

Committee Of Management Shiv Mangal ... vs State Of U.P. And 2 Others on 2 January, 2025

Author: Saral Srivastava

Bench: Saral Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:402

Court No. - 32

Case :- WRIT - C No. - 41667 of 2024

Petitioner :- Committee Of Management Shiv Mangal Shikshan Sansthan And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sunil Kumar Srivastava

Counsel for Respondent :- C.S.C.,Deepak Kumar,Prabhakar Awasthi

Hon'ble Saral Srivastava,J.

1. Sri Prabhakar Awasthi, learned counsel for the respondents, submits that the contesting respondents represented by him does not propose to file any counter affidavit and the writ petition may be decided at this stage.

2. In view of the aforesaid statement, the writ petition is being decided.

3. Heard Sri Ashok Khare, learned Senior Counsel for the petitioners, Sri Prabhakar Awasthi, learned Senior Counsel for the respondents and perused the records.

4. The petitioners by means of the present writ petition have assailed the order dated 25.11.2024 passed by the Assistant Registrar, Firms, Societies and Chits, Prayagraj Region, Prayagraj, whereby he has passed an order to hold election of Committee of Management under Section 25(2) of the Societies Registration Act, 1860 (in short 'the Act').

5. The only contention advanced by learned counsel for the petitioners is that earlier the election of the Committee of Management of the Society namely Shiv Mangal Shikshan Sansthan, Sarsikham, Patti, District Pratapgarh was held on 05.01.2013. However, there was a dispute with respect to office bearers of the Society as one Raaurdeen Verma had also set-up a claim for election. It is submitted that the matter was referred to the Prescribed Authority by the Assistant Registrar and the Prescribed Authority by order dated 12.06.2017 recognized the Committee of Management, wherein petitioner no.3 Vinod Kumar Singh was elected as Manager of the Society. It is submitted that thereafter a Writ Petition i.e. Misc. Single No.15963 of 2017 was filed challenging the order dated 12.06.2017, in which the Lucknow Bench of this Court passed an interim order on 20.07.2017. It is submitted that the aforesaid Writ Petition i.e. Misc. Single No.15963 of 2017 was dismissed in default on 26.03.2019 and the recall application to recall the order dated 26.03.2019 was also dismissed in default on 12.09.2019 .

6. It is submitted by the learned counsel for the petitioners that as the term of the Committee of Management was coming to end, therefore, fresh election of the Committee of Management was held on 23.06.2021, wherein petitioner no.3 Vinod Kumar Singh was elected as Manager of the Society. It is submitted that the papers with respect to election held on 23.06.2021 was submitted to the Assistant Registrar for registering the list of office bearers of the Society. However, instead of taking a decision on the election held on 23.06.2021, the Assistant Registrar proceeded to pass an order holding that since the election was conducted by petitioner no.3 on 23.06.2021 after the last election which was held on 05.01.2013, therefore, the new election held in the year 2021 was not held within the period of five years. He further held that the Committee of Management of the Society is time barred and further proceeded to hold election under Section 25(2) of the Act.

7. It is further contended by learned counsel for the petitioners that the reason assigned by the Assistant Registrar in the order dated 25.11.2024 is contrary to the judgment of the Division Bench of this Court passed in Vinod Kumar Varshney Vs. State of U.P. and others; (2017) 7 ADJ 311, inasmuch as once the election has been conducted by a Committee of Management, the Assistant Registrar cannot proceed to hold election under Section 25(2) of the Act. It is submitted that the impugned order is without jurisdiction and the same be set aside by this Court.

8. Per contra, learned counsel for the respondents would contend that after the order passed by the Prescribed Authority dated 12.06.2017, no fresh order was passed by the Assistant Registrar for registering the list of office bearers of the Society and in such view of the fact, the petitioners' Committee of Management was never approved, and as such it did not have any authority to hold the alleged election dated 23.06.2021. The Assistant Registrar has rightly held that the Committee of Management of the petitioners is time barred and directed to hold election under Section 25(2) of the Act.

9. Be that as it may, in the instant case, it is evident from the record that the Prescribed Authority by order dated 12.06.2017 passed an order approving the election of petitioner no.3 Vinod Kumar Singh held on 05.01.2013. Against the said order, a Writ Petition i.e. Misc. Single No.15963 of 2017 was preferred, wherein the Lucknow Bench of this Court was pleased to pass an interim order on 20.07.2017. However, subsequently, the aforesaid Writ Petition i.e. Misc. Single No.15963 of 2017 was dismissed in default on 26.03.2019 and the recall application to recall the order dated 26.03.2019 was also dismissed in default on 12.09.2019. Thus, the order passed by the Prescribed Authority dated 12.06.2017 has attained finality and it is only the petitioners' Committee of Management elected on 05.01.2013 was approved in terms of the order passed by the Prescribed Authority dated 12.06.2017. It is also evident from the record that the petitioners have conducted election on 23.06.2021 on which no order was passed by the Assistant Registrar. However, the Assistant Registrar proceeded on the ground that since the election of the Committee of Management of the petitioners' Society has not been conducted between 2013 and 2021, while the term of the Committee of Management was only five years, therefore, the Committee of Management of the petitioners' Society was time barred and it did not have any power to hold election.

10. This Court is of the view that the reason given by the Assistant Registrar in his order dated 25.11.2024 for proceeding to hold election under Section 25(2) of the Act is in the teeth of the judgment passed by the Division Bench of this Court in the case of Vinod Kumar Varshney (supra), inasmuch as once he acknowledges the fact that the election was held on 23.06.2021, in which it is alleged that petitioner no.3 was elected as Manager, however, later on, for certain personal reason, petitioner no.3 has resigned from the post of Manager, therefore, the Assistant Registrar did not have any jurisdiction to invoke power under Section 25(2) of the Act to proceed for holding election rather the Assistant Registrar should have taken a decision on the validity of the election of the petitioners' Society alleged to have been held on 23.06.2021.

11. Since, the controversy in the present case is squarely covered by the judgment of the Division Bench of this Court in the case of Vinod Kumar Varshney (supra), therefore, the impugned order dated 25.11.2024 passed by the Assistant Registrar, Firms, Societies and Chits, Prayagraj Region, Prayagraj cannot be sustained in law and is, accordingly, set aside.

12. The matter is remitted to respondent no.2 to take a fresh decision with respect to the election of the petitioners' Society alleged to have held on 23.06.2021 as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order, after giving notice and opportunity of hearing to all the concerned parties.

13. The writ petition is disposed of in terms of the aforesaid orders.

Order Date :- 2.1.2025 CS/-