

Case :- WRIT - C No. - 46652 of 2012

Petitioner :- Maharashtra Shikshan Mandal Jhansi And Another
Respondent :- State Of U.P. Thru Secy. And Others
Counsel for Petitioner :- G.K. Singh, G.K. Malviya
Counsel for Respondent :- C.S.C., Akank Jain

Hon. Pankaj Mithal, J.

The dispute in this writ petition is with regard to membership of the Society Maharashtra Shikshan Mandal Jhansi which is registered under the Societies Registration Act, 1860 (hereinafter referred to as the 'Act').

The petitioner society through its Secretary and its Secretary have jointly preferred this writ petition challenging the order dated 30.6.2012 (annexure 12 to the writ petition) passed by the Assistant Registrar, Firms Societies and Chits and the consequential order dated 29.8.2012 passed by the District Inspector of Schools (in short DIOS) annexure 13 to the writ petition.

In short, the dispute is about the 7 persons (Respondents no. 4 to 10) who have been directed to be included in the list of members of the Society by the Assistant Registrar even though the membership of these 7 members and 8 others was never accepted by the Society.

The society is registered and is having its own bye-laws. The bye-laws provide for ordinary membership to Marathi knowing persons aged above 18 years, if they pay Rs. 2/- only annually. Any such person who pays Rs. 101/- or more would be the life member of the society. In other words, a Marathi knowing person of 18 years and paying Rs. 101/- and more would be the life member of the Society.

Some of the life members of the society died and there were large vacancies. Therefore, the society decided to enrol new members. The applications were invited between 8.3.2010 to 18.3.2011. About 37 applications were received. The said applications were placed before the Managing Committee of the Society in its meeting held on 22.3.2011. The Managing Committee resolved that the ordinary membership should not be allowed to unmarried boys and girls who are not earning and that it should be open to persons who are graduates but no final decision on the applications so received was taken and the matter was referred to the general body of the Society. The Society in its meeting held on 22.4.2011 considered all the 37 applications received for the membership and decided to accept the

membership of only 22 persons and no resolution was passed in respect of the remaining 15 applicants. These 15 applicants made a complaint before the Assistant Registrar who without interfering with the decision of the Society passed an order on 18.2.2012 that as the term of the Managing Committee of the society is over fresh elections of its office bearers be held under Section 25 (2) of the Act and appointed DIOS, Jhansi for the purpose.

The Assistant Registrar vide letter dated 27.3.2012 addressed to the DIOS sent a list of 89 members of the Society. The said list included 7 persons whose applications for membership were not accepted by the Society along with 8 other applicants.

The DIOS in response to it sent a letter dated 11.5.2012 to the Assistant Registrar informing him that the names of the above 7 persons have not been accepted by the Society, they are not in the list and their drafts of membership fee have already been returned by the Society. The Assistant Registrar on receiving the above letter of the DIOS passed an order dated 21.5.2012 directing him to hold the elections of the society on the basis of the list of 89 persons/members as submitted by him.

The above order of the Assistant Registrar dated 21.5.2012 and the letter dated 27.3.2012 were challenged by the petitioners by filing writ petition no. 28022 of 2012. The writ petition was allowed by the High Court vide judgment and order dated 30.5.2012 and the order of the Assistant Registrar dated 21st May 2012 was quashed. He was directed to decide about the legality of the enrolment of the disputed 7 persons as members of the Society in the light of the objections of the DIOS contained in his letter dated 11.5.2012.

It is in pursuance of the above order of the High Court that the Assistant Registrar has passed the impugned order dated 30.6.2012. He has held that as all the 37 applicants were eligible for the membership of the Society, they all are entitle to be enrolled as members and their applications were not liable to be rejected and thus issued directions to give membership to all of them.

I have heard Sri G.K. Singh, Senior counsel assisted by Sri G.K. Malaviya, learned counsel for the petitioners, learned Standing counsel for respondents no. 1 to 3 and Sri H.N. Singh, Senior counsel assisted by Sri Aklank Jain, learned counsel for respondents no. 4 to 10.

The main plank of the argument of learned counsel for the petitioners is that the membership can not be thrust upon the Society. The Society can not be compelled to make all persons who are eligible and have applied for membership, the members of the Society. The Assistant Registrar has no authority of law under the Act to pass an order directing the Society to give

membership to those who have not been accepted as members by the Society.

Sri H.N.Singh on the other hand contends that the order impugned has been passed pursuant to the directions of the Court. The aforesaid 7 persons fulfil all the requisite qualifications for the membership of the Society as laid down under the bye-laws. Any resolution of the Managing Committee laying down any further condition restricting membership is not valid. The Society has acted in an arbitrary and discriminatory manner in accepting the membership of few persons and rejecting that of others including the aforesaid 7 persons. The Assistant Registrar is competent to decide about the dispute of membership of the Society.

The bye-laws of the Society are annexure 1 to the petition. They provide that any Marathi knowing person aged 18 years and above and paying Rs. 2 annually can be enrolled as ordinary member of the Society and that any such person who pays Rs. 101/- and more would be enrolled as a life member. The aforesaid bye-laws have not been amended. It is not in dispute that in pursuance of resolution of the Society inviting applications for enrolment of new members, only 37 applications were received in time and out of the said 37 applications, only 22 were accepted in the meeting dated 22.4.2011. There was no resolution or any decision to accept the other 15 applications including 7 in dispute as members of the Society. No other resolution of the Society is on record which may establish that the applications of the said 7 persons were accepted to enrol them as members of the Society.

The right to form Associations guaranteed under Article 19 (1) (c) of the Constitution of India though fundamental but does not inheres in a person a right to become a member of any Association in existence by force or against the wishes of its existing members. Thus, no person has any vested or a fundamental right to become a member of a Society merely for the reason that he fulfils the eligibility conditions unless he is accepted to be a member by the Society itself.

In *State of U.P. And another Vs. C.O.D. Chheoki Employees Cooperative Society Limited and others (1997) 3 SCC 681* it has been held that no citizen has a fundamental right under Article 19 (1) (c) of the Constitution to become a member of a co-operative Society even on fulfilment of the qualifications prescribed to become a member unless he is admitted to the membership.

The ratio of the above decision is that mere eligibility is not sufficient to become a member of a Society or Association unless a person is admitted to the membership by the Association/Society in a voluntary manner.

In *Smt. Damyanti Naranga Vs. Union of India and others 1971 (1)*

SCC 678 the Constitution Bench of 5 Judges while considering the right of the citizens to form association or Union under Article 19 (1) (c) of the Constitution held that freedom of association includes right to associate with persons of one's choice. It was held that right to form an association, in the opinion of the Court necessarily implies that the persons who form the association have also the right to continue to be associated with only those, whom they voluntarily admit in the association.

In view of the above legal position no person even if he is eligible and qualified to be member of a Society has any right to be admitted as member until and unless the persons forming the association or running the same voluntarily accepts him to be a member. The aforesaid 7 persons have not been accepted to be members of the Society by its Managing Committee or the general body. Thus, they can not be thrust upon the Society as members.

The second aspect which requires consideration is if the Assistant Registrar is competent to direct the Society to give membership to the above 7 persons or not.

Sri H.N. Singh in this connection has placed reliance upon the Division Bench decision of this Court in case of ***Jamia Razviya Merajul Uloom, Chilmapur, Gorakhpur and another Vs. State of U.P. and others 2010 (10) ADJ 84 (DB)***. It is a case relating to the powers of the Registrar/Assistant Registrar in relation to the elections of the Managing committee of the Society. The Court held that as the matter before the Registrar/Assistant Registrar is only in connection with membership, the dispute in that regard is not referable under Section 25 of the Act to the prescribed authority rather could be decided by the Registrar/Assistant Registrar himself in exercise of powers vested under Section 4 of the Act. The Court relying upon a previous decision of the ***Committee of Management, Kisan Shiksha Sadan, Banksahi, District Basti and another Vs. Assistant Registrar, Firms Societies and chits, Gorakhpur Region, Gorakhpur and another (1995) 2 UPLBEC 1242*** held that the ratio of the aforesaid judgment is that where there is a dispute of membership of person to a Society, even the Registrar/Assistant Registrar who maintains the list of members under Section 4 of the Act can apply his mind to the facts of the case and declare if the person is a valid member or not.

The aforesaid decision lays down that under Section 4 of the Act as the Registrar/Assistant Registrar is vested with the power to maintain the list of members of the Society, in case any dispute of membership is raised before him, he can rule if a person is a valid member of the Society or not.

The aforesaid decision is not a decision on the point that the Registrar/Assistant Registrar is competent and have any authority in law to

issue directions to the Society to give membership to any person. His powers are confined only with regard to adjudication of the validity of the membership.

In the instant case, the validity of the members of the Society was not in dispute rather the complaint was that the 7 persons were arbitrarily left out from being enrolled as members of the Society.

The order of the High Court dated 30.5.2012 passed in Writ Petition No. 28022 of 2012 also does not confer any power upon the Registrar/Assistant Registrar to decide if the said 7 persons are entitled to be enrolled as members. It only directs to adjudicate about the validity of the members of the Society. In deciding the validity of the membership, the Assistant Registrar was not possessed of any power to rule about the persons who were never accepted as members. He could have only decided if the existing members have been legally enrolled or if any of the them has been illegally thrown out.

In ***Tej Pal Singh and others Vs. State of U.P. And others 2013 (10) ADJ 446*** his Lordship of this Court seized of a similar controversy observed that the authorities can not thrust upon the Society new members against their wishes as it would clearly be an infringement of the right possessed by the existing members to enrol new members.

The Registrar/Assistant Registrar has no jurisdiction under law or even under Section 4 of the Act to direct for inducting any person as a member who has not been accepted by the Society for any reason even though may be qualified.

It was not the grievance of the respondents that membership was granted to them but they were ousted in an illegal manner. The membership of other persons who were enrolled was not in question.

In view of the aforesaid facts and circumstances, the impugned order of the Assistant Registrar is patently without jurisdiction and amounts to compelling the Society to make members against its wishes or the wishes of those members who have formed the Society or are running it which is not legally permissible.

In ***Committee of Management Maharana Pratap Vidyalyaya Prabandh Samiti Bhadwara, Kanpur and another Vs. State of U.P. And others 2013 (10) ADJ 532*** a division Bench of this court considering the general propositions relating to the elections, in context with the elections of the Committee of Management of educational institutions held that any grievance with regard to electoral roll could be considered after the elections are held in accordance with law or by filing civil suit.

The ratio of the above decision is that a dispute of membership/electoral roll of any organization is not open to challenge before the elections and if necessary, could be challenged after the elections are over or by filing a civil suit. The 7 persons who have been denied membership of the Society could have taken recourse to the civil suit but the Assistant Registrar could not have usurped the jurisdiction to direct the Society for giving membership to them. Such a direction is even contrary to the bye laws of the Society.

In view of the above facts and circumstances, the impugned order dated 30.6.2012 passed by the Assistant registrar is held to be without jurisdiction and is quashed. The consequential order of the DIOS dated 29.8.2012 also falls to the ground.

The writ petition stands allowed with no orders as to costs.

SKS

December 10 , 2015.