

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.1331 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the common order passed by the learned Single Judge in W.P. Nos. 28503 of 2017 and 29037 of 2017 dated 4.9.2017.

The appellants herein filed W.P. No.29037 of 2017 to declare the certificate of registration dated 22.8.2017, issued by the Registrar of Societies accepting the resolution dated 6.12.2016 submitted by respondent Nos.3 to 5 whereunder their names were entered in the place of appellants and one Mr. A. Srinivasa Rao was shown as Vice President, as contrary to Rule 15 of the bye-laws and the Societies Registration Act, 2001, illegal, arbitrary and unconstitutional. A consequential direction was sought to set aside the same.

W.P. No. 28503 of 2017 was filed by an Executive Member of the Society to declare the inaction of the Registrar of Societies, in taking appropriate action on his representation dated 17.1.2017 made against respondent Nos. 3 to 5 for forging his signature on the copy of notice and resolution submitted to the Registrar as if the petitioner attended the meeting and was elected as Vice-President, as illegal, arbitrary and contrary to the Societies Registration Act, 2001. He sought a consequential direction to the 2nd respondent to take appropriate criminal action against respondent Nos. 3 to 5 for forging his signature, and to reject the alleged forged resolution.

The learned Single Judge dismissed the Writ Petitions at the admission stage holding that, while Section 8 of the A.P. Societies Registration Act, 2001 (hereinafter called "the 2001 Act") required the

Registrar to examine whether an alteration to the memorandum or alteration of the bye laws of the society is contrary to the provisions of the 2001 Act, Section 9 does not confer any such power on the Registrar, and only requires him to perform the ministerial act of receiving the annual list of members of the Managing Committee, and nothing more.

Sri I. Koti Reddy, learned counsel for the appellants, would draw our attention to the resolution passed by the Society itself which records that, as against a total strength of eighteen members, only ten had participated. He would refer to the bye-laws of the Society which stipulates that the quorum for the general body meeting is 2/3rd of its members, (which is twelve in number), to submit that as, admittedly, only ten members had participated in the general body meeting, the managing committee members elected by such a body is illegal; consequently, the Registrar of Societies ought not to have received the list; and he should have rejected it. Learned counsel would submit that in similar circumstances, when the jurisdiction of this Court was invoked earlier, this Court had held that, in the absence of a valid quorum, any resolution passed by the Society need not be accepted by the Registrar. He would also rely on the judgment of the Supreme Court in **Allahabad High School Society vs. State of Uttar Pradesh**¹ in this regard.

As has been noted by the learned Single Judge, in the order under appeal, there is a clear distinction between Sections 8 and 9 of the 2001 Act. While Section 8 relates to amendment of the memorandum and the bye laws of a Society, Section 9 relates to filing of an annual list. Under Section 8(4) and (5), the Registrar is obligated to register the alteration of the memorandum, filed before him, only after

¹ 2011(6) SCC 118

satisfying himself that they are not contrary to the provisions of the 2001 Act. Likewise, under Section 8(5), the Registrar is required to take on record alteration of the bye laws of the society, only if it is not contrary to the provisions of the 2001 Act. The obligation placed on the Registrar under Section 8(4) to register an alteration in the memorandum, and under Section 8(5) to take on record an alteration of the bye-laws, is circumscribed by the requirement that he should be satisfied that the alteration is not contrary to the provisions of the 2001 Act.

In case, the Registrar has not examined whether or not alteration of the memorandum and the bye laws of a Society is contrary to the provisions of the 2001 Act, his failure to do so may enable a person aggrieved to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Unlike Section 8, which specifically requires the Registrar to satisfy himself that the alteration of the memorandum and the bye-laws is not contrary to the provisions of the 2001 Act, Section 9 does not place any such obligation on him. The only requirement under Section 9 is for the Society, every year, to furnish a list of members of the managing committee to the Registrar of Societies within 15 days from the date on which the general body meeting is held. If the list of members of the Managing Committee is furnished to the Registrar, within 15 days from the date of the annual general body meeting, he has no other alternative except to receive the same for, unlike Section 8, Section 9 does not confer on him any power to examine whether the annual list is in accordance with, or contrary to, the provisions of the 2001 Act. The learned Single Judge has, in our opinion, rightly observed that the Registrar merely performs a ministerial act in receiving the annual list of members of the managing committee, and nothing more.

Reliance placed on behalf of the appellants, on the Division Bench judgment of this Court in W.A. No. 1052 of 2017 dated 1.8.2017, is misplaced. W.A. No. 1052 of 2017 was filed against the order of the learned Single Judge in W.P. No. 3573 of 22017 dated 7.2.2017 directing the Registrar of Societies to receive the list furnished by the petitioner-society therein, and to acknowledge the same under Section 9 of the 2001 Act. In W.A. No. 1052 of 2017 it was contended that a resolution was passed by a general body which did not have the quorum. We had observed that the petitioner therein had invoked the jurisdiction of the Court complaining of failure on the part of the Registrar to receive the list of members of the managing committee relying on Section 9 of the Act; and it was essential, therefore, for them to establish that a validly constituted general body meeting was held in which event alone could they complain of failure of the Registrar; and as they had not been able to establish that a validly constituted general body meeting was held, and as the earlier meeting was not that of the general body but that of a managing committee, the order under appeal was set aside.

Unlike the present case, in the case which fell for consideration before us in W.A. No. 1052 of 2017 dated 1.8.2017, the members of the Society, who had submitted the list, had approached this Court complaining of refusal by the Registrar of Societies to receive the list submitted by the Society. It is in that context that we had observed that it was obligatory on their part to first satisfy the High Court, that the list submitted by them to the Registrar was sent pursuant to a validly constituted general body meeting; and in the absence of their being able to satisfy the Court, that such a meeting was validly held, the Registrar's failure to receive the list could not be interdicted.

Even otherwise, the distinction between Sections 8 and 9 of the 2001 Act was not noticed by us in our earlier judgment. We are satisfied that the learned Single Judge has not erred in holding that the Registrar merely performs a ministerial act while exercising jurisdiction under Section 9 of the 2001 Act, unlike Section 8 wherein he is required to satisfy himself that the alterations sought, in the memorandum and the bye-laws, is not contrary to the provisions of the 2001 Act.

In **Allahabad High School Society**¹, the Supreme Court observed:

“..... It was also highlighted and demonstrated that there was no quorum in the meeting held on 28.05.2007 in which amendments had been carried out. It is seen that four Officers and five members of the Society were present in the meeting. One ex-officio member and four members were absent. There were total 14 (fourteen) members of the Society. In the Special General Meeting held on 28.05.2007 only nine members were present. Three quarter member of 14 members would be 10.5 members. Therefore, according to Rule 38 of the Rules, at least 10 members were required to be present at the Special General Meeting held on 28.05.2007. In the absence of quorum laid down by Rule 38, neither the amendments could be passed in the Special General Meeting of the Society nor could the amendments made be registered by the Assistant Registrar. The above details, as noted in the order of the learned Single Judge clearly show that there was no quorum in the meeting held on 28.05.2007 in which the amendments had been carried out.”

In **Allahabad High School Society**¹, the rules, constitution and bye laws of the society were amended, which was registered and the information was communicated to the Assistant Registrar, Firms, Societies and Chits, Allahabad. As noted hereinabove, the amendment to the Memorandum and the byelaws of the society are required to be recorded by the Registrar only if he arrives at the satisfaction that they are not contrary to the provisions of the 2001 Act. It is not the case of the appellants that receipt, of the list of managing committee members, by the Registrar falls within the ambit of Section 8 of the 2001 Act.

The learned Single Judge has relegated the appellants-writ petitioners to avail their remedies under Section 23 of the 2001 Act, which stipulates that, in the event a dispute arises among the committee or the members of the society in respect of any matter relating to the affairs of the Society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996 or may file an application in the District Court concerned and the said Court shall, after necessary enquiry, pass such order as it may deem fit.

Disputes arising among the committee or the members of the society can, in terms of Section 23 of the 2001 Act, be raised before the District Court which has the power to adjudicate on such disputes. The appellants-writ petitioners were relegated to the remedy under Section 23 of the 2001 Act not because disputed questions of fact were raised in the Writ Petition, but because Section 23 of the 2001 Act provides for the manner in which inter-se disputes, between members of the society, are required to be resolved.

Viewed from any angle, we do not find any error in the order of the learned Single Judge necessitating interference in an intra-Court appeal under Clause 15 of the Letters Patent. The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

14th September, 2017
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