

Court No. - 10

Case :- WRIT - C No. - 40967 of 2023

Petitioner :- Rakesh Chandra Mishra And 3 Others

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

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- CSC, Neeraj Kumar Pandey

Hon'ble Kshitij Shailendra, J.

1. Heard Ms. Akashi Agarwal, holding brief of Sri Rahul Agarwal, learned counsel for the petitioners, learned Standing Counsel for the respondents no.1 and 2 and Sri Neeraj Kumar Pandey, learned counsel for the respondent no.3.

2. A preliminary objection has been raised by Sri Pandey regarding maintainability of the writ petition on the ground that the petitioners have challenged the result of elections and they have two remedies, first either to approach the Prescribed Authority under Section 25(1) of the Societies Registration Act, 1860 in view of the Division Bench judgment of this Court dated 31.07.2019 passed in Special Appeal No.60 of 2018 (Kamlapati Singh Vs. State of U.P.) or secondly to approach the civil court.

3. Learned counsel for the petitioners submits that the alternative remedy is not a bar in entertainment of writ petition, particularly, when the record shows that the elections were held committing violation of the principles of natural justice. Learned counsel has referred to various documents and submits that though the election programme was notified on 01.05.2023, the petitioners could not get information regarding the elections to be held on 16.05.2023 on account of incomplete address mentioned in the list relied upon by the Assistant Registrar. She further further submits that certain members had submitted objections regarding unlawful holding of elections but the same have not been considered.

4. I have perused the record and I find that in so far as the objections are concerned, the same were dispatched by registered post on 16.05.2023, i.e. the date on which the result of the elections was declared and, therefore, there was no occasion for taking into consideration the objections which were not even received in the concerned office. Learned counsel, in this regard, submits that in addition to sending of representations by registered post, the same were also submitted by hand.

5. Section 25(1) of the Act reads as follows:-

"25. Dispute regarding election of office-bearers.--(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, **hear and decide in a summary manner any doubt or dispute in respect of the election** or continuance in office of an office-bearer of such society, and may pass such orders in respect thereof as it deems fit :

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied-

(a) that any corrupt practice has been committed by such office bearer ; or

(b) that the nomination of any candidate has been Improperly rejected ; or

(c) that the result of the election in so far it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the Improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the society.

Explanation I--A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person-

(i) includes, or attempts to induce, by fraud intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not withdraw from being a candidate at the election ;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election, offers or gives any money, or valuable consideration, or any place of employment, or holds out any promise of individual advantage or profit to any person ;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii) ;

(iv) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is Interested, will become or will be rendered an object of divine displeasure or spiritual censure ;

(v) canvasses on grounds of caste, community, sect or religion ;

(vi) commits such other practice as the State Government may prescribe to be a corrupt practice.

Explanation II--A, promise of individual advantage or profit to a person, includes a promise for the benefit of the person himself, or of any one in whom he is interested.

Explanation III--The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such

elections and making provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society."

6. A perusal of the said provision clearly stipulates that the Prescribed Authority is competent to hear and decide, in a summary manner, any doubt or dispute in respect of the elections and, admittedly, no occasion arose for making a reference by the Assistant Registrar, however, that would not preclude members to directly approach the Prescribed Authority after satisfying the statutory requirement of 1/4 strength/ quorum.

7. Accepting the preliminary objection raised by the respondent no.3, **no interference** is required in the order/ declaration dated 16.05.2023 **only on the ground of existence of alternative remedy**.

8. The writ petition stands **disposed of** permitting the petitioners to approach the Prescribed Authority under Section 25(1) of the Act in relation to the elections in dispute after satisfying the statutory requirements and, in case such requirements are found to have been satisfied by the Prescribed Authority as and when the representation is filed before it, the Prescribed Authority shall deal with the same and hear and decide the dispute after providing full opportunity of hearing to the applicants of the representation as well as the respondent no.3, expeditiously.

9. It is made clear that this Court has not expressed any opinion on merits of the rival contentions or the election held and it is for the Prescribed Authority to deal with the same in accordance with law on merits.

Order Date :- 12.12.2023

AKShukla/-