

SUPREME COURT OF INDIA

Allahabad High School Society

Vs.

State of U.P. & Ors.

C.A.No.4329 of 2011

(P.Sathasivam and B.S.Chauhan,JJ.,)

12.05.2011

JUDGMENT

P.Sathasivam,J.,

SLP(Civil)No.9353 of 2011

1. I.A. No.4 - Application for impleadment is allowed.

2. Leave granted.

3. This appeal is directed against the judgment and final order dated 25.03.2011 passed by the Division Bench of the High Court of Judicature at Allahabad in Special Appeal No. 281 of 2011 whereby the Division Bench confirmed the order dated 22.02.2011 passed by the learned Single Judge and the order dated 24.07.2010 passed by the Assistant Registrar, Firms, Societies & Chits, Allahabad, who cancelled the proceedings related to amendments registered on 30.05.2007.

4. Brief facts:

“(a) The appellant-Allahabad High School Society (hereinafter referred to as "the Society") was established in the year 1861 and was registered on 09.02.1888 under the U.P. Societies Registration Act, 1860 (hereinafter referred to as "the Act"). According to the constitution of the Society, it was established and registered with the object to advance the cause of Christian education in Allahabad, according to the teaching of the Church of England as by law established, especially amongst the children of the European and Anglo-Indian population, in conformity with, and agreeably to, the provisions of the Rules of the Allahabad High Schools Society, 1952 (in short 'the Rules'). The memorandum of the Society contains various clauses which includes that the Society shall consist of the Bishop of Lucknow and of other

Members not exceeding 23, three of whom shall be respectively the Senior Chaplain for the time being of the Church of England at Allahabad, the Commissioner for the time being of the Allahabad Division and the Collector for the time being of the Allahabad District. The affairs of the Society shall be managed by all the Members of the Society that the Bishop of Lucknow, the Honorary Secretary and the Honorary Treasurer of the Society, shall have the authority to execute all contracts and deeds on behalf of the Society. The management of the Girls' School shall be conducted by a Standing Committee of all the lady Members of the Society and the management of the Boys' School shall be conducted by a Standing Committee of all the men who are Members of the Society. These Schools shall be subject to the inspection of the Government and of the Diocesan Council and make such returns as may be required by the Diocesan Council from time to time.

(b) On 28.05.2007, Rules, Constitution and Bye-laws of the Society, in question, were amended, which were registered on 30.05.2007 and the above-said information was also communicated to the Assistant Registrar, Firms, Societies & Chits, Allahabad. Since several objections were raised about the amendments made on 28.05.2007, the Assistant Registrar, who is the competent authority under the Act, after analyzing all the materials with reference to various clauses of memorandum, had concluded that the amendments were made arbitrarily, unlawfully and without following the democratic process, and in contravention of the provisions of the Act and the Rules and, therefore, by order dated 24.07.2010, cancelled the registration of the proceedings related to amendments registered on 30.05.2007, under Section 12D(b) of the Act, in pursuance of notice issued under Section 12D(1) of the Act. In the same order, the Assistant Registrar issued direction to the Bishop, Diocese of Lucknow, who is an ex-officio member of the Society and Chairman of the Governing Body under the Rules, to convene a General Body Meeting, after informing all the Members about the present situation and circumstances and reasons regarding amendments to the Rules to comply with Rule 11 of the 1952 Rules and to form a Governing Body and present the same.

(c) The above order of the Assistant Registrar was challenged by the appellant-Society before the learned Single Judge of the High Court of Allahabad in Civil Misc. Writ Petition No. 46551 of 2010. The learned Single Judge, after going into the merits of the claim with reference to statutory provisions and all other relevant materials, vide his order dated 22.02.2011, confirmed the order passed by the Assistant Registrar and dismissed the writ petition filed by the Society.

(d) Aggrieved by the order of the learned Single Judge, the Society filed Special Appeal No. 281 of 2011 before the Division Bench of the High Court assailing the correctness of the judgment and order dated 22.02.2011. The Division Bench, after considering the rival claims and taking note of the basic and core objects of the Society to impart Christian education in Allahabad and neighbouring areas, by judgment and order dated 25.03.2011, confirmed the orders passed by the learned

Single Judge and the Assistant Registrar, consequently, dismissed the special appeal being devoid of any merits. The said order is under challenge in this appeal by way of special leave.

5. Heard Mr. C.S. Vaidyanathan, learned senior counsel for the appellant-Society, Mr. R. Venkataramani, learned senior counsel for respondent No.3 and Mr. T.P. Singh, learned senior counsel for the impleaded party.

6. In view of the various proceedings, orders by the authorities under the Act and the decision of the learned Single Judge, the Division Bench and this Court after taking note of the fact that the Assistant Registrar had issued a direction to the Chairman of the Governing Body to convene a fresh General Body Meeting after notifying all the Members about the present situation and circumstances and reasons as per the Rules and take a fresh decision regarding amendments to the Rules, we are of the view that it is not necessary to refer all those factual details and earlier orders.

7. The points for consideration in this appeal are whether the Assistant Registrar was justified in cancelling the amendments and permitting the Chairman, Governing Body, to convene fresh meeting and take a decision as per the Rules and whether the learned Single Judge and the Division Bench of the High Court have committed any error in confirming the said order?

8. It is not in dispute that the Assistant Registrar of the Society issued certain show cause notices to the appellants which were challenged by filing Civil Misc. Writ Petition No. 9598 of 2010. When notices dated 02.02.2010 and 11.02.2010 were issued to the Society, they filed the said writ petition praying for issuance of a writ in the nature of certiorari for quashing the same. The High Court, after finding that it would be appropriate to adjudicate the matter by the relevant authority on the basis of relevant records whether the amendments made in the bye-laws by the appellants were valid or not and whether the object of the Society meaning in the initial bye-laws has been changed or not or whether it is against public policy, all these have to be adjudicated on the basis of the show cause notices and it will be inappropriate to go into the correctness of the same at this stage, dismissed the writ petition vide order dated 16.04.2010 as not maintainable and directed the Registrar to decide the dispute between the parties after affording opportunity to the appellants as well as the respondents-objectors.

9. The appellants, not satisfied with the above order of the learned Single Judge, filed Special Appeal No. 615 of 2010 before the Division Bench which was dismissed on 20.05.2010 observing that there was a fraud, manipulation and documents have been forged.

10. The following discussion and conclusion of the Division Bench about Mr. C.V. Innis, functioning as Secretary of the Society are relevant:

"Mr. Cedric Valentine Innis, was born on 18.09.1948. He is a CNI CHRISTIAN (Anglo-Indian). He was appointed as Principal of the BHS on 12.01.1988 by the

Chairman of the Society/The Bishop of Lucknow, Diocese of Lucknow, C.N.I. He took charge on 15.03.1988. He was confirmed after one year w.e.f. 15.03.1989. At the time of his appointment as Principal the age of superannuation of Principal BHS had already been enhanced from 58 years to 60 years. The age of superannuation was enhanced on the recommendation of Diocesan Education Board which had resolved on 10.01.1985 to fix the retirement age of the Principals of the English medium Schools, governed by the Anglo-Indian Education Code, of the Diocese of Lucknow to sixty years. The proviso permitted yearly extensions up to a maximum of five years. The Society in the Governing Body meeting held on 12.12.1985 accepted and adopted the Diocesan Education Board Resolution dated 10.01.1985. The Predecessor of Mr. C.V. Innis, retired at the age of 60 years. The age of superannuation of the teaching staff was enhanced in the meeting dated 23.11.2006 from 58 years to 62 years. In the proceedings of the meeting dated 23.11.2006, it had not been mentioned as to whether the meeting was a Governing Body Meeting or an Annual General Meeting. There was no agenda for enhancing the age of superannuation. The proceedings of the meeting dated 23.11.2006 filed as Annexure SRA-II at Page 70 is a forged document as it mentions enhancement in age of superannuation of management staff and non-teaching staff whereas in the original proceedings of 23.11.2006 produced by the counsel for the appellant only the age of superannuation of the teaching staff had been enhanced. A question arises that what was the need for forgery for enhancing the age of superannuation. The answer appears to be simple. The appellants wanted to hide under the carpet that Principal's age of superannuation had already been enhanced by the Society on 12.12.1985 and they wanted to hide the control of Diocese of Lucknow. From the aforesaid discussion, it appears that the meeting dated 23.11.2006 was illegal being in violation of Rule 11 and in such a meeting age of superannuation could not be enhanced. The enhancement made in the meeting dated 23.11.2006 would not confer any right on Mr. C.V. Innis the Principal of BHS. His age of superannuation was 60 years and there being no material on record about any extension of service granted to him, it appears that he retired from the post of Principal of BHS in September, 2008."

11. Against the dismissal of the Special Appeal No. 615 of 2010, the Society approached this Court by way of special leave petition and the same was dismissed vide order dated 15.06.2010 with an observation that the Assistant Registrar is free to pass an order on merits including the question of jurisdiction in accordance with law.

12. With this background, we have to verify whether the order of the Assistant Registrar dated 24.07.2010 holding that all the proceedings were illegal/frivolous or not. The Assistant Registrar, in his order, has also held that the Members of the Society had died prior to 1997 and there was manipulation in the record. It is pertinent to refer the discussion and ultimate conclusion by the Assistant Registrar which reads as under:

"After going through the complaints pertaining to the amendment made by the Bishop and other people, evidence and documents presented as had been mentioned above, proceedings for bringing fraudulent amendments are found to be contrary to the

registered bye laws as well as directions given by the Assistant Registrar to comply with the provisions of the Societies Registration Act, 1860. In spite of several opportunities, the applicant has failed to prove the veracity and the genuineness of the proceedings. It is also obvious through the documents that neither list nor balance sheet has been produced regularly every year under Section 4(1) of the Act. From the documents produced, it is also clear that after complaints were made and information as sought regarding renewal, Shri C.V. Innes has sought to deposit the requisite fee under Section 3A(5) of the Act. In the list relating to managing committee as submitted, 15 lists have been submitted of members of the managing committee from the year 1977-78 to year 1997-98; in the said list 3 persons have been mentioned as occupying the post of Secretary; the reasons for the same are not clear. Along with the documents submitted, an affidavit of Shri C.V. Innes has also been submitted in which it is stated that all persons who were officers and members of the society prior to 1997 are dead. In such a situation it is not clear how the identity of the society continued to exist. If all the members were dead then it is not clear how new members were elected and whether they were elected under rules or not....."

Apart from this, the Assistant Registrar has also specifically concluded that the amendments to the proceedings were made arbitrarily, unlawfully and decisions were taken without following the democratic process and in contravention of the provisions of the Act and the Rules. After arriving at such factual conclusion based on appreciation of acceptable materials, the Assistant Registrar cancelled the registration of proceedings related to the amendments registered on 30.05.2007 under Section 12D(b) of the Act.

13. The said order of the Assistant Registrar dated 24.07.2010 was challenged in the writ petition which was dismissed by the learned Single Judge vide order dated 22.02.2011 pointing out that the alleged Secretary of the appellants Mr. Innis has no business to continue in the said post. It is apt and relevant to quote the following conclusion of the learned Single Judge which reads as under:

"Most surprising feature in the present case is that Secretary of the Society is no one else than the Principal of the institution himself. He has been nominated as Secretary by virtue of being ex-officio Member. In order to perpetuate himself in the society and in the institution being fully aware of the fact that he was going to attain the age of superannuation and his Secretary ship would also automatically come to an end, an attempt was made by him to get his age extended and on the strength of the same to continue as Secretary of the society. After attaining the age of superannuation, Principal of the institution is not at all entitled to continue as Secretary. Specific mention has been made that petitioner No. 2 was Secretary by virtue of being Principal, who happens to be ex-officio member, and once he attained the age of superannuation as Principal, then he could be elected as Secretary only when he was valid member of the society, but at no point of time he had ever been enrolled as valid member of the general body of the society. This specific statement of fact has not been disputed in the rejoinder affidavit. Once this is the factual situational in respect of status of petitioner No. 2 as Principal of the institution has already attained the age

of superannuation and this fact has not been substantiated before this Court as to in what way and manner he had been enrolled as member of the general body of the society, then legitimately petitioner No. 2 has no grievance. The Bishop who had accepted the request to act as Chairman along with petitioner No. 2 has already washed his sin, by resigning and submitting letter on 29.07.2010, regretting therein his deeds. These averments have been mentioned in paragraph 4(d) of the counter affidavit and said specific averments have not at all been replied."

14. It was also highlighted and demonstrated that there was no quorum in the meeting held on 28.05.2007 in which amendments had been carried out. It is seen that four Officers and five members of the Society were present in the meeting. One ex-officio member and four members were absent. There were total 14 (fourteen) members of the Society. In the Special General Meeting held on 28.05.2007 only nine members were present. Three quarter member of 14 members would be 10.5 members. Therefore, according to Rule 38 of the Rules, at least 10 members were required to be present at the Special General Meeting held on 28.05.2007. In the absence of quorum laid down by Rule 38, neither the amendments could be passed in the Special General Meeting of the Society nor could the amendments made be registered by the Assistant Registrar. The above details, as noted in the order of the learned Single Judge clearly show that there was no quorum in the meeting held on 28.05.2007 in which the amendments had been carried out.

15. It was also demonstrated that manipulations/manoeuvrings is writ large that Principal in connivance with the outgoing Bishop, in order to perpetuate themselves in the Society have made amendments for their benefit and to the disadvantage of the Society and therein Dioces Education Board and the Bishop have been deliberately kept at bay. After saying so, the learned Single Judge correctly concluded that in such a situation and in this background, any interference with the order of the Assistant Registrar would amount to perpetuating the illegality and subscribing to apparent illegality committed.

16. The above-said order of the learned Single Judge was challenged before the Division Bench by way of Special Appeal No. 281 of 2011 which was also dismissed on 25.03.2011. The Bench has also arrived at a conclusion that there was interpolation and forgery in the records. The basic feature of the Society along with its primary object had been altered by way of amendments to the Rules. The Division Bench has accepted that the Assistant Registrar had the jurisdiction not only to deal with the validity of the convening of the meeting but also to examine the import of the resolution regarding the amendments of the Rules. The Division Bench has also agreed with the conclusion that the appellant No. 2 was not a member of the Society but was holding the office of the Secretary by virtue of being the Principal of the Boys' High School, Allahabad.

17. The Division Bench has also accepted that the meetings in which the amendments were carried out had not been validly convened. The Division Bench has pointed out that the minutes of these three meetings have also been registered on 30.05.2007 by the Assistant Registrar and by the impugned order dated 24.07.2010, he cancelled the registration. Ultimately, the Division Bench has rightly concluded that all other proceedings had been

illegal and the meetings were in violation of the statutory provisions. The Division Bench, in view of its findings held that the meetings itself had not been validly convened as per the Rules of the Society and concluded that the orders passed by the Assistant Registrar and the learned Single Judge do not warrant any interference.

18. It is also brought to our notice that a criminal prosecution has also been lodged against the appellant No. 2 by filing an FIR dated 09.03.2010 in Crime No. 54 of 2010 under Sections 467, 468, 471, 420 and 409 IPC in which chargesheet has already been filed on 11.07.2010 and the court has also taken cognizance of the same.

19. In the light of the factual findings by the authority concerned-the Assistant Registrar, affirming the same by learned Single Judge and Division Bench, it is impermissible for this Court to exercise jurisdiction under Article 136 of the Constitution. It is relevant to point out that the Assistant Registrar, in his order dated 24.07.2010 itself permitted the Bishop, Diocese of Lucknow, who is an ex-officio member of the Society and Chairman of the Governing Body under the Rules, to convene a general body meeting after informing all the members about the present situation and circumstances and reasons, there is no valid ground for interference by this Court. Consequently, appeal fails and the same is dismissed.