

Court No. - 20

Case :- WRIT - C No. - 1004792 of 2015

Petitioner :- Anjuman Taleem Thru Its Secy. Syed Ahmad Jafar And 59 Ors.

Respondent :- Deputy Registrar Firms Societies And Chits Vikas Deep Lko.Andors

Counsel for Petitioner :- Sudeep Seth

Counsel for Respondent :- C.S.C.,Abhneet Jaiswal,Naveen Awasthi,Santosh Kumar Tripathi

Hon'ble Shree Prakash Singh,J.

Order on amendment application:-

(C.M. Application No. 5 of 2023)

This is an application for substitution, seeking substitution of legal heirs of petitioners, who died on 23.01.2023 and 13.06.2017. The application is supported with an affidavit.

The ground taken in the affidavit is sufficient.

Accordingly, substitution application is **allowed**.

Let necessary corrections be carried out in the array of parties during course of the day.

Order on petition:-

1. On the joint request of counsel for the parties, both the writ petitions namely, Writ C No.1004792 of 2015 and Writ C No. 1004523 of 2015 are hereby decided as the common dispute is with respect to membership of the parent society is under question.

2. The factual matrix of the case is that the dispute had arisen between the parties regarding membership of general body of the society namely, Anjuman-e-Taleem, Muftiganj, Lucknow,

whereafter, a writ petition was preferred namely, 4595 (MS) of 2012 (Syed Saeed Jafar and others versus State of U.P. and others), which was decided finally vide the judgment and order dated 27.04.2015 and the following order is passed:-

""Heard Sri Anurag Shukla, learned counsel for the petitioners and Sri Sudeep Seth, learned counsel for respondents no. 7, 8, 10 and 11. Learned Standing Counsel has argued on behalf of respondents no. 1 to 6. Respondent no. 9 remains unrepresented, despite issuance of notice. The order dated 30.7.2012 contained in Annexure-33 to the writ petition and the order dated 16.8.2011 contained in Annexure-11 to the writ petition are essentially the subject matter of challenge in the present writ petition.

By order dated 30.7.2012 a decision has been taken by the Deputy Registrar as regards the membership of the petitioners in relation to the Society viz. Anjuman-e-Taleem, Muftiganj, Lucknow whereas order dated 16.8.2011 whereby signature of respondent no. 7 was attested is dependent upon the legitimacy of membership of the members, who are validly entitled to participate in the process of election in order to constitute the managing body of the Society.

Admittedly, in the present case, the Committee of Management of the Society and for the institution is one and the same, therefore, once the membership of the Society is settled, the consequences shall automatically follow.

It is also relevant to note that the renewal of the Society has also fallen due to be considered w.e.f. 1.6.2014, the previous renewal having been granted in the year 2009.

Learned counsel were heard at length on the aspect of validity of the impugned order dated 30.7.2012. Having regard to the submissions, this Court during pendency of the writ petition, stayed the operation of the order dated 30.7.2012 by order dated 14.8.2014 which reads as under:

"It is submitted by Sri Anurag Shukla that Deputy Registrar has held the election dated 17.5.2011 as valid one vide its order dated 30.7.2012. District Inspector of Schools-II (DIOS-II), Lucknow has also attested the signature of Syed Ahmad Jafar as Manager of Girls Inter College, Muftiganj, Lucknow.

Notices were issued to private respondents but nobody has put in appearance.

Till further orders, operation of the order dated 30.7.2012 shall remain stayed. So far as Girls Inter College, Muftiganj, Lucknow is concerned, D.I.O.S. will pass consequential order within 15 days.

List thereafter."

Thereafter, in compliance of Court orders, the original receipts of membership subscription and the names of the members enrolled throughout by both the parties in the membership register were produced and rendition of this record by contesting

respondents having availed opportunity before this Court, coupled with the fair assistance by Sri Sudeep Seth, learned counsel for respondents no. 7, 8, 10 and 11, has really helped the Court to understand the controversy within the Society and suo motu notice of basic dispute linked to membership of the Society, in a sense beyond the scope of impugned order, is taken as the institution run by the Society is a government aided college. It is not disputed that the institution is placed under single hand operation by the educational authorities in compliance of the aforementioned order for being an institution receiving grant in aid.

Now coming to the validity of the impugned order dated 30.07.2012, the limited controversy is with respect to the membership of the petitioners. The objections of the petitioners appear to have been dealt with by the Deputy Registrar and rejected specifically on two grounds, namely, (i) there has been a default on the part of the petitioners to deposit the annual subscription; and (ii) the petitioners having lost interest in the affairs of the Society, have lost their hopefulness in the membership. Therefore, as per the scheme of bye laws the membership of the petitioners on both the counts being questionable, stood terminated by implication of the bye laws.

So far as termination or expulsion of membership as per the bye laws is concerned, it would be necessary to refer to the bye laws according to which the membership of the Society can be granted and classified. Once grant of membership and the classification thereof is clearly understood, the termination of membership as per the prescribed norms contained in the bye laws can easily be applied with all consequences. Referring to the bye laws of the Society placed on record, it is necessary to record that at the initial stage of registration of the Society, the Committee of Management which stood at the helms of the affairs of the educational institution, comprised of 15 members including 3 ex-officio members.

Learned counsel for the petitioners has submitted that 12 members at the time of initial constitution of the Society, were the life members in as much as, they were originally responsible for constituting the Society with the purposes embodied in the Memorandum of Association and the said members have not paid any subscription fee towards the membership of the Society at any point of time, as such, are to be classified as life members. Out of 12 such members who constituted the Society, only 3 members are at present alive, namely, the two petitioners and one Syed Ali Jafar (respondent no. 9).

The issue as regards the life membership of the petitioners is essentially a matter of consideration whereas all other members have been inducted on the basis of subscription from time to time as per the record made available before this Court. The life membership of the petitioners, as averred by learned counsel for the petitioners, was seriously refuted by learned counsel appearing for respondents no. 7, 8, 10 and 11 and it is pleaded that membership of the Society is decided on the basis of annual subscription alone, therefore, there was no scope for any classification of life membership and membership otherwise of the Society.

Having called for the original subscription record of the Society as regards membership, two noticeable aspects have come to light; (i) no member of the Society has deposited subscription of Rs. 10/- annually strictly in terms of the bye laws; (ii) the subscription of Rs. 12/- deposited and maintained by the society is in the light of scheme of administration of the institution which prescribes the annual subscription fee as Rs. 12/- for ordinary membership. As has already been recorded above, the Committee of

Management of the institution and that of the Society is common in the present case, therefore, the subscription for seeking membership of the Society and for participation as a member in the election of Committee of Management is the real question that needs to be determined in the peculiar facts and circumstances of the present case.

In this regard the relevant provisions of Society Registration Act may also be made a reference. Section 2 of the Societies Registration Act provides for Memorandum of Association to be submitted at the time of registration of the Society, which reads as under:

"2. Memorandum of association.—The memorandum of association shall contain the following things (that is to say),—

the name of the society;

the objects of the society;

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association."

According to Section 2 of Societies Registration Act, it is mandatory that the names, address, occupation of the governing body or Committee of Management to whom the management of its affairs is entrusted, are clearly mentioned in the Memorandum of Association. In the present case, the composition of 15 members including 3 ex-officio members, spells out the description of the Committee of Management as per the requirement of Section 2 of the Society Registration Act.

Undisputedly, the said Committee remained functional up to the year 1999. Thereafter neither registration of the Society was renewed nor elections were duly held. However, in the year 2009, renewal of the Society was granted for a period of five years in the month of June rendering registration of the Society valid up to 1.6.2014.

In the year 2009 when the renewal was granted, a significant development had taken place with the issuance of government order dated 21.11.2008 according to which the general body of the Society and that of the Committee of Management stood limited to the extent of general body of the Society alone and could not stay straight on variance, as is evident from the relevant extract of the government order, which is quoted below:

"प्रशासन योजना में यह व्यवस्था दी जाय कि सोसाइटी रजि० एक्ट 1860 के अंतर्गत पंजीकृत मात संस्था / साधारण ट्रस्ट के सदस्य ही विद्यालय की प्रबंध समिति के निर्वाचन सदस्य के रूप में मतदाता होंगे।"

Therefore, at the time when renewal in the year 2009 was granted, it was very much necessary on the part of the Deputy Registrar to consider the structure of the Committee of Management in the light of the membership of the Society as per the provisions of the Act and relevant bye laws. Not only the affairs of the institution but the affairs of the Society appear to have been subjected to a lot of uncertainties between the year 1999 to 2014, which ultimately resulted into moving of numerous complaints that were also taken note of, by the Deputy Registrar while passing the impugned order dated 31.7.2012. When the vital issue of membership of the petitioners came to be considered by the

Deputy Registrar while passing the impugned order, the question which specifically cropped up was as to whether the petitioners were life members of the Society or they could be classified to be the ordinary members of the Society on the basis of annual subscription.

The Deputy Registrar while looking into the matter has referred to the bye laws of the Society but before coming to the relevant bye laws, it would be necessary to refer to Section 15 of the Societies Registration Act, which is reproduced below:

"15. Member defined For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations;

Disqualified members -- But in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrears for a period exceeding three months.

(2) Every society shall maintain a register of members giving such particulars as may be prescribed."

Section 15 of the Societies Registration Act unequivocally makes it clear that membership of the Society is to be made only in accordance with the rules and regulations of the Society and the payment of subscription wherever prescribed, is also a condition precedent, coupled with the fact that the members have to sign the roll or list of membership and shall not have resigned in accordance with the rules and regulations.

In the instant case, while the issue of membership was being looked into by the Deputy Registrar, the plea as regards life membership of the petitioners was not favoured with and the petitioners having defaulted in depositing the annual subscription, were deemed to have ceased to be the members of the Society, as such, the objections raised by the petitioners was rejected making a specific reference to clause 4-Sa and 5 of the bye laws, which are reproduced below:

"4. संस्था की सदस्यता तथा सदस्यो के वर्ग:

अ.....

ब.....

स. आजीवन सदस्य वह सदस्य होंगे जो संस्था के लिये स्थायी रूप से विशेष उपयोगी समझे जायेंगे अथवा संस्था को एक हजार रुपया दान स्वरूप देंगे। साधारण सदस्य वह सदस्य होंगे जो संस्था को सदस्यता शुल्क के रूप में दस रुपया वार्षिक चन्दा अदा करेंगे तथा पदेन सदस्य में संस्था द्वारा संचालित विद्यालय की प्रधान शिक्षिका व वरिष्ठताकम से दो अन्य शिक्षिकायें होंगी।

5. सदस्यता की समाप्ति:

मृत्यु, पागलपन, दण्डित होना, दिवालिया होना, सदस्यता शुल्क न देना अथवा संस्था के प्रति किसी अन्य प्रकार से अनुपयोगी तथा अनास्थावान होने की दशा में सदस्यता समाप्त हो जायेगी।"

When the observations recorded by the Deputy Registrar are scrutinized in the context of bye laws of the Society, it is seen that none of the members of the Society as on date, have ever deposited annual subscription in terms of clause 4-Sa of the bye laws of the

Society. There is also no indication in the impugned order as to how membership of the petitioners is otherwise adjudged on the basis of any authentic membership register conforming to the provisions of Section 15 of the Societies Registration Act read with bye laws.

The contention that the petitioners could not be the life members of the Society, despite being an original part of the Society in its Memorandum of Association, has also not been dealt with. The plea of classification of life members and ordinary members was not dealt with by the Deputy Registrar within the scope of bye laws, rather the membership sought for participation in the election of Committee of Management as per the scheme of administration was treated to be the decisive criteria.

From perusal of the order dated 30.7.2012 passed by Deputy Registrar, it can be safely deduced that in the absence of any authentic record as to the membership of the Society, the observations recorded by the Deputy Registrar having regard to the requirement of subscription as per scheme of administration of Management recognised under the provisions of Intermediate Education Act, 1921, was clearly faulty and erroneous. The record of subscription maintained with the Society submitted before this Court does not reconcile with the provision of subscription as envisaged in clause 4-Sa of the bye laws, therefore, the finding recorded by the Deputy Registrar rejecting the membership of the petitioners by order dated 30.7.2012 is without jurisdiction. Even otherwise the findings based on the provisions of scheme of administration are untenable in law and suffer from perversity.

The question as to whether the petitioners could be treated to be life members of the Society or not, ought to have been gone into in the light of the fact that none of the members constituting the Society from the initial stage, had ever deposited any annual subscription obviously for the reason of having satisfied the criteria of life membership as per bye laws. This fact may lead to a conclusion that the original strength of members in the Memorandum of Association would not be classified otherwise than life members.

In any case, the membership of the Society of any description in the light of the contention raised by the petitioners, was necessarily to be scrutinized and determined as per bye laws of the Society to which the scheme of administration is subservient. Whether the petitioners had played any useful role with the affairs of the Society or not, the Deputy Registrar also does not seem to have recorded any plausible justification, particularly when the record of membership of the Society has not been authentically maintained by the Society.

Now I come to the question as to whether the membership granted on the basis of deposit of annual subscription of Rs. 12/- for participation in the election of Committee of Management running the institution without seeking membership of the parent Society, would be permissible or not. This dimension of the controversy is more serious and endangers the very legal existence of the Society, in as much as, any number of persons on subscribing Rs. 12/- annually as per scheme of administration would gain participatory rights in the election of Committee of Management and though not being members of the present Society as per bye laws, would usurp the Management of the parent Society, which is the basic legal entity. Once it is concluded that the membership of Society has not been registered in the manner prescribed under Section 15 read with the bye laws, any proceedings undertaken during the pendency of writ petition are of no consequence.

This Court has no hesitation to observe that only general body of the Society constituted

as per bye laws can participate in the election of Committee of Management and unless a person is duly granted the membership of the parent society as per bye laws, his participation in the election of the Committee of Management cannot be recognized within the ambit of law and for this purpose alone, the foundation of Societies registered under the Societies Registration Act in terms of government order dated 21.11.2008 stands strengthened. Significantly, a material amendment has also come to be incorporated in the Societies Registration Act by U.P. Act 23 of 2013 with the insertion of Section 4- B, according to which the general body of the Society is provided to be settled at the time of registration as well as at the time of grant of renewal and other exigencies are also taken care of.

To have a bird's eye view on Section 4-B, the same is reproduced below:

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, registration or death of any members, 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."

The Societies registered under the Societies Registration Act are the integral part of Indian democracy and determination of general body of every Society in accordance with the provisions of the Act, bye laws or the rules applicable, is a condition precedent for the smooth functioning of the Societies, so as to achieve the object for which they are constituted.

In view of the discussions made hereabove and keeping in view the fact that the renewal of the Society in question has fallen due as back as on 1.6.2014, the Deputy Registrar is directed to finalize the membership of the Society for which the requisite formalities shall be fulfilled by the parties concerned. In order to free the Society from ongoing disputes, the register containing the list of members was called for alongwith original subscription receipts and the same can be transferred to the Deputy Registrar for examining the authenticity of membership of ordinary members and life members in the light of the provisions of the Act, bye laws applicable in this behalf and the observations made hereinabove. On finalization of the membership of the Society in accordance with law, it shall be open to the Registrar to constitute the Committee of Management in the manner prescribed under Section 25(2) of the Societies Registration Act, 1860 and until the constitution of new Committee of Management, status quo as exists today shall be maintained by the parties. This exercise shall be completed by the Deputy Registrar/Registrar within a period of three months from the date of receipt of a certified copy of this order. Membership finalised shall be certified on a register and the same shall be operated by duly elected office bearers of the Society as per bye laws and updated from time to time under due intimation and certification by the competent state authority. In case the membership is found deficient than the statutory requirement, the life

members shall have one time option to choose members of the general body, preferentially by consensus, or otherwise by majority from amongst the list contained in the register forwarded to the Deputy Registrar. The completion of formalities of membership of any description, as per subscription provided in the bye laws, shall form the roll of membership henceforth for all purposes subject to the changes, if any, brought about as per law or applicable by implication of law. The list finalised in the manner above, of course, shall be open to the jurisdiction of civil court at the instance of an aggrieved person.

The Senior Registrar of this Court is directed to deliver the register and original receipts of membership subscription to the Deputy Registrar in sealed cover after retaining a photocopy of the same on record within 7 days from today and the period of three months shall reckon from the date of handing over the register and original subscription receipts to the Deputy Registrar.

In the light of the findings recorded above, the writ petition is allowed.

The order passed by the Deputy Registrar dated 30.7.2012 is hereby set aside. The entire exercise of finalization of the membership of the Society shall be completed within the aforesaid period.

There shall be no order as to cost.""

3. After the aforesaid, the Deputy Registrar proceeded in the matter and ultimately, the calendar of election was fixed by order dated 30.07.2015, thereafter, an application for recall was moved, which was entertained by the Deputy Registrar and the same was stayed and being aggrieved, the Writ C No. 1004523 of 2015 was preferred, whereafter, another writ petition was also filed bearing Writ C No. 1004792 of 2015, challenging the calendar of election dated 30.07.2015.

4. The crux in both the petitions are that the Deputy Registrar who has decided the issue with respect to the membership after the judgment and order passed in Writ No. 4595 (MS) of 2012 on 27.04.2015 is not in consonance with the provision prescribed under the Society Registration Act, 1860. It is also a fact that there were three life members, alive but later one of them died and now to resolve the controversy amicably and to put all the issues at rest in the interest of society in question, the petitioners of both the writ petitions have amicably been decided, to go before the Deputy Registrar again, so as to

decide the issue finally with respect to the membership of the society in pursuant to the order dated 27.04.2015 passed in Writ C No. 4595/(M/S)/2012.

5. Both the petitioners have also filed an affidavit while giving their consent, in their respective writ petitions.

6. Considering upon aforesaid submissions of counsel for the respective petitioners, this Court is of considered opinion that no fruitful purpose would be sub-served to keep the matter pending as both the parties are ready to go before Deputy Registrar for redressal of their grievances.

7. In view of the above, the Deputy Registrar, society is hereby directed to pass afresh order in compliance of the earlier order dated 27.04.2015 passed in writ petition no. 4595 (MS) of 2012, ignoring the impugned order dated 31.07.2015 including the election calendar dated 30.07.2015, within period of two months, from the date, certified copy of this order produced before him.

8. The Deputy Registrar is further directed that he will afford the proper opportunity of hearing to all the stake holders with respect to the society.

9. With the aforesaid observations, the writ petitions are finally **disposed of.**

10. Needless to say that status-quo shall be maintained, uptill the final decision is taken by the Deputy Registrar.

Order Date :- 9.5.2024

Mayank