

Society Anjuman Islahul Muslimeen, ... vs State Of U.P. Thru. Addl. Chief Secy. ... on 28 April, 2025

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Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:24454

Reserved

Court No. - 8

Case :- WRIT - C No. - 2699 of 2025

Petitioner :- Society Anjuman Islahul Muslimeen, Thru. Secy. Syed Mohammad Athar Nabi A

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Finance Lko. And 13 Others

Counsel for Petitioner :- Vikas Singh,Lalta Prasad Misra,Mahendra Bahadur Singh

Counsel for Respondent :- C.S.C.,Abhishek Singh,Puneet Chandra,Zia Ul Qayum

Hon'ble Jaspreet Singh,J.

1. Heard Dr. L.P. Mishra and Sri M.B Singh learned counsel for the petitioners, Sri Puneet Chandra learned counsel for the respondent no.4, Sri Abhishek Tomar learned counsel for the respondent no.5, Sri Abhishek Singh learned counsel for the respondent no.14, Sri Altaf Mansoor learned counsel for the respondent no.15 as well as Sri K.K. Sharma learned counsel for the respondent no.16.

2. All the aforesaid private respondents have collectively raised preliminary objections regarding the

maintainability of the instant petition. It is urged that the petition has been filed by the Society through its Secretary who has been impleaded as petitioner no.2.

3. It is stated that the Society is governed by its bye-laws, a copy of which has been brought on record, however, Clause 10(4) of the bye-laws of the Society categorically states that any proceedings conducted by or against the Society shall be done by the Secretary after taking prior approval from the Committee of Management/Society. It was urged that at the time of filing of the writ petition there was no Resolution brought on record by which it could be ascertained that the Committee of Management/Society had authorized the Secretary to institute the instant petition. Hence, in absence of the Resolution the petition was not maintainable. In addition, Sri Altaf Mansoor has raised another objection to the effect that the writ petition was signed on 17.03.2025 whereas the affidavit is sworn on 17.02.2025. It is thus sought to be urged that on the date when the affidavit was signed and sworn, the writ petition was not in existence and it has come to be filed at a later stage, for this reason as well the petition is not maintainable.

4. In response learned counsel for the petitioners have urged that the Society is governed by its bye-laws and in the bye-laws, it is categorically stated that the proceedings by or or against the Society shall be conducted under the authority of the Secretary. It is urged that once in the bye-laws itself it has been provided that it would be Secretary who is authorized to conduct or defend the proceedings and the petitioner no.2 who is the Secretary has signed the petition, hence, it cannot be said that the petitioner no.1 which is the Society and is represented through its Secretary which is in consonance with Clause 10 of the by laws of the Society and is also in sync with Section 6 of the Societies Registration Act, 1860 and for the said reason it cannot be held that the petition is not maintainable.

5. Learned counsel for the petitioner has relied upon the decision of the Apex Court in P. Nazeer v Salafi Trust and another; (2022) SCC OnLine SC 382 and it was emphasized that in the said case the Apex Court had taken note of Section 6 of the Societies Registration Act and it was held that every society registered under the Act may sue or be sued in the name of the President, Chairman or Principal Secretary or Trustees as shall be determined by the Rules and Regulations and only in default of such determination the name of such person as shall be appointed by the governing body can represent the Society. Since in terms of the by laws the Secretary is already nominated thus the petition filed by the Secretary cannot be said to be without authority and moreover, Section 6 itself authorizes the Secretary, inter alia, which is corroborated by Clause 10(4) of the bye-laws hence, the petition cannot be thrown out on the ground of lack of Resolution.

6. Learned counsel for the petitioners has also relied upon the decision of this Court in Committee of Management A.K College, Shikohabad District Firozabad and Ors vs State of U.P; (2000) 1 UPLBEC 777 to contend that the term of the Committee of Management continues from the date it takes over charge till the time the new Committee is constituted. It is urged that in the instant case, the Committee of Management is continuing as the new elections have yet not been held, consequently, it cannot be said that the petition has been filed by a person not authorized or not acknowledged as per bye-laws, hence, preliminary objections deserves to be overruled.

7. The Court had heard learned counsel for the parties and on 27.03.2025 had passed an order and the relevant portion thereof reads as under:-

"8. This Court had also heard the learned counsel for the parties on the preliminary objections which primarily relates to the fact that since the petition has been filed by the Society, accordingly its alter ego i.e. the Secretary who under the by-laws is authorized to file a petition on behalf of the Society and is also entitled to defend any proceedings but the contention is that the Committee of Management of the Society must execute resolution in favour of the Secretary. Reference has been made to clause 10(4) of the by-laws and it is urged that in absence of any such prior authorization the petition itself is bad and cannot be entertained.

9. Dr. L. P. Misra, learned counsel for the petitioners while responding to the said submission has pointed out that Section 6 of the Societies Registration Act is quite clear and if the same is read with clause 10 (4) of the by-laws, it would clearly indicate that the Secretary is authorized to file the petition in terms of the by-laws as well as in terms of Section 6, hence there is no requirement to file any separate authorization.

10. Learned counsel for the parties have filed certain decisions of this Court and the Apex Court in support of their respective submissions.

11. Having considered the preliminary objections raised by the counsel for the private respondents and the response of the learned counsel for the petitioners, this Court before dealing with the same is of the view that an opportunity must be made available to the petitioners that in case if they do feel appropriate, they may file any authorization if they so wish before the next date fixed. "

8. In furtherance of the aforesaid order, counsel for the petitioners filed a supplementary affidavit bringing on record the notice, the agenda as well as the Resolution which was passed authorizing the Secretary to file and prosecute the instant petition.

9. In this context, Sri Abhishek Singh learned counsel appearing for the respondent no.5 has further objected to the supplementary affidavit and submitted that the mere fact that the Resolution which has been brought on record by the petitioners along with supplementary affidavit is dated 08.04.2025 in itself is indicative of the fact that the petitioners duly acknowledge that authorization in favour of the Secretary was necessary prior to the filing of the petition or atleast by the time the petition came to be filed and since on the date of filing of the petition the Resolution was not there which came to be passed only on 08.04.2025 hence, the Secretary, did not have the authority to institute the writ petition, hence, the petition apparently is defective and deserves to be dismissed at this threshold.

10. Sri Abhishek Singh learned counsel in support of his submissions for sustaining the preliminary objections has relied upon a decision of a coordinate Bench of this Court in Baba Bariyar Shah Memorial Association v State of U.P. and Ors in Misc

Single no.1316 of 2016 decided on 15.03.2019. It is urged by Sri Abhishek Singh that the facts of the instant case are quite similar to the case in Baba Bariyar Shah (supra) wherein preliminary objection regarding the authority of the Secretary in absence of a Resolution was held to be fatal and the writ petition was held to be non maintainable and on the same parity the instant petition also deserves to be dismissed while upholding the preliminary objections.

11. The Court has considered the rival submissions and also perused the material available on record.

12. At the outset, it may be noticed that the Society i.e. petitioner no.1 as per its bye-laws can sue and be sued through its Secretary. It is also relevant to notice that the last Committee of Management/Society which was in control of the affairs of the Society was represented by Sri Syed Mohammad Athar Nabi who is styled as the Secretary and through him the Society has been impleaded as petitioner no.1 while Sri Syed Mohammad Athar Nabi is impleaded as the petitioner no.2.

13. In the instant petition, challenge is laid to the order passed by the Deputy Registrar, Firms Societies and Chits Lucknow dated 19.12.2024 whereby it has decided an issue regarding membership. In this background, apparently, the Society as per its bye-laws is permitted to sue or be sued in the name of the Secretary as per Clause 10(4) of the bye-laws.

14. However, the contention has been raised by the private respondents that it only permits the Society to sue or be sued through its Secretary but in order to sue or be sued the Society must first pass a Resolution and in the instant case since the Resolution was not present on the date of filing of the petition, hence, the petition in itself is incompetent. It has also been contended that by filing Resolution dated 08.04.2025, it indicates that on the date of filing of the petition the authority was not there and this defect cannot be cured at a subsequent stage by bringing Resolution dated 08.04.2025 on record, while it is also against the pleading of the petitioner made in para 47 of the petition.

15. Learned counsel for the petitioners while refuting the submissions of the private respondents has also raised an issue that the manner in which Clause 10(4) has been incorporated in the bye-laws it indicates that the prior approval of the Committee of Management is required only in a case where the Society is required to contest the proceedings but no such prior approval is required in a case where the Society has to institute proceedings, in as much as, the bye-laws itself authorize the Secretary.

16. As far as the aforesaid interpretation is concerned that may not detain this Court, at this stage. However, the fact remains that the Society is to be sued or be sued through its Secretary. It is not disputed that the Secretary has instituted the petition on behalf of the Society but it is equally true that as per the bye- laws the Society

must authorize the Secretary to institute the proceedings. The reliance placed on Section 6 of the Societies Registration Act does not in any manner suggests that the Secretary on its own may file any proceedings on behalf of the Society merely because in terms of Section 6, he is treated as one of the Principal officers of the Society. All what Section 6 indicates is the fact that the Society or a trust is to be sued through its Principal Officers who may be the Chairman, President, Secretary or other persons called by any other designation unless there is any contrary indication in the bye-laws of the Society. In absence of any clear reference in the bye-laws indicating or conferring power on any officer to represent the Society or in absence of the availability or the willingness of the President, Chairman or Secretary of such a Society only then such other person can institute the proceedings who is duly authorized by the Committee of Management/Society.

17. In the instant case, the bye-laws of the Society clearly confers power on the Secretary to represent the Society in legal matters, if that be so and the instant petition has been filed through the Secretary it cannot be held, at this stage, that the petition has been instituted by an incompetent person who is not authorized.

18. However, whether prior approval is required that is a question of fact that needs to be considered. In the instant case, this Court finds that a Resolution has been brought on record dated 08.04.2025 which authorizes the Secretary to continue with the petition. Upon perusal of the said resolution, it appears to be more in the nature of a ratification approving the act of institution of the writ petition by the Secretary.

19. It may be true that the said Resolution dated 08.04.2025, it can give rise to an explicit inference that on the date of filing of the writ petition the Resolution was not there. However, it is equally true that even if an act has been done by a person who prima facie is authorized under bye-laws to represent the Society then without bringing on record any contrary material that the said Secretary was not authorized, an inference holding that the petition was not competent cannot be arrived at.

20. It is for the said reason that this Court after noticing para-47 of the writ petition wherein it was averred that in terms of the bye-laws of the Society, the Secretary is permanently authorized to file the cases on behalf of the Society and the Secretary was authorized by the members through its Resolution to contest the cases in the interest of Society that the Court in its order dated 27.03.2025 had granted time to the petitioners to bring on record any Resolution if available. It is in furtherance thereof that the Resolution dated 08.04.2025 was brought on record which as already observed hereinabove is more in the nature of ratification of the act of the Secretary rather than to authorize the Secretary for a first time to institute the petition.

21. This issue can also be seen from another angle and that is once the Society which is represented through its Committee of Management/Society may have instituted a

petition without there being a formal authorization, however, upon being questioned in this regard if the Society files a Resolution may be of a subsequent date then the issue that requires consideration is whether a post facto approval can be given to such an act by Committee of Management/Society or not.

22. From a bare perusal of the Resolution which has been brought on record by the petitioners, it reflects that the issue regarding the life membership which was decided by the Deputy Registrar of Societies has been challenged before the High Court in a petition and even though as per bye-laws the Secretary is fully authorized to represent the Society and it is reiterated that the members/Society, by majority, authorizes the Secretary to continue with the said petition.

23. This reflects the will of the members/Society to support the action of the Society represented through its Secretary to contest the proceedings. Even though this Resolution is dated 08.04.2025, much after filing of the writ petition ie on 17.03.2025 but the fact remains that the person before this Court is the Secretary who is representing the Society and as per the bye-laws, Secretary is the competent authority to institute the proceedings, to that extent the institution of the petition cannot be faulted.

24. Whether the Resolution was necessarily to be passed before institution of the petition or a subsequent Resolution could cure the initial defect can be considered as ratification by the Committee of Management/Society of an action taken on behalf of the Society which may be irregular.

25. The word 'ratification' in itself implies that an initial defect is cured and to that extent in proceedings such as a writ petition a hyper technical view may not be desirable to defeat the rights of a juristic person who is represented by its alter ego.

26. Once the Committee has ratified the act of institution of the petition any irregularity in filing the petition, if any, stands cured. This Court is fortified in its view in light of the decision of the Apex Court in Maharashtra State Mining Corporation Vs. Sunil S/o Pundikarao Pathak; (2006) 5 SCC 96 held as under:

"7. The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently 'rectified' by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim 'Ratihabitio priori mandato aequiparatur' namely 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore ratification assumes an invalid act which is retrospectively validated. [See P. Ramanatha Aiyar's Advanced Law Lexicon, (2005) Vol. 4, p. 3939 et seq.]

8. In *Parmeshwari Prasad Gupta* [(1973) 2 SCC 543] the services of the General Manager of a company had been terminated by the Chairman of the Board of Directors pursuant to a resolution taken by the Board at a meeting. It was not disputed that that meeting had been improperly held and consequently the resolution passed terminating the services of the General Manager was invalid. However, a subsequent meeting had been held by the Board of Directors affirming the earlier resolution. The subsequent meeting had been properly convened. The Court held: (SCC pp.546-47, para 14) "Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953".

The view expressed has been recently approved in the case of *High Court of Judicature for Rajasthan V. P.P. Singh* [(2003) 4 SCC 239 : 2003 SCC (L & S) 424], [See also *Claude-Lila Parulekar v. Sakal Papers (P) Ltd.* (2005) 11 SCC 73.]"

27. In *National Institute of Technology and another v. Panna Lal Chaudhary and another*; (2015) 11 SCC 669 noticing the earlier decision of *Parmeshwari Prasad Gupta v. Union of India*; (1973) 2 SCC 543 and *High Court of Judicature for Rajasthan v. P.P. Singh*; (2003) 4 SCC 239 (supra), the Apex Court in Paragraphs 29 to 33 of *Panna Lal Chaudhary* (supra) has held as under:-

"29. The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.

30. The expression "ratification" was succinctly defined by the English Court in one old case, *Hartman v. Hornsby* [*Hartman v. Hornsby*, 142 Mo 368 : 44 SW 242 at p. 244 (1897)] as under:

"Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."

31. The law of ratification was applied by this Court in *Parmeshwari Prasad Gupta v. Union of India* [*Parmeshwari Prasad Gupta v. Union of India*, (1973) 2 SCC 543]. In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held : (SCC pp. 546-47, para 14) "14. ... Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953."

This view was approved by this Court in *High Court of Judicature of Rajasthan v. P.P. Singh* [*High Court of Judicature of Rajasthan v. P.P. Singh*, (2003) 4 SCC 239 : 2003 SCC (L&S) 424].

32. The aforesaid principle of law of ratification was again applied by this Court in *Maharashtra State Mining Corpn. v. Sunil* [*Maharashtra State Mining Corpn. v. Sunil*, (2006) 5 SCC 96 : 2006 SCC (L&S) 926]. In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs. 4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs. 1900 p.m. The respondent at the relevant time was drawing more than Rs. 1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held [*Sunil v. Maharashtra State Mining Corpn.*, 2005 SCC OnLine Bom 758 : (2006) 1 Mah LJ 495] the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Ruma Pal, J. speaking for the three-Judge Bench, while allowing the appeal and setting aside the order of the High Court held as under: (*Sunil case* [*Maharashtra State Mining Corpn. v. Sunil*, (2006) 5 SCC 96 : 2006 SCC (L&S) 926], SCC pp. 96g-h & 97a-b) "The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently 'rectified' by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio*

mandato aequiparatur, namely, 'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore, ratification assumes an invalid act which is retrospectively validated.

*** In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it."

33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8-1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16-8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules."

28. In so far as the reliance placed by Sri Abhishek Singh on a decision of a coordinate Bench of this Court in Baba Bariyar Shah (supra) is concerned, suffice to state that this Court finds that the said decision has been rendered on the basis of its own facts and there was never any issue regarding ratification of the act of the office bearers/Committee of Management nor this aspect was considered in the said decision hence the proposition therein may not come to the rescue of the private respondents.

29. In this regard it will be relevant to notice that ratio of a judgment is binding. However, when there is difference in the facts of two cases it may making great difference in the precedent value of such a decision.

30. Similarly, the decision cited by the learned counsel for the private respondent in Baba Hulasi Das Shiksha Sansthan Thru Its Manager & Another v Deputy Registrar, Firms, Societies & Chits Lucknow Region & Anr in Misc. Single No.2694 of 2013 decided on 02.05.2013 and in Saraswati Vidya Mandir v State of Uttar Pradesh; 2003 3 AWC 1917 are not applicable to the extent as their facts differ from the facts of this case.

31. In this regard this Court is fortified in its view in terms of the decision of the Apex Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd and others, (2003) 2 SCC 111 held as under:

"59.A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v Union of India [AIR 2002 Del 458 (FB)] ,Delhi Admn.

(NCT of Delhi)v. Manohar Lal [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088] ,Haryana Financial Corpn. v.Jagdamba Oil Mills[(2002) 3 SCC 496 : JT (2002) 1 SC 482] and Nalini Mahajan (Dr)v Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)] .]"

32. In light of the aforesaid, this Court is of the clear view that the petition cannot be said to be bad for want of Resolution, specially, when it has been filed by the Secretary and any defect of prior approval by the Society stands rectified by the Resolution dated 08.04.2025. The preliminary objection raised by the private respondent stands overruled.

33. Having held that, this Court hastens to add that any observation made herein may not be treated as an expression of opinion on merits and are only prima facie observation to adjudge the issue of maintainability. All plea on merits are left open at this stage.

34. The matter shall be listed on 5th May, 2025 as fresh and in the meantime, it will be open for the private respondents to file their response on merits of the petition.

Order Date :- 28.04.2025 Harshita