

Neutral Citation No. - 2023:AHG-LKO:68321

Reserved on:- 25.09.2023

Pronounced on:-18.10.2023

Court No. - 8

Case :- WRIT - C No. - 7054 of 2023

Petitioner :- C/M Kshetriya Shri Gandhi

Ashram,Akbarpur,Ambedkar Nagar Thru. Secy. Ramesh Chandra
Tiwari And Anr.

Respondent :- State Of U.P. Thru. Prin. Secy. Finance Deptt. Lko.
And 3 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava,Akshat Kumar

Counsel for Respondent :- C.S.C.,Pt. S. Chandra

A N D

Case :- WRIT - C No. - 14003 of 2021

Petitioner :- Harish Chandra Pathak And Anr.

Respondent :- State Of U.P. Thru. Prin.Secy. Institutional Finanace
And Ors.

Counsel for Petitioner :- Pt. S. Chandra

Counsel for Respondent :- C.S.C.,Sanjay Kumar Srivastava,Saryu
Prasad Tiwari

A N D

Case :- WRIT - C No. - 15687 of 2020

Petitioner :- Kshetriya Sri Gandhi Ashram Thru. Secy. Nathuni
Prasad Gupta

Respondent :- Up Zila Adhikari Akbarpur Ambedkar Nagar And Ors.

Counsel for Petitioner :- Anil Kumar Tiwari,Krishna K. Sharma

Counsel for Respondent :- C.S.C.,Arun Kumar,Sanjay Kumar
Srivastava,Saryu Prasad Tiwari

A N D

Case :- WRIT - C No. - 21522 of 2019

Petitioner :- C/M Shetriya Shri Gandhi Ashram Thru. Secy.
R.C.Tiwari And Anr

Respondent :- State Of U.P. Thru. Principle Secy. Finance Lucknow
And Ors.

Counsel for Petitioner :- Sanjay Kumar Srivastava

Counsel for Respondent :- C.S.C.,Anil Kumar Tiwari

Hon'ble Pankaj Bhatia,J.

1. All the writ petitions are common, as such, they are being decided by means of this order.
2. ***Writ – C No.14003 of 2021*** challenges an order dated 15.09.2020 passed by respondent no.2, which in turn is a compliance of an order dated 07.09.2020.
3. Through an order dated 07.09.2020, the prescribed authority after hearing the parties took a decision that the election held by respondent nos.3 & 4 on 23.04.2019 was not a valid election because the same was not in accordance with the provisions of a registered bye-laws of the society and the election held by the petitioner on 09.05.2019 was a valid election. In terms of the said, an order came to be passed on 15.09.2020 registering the list of elected office bearers submitted by the petitioners in terms of the election dated 09.05.2019.
4. As there is no challenge to the order dated 07.09.2020, the consequential order dated 15.09.2020 would not be maintainable, as such, ***Writ – C No.14003 of 2021 is dismissed.***
5. ***As regards, Writ – C No.15687 of 2020,*** the same was filed challenging the validity of order dated 07.09.2020 passed by the prescribed authority, however, subsequently, an application being C.M.A. No.66245 of 2020 was filed seeking withdrawal of the said writ petition on 13.10.2020. The said application is allowed.
6. In view of the withdrawal application being allowed, ***Writ – C No.15687 of 2020 is dismissed as withdrawn.***
7. ***As regards, Writ – C No.21522 of 2019,*** the said writ petition was filed challenging the order dated 25.06.2019 whereby the then Deputy Registrar had exercised the powers under Section 25(1) of the Act and referred the matter for adjudication before the prescribed authority under Section 25(1) of the Act.

8. Considering the fact that the term of the Committee of Management through election dated 09.05.2019 had already come to an end and subsequent order dated 07.09.2020 was passed by the prescribed authority in pursuance to the directions contained in the order dated 25.06.2019, Writ – C No.21522 of 2019 has rendered infructuous and the same is accordingly ***dismissed***.

9. ***As regards, Writ – C No.7054 of 2023***, the same has been filed by the Committee of Management as well as one Mr. Ramesh Chandra Tiwari challenging the order dated 01.08.2023 passed by respondent no.2 whereby it has been held that the election proceedings of the office bearers of the Committee of Management held on 30.04.2022 is invalid and further directed that as the society has become time barred, fresh elections be held under Section 25(2) of Societies Registration Act.

10. Petitioner No.1 is a society registered under the Societies Registration Act (hereinafter referred to as ‘the Act’) since 09.07.1965 and has been renewed from time to time, and is governed by the bye-laws which are also registered. The claim of the petitioners is that the last election of the petitioner’s society was held on 09.05.2019 in which Petitioner No.2 was elected as the Secretary. The proceedings of the said elections have been brought on record by means of the supplementary affidavit. In the light of the said election as held, the first submission of counsel for the petitioners is that there was no occasion for respondent no.2 to have directed the holding of the fresh elections in exercise of powers under Section 25(2) of the Act after holding that the society has become time barred, completely overlooking the fact that a valid election had been held on 09.05.2019.

11. It is further argued that in the event there was any dispute raised with regard to any election or continuation of officer bearers, the same could be decided only by the prescribed authority on a reference made

to it by the Registrar or by at least 1/4th member of the society, however, through the impugned order, respondent no.2 has herself decided the issue, which is contrary to the mandate of Section 25(1) of the Act. The entire petition challenging the impugned order is founded on these two facts and grounds as recorded herein above.

12. In view of the argument as noted above, this Court is to decide the validity of the impugned order dated 01.08.2023, which is in two parts: firstly, that it holds that the election of the office bearers on 30.04.2022 is invalid and secondly, insofar as it directs holding for a fresh election on the foundation of a view that no election of the Committee of Management has been held and the Committee of Management has become time barred.

13. Confronted with the arguments raised by counsel for the petitioners and noted herein above, learned counsel for the respondents argues that the election held on 09.05.2019 pertain to election of only 10 new members in the general body, which cannot be termed as Annual General Election of the Committee of Management. He argues that the last valid election was held on 16.07.2018 and thus, the term of the Committee of Management had become time barred on 16.07.2021 and thus, no error can be said to have been committed by respondent no.2 while directing the holding of fresh elections under Section 25(2) of the Act.

14. As regards the election held on 30.04.2022 by the petitioner, it is argued that respondent no.4 had made a complaint with regard to malpractices held in the election dated 30.04.2022, which was a date prior to petitioner no.2 submitting the proceedings of the election vide letter dated 07.05.2023 with a request to register the election proceedings under Section 4(1) of the Act. The said election, according to him, would be a valid election when the Deputy Registrar admits and registers the election. He argues that in terms of the powers under Section 4(1) of the Act, the Registrar has jurisdiction

to refuse to accept the election which is perfectly in accordance with law.

15. It is also prayed that it is in the interest of justice that directions be issued to the District Magistrate or any other authority to hold fresh elections amongst the undisputed general body or even from the general body of the election dated 30.04.2023.

16. Learned counsel for the respondent also argues that there is an alternative remedy of filing an appeal before the Commissioner under Section 4(1)-A of the Act as amended. He further argues that the writ petition filed at the instance of petitioner no.1 is not maintainable as there is no resolution passed. It is further argued that petitioner no.2 has crossed the age of 65 years and he cannot be a member of the general body and cannot work as *Mantri*.

17. With regard to the powers vested with the Deputy Registrar, he places reliance on the following judgments:

“(i) Committee of Management versus Assistant Registrar and others, 1995 (2) UPLBEC, 1242, D.B, Alld.-Para 3

(ii) Guru Singh Sabha and another versus Assistant Registrar and others, 2006 (2) UPLBEC, 1410, Alld.- Para 14

(iii) Gyan Bharti Shiksha Sadan versus State of U.P., 2015 (1) AWC, 1061, Alld.-Para 32

(iv) Committee of Management versus State of U.P., 2015 (33) LCD, 2383, Alld.-Para 17

(v) "Committee of Management versus State of U.P., 2019 (37) LCD, 2653, Alld.-Para 17"

18. As regards, the argument that time barred Committee of Management cannot be permitted to function, he places reliance on the following judgments:

“(i) Sri Rajpati versus Regional Committee and others, 2007 (25), LCD, 1402, DB, Alld.-Para 9

(ii) Prithvi Pal Tripathi versus DIOS, 1993 (1) UPLBEC, 355, D.B, Alld.-Para 7

(iii) *Committee of Management versus Deputy Director of Education and others, 1995 (1) UPLBEC, 149, D.B. Alld.-Para 3 & 6*

(iv) *Vaibhav Jain versus State of U.P. and others, 2015 (2) UPLBEC, 993, F.B, Alld.-Para 12"*

19. In the light of the said, he argues that the writ petition deserves to be dismissed.

20. In view of the arguments raised at the Bar and noted above, this Court is to decide the following issues:

- I. Whether the writ petition filed by the petitioner is maintainable;
- II. Whether the impugned order in respect of the claim of the petitioner for registering the elections is bad in law; and
- III. Whether Respondent No.2 could have directed holding of the fresh elections under Section 25(2) of the Societies Registration Act?

21. On the Issue No. I as framed herein above, the contention of learned counsel for the respondent is that in view of the law laid down by this Court in the case of ***Baba Hulasi Das Shiksha Sansthan and Anr. v. Deputy Registrar, Firms, Societies & Chits, Lucknow and Anr; 2013 (31) LCD 1102***, the writ petition filed by the Committee of Management is not maintainable at the instance of the Manager without there being any resolution in his favour.

22. This Court in the case of ***Baba Hulasi Das Shiksha Sansthan (supra)*** had the occasion to consider whether a Manager who had put in resignation which as duly accepted by the Committee of Management, had the power to file a writ petition on behalf of the Management without there being a resolution; the Court after considering the law laid down by the Full Bench in the case of

Saraswati Vidya Mandir, Rewatipur, Ghazipur through Its Manager Smt. Ram Rakhi Devi v. State of U.P. & Ors.; (2002) 3 UPLBEC 2777 has decided that the writ petition at the instance of the Manager without there being any resolution was not maintainable.

23. In the present case without disputing the said proposition of law, the present petition has been filed by the Committee of Management as well as Petitioner No.2 himself, as such, even if it is held that the petition is not maintainable at the instance of Petitioner No.1, the petition is clearly maintainable by Petitioner No.2 whose rights are adversely affected by virtue of the impugned order, thus, Issue No.1 is decided holding that the petition at the instance of Petitioner No.2 is maintainable.

24. Issue Nos.2 & 3 as framed herein above are intricately interlinked. In the present case, the Deputy Registrar by means of the impugned order has directed holding of fresh elections in purported exercise of power under Section 25(2) of the Act based upon a finding that after the last valid election of the Committee of Management, no elections have been held within the time prescribed, as such, the election held on 09.05.2022 was declared as beyond limitation.

25. The said finding is founded on the analogy that the last election of the society was held on 16.07.2018 and thus, the term of the Committee came to an end on 16.07.2021, thus, it was, according to the Sub-Registrar, a clinching evidence that the term of the Committee of Management had expired on 09.05.2022. The said finding is *prima-facie* erroneous as admittedly the last election was held on 09.05.2019 regarding the Committee of Management and the fresh elections were held on 30.04.2022 i.e. within the time prescribed. Even otherwise, it is fairly well settled that even after the expiry of time, the Committee of Management is well and truly empowered to hold fresh elections

unless an order is passed under Section 25(2) of the Act. Thus, on the face of it, the finding of the Deputy Registrar is wholly erroneous.

26. Although, an effort was made by the counsel for the respondents to demonstrate that no fresh elections were held on 09.05.2019 and only 10 new members were inducted, the same is clearly not acceptable in view of the documents filed alongwith the supplementary affidavit to demonstrate that the election held on 09.05.2019 was the Annual General Election of the Committee of Management; whatever be its worth, the same was also approved by a subsequent order dated 07.09.2020.

27. In view of there being a valid election held on 09.05.2019 and the subsequent election held on 30.04.2022 as per the petitioners, and there being nothing on record to demonstrate that any other election was held, the power exercised by the Deputy Registrar under Section 25(2) of the Act was an invalid exercise of power. Thus, Issue Nos.2 & 3 are also decided in favour of the petitioner.

28. In view of the findings in respect of all the issues recorded herein above, ***Writ – C No.7054 of 2023 deserves to be allowed and ordered accordingly.***

29. Order dated 01.08.2023 passed by Respondent No.2/Deputy Registrar, Firms, Societies & Chits, Ayodhya Mandal, Ayodhya is quashed and the matter is remanded to the Deputy Registrar to pass orders accepting the document submitted by the petitioners in the light of the elections conducted by them on 30.04.2022 in accordance with law.

Order Date :- 18.10.2023

[Pankaj Bhatia, J.]

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