

Court No. - 10

Case :- WRIT - C No. - 38780 of 2023

Petitioner :- Bus Operators Association Orai Konch And Another

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

Counsel for Petitioner :- Akshay Prakash Srivastava,Dharmendra Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra,J.

1. Heard Sri D.K. Srivastava, learned counsel for the petitioners and Sri Jitendra Singh, learned Additional Chief Standing Counsel for the respondents no.1 and 2.

2. The petitioner is aggrieved by cancellation of registration of the petitioner-society, namely, Bus Operators Association Orai-Konch, Orai Bus Stand, Tehsil Konch, District Jalaun.

3. It is contended that a show cause notice was issued to the respondent no.3 with its copy addressed to the petitioner no.2 calling upon the persons to appear before the Assistant Registrar, Firms Societies and Chits, Jhansi Division, Jhansi (respondent no.2) to show cause as to why the certificate of registration of society be not cancelled in exercise of power under Section 12-D of the Societies Registration Act, 1860 of the Act as registration of a society, having name similar to an earlier registered society, has been obtained.

4. It is contended that though the petitioner no.1 association/society is different from respondent no.3 association/society and there is no similarity in between the two names, the Assistant Registrar has proceeded to make various observations in the order impugned and has cancelled the same by invoking Section 3(2) (a) and (b) read with Section 12-D (1) (c) of the Act, whereas none of such provisions stands attracted in the facts and circumstances of the case.

5. Learned Additional Chief Standing Counsel submits that the writ petition is not maintainable in view of availability of alternative remedy of filing an appeal before the Commissioner of the Division under Section 12-D of the Act. He has also addressed the Court on the merits of the order impugned and supports the same.

6. Though learned counsel for the petitioner submits that existence of alternative remedy is not an absolute bar in entertainment of writ petition, considering the fact that the order

impugned was passed after providing opportunity of hearing to the petitioner nor is the order impugned without jurisdiction, but the submission is that powers under certain clauses/ sub-clauses of the Act have been wrongly exercised and grounds raised in defence have not been properly considered, in the opinion of the Court, statutory remedy of appeal would come in the way of the petitioner at least in the present set of facts and circumstances.

7. The writ petition is **disposed of** in the following terms:-

(i) The petitioner may file an appeal against the order impugned before the Commissioner of the Division along with certified copy of this order, **by the end of November, 2023** and in the event the appeal shall not be dismissed on the ground of limitation.

(ii) The Commissioner shall decide the appeal after providing full opportunity of hearing to the petitioner and the respondent no.3 **on or before 28.02.2024.**

Order Date :- 8.11.2023

AKShukla/-