

Court No. - 35

Case :- WRIT - C No. - 703 of 2022

Petitioner :- Suresh Kumar And 55 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Krishna Kant Dwivedi, Vijay Kumar Ojha

Counsel for Respondent :- C.S.C., Harindra Prasad, Prabhakar Awasthi

connected with

Case :- WRIT - C No. - 30956 of 2021

Petitioner :- C/M Gandhi Rashtriya Vidyalaya Intermediate College And Another

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Krishna Kant Dwivedi, Sr. Advocate

Counsel for Respondent :- C.S.C., Harindra Prasad, Prabhakar Awasthi

and

Case :- WRIT - C No. - 30573 of 2021

Petitioner :- Ram Ratan Gupta

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

Counsel for Petitioner :- Krishna Kant Dwivedi

Counsel for Respondent :- C.S.C., Harindra Prasad, Prabhakar Awasthi, Radha Kant Ojha (Senior Adv)

Hon'ble Ajit Kumar, J.

Heard learned counsel for the parties.

These three petitions are connected together as they relate to the same society, namely, Sri Gandhi Rashtriya Vidyalaya Rath Rath, (Hamirpur) U.P., a society registered in this name with the Registrar of Societies, Jhansi with registration no. I-3760 and institution run by the society which is recognized under the Intermediate Education Act, 1921 with approved scheme of administration for the Constitution of the Committee of Management of the institution.

Accordingly these three petitions are being disposed of by this common judgment.

Writ Petition No. 30573 of 2021 has been filed by Dr. Ram Ratan Gupta, Manager of the Committee of Management of the Institution who is also petitioner no. 2 in Writ Petition no. 30956 of 2021. In Writ Petition No. 30573 of 2021 challenge is made to the order of the Assistant Registrar Societies, Jhansi dated 5.12.2019 by which he had approved the general body of the society with 1397 members. In Writ Petition No. 30956 of 2021, the same petitioner both in personal capacity as well as Manager of

the Committee of Management in its behalf has challenged the order of the Assistant Registrar Societies dated 30th October, 2021.

The main challenge is led to the authority of the Assistant Registrar Societies in setting aside the election of the Committee of Management of the institution, however order has been challenged in its entirety and the reasons assigned for same have been elaborated in paragraph 18,19 and 20 of the petition.

While entertaining writ petition no. 30956 of 2021, this Court on 27.11.2021 has passed following order :

"Connect this case with Writ-C No. 30573 of 2021.

On the arguments being advanced by learned counsel for the petitioner, the counsel for respondent no. 5 has given an undertaking that no elections of the Committee of Management of the College are being held, pursuant to the order dated 30.10.2021, passed by Assistant Registrar, Firms Societies & Chits, Jhansi Division, Jhansi and its only the elections of Committee of Management of the Society which have been notified.

In such circumstances, the respondents are restrained from interfering in the peaceful functioning of the petitioners' society as approved on 06.03.2019 on the basis of elections held on 03.02.2019.

Issue notice to respondent no.6 fixing 20.12.2021 as the date for appearance.

Steps be taken within a week.

All the respondents are granted two weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within a week thereafter.

List this case on 20.12.2021 in the additional cause list along with connected matter. "

This above order restrains respondents from interfering with working of the Committee of Management of the institution/ college as approved on 06th March, 2019 on the basis of elections held on 3rd February, 2019.

In Writ Petition No. 703 of 2022 the order passed by the Assistant Registrar Societies dated 30.10.2021 has been challenged by a large number of members of the society. Under the order impugned, the Assistant Registrar has now approved the general body of the society consisting of 1025 members in absolute contrast to his earlier decision dated 5.12.2019. The order is challenged on sole the ground that Assistant Registrar Societies does not have power to review his earlier order. This petition has subsequently come to be amended and another prayer has been added for quashing the election held by Assistant Registrar Societies on 16th January, 2022 as a consequence to the order passed by Assistant Registrar dated 30.10.2021 originally challenged in this petition.

From the pleadings as raised in the three writ petitions filed before this Court, this admitted position emerges that there are two general bodies; (a) one of the society registered under the Societies Registration Act which is governed under the approved bye laws of the society; and (b) the other of Educational institution as per its own approved scheme of administration that provides separate general body of members enrolled as per scheme of administration. And obviously, therefore, there are two separate Committees of Management one of the society and the other one of the college.

The challenge in all the three petitions is to the decision of the Assistant Registrar Societies deciding membership of the society under Section 4B of the Societies Registration Act, 1860.

Both learned Advocates appearing for respective parties agreed that Assistant Registrar, Societies could not have set aside the election of the Committee of Management of the College and, therefore, to that extent order is clearly unsustainable.

In view of above agreement between the parties, the order of Assistant Registrar Societies dated 30.12.2022 whereby he has set aside the elections of the Committee of Management of the institution is absolutely bad. However, in so far as decision of the Assistant Registrar Societies dated 30.10.2021 relating to membership is concerned, while it is argued by petitioner in Writ Petition no. 703 of 2022 that Assistant Registrar Societies was not justified in passing another order in the face of his earlier order dated 09.05.2019 whereby he had decided membership of 1397 members as it amounted to review of his earlier order and this authority is certainly not vested with Assistant Registrar Societies under the Act of 1860, the petitioner could not reconcile his argument with stand taken in paragraph 18, 19 20 of Writ-C no. 30956 of 2021.

It is interesting to notice that petitioners in all the petitions have engaged same counsel and so, therefore, for allowing the petition no. 703 of 2022, it would be appropriate in propriety that petitioners withdraws its writ petition no. 30573 of 2021 and 30956 of 2021 first. However, learned counsel for the petitioner submits that he could neither to do so nor does he has any such instructions.

Sri R.K.Ojha, learned Senior Advocate submits that it would be proper that both orders passed by the Assistant Registrar Societies are set aside and matter is remitted to the Assistant Registrar Societies to rehear the matter and pass orders afresh

Having gone through the pleadings raised in the three writ petitions, the argument advanced before me, I find that the epicenter of the controversy is membership of the society.

The rival claims have been set up and matter has been so mixed up in two orders and as pleadings have been raised that membership seems to be overlapping between the general body of the society and general body of the institution/college. It is necessary, therefore, that membership of the general body of the society is decided under Section 4B of the Societies Registration Act, 1860 independently of the membership of the general body of the college and that too within four corners of provisions of the bye laws of the society.

In view of above, the order passed by the Assistant Registrar Societies dated 5.12.2019 and 30.10.2021 are hereby quashed. Since I have quashed the order dated 30.10.2021 any proceeding in pursuance to the said order dated 30.10.2021 shall also stand quashed.

Both the parties are directed to appear on or before 21st March, 2022 before Assistant Registrar Societies and file their objections regarding membership to be determined by the Assistant Registrar, Societies under Section 4B of the Societies Registration Act, 1860. The documents submitted by both the parties shall be permitted to be examined by the respective parties by offering proper opportunity by the Assistant Registrar Societies. The Assistant Registrar Societies, however, is directed to ensure that while deciding the membership under Section 4B of the Act, 1860, the claim set up for membership is in tune with the provisions as contained under the bye-laws of the society. He will record specific findings to this above effect before finalizing list of general body member of the society under Section 4 B of the Act, 1860. It is also clarified at the same time that membership of the institution and elected Committee of Management of the institution shall not be disturbed.

The decision as directed hereinabove shall be taken by the Assistant Registrar Societies within a period of three months from the date of appearance of the parties and filing their documents as directed hereinabove while giving opportunity of hearing to all the concerned parties. It is further directed that since executive body elected under the order dated 30.10.2021 has been set aside, the Assistant Registrar Societies shall exercise power under Section 25(2) of the Societies Registration Act, 1860 after finalizing the membership of the general body of the society under Section 4B of the Societies Registration Act, 1860 as directed hereinabove.

All the three writ petitions succeed and are allowed to the above extent.

Order Date :- 24.2.2022/Sanjeev