

Court No. - 34

Case :- WRIT - C No. - 6391 of 2021

Petitioner :- Udai Pratap Education Society

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

Counsel for Petitioner :- Devansh Rathore,Gajendra Pratap Singh,Navin Sinha (Senior Adv.)

Counsel for Respondent :- C.S.C.,Santosh Kumar Mishra

Hon'ble Yashwant Varma,J.

Heard Sri Naveen Sinha learned Senior Counsel assisted by Sri Devansh Rathore for the petitioner, Sri S.K. Mishra for the third respondent, learned Standing Counsel alongwith Sri Manish Goyal learned Additional Advocate General who appears for respondent Nos. 1 and 2.

The respondents have taken a preliminary objection to the maintainability of the writ petition and contend that against the order passed and impugned here, an appeal would lie to the Commissioner in terms of the provisions made in Section 12D(2) of the Societies Registration Act 1860. Additionally it was submitted by Sri Goyal, learned Additional Advocate General, that the petition at the behest of the Society would not be maintainable since once the certificate of registration comes to be cancelled, it ceases to exist in the eyes of law.

Countering the aforesaid submission, Sri Sinha learned Senior Counsel submits that the order which is purported to have been made by virtue of powers conferred by Section 12D would not sustain since it is not shown to be based on any of the grounds on the basis of which the registration of a society may be lawfully cancelled. Sri Sinha submits that the order also fails to record any finding with respect to misrepresentation or fraud so as to bring it within the ambit of clause [c] of Section 12D of . In view of the aforesaid, it was submitted that since the order is clearly without jurisdiction, the objections are liable to be turned down.

Having heard learned counsel for parties, the Court finds force in the submission of Sri Sinha insofar as the objection of the petitioner being relegated to the alternative remedy of filing an appeal is concerned. Prima facie, the Court fails to find any definitive finding of misrepresentation or fraud having been rendered by the respondent. If that be the position and since the cancellation of registration is not urged to have been made on any other ground, the impugned order would clearly be rendered without jurisdiction.

Insofar as the submission of Sri Goyal as noted above is concerned, it would be pertinent to bear in mind that the registration of a society under the 1860 Act neither extends to that body the benefits nor confers the status of "*incorporation*" as generally understood in law and also does not bestow a society with a separate or legally distinct personality. It would therefore be incorrect to hold that the association of persons ceases to exist upon the certificate of registration being cancelled.

For the aforesaid reasons, the preliminary objections as raised are negatived.

Let all noticed respondents file a reply within a period of three weeks. The petitioner shall have two weeks thereafter to file rejoinder affidavit. Post on the expiry of the aforesaid period before the appropriate Court.

In the meanwhile and till the next date of listing, bearing in mind Annexures- 9, 10 and 11 which prima facie appear to establish compliance with the directions which were issued by the State Government for the purposes of creation of a new society, the impugned order of 29 January 2021 shall remain stayed.

Order Date :- 12.3.2021/faraz