

Neutral Citation No. - 2024:AHC-LKO:84703-DB

RESERVED

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 94 of 2022

Appellant :- Sarfaraj Ahmad And Others (In Wric 1313 Of 2022)

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

Counsel for Appellant :- Pawan Kumar Pandey, Sharad Pathak

Counsel for Respondent :- C.S.C., Kshemendra Shukla, Yogendra Kumar Mishra

CONNECTED WITH

Case :- SPECIAL APPEAL No. - 124 of 2022

Appellant :- C/M, The Tanda Muslim Edu. Asso. Thru. Its Secy. Imtiyaz Ahmad (In Wric No. 1313 Of 2022)

Respondent :- State Of U.P. Thru. Prin. Secy. Institutional Finance Dept. Lko. And Others

Counsel for Appellant :- Kshemendra Shukla

Counsel for Respondent :- C.S.C., Hari Om Pandey, Pawan Kumar Pandey, Rajneesh Kumar, Yogendra Kumar Mishra

AND

Case :- SPECIAL APPEAL No. - 308 of 2022

Appellant :- Sarfaraj Ahmad And Others (In Wric No. 3598 Of 2022)

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

Counsel for Appellant :- Pawan Kumar Pandey

Counsel for Respondent :- C.S.C., Yogendra Kumar Mishra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per:- Jaspreet Singh, J.)

1. The controversy involved in the aforesaid three intra-Court appeals relates to the issue of the membership of the appellants, of Special Appeal No.94/2022, which was unfavourably decided against them by the Deputy Registrar, Firm, Society and Chits, Ayodhya Mandal, Ayodhya (hereinafter referred to as 'Deputy Registrar'). The said order passed by the Deputy Registrar dated 11.02.2022 was assailed by the appellants, of intra-Court Appeal No.94/2022, by instituting WRIT-C No.1313/2022, which was dismissed by the learned Single Judge vide its judgment dated 05.03.2022. This judgment of the learned Single Judge is assailed by the appellants in

Special Appeal No.94/2022 while the Committee of Management, Tanda Muslim Educational Association (hereinafter referred to as the Society), who was the respondent No.3 in WRIT-C No.1313/2022 also assailed the same judgment passed by the learned Single Judge dated 05.03.2022 by means of intra-Court Appeal No.124/2022. While the said two intra-Court appeals were pending, in the meantime, the Deputy Registrar had passed an order dated 02.04.2022 directing the Society to fill up the vacant posts and inform the Deputy Registrar in this regard and in furtherance of the same, elections were held by the Society on 26.03.2022 which was challenged by the appellants of intra-Court Appeal No.308/2022 by filing WRIT-C No.3598/2022 which was dismissed by the learned Single Judge on 17.06.2022 and this order too is under challenge in intra-Court Appeal No.308/2022.

2. Since, the issue of membership as well as the exercise of powers by the Deputy Registrar under Section 4-B (as amended in the U.P.) of the Societies Registration Act, 1860 (hereinafter referred to as 'the Act of 1860') is in question in intra-Court Appeals No.94/2022 and 124/2022 and the subsequent event is assailed in intra-Court Appeal No.308/2022, accordingly, all the three intra-Court appeals were connected and heard and are being decided by this common judgment.

3. The brief resume of facts, giving rise to the instant three intra-Court appeals, are being narrated hereinafter.

(a) The Tanda Muslim Educational Association Society was formed and registered under the provisions of the Act of 1860 in the year 1949. The said Society has its own registered by-laws and it is governed by it. The

term of the Committee of Management is two years and the last undisputed election of the Committee of Management of the said Society was held on 18.06.2019.

(b) In the last undisputed election as referred to hereinbefore, the strength of the general body was of only 28 members. Since, the Committee of Management envisages 15 posts, elections could be held on 11 posts and the Society had made a request for allowing the Society to fill up the remaining 4 posts. The Deputy Registrar permitted the Society to fill up the remaining posts and thereafter on 08.07.2019, the election on the 4 vacant posts was held. The Society sent a list of 15 members of the Committee of Management on 09.07.2019 to the Deputy Registrar.

(c) The dispute arose from the issuance of the agenda for the meeting scheduled to be held on 05.08.2019. It is alleged that the Committee of Management in its meeting held on 05.08.2019 had authorized the Secretary to take steps in enrolling new members in the general body of the Society. In furtherance thereof, an advertisement was issued in the local newspaper and the agenda was circulated which is said to have been received by 24 members of the general body and 4 members, who were not in town, they were sent the agenda by registered post and thereafter applications were invited for enrollment of new members.

(d) It is alleged that 28 persons submitted their applications and also their membership forms seeking life membership alongwith receipts of membership fee. On 28.10.2019, it is alleged that the general body considered the applications of the said persons seeking membership which is alleged to have been allowed on 28.10.2019 and thus 28 persons were

inducted as members of the Society whereas the applications of another set of 28 persons were rejected on the ground that they had not deposited the membership fee with their applications.

(e) On 08.11.2019, a composite, modified list of 55 members which included 28 new members, was submitted in the office of the Deputy Registrar. On 17.11.2019, the resolution was passed affirming the resolution dated 28.10.2019 and in this fashion the membership of 28 newly inducted members in the Society is said to have been approved and ratified.

(f) On 20.11.2019, one of the member of the general body of the Society namely Mohd. Kausar filed objections before the Deputy Registrar raising questions on the validity of inclusion of 28 new members and on the rejection/none inclusion of such other 28 persons who had applied for the membership and as alleged had not deposited the membership fee with their respective applications. In the same vein, another person namely Hafiz Anwar, who had applied for the membership, but was not granted, also raised the same issue.

(g) Taking note of the aforesaid, the Deputy Registrar issued a public notice inviting objections from all concerned relating to the membership of the appellants of intra-Court Appeal No.94/2022 (who was the writ petitioners before the learned Single Judge in WRIT-C No.1313/2022). In furtherance thereof, 5 persons filed their objections. The record of the Society comprising of membership register, cash book, passbook, minutes of meeting and the agenda was summoned.

(h) While the aforesaid exercise was pending at the end of the Deputy Registrar and the renewal of the Society was due, hence, the Secretary moved an application seeking renewal of the Society along with a list of members which included the names of the appellants of intra-Court Appeal No.94/2022.

(i) Before any decision could be taken in this regard, the term of two years of the Committee of Management also came to an end and fresh elections were held on 06.06.2021 and its minutes and records was also sent to the office of the Deputy Registrar.

(j) In this regard, the Deputy Registrar issued notice to the Secretary and required him to issue a public notice inviting objections failing which the list and the documents submitted by the Secretary would be accepted.

(k) In the aforesaid backdrop, the Deputy Registrar had also commenced hearing on the initial objections raised by certain members regarding the inclusion of 28 members in the Society. It is at this stage that the appellants of intra-Court Appeal No.94/2022 appeared before the Deputy Registrar and also furnished their separate and individual replies despite the fact that the Secretary of the Society had already filed his response to the objections regarding induction of new members/none inclusion of such persons whose applications were rejected.

(l) Taking note of the respective submissions and the material on record, the Deputy Registrar passed an order dated 11.02.2022 holding that the induction of 28 members (the appellants of intra-Court Appeal No.94/2022) were not validly inducted. This order of the Deputy Registrar was assailed

before the learned Single Judge in a writ petition bearing WRIT-C No.1313/2022 which was also dismissed.

(m) The order dated 05.03.2022 passed by the learned Single Judge was assailed in an intra-Court Appeal No.94/2022 by the individual members whereas the same order was put to challenge by the Society by means of the intra-Court Appeal No.124/2022.

(n) While the aforesaid two intra-Court appeals were pending, in the meantime, the Deputy Registrar directed to proceed to hold elections for the vacant posts which was challenged by filing WRIT-C No.3598/2022. The said WRIT-C No.3595/2022 was dismissed on 17.06.2022 on the ground that since the writ petitioners and their membership was not recognized by the Deputy Registrar and their WRIT-C No.1313/2022 was also dismissed by the learned Single Judge on 05.03.2022 and there being no interim order in the two pending intra-Court appeals and this order dated 17.06.2022 has given rise to the connected intra-Court Appeal No.380/2022.

4. Shri Sharad Pathak, learned counsel appearing for the appellant in intra-Court Appeal No.94/2022 has primarily assailed the impugned order passed by the learned Single Judge on the following grounds:-

(a) It is urged that the Deputy Registrar in exercise of powers under Section 4-B of the Act of 1860 (as amended in the State of U.P.) could not hold a roving enquiry to decide the issue of membership and continuance in office as that is not the scope of enquiry under Section 4-B of the Act of 1860. It is submitted that if at all the Deputy Registrar found that there was some

illegality or irregularity in their membership, it could only refer the matter to the Prescribed Authority in terms of Section 25(2) of the Act of 1860.

(b) It is further submitted that the issue raised was of none-inclusion of the members as their applications for membership had been rejected, but there was never a direct challenge to the inclusion of the appellants in the Society. On the contrary, the Deputy Registrar had acknowledged the membership of the appellants while permitting renewal of the Society, hence, it was not open for the Deputy Registrar to have taken a different view by rejecting the membership of the appellants while passing the order dated 11.02.2022.

(c) It is also submitted that the scope of enquiry under Section 4-B of the Act of 1860 is summary in nature and to be conducted on the basis of such documents as has been referred to in Section 4-B of the Act of 1860 itself. However, the Deputy Registrar erred in exercise of its jurisdiction and held a detailed enquiry as if it was a Court of law which is not permissible, hence, the Deputy Registrar exceeded its jurisdiction by passing the impugned order dated 11.02.2022 which is per-se beyond jurisdiction.

(d) In support of his aforesaid submissions, Shri Pathak has relied upon a Division Bench decision of this Court in **T.P. Singh v. Registrar/Assistant Registrar, Firms Societies & Chits, Teliyarganj & Others, 2018 SCC OnLine All 1927** and a decision of the Apex Court in **A.P. Aboobaker Musaliar v. District Registrar (G), Kozhikode and others, (2004) 11 SCC 247**.

5. (a) The other limb of submission of Shri Pathak is that the appellants

of intra-Court Appeal No.94/2022 were not given an opportunity of hearing by the Deputy Registrar and on this count also, the order dated 11.02.2022 was without jurisdiction and it was against the settled principles of natural justice.

(b) It is further urged that once the issue regarding the membership of the appellants was being considered then before passing an order, the individual member who would be aggrieved by any decision would have to be given an opportunity of hearing especially when the appellants of intra-Court Appeal No.94/2022 had also furnished their response in their individual capacity apart from the fact that the response of the Secretary was there before the Deputy Registrar, hence, in such circumstances, without considering the response of the appellants and without giving them an opportunity, the impugned order passed by the Deputy Registrar could not be sustained.

(c) It is also urged by Shri Pathak that the learned Single Judge, before whom the aforesaid issues were raised, did not appropriately consider it and the learned Single Judge erred in holding that once of the Secretary of the Society had been granted an opportunity and the material on record was examined, it was not required to hear the individual appellants. It also erred in coming to the conclusion that the Secretary who was heard could not substantiate the lawful induction of members and once the appellants (the writ petitioners before the learned Single Judge) claimed that they were the members of the Society and according to them, they were represented by the Secretary even though they had filed their separate response yet it was not open for the individual members to rake up the grievance that they were

not granted any opportunity of hearing and for the aforesaid reasons, the decision rendered by the learned Single Judge is per se against the settled legal principles and the learned Single Judge also did not appreciate the ratio as laid down by this Court in **Savendra Veer Vikram Singh and 33 Others v. State of U.P. & Ors., 2017 (18) ADJ 671.**

(d) In support of his aforesaid submission, Shri Pathak has relied upon a decision of the Apex Court in **Swati Ulhas Kerkar and others v. Sanjay Walavalkar and others, 2021 SCC OnLine SC 77; Durgawati Singh v. Deputy Registrar, Firms Societies and Chits, Lucknow, 2022 (2) ALJ 200; Savendra Veer Vikram Singh (supra); Committee of Management Chaudhary Ram Adhar Santbox Singh Gramin Shiksha Samiti v. State of U.P. and others, 2015 (33) LCD 2316 and Committee of Management Anjuman Kherul Al-min Allahaganj and others, (2014) 1 SC UPLBC 233.**

6. Accordingly, it is urged that the impugned order passed by the learned Single Judge deserves to be set aside and after allowing the intra-Court appeals, the writ petitions be allowed and the election as allegedly held on 26.03.2022 also deserves to be set aside, as a consequence.

7. (a) Shri Y.K. Mishra, learned counsel appearing for the Society has submitted that the order passed by the Deputy Registrar is self-explanatory inasmuch as it has considered the grounds of objections and the material placed before him which clearly indicated the systematic collusion which was practiced in order to induct certain members who were the relatives and close confidants of the Secretary only to usurp the Society, which was in existence since 1947. It is further urged that there were blatant violation

of the by-laws of the Society so much so that there was no power conferred upon the Committee of Management including the Secretary to induct new members. The manner in which the entire exercise of inviting applications, inducting new members and rejection of the applications of persons seeking membership was done it clearly indicates that it was a calculated and manipulated exercise, hence, no right could be conferred on such persons.

(b) The entire material including the documents which finds mention in Section 4-B of the Act of 1860 and other documents which the Society in its usual course is required to maintain were examined and the contentions set forth by the appellants of the intra-Court Appeal No.94/2022 and the Secretary of the Society were noticed and by it the induction could not be justified rather it prima-faice, gave a clear expression of manipulation, hence, the Deputy Registrar came to a definite conclusion that the induction of members (the appellant of intra-Court Appeal No.94/2022) was not bonafide.

(c) Learned counsel has further urged that in case if the appellants were aggrieved by the order of the Deputy Registrar dated 11.02.2022, in such circumstances, they could assail it before the regular forum and invocation of the writ jurisdiction of this Court before the learned Single Judge was not appropriate and in the aforesaid circumstances, the dismissal of the writ petition does not suffer from an error nor the order passed by the learned Single Judge requires any interference in the instant intra-Court appeals.

8. Shri Tushar Verma, learned Additional Chief Standing Counsel representing the State-Authorities had placed the record available with the

Deputy Registrar of the Societies for the perusal of the Court and it has been pointed out that all the material available has been duly considered by the Deputy Registrar while passing the order dated 11.02.2022 and since the order of the Deputy Registrar is based on facts and material available before him, it cannot be said that it suffers from some jurisdictional error or any finding is perverse which may permit the appellants to assail the order of the Deputy Registrar or the learned Single Judge, consequently, the intra-Court appeals are liable to be dismissed.

9. The Court has heard learned counsel for the parties and also perused the material on record including the original record.

10. Learned counsel for the appellants has raised an issue regarding the scope of inquiry as envisaged in Section 4-B of (as amended in the State of U.P.) Act of 1860 and at this stage, it will be relevant to note the same.

"4-B.(1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, resignation or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society.-*Vide U.P. Act No.23 of 2013, Section 2 (w.e.f. 9.10.2013).*"

11. This aspect has been considered by a Co-ordinate Bench of this Court in **T.P. Singh** (supra) wherein it has been held as under:-

"25. A plain reading of above provision shows that at the time of

registration or renewal, a list of members of General Body of Society has to be filed by Assistant Registrar. Thereafter whenever there is any change in said list, same has to be informed to Registrar by submitting a modified list of members of General Body. When such a modified list is submitted to Registrar, in our view, examination allowed to be made by Registrar in respect of correctness of list of members of General Body in sub-section (1) would also include removal of member(s) for the reason, when modified list is communicated to Registrar, whether modification is on account of induction or removal in any manner, both aspects and correctness thereof can be and must be examined by Registrar.

26. The incidental question which immediately crops up is the extent of authority of Registrar of such examination. Whether it is an indepth examination which may be termed as adjudication of dispute or it is a summary inquiry subject to adjudication of dispute by a Court of Law.

27. On this aspect various judicial precedents have been relied by parties and we may examine the same at length so as to complete our search to answer the questions formulated above.

37. Court also observed that in making inquiry under Section 4-B of Act, 1860, Registrar is not a Post Office but supposed to act administratively by applying his mind on the facts and documents placed before him. Division Bench also referred to Supreme Court judgment in A.P. Aboobaker Musaliar v. District Registrar (G), Kozhikode, (2004) 11 SCC 247 and observed that when more than one returns are filed before Registrar, it may not hold an elaborate enquiry but bound to satisfy himself prima facie as to which return is to be accepted. Inquiry made by Registrar is not final and aggrieved party can always take up the matter before a Competent Court. Court also held that term “membership” has been defined under Act, 1860 and it indicates that a member of a Society shall be a person who, having been admitted therein according to rules and regulations, paid subscription, signed the roll or list of members and has not resigned in accordance with such rules and regulations. Hence, upholding action taken by Deputy Registrar, Court in para 55 of judgment observed:

“The original records were deposited by the appellant. The Deputy Registrar has undertaken exercise to verify the membership on the basis of agenda, proceedings, membership register and passbook of the bank account etc., and found that there was nothing illegal in the induction of those members and proceeded to accept the membership under Section 4-B of the Act on 17.10.2014.”

(emphasis added)

38. This judgment makes it clear that under Section 4-B of Act, 1860, Registrar is not supposed to make adjudication of dispute of correctness of membership like a Court but whenever a list is submitted or there is any change in the list of members and any objection is raised or otherwise, Registrar has to prima facie satisfy himself that change has been made in accordance with provisions of by-laws and prima facie genuine. For this purpose, Registrar may examine agenda, minutes of meeting and other relevant steps taken by Society. To this extent, an inquiry can be made by Registrar to find out whether list of members or change in list of members is correct or not.

46. In Allahabad High School Society, Allahabad v. State of U.P., 2011 (4) ADJ 341, a learned Single Judge (Hon'ble V.K. shukla, J.) considered correctness of decision dated 24.7.2010 taken by Assistant Registrar annulling resolution dated 28.5.2007 passed by Allahabad High School Society, Allahabad, registered under Act, 1860. It examined power of Registrar on the validity of amendment made in the by-laws. Court observed that Registrar is not a mere post office but can examine whether alleged resolution making amendment in by-laws is forged, fictitious or otherwise patently illegal. Court also said that though amendment in by-laws except for the change in the name do not require Registration but all changes in the rules are mandatorily required to be intimated to Registrar, who has to maintain record and hence when it is brought to its notice that there is any manipulation, maneuvering etc., he can examine the said issue. Similar view was taken by Division Bench in Allahabad High School Society, Allahabad v. State of U.P., 2011 (4) ADJ 887, which in fact, a judgment in appeal against Single Judge judgment in Allahabad High School Society, Allahabad v. State of U.P., 2011 (4) ADJ 341 and Division Bench confirmed view taken by learned Single Judge. We find that the matter was taken by Allahabad High School Society, Allahabad to Supreme Court and Supreme Court dismissed appeal vide judgment reported in (2011) 6 SCC 118.

53. The discussion made by us and facts stated above show that Society in question, in the present case, held a meeting with agenda to consider letters of petitioner and thereupon read those letters as constituting a misconduct, justifying termination of membership and resolved to terminate membership of petitioner. This resulted in change in the list of members of Society and hence was communicated to Assistant Registrar. Petitioner filed objection raising various issues including issue of membership of some other persons as well as some office bearers of Society. It may be noticed that a person, filing objection before Assistant Registrar, may raise a whole gamut of issues to Assistant Registrar which may be a combination of issues, some within jurisdiction of Assistant Registrar and some beyond but then the Registrar/Assistant Registrar can always discern substantive issues which are within the scope of scrutiny and within his jurisdiction and can respond to those aspects. It is the substance and not the tenor of language or draft of letter by Objector, which has to be seen by Assistant Registrar/Registrar who is a statutory authority supposed to look into the matter in exercise of statutory power conferred under Section 4-B of Act, 1860. It is true that Registrar/Assistant Registrar may not go into a detailed adjudication of a disputed question of fact like a Civil Court and remedy obviously would be available to the party concerned to take recourse to Civil Court but the mandate contained in the Statute regarding scrutiny, to the extent it is provided, has to be observed and discharged. Registrar/Assistant Registrar is obliged to examine the question of correctness of alteration or change or modification in the list of members when an objection is taken. Cancellation/termination/removal of membership is a mode of alteration of list of General Body of Society. Section 4-B of Act, 1860 talks of correctness of list of members, which can be examined by

Registrar/Assistant Registrar. Documents, which are supposed to be furnished to Registrar/Assistant Registrar are also specifically mentioned therein and from those documents whatever facts discern, may be seen to find out whether Society, in a bona fide manner has followed its own procedure laid down in Bye laws. For example, if abruptly a resolution is passed without there being any agenda on a particular issue and by-laws require circulation of agenda to the members before meeting containing subject, it is apparent that action taken by Society is not in accordance with by-laws and thus its decision would not be correct and can be interfered by Registrar/Assistant Registrar. Similarly, from documents relating to fee, if it is found that requisite fee has not been paid by a person inducted as member though deposit of fee is one of the conditions to become a member of Society, Registrar/Assistant Registrar can interfere and declare induction of such member to be illegal and declare resolution to this effect, bad in law. Similarly, if Society claims that fee has been deposited but from bank passbook, this claim is not found correct, Registrar/Assistant Registrar can again interfere. These are a few illustrations only. This interference includes declaration of resolution bad or illegal, and, mere fact that request has been made that resolution should be cancelled or be declared illegal, by itself, would not deprive Registrar/Assistant Registrar from entering into scrutiny to the extent it is mandated by Section 4-B of Act, 1860 otherwise the very objective and purpose of insertion of Section 4-B of Act, 1860 would stand defeated."

12. Another Co-ordinate Bench of this Court in **Ajai Kumar Singh Vs. State of U. P. and others (Special Appeal No.337 of 2022)** decided on 10.08.2022 as held as under:-

"15. On behalf of respondents, Sri G.K. Singh, learned Senior Counsel submits that the list of 130 members, which has been referred to in the order of the prescribed authority, dated 26.4.2011, has to be necessarily discarded as there is a serious dispute with regard to existence of such a list which has also been noticed by the prescribed authority in his order itself. It is also urged that subsequent orders of the Assistant Registrar also noticed the fact that no undisputed list of 130 members existed on record and that is why the Assistant Registrar while passing the order dated 23.7.2011 restricted the membership to 93 persons only. It is also argued that once the elections were conducted in the year 2011 on the basis of order dated 23.7.2011 and the challenge laid to the order of the Assistant Registrar has failed with no relief being granted in the writ petition, filed against such order, it would not be open for the petitioners to challenge such order, nor the Assistant Registrar can go behind such order, and he has committed no illegality in referring to and relying upon the list of 93 admitted members. A division bench judgment of this Court in Special Appeal No. 355 of 2019 has also been placed before the Court in order to submit that while exercising powers under Section 4-B of the Act of 1860, the admitted list of members are not liable to be reopened and only subsequent changes made therein including deletion or admission of new members alone are required to be

examined by the Assistant Registrar. It is in this context that the controversy raised in the present writ petition needs to be examined."

"18. The order of the prescribed authority, dated 18.12.1987 is a short order and appears to have been passed on the basis of some settlement which has been arrived at between the parties. The order of the prescribed authority, dated 18.12.1987, reads as under:-

"सम्बन्धित वाद के निस्तारण के बावत उभय पक्ष के विद्वान अधिवक्तओ की बहस सुना एवं पत्रावली पर उपलब्ध कागजातों का अवलोकन किया। पक्षों ने अदालत को अवगत कराया कि अब College Management के बावत पक्षों के बीच कोई विवाद नहीं है। पहले Membership को लेकर पक्षों के बीच विवाद था लेकिन अब इस विषय पर स्थिति बहुत ही स्पष्ट है। स्वयं इतर पक्ष ने स्वीकार किया कि कुल 130 सदस्यों की सूची जो विजय नरायन द्वारा प्रेषित की गयी है, वह सही है तथा बहुमत उन्हीं का है। इतर पक्ष ने यह भी स्वीकार किया कि कुल 130 सदस्यों द्वारा निर्मित कमेटी उन्हें मान्य है। इनके द्वारा प्रबन्ध संचालन भी उन्हें मान्य है। इस तरह से पत्रावली पर उपलब्ध कागजातों के आधार पर इस निर्णय पर पहुँचा जाता है कि अब उ०मा०विद्यालय नेवढ़िया जौनपुर के अध्यक्ष श्री उदरेज एवं प्रबन्धक श्री विजय नरायन तिवारी घोषित किये जाते हैं। कुल 130 सदस्यों की कमेटी भी वैध घोषित की जाती है। इस कमेटी द्वारा पदाधिकारी जो समप्रति है या घोषित किये जायेंगे व भी वैध माने जायेंगे।

तदनुसार आदेश का क्रियान्वयन हो वाद आ०का० पत्रावली द०८० हो। आदेश की एक प्रति स० रजिस्ट्रार को प्रेषित हो।"

"19. According to petitioners, the list of 130 members is an enclosure to this order whereas the respondent states that no such list exists or is enclosed with the order. The Court need not enter into the factual issues as to whether the list allegedly annexed alongwith Annexure 3 is a part of the order of prescribed authority in view of the serious dispute on facts raised by the parties. Nevertheless, the order of SDM is not in dispute which does refer to a list of 130 members submitted by Vijay Narayan Tiwari and the fact that such list of 130 members was accepted by the parties. The subsequent order of the prescribed authority dated 26.4.2011 notices the dispute regarding the list of 130 members but in the operative portion of the order a specific direction has been issued to conduct elections on the basis of surviving members from the list of 130 members and 93 members. The operative portion contained in the order of the prescribed authority is not in issue. The subsequent order of the Assistant Registrar, dated 23.7.2011, proceeded to determine the list of 93 members and the elections were also held in the year 2011, accordingly. It is true that a writ petition filed against such order has been disposed of in terms of the order passed in the writ petition relating to constitution of managing committee of the educational institution, but there is apparently no consideration on merits with regard to compliance of the direction contained in the order of the SDM, dated 26.4.2011. The subsequent order of the Assistant Registrar primarily proceeds upon the list of members finalized on 23.7.2011 and also the fact that writ petition filed against such order has been disposed of without interfering with such order. The disposal of the writ petition, in view of the order passed in the leading writ petition relating to committee of management cannot be construed as an approval of the order of Assistant Registrar dated 23.7.2011. It is true that the term of the elected committee being three years, the order has substantially lost its relevance, but when it comes to determination of list of valid

members, all aspects relating to membership would have to be examined. The order of the prescribed authority acknowledging the list of 130 members, therefore, cannot be brushed aside without there being any independent consideration with regard to claim of such members. Even the list of 93 members, which has been accepted by the Assistant Registrar, merely proceeds on the premise that previous elections were held from the list of such members. This may be a relevant fact but the Assistant Registrar cannot be absolved from undertaking the statutory exercise expected of him in terms of Section 4-B of the Act of 1860 when there is a serious challenge to the membership of the society. It is apparently to get over such disputes that Section 4-B has been inserted by way of amendment and this is a fit case in which the Assistant Registrar ought to have called for the original records and determined the list of members before registering the list of 93 members. The order of the Assistant Registrar is absolutely silent with regard to the factors specified in Section 4-B even with regard to the list of 93 persons which has been accepted by him. Apart from the fact that such members had participated in the last elections, there is no other material supporting their claim of membership. Section 4-B statutorily mandates the Assistant Registrar to refer to the original records to examine the correctness of the list of members of General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass-book of the society. The order of the Assistant Registrar is absolutely silent with regard to examination of claim of membership with reference to the statutory factors enumerated in Section 4-B. In a given case where the membership is not disputed, it is always open for the Assistant Registrar to rely upon the list of undisputed members who have participated in previous elections, but in a case where claim of membership is seriously disputed and the orders of the prescribed authority are open to interpretation, the safest course for the Assistant Registrar would be to examine the original records and return an independent finding with regard to claim of membership. So far as the division bench judgment of this Court in Special Appeal No. 355 of 2019, relied upon by the respondents are concerned, this Court finds that the observations made therein were in the context of facts of that case as the previous elections were held on the basis of 63 members and there was apparently no serious challenge laid to it. In the facts of the present case, however, such is not the case. The election of the year 2011 held on the basis of 93 members was challenged and there is no apparently no adjudication on merits of the claim. The writ petition was disposed of in terms of the direction issued to constitute the managing committee of the educational institution. A special appeal is reportedly pending. Technically the respondents may be justified in asserting that no interference has been made by this Court in the order of the Assistant Registrar, but such disposal cannot be construed as an act of approval of the order passed by the Assistant Registrar. The subsequent dispute of membership of society, therefore, will have to be resolved in accordance with law. The disposal of the writ petition in the year 2013, therefore, will not foreclose the claim of petitioners, nor would it absolve the Assistant Registrar from the statutory responsibility imposed upon him under Section 4-B of the Act of 1860."

13. From the perusal of the provision 4-B of the Act 1860 and the aforesaid decisions it can clearly be culled out that in terms of Section 4-B of the Act of 1860, a list of members of the governing body has to be submitted (i) at the time of registration of the society; (ii) at the time of renewal (iii) at the time when there is a change in the list of members of the general body, which may on account of several reason including in a case of induction, removal or death of any member. Once a situation as contemplated in Section 4-B accrues then the Deputy Registrar is required to apply its mind to sift the grain from the chaff. He does not act as a mere rubber stamp rather it is required of him to apply his judicial mind to the controversy before it.

14. In the instant case, the Deputy Registrar was confronted with the issue regarding proper induction of the members and in this context after calling for the response from the Secretary as well as the documents, which are mentioned in Section 4-B of the Act 1860, and then after considering the impact of those documents as well as the reply of the Secretary of the Society, the impugned order dated 11.02.2022 was passed. It cannot be said that at the stage when the altered list was submitted before the Deputy Registrar, it did not have the power to examine the correctness of such list. It may be a different issue that the Deputy Registrar should have decided the controversy expeditiously before supervening events could make a different impact. However, the fact remains that the core issue regarding the correctness of the list of members as submitted was to be examined prima-facie and it was done by the Deputy Registrar which led to passing of the order dated 11.02.2022.

15. From the perusal of the order dated 11.02.2022, it is clear that the Deputy Registrar has taken note of the bylaws of the Society which clearly envisages the right to induct member is vested with the general body and not the Committee of Management. The Deputy Registrar after examining the bylaws, the issuance of the public notice made by the Committee of Management through its Secretary, which was published in a newspaper which had its circulation in different districts and not in a district where the Society had its area of operation coupled with the fact that the publication of the advertisement itself was found wanting on several counts. It noticed that the receipt of membership applications and deposit of membership fee in a separate account which was opened recently, also that the persons inducted as members were closely related and acquainted with the Secretary while rejecting the applications of other persons, who also wanted to be inducted, was all done by the Committee of Management which was *per se* against the bylaws of the Society.

16. The Deputy Registrar while passing the order noted the specific regulation and the bylaws which clearly indicated that the decision to induct new members would be considered at the time of annual general meeting of the general body. The persons who make an application for being inducted as a member was also to be considered and approved by the general body and only thereafter if such persons were approved could then deposit the membership fee in order to become bonafide members of the Society. The Deputy Registrar found that the process as envisaged in the bylaws was not scrupulously followed rather an orchestrated exercise was under taken by the Secretary to induct certain member by resorting to

manipulation as well as bending of rules which was against the bylaws of the Society.

17. Once the act of induction of new members was tentatively found by the Deputy Registrar not to vest in the Committee of Management rather it vested with the general body and it was to be considered at the time of the annual general meeting, coupled with the fact that this issue was never raised in the annual general meeting authorizing the Secretary or the Committee of Management to induct new members also noticing that there were several discrepancies while inviting application for seeking enrollment of member such as; **(i)** The advertisement was made in a newspapers which did not have worthy circulation in the district Ambedkar Nagar where the Society has its area of operation rather the said newspaper, Lok Bharti, had circulation in Lakhimpur Kheri; **(ii)** Unless and until the applications so received were scrutinized and approved by the general body only thereafter the membership fee could have been deposited which was not done. In the instant case, it was found that the appellants had deposited the money amounting to Rs.1100/- not more not less for which receipts were issued in one seriatim and it was deposited in a new account opened on 24.09.2019 with Bank of Baroda i.e. after the date when the alleged meeting was held on 05.08.2019 allegedly authorizing the Secretary to take measures for enrolling new members; **(iii)** The document of income and expenditure for the financial year 2019-20 did not match with the detail as mentioned in the original cash book; **(iv)** The provisions of the bylaws namely regulation 3, 4, 5, 8 and 20 were also noticed and it was found that the Society envisaged five type of members and in order to be a life

member, the eligibility of the person seeking membership was to be ascertained which was not done. The membership money was to be received by the President as provided in Regulation 21 of the bylaws, which was also not done; (v) It was also noticed that the advertisement issued did not mention as to what type of membership was open for enrollment and though the basic eligibility for seeking life membership was, a person who would donate Rs.500/- or more in lump sum, while all the persons who applied and was granted the alleged membership had deposited Rs.1100/- and all the receipts were dated 28.10.2019 and all in seriatim and taking note of all the aforesaid facts as a whole including the fact that most of them were relatives and acquaintances of the Secretary.

18. In such background circumstances, where the Deputy Registrar passed the order dated 11.02.2022, after hearing the Secretary of the Society and considering the material submitted by him including the records as available with the Society and prima facie findings of fact were recorded by which the Deputy Registrar concluded that the members were inducted against the provisions of the bylaws of the Society. This is primarily a finding of fact which in given circumstances is not amenable to challenge under writ jurisdiction rather in case if any party was aggrieved it had a right of assailing the same before the appropriate forum or the civil court.

19. In the instant case, the Deputy Registrar by taking note of the record available with him, referred to the bylaws, the cash book, the bank account, pass book and other material such as the agenda, the newspaper citation *inter alia* other documents to arrive at its conclusion that the induction of

28 members (who are the appellants in intra-Court Appeal No.94 of 2022) was not done as per the rules and regulations and bylaws of the Society. Only for the reason, that the Deputy Registrar has given his elaborate findings does not mean that he has usurped the jurisdiction and has acted as a civil court while giving his findings. The fact still remains that his findings are still subject to scrutiny by the appropriate forum or the Court.

20. On the perusal of the order passed by the Deputy Registrar, it reveals that he found fundamental errors which persuaded him to record a finding that the induction of 28 members was not in accordance with law and the same cannot be termed as a roving inquiry. The documents which have been considered by the Deputy Registrar cannot be said to be irrelevant as these are the foundational documents which are necessary to be considered while arriving at any finding where tentative or otherwise. Once it found that the induction of 28 members was not appropriate, any further exercise undertaken by such members *per se* do not receive the sanction or approval of legitimacy.

21. Thus, to submit that subsequently after the objections were filed, while considering the issue of renewal of the Society or further elections, the names of the appellant were considered would not cure the initial illegality of induction of such members. Accordingly, any correspondence issued from the office of Deputy Registrar addressed to Secretary would not necessarily mean that the list sent by the said Secretary including the names of the appellants had attained approval or sanction of the Deputy Registrar. The decision of a Co-ordinate Bench of this Court in **T.P. Singh** (supra) and that of the Apex Court in **A.P. Aboobaker Musaliar** (supra)

does not help the case of the appellants.

22. Thus, for the aforesaid reasons, the submissions of the learned counsel for the appellants that the Deputy Registrar exceeded his jurisdiction while exercising powers under 4-B of the Act of 1860 does not find favour with this Court.

23. The other question raised by the counsel for the appellants that the order passed by the Deputy Registrar was against the principles of natural justice as no hearing was given to the appellants is also not legally tenable for the reason that the present appellants had also filed their separate response. The copies of the response is available on the record wherein they have merely stated that in pursuance of the advertisement published they had furnished their applications alongwith the membership fee which was duly approved by the Committee of Management and acting upon the same, the renewal of the Society was done and subsequent elections was also held wherein the appellants were treated as bona fide members.

24. Once the appellants termed themselves to be the members having been inducted by the Secretary and the same Secretary had furnished the said documents and was attempting to justify his own action on the basis of the material submitted by him which has been considered by the Deputy Registrar while passing the order dated 11.02.2022. Thus, the appellants who had gained the alleged membership on the basis of the act of the said Secretary who duly represented the cause of the said appellants and now the appellants cannot take a ground to submit that they were not afforded an opportunity of hearing. Even otherwise, from the perusal of the response filed by the individual members before the Deputy Registrar, it cannot go

beyond the contentions of response of the Secretary and the material submitted by him before the Deputy Registrar.

25. Learned counsel for the appellants could not point out what material was available with the appellants which was not available on record of the Society and submitted before the Deputy Registrar, which if placed and considered by the Deputy Registrar separately could have given altogether different complexion to the matter at hand.

26. A specific query was put to the counsel for the appellant, Shri Pathak, as to what material has been brought on record by the appellants, either before writ court or before this appellate court which they would have furnished before the Deputy Registrar and which if considered could give rise to any different conclusion. The same could not be answered in the affirmative nor it could be pointed out that the appellants had any other document available with them, than the ones produced before the Deputy Registrar.

27. In the aforesaid background, it cannot be said that the appellants have been prejudiced in any manner on account of non grant of an opportunity of hearing. A Co-ordinate Bench of this Court has dealt with the issue of violation of principles of natural justice in **Durgawati Singh** (supra) wherein after taking aid of several judgments of the Apex Court it was held that mere violation of principles of natural justice do not always give a right to a party to assail an order unless it also establishes a consequent failure of justice. The prejudice which is expressed must be more than an apprehension and it should exist as a matter of fact or be based on a definite inference of likelihood of prejudice flowing from the

non observance of natural justice.

28. In the instant case, if the facts are seen it would indicate that the appellants did not have any document or plea which if presented before the Deputy Registrar could give rise to different conclusion. Mere submission that the issue relating to subsequent events that is to say inclusion of the names of the appellants as members while considering the issue of renewal of the Society and a subsequent election having taken place is not going to cure the initial defect which accrued at the time when the said appellants were allegedly inducted as members. Once the foundation is held to be compromised then the entire edifice built on the said foundation also collapses.

29. In light of the aforesaid discussions, it is clear that no prejudice has been caused to the appellants as the Secretary who had inducted them had already put the entire records before the Deputy Registrar and there was nothing more which was available with the appellants which they could have placed before the Deputy Registrar. Even otherwise since the appellants had filed their individual responses but they did not file any document except the one which has been furnished by the Secretary hence the submissions of violation of principles of natural justice as raised by the appellants is merely artificial and has no substance.

30. For the aforesaid reasons, this Court does not find any merit in the submissions advanced by the learned counsel for the appellants nor there is any palpable error in the order passed by the learned Single Judge which may persuade this Court to allow this appeal. As a consequences, the order impugned dated 05.03.2022 passed by the learned Single Judge in Writ-C

No.1313 of 2022 is affirmed. The intra-Court appeals bearing No.94 of 2022 and 124 of 2022 are dismissed.

31. The other connected intra-Court Appeal No.308 of 2022 which arises out of WRIT-C No.3598 of 2022, and is dependent on the outcome of the other two co-connected intra-Court Appeals No.94 of 2022 and 124 of 2022 which have been dismissed, thus, no right accrues to the appellants of intra-Court Appeal No.308 of 2022 which is also dismissed. Costs are made easy.

32. The original record summoned by the Court has been handed over to the Additional Chief Standing Counsel.

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)

Order Date :- 18th December, 2024

Rakesh/ank/-