

Court No. - 19

Case :- WRIT - C No. - 11104 of 2024

Petitioner :- Satpal Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Institutional Finance U.P. Lko. And 3 Others

Counsel for Petitioner :- Ankit Pande

Counsel for Respondent :- C.S.C.,Anand Mani Tripathi,Gaurav Mehrotra,Vivek Kumar Rai

Hon'ble Manish Mathur,J.

1. Heard Mr. R.S. Pandey learned Senior Counsel assisted by Mr. Virendra Bhatt, learned counsel for petitioner, learned State Counsel for opposite parties no.1 & 2 and Mr. Gaurav Mehrotra, learned counsel for opposite party no.4. Power on behalf of opposite party no.3 has been filed by Mr. A.M. Tripathi, Advocate earlier.

2. Learned counsel for petitioner is granted liberty to correct the array of opposite party no.4 during the course of day.

3. Petition has been filed challenging order dated 03.12.2024 whereby complaint raised by petitioner against election of opposite party no.4 on the post of President of Sri Guru Singh Sabha, Gurudwara Road, Naka Hindola, Lucknow through its Secretary has been rejected. Further prayer for a direction to concerned authority to refer the election dispute to the prescribed authority under Section 25 of Societies Registration Act, 1860 and for appointment of administrator for the society till disposal of election dispute has been sought.

4. Learned counsel for opposite party no.4 has raised a preliminary objection with regard to maintainability of this petition on the following grounds:-

(a) There is material concealment of fact inasmuch as petitioner has not disclosed that he also participated in the elections for the society.

(b) That the pleadings made in the complaint do not indicate any specific ground as required in Section 25 of the Act. Furthermore pleadings made in the complaint against elections pertained only to judgment and order dated 30.05.2016 passed in Writ-C No. 11200 of 2002, Shri Tulsi Smarak Samiti Rajapur and another versus District Magistrate, Chittrakook and others which is not applicable in the present facts and circumstances.

(c) That petitioner has not challenged the subsequent order dated 04.12.2024 whereby the list of governing body has been approved by the Deputy Registrar.

(d) That the complaint pertaining to elections dated 06.11.2024 challenge the entire governing body elections without impleading all the 15 Members elected and approved.

5. In response to the preliminary objection raised, learned counsel for petitioner has adverted to the complaint received in the office of Deputy Registrar on 18.11.2024 pertaining to elections of the governing body held on 06.11.2024. It is submitted that so far as first preliminary objection is concerned, the alleged concealment of fact is completely irrelevant and immaterial for purposes of the complaint so made since even otherwise the ground of estoppel would not be available and would also not affect the outcome of the complaint against elections.

6. With regard to second preliminary objections raised, it is submitted that a perusal of paragraphs 4 to 9 of the complaint clearly indicates the ineligibility of opposite party no.4 to be

elected as President of the Society. It is submitted that specific pleadings have been raised with regard to the fact that the entire process of elections including nomination, casting of vote and declaration of result has been done in just one day indicating mala fide on the part of authorities concerned. It is also submitted that in paragraphs 5 and 9 of the complaint, reliance has been placed on judgment and order dated 30.05.2016 passed by Division Bench of this Court whereby Government Officials such as opposite party no. 4 have been restrained from being a part of management of a society registered under the Societies Registration Act, 1860.

7. It is further submitted that the aforesaid ground taken also pertains to Rule 16 of the U.P. Government Servants Conduct and Rules, 1956 which specifically prohibits a Government servant to take part in a society having any financial transaction of such society and since petitioner being President of the Society would automatically take part in financial transactions of the society in terms of by laws of the society, such an election was barred.

8. With regard to non-joinder of necessary parties, it is submitted that although all the Members of the governing body have not been impleaded as opposite parties but nonetheless the Deputy Registrar upon complaint being made had granted opportunity of hearing to all concerned.

9. With regard to challenge to the approved list of the governing body dated 04.12.2024, it is submitted that once the main order passed by the Deputy Registrar whereby the list of governing body Members for the year 2024-25 has been approved under Section 4 of the Act, the subsequent approval being only consequential in nature, does not require to be challenged.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it appears that although there is no averment in the memorandum of petition that petitioner had also participated in the elections held on 06.11.2024 but in the considered opinion of this Court, such an alleged concealment of fact would be immaterial since it would not affect the outcome of complaint raised against the elections which is a statutory right vested in a Member of the general body and would not be barred by estoppel since there cannot be estoppel against statute.

11. With regard to the second preliminary objection raised, it is evident from a perusal of the complaint received in the office of Deputy Registrar on 18.11.2024 that in paragraph 4 thereof, the election has been challenged on the ground that the entire proceedings for election were undertaken in merely one day. However, learned counsel for petitioner has been unable to demonstrate any prohibition in the conduct of elections in the manner it was held as alleged. There does not appear to be any statutory provision or even any provision under the by laws governing the society concerned prohibiting such a procedure.

12. Section 25 of the Act of 1860 as applicable in the State of U.P. specifically provides the grounds on which the election of an office-bearer shall be set aside. It, therefore, necessarily follows that a complaint with regard to elections is to be made under Section 25 of the said Act in terms of the criteria indicated in proviso thereto. For ready reference, Section 25 of the Act is as follows:-

"25. Disputes regarding election of office-bearers.-(1) The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a Society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the

election or continuance in office of an office-bearer of such Society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied:

(a) that any corrupt practice has been committed by such office-bearer; or

(b) that the nomination of any candidate has been improperly rejected; or

(c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of any rules of the Society.

Explanation I. - A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person:

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate or any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election;

(ii) with a view to inducing any elector to give or to refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;

(iii) abets (within the meaning of the Indian Penal Code) the doing of any of the act specified in clauses (i) and (ii);

(iv) induces, or attempts to induce, a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the State Government may by rule

prescribe to be a corrupt practice.

Explanation II. - A, promise of individual advantage or profit to a person, includes a promise for the benefit of the person himself, or of any one in which he is interested.

Explanation III.-The State Government may prescribe the procedure for hearing any decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the Society.

(2) Where by an order made under sub-section (1), an election is set aside or an office-bearer is held no longer entitled to continue in office or where the Registrar is satisfied that any election of office-bearers of a Society has not been held within the time specified in the rules of that Society, he may call a meeting of the general body of such Society for electing such office-bearer or office-bearers, and such meeting shall be presided over and be conducted by the Registrar or by any officer authorised by him in this behalf, and the provisions in the rules of the Society relating to meetings and elections shall apply to such meeting and election with necessary modifications.

(3) Where a meeting is called by the Registrar under sub-section (2), no other meeting shall be called for the purpose of election by any other authority or by any person claiming to be an office-bearer of the Society.

Explanation. -For the purposes of this section, the expression "prescribed authority" means an officer or Court authorised in this behalf by the State Government by notification published in the official Gazette. -Vide U.P. Act 52 of 1975, Section 12 (w.e.f. 10.10.1975) and U.P. Act 13 of 1978, Section 4 (w.e.f. 27.2.1978)."

13. It is thus quite evident that the Deputy Registrar while considering the complaint was required to advert only to the pleadings specifically made in the complaint itself. It is noticeable that the complaint made seeks to prohibit the elected Members of the governing body of the society from functioning as such and therefore would be cog in the democratic process. It is settled law that complaints against election process or against

an elected representative is required to be particularly specific indicating grounds on which election can be challenged.

14. In the present case, in view of the prayer so made in the present petition as well requiring reference under Section 25 of the Act of 1860, the aspect of dispute regarding election of office bearers and the grounds on which such a reference can be made are specifically indicated under proviso to Section 25 (1) of the Act, 1860.

15. Upon comparison of provisions of Section 25 (1) of the Act of 1860 with the complaint so made against the elections held on 06.11.2024, it is evident that no specific pleading as required under proviso to Section 25 (1) of the Act has been made in the complaint which is completely vague in nature.

16. In the considered opinion of this Court, the Deputy Registrar is required to address the complaint in terms of grounds raised therein without assuming any ground which could have been taken by petitioner.

17. A perusal of the impugned order makes it evident that reference under Section 25 (1) of the Act has been declined primarily on the ground that applicant has not been able to substantiate his pleadings. Although a detailed analysis of the aspects raised in the complaint was desirable to have been indicated in the impugned order but nonetheless in view of observation of this Court made hereinabove, it is evident that no specific pleading as required in terms of proviso under Section 25 (1) of the Act of 1860 has been made by petitioner.

18. In view thereof, this Court does not find any occasion to interfere in the order impugned with regard to declining of reference under Section 25 (1) of the Act of 1860.

19. So far as the judgment and order dated 30.05.2016 passed by Division Bench of this Court is concerned, it is evident from a perusal of same that it pertained to Central Government employees and passed directions in terms of the All India Service (Conduct) Rules, 1968, specifically Rule 13 thereof. It is admitted between the parties that petitioner in fact is an employee of Dr. Ram Manohar Lohia Institute of Medical Sciences, which is a statutory body under the Act of 2015 and is not a Central Government employee.

20. It is, therefore, evident that the aforesaid judgment relied upon by petitioner is clearly inapplicable.

21. From a perusal of the complaint, it is also evident that there is no averment that the opposite party no.4 is prohibited under any by law applicable upon the society from being elected to management of the society. In fact the complaint also does not make any reference to incapacity of the opposite party no.4 for holding an elected post in the society even in terms of the U.P. Government Servants Conduct Rules, 1956.

22. With regard to other preliminary objections, it is also evident that although the entire elections held on 06.11.2024 pertaining to the Members of governing body has been challenged, none of the other Members except for the opposite party no.4 as President of the Society have been impleaded and therefore also the petition is liable to be dismissed for non-joinder of necessary parties. So far as the last preliminary objection is concerned, in view of finding recorded hereinabove, it is not necessary to advert to same particularly since order approving the general body list was consequential to the order impugned.

23. It is also evident from the impugned order that under

Section 25 (1) of the Act, two modes of challenging an election are provided with the first being a reference made by the Deputy Registrar to the prescribed authority and secondly, a reference being made by at least one fourth members of general body. In the instant case, the Deputy Registrar has declined to make a reference under Section 25 (1) of the Act on his own leaving it open to complainant to adopt the second method. No fault with such a direction can be found.

24. In view of aforesaid discussion, the preliminary objections pertaining to maintainability of this petition are upheld and the petition, therefore, is **dismissed**. Parties to bear their own cost.

Order Date :- 28.1.2025

Satish