

RESERVED ON 19.4.2023

DELIVERED ON 17.10.2023

Court No. - 13

Case :- WRIT - C No. - 1005311 of 2005

Petitioner :- C/M L.M.T.Uchchatar Madhyamik Vidyalaya Samiti And Anr.

Respondent :- Dy.Registrar Firms Soccieties And Chits Faizabad And 5 Ors.

Counsel for Petitioner :- Pt.S.Chandra,Aseem Goswami,Dr. L.P. Mishra,Manish Singh,U.S. Sahai

Counsel for Respondent :- C.S.C.,Anil Kumar Tewari,Apoorva Tewari,Mahendra Pratap Singh

Hon'ble Karunesh Singh Pawar,J.

1.Heard Pt. S. Chandra, learned counsel for the petitioner and Mr. Anil Kumar Tewari, learned Senior Advocate, assisted by Mr. Vivek Kumar and Apoorva Tewari, learned counsel for the respondent No.4 as also Mr. Vinod Kumar, learned Addl. Chief Standing Counsel.

2.Present writ petition has been filed by the petitioners challenging order dated 8.4.2005 passed by Deputy Registrar, firms, Chits and Societies, Faizabad, by which the Deputy Registrar declared Committee of Management of the society as time barred and directed that fresh election be held in exercise of power under section 25(2) of the Societies Registration Act, 1860, order dated 13.8.2005/24.8.2005 by which the Deputy Registrar finalised the list of valid voters of the society in furtherance to order dated 8.4.2005 as also order dated 18.5.2010 by which the Deputy Registrar upheld the claim of Ram Lal Shukla and directed that name of 80 persons be added to the list of members of general body of the society.

The petitioners have further prayed for a direction to the respondents to ignore the internal orders passed against the petitioners which are alleged to be unserved and un-communicated.

3. Brief facts of the case are that Lok Manya Tilak Uchchatar Madhyamik Vidyalaya Samiti, Pachpedwa, District Balrampur, U.P. (in short, Society) is registered under the provisions of the Societies Registration Act, 1860 (in short, Act of 1860). The Society was initially registered on 3.9.1956. The prescribed period for the office bearers of the Society is three years and the registration of the Society is duly renewed from time to time. On some controversy having arisen in the year 1992 qua the post of Secretary/Manager, the Assistant Registrar referred the matter to the Prescribed Authority under section 25(1) of the Act of 1860 on 26.9.1992 to determine the controversy between Devendra Bahadur Singh and Dharmendra Pratap Singh Kalhans, respondent No.4. After recording statements of all concerned and going through the record, the prescribed authority decided the controversy vide order dated 6.11.1992 and declared Devendra Bahadur Singh as Secretary/Manager. Consequent to the order dated 6.11.1992(supra), the Deputy Registrar filed the list of Managing Committee of the Society for the year 1992-1993 submitted by Devendra Bahadur Singh as Secretary/Manager. The appeal filed by respondent No.4 before the Commissioner, Faizabad has been dismissed vide order dated 2.9.1993.

On 12.3.1995, election of committee of management of the society was held. The Deputy Registrar vide impugned order dated 8.4.2004 has

recorded that the nomenclature of office bearers elected in the said election are in accordance with bye-laws of the Society. Kaushlendra Pratap Singh applied for renewal of the registration of the society along with list of committee of management pursuant to election(s) dated 18.2.1998 and 18.2.2001.

On certain complaints having been made, Kaushlendra Pratap Singh vide letter dated 18.8.2004 submitted another list of committee of management along with election proceeding dated 31.5.2004 before the Deputy Registrar. The Deputy Registrar vide order dated 8.4.2005 after considering all the representations declared the society as time barred and directed that election be held under section 25(2) of the Act of 1860. The Deputy Registrar held that elections dated 18.2.1998, 18.2.2001 and 31.5.2004 were not held in accordance with the nomenclature of bye-laws of the Society and declared the society time barred.

The Deputy Registrar has issued notice dated 10.6.2005 to Kaushlendra Pratap Singh and invited objections on the list of members of general body of the society submitted by Dharmendra Pratap Singh Kalhans. Kaushlendra Pratap Singh did not file any objections to the notice dated 10.6.2005 (supra). The Deputy Registrar finalised the list of valid voters which constituted the electoral college comprising 80 persons for holding election of committee of management of the society under section 25(2) of the Act of 1860. Election schedule for holding election of committee of management of the society was issued by the Deputy Registrar.

In the present writ petition, an interim order dated 22.12.2005 was passed, whereby status quo was directed to be maintained by the parties till the next date of listing.

After the election was held, the Deputy Registrar, inter alia declared ten persons elected as member of the committee of management of the society. Prior to expiry of term, fresh election of committee of management of the society was held from time to time ranging from 28.9.2009 to 16.8.2020, in which in all five times, i.e. on 28.9.2008, 25.9.2011, 24.8.2014, 20.8.2017 and 16.8.2020, the respondent No.4 was elected as Secretary of the Society. The petitioners, however, did not challenge the said election(s).

4.Learned counsel for the petitioners submits that vide order dated 6.11.1992, the prescribed authority has held that respondent No.4 Dharmendra Pratap Singh Kalhans is not a member of the society. The committee of management even after expiry of its term has convened a meeting for the purpose of holding election. Such right continues till such time the order is passed by the Deputy Registrar under section 25(2) of Act of 1860. Since no order was passed by the Deputy Registrar under section 25(2) of Act of 1860 prior to holding election dated 31.5.2005, order dated 8.4.2005 is without jurisdiction.

It is further submitted that the elections dated 18.2.1998, 18.2.2001 and 31.5.2005 even if held inconsistent to the nomenclature of the office bearers provided in the bye-laws are valid elections of the committee of management of the society, nomenclature makes no difference.

It is argued that the Deputy Registrar passed the impugned orders dated 8.4.2005 and 13.8.2005 without affording any opportunity to the petitioners.

It is submitted that during pendency of the writ petition, the Deputy Registrar in an illegal manner held election on 5.10.2005 among 80 disputed forged members and elected Rakesh Kumar Yadav son of Manager S.P. Yadav as President and the respondent No.4 as a Manager.

In a special appeal No.93 of 2015 filed by Kaushlendra Pratap Singh, a Division Bench of this court directed the parties to pursue the present writ petition.

It is submitted that the Deputy Registrar while registering the general body of 80 new members given by respondent No.4 has no authority to give the list. He is neither President nor Manager. It is submitted that his claim was rejected by the prescribed authority and Commissioner in appeal.

It is further submitted that even if the Deputy registrar has concluded that the election dated 31.5.2004 is time barred, he ought to have conducted election among the general body of undisputed election, i.e. election dated 18.2.2001 or general body of election dated 31.5.2004. It is submitted that the Deputy Registrar conducted election in political pressure and held Mr. Rakesh Yadav as President. It is submitted that under sections 4 and 4-B of Act of 1860, the Deputy Registrar is duty bound to make necessary exercise before issuing list of general body. Under section 4-B of Act of 1860, it is provided that Registrar shall examine correctness of members of general body on the basis of register

of meetings, minutes book, cash book, receipt of membership fees and bank pass book of society, however, the Deputy Registrar did not follow the statutory provision. The law is also settled that even if the election is beyond the periodical time, even then, it is protected by section 25(3) of Act of 1860. In this context, learned counsel has relied on 2005(9) Education Service Cases 847, Alld (para 7).

In this view of the matter, it is contended that the election dated 31.5.2004 was neither time barred nor the Deputy Registrar served any notice on the petitioner before passing impugned order dated 8.4.2005. The order dated 13.8.2005 is also ex parte, illegal and arbitrary and has been passed without application of mind.

It is further submitted that mere passage of time or due to holding periodical election, case is not rendered infructuous. In support of his contention, learned counsel has relied on **Union of India versus Narendra Singh** 2005(6) SCC 106, **Madhya Pradesh State Road Transport Corporation vs. B.P. Upadhyaya and others** AIR 1996 SC 156, **Union of India versus G.R. Prabhavalkar** 1973(4) SCC 183, Alld., **Smt. Gujrati Devi Singhal vs. Assistant Registrar** 1997(15) LCD 456, **Karimaben K. Bagad vs. State of Gujrat** 1998(6) SCC 264, **Amit Kumar Singh vs. Baba Bariyar Shah Memorial and others** 2016(3) UPLBEC 1845 DB and **Jagdambika Prasad Pandey vs. State of U.P. and others** 2019(37) LCD 2574.

5.Mr. Anil Tewari, learned counsel for respondent No.4, on the other hand, has raised preliminary objection that the writ petition is not

maintainable. It is submitted that in this petition, dispute is in regard to membership of the general body of the society, which is purely a disputed question of fact and requires adjudication by oral and documentary evidence. Such oral and documentary evidence can only be done by the Civil Court and not by this Court under Art. 226 of Constitution of India. Consequently, the writ petition filed by the petitioners is not maintainable against finalization of membership of general body of the society. In this context, learned counsel has relied on **A.P. Aboobakar versus Deputy Registrar** (2004)11 SCC 247 (relevant para 3), **Committee of Management, Kisan Shiksha Sadan, Banksahi, district Basti and another versus Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur and another** [(1995)2 UPLBEC 1242, **Ram Narain Sharma versus State of U.P.** (2006) 64 ALR 115 (All.) (relevant para 12), **Babu Ram Shiksha Prasar Samit vs. Deputy Registrar** 2008(1) ALJ207 and **Education Sahyogi Association versus Deputy registrar** (1996) SCC Online All 6.

It is next submitted on behalf of respondent No.4 that after filing of the writ petition in this Court, elections of the committee of management of the society were held from time to time, i.e. on 14.10.2005, 28.9.2008, 25.9.2011, 24.8.2014, 20.8.2017 and 16.8.2020 and the petitioners have not challenged any of these elections before any forum. It is contended that the instant writ petition has become infructuous for not assailing the subsequent elections. Learned counsel in support of his contention has relied on **Qmar Rashid Khan versus Comt. MGMT, Azamgarh Muslim Ed. STY and others** JT 2001(10) SC

50 (relevant para 1) and **Committee of Management, Shiksha Pracharini Sangh, Isari Salempur, Ballia and another versus Prescribed Authority/Sub Divisional Magistrate, Rasara, District Ballia and others** 2005(1) AWC 588 (para 7).

It is further submitted that the order of status quo passed by this Court till the next date of listing cannot extend the tenure of the committee of management and as such, fresh election would not become null and void. Since during pendency of the writ petition, tenure of election itself has come to an end, direction for maintenance of status quo will lose its effect as it will protect existing interest of the parties and other party in such situation can get fresh election conducted. In this context, learned counsel has relied on **Committee of Management, Adarsh Shiksha Samitee, Charibana, Karchana, district Allahabad and another versus State of U.P. and others** [(2009)3 UPLBEC 2636] and **Dr. Luis Proto Barbosa vs. Union of India and others** 1992 Supp (2) SCC 644.

In regard to the argument that the prescribed authority vide order dated 06.11.1992 has held that the respondent no. 4 is a stranger to the society, learned counsel for respondent No.4 has submitted that the petitioners have misled this Court and made a false statement. A perusal of order dated 06.11.1992 makes it evident that the prescribed authority has not recorded any finding about membership of the respondent no. 4 except that Dharmendra Pratap Kalhans refused to accept notice.

It is submitted that dispute before the prescribed

authority was to determine the controversy between Devendra Bahadur Singh and Dharmendra Pratap Kalhans on the post of Secretary/Manager. The Prescribed Authority decided the controversy on the basis of records of the college and certain affidavit filed and statement of the Principal and certain employees of the college and declared Devendra Bahadur Singh as Secretary/Manager of the society. It is submitted that the Prescribed Authority without looking into the bye-laws of the society recorded that the college is being managed by the committee of management comprising of President, Vice-President, Manager/Secretary, Deputy Manager etc. The order of Prescribed Authority would confine only to the term, and not beyond that.

In the present case, the Deputy Registrar has not recognised the elections dated 18.02.1998, 18.02.2001 and 31.05.2004 as set up by the petitioners. Deputy Registrar after examining the record recorded a categorical finding that the election dated 12.03.1995 submitted by Devendra Bahadur Singh in capacity as secretary of the society wherein Kaushalendra Pratap Singh was elected as Deputy Secretary is in accordance with nomenclature of office bearers as provided in bye-laws of the society, whereas election proceeding dated 18.02.1998, 18.02.2001 and 31.05.2004 are not in consonance with the registered bye-laws of the society. The nomenclature of the office bearers in the aforesaid election proceeding is different from the nomenclature provided under the bye-laws and hence Deputy Registrar only recognised the election dated 12.03.1995 and did not recognise the election(s) dated 18.02.1998, 18.02.2001 and

31.05.2004 on the basis of which after due opportunity to respective parties declared the elections time barred under section 25(2) of the Act of 1860. It is submitted that no rival claim in respect of election of committee of management of the society was raised by the parties.

Mr. Anil Tewari, learned senior counsel for respondent No.4 has drawn this Court's attention to the pleading made in paragraph 4 of the writ petition and submitted that the petitioners have admitted in the said para that on 31.05.2004 an election of committee of management of the society and college was held which was duly recognised by the District Inspector of Schools, Balrampur. It is submitted that District Inspector of Schools has no role in respect of recognition of election of the society. It is the Deputy Registrar who has the power under section 4 of the Act of 1860 to recognise the elections of the society. Thus, it is admitted that election allegedly held on 31.05.2004 is not the election of the committee of management of the society.

Learned counsel while referring to the bye-laws of the Society has submitted that any election which is not in accordance with the nomenclature of the office bearers provided in the bye-laws would not be considered as election of committee of management of the society.

It is submitted that prior to passing of impugned order dated 08.04.2005, Deputy Registrar considering the various representations and rival claims submitted by respective parties issued notice dated 21.02.2005 to Kaushlendra Pratap Singh, Dharmendra Pratap Kalhans and Tej Bahadur Singh through registered post requiring

them to appear on 05.03.2005 along with evidence/documents in support of their claims so that matter could be proceeded.

The notice dated 21.02.2005 was sent to petitioner no. 2 Kaushalendra Pratap Singh on his correct address. Section 27 of the General Clause Act gives rise to a presumption that service of notice would be effected when it is sent to the correct address of the addressee by registered post. Thus, in view of aforesaid provision the notice dated 21.02.2005 sent by the Deputy Registrar to the petitioner no. 2 Kaushalendra Pratap Singh would be deemed served.

It is submitted that the petitioner no. 2 Kaushalendra Pratap Singh despite service of notice dated 21.02.2005 did not appear before the Deputy Registrar and as such, it cannot be said that the impugned order dated 08.04.2005 has been passed behind the back of the petitioners.

It is submitted that vide order dated 08.04.2005, Deputy Registrar declared the committee of management of the society as time barred under section 25(2) of the Act, 1860 and directions were issued to the respective parties to file the list of valid members of general body within one month from the issuance of order, however the petitioner no. 2 Kaushalendra Pratap Singh did not file any list of members of general body of the society. The respondent no. 4 Dharmendra Pratap Kalhans filed a list of 80 members along with his letter dated 17.05.2005.

It is submitted that since petitioner no. 2 Kaushalendra Pratap Singh did not submit any list of members of general body of the society, therefore, Deputy Registrar issued notice dated

10.06.2005 to Kaushalendra Pratap Singh through registered post reminding him for non-production of list of valid members and also supplied the list of 80 members submitted by the respondent no. 4 Dharmendra Pratap Kalhans and invited objections against the same.

The petitioner no. 2 Kaushalendra Pratap Singh despite service of notice dated 10.06 2005 neither filed any list of members of general body of the society nor any objections against the list of 80 members of general body of the society submitted by Dharmendra Pratap Kalhans in furtherance to impugned order dated 08.04.2005.

It is submitted that one Kedar Nath Gupta on behalf of Kaushalendra Pratap Singh filed a list of 56 members of the institution. Deputy Registrar after comparing the list 56 members and list of 80 members submitted by Dharmendra Pratap Kalhans and Kedar Nath Gupta respectively found only two common names. Thereafter, Deputy Registrar after perusing all relevant records pertaining to the membership of the society finalized the list of valid voters for holding election of the committee of management of the society vide impugned order dated 13.08.2005.

Petitioners are aggrieved by the order dated 13.08.2005 passed by the Deputy Registrar, whereby membership of general body of the society was finalised for holding election of committee of management of the society in furtherance to order dated 08.04.2005. It is submitted that dispute of membership is highly disputed question of fact which requires adjudication by oral and documentary evidence.

It is not possible for this Court under Article 226 of the constitution of India to record evidence, which can only be done by the Civil Court. Therefore, the instant writ petition is not maintainable against the finalization of membership of general body of the society. The petitioners have efficacious alternative remedy to approach before the Civil Court.

During pendency of the instant writ petition, periodical elections of the committee of management of the society were held on 14.10.2005, 28.09.2008, 25.09.2011, 24.08.2014, 20.08.2017, 16.08.2020. The petitioners have not assailed any of the subsequent elections before any forum till date and as such the instant writ petition has become infructuous by holding subsequent elections.

6.Having heard learned counsel for the parties and perusal of the record, I deem it appropriate to deal with the preliminary objections raised by learned counsel for respondent No.4 first.

7.The petitioners' counsel has submitted that the Deputy Registrar, Faizabad has passed impugned order dated 13.8.2005 without providing opportunity of hearing to the petitioner. It is stated in para 10 of the petition that respondent No.4 Dharmendra Pratap Singh Kalahans is not member of General Body of committee of management of society and the college. The respondent No.4 is not even member of the college. He is son of earlier Principal of the college who has been superannuated. It is further pleaded in the said para that list of members submitted by respondent No.4 is fake and forged and therefore, he had no authority to make the

members.

It is further pleaded in para 11 of the petition that respondent No.4 has no authority to intervene in the matter and he is stranger to the college. He has committed forgery. The alleged membership register and fees receipt is not valid paper. It is further pleaded in para 13 of the petition that the list submitted by petitioner No.2 is correct; and the list of eighty members submitted by respondent No.4 is forged and without any basis.

In para 25, it has been pleaded that the impugned order dated 24.8.2005 has been passed without examining the cashbook, membership register, fees register and other records. It is further submitted that the Deputy Registrar did not see the authority of respondent No.4 and he also could not look into the matter as to who had produced the list of 80 members and the list preferred by unauthorised persons is nonest, fake and forged papers. The Deputy Registrar acted in collusion with respondent No.4. To sum up, the petitioners have disputed the membership in the society which, of course are disputed questions of facts, coupled with the allegation of forgery etc levelled by the petitioners. These disputed questions of facts in the opinion of this Court requires adjudication by leading oral and documentary evidence. This court under Art. 226 of the Constitution of India cannot adjudicate disputed questions of fact; rather only the competent civil court by recording evidence both oral and documentary can decide such kind of dispute. Therefore, I am of the view that against finalization of membership of the general body of the society, present writ petition against the order of Deputy Registrar is not maintainable as it

contains disputed questions of facts. The petitioners have statutory alternative remedy to approach the competent Civil court.

8. Supreme Court in A.P. Aboobaker Musaliar's case (supra) has held in para 3 that merely because the Deputy Registrar has accepted the list of governing body members given by one party does not preclude the other party for establishing his claim in a competent court.

In Committee of Management, Kisan Shiksha Sadan's case (supra), it has been held in para 3 that in exercising power under section 25, Registrar has to apply his mind to the facts of the case and take a decision. In taking such a decision, the Registrar will be quite justified to take into account all the relevant circumstances and if an objection is raised about membership of a person, it is the duty of the Registrar for his own administrative purpose to enquire into whether the person concerned is a member of the society or not. If the Registrar comes to the conclusion that such person is not a member of the society, then he is under no obligation to refer the dispute relating to his election to the prescribed authority. This is purely factual and any person feeling aggrieved of such a decision can approach the Civil court which is the proper course to seek appropriate relief. Para 3 (relevant portion) is extracted herein below :

"3.....In exercising this power whether to refer or not any doubt or dispute relating to the election of members of the managing body of a Society to the Prescribed Authority, the Registrar has to apply his mind to the facts of the case and take a decision. In taking such a decision, the Registrar will be quite justified to take into account all the relevant circumstances, as he has done in the present case If an objection is raised about the membership of a person. In our view, it is the duty of the Registrar, for his own administrative purpose, to enquire into whether the person concerned is a member of the Society or not. If the Registrar comes to the conclusion that such a person is not a member of the Society

then he is under no obligation to refer the dispute or doubt relating to his election to the Prescribed Authority for decision. In the present case, the Registrar has applied his mind to the facts of the case to find out whether the second appellant herein or was not a member of the Shiksha Sadan. He found that he was not even a member of a Society. It is a pure question of facts. If any person feels aggrieved by such decision, the proper course open to him is to approach the Civil Court and seek appropriate relief. The Registrar is bound by the decision"

In Ram Narain Sharma's case (supra), a Single Judge of this Court held that the dispute of membership of the election requires adjudication by oral and documentary evidence and it is not possible for this Court under Art. 226 of the Constitution of India to record evidence in every case regarding disputed questions of facts. Appropriate remedy is civil suit or election petition. For convenience, para 12 is reproduced as below :

"12. In cases of questions of memberships of Committee of Management under section 25(1) of the Societies Registration Act, the only course open is by adjudication by Civil Court finally. Whenever there is a whisper of dispute regarding the electoral college, the Committee of Management elections or election process which requires findings of facts by oral and documentary evidence, Civil Court is the only remedy and writ petition is not maintainable under Article 226 of the Constitution as has been also held by the Division Bench of this Court in the case of Basant Prasad Srivastava (supra)."

In Babu Ram Shiksha Prasara Samiti's case (supra) (Relevant paras 12 and 17), the decision in Committee Kisan Shiksha Sadan, Banksahi, District Basti (supra) has been referred and relied on, hence, it does not need to be elaborately discussed.

In Educational Sahyogi Association's case (supra), 1996 SCC OnLine All 6, this Court has held as under in para 4 :

"4. Without further entering into the merit of the submissions, I am of the view that this writ petition raises factual disputes as to whether a set of members alleged to have been enrolled or not. The Registrar found that they were not properly enrolled in accordance with bye-laws of the Society. Hence, he refused to register their names. Such a controversy can

not be decided in a writ petition. It would have been better for the petitioner to have approached the Civil Court for adjudication of this matter. But, instead he has raised that factual dispute before this Court, which cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the Constitution. Writ petition is dismissed only on the ground of availability of alternative remedy."

9. In view of the above pronouncements of Supreme Court as well as this Court, it is evident that where writ petition raises a factual dispute regarding membership of the members of the Society and the decision of the Registrar regarding their enrollment and registration of their names, such kind of controversy being factual in nature cannot be decided in a writ petition under Art. 226 of the Constitution of India. The only remedy for the petitioner is to approach the Civil Court for adjudication of this dispute. Since the petition is not maintainable, no useful purpose will be served to adhere or adjudicate other issues raised by the parties. All pleas are left open for the parties to raise before the appropriate forum, such as Civil Court.

10. The writ petition is dismissed only on the ground of availability of alternative remedy.

Order Date :- 17.10.2023

k kb/