

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 388 of 2025

Appellant :- Dr. Sushil Kumar Sinha

Respondent :- The State of U.P. and 3 others

Counsel for Appellant :- K.R. Singh, Santosh Kumar Tripathi, Uday Pratap Singh, Vishesh Rajvanshi, Anil Tiwari (Sr. Advocate), Anmol Bartaria, Neeraj Sinha, Adiba Khatoon, Aditya Kashyap

Counsel for Respondent :- C.S.C., Kartikeya Saran, R.K. Ojha (Sr. Advocate), Prabhakar Awasthi, Ram Kaushik, Satyavrat Sahai, Varad Nath, Prateek Sinha

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

(Per: Arun Bhansali, CJ)

1. This appeal is directed against order dated 25.04.2025 passed in Writ C No. 9752 of 2025 whereby the learned Single Judge, refused to grant interim relief, granted time to complete the pleadings and ordered for listing of the matter on 22.05.2025 and directed that the matter will be taken up after recess.
2. The writ petition was filed questioning the order (Election Certificate) dated 28.03.2025 issued by the Assistant Registrar, Firm, Societies and Chits, Prayagraj, respondent no. 3 pursuant to final order dated 22.03.2025 passed by the prescribed authority/S.D.M., Sadar, Prayagraj.
3. Challenge to the election certificate dated 28.03.2025 was laid *inter-alia* on the ground that Assistant Registrar though pursuant to the order dated 22.03.2025 could undertake recounting of votes, declare respondent no. 4 as elected, however, he could not have cancelled the election certificate dated 25.12.2023 issued in favour of the appellant, which action was without jurisdiction and contrary to the provisions of Section 25 of the

Societies Registration Act, 1860 (for short 'the Act') wherein the power vests with the prescribed authority.

4. Along with the writ petition, an application seeking interim relief was filed seeking stay of effect and operation of the order dated 28.03.2025 passed by respondent no. 3 and prayer in the form of interim mandamus was sought restraining the respondent no. 4 in interfering in the functioning of the appellant as President of the Society.

5. Learned Single Judge after hearing the parties, noticing the contentions raised on either side, observed and ordered as under :

“16. Since the respondent no. 4 in pursuance of the order dated 28.3.2025 has already joined the office of President of the Society, as such, at this stage, the interim relief, as prayed for by the petitioner in the writ petition cannot be granted as it amount to grant of final relief.

17. As prayed by counsel for the respondents, two weeks time is granted to file counter affidavits.

18. Rejoinder affidavit, if any, may be filed within one week thereafter.

19. List on 22.05.2025. The matter will be taken up after recess. ”

6. Learned counsel for the appellant made vehement submissions that a bare look at the order impugned dated 28.03.2025 would reveal that the Assistant Registrar, while declaring the result of recount, has acted wholly without jurisdiction in cancelling the certificate issued to the appellant, which power does not vest in him. It was emphasized that the prescribed authority while dealing with the petition filed by respondent no. 4, directed recounting and required the Assistant Registrar to declare the result, neither the power to cancel the election could be delegated to the Assistant Registrar nor the same was delegated and therefore, passing of the said order was *ex-facie* contrary to law as well as the direction given by the prescribed authority.

7. Further submissions were made that the respondent no. 4 was well aware of the parameters and requirements of law which aspect is reflected from the prayers which were made before the prescribed authority, wherein

separate prayers were made for recounting of the votes and for cancellation of election result for the post of the President of the Society and therefore, the fact that the Assistant Registrar was directed by the prescribed authority only to hold the recounting and declare the result, the election certificate issued to the appellant could not have been cancelled, which essentially amounts to setting aside of the election.

8. With reference to the provisions of Section 25 of the Act, submissions were made that the prescribed authority under the said provision on a reference made to it by the Assistant Registrar can decide dispute in respect of the election and pass such order in respect thereof as deems fit. Sub-section (2) of Section 25 of the Act envisages further action pursuant to sub-section (1) which includes an order setting aside of the election wherein, the power only vests in the prescribed authority and therefore, the order impugned dated 28.03.2025 is *ex-facie* illegal.

9. Submissions were made that on the above submissions, the appellant was able to make out a strong *prima-facie* case on account of illegality committed and aspects of balance of convenience and irreparable injury were also in favour of the appellant, however, learned Single Judge by observing that pursuant to order dated 28.03.2025 as respondent no. 4 has already joined the office of the President of the society, grant of interim relief would amount to grant of final relief, has refused to grant interim order, which is not justified and therefore, the order impugned deserves to be quashed and set aside.

10. It was sought to be emphasized that even in the circumstances of the present case, wherein ever since the election took place on 26.12.2023, the appellant was working as President of the Society, and a strong *prima-facie* case was made out by the petitioner/appellant on the grounds indicated before the learned Single Judge, the prayer could not have been refused and therefore, the order impugned deserves to be quashed and set aside and interim relief, as prayed in the writ petition, be granted.

11. On the aspect of jurisdiction as well as grant of interim order, even in given circumstances where the same may amount to grant of final relief, reliance was placed on **All India Council Vs. Assistant Registrar, Firms, Societies and Chits, Varanasi: AIR 1988 (All) 236, C/M Arya Kanya Pathshala Samiti And 3 Others Vs. State of U.P. and 3 others: 2024:AHC:73382, Manoj Devi Vs. State of U.P. and 20 others: Writ C No. 33777 of 2022** decided on 29.03.2023, **Udey Chand Vs. Surat Singh and another: (2009) 10 SCC 107, P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and others: (1989) 1 SCC 526 and Deoraj Vs. State of Maharashtra and others : (2004) 4 SCC 697.**

12. Learned counsel for the respondent no. 4 with equal vehemence opposed the submissions made on behalf of the appellant. It was submitted that the appeal arises out of an order wherein interim order has not been granted, which is not appealable. It was emphasized that the entire plea sought to be raised and the challenge laid by the appellant, has no substance. It was submitted that in the election held on 25.12.2023, the counting of votes was held on 26.12.2023 wherein 148 votes polled were not counted. The respondent no. 4 approached the authorities under the Act seeking to question the declaration of the appellant as elected candidate. The Assistant Registrar, Firm, Societies and Chits, by its order dated 06.04.2024, referred the matter to the prescribed authority. The prescribed authority after hearing the parties, passed order dated 22.03.2025 specifically directing the Assistant Registrar to conduct the recount and declare the result.

13. It was submitted that there is no dispute on the fact that as a result of recounting, the respondent no. 4 has obtained 77 more votes than the appellant, it is claimed that irrespective of issuance of election certificate dated 28.03.2025 sought to be challenged by the appellant in the writ petition, the Assistant Registrar has passed the order dated 02.04.2025 by which, the list of office bearers of the society, pursuant to the recounting and declaration of result, has been registered in terms of Section 4(1) of the Act.

14. It was submitted that the election certificate, which has been issued by the Assistant Registrar, apparently has no sanctity and in fact, there is no provision under the Act or the Rules for issuance of such certificate and therefore, the challenge laid to the election certificate, is of no consequence. The remedy, if any, available to the appellant is qua the order dated 22.03.2025 passed by the prescribed authority, which remedy has also been availed by the appellant and/or qua the registration of the list of office bearers by Assistant Registrar on 02.04.2025, filing of the petition and seeking relief based on the contents of the said election certificate, is of no consequence and therefore, the appeal deserves to be dismissed.

15. It was sought to be emphasized that in the writ petition and in the present appeal, the fact/declaration that the respondent no. 4 had obtained higher votes than the appellant is not under challenge and as such, even otherwise the relief claimed under Article 226 of the Constitution of India is not available to the appellant.

16. Further submissions have been made that learned Single Judge was justified in rejecting the prayer made as indeed in terms of the relief sought in the writ petition, grant of interim relief, as prayed, would amount to grant of final relief, which is not permissible.

17. Learned counsel for the respondent no. 4 also emphasized that the law sought to be cited by the counsel for the appellant had no application to the facts of the present case as the judgements cited arose in respect of the Representation of Peoples Act, 1951 and the U.P. Panchayat Raj Act, 1947 and provisions under the Act are not similar. Reliance was placed on **A.S. Gahlout and others Vs. Lt. Governor of Delhi and others: ILR (1994) II Delhi, Shailendra Kumar Gupta Vs. State of U.P. and Others: 2015 (6) ADJ 732 and Ashutosh Shrotriya and others Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and Ors.: AIR 2015 All 187.**

18. We have considered the submissions made by counsel for the parties and perused the material available on record.

19. In the appeals, arising out of refusal/grant of interim orders when detailed arguments are advanced on the merits of the case, despite the fact that learned Single Judge has not dealt with the merit and on the ground of preliminary submissions regarding nature of interim relief sought and grant of same would amount to grant of final relief, has passed the order, the determination by the appellate court on merit of such appeal, essentially is at the peril of the party, which finds itself on the losing side, however, oblivious of the said consequence, the matter has been argued with vehemence and as such, the Court is left with no option but to deal with the same.

20. As noticed herein above, after the elections to the Society were held on 25.12.2023 and counting of the votes was done on 26.12.2023, the appellant was declared elected as next President of the Society by the Returning Officer on 26.12.2023.

21. On dispute being raised, the Assistant Registrar by order dated 06.04.2024 referred the dispute to the Prescribed Authority and it appears that after protracted proceedings before him, the order dated 22.03.2025 was passed. Relevant portion whereof, reads as under:

"उपरोक्त तथ्यों को दृष्टिगत रखते हुए सभी (9543 मतपत्रों) की पुर्न मतगणना का आदेश जारी किया जाता है। सहायक रजिस्ट्रार, फर्म्स, सोसाइटीज एवं चिट्स प्रयागराज को यह निर्देशित किया जाता है कि 7 दिवस के अन्दर पुर्न मतगणना कराना तथा उसका परिणाम घोषित करना सुनिश्चित करें। इसके साथ ही नायब तहसीलदार उत्तरी सदर प्रयागराज को यह निर्देशित किया जाता है कि मतगणना की पूरी प्रक्रिया के दौरान मतगणना स्थल पर उपस्थित रहकर सतत पर्यवेक्षण करेंगे। आदेश की दूसरी प्रति CO कर्नलगंज को इस निर्देश के साथ भेजी जाय कि नियत स्थान एवं समय पर पर्याप्त पुलिस बल तैनात करें। यह भी आदेशित किया जाता है कि पुर्न मतगणना की सम्पूर्ण प्रक्रिया विडियोग्राफी में कराया जाय।"

22. A perusal of the above order would reveal that the prescribed authority required the Assistant Registrar to recount the votes in terms of the order passed by him and declare the result.

23. Against the order dated 22.03.2025, the appellant has filed appeal under the proviso (d) to Section 25 (1) of the Act before the Commissioner, Prayagraj, which appeal is stated to be pending.

24. Pursuant to the direction dated 22.03.2025, the Assistant Registrar conducted the recounting of votes and besides drawing the minutes pertaining to the recounting, issued the election certificate dated 28.03.2025, which reads as under:

“निर्वाचन प्रमाण पत्र

सन्दर्भ वाद संख्या: 6998/2024, चौधरी राघवेंद्र नाथ सिंह बनाम आर ओ कायस्थ पाठशाला अंतर्गत धारा 25(1) उत्तर प्रदेश सोसाइटीज रजिस्ट्रीकरण अधिनियम 1860 में नियत प्राधिकारी/उप जिलाधिकारी सदर प्रयागराज द्वारा पारित आदेश दिनांक 22.03.2025 के अनुपालन में व माननीय जिला अधिकारी द्वारा प्रेषित पत्र संख्या 3033 दिनांक 26.03.2025 के क्रम में समस्त मत पत्रों की पुनर्मतगणना के पश्चात चौधरी राघवेंद्र नाथ सिंह कायस्थ पाठशाला के अध्यक्ष निर्वाचित घोषित किया जाता है।

दिनांक 25.12.2023 को निर्वाचन अधिकारी कायस्थ पाठशाला श्री प्रमोद कुमार के हस्ताक्षर से जारी निर्वाचन प्रमाण पत्र जो डॉ सुशील कुमार सिन्हा के पक्ष में जारी किया गया था एतद्द्वारा निरस्त किया जाता है।”

25. A perusal of above would reveal that the certificate indicated that pursuant to the recounting, respondent no. 4 is declared as elected President of the Society and went on to cancel the election certificate issued pursuant to the election dated 25.12.2023 in favour of the appellant. As specifically stated by learned counsel for the appellant that in so far as the result of the counting as declared by the Assistant Registrar is concerned, the appellant does not have any grievance in the writ petition as his appeal against the order dated 22.03.2025 is pending. The grievance is qua the cancellation of his election certificate.

26. Nothing has been pointed out that the Act/Rules requires issuance of any such election certificate and, therefore, in our opinion, the same by itself, does not have any legal status. It is not in dispute that pursuant to the recounting held and the declaration of result on 28.03.2025, the Assistant Registrar by his order dated 02.04.2025 has registered the list of office bearers in terms of Section 4(1) of the Act and it is claimed that signatures also have been attested. The issuance of the certificate, whatever value can be attached to the said certificate, does not empower the elected President in any manner, the power is derived based on the registration of the office

bearers under Section 4(1) of the Act and even the said order is appealable under Section 4(1A) of the Act.

27. In view of above fact situation, the submissions made by learned counsel for the respondent regarding the nature of challenge laid by the petitioner in relation to the election certificate, which on its own does not have any legal sanctity appear to be justified and consequently seeking of interim relief qua the working of the society despite passing of the order dated 02.04.2025 under Section 4(1) of the Act appears to be wholly misplaced.

28. So far as the judgements cited by both the sides are concerned, in view of what has been found, the same would have no application to the present circumstances.

29. In view of above, in the context of the submissions made, in a petition, seeking to question a part of the election certificate i.e. only regarding cancellation of appellant's certificate and seeking therein interim relief of restraint against the respondent no. 4 from working as President of the Society, the prayer made, cannot be countenanced.

30. In view of above discussion, the order passed by learned Single Judge does not call for any interference, though for different reasons.

31. Consequently, the appeal has no substance, the same is, therefore, **dismissed.**

Order Date :- 21.05.2025

Sandeep/RK

(Kshitij Shailendra, J.)

(Arun Bhansali, CJ)