

Amar Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-10-1999

Reported in : (1999)2UPLBEC1414

Judge : Shitla Prasad Srivastava, J.

Acts : Society Registration Act, 1960 - Sections 3B and 20; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 25820 of 1995

Appellant : Amar Singh

Respondent : State of U.P. and ors.

Advocate for Def. : I.S. Singh, S.C.

Advocate for Pet/Ap. : V.K. Agnihotri and ;Atul Mehra, Advs.

Judgement :

Shitla Prasad Srivastava, J.

1. This petition under Article 226 of the [Constitution of India](#) has been filed by the petitioner for issuing a mandamus commanding the respondent No. 2 (incorrectly typed as petitioner No. 2) to register the society as Police Parivarik Kalyan Sansthan.

2. The brief facts for the purpose of present writ petition as stated in the petition are that the petitioner applied to the Registrar, Firms, Societies and Chits, U.P. for registration of a society, known as All India Police Family Welfare Organization under the Societies Registration Act, 1960. It appears that the Registrar referred the matter to the Director-General of Police to elicit his opinion but no reply was received from the Director-General of Police, then reminders were sent to the Director-General of Police, by the Registrar under the Societies Registration Act. The matter was being delayed, hence Writ Petition No. 5350 of 1993 was filed by one Rajendra Singh Yadav in the High Court for a direction to be issued to Director General of Police to issue a no objection certificate. The aforesaid writ petition was disposed of with a direction that the matter may be considered by the Director-General of Police and proper action may be taken by him within a month from the date of production of a certified copy of the order before him and the proceedings relating to the registration of society may be completed by the Registrar in accordance with law within one month from the date of receipt of the reply from the Director-General of Police. This judgment was delivered by Division Bench of this Court on 23rd November, 1993. It appears that the Director-General of Police, U.P., raised objection and opposed the registration of the said society vide letter dated 28-12-1993. A copy of which has been filed by the petitioner as Annexure-4 to the Writ Petition. Paragraph 11 of the aforesaid letter of the Director-General of Police is relevant, wherein he has said that Brijendra Singh Yadav, the President of the society is a dismissed constable who was removed for his in disciplined activities from the police force and the aim and object of the propose institution is to encourage indiscipline in the Police Department. The D.G.P. also quoted police Force Registration of Right Act, 1966. Enforcement of Police Force Registration of Right Act, 1966 and the Police Incitement to Discipline Act, 1992. It further appears that on 30th November, 1993, the Registrar, Firms, Societies and Chits, UP., Lucknow had referred the matter to the State Government and the State Government considered the report of D.G.P. dated 28th December, 1993 and the Joint Secretary, U.P. Government on 4th January, 1994 wrote a letter to the Registrar that the State has taken decision that the firm in question 'Police Parivarik Kalyan Sansthan, Jhansi' should not be registered. This letter has been filed as Annexure-3 to the present writ petition. On 30th

December, 1994 the Assistant Registrar wrote a letter to the present petitioner Amar Singh, in which he referred the report of the D.G.P. Specially paragraphs 11 and 12 of the report and rejected the application for registration. This document has been filed as Annexure-5 to the present writ petition.

3. Challenging this order dated 30th December, 1994 a writ petition was filed in the High Court, which was numbered as Writ Petition No. 1500 of 1995. This writ petition was disposed of by the High Court on 18th April, 1995. A copy of the judgment has been filed as Annexure-2 to the writ petition. The relevant extract of the judgment is quoted as under:-

'Learned Standing Counsel on the other hand, submitted that if the objection raised by the department has been removed by the petitioner society, petitioner may make a fresh application for registration before the concerned authority which shall be disposed of in accordance with law.

Having heard learned Counsel, for the parties, I do not find any merit in this writ petition and it is accordingly dismissed. However, it would be open to the petitioner to make a fresh application in accordance with law before the competent authority for registration of the society and if such an application is filed before the concerned authority the same shall be disposed of a reasoned order expeditiously preferably within a period of these months from the date of submission of such application.'

4. Petitioner, Amar Singh, filed a fresh application before the Asstt. Registrar after the order was passed by the High Court. Alongwith the application a copy of the amended bye-laws of the society was also filed, then certain correspondence took place between the Asstt. Registrar and the present petitioner, specially in respect of paragraphs 11 and 12 of the D.G.P. report and further that the defect pointed out has been removed and it was pointed out that the defect pointed out by the D.G.P. have been removed. The Sub-Registrar referred the order of the High Court dated 18th April. 1995 and also a reference was made by him under Section 3-B of the Act to the State Government in which the State Government has taken decision that the proposed society should not be registered. He also referred the earlier order passed by the High Court, dated 23rd November, 1993, report of

D.G.P. dated 28-12-1993 and his earlier letter dated 14th August, 1995 and also said that the explanation given by the petitioner on 19th August, 1995 was not satisfactory. He also considered the amendment made in the new bye-laws specially the aim and object at Serial No. 18 of the bye-laws and change of the Managing Committee and ultimately informed the petitioner that the decision taken by the State Government under Section 3B of the Society Registration Act is final and rejected the application dated 22nd August, 1995. The petitioner has challenged this order on the ground that the respondent No. 2 rejected the application in accordance with the order dated 4th January, 1994 which had already been decided by the respondent No. 2 by his order dated 30th December, 1994, which was challenged in previous Writ Petition No. 1500 of 1994 and the High Court directed to take fresh decision therefore, the decision is not a fresh decision. It is further stated that aim and object of the Society proposed to be registered is different than what has been said in the report of the D.G.P. Its aim is to provide free education, lodging and fooding to those children whose father died in any accidental death and helping in smooth employment to the young boys and widows of the members of the Society, therefore it is not an association but, only a welfare society.

5. A counter-affidavit has been filed on behalf of the State and one Munni Lal, Assistant Registrar, Firms Societies and Chits, U.P. has filed his affidavit, stating the old story that the matter was referred to the Government under Section 3-B and an order passed by the State Government has become final, therefore, there is no illegality committed by the Assistant Registrar in rejecting the application. A rejoinder affidavit has also been filed by the petitioner reiterating the same thing' which has been stated in the writ petition.

6. Heard learned Counsel, for the parties and perused the record, learned Counsel, for the petitioner has urged that when the High Court directed on 18th April. 1995 to consider the application a fresh then it was the duty of the Registrar or the Asstt. Registrar to have obtain a fresh report from the D.G.P. or from the State under Section 3-B of the Act as to whether the defects pointed out by the D.G.P. have been removed or not. His further submission is that when the second time the writ petition was filed by the petitioner the learned Standing Counsel

himself conceded on behalf of the State that if a fresh application is filed and defects have been removed then the authorities shall consider the application a fresh, therefore, it was the duty of the Asstt. Registrar to consider the fresh application and give a finding as to whether the defects have been removed or not. His contention is that from perusal of the letter dated 22nd August, 1995/order of the Assistant Registrar it is clear that he has simply said that the explanation given by the petitioner vide letter dated 19th August, 1995, is not satisfactory and has placed reliance on the earlier report of the D.G.P. and State Government, which will amount non-application of mind.

7. Mr. I.S.Singh, learned Standing Counsel appearing, for the State urged that on 4th January, 1994 an order was passed by the State Government exercising the power under Section 3-B of the Act and the State Government took a decision that the registration of the Society cannot be made. The petitioner did not challenge that order, therefore, that order became final. He further submitted that aim and object of the society what was at the time of moving the first application was remained the same at the time of second application and as no permission has been obtained from the Police Authorities to form an association, no association or society can be registered. His further submission is that the Director-General of Police apart from the defects of Sri Brijendra Singh Yadav being there as a President has also pointed out in paragraph 12 of his letter that in view of the three Acts no society can be registered. He has placed reliance on 1987 Supreme Court Cases. Delhi Police Non-gazetted Karmchari Sangha and Ors. v. Union of India and Ors., (1987) 1 SCC 115; AIR 1980 Patna 138; 1994 Service Law Report (Volume-2) 574 and has submitted that in view of the existing law and in view of the decision taken by the State Government under Section 3-B which became final the petitioner cannot get relief of mandamus. He has also submitted that Section 20 of the Societies Registration Act has given the list of Societies, which is as under:--

'20. To what Societies Act applies.-The following societies may be registered under this Act-Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of Khadi and Village Industry. Panchayat Industry, Rural Development

Science Literature, or the Fine Arts, for Instructions the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for a general use among the members or open to the public or public museums and galleries of paintings and other works of Art, collection of natural history, mechanical and philosophical inventions, instruments or designs.'

He further submitted that the petitioner's case is not covered under this section, therefore, the petitioner's application cannot be considered. He has further urged that the High Court has directed to consider the application a fresh if the defects have been removed, and the defects which were pointed out by the D.G.P. was not only factual defects but it was also legal defect which was pointed out in paragraph 12 of the report, which could not have been removed by the petitioner, therefore, there is no error in the order passed by the Assistant Registrar and the application has rightly been rejected that such a society cannot be registered.

8. Learned Counsel, for the petitioner Sri V.K. Agnihotri has replied that in paragraph 3 of the writ petition it has been stated by the petitioner that order dated 4th January, 1994 was challenged in Writ Petition No. 1500 of 1995, as the petitioner has challenged the order dated 30th December, 1994 by which his application was rejected and the High Court on 18th April, 1995 directed the Asstt. Registrar to consider the application a fresh, if filed after removal of objections raised by the department, therefore, it cannot be said that the order dated 4-1-1994 became final. His further submission is that Section 20 of the Act says regarding applicability of the Act of the Society and the petitioner being Charitable Society the provisions of the Act is applicable and in all the three Acts mentioned in paragraph 12 the word 'Association' has been used, where the petitioner's application for registration of the Society and not for association and this aspect of the case has not been considered by the Assistant Registrar.

9. After hearing the learned Counsel, for the parties I am of the view that there appears to be force in the argument of the learned Counsel, for the petitioner. From the facts and circumstances of the instant case it is clear that the application was entertained by the Assistant Registrar who was competent authority to receive

the application for registration and for renewal and he exercising power asked for the opinion of the Director-General of Police and further referred the matter to the State Government under Section 3-B of the Act and when he received the report and letter from the State Government, he rejected the application on 30th December, 1994 and when this judgment was challenged in the High Court the grounds taken by the petitioner was that the rejection order is illegal and the High Court directed the Assistant Registrar on 28th April, 1995 to consider the application if filed after removal of the defects a fresh and the application was entertained no objection was raised by the learned Standing Counsel appearing on behalf of the State when the writ petition was being disposed of that order dated 4-1-1994 passed by the State Government under Section 3-B became final, therefore, the writ petition is not maintainable rather the learned Counsel appearing for the State conceded that if the objection raised by the department has been removed by the petitioner society, the petitioner may make a fresh application for registration before the authority concerned, which shall be disposed of in accordance with law, therefore, now it cannot be argued by the learned Standing Counsel that the order dated 4-1-1994 has become final. Judgment passed by the High Court in Writ Petition No. 1500 of 1995 is binding on both the parties when it was conceded by the learned Standing Counsel that if a fresh application is filed it shall be decided in accordance with law, it is not open to the learned Standing Counsel to urge that the application was not maintainable as the society was not covered under Section 20 of the Registration Act and when the fresh application was filed by the petitioner as per the directions issued by the High Court and a specific date was fixed by the High Court it cannot be said that application was not maintainable and it was to be decided in accordance with law. A perusal of the relevant provision of the Act would show that the Assistant Registrar is required to consider the application according to the provisions of the Act and when the application was filed it was the duty of the Assistant Registrar either to have obtained a fresh, report from the Director-General of Police or to refer the matter again under Section 3-B of the Act to the State Government for a fresh decision as the earlier decision dated 4-1-1994 had merged in the Order dated 30th December, 1994 but it has not been done in the present case, the matter requires reconsideration by the Assistant Registrar. I accordingly issue a

mandamus to the Assistant Registrar, respondent No. 2 to restore the application filed by the petitioner after decision of the High Court in Writ petition and reconsider it in accordance with law.

10. The Writ petition is accordingly allowed. Mandamus is being issued to the Assistant Registrar, Firms, Societies and Chits, Jhansi to restore the application filed by the petitioner after decision of the High Court in Writ Petition No. 1500 of 1995 and decide it a fresh in accordance with law.

11. There will be no orders as to costs.

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