

Court No. - 1**Reserved****Case :- SPECIAL APPEAL No. - 516 of 2023****Appellant :-** Harish Chandra Pathak**Respondent :-** State Of U.P. Thru. Prin. Secy. Finance Deptt. U.P. Govt. Civil Sectr. Lko. And Others**Counsel for Appellant :-** Pt. S. Chandra, Abhishek Tiwari, Ravi Kant Mishra**Counsel for Respondent :-** C.S.C., Sanjay Kumar Srivastava**Hon'ble Attau Rahman Masoodi, J.****Hon'ble Om Prakash Shukla, J.**

- (1) This intra-court appeal filed under Chapter-VIII Rule 5 of the High Court Rules has assailed the judgement and order dated 18.10.2023 passed by the writ court insofar it allows Writ-C No. 7054 of 2023 by quashing the order impugned therein passed on 1.8.2023. While quashing the order dated 1.8.2023 passed by Deputy Registrar, Firms, Socialites & Chits, Ayodhya Mandal, Ayodhya the matter was remitted back to him to pass orders accepting the document submitted by the respondent no. 5 and Committee of Management (petitioners therein) in the light of the elections conducted by them on 30.4.2022 in accordance with law.
- (2) The Society has a general body of two category of members viz. life members (trustees) and ordinary members. The membership of ordinary members continues upto the maximum age i.e. 65 years, for which a worker

having requisite qualifications would continue in service beyond which he shall automatically cease to be a member. The ordinary members are elected by the general body from amongst the employees of Gandhi Ashram for a period of three years and after every three years, there is a provision of renewal/induction of new members by passing a resolution in the meeting of general body.

- (3) The earlier election of office bearers of Committee of Management of the Society was held on 9.5.2019 in which respondent no. 5 was elected as Secretary. However, the said election was questioned by one Nathuni Prasad Gupta i.e. respondent no. 3 who submitted another election proceedings held for election of office bearers of the Committee on 23.4.2019 and urged that the election held on 9.5.2019 was not valid and against the bye-laws of the society and the same deserves to be set aside. The dispute so raised before the Deputy Registrar Firms, Societies and Chits, Ayodhya was referred to the Prescribed Authority i.e. Sub-Divisional Magistrate, Akbarpur, Ambedkar Nagar under Section 25(1) of the Act.
- (4) The Prescribed Authority after hearing the parties decided the matter by order dated 7.9.2020 holding that the

election proceedings held on 9.5.2019 were in accordance with law and the proceedings submitted by Sri Nathuni Prasad Gupta dated 23.4.2019 were not in accordance with the bye-laws of the Society and, therefore, the same cannot be accepted. The said order came to be challenged by respondent no. 3 in Writ-C No. 15687 of 2020 which was ultimately withdrawn by the Committee of Management and was accordingly dismissed by the order passed by the writ court dated 18.10.2023.

- (5) On the other hand, the Deputy Registrar, Firms, Societies and Chits, Ayodhya Mandal, Ayodhya pursuant to the order dated 7.9.2020 passed by the Prescribed Authority, registered the list of the office bearers elected in the proceedings held on 9.5.2019 by order dated 15.9.2020.
- (6) The order dated 15.9.2020 was challenged by the appellant and Nathuni Prasad Gupta (respondent no. 3) by filing writ petition being Writ-C No. 14003 of 2021 which has also been dismissed by the writ court by the same order dated 18.10.2023 holding it to be not maintainable in the absence of any challenge to the order dated 7.9.2020 passed by the Prescribed Authority consequent to which the order dated 15.9.2020 was passed.

- (7) In the aforesaid background since the three years' term of elected Secretary of the Committee of Management of the Society came to an end, the Committee of Management elected Ramesh Chandra Tiwari, respondent no. 5 (petitioner no. 2 to the writ petition) as Secretary of the Society and empowered him to contest cases on behalf of the Society and also those which are filed against it.
- (8) Since the term of the office bearers of Committee of Management of the Society was also to expire on 8.5.2022, therefore, agenda for meeting of general body of the Society for conducting election of office bearers of the Committee of Management was issued on 14.4.2022 by the Secretary intimating that the meeting of general body was scheduled to be held on 30.4.2022 wherein election of office bearers of the Society shall also be held.
- (9) In pursuance of the agenda notice dated 14.4.2022 meeting of the general body of the Society was held as per schedule on 30.4.2022 in which out of 24 members of general body, 22 members were present and participated in the proceedings. In the said meeting, 11 members were elected as office bearers of the Committee of Management including respondent no. 5.

- (10) The newly constituted Committee of Management while exercising powers under Clause 19(ga) of the bye-laws decided to increase the age of superannuation of the employees of Gandhi Ashram from 65 to 70 years in its meeting dated 27.4.2023.
- (11) Subsequently, two complaints dated 4.5.2022 were moved by the appellant and Nathuni Prasad Gupta wherein it was averred that the agenda notice dated 14.4.2022 was served upon them and in pursuance thereof they had reached to participate in the election meeting dated 30.4.2022 but the President of the Committee did not allow them to participate and ousted them from the meeting and, therefore, the list of office bearers of the Committee of Management for the year 2022-23, being faulty, may not be registered.
- (12) The respondent no. 5 in the capacity of Mantri (Secretary) of the Society submitted a reply on 17.6.2022 stating that the allegations levelled by the complainants and other members are totally incorrect. It was further stated that despite sufficient service and knowledge the respondent no. 3 as well as the appellant did not participate on their volition and as a matter of fact, they had not attended even a single meeting of the Committee of Management

since 28.9.2018. It was further submitted that the dispute with respect to the election of Committee of Management of the Society already stands decided by the Prescribed Authority and the writ petitions against the same were pending.

- (13) The Deputy Registrar also issued a letter dated 16.7.2022 to the Committee whereby the fact regarding complaints being made by the appellants and other persons was mentioned. The Deputy Registrar required the Secretary to explain as to why he was transferring the respondent no. 3 from one place to another. Another letter dated 30.7.2022 was issued by the Deputy Registrar requiring the respondent no. 5 to appear before him for submitting further reply. The respondent no. 5 and Trustee (Sanchalak) submitted their reply wherein they made an allegation against the appellant and respondent no. 3 for committing embezzlement of huge amount of the institute for which an enquiry was conducted by Khadi Gramodyoga Commission as well as District Magistrate, Ambedkar Nagar and FIRs were also lodged against them. It was further submitted that the appellant was creating hindrance in the peaceful functioning of the Society despite the fact that the dispute regarding the election

was resolved by the then Deputy Registrar as well as the Prescribed Authority i.e. Sub-Divisional Magistrate. It was also submitted that the elections were conducted in a lawful manner and the complainants had themselves chosen not to participate in the election proceedings. In this background it was pleaded that since the complaints are false and based on incorrect facts the same may be rejected.

- (14) Subsequently, the Deputy Registrar Firms, Societies and Chits passed the order dated 1.8.2023 which was challenged in the writ petition, whereby the Deputy Registrar held the election proceedings of the Committee of Management conducted on 30.4.2022 to be invalid and further that since the said election proceedings have become time barred, fresh election be held under Section 25(2) of the Act.
- (15) It is this order that has given rise to the writ petition, namely, Writ-C No. 7054 of 2023 filed by the Committee of Management and Ramesh Chandra Tiwari.
- (16) The writ court after considering the entire aspects of the matter, held that the power exercised by the Deputy Registrar under Section 25(2) of the Act was an invalid exercise of power and while allowing the writ petition,

remanded the matter to the Deputy Registrar to reconsider the same and pass appropriate orders afresh accepting the document submitted by the petitioner-Committee of management in the light of the elections conducted by them on 30.4.2022 in accordance with law.

(17) We have heard the parties' counsel at length and perused the record.

(18) Learned counsel for the appellants has made three-fold submissions while challenging the impugned order passed by the writ court viz. :-

(i) There is a statutory remedy of appeal available to the respondents before the Commissioner of the Division under Section 4(1-A) of the Act, therefore, the writ petition could not have been entertained straightaway bypassing the statutory alternate remedy;

(ii) There being no resolution of the general body of the Committee of Management in favour of the respondent no. 5, he could not have filed the writ petition in the name of the Society or on its behalf; and

(iii) Even otherwise the respondent no. 5 had no locus standi to file a writ petition in individual capacity unless he is authorised to do so under the relevant rules or regulations or the bye-laws of the Society. As a corollary to the aforesaid argument, it is further submitted that having crossed the age of 65 years, the respondent no. 5 ceased to be a member of the general body and could not have raised its cause as Secretary of the Society. The alleged resolution to enhance the age of retirement is also only an eyewash and the same has never been registered by the Deputy Registrar.”

- (19) It is further argued that the election alleged to have been held by respondent no. 5 on 30.4.2022 was not conducted as per the bye laws inasmuch as the members who participated therein were not valid members. As a matter of fact without obtaining a list of general body from the office of Deputy Registrar, the said election was held in order to usurp the powers vested in the Committee of Management. That apart the requirement of Section 27 of General Clauses Act, 1897 as well as Order V Rule 9 CPC, was also not fulfilled and the election was held without proper service of the agenda through registered post.
- (20) In the aforesaid backdrop, it is contended that the writ petition filed by the respondent no. 5 ought to have been dismissed outrightly but the learned Single Judge committed an error of law in entertaining the writ petition filed on behalf of the respondent no. 5 in his individual capacity and thus the impugned judgement and order does not withstand the mandate of law in the case of *Umesh Chandra and another v. Mahila Vidyalaya Society and others* reported in **2006 (24) LCD 1373**.
- (21) It is also emphatically urged that the Deputy Registrar has rightly held that the election should be conducted under Section 25(2) of the Act from amongst the valid list of

general body and there could not have been any objection on behalf of respondent no. 5, in case, both the parties contest the election in terms of the order passed by the Deputy Registrar which guarantees nothing but rule of majority. As a matter of fact, the term of Committee of Management had become time barred after 16.7.2021 and thus it cannot be said that the Deputy Registrar committed any error while directing for holding of fresh elections under Section 25(2) of the Act.

- (22) Certain case laws have been cited from both the sides but since we are of the opinion that the view taken by learned Single Judge does not suffer from any infirmity, we refrain from delving into the same and making any observation on the merit of the case.
- (23) The learned Single Judge in view of the counterclaims with respect to the validity of the elections held on 9.5.2019 and the subsequent election held on 30.4.2022 and in the absence of any material on the record to establish that any other election was held, the view taken by the Deputy Registrar does not hold good and suffers from fallacious exercise of powers. That being the position, the matter deserves to be revisited by the Deputy Registrar in correct perspective and keeping in

view the observations made hereinabove as well as by learned Single Judge in the order under appeal.

- (24) Insofar as the question regarding enhancement of age of retirement from 65 years to 70 years is concerned, the same can more appropriately be dealt with by the Deputy Registrar, respondent no. 2, after considering the rival claims of the parties as well as the evidence produced by them. The issue having intricate questions of fact has rightly been remanded to the Deputy Registrar for taking a decision afresh considering the claim of the parties and validity of the elections. The Deputy Registrar shall also consider the validity of the resolution whereby the age of retirement is stated to have been increased.
- (25) We, therefore, do not find any infirmity in the order passed by the learned Single Judge and accordingly direct the Deputy Registrar to reconsider the matter in the light of judgement rendered by the learned Single Judge subject, however, that in case there is any objection against the validity of membership of a person on account of age prescribed in the bye-laws, the same may also be dealt with having its impact on the election held on 30.4.2022 as validated by the writ court. The entire exercise shall be done by the Deputy Registrar within a

period of one month from the date a certified copy of this order is served upon him.

(26) In view of the discussion and modification as above, the special appeal is **disposed of**.

Dated: Nov. 24, 2023
MFA