsel for Respondent :-** C.S.C., Bhaiya Lal Yadav

**Hon'ble Kshitij Shailendra, J.**

1. Counter affidavit filed on behalf of the respondent no.3 as well as two rejoinder affidavits filed by the petitioners are taken on record.
2. Heard Sri Prabhakar Awasthi, learned counsel for the petitioners, learned Standing Counsel for respondent nos.1 and 2 and Shri Bhaiya Lal Yadav, learned counsel for the respondent no.3.
3. This Court passed an interim order on 18-10-2023 staying the effect and operation of the order impugned till the next date of listing with a further direction that no election shall be held pursuant to the notification issued and that in case, after exchange of affidavits, necessity to lawfully determine the electoral college is felt by this Court, appropriate directions shall be passed.
4. The aforesaid interim order was assailed by the respondent no.3 by filing a Special Appeal (Defective) no.771 of 2023, which has been disposed of by the Division Bench of this Court on 21-11-2023 observing that the parties may exchange the affidavits so that the matter may be considered by the writ court on the next date fixed i.e. 06-12-2023.
5. Since affidavits have been exchanged, this Court, as per observations made by the Division Bench, proceeds to finally decide the matter.
6. The basic contentions raised by the learned counsel for the petitioners are already noted in detailed interim order dated 18-10-2023 which is reproduced as follows:-

" 1. By challenging the orders dated 30.06.2023 and 19.09.2023, it has been argued

that on the complaint moved by respondent No. 3, namely, Jang Bahadur Singh, under section 24 of the Societies Registration Act, 1860, an order for enquiry was passed and one Chartered Accountant Company was appointed as enquiry officer, however simultaneously a tentative list of members was issued and cryptic direction for holding elections was issued under section 25(2) of the Act observing that the petitioner failed to produce certain documents.

2. The subsequent order dated 19.09.2023 deals with certain documents produced by the petitioners and also the enquiry report, which speaks that 993 members are valid. However, discarding the documents submitted by the petitioners in one or two lines, the list of office bearers submitted by the respondent No. 3 containing 102 members has been approved by directing expunging of membership of certain persons, namely, Ram Bahore and B.B. Yadav and reference to section 15 of the Act has also been made.

3. Learned counsel for respondent No. 3 submits that admittedly the Committee is time barred since 2021 and no elections have been held.

4. Be that as it may, once the petitioners have submitted their documents and there is no proper adjudication of the same, and even if circumstances for holding fresh elections under section 25 (2) of the Act may be justified, determination of electoral roll is of much significance, however contrary to the report submitted by the enquiry officer and without properly examining the documents, the manner in which membership has been decided by the Assistant Registrar appears to be prima facie not justified.

5. Let a counter affidavit be filed by respondents within four weeks from today.

6. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

7. Put up this case as fresh on 06.12.2023.

8. Till the next date of listing, the effect and operation of orders dated 30.06.2023 and 19.09.2023 shall remain stayed.

9. No elections shall be held pursuant to the notification issued.

10. In case after exchange of affidavits necessity to lawfully determine the electoral

college is felt by this Court, appropriate directions shall be passed. "

7. Sri Prabhakar Awasthi, learned counsel for the petitioners, after exchange of affidavits, further submits that there is no dispute with respect to the election of society held on 13-12-2020, in which the petitioner no.2 was elected as Secretary and the respondent no.3 as Vice-President. He submits that by the order impugned dated 19-10-2023, names of even those members have been removed from the zone of consideration in relation to the proposed elections, which were either members or office bearers in the elections held in 2020.

8. In sum and substance, the contention is that few observations have rightly been recorded in the order impugned that the society has become defunct/time barred on account of lapse of the term of one year, and that the elections have been rightly directed to be held under Section 25(2) of the Act, the grievance of the petitioners is confined to determination of the valid electoral college for the purposes of holding elections.

9. It is further contended that in response to the notice issued by the Assistant Registrar, the petitioner no.2 submitted voluminous documents on 03-04-2023 vide annexure-6 to the writ petition, however, there is no consideration of the same in the order impugned and perverse observations have been recorded with reference to the proceedings etc. and hence, the alleged determination being vague and done behind the back of the petitioners, the order cannot sustain.

10. Learned Standing Counsel, while referring to the counter affidavit, submits that the documents produced by the petitioners such as membership register etc. etc. are in possession of the Assistant Registrar, Prayagraj and that the petitioners could not establish validity of the membership. Certain observations have been made with respect to 993 members with a further stand that the opportunity provided to the petitioner no.2 was not availed by him.

11. Learned counsel for the respondent no.3 has vehemently opposed the writ

petition and he submits that at the time of renewal of the society in the year 2020, the petitioners themselves had submitted a list of 104 members before the Assistant Registrar, which has been annexed as annexure-CA-11 to the counter affidavit and therefore the submission that there are 993 members, is contrary to the stand of the petitioners themselves. It is further argued that the determination made by the Assistant Registrar in terms of the issuance of tentative and final list is strictly in accordance with the statutory requirements and hence, no interference is warranted.

12. Having heard the learned counsel for the parties, this Court finds that two simultaneous proceedings were being undertaken by the Assistant Registrar, one under Section 4-B of the Act and the other under Section 24 of the Act. The notices were issued in relation to both the proceedings and insofar as proceeding under Section 24 of the Act are concerned, there is already an inquiry report dated 11-04-2023 submitted by one Chartered Accountant Company. However, any observation made by the said Inquiry Officer/Company in relation to the membership of the society is beyond his competence as rightly observed by the such Officer/Company before the Deputy Registrar as noted in the order impugned dated 19-09-2023 also. The court finds that the two proceedings have different scopes and insofar as the holding of election under Section 25(2) of the Act is concerned, the same has to be held on the basis of valid electoral college.

13. From perusal of the record the Court finds that even if the stand of the respondent no.3 is accepted for the time being that the petitioners themselves produced the list of 104 members at the time of getting the registration of society renewed in 2020, it is a matter of quite surprise as to how the names of those office bearers/members which were recorded in the said list could be removed.

14. The Court has compared the names as recorded in the order impugned with the list appended as annexure CA-11 and finds that the cryptic observations dislodging the membership of those persons appear to be unjustified. There is nothing on record to show that any notice was issued even to those members and it appears that on representation filed by the petitioner no.2, who happens to be Secretary of

the Society, action has been taken not only against the petitioner no.2 whose name has also been expunged but also against various other persons.

15. Leaving aside the proceedings under Section 24 of the Act which is not the issue involved in the present writ petition, in the totality of the facts and circumstances, the petition stands **disposed of** in the following terms:-

(a) The declaration of the society as defunct/time barred is **upheld**.

(b) Decision to hold elections under Section 25 of the Societies Registration Act is also **upheld**.

(c) Order impugned dated 19-09-2023 is **set aside**.

(d) The petitioners are directed to file certified copy of this order before the Assistant Registrar, Prayagraj in **December 2023**.

(e) The Assistant Registrar **shall call upon** the petitioner no.2, respondent no.3 and those persons whose names have been expunged/removed by him under the order dated 19-09-2023 to make their say by fixing a specific date **in the month of January 2024**.

(f) Noticees would be at liberty to submit their respective claim/defence that shall be treated as representation against the tentative list in the month of February 2024.

(g) The Assistant Registrar shall make a determination under Section 4-B of the Act after providing opportunity of hearing to all the parties and shall also analyse the documents already in possession as provided by the respective parties and any other documents that may be submitted in terms of these transactions, **in presence of all the noticees**.

(h) The determination shall be made by 31-03-2024 and election under Section 25(2) of the Act shall be held on the basis of the such determination and according to the bye-laws of the society within next two months.

(i) The determination of the **final** electoral college **would not be confined** only to 104 members as mentioned in the tentative order dated 30-06-2023 and the Assistant Registrar shall examine the membership in toto.

**Order Date :-** 6.12.2023

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