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

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Court : Allahabad

Decided On : Feb-28-2011

Judge : A.P. Sahi, J.

Acts : Societies Registration Act, 1860, - Section 25 (2)

Appeal No. : Civil Misc. Writ Petition No. 10052 of 2011

Appellant : Khachchan Singh

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. R.K. Ojha

Judgement :

1. The petitioner claiming himself to be a member of the General Body of a Society registered under the Societies Registration Act, 1860, which runs a Junior High School, and is aided by the State Government assails the impugned order dated 19th January, 2011 passed by the Deputy Registrar, Firms, Chits & Societies on the ground that it is without jurisdiction and even otherwise on merits the acceptance of the claim of the respondent no. 3 in relation to the elections dated 25.11.2005 and 1.10.2010 is contrary to the provisions of the bye-laws as is evident from the facts already brought on record.

2. Sri R.K. Ojha alongwith Sri Irshad Husain has advanced his submissions for the petitioner and Sri Ashok Khare learned senior counsel along with Sri H.N. Pandey

has been heard for the respondent no. 3 and the learned Standing Counsel for the respondent nos. 1 and 2.

3. The judgment had been reserved on 23.2.2011 as the learned counsel for the respondent including the learned Standing Counsel stated that they do not propose to file any counter affidavit and the matter be disposed of finally on the submissions already raised and the documents on record. Accordingly, the matter is being disposed of finally under the rules of the court and with the consent of parties.

4. Sri R.K. Ojha learned counsel for the petitioner submits that the Resolution dated 25.11.2005 which is being relied upon by the respondents alleging holding of elections is no elections in accordance with the bye-laws, and Resolution No. 2 simply allows the earlier office bearers elected to continue to act as office bearers and get renewal of the society done. Sri Ojha, therefore, submits that this is no election in the eyes of law, and therefore, fresh elections ought to have been held under the provisions of Sub-Section (2) of Section 25 of the Societies Registration Act, 1860 through the Deputy Registrar, Firms, Societies and Chits.

5. He further contends that the claim of the respondent no. 5 - Committee that it was elected on 1.10.2010 again is also erroneous, inasmuch as, a copy of the said proceedings which has been filed as Annexure - 4 to the writ petition indicates only filling up of casual vacancies and is no regular election in accordance with the bye-laws. Sri Ojha, therefore, submits that as a matter of fact, no elections were held at all and therefore elections had to be held through the Deputy Registrar, Firms, Societies and Chits as referred to herein above.

6. Sri Ojha then proceeded to invite the attention of the court to Annexure - 7 to the writ petition to contend that an order was passed on 23.11.2010 by the Deputy Registrar, Firms, Societies and Chits. When he was hearing the dispute, the learned counsel for both the contesting parties had agreed for getting fresh elections held through the Deputy Registrar and that the Deputy Registrar also accepted the said proposal. Not only this, the Deputy Registrar passed the following order on 23.11.2010:-

7. Sri Ojha, therefore, submits that the matter had been decided finally and the file had been closed.

8. Thereafter the contesting respondent no. 3 appears to have moved an application on the same day itself making a request for review of the said order, inasmuch as, the elections had already been held on 25.11.2005 which aspect deserved to be reconsidered in the interest of justice. It was further urged therein that the proceedings dated 1.10.2010 should also therefore be accepted.

9. The contention of the petitioner is that such an application was not maintainable, inasmuch as, the Deputy Registrar, has no power to review his own orders as no such power is conferred under the statute and even otherwise there was neither any mistake, misrepresentation or fraud to enable the authority to assume such jurisdiction. Sri Ojha, therefore, submits that the entire proceedings of review suffers from patent lack of jurisdiction and therefore the order impugned dated 19.1.2010 deserves to be quashed.

10. Sri Ashok Khare learned senior counsel for the contesting respondent no. 3 submits that a review is permissible if any mistake has crept in and that in effect the passing of the order treating the Committee to have become time barred was not a final order and which was subject to a detail order being passed by the authority. He therefore contends that the Deputy Registrar, was fully justified in proceeding to entertain the application and pass appropriate orders that does not require any interference.

11. Pointing out to the election proceedings dated 1.10.2010 Sri Khare submits that the Resolution itself indicates that it was for the entire Committee and was not for merely filling of casual vacancies and hence the contention raised on behalf of the petitioner on that score cannot be accepted.

12. Before adverting to the issues of fact, it would be appropriate to delve into the contention raised by the parties relating to the exercise of power of review by the Deputy Registrar. It is by now settled that an administrative authority or a quasi-judicial authority in order to exercise the power of review has to be specifically conferred with such a power under the statute itself. The provisions of the

Societies Registration Act, 1860 do not confer a power of review on the Deputy Registrar. The apex court while construing such a proposition in relation to the powers of the Vice Chancellor also came to the same conclusion. Reference may be had to the decision in the case of Dr. (Smt.) Kuntesh Gupta v. Management of Hindu Kannya Mahavidyalaya, Sitapur U.P. & others, reported in 1987 (4) SCC 525. The said view has its approval in the decision relied on by the learned counsel for the petitioner in the case of Kalabharati Advertising v. Hemant Vimalnath Narichania & others, reported in (2010) 9 Supreme Court Cases 437 Paras 12 to 14.

13. The exception however as carved out by the various authorities of this court and the apex court are that such authorities can also review their orders provided there is an element of mistake, fraud or misrepresentation. The decisions to that effect of this court are Havaldar Singh v. U.P. Shiksha Nideshak, VII Mandal, Gorakhpur & others, 1976 AWC Pg 123 and Radhey Shyam Chaube & others v. The District Inspector of Schools, Jaunpur & others, 1978 AWC 40.

In the instant case, Sri Khare contends that the Deputy Registrar has invoked the power of review on the ground of mistake. For this, he orally contends that the mistake was of the earlier counsel who accepted the proposal for holding of fresh elections and, therefore, the application was moved through a different counsel. The aforesaid plea cannot be accepted, inasmuch as, a counsel who puts in appearance takes full responsibility of even entering into a compromise. The counsel who had given his consent did not file any affidavit nor was he produced to contend that he had given his consent by mistake. Even the application moved by the contesting respondent did not indicate any such mistake on the part of the counsel. The consent for fresh elections is not disputed as against the wish of the respondent as there is no such recital in the review application. Even otherwise this theory of mistake of counsel is a figment of imagination or counsel's ingenuity at the bar through oral arguments without any pleadings, and therefore such a plea has to be rejected. Although, if such a mistake is established, then the mistake of a counsel can also be a ground for review. Reference be had to AIR (37) 1950 Federal Court 131 Smt. Jamna Kuer v. Lal Bahadur and others.

14. Sri Khare then contends that through the application the mistake which was pointed out was about the proceedings and the elections of the year 2005 that had escaped the notice of the Deputy Registrar. He therefore submits that the Deputy Registrar had committed a mistake by not noticing the same and therefore he was empowered to review his order.

15. It would be worthwhile to refer to Kerr on Fraud and Mistake (Sweet & Maxwell Limited, London) where mistake has been said to be;

> **"some unintentional act, omission, or error arising from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence."**
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> **16. Applying the said principles, the aforesaid ingredients are not available in the application moved by the petitioner nor is there a finding by the authority that it was on account of such a mistake that a review was permissible. In the opinion of the court, this argument raised on behalf of the respondents is neither borne out from records nor is it established on the basis of the documents in relation to the dispute. The respondents have not disputed the contents of the documents or the recital contained in the impugned order. The impugned order proceeds to exercise a power of review in the interest of justice. There is no such known principle empowering an administrative or a quasi-judicial authority to rehear a matter and review its order on the ground of some alleged mistake in the interest of justice which cannot be attributed to the authority itself.**
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> **17. There is an illustrative judgment on the power of review by courts and on the principles of administrative law that has been explained in detail in the case of S. Nagaraj & others v. State of Karnataka & another reported in 1993 JT (5) Pg. 27 Paragraphs 18 and 19 which is extracted herein under:-**

"Para 18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which are of us (R.M. Sahai,J) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

Para 19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage

of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithvi Rai and others, AIR 1941 Federal Court 1, the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh 1 Moo PC 117 that an order made by the Court was final and could not be altered.

"Nevertheless, if misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the Power was stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not

for disturbing finality. When the Constitution was framed and substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution - makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse the process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

18. It is however noted that review in the interest of justice or to prevent the abuse of the process of the court was found inherent in the Supreme Court itself read with the provisions of Order XI Rule 1 of the Supreme Court Rules.

19. The Deputy Registrar does not have any such inherent jurisdiction and even otherwise the impugned order in the present case proceeds to disturb the finality of the order already passed and was not done to remove any accidental mistake or error. The Deputy Registrar therefore could not have reviewed his order in the interest of justice.

20. Thus on all scores, it is a clear case of the exercise of power of review without any such jurisdiction being conferred on the authority. There is neither any

element of mistake or fraud or misrepresentation, and hence, such a power could not have been exercised. The application as moved by the contesting respondent no. 3 was not at all maintainable.

21. There was an express and conscious consent by the counsel representing the respondent on the factual issue of holding fresh elections. It is for this specific reason that the Deputy Registrar put on record that the earlier Committee had become time barred as its tenure had lapsed.

22. Even on first principles relating to the procedure adopted by courts, a review is permissible on the principles of Order 47 Rule 1 C.P.C. where there is an error apparent on the face of record. A review is not permissible when one has to attempt a long drawn reasoning to arrive at a conclusion. A review is no rehearing. See 1997 (9) SCC Pg. 736 Tamil Nadu Electricity Board & another v. N. Raju Reddiar & another and 2000 SCC (9) Pg. 482 B.H. Prabhakar & others v. M.D. Karnataka State Cooperative Apex Bank Ltd. In the instant case, the Deputy Registrar has proceeded to rehear the entire matter and render an opinion contrary to the agreed position that had been arrived at under the order dated 23.11.2010 quoted herein above. The Deputy Registrar became functus officio after declaring that the earlier committee had become time barred and the only option was to hold fresh elections.

23. Two judgements have been cited by Sri Ashok Khare 1999 (7) SCC Pg. 578 (Oriental Insurance Corporation Ltd. & Another v. Gokul Prasad Manik Lal Agrawal & Another) and 2005 (9) SCC Pg. 741 (Board of Control for Cricket in India & Another v. Netaji Cricket Club & Others) to contend that a review on the location of a mistake is permissible. In the first decision, the mistake was located in the counsel in describing the punishment extended to an employee as a minor penalty whereas in-fact it was a major penalty. The apex court held that when this mistake was pointed out the High Court ought to have reviewed the same. The aforesaid judgment does not help the contesting respondent, inasmuch as, it was never pleaded or pointed out in the present case that there was any mistake on the part of the counsel about which facts have been discussed herein above. And even otherwise, there is no error or mistake, inasmuch as, the parties adopted the

course of agreeing to holding of fresh elections fully knowing the context about the 2005 and 2010 elections.

24. The second decision reported in 2005 (9) SCC Pg. 741 (supra) relied on by Sri Khare deals with this proposition of law in Paragraph 90 quoted herein under:-

> **"Para 90: Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".**

25. Further Paragraph 93 is as follows:-

> **"Para 93: It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29.9.2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."**

26. A perusal of the ratio of the aforesaid decision would also indicate that the order passed on 23.11.2010 was an order of consent and it did not arise out of any mistake either of the parties or their counsels nor was it a mistake of the authority. The counsels had voluntarily agreed for fresh elections. Once they had agreed then the Deputy Registrar rightly proceeded to accept the same and he was not

induced to commit any mistake. The consent was given by the learned counsels for both sides and there is no indication of any misunderstanding on the part of the counsel either in the application for review or any other affidavit of the counsel indicating such misunderstanding. There is no element of misconception so as to attract the principles enunciated in the authority noted above. Accordingly, the aforesaid decisions also do not come to the aid of the respondents.

27. This is a case where the lawyers entrusted with their respective cases through their clients had consciously made the offer before the authority and hence the agreement arrived at has to be honoured and is also binding. The law relating to such a duty being discharged by an advocate came to be extensively considered in the case of Byram Pestonji Gariwala v. Union Bank of India & others, reported in (1992) 1 SCC 31. The apex court after outlying the role of an advocate in England and in India held that the traditionally recognised role of a counsel cannot be fettered by the provisions of the Civil Procedure Code and an advocate possessed of requisite authorisation through a Vakalatnama has every authority to act on behalf of his client. The aforesaid authority therefore fully supports the view taken herein above.

28. The respondent no. 3 through is counsel will therefore be presumed to have put to rest the dispute that had arisen between the parties and could not have been reopened. The provision of review is no vehicular or transport system of law on which one can board or get down as one wishes. The Regulation of the Power of Review is therefore hedged by specific limitations as discussed herein above. The respondent no. 3 therefore could not have as an afterthought chosen different route without setting up a case before the authority that it was a mistake of the nature prescribed in law so as to describe it as an incident of review.

29. Merely because another view is possible, the same cannot be a ground for review. An error of decision does not lead to the proposition that every erroneous decision calls for a review. The distinction has been succinctly explained in 2008 (8) JT 317 The State of West Bengal and others v. Kamal Sengupta and another. A change of heart and any afterthought cannot be made the basis for the review of an order. The respondent for this reason appears to have allegedly changed his

counsel. The facts of this case required the moving of an application by the same counsel if any such circumstances existed. Ordinarily filing of review through a different counsel, particularly where mistake is being attributed as a reason, has been deprecated. For reference see 1997 (9) SCC 736 Tamil Nadu Electricity Board & another v. N. Raju Reddiar & another.

30. The Deputy Registrar committed a manifest error by again reopening the entire dispute which had come to a close with the agreement of the parties through their counsel to get fresh elections held. The impugned order was therefore an exercise in futility being without jurisdiction. For the reasons aforesaid, it is not necessary to enter into the factual controversy of the elections dated 25.11.2005 and 1.10.2010.

31. Accordingly, the order dated 19th January, 2011 is quashed. The Deputy Registrar shall proceed to get the elections held on the basis of the order dated 23.1.2011 and issue necessary directions in that regard.

32. The writ petition is allowed.