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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

JAIN DHARM PARVARDHANI SABHA DALIGAN LKO. & ANOTHER —
Appellant

Vs.

STATE OF U.P. THRU. PRIN. SECY. INSTITUTIONAL & ORS. 6131(M/S)15
— Respondent

(Before : Dhananjaya Yeshwant Chandrachud, C.J. and Narayan Shukla, J.)

Special Appeal No. 524 of 2015

Decided on : 02-11-2015

- Societies Registration Act, 1860 - Section 4B

A. Societies Registration Act, 1860 — Section 4-B (as inserted by U.P. Act 23 of 2013) — Applicability of — Mandate for Registrar to examine correctness of general body list at time of registration/renewal — Deputy Registrar's finding that Section 4-B was inapplicable held erroneous by Single Judge — Section 4-B became effective before society's registration was renewed, making it applicable — Correctness of Single Judge's finding regarding applicability upheld. (Paras 5, 6, 7)

B. Societies Registration Act, 1860 — Section 4-B — Interpretation and Remand — Propriety — When Deputy Registrar's view of non-applicability of Section 4-B found erroneous by Single Judge, it was improper for Single Judge to then deem Deputy Registrar's exercise as if conducted under Section 4-B — Once initial premise (non-applicability) was flawed, the entire exercise by Deputy Registrar could not be treated as compliant with the correct legal provision. (Paras 8, 10)

C. Societies Registration Act, 1860 — Section 4-B — Procedural Error and Remedy — Challenge to finalisation of membership list — Deputy Registrar incorrectly held Section 4-B inapplicable — Learned Single Judge correctly found error in applicability but wrongly proceeded to uphold the exercise as if compliant — Proper course of action was to set aside Deputy Registrar's order and remand for fresh consideration based on the correct interpretation of Section 4-B — Special appeal allowed in part, impugned judgment of Single Judge set aside in part, and proceedings remanded to Deputy Registrar for re-examination and finalisation of membership list under Section 4-B. (Paras 9, 10, 11)

Counsel for Appearing Parties

Sandeep Dixit and Vijay Dixit, Advocates, for the Appellant; C.S.C. and Apoorva Tewari, Advocate, for the Respondent

JUDGMENT

1. This special appeal has arisen from a judgment and order of the learned Single Judge dated 14 October 2015.
2. A body by the name of Sri Jain Dharm Parvardhani Sabha was initially registered under the Societies Registration Act, 1860 on 6 September 1972. The registration of the society was renewed on 24 September 1996 with effect from 10 October 1985 and was valid until 9 October 2000. Thereafter, after the lapse of thirteen years, an application for renewal of the registration was filed on 27 November 2013 and the registration of the society was renewed on 31 December 2013. The appellants filed an application for recall of the order, which was rejected by the Deputy Registrar on 11 December 2014. The first Writ Petition No. 8222 (M/S) of 2014 was filed before a learned Single Judge for challenging that order. Thereafter, the Registrar passed another order on 23 January 2015 accepting the list of members of the Committee of Management and allowing the amendments in the bye-laws which was the subject matter of the second Writ Petition No. 1367 (M/S) of 2015. During the pendency of the writ petition, an interim order was passed directing the Registrar/Deputy Registrar to decide upon the rival lists in respect of members of the general body and to finalise the list of members within a stipulated period. The general body, as finalised by the Registrar/Deputy Registrar, was thereafter directed to hold elections.
3. After the order of this Court dated 1 April, 2015, the Deputy Registrar finalised the list of members of the general body on 20 July 2015. This order was set aside on 29 July 2015 in Writ Petition No.4335 (M/S) of 2015 on grounds of the violation of the principles of natural justice and the proceedings were remanded back. Thereafter, the Registrar passed a fresh order, which was impugned before the learned Single Judge. The judgment of the learned Single Judge dated 14 October 2015 having been rendered, this special appeal has

been filed.

4. The learned Single Judge dismissed the writ petition and issued directions for the Registrar/Deputy Registrar to call for a meeting of the general body within two weeks, so that the election programme could be rescheduled.

5. Section 4-B was introduced into the Societies Registration Act, 1860 by U.P. Act 23 of 2013 and came into force with effect from 9 October 2013. Section 4-B reads as follows:

"4-B. (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father's name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society."

6. The Deputy Registrar was of the view that the amended provisions of Section 4-B had no application. The relevant part of the observations of the Deputy Registrar read as follows:

"lkslkbVh vf/kfu;e esa lekfo"V fd;k x;k /kkjk&4 ch dk izkfo/kku o"kZ vDVwcj 2013 ls ykxw fd;k x;k gSA mijksDr foospuk ds vuqlkj laLFkk dh lk/kkj.k lHkk ds lnL;ksa ds fu/kkZj.k dk le; o"kZ 1972 ls o"kZ 2000 ds e/; bafxr fd;k x;k gSA vr,o lks0 jft0 vf/k0 1860 ds uohu vaxhd`r fd;s x;s /kkjk&4 ch ds izkfo/kku dks orZeku izdj.k esa ykxw fd;k tkuk mfpr ugha gksxk] D;ksafd mDr izkfo/kku ljdkjh xtV m0iz0 ds vlk/kkj.k xtV esa 9 vDVwcj 2013 dks izdkf`kr gS rFkk mDr izkfo/kku dk vuqefr fnukad 28 flrEcj 2013 dks egkefge jk"V~ifr }kjk iznku dh x;h gSA"

7. The learned Single Judge, in our view, rightly held that the Deputy Registrar erred in coming to the conclusion that Section 4-B had no application. Section 4-B provides that at the time of registration/renewal of a society, a list of members of the general body of the society shall be filed with the Registrar containing the stipulated particulars. The Registrar is mandated to examine the correctness of the list of members of the general body on the basis of the register of members, minutes book, cash book, receipt book of membership fee and bank pass book of the society. Hence, it is the time of the renewal of registration, which is material. The order for renewal of registration was passed on 31 December 2013 by which date, Section 4-B had already come into force on 9 October 2013. In this view of

the matter, the finding of the Deputy Registrar that Section 4-B would not be applicable was based on a complete misreading of the provisions of Section 4-B. The finding of the learned Single Judge is correct on the applicability of Section 4-B.

8. However, having held that the Deputy Registrar had failed to appreciate the provisions of Section 4-B correctly, the learned Single Judge came to the conclusion that the exercise which was carried out by the Registrar was on the basis of the provisions of Section 4-B and arrived at the following conclusion:

"I have no hesitation to hold that though the Registrar in the impugned order has stated that Section 4-B is not applicable in this case, however, the entire exercise conducted by him while passing the impugned order can safely be termed to be an exercise under Section 4-B."

9. The learned Single Judge then proceeded to deal with the merits of the allegations made by the appellants in regard to the list of members finalised by the Deputy Registrar and found no substance in the contention that out of a total 425 members, as finalized, as many as 70 persons were dead. On this basis, the learned Single Judge, after recording a finding on merits, dismissed the writ petition.

10. We find merit in the contention of the learned counsel for the appellants that once the learned Single Judge held that the view of the Deputy Registrar on a construction of Section 4-B was erroneous, the appropriate direction would have been to set-aside the order of the Deputy Registrar and remand the proceedings back for a fresh consideration. On the face of the record, it is clear that the Deputy Registrar took a view that Section 4-B was not attracted. This view was held to be erroneous by the learned Single Judge. That being the position, it was not appropriate or proper for the learned Single Judge to hold that the exercise which was carried out by the Deputy Registrar can safely be termed to be an exercise under Section 4-B.

11. Hence and for the reasons, which we have indicated, we allow the special appeal in part by setting side the impugned judgment and order of the learned Single Judge dated 14 October 2015 insofar as the learned Single Judge has dismissed the writ petition. The order passed by the Deputy Registrar dated 29 September 2015 shall, accordingly, stand set aside and the proceedings shall stand remanded back to the Deputy Registrar. On remand, the Deputy Registrar, shall examine and finalise the correctness of the list of members of the general body of the society in terms of the provisions of Section 4-B of the Societies Registration Act, 1860. This exercise shall be carried out by the Deputy Registrar within one month from the date of receipt of a certified copy of this order. The contesting parties shall appear before the Deputy Registrar for receiving directions and fixing a time schedule for the disposal of proceedings on 5 November 2015 and the Deputy Registrar shall conclude the proceedings no later than by 5 December 2015. Thereafter, steps shall be taken to convene a meeting of the general body, which shall be presided over by the Registrar or Deputy Registrar or any other Officer duly authorised, within two weeks and

the election programme shall be notified so that the elections shall be concluded preferably before 10 January 2016.

12. The special appeal is, accordingly, disposed of. There shall be no order as to costs.