

In Chamber

Case :- WRIT - C No. - 2553 of 2024

Petitioner :- C/M Ram Dularey Lal Yadav Higher Secondary School Thru. Manager Udai Veer Singh Chandel And Another
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Prin. Secy. Institution Finance, Lko. And 3 Others
Counsel for Petitioner :- Dileep Kumar Mishra
Counsel for Respondent :- C.S.C., Suresh Chandra Tiwari

Hon'ble Shree Prakash Singh, J.

1. Heard Sri Dileep Kumar Mishra, learned counsel for the petitioners, Sri Shailendra Kumar Singh, learned Chief Standing Counsel and Sri Piyush Kumar, learned Standing Counsel for the State, Sri Suresh Chandra Tiwari, learned counsel for opposite party no. 4 and perused the material placed on record.
2. By means of the present petition, the petitioner has assailed the order dated 12th December 2023 passed by the Deputy Registrar, Firms, Society and Chits, Lucknow Region Lucknow. Further, a writ in the nature of mandamus is also sought for commanding the respondent to accept the original papers of the petitioner's Committee of Management, for renewal of the registration certificate of the society.
3. Factual matrix of the case is that Sri Ram Dularey Lal Yadav, Higher Secondary School Society (hereinafter referred to as 'society') was got registered in the year 1966. The society has its own by-laws for functioning and managing the affairs of the society, as such the rules and regulation of the Society Registration Act, 1860 (hereinafter referred as 'Act, 1860') are fully applicable on the petitioner's society. As per the by-laws of the society, the term of Committee of Management is three years and it is said that the election of the Committee of Management is regularly held and the list of office bearers of the society including the list of member of the general body was also sent time to time by the Manager of the society.
4. The election of Committee of Management were held in year 2006, 2009 and 2010 and the requisite records/documents were also sent before the Deputy Registrar, in accordance with the provision of Section 4 of the Act, 1860.

5. It is said that in the election held on 20th December 2009, late Laxman Singh Yadav was elected as President of Committee of Management and Bahadur Singh Chandel was the Manager. On, 30 March 2010, Laxman Singh Yadav died, thereafter, Committee of Management, wrote resolution dated 11th May 2010 and proposed the election of President, wherein, Veer Singh Chandel was proposed to be the President and when Raj Bahadur Singh, the then Manager of Committee of Management died on 23rd October 2012, on 16th December 2022, the petitioner no. 2, namely, Veer Singh Chandel was elected as Manager and all the proceedings were submitted, consequently, on 27th December 2022. The petitioner applied for renewal of the registration of society which was renewed on 27th December 2012, whereafter, on 10th January 2013, opposite party no. 4, who was never inducted as a member, made false complaint before opposite party no. 2, with a prayer to deputy registrar, not to proceed on the election proceeding of the petitioners' society held on 20th December 2009 and to cancel the list of office bearers of Committee of Management of year 2012–13, the Deputy Registrar stayed the implementation of the election of Committee of Management.

6. Being aggrieved with the order dated 11th January 2023, petitioner filed writ petition no. 507 (MS) of 2013 before this Hon'ble Court and vide order dated 24th January 2013, the operation of the order dated 11th January 2013 passed by the Deputy Registrar, Firms, Society and Chits, Lucknow Region Lucknow was stayed. Whereafter, the term of the Committee of Management completed and the new election held on 10th October 2015, as per the procedure prescribed in the by-laws. Thereafter, the petitioner submitted the application on 19th March 2017 for renewal of the registration certificate before the Deputy Registrar, which was prepared on 5th July 2016. It is also submitted that the original copy of the renewal certificate is with the petition no. 2.

7. Election of the Committee of Management was consecutively held after completion of three years of the tenure i.e., on 10 October 2018, and all the papers were sent to the office of the Deputy Registrar and when on 24th October 2019, the petitioner submitted all the proceeding before the Deputy Registrar for registration of list of office bearers of Committee of Management, no action was taken and therefore, contempt petition was preferred bearing Contempt Petition No. 1644 of 2020, wherein, the notice was issued to the respondent-authority and as soon as the notice was issued, the Deputy Registrar approved the election proceeding dated 10th October 2015 and 10th October 2018.

8. After expiry of term of renewal of registration of the society, the petitioner submitted an application through online on 28.11.2020 for renewal of registration certificate and also submitted the requisite fee as prescribed under Section 3–A of the Act, 1860 and further submitted the requisite papers/documents on 25.11.2021 and 21.12.2021, which was properly furnished in the office of the Deputy Registrar by the petitioner no. 2 and thereafter, on 10th October 2023, and on subsequent dates, the petitioner personally appeared before the Deputy Registrar for submission of original records, but the Deputy Registrar ignored every request of the petitioner, rather the petitioner was misbehaved by the officials of the office of the Deputy Registrar and all of sudden without associating the petitioner, the Deputy Registrar vide impugned order dated 19th December 2023, issued the renewal certificate on the basis of the papers submitted by the opposite party no. 4.

9. Contention of the counsel for the petitioner is that the impugned order dated 19th December 2023 has been passed by the Deputy Registrar without affording proper opportunity of hearing to the petitioners and that too in illegal and arbitrary manner and against the provision of Act, 1860. He further added that as per the by-laws, the term of the Committee of Management is prescribed as three years and the election of Committee of Management has regularly been held and time and again the list of the members as well as the office bearers of the society were sent to the office of Deputy Registrar, as prescribed under the provision of the Act, 1860.

10. Further contention of the counsel for the petitioner is that the opposite party no. 4 has never been inducted as member of society, though, he has fraudulently shown himself to be the member of the society by submitting a forged membership receipt, shown to be issued by the then President of the society, though, no proceeding regarding the induction of membership of the opposite party no. 4 is placed on record and except apart the alleged membership receipt, there is no proof/evidence, that under what circumstances the petitioner is inducted as member of the society?

11. Adding his argument, he submits that the Deputy Registrar while proceeding with the renewal of the registration of society accepted the fabricated document, submitted by the opposite party no. 4 and did not allow the petitioner to submit the original records, which is in custody of the petitioner no. 2. He also added that after concluding the proceeding on 17.07.2023, the Deputy Registrar kept on writing to the petitioner to submit the record as if the proceeding are going on and all these act of the Deputy Registrar is camouflaging and not permissible under

the law.

12. Further submission is that the opposite party no. 4 could not substantiate while filing the counter affidavit that how he has been inducted as a member and he has failed to controvert the pleadings of the writ petition, therefore, submission is that the order impugned passed by the Deputy Registrar is unlawful and erroneous, and the same maybe quashed.

13. Counsel appearing for the opposite parties have opposed the abovesaid contentions and submitted that opposite party no. 4 has been inducted as a member in year 2010 and a membership receipt has also been issued, which is endorsed by the then President, who is the authority to issue such receipt, under the by-laws of the society. He further added that the opposite party no. 4, being the son of the then Manager, is claiming his right as if there is any right of inheritance on the post of Manager of Committee of Management of the society, though, the by-laws specifically speaks about the provision of induction of the members in the society and by adopting those provision, the opposite party no. 4 has been inducted as a member and thereafter, since he was having the original records and thus, he produced the same and on his production of his records, the renewal of the registration of the society is done by the Deputy Registrar in a right and proper way, which is in consonance with the provision of Act, 1860, as well as the by-laws of the society.

14. He further added that since, the disputed question of fact are raised and therefore, the petitioner, if aggrieved, may challenge this order before the Civil Court and it is not amenable to the Writ Jurisdiction under Article 226 of Constitution of India.

15. Concluding his arguments, he submits that since there is no force in the contention and subject matter, raised/preferred by the petitioners and therefore, the petition is liable to be dismissed.

16. Considering upon the submissions of the counsel for the parties and after perusal of the available records, including the original record placed before this Court, it emerges that a dispute arose when one Rakesh Kumar Gupta, i.e., opposite party no. 4, claiming him to be the Manager of Committee of Management of the society, submitted the documents before the Deputy Registrar and sought the renewal of the registration of the society, whereafter, the same was controverted by the petitioners while stating that the opposite party no. 4 has never been inducted as a member of the society and therefore, he is a stranger and the renewal of the society on furnishing the paper

by the opposite party no. 4, annexing therewith the list of general body and the expenditure of financial year 2009–10 and 2011–12 is impermissible. The matter went up to the Coordinate Bench of the Court, whereafter, the Deputy Registrar decided the matter vide order dated 19th December 2023, which is under challenge in the instant petition. The petitioner no. 2, claiming him to be the duly inducted member and the Manager of Committee of Management of the society, while outrightly rejecting the claim of the opposite party no. 4, as member of the society, while placing the membership receipt bearing no. 648 dated 23rd October 2010, issued by the then President of society. As per the provisions of by-laws, the President can utilise the power of the treasurer and thus, it is stated that the opposite party No.4 is a validly inducted member of the society.

17. The crux of the issue is that without affording opportunity of hearing to the petitioners, the order dated 19th December 2023 has been passed.

18. When this court examines the above said, in facts and law, it emerges from the order-sheet of the original record that on 17th January 2023, the then Deputy Registrar heard the matter finally and closed the proceeding, and the judgement was reserved, but, from perusal of the further proceedings, carried out by the present Deputy Registrar, it does not transpires that when the matter was fixed for re-hearing, though, on two occasions a formality is done while calling the original records from the parties, however, by what means the petitioners are communicated, is not evident from the order-sheet. Simply the question arises that once the proceeding was closed and it was not open for further hearing, there was no occasion for calling the original record.

19. It is specific case of the petitioners that proper and fair opportunity has not been afforded to the petitioners, and once the petitioners appeared in person to submit the original records to the Deputy Registrar, the Deputy Registrar has denied to accept, for the reasons best known to him. It is not understandable that why the petitioners would restrain themselves to deposit the original records to the office of Deputy Registrar, if it was in fact called for? and that too in the event that the proceedings were earlier closed vide order dated 17th January 2023; meaning thereby that the present Deputy Registrar was merely doing the formality and nothing else.

20. It is a trite law that if any action/order is of a civil consequence, then opportunity of hearing is must to the affected persons. This court is also not unmindful to the law that if there

is disputed question of fact or there can be two possible views, the same is not amenable to the writ jurisdiction, but so far as the present case is concerned, prima facie, there seems to be lack of rules of principle of natural justice as after the hearing was over, and the judgement was reserved by the Deputy Registrar, the records were sought without putting the matter for further hearing and as per the contention of the petitioners, prior to 17th January 2023 also, the proper opportunity of hearing was not accorded to the petitioners.

21. The Hon'ble Apex Court, time and again has held that the opportunity of hearing is one of the major and essential ingredient so as to make a test of any decision of an authority. The decision might be administrative, judicial or quasijudicial, but person affected must be heard before a decision is taken.

22. The issue has rightly been settled in case of **Managing Director, ECIL, Hyderabad and others vs B. Karunakar and Others by a Constitutional Bench of the Apex Court** reported in (1993) 4 SCC 727 and subsequently, law rendered in **State Bank of India and Others Vs. Rajesh Agarwal and others** reported in (2023) 6 SCC 1 regarding the principle of 'audi alteram partem'.

23. Paragraph 36 of the abovesaid judgement is quoted hereinunder:-

"36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo iudex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power."

24. In view of the aforesaid submissions and discussions, this Court is of considered opinion that the proper and fair opportunity of hearing has not been afforded to the present petitioners, as is evident, from the original records of the society produced before this Court. Further, the settled

proposition of law has also materially been ignored. Consequently, the writ petition is hereby **allowed** and the impugned order dated 19.12.2023 is quashed.

25. Matter is relegated back to the Deputy Registrar concerned to proceed with the matter a fresh, after hearing all the stakeholders, while providing them opportunity of hearing and the decision shall be taken within a period of three months.

26. The original certificate shall be submitted by the opposite party No. 4 before the Deputy Registrar, within a week, if he has received it, already.

27. Office is directed to return the original records to counsel for the State.

Order Date :- 23.5.2024

Anurag