

**Managing Committee and anr. Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Jul-22-2009

**Reported in :** 2009(4)AWC3863

**Judge :** Devi Prasad Singh, J.

**Appellant :** Managing Committee and anr.

**Respondent :** State of U.P. and ors.

**Disposition :** Petition allowed

**Judgement :**

**Devi Prasad Singh, J.**

1. Heard learned Counsel for the parties. Precisely, the substantial question of law involved in the present writ petition is whether the tenure of the Committee of Management may be extended by resolution of the General Body instead of electing the office bearers in accordance with the procedure provided in the bye-laws of the Society ?

2. Aljamiya Tul Islamia Lil Banaat Educational Society, Dhaura, Tanda, District Bareilly, in short, Society is a society, registered under the Societies Registration Act. The Society runs a Madarsa with the name and title of Aljamiya Tul Islamia Lil Banaat, in short Madarsa. By the impugned order, the Assistant Registrar, Firms,

Societies & Chits, Bareilly has allowed an amendment done in the bye-laws of the society vide alleged resolution of the general body dated 25.3.2007.

3. Sri Ashok Khare, learned Senior counsel, assisted by Sri Ismamul Rahman Khan submits that the Assistant registrar while passing the impugned order has exceeded its jurisdiction and the matter could have been referred to the prescribed authority under sub Section (1) of Section 25 of the Societies Registration Act. He submits that the order has been passed without providing reasonable opportunity of hearing to the petitioners and the affected parties.

4. However, while defending the impugned order, it has been submitted by Sri Mahtab Alam that the Assistant Registrar has got jurisdiction to pass the impugned order and it has been passed with due opportunity of hearing to the parties. It has been submitted that only election dispute may be referred to the prescribed authority and not a controversy with regard to amendment in the bye-laws of the society by which the total members of the general body have been increased from 11 to 34. Admittedly, the election of the Committee of Management was held in March 1999.

5. Before the term expired, a general body meeting of the society was called on 4.3.2004. Out of 11, 9 members had appeared and by resolution passed in the said meeting, the term of the Committee of Management was extended for five years. The copy of the resolution has been filed as Annexure-3 to the writ petition. It has been stated that the resolution dated 4.3.2004 was confirmed in the subsequent meeting of the general body dated 3.4.2004. The petitioners filed an application before the Assistant Registrar for the renewal of registration certificate for the period of five years from 10.3.1999. In the mean time, one Sri Abdul Jaleel moved an application dated 8.4.2004 before the Assistant registrar claiming himself to be new general secretary. The Assistant Registrar has issued a notice dated 29.4.2004 calling upon the petitioners to submit reply. It was stated before the Assistant Registrar by the petitioners that since Abdul Jaleel could not get elected, he had set up a false case with regard to the office of General Secretary. Along with reply/objection dated 12.5.2004 (annexure-7), the petitioners have also filed an affidavit of seven members of the general body to establish that Sri Abdul

Jaleel was not general secretary; rather the term of earlier office bearers was extended for five years. However, Sri Abdul Jaleel has also staked his claim and later on moved an application stating that the general body meeting was convened on 25.3.2007 wherein out of 45 members, 32 appeared. By amendment, it was provided that the maximum number of members of the Management Committee would be 25 and minimum would be 11. Sri Abdul Jaleel filed an affidavit also to establish his claim. In response to it, the petitioners stated that no meeting of the general body was held to carry out the amendment and 34 names have been added by interpolation and on objections filed by the petitioners the notice was also issued to Sri Abdul Jaleel.

6. The Assistant Registrar at his end, by the impugned order dated 9th May, 2008 decided to register the amendment keeping in view the papers submitted by Sri Abdul Jaleel and the objections filed by the petitioners were rejected. A copy of the impugned order dated 9th May 2008 has been filed to Annexure-15 to the writ petition.

7. While assailing the impugned order, it has been stated that the Assistant registrar has fixed only one date, i.e. 13.2.2008, on which date the petitioner No. 2 was present but Sri Abdul Jaleel was not present. It is stated that no hearing took place and the case was adjourned in absence of Sri Abdul Jaleel keeping in view the application moved on his behalf. After 13th August, 2008, no date was fixed by the Assistant Registrar; rather the impugned order was passed straight way in utter disregard of principles of natural justice.

8. Though the averments contained in para 36 and 37 of the writ petition have been denied in the counter affidavit (para 18) and it has been stated that various dates were fixed but no date has been mentioned. Thus, it appears that a vague reply has been given by the respondents to the averments contained in paras 36 and 37 of the writ petition.

9. While considering the arguments, advanced by the learned Counsel for the parties, one other question seems to be cropped up, i.e.:- whether the Committee of Management was empowered to extend its period for a further five years keeping in view the resolution of the General Body dated 4.3.2004 ?

10. From perusal of the bye-laws of the Society, a copy of which has been filed as Annexure No. 2 to the writ petition, it is evident that the Committee of Management shall be selected by the General Body under the guidelines given in the bye-laws. Virtually, the word, 'selection' used by the draftee seems to mean 'election'. Meaning thereby that all the members of the General Body shall elect the post holders of the Committee of Management (office bearers) who shall continue to discharge their obligation under bye-laws for five years. For convenience, relevant portion from the bye-laws of the Society in question is reproduced as under :

A. FRAMING : There shall be a Management committee to conduct, and to manage the society which shall be selected by the General Body under the following guidelines.

Above all the members the general body shall select the following Post holders of the Management Committee.'

B. MEETINGS : Meeting of the Management Committee there will be 3 general meeting in a year and special meeting can be called at any time by the president. In which the subject should be mentioned as a reason of the meeting.'

C. INFORMATION : Duration of Information - For the General Meeting of the Management Committee information should be given to each members, prior 3 days of the Meeting date and in case of special meeting 24 hours before meeting date, the information shall be given to the members personally or through special messenger.'

D. QUORRUM : 2/3 part of the total members of the Committee is sufficient to fulfil the quorum the meeting.'

E. VACANCIES. Vacancies can be fulfilled by the approval of the President and the majority of the members or the General Body by the 2/3 part of the total member.

F. RIGHTS AND DUTIES OF MANAGEMENT COMMITTEE : To make the arrangement and to define the stable and unstable property of the society.

To amend the objects in accordance with the beneficial arrangement and conductivity of the society.

To make arrangement of the funds for carrying the expenditures of the institution governed by the society.

To put the proposal about the annual income and expenditures before the General Body and future budget also.

To make the final decision and appointments for the institutions governed by the society.

Other beneficiaries steps for the institutions.

G. DURATION : Management committee, working period not less than five years.

11. Thus, a combined reading of relevant portion of the bye-laws of the Society indicates that though the General Body has got right to amend the bye-laws but so far as the term of office bearers is concerned, it shall expire after the period for which they had been elected. The bye-laws of the Society does not empower the General Body to extend the period of the Committee of Management by resolution.

12. The Scheme of Societies Registration Act, 1860, in short Act, is democratic in nature. The purpose is that the office bearers of the society must be elected for the period provided in the bye-laws or rules of the society and any member of the General Body has right to contest such election. Ordinarily, the resolutions are passed unanimously or by majority. In case in absence of any specific procedure, the societies are permitted to extend the term of the Committee of Management by resolution of the General Body, it shall frustrate the very object of the Act. Moreover, in the present case, the resolution of 4.3.2004 is by majority and is not unanimous. Even, absence of one member makes a difference. Every member of a Society has got right to express his views. Accordingly, so far as the present case is concerned, the extension of term by the resolution of General Body seems to be an act in derogation to bye-laws of the Society.

13. A Division Bench of this Court in a case reported in 2006(24) LCD 1373 Umesh Chandra and Anr. v. Mahila Vidyalaya society Aminabad, Lucknow and Ors. (delivered by me) held that the committee of Management and its member cannot act in violation of bye-laws or the rules of the society.

14. The aforesaid proposition may also be inferred from the Scheme of the Act. Under Section 1, the Society is registered in pursuance to the Memorandum of Association formed by the founding members of the Society. Under Section 2, it shall be obligatory for the members to indicate various features in the Memorandum of Association like name of the society, its object etc. Under Section 3A read with Sections 4 and 4A of the Act, the renewal of certificate of registration and annual list of managing body is to be filed. Section 4 provides that once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar containing names, addresses and occupations of the governors, council, directors, committee, or other governing body. The provision of Section 4 provides that if the managing body is elected after the last submission of the list, the counter signature of the old member, shall, as far as possible, be obtained on the list. Section 4A of the Act relates to the amendment in the rules. For convenience, Sections 4 and 4A of the Act are reproduced as under :

4. Annual list of, managing body to be filed.- Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the Society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

Provided that if the managing body is elected after the last submission of the list, the counter signature of the old member, shall, as far as possible, be obtained on the list. If the old office-bearers do not counter-sign the list, the Registrar may, in

his discretion, issue a public notice or notice to such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.'

'4A. Changes etc. in rules to be intimated to Registrar.- A copy of every change made in rules of the society and intimation of every change of address of the society, certified by not less than three of the members of the governing body shall be sent to the Registrar within thirty days of the change.'

15. A combined reading of Sections 4 and 4A of the Act shows that the Managing Committee or the Committee of Management of a society must be an elected body. While framing bye-laws of the Society, the provisions contained in Section 4 should be kept in mind. No society can frame bye-laws contrary to letter and spirit of the Section 4 of the Act which speaks for the elected representative. Once the term of the office bearers of the Committee of Management expire, then it shall always be incumbent on the society to call the General Body meeting and hold a fresh election.

16. In the case of Umesh Chandra (supra), various pronouncements of Hon'ble Supreme Court this Court considered and observed that every word, every line and section of an statute should be considered which ascertaining the intent of legislature. Legislature to their wisdom has used word 'elected' in the provision of Section 4, which cannot be ignored.

17. Undoubtedly, in case the dispute arises with regard to election of the office bearers of the Committee of Management, then such dispute may be referred to the prescribed authority in pursuance to power conferred by Sub Section (1) to Section 25 of the Act. The prescribed authority has got power under Sub-section (1) to decide any doubt or dispute in respect of election or continuance in office of an office bearer of such society, and may pass such order in respect thereof as it deems fit. Relevant portion from Section 25 of the Act is reproduced as under :

25. Dispute regarding election of office-bearers.-(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner

any doubt or dispute in respect of the election or continuance in office of an office-bearers of such society, and may pass such orders in respect thereof as it deems fit....

(2) Where by an order made under Sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a society has not been held within the time specified in the rules of that society, he may call a meeting of the general body of such society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

18. A Division Bench of this Court in a case reported in : 2004(5)SCC 795 New Friends Cooperative House Building Society Limited v. Rajesh Chawla and others held that an order of any person or authority limiting the right to vote of election can be challenged before the appropriate competent authority. A defective electoral roll can also be challenged before the competent authority or by filing a regular suit.

Hon'ble Supreme Court in a case reported in AIR 1952 SC 6 N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem, Distt. and others held that where a remedy has been provided under an Act or statute to challenge the outcome of the election, then that alternative remedy should be availed and writ petition under Article 226 of the Constitution shall not be maintainable. N.P. Ponnuswami (supra) has been reaffirmed by the Hon'ble Supreme Court in a case reported in : AIR 1978 SC 851 Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and others.

A Division Bench of this Court in a case reported in 1994 Allahabad CJ 162 Basant Prasad Srivastava, Manager, Gandhi Smakarak Uchchtar Madhyamic Vidyalaya, Azamgarh v. State of U.P. and others held that the election of the Committee of Management of an institution may be raised before the Civil Court. It has been further held that in appropriate case, it shall always be open to the

parties to approach the prescribed authority in accordance with the provisions contained in Sub Section (1) of Section 25 of the Societies Registration Act.

In : (2001)8 SCC 509 Shri Sant Sadguru Janardan Swami Sahkari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra and others, their Lordships of Hon'ble Supreme Court held that the breach or non-compliance of the mandatory provisions or rules during election process can be challenged in an election petition.

19. In a case reported in : 1991 Suppl. 2 SCC 36 Nagri Pracharini Sabha v. Vth Additional District Judge, Varanasi and others, Hon'ble Supreme Court held that once the tenure of the election of the office bearer was over by passage of time, the Court should decide the controversy keeping in view the latter development.

In : 1991(2) SCC 412 K. Murugan v. Sencing Association of India, Jabalpur and another, when the tenure of the office bearer of Indian Olympic Association was over, Hon'ble Supreme Court appointed a retired Judge of Hon'ble Supreme Court as receiver to conduct the election in accordance with rules of the society.

In : 2002 Vol. 1 AWC 771 Seva Samiti Allahabad and Anr. v. Assistant Registrar, Firms, Societies & Chits and another where the term of the Committee of Management had expired, the Deputy Registrar was directed to hold election in pursuance to power conferred by Sub Section (2) of Section 25 of the Act and a District Magistrate was appointed to look after the routine affairs of the Society.

20. In a case reported in 2003 3 AWC 1802 Committee of Management v. Assistant Registrar, Firms, Societies, a Division Bench of this Court held that after expiry of tenure of Committee of Management, the erstwhile members of the Committee of Management cannot hold election. Only option is to proceed under Sub Section (2) of Section 25 of the Societies Registration Act by the Deputy Registrar.

21. In the present case, keeping in view the observation made hereinabove, it shall be appropriate that a fresh election should be held of the Committee of Management in pursuance to the provisions contained in Sub Section (2) of

Section 25 of the Act on the basis of membership list as was available in the year 2004 to run the society in question.

22. In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 9.5.2008 (Annexure-15) with consequential benefits. A writ in the nature of mandamus is issued directing the Registrar to hold the fresh election of the Society in question in pursuance to power conferred by Sub Section (2) of Section 25 of the Societies Registration Act, 1860 expeditiously and preferably within a period of four months from the date of receipt of a certified copy of this order. For the interim period, the District Magistrate, Bareilly shall appoint a receiver who shall be an officer of the district to do routine work of the society in question till new elected committee resumes office.

23. The writ petition is allowed accordingly with no order as to costs.

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