2026:AHC:209735

# HIGH COURT OF JUDICATURE AT ALLAHABAD

**WRIT - C No. - 40799 of 2026**

Shri Thakur Ji And Shri Ram Janki Jan Seva Samiti
Rani Mandi
.....Petitioner(s)

Versus

State Of U.P. And 2 Others
.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | Vijay Kumar Pandey |
| Counsel for Respondent(s) | : | C.S.C. |

**AFR**

**Court No. - 38**

**HON'BLE SIDDHARTH NANDAN, J.**

1. Heard Shri Vijay Kumar Pandey, learned counsel for the petitioner and learned Standing Counsel for the respondent-State.

2. The contention of learned counsel for the petitioner is that, he had preferred an appeal under Section 4(1-A) of the Societies Registration Act, 1860 (hereinafter referred to as the 'Act, 1860'), against an order dated 25.10.2024, purportedly under Section 12-D(Kha) of the Act, 1860.

3. However, the said appeal was rejected by the Respondent No.2 i.e. the Commissioner, Prayagraj Division, Prayagraj, on the ground that an appeal against an order passed under Section 12-D(kha) of the Act, 1860 lies under the provision Section 12 (2) of the Act, 1860. For ready reference, Section 12-D is quoted herein below"

> *"12D. Registrar's power to cancel registration in certain circumstances.—(1) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds:—*
>
> > *(a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act or of any other law for the time being in force;*
> >
> > *(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed*

*to public policy;*

*(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud:*

*Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken in regard to it.*

*(2) An appeal against an order made under sub-section (1) may be preferred to the Commissioner of the Division in whose jurisdiction the Headquarter of the society lies, within one month from the date of communication of such order.*

*(3) The decision of the Commissioner under sub-section (2), shall be final and shall not be called in question in any court."*

4. In support of his submission, he has placed reliance on a decision of the Apex Court in the case of ***Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr.,*** reported in ***(2006) 1 SCC 75.*** For ready reference, Para-17 of the aforesaid judgment is reproduced below:

*"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:*

*(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;*

*(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*

*(iii) where the non-compliance or violation is proved to be*

*deliberate or mischievous;*

*(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;*

*(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."*

5. He as also relied upon a decision of the Apex Court in ***P. K. Palanisamy Vs. N. Arumugham and Anr.,*** reported in ***(2009) 9 SCC 173*** specifically on Para- 27 and 28, which are reproduced below:

*"27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.*

*28. In Ram Sunder Ram v. Union of India, it was held:*

*"19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.*

*'9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the*

> *power does exist and can be traced to a source available in law.'*
>
> *Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant."*

6. In view of the aforesaid, he asserts that mere mentioning of the wrong provision, under which the appeal was to be filed, the appeal does not automatically entail dismissal or rejection, unless the relevant statutes or rules so mandates; especially when the Appellate Authority under Section 4(1-A) and Section 12(D)(2) are same i.e. Commissioner of the division.

7. The learned Standing Counsel does not dispute the aforesaid legal proposition, that merely mentioning of the wrong provision under which the appeal is filed, will entail automatic dismissal or rejection.

8. It is also a settled principle of law that even if the source for exercising a particular power is not specifically referred to, or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

9. In view of the aforesaid, the Commissioner- Prayagraj Division, Prayagraj has completely misguided itself in coming to the conclusion that, since in the memo of appeal wrong provision has been mentioned, the appeal is liable to be rejected.

10. In view of the aforesaid admitted legal position, no fruitful purpose shall be served in keeping the present writ petition pending and by the consent of the parties the same is being decided at the admission stage itself; and for the reasons stated hereinabove, the impugned order date 29.06.2026 cannot be sustained in the eyes of law and is accordingly **set aside**. The matter is remitted back to the Commissioner of the division i.e.

Respondent No.2, who shall restore the appeal to its original number and treat the same as having been filed under Section 12(D)(2) of the Act, 1860; and proceed to decide the same strictly in accordance with law, adhering to the principles of natural justice.

11. With the aforesaid observation and direction, the writ petition stands ***allowed***.

**(Siddharth Nandan,J.)**

**October 7, 2026**
Sumit K.

Digitally signed by :-
SUMIT KUMAR
High Court of Judicature at Allahabad