

Court No. - 18

Case :- WRIT - C No. - 8668 of 2024

Petitioner :- C/M Shri Lal Bahadur Shastri Shaheed Vidyalaya Samiti Thru. Manager Uma Shankar Mishra And Another

Respondent :- State Of U.P. Thru. Prin. Addl. Chief Secy. Institutional Finance Lko. And 10 Others

Counsel for Petitioner :- Arvind Kumar, Amrendra Nath Tripathi

Counsel for Respondent :- C.S.C., Pramod Kumar Shukla

Hon'ble Subhash Vidyarthi, J.

1. Heard Shri Amrendra Nath Tripathi and Shri Arvind Kumar, learned counsel for the petitioners, Shri L.M. Khare, learned Standing Counsel representing the opposite party No.1, 2 and 3 and Shri Vivek Raj Singh, Senior Advocate assisted by Shri Pramod Kumar Shukla, Advocate, the learned counsel representing the opposite party No.5.

2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioners have challenged the validity of an order dated 11.06.2024 passed by the Deputy Registrar, Firms, Societies & Chits, U.P., Lucknow Division, Lucknow. The petitioners have also challenged the result of an election held on 24.07.2024 as per the list of members of Committee of Management of Shri Lal Bahadur Shastri Shaheed Vidyalaya Samiti Sareni, District- Raebareli held in furtherance of the aforesaid order dated 11.06.2024.

3. While assailing the validity of the aforesaid order, Shri Amrendra Nath Tripathi, the learned counsel for the petitioners has submitted that the Deputy Registrar, Firms, Societies & Chits, U.P., Lucknow had passed an earlier order dated 15.05.2023, whereby a tentative list of 40 members of the aforesaid society was published and objections regarding any of the aforesaid 40 members being dead, were invited. The learned counsel for the petitioners has submitted that the scope of objections was only to

delete the name of any of the 40 persons who had died and not to include any other member besides the 40 members named in the tentative list of members. This list has been published on the basis of the last elections held in the year 2015-16, the validity whereof was not challenged by any person. By means of the impugned order dated 11.06.2024, the Deputy Registrar has issued an altogether different list of 7 members of the Society only, which amounts to reviewing the earlier order dated 15.05.2023 whereas the Societies Registration Act, 1860 contains no provision authorizing the Deputy Registrar to review his order.

4. The learned counsel for the petitioners has further submitted that by finalizing the list of 7 members only, the Deputy Registrar had in fact reviewed the list of members on the basis of which elections were held in the year 2015-16 and which has not been challenged by any person.

5. Shri Vivek Raj Singh, the learned Senior Advocate appearing for the opposite party No.5 has raised a preliminary objection that after passing of the order dated 11.06.2024, elections of the Managing Committee were held on 24.07.2024 and its result has been declared, the validity whereof has also been challenged by filing this petition. He has submitted that the result of election can only be challenged by filing an election petition under Section 25 (1) of the Societies Registration Act, 1860. As the petitioners have got a statutory remedy available, the writ petition is not maintainable.

6. In reply to the aforesaid preliminary objection, the learned counsel for the petitioners has placed reliance on a decision rendered by a Division Bench of this Court in case of **Banwari Lal Kanchal v. Bhartendu Agarwal & Ors.**; (2019) 12 ADJ 235. In that case also, a writ petition was filed after the election process had commenced and the hon'ble Single Judge had passed an interim order that election of the Society shall be held on its

schedule subject to further orders in the writ petition but its result shall not be declared. In Special Appeal, the Division Bench held that the Electoral College is an essence of an election. The Deputy Registrar had proceeded to hold 4 members to be valid members of the General Body of the Society without considering the provisions contained in the bye-laws of the Society. Therefore, the finding of the Deputy Registrar was perverse and contrary to the provisions contained in the bye-laws of the Society. When this Court came to a conclusion that persons who are not legally enrolled members, were included in the Electoral College, it is open to this Court to interfere in the election process. Therefore, the submission of the learned counsel for the petitioners is that existence of statutory remedy will not be an absolute bar against maintainability of the writ petition, when the petitioners have challenged the validity of the Electoral College as decided by the Deputy Registrar by means of the impugned order dated 11.06.2024.

7. I have heard the submissions of the learned counsel for the parties and perused the record.

8. By means of an order dated 15.05.2023, the Deputy Registrar had decided representations of various persons against the election of the Society held on 10.10.2020 and had held that the elections were held on 10.10.2020 on the basis of forged documents and accordingly, the same was set-aside. The meeting was held on 18.04.2021 without giving notice to all the valid members of the Society and, therefore, the meeting and the resolution passed therein was also illegal and was set-aside.

9. The Deputy Registrar held that as elections of the Managing Committee of the Society had not been held in accordance with law, the Managing Committee had become time barred and elections of the Managing Committee of the Society were to be held under provisions of Section 25 (2) of the Societies

Registration Act, 1860. The list of members of the General Body of the Society for the year 2015-16, which consisted of 40 members was published tentatively. The order stated that if any person had any objection against the name or parentage of any of the aforesaid 40 persons or any of them having died, he could have submitted his objections within 15 days.

10. Submission of the learned counsel for the petitioners is that no objections were filed against the tentative list of 40 members published in furtherance of the order dated 15.05.2023. In these circumstances, the Registrar had no power to review earlier order dated 15.05.2023 and published altogether a new list consisting of 7 members of the Society, whose names did not find place in the list of members, on the basis whereof elections were held in the year 2015-16.

11. It is stated in the order dated 11.06.2024 that Shri Krishna Chandra Dixit, Shri Devi Shankar Tiwari and Shri Jeet Narayan Shukla had submitted objections against the tentative list published in furtherance of the order dated 15.05.2023 through their letter dated 28.05.2023. Shri Bhagwati Prasad Shukla had submitted objections dated 29.05.2023. Shri Jai Baksh Singh (Opposite party No.5) and Shri Uma Shankar Mishra had also submitted undated objections on 03.06.2024 complaining that their names were not there in the tentative list and they produced evidence regarding their membership of the General Body of the Society.

12. A letter dated 15.09.2023 was issued to Shri Jata Shankar Mishra, Shri Uma Shankar Mishra (petitioner No.2), Shri Raj Narayan Pandey and Shri Rajesh Kumar Tiwari giving opportunity to them to file objections against the tentative list of 40 members published in furtherance of the earlier order dated 15.05.2023 as the earlier Officer holding the post of Deputy Registrar had got transferred. However, the aforesaid persons did not submit any objection. Shri Daya Ram Yadav, Shri Jai Baksh

Singh, Shri Umadutt Trivedi had produced copies of original membership register since the time of establishment of the Society and membership receipt and they had also produced originals thereof for perusal of the Deputy Registrar. The minute book contained proceedings from 11.08.1968 and the proceedings of last meeting held on 23.01.1972 were recorded in it. As per the register of notice, information of the meetings were sent to the members under certificate of posting, as per which the last notice was sent regarding meeting held on 12.06.1980. The attendance register contained signatures as proof of attending a meeting held on 17.02.1974. A total of 48 persons had signed in the register to show their attendance of meeting held on 06.09.1981. Pages 3 to 11 of the membership register contained particulars of life members of the Society. It contained particulars of a total of 121 members. Except for the few names, 'Dead' was endorsed against almost all the names. The name of Shri Umadutt Trivedi is recorded at Serial No.56 of the membership register and dead is endorsed against his name. Shri Devi Shankar Tiwari is entered at Serial No.5. Shri Jai Baksh is recorded at Serial No.86 and dead is endorsed against his name. Shri Daya Ram Yadav is recorded at Serial No.98 and dead is endorsed against his name and Shri Krishna Chandra Dixit is recorded at Serial No.118.

13. Discrepancies regarding entries of several other persons were also highlighted by the Deputy Registrar in his order dated 11.06.2024 and the Deputy Registrar concluded that the original membership register relating to the time of establishment of the Society and other documents established that Shri Daya Ram Yadav, Shri Jai Baksh Singh, Shri Umadutt Trivedi, Shri Krishna Chandra Dixit and Shri Devi Shankar Tiwari are life members of the Society since its establishment. There is no material available on record to indicate as to how their membership of the Society was terminated. They are life members of the Society and no resolution for termination of their life membership was produced.

No resolution or other particulars for induction of new members was also available on record.

14. From the aforesaid discussion, the Deputy Registrar concluded that life members, who were members of the Society since the inception, had been shown to be dead fraudulently, without any resolution to this effect having been passed and new members had been inducted without giving any intimation to the valid life members of the Society and without their participation, which is not proper. The Deputy Registrar concluded that the list of members of the Society for the year 2015-16 was not sustainable and the election of the Managing Committee of the Society held on the basis of that list is also not in accordance with law. Only 7 life members, who were there since inception of the society, were alive and the Deputy Registrar ordered an election of the Managing Committee of the Society to be held on the basis of list of 7 life members only.

15. In furtherance of the order dated 11.06.2024, an election of the Managing Committee of the Society was held on 24.07.2024. The petitioners have challenged the order dated 11.06.2024 by filing a Writ-C No.6786 of 2024, which was dismissed as not pressed by means of an order dated 07.08.2024 granting liberty to the petitioners to file a fresh petition after assailing elections which had already been conducted in pursuance of the impugned order.

16. Apparently, Writ-C No.6786 of 2024 was also filed after the elections had already been held on 24.07.2024, without challenging the validity of the elections held on 24.07.2024.

17. The first submission of the learned counsel for the petitioners is that by means of the order dated 15.05.2023, the Deputy Registrar had published a list of 40 members and had invited objections only to the effect as to whether any of those 40 members had died. The scope of objections was not to include any new member besides those 40 members mentioned in the tentative

list. He has submitted that by publishing an altogether new list of 7 members, the Deputy Registrar reviewed his earlier order whereas he has got no power to review an order.

18. By means of the order dated 15.05.2023, merely a tentative list of members had been published. Although the order mentions that any person may file objections regarding any of those 40 members having died, it did not expressly exclude any other objection against the list being submitted. When the list published by the order dated 15.05.2023 was a tentative list, it cannot be said that the nature of objections to be filed against the tentative list of ought to be limited only to the extent of any of those 40 persons having died and no other objections could be entertained. By means of the order dated 11.06.2024, the Deputy Registrar has decided the objections against the tentative list published in furtherance of the order dated 15.05.2023. It does not amount to review of the earlier order dated 15.05.2023.

19. Moreover, the Deputy Registrar has recorded a satisfaction in the impugned order dated 11.06.2024 that a fraud has been played by showing certain life members as dead, as the names of those members had been deleted without any resolution and there was no record regarding induction of any new members.

20. It is settled law that fraud vitiates even the more solemn proceedings. When allegation of fraud is there and the authority is satisfied after examining the material placed before it that a fraud has been played which has resulted in a wrong order been passed, the authority is certainly empowered to pass orders to wipe out the evil effects of fraud.

21. The learned counsel for the opposite party No.5 has submitted that the election of the Society has already been held and its result has been published on 24.07.2024, the petitioners have got a statutory remedy of challenging the election by filing a

petition under Section 25 (1) of the Societies Registration Act, 1980.

22. The learned counsel for the petitioners submitted that as the petitioners do not remain members of the Society anymore after passing of the order dated 11.06.2024, the remedy of filing the election petition under Section 25 (1) of the Societies Registration Act, 1980 is not available to them. He has further submitted that the grounds mentioned in Section 25 (1) of the Societies Registration Act, 1980 for challenging the election, are not available to the petitioners as their membership right has been taken away in an illegal manner by the impugned order dated 11.06.2024.

23. In response to this submission Shri Vivek Raj Singh, the learned counsel appearing for the opposite party No.5 has placed before this Court a decision rendered by a Division Bench of this Court in **Ratan Kumar Solanki v. State of U.P. & Ors.**; (2010) 2 All LJ 181, wherein this Court referred to some precedents wherein it has been held that an individual member has no locus standi to challenge the result of the election by filing a writ petition but if he is aggrieved, the remedy lies by filing a civil suit seeking an appropriate relief against an election. The Court further observed that where the matter involves investigation into disputed questions of fact, the parties can be relegated to avail remedy by filing a civil suit. Although that does not mean that an individual can never file a writ petition under Article 226 of the Constitution of India, the discretion has to be exercised keeping in view the entire facts and circumstances of the cases. Where disputed questions of fact are involved, it would not be proper for this Court to entertain a writ petition for deciding the disputed questions of fact, which can be better dealt with by the appropriate Forum where the parties can have opportunity to lead evidence in support of their respective case.

24. In view of the aforesaid discussion, I am not inclined to interfere in the order dated 11.06.2024 passed by the Deputy Registrar when elections in furtherance of the aforesaid order have already been held way back on 24.07.2024 and the petition thereafter involves seriously disputed question of fact.

25. Accordingly, the petition is ***dismissed*** leaving it open to the petitioners to avail their remedy in accordance with the law.

26. As the Court has not decided the merits of the rival claims of the parties, it is made clear that the authority/Forum will not be influenced by any observation made in this order regarding merits of the rival claim of the parties.

[Subhash Vidyarthi,J.]

Order Date :- 18.10.2024

-Amit K-