

A.F.R.

Court No. - 7

Case :- WRIT - C No. - 1000448 of 2010

Petitioner :- C/M Madarsa Ehle Sunnat Sirajul Uloom
Sultanpur Through Its

Respondent :- State Of U.P.Through Secy. Minority Welfare
Deptt. Govt.

Counsel for Petitioner :- Dr.L.P.Misra,G.M.Kamil

Counsel for Respondent :- C.S.C.,Ausaf Ahmad
Khan,M.B.Singh

Hon'ble Alok Mathur,J.

1. Heard Dr. L.P. Mishra, learned counsel appearing for the petitioner, Shri S.K. Khare, learned Standing Counsel appearing for the State-respondent nos. 1 to 4 and perused the material available on record.

2. It has been submitted by learned counsel for petitioner that one society under the name of "Edara Madarsa Ahle-Sunnat Sirajul-Uloom Latifiya, Nihalgah, Post Jagdishpur, District Sultanpur" was registered on 08.08.1973 but its registration was not renewed subsequently and also that no educational institution was run by the said society.

3. It is not in dispute that the Manager of the aforesaid society along with certain other members had moved an application for registration of another society under the name & style of "Madarsa Ahle-Sunnat Sirajul-Uloom Latifiya, which was duly registered on 17.10.1974. The subsequent society had a similar name as the previous society except that the word "Edara" was not included in the name of the subsequent society, which is the petitioner's society. Educational institutions were established by the petitioner-society and recognition was also granted to them on 17.6.1977 and even permanent recognition was granted by

the State of U.P. for the purpose of grant-in-aid on 06.08.1979.

4. It is the aforesaid circumstances that respondent no. 5 made a complaint on 12.5.2009 to the Deputy Registrar, Firms Societies and Chits, U.P. Faizabad stating that the name of the petitioner-society was the same as the previous society, namely, "Edara Madarsa Ahle-Sunnat Sirajul-Uloom Latifiya" and accordingly, sought cancellation of its registration. It is on the complaint made by respondent no. 5 that proceedings under Section 12-D sub Clause 2 of the U.P. Societies Registration, Act, 1860 were instituted and the petitioner society was put under notice seeking the response to the complaint made by respondent no. 5. The petitioner had duly opposed the averments made in the complaint and submitted that the previous society, namely, "Madarsa Ahle-Sunnat Sirajul-Uloom Latifiya, was a defunct society, inasmuch as, its registration was never renewed after 1975 till the year 2009. In any view of the matter, the previous society was not running any institution and even otherwise, it is stated that the name of the petitioner society was materially different from the name of the previous society, inasmuch as the word "Edara" was not included in the name of the petitioner-society.

5. The Deputy Registrar by means of order dated 28.08.2009 was of the view that the same person was responsible for registering the previous society on 30.7.1973 while second society was also registered on the application given by Mohd. Hanif Azmi, who was the Manager and he was aware of the similarity in the said name and he had concealed the fact about the registration of the first society and due to the said fact, it was found that there was violation of Section 3 (2) (Ka) and (Kha) of the Societies Registration, Act, 1860 and accordingly, cancelled the registration of the petitioner-society while

exercising its power under Section 12-D (1) (C) of the U.P. Societies Registration Act, 1860.

6. Being aggrieved by the aforesaid order, the petitioner had filed an appeal before the Commissioner, Faizabad Division, Faizabad, which was also rejected by means of order dated 13.01.2010 upholding the order of the Deputy Registrar, against which, the present writ petition has been filed.

7. Learned counsel for petitioner has firstly submitted that the Deputy Registrar as well as the Commissioner had wrongly invoked the powers under Section 3 (2) (Ka) & (Kha) of the Societies Registration Act to cancel the registration of the society of the petitioner institution. He submits that the provisions of Section 3 (2) were incorporated by the legislature and came into effect only on 10.10.1975 by the amending Act No. 52/75 while undoubtedly the petitioner society was registered previously on 17.10.1974. Accordingly, at the relevant time, the statutory bar of Section 3 (2) of the Act of 1860 was not available and accordingly, it was submitted that the Deputy Registrar has exceeded its jurisdiction and passed illegal and arbitrary order while cancelling the registration of the petitioner.

8. He has further submitted that even considering the provisions of 3 (2) (Ka) & (Kha) of the Act of 1860, it would be clear that statutory bar is only with regard to registration of the second society whose name is identical with that of any other society previously registered under the Act. In this regard, he submits that there is no doubt that the previous society had the word "Edara" included in the said name while the petitioner society does not include the word "Edara" and consequently, the name of petitioner society is not identical and accordingly, the bar created under Section 3 (2) (b) of the Act of 1860 would not be

available to the authorities to cancel the registration of the petitioner. It has also been submitted that since the date of registration, the society is getting its renewal whenever required continuously.

9. Learned Standing Counsel on the other hand has opposed the writ petition but could not dispute the facts of the said case.

10. This Court has considered the rival submissions of learned counsel for the parties and perused the material available on record.

11. It is noticed that one society by the name of "Edara Madarsa Ahle-Sunnat Sirajul-Uloom Latifiya" was duly registered on 8.8.1973 and the same person had moved a subsequent application on 15.10.1974 for registration of the petitioner society which was registered on 17.10.1974 by the name of "Madarsa Ahle-Sunnat Sirajul-Uloom Latifiya". The Societies Registration Act, 1860 was amended in Uttar Pradesh by the Act of 52/75 effective from 10.10.1975 specifically modifying Section 3 regarding the registration process for societies. The amendment clarifies that there was no restriction for registration of the society with an identical name to another previously registered society as of 1973.

12. The issue before this Court is as to whether the order dated 28.08.2009 passed by the Deputy Registrar, Firms Societies and Chits, U.P. Faizabad as well as order passed by the Commissioner, Faizabad Division, Faizabad dated 13.01.2010 cancelling the registration of the petitioner society were legally sustainable?

13. It has also been submitted on behalf of the petitioner that the orders passed by the Deputy Registrar and by the

Commissioner proceeded on misconception of fact as well as law, inasmuch as, at the time when the new society was registered in the similar name and style as that of the earlier society, there was no restriction for the second society to be registered with the similar or identical name and style as of the earlier society. The restriction in this regard has been brought about by the amendment to Section 3 (2) (a) which has been added by the Act of 52/75 with effect from 10.10.1975. It is therefore, submitted that there was no illegality or infirmity in the registration of the new society in the similar name and style as of the earlier society, which was registered on 8.8.1973.

14. On behalf of the respondents, it has been fairly submitted that at the time of registration of the petitioner society, there was no restriction in registration of two societies with the same name and style. The amendment in this regard has been enforced by the Act No. 52/75. It has also been submitted that there is an inherent power/ jurisdiction refuse to recognize the registration of the society in the same name and style, inasmuch as, the same would necessarily lead to confusion and would seriously prejudice the activities of the earlier society and therefore, under the said inherent power, the Deputy Registrar has also power to cancel the registration granted to the subsequent society in the same name and style that as of the earlier society, which was registered on 8.8.1973.

15. For the purposes of appreciating the controversy, it would be relevant to refer the provisions of Section 3 of the Societies Registration, Act, 1860, as were applicable in the year 1973, which are quoted here-in-below:-

"3. Registration and fees.--Upon such memorandum and certified copy being filed, the Registrar shall certify under his hand that the society is registered under this Act, There shall be paid to the Registrar for every

such registration a fee of fifty rupees or such smaller fee as (the State Government) may, from time to time, direct ; and all fees so paid shall be accounted for to (the State Government)".

16. Reference may also be had to the provisions of Section 3 as were amended in the State of Uttar Pradesh vide Act No. 52/75 and the said amendments were enforced w.e.f. 10.10.1975. The said amended Section 3 in the State of U.P. reads as follows :

"In its application to the State of Uttar Pradesh, for Section 3, substitute the following section, namely :

"3. (1) Upon such memorandum and certified copy being filed along with particulars of the address of the Society's office which shall be in registered address, by the Secretary of the Society on behalf of the persons subscribing to the memorandum, the Registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the Registrar for every such registration a fee of one hundred rupees (or such smaller fee as the State Government may notify in respect of any class of societies) :

Provided that the Registrar may, in his discretion, issue public notice or issue notice to such persons as he thinks fit inviting objections, if any, against the proposed registration and consider all objections that may be received by him before registering the society.

(2) Notwithstanding anything in Sub-section (1) the Registrar shall refuse to register a society, if after giving it an opportunity of showing cause against such refusal, he is satisfied that--

(a) the name of the society is identical with that of any other society previously registered under this Act;

(b) the name of the society sought to be registered uses any of the words, namely, 'union', 'State', 'Land Mortgage', 'Land Development', 'Co-operative Gandhi', 'Reserve Bank' or any words expressing or implying the sanction, approval or patronage of the Central or any State Government or any word which suggests or is calculated to suggest any connection with any local authority or any corporation or body

constituted by or under any law for the time being in force or is such as is otherwise likely to deceive the public or the members of any other society previously registered under this Act."

17. From the aforesaid amendment, it is apparently clear that in the year 1973 there was absolutely no restriction under the Societies Registration Act, 1860 with regard to the registration of a society with identical name and style as that of other society previously registered.

18. In view of the aforesaid, there was no restriction under the Societies Registration Act, 1860 prohibiting the registration of a new society, in the year 1973 with the same name vis-a-vis the name of the society, which was earlier registered in the year 1964, Therefore, there was no occasion for the Assistant Registrar to exercise the power under **Section 12-D (1) of the Societies Registration Act, 1860** for cancelling the registration of the petitioner society on the pretext that there was restriction for registration of a society in the same name and style as that of an earlier registered society. The amendments made in the Act vide Act No. 52/75 are prospective in nature. Prior to the date of aforesaid amendment Section 12-D (1) or section 12 of the Act do not in any way confer a power upon the Assistant Registrar to cancel the registration, which has been granted to a society in the same name prior to the date of enforcement of section 3 (2) (a) under U.P. Act No. 52/75.

19. In the opinion of the Court, the aforesaid amended statutory **provisions of 3 (2) (a)** have no application in the facts of the present case and as a consequent thereto to the orders passed by the Assistant Registrar dated 12.3.1992 and that of passed by the Commissioner dated 7.4.1993 cannot be legally sustained.

20. At this stage it would be appropriate to consider to the

contention raised by the petitioner with regard to the inherent power of the Assistant Registrar to refuse the registration to a society by the same name coupled with the incidental power to cancel the registration of a society, if granted, by him in the same name. In the opinion of the Court, no such incidental power can be culled out from the provisions of Section 3 as were applicable in the year 1973, nor any such inherent power can be read from any other provisions of the Societies Registration Act, 1860. Power to refuse the registration of the society cannot be enlarged to the extent so as to confer a power upon the Registrar to cancel the registration of the society with the same name.

21. It is true that apart from certain special statutes which entitle companies or persons to the exclusive use of a name or a mark, such as the **Companies Act or the Trade Marks Act**, a man has no exclusive proprietary rights in a fancy name or title, and normally and principally, it is in relation to the user of a name associated with a certain businesses or trading concern or some profession that the Court affords protection and grants an injunction restraining the adoption and use of such a name by another when the Court is satisfied that damage has been caused or there is tangible risk or possibility of a damage resulting from confusion caused in the public mind or in other words by reason of the public being deceived by the use of such name."

22. It is, thus, clear that only Courts of law have been conferred a power to grant an injunction restraining the adoption and use of the same name when the Court is satisfied that damage has been caused or there is tangible risk or, possibility of a damage resulting from confusion caused in public mind, or the public being deceived by the use of the identical name and style. This power to grant injunction against the use of same name and

style as recognised by the Courts of law is based upon a cause established by the plaintiff of likelihood damage/confusion to be caused in the mind of the public. Thus, it is established beyond doubt that it is for the respondents to have initiated suitable Civil Injunction Proceedings, if they had any apprehension of misuse of the name of the respondent by the subsequent society being registered. The claim, if any, so pleaded would be adjudged by the Civil Court, on the basis of evidence led and the extent of damage/loss, which may be caused. However, they cannot be permitted to invoke the authority of the Registrar himself to cancel the registration.

23. In such circumstances, order dated 28.08.2009 passed by the Deputy Registrar, Firms Societies and Chits, U.P. Faizabad as well as order dated 13.01.2010 passed by the Commissioner, Faizabad Division, Faizabad, cannot be legally sustained and are, hereby, quashed.

24. The writ petition is, accordingly, allowed.

(Alok Mathur, J.)

Order Date :- 1.8.2024
Virendra