



Reserved On: 9.9.2022
Delivered On : 20.10.2022

Case :- WRIT - C No. - 20203 of 2022

Petitioner :- Shree Arya Mahila Hitakarini Mahaparishad And Another

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

Counsel for Petitioner :- Shivendu Ojha, Dr. Pradeep Kumar Mishra, Sr. Advocate

Counsel for Respondent :- C.S.C., Jitendra Kumar Srivastava

Hon'ble Neeraj Tiwari, J.

Heard Mr. Radha Kant Ojha, learned Senior Advocate assisted by Sri Pradeep Kumar Mishra, learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Sri Gajendra Pratap Singh, learned Senior Advocate assisted by Sri J.K. Srivastava, learned counsel for the respondent no.3.

Present petitioner has been filed for quashing the impugned order dated 28.6.2022 passed by the Assistant Registrar, Firms Societies Evam Chits, Varanasi Mandal, Varanasi-respondent no.2 and further direct the respondent no.2 to refer the matter to the Prescribed Authority under Section 25(1) of Societies Registration Act, 1860.

Mr. Radha Kant Ojha, learned Senior Advocate appearing on behalf of petitioners submitted that there is society in the name of Shree Arya Mahila Hitakarini Mahaparishad Maharishi Swami Gyananand Marg, Lahurabir, Varanasi, which was established in the year 1919 and duly registered under the Societies Registration Act, 1860 (*hereinafter referred to as Act, 1860*). The functioning of society is governed by its own Memorandum of Association (*hereinafter referred to as MoA*) and Rules and Regulations of Shree Arya Mahila Hitakarini Mahaparishad (*hereinafter referred to as Rules and Regulations of Association*), which is duly amended from time to time. Rules 28 to 53 of Rules and

Regulations of Association deals with “Management” and Rules 54 to 65 of Rules and Regulations of Association deals with “The Executive Committee.” Rule 28 of Rules and Regulations of Association provides three bodies, namely:-

(i) All India Samarakshak Sabha (in short 'Samrakshak Sabha')

(ii) All India Council of the Association (in short 'All India Council')

(iii) Executive Committee of the Association. (in short 'Executive Committee').

The last undisputed elections of all three bodies were held in the year 2017, which was duly registered in the office of Assistant Registrar-respondent no.2 under Section 4 (1) of the Act, 1860 and accordingly for Samarakshak Sabha, Sri Arvind Agarwal elected as General President, Dr. Shashi Kant Dixit elected as Chief Secretary and Sri Hari Narayan Pandey elected as Joint Chief Secretary. For all India Council, Sri Satya Narayan Pandey elected as President, Sri Shashi Kant Dixit elected as General Secretary and Sri Vinod Kumar Pandey as Joint Secretary. For Executive Committee, Mr. Devi Prasad Dwivedi was elected as President and Satya Narayan Pandey was elected as Secretary. He next submitted that there is no dispute with regard to office bearers of all bodies of the election, 2017.

He further submitted that dispute arose when the certain members of general body has sent letter dated 14.10.2021 to Chief Secretary/General Secretary of Samarakshak Sabha and All India Council for preparation of electoral college, but respondent no.3 has not proceeded for finalizing the electoral college. Consequently, certain actions were taken against him. Petitioner no.2 in the capacity of President of All India Council, has written letter dated 26.10.2021 to respondent no.3-General Secretary pointing out certain issues about the membership. He further submitted that as per Rule 29 of Rules and

Regulations of Association, power to convene the meeting of the Samarakshak Sabha lies with the Chief Secretary, Joint Chief Secretary or on the request of at least seven members of Samarakshak Sabha in writing to the Chief Secretary.

Similarly for All India Council, power to convene the meeting lies with Chief Secretary or the Joint Secretary or any office bearers of the Executive Committee. As respondent no.3 was not convening the meeting, therefore, Sri Hari Narayan Pandey, Joint Chief Secretary of Samrakshak Sabha has issued notice dated 15.11.2021 for calling the meeting on 29.11.2021, which was cancelled by the respondent no.3 vide letter dated 16.11.2021 and issued letter dated 18.11.2021 for calling the meeting of All India Council on 3.12.2021. The said meeting was held and minutes of the same was duly signed by the petitioner no.2-President, Dr. Shashi Kant Dixit-respondent no.3 and many other members of the All India Council. 18 members have also given affidavits that they have also participated in the said meeting.

Pursuant to the meeting held on 3.12.2021, petitioner has written letter dated 7.12.2021 to all members of Election Committee for conducting the election. Thereafter, eight members of Samarakshak Sabha have also written letter dated 13.1.2022 to respondent no.3 to call a meeting in light of earlier decision taken on 3.12.2021 for consideration on certain points. Upon which, no action has been taken by the respondent no.3, therefore, Sri Hari Narayan Pandey-Joint Chief Secretary of Samarakshak Sabha has issued notice dated 21.1.2022 for holding the meeting on 4.2.2022.

As respondent no.3 was not following the provisions of Rules and Regulations of Association, complaint letter dated 25.1.2022 has also been written by several members to the Assistant Registrar-respondent no.2. Thereafter, Mr. Vinod Kumar Pandey-Joint General Secretary of

Samarakshak Sabha has published agenda on 25.1.2022 for calling the meeting of Executive Committee on 29.1.2022. The said meeting was held on the date fixed i.e. 29.1.2022 and certain decisions were taken including no confidence motion was passed against the respondent no.3.

After knowing about the notice dated 25.1.2022, respondent no.3 has also issued notice on 23.1.2022 for convening the meeting on 18.2.2022 alongwith agenda for holding the election.

As per notice dated 21.1.2022 issued by the Joint Chief Secretary, meeting was held on 4.2.2022 attended by 13 members in person and three members by proxy. In the said meeting, notice of respondent no.3 dated 23.1.2022 has also been considered and finally decided to hold the election on the date fixed by respondent no.3 i.e. 18.2.2022 under the supervision of Joint General Secretary and Joint Chief Secretary at 12:30 pm at Mahamandal Buildings, Lahurabir, Varanasi in place of 3 pm at Arya Kanya Mahila P.G. College. Unanimously, Joint General Secretary & Joint Chief Secretary were directed to paste the notice on notice board in Arya Mahila, P.G. College as well as publish the same in local newspapers about the change of election program.

He next submitted that present dispute arose when two sets of elections have taken place on the same day i.e. 18.2.2022. Pursuant to the meeting dated 4.2.2022 under the supervision of Joint General Secretary and Joint Chief Secretary, election was held on 18.2.2022 and papers were sent to respondent no.2 on 3.3.2022. Thereafter election of All India Council and its office bearers was held on 5.3.2022 and papers were sent to Assistant Registrar on 14.3.2022. After proper co-option of members, election was held on 11.3.2022 and duly communicated to Assistant Registrar vide letter dated 14.3.2022 and further election of Office Bearers of the Executive Committee was held on 16.3.2022 and it was also communicated to Assistant Registrar on 28.3.2022.

He next submitted that on the very same dates i.e., 18.2.2022, 5.3.2022 & 11.3.2022, respondent no.3 has also conducted the elections and sent papers before the Assistant Registrar for registration under Section 4(1) of Act, 1860. He also submitted that under the provision of Section 25(1) of Act, 1860, in case of dispute of election, it is required on the part of Assistant Registrar to refer the matter to Prescribed Authority, but instead of that, he has rejected the election papers submitted by petitioner no.2 on the ground that they are having no authority to hold the election.

He firmly submitted that under the MoA as well as Rules and Regulations of Association, there is no procedure prescribed to hold the election and only power is given to Chief Secretary or Joint Chief Secretary to convene the meeting of Samarakshak Sabha. While convening the meeting, election may also take place. In the present case, there is no dispute on the point that Chief Secretary and Joint Chief Secretary both are having authority to convene the meeting as provided under Rule 29 of Rules and Regulations of Association, therefore, Assistant Registrar-respondent no.2 cannot hold that election papers submitted by petitioner no.2 is invalid as they are not having power to hold the election. It is undisputed that Joint Chief Secretary is having power to convene the meeting and accordingly he has convened the meeting on 23.1.2022, which was held on 4.2.2022 and accordingly decision was taken to hold the election. Therefore, in lack of specific provision of election in Rules and Regulations of Association, it is required on the part of Assistant Registrar to see only as to whether Joint Chief Secretary is having power to convene the meeting or not. Undisputedly, under Rule 29 of Rules and Regulations of Association, Joint Chief Secretary is having power to convene the meeting. He submitted that once the Chief Secretary is not exercising its power in

accordance with Rules and Regulations of Association, Joint Chief Secretary is having no option, but to convene the meeting and accordingly, meeting was held on 4.2.2022 and decision was taken to conduct the election on 18.2.2022, which was fixed by the respondent no.3 vide notice dated 23.1.2022 with certain change in time and place. Rule 35 of Rules and Regulations of Association provides that meeting shall be held at Headquarter or any other place in India considered suitable by the General President, Chief Secretary or General Secretary. Clause 2 of MoA is also having definition about the Headquarter of Shree Arya Mahila Mahaparishad, which is located at Benares and the office at Bharat Dharm Mahamandal Buildings, Jagatganj, Benaras where the election of petitioner was held.

He next submitted that papers of election so submitted by the respondent no.3 are concerned, that was held at Arya Kanya Mahila P.G. College which is contrary to the Rule 35 of Rules and Regulations of Association.

He also submitted that respondent no.3 was acting in malafide manner, knowingly fix the date of election on 18.2.2022 on which date marriage ceremony of daughter of President and Joint General Secretary was scheduled. Not only this, contrary to provisions of MoA, he has fixed the place of election at 3 pm at Arya Kanya Mahila P.G. College where respondent no. 3 is working as Manager, his son Anurag Dixit is also working as Manager of the Arya Nagarmal Murarka Model School and his daughter-in-law is Assistant Manager of the said institution and they are having full control over the staff and employees of the Institution, due to which, there is doubt in impartial and transparent election.

He lastly submitted that at this stage it is not required on the part of Assistant Registrar to see the facts of the election, but has to see as to whether person, who have convened the meeting to hold the election,

having authority to convene the meeting or not. In light of Rule 29 of Rules and Regulation of Association, Chief Secretary and Joint Chief Secretary both are having power to convene the meeting.

In support of his contention, he has placed reliance judgement of this Court in the case of ***Shailendra Singh & others vs. State of U.P. And others reported in 2017 (3) UPLBEC 2035***. He lastly submitted that in light of facts, provisions of MoA and Rules and Regulation and law laid down by this Court, order is bad and liable to be set aside.

Sri Gajendra Pratap Singh, learned Senior Advocate appearing on behalf of respondent no.3 has vehemently opposed the submission of learned counsel for the petitioners and submitted that it is undisputed that in the election of 2017, respondent no.3 was elected as Chief Secretary of the Samrakshak Sabha and General Secretary of All India Council. As per Rules and Regulations of Society, specified office bearers of the outgoing committee have right to hold periodical elections of the Society. He next submitted that Rule 30 of Rules and Regulations of the Association provides that Chief Secretary or Joint Chief Secretary or General Secretary of the Samrakshak Sabha has right to issue notice to convene the meeting of Samrakshak Sabha. There is no dispute on the point that Dr. Shashi Kant Dixit-respondent no.3, in the capacity of Chief Secretary of the Samrakshak Sabha, issued notice for convening the meeting of Samrakshak Sabha to elect office bearers of Samrakshak Sabha and member of All India Council, which are to be elected by Samrakshak Sabha.

He further submitted that petitioner no.2 has set up a rival claim of election, but in the writ petition there is no averment that the petitioner no.2 or any person of his group had issued election notice/agenda convening the election meeting for his alleged set of elections for the reason that neither petitioner no.2 nor any member of his group have

authorirty to issue notice/agenda of the said elections of the Society. Further, it is for this reason that before the Assistant Registrar, petitioner no.2 has not submitted any documents showing the issuance of election notice/agenda to hold the election.

He further submitted that Respondent no.3 and petitioner no.2 have submitted their respective election proceedings before the Assistant Registrar and claimed registration of their respective lists of office bearers under Section 4(1) of Act, 1860. He next submitted that Assistant Registrar-respondent no.2 examined the rival election claims and by his impugned order dated 28.6.2022 held that elections set up by petitioner no.2 is void ab initio as the same has been held by unauthorized persons and also not in accordance with registered Rules and Regulations of Association. Accordingly, respondent no.2 refused to refer the dispute of election to the Prescribed Authority under Section 25(1) of the Act, 1860. Further, respondent no.2 found the rival elections of respondent no.3 are valid as well as in accordance with Rules and Regulations of Association and also registered the list of elected office bearers of the Executive Committee on 19.7.2022 under Section 4(1) of the Act, 1860.

He further submitted that order of respondent no.2 dated 19.7.2022 registering the list of elected office bearers of Executive Committee under Section 4(1) of Act, 1860 has not been challenged. He next submitted that while considering the rival election claim, it is required on the part of respondent no.2 to first consider as to persons who have conducted the election, having authority to conduct the same or not. In support of his contention, he has also placed reliance upon the Division Bench judgment of this Court in the case of ***Shailendra Singh & others vs. State of U.P. And others reported in 2017 (3) UPLBEC 2035*** wherein Court has held that Assistant Registrar is required to see about authority to convene the election while referring the dispute to the Prescribed Authority.

Assistant Registrar-respondent no.2 has passed impugned order with the specific finding and the said finding has never been challenged in the present petition, therefore, it has attained finality in view of law laid down by the Apex Court in the case of ***Life Insurance Corporation vs. Nandini Jay***. He next submitted that newly elected office bearers of Executive Committee, whose election were found valid by the Assistant Registrar and managing affairs of the society, have not been made party in the writ petition, whereas they are necessary party, therefore, petition may be dismissed on the ground of non-joinder of necessary parties. In support of his contention, he has placed reliance upon the judgment of ***Avtar Singh Hit vs. Delhi Sikh Gurudwara Management Committee reported in 2006(8) SCC***. He lastly submitted in light of aforesaid facts as well as law settled by the Apex Court, petition deserves to be dismissed.

I have considered the rival submissions advanced by the learned counsel for the parties and perused the record, judgments relied by the learned counsel for the parties, MoA as well as Rules and Regulations of Association.

There is no dispute on the point that last undisputed election was held in the year 2017 in which office bearers of Samrakshak Sabha, All India Council and Executive Committee of Association have been elected and registered under Section 4(1) of the Act, 1960. Dispute arose after five years on the eve of conducting next election. It is also undisputed that Society is governed by the provisions of MoA as well as Rules and Regulations of Association, therefore, it is necessary to quote the relevant provisions:-

Clause 1 & 2 of MoA elaborates about the definition and location of the Association and same are quoted hereinbelow:-

“(1) This Association shall be called “The Shree Arya Mahila Hitkarini Mahaparishad.”

(2) The Head Quarters of the Arya Mahila Hitkarini Mahaparishad will be located at Benares and the office at the Bharat Dharm Mahamandal Buildings, Jagatganj, Benares.”

Rules a, b, c, d & e of Rules and Regulations of Association are also relevant to appreciate the controversy and same are being quoted below:-

“(a) The Association shall mean ‘SHREE ARYA MAHILA HITAKARINI MAHAPARISHAD’.

(b) “Members shall include various kinds of patrons and members of the Association.

(c) “Sabha” shall mean the All India Samarakshak Sabha.

(d) “Council” shall mean the All India Council of the Association.

(e) “Committee shall mean the Executive Committee of the Association.”

Rules 28, 29, 30, 35, 49, 59 and 61 are relevant to decide the controversy, which are being quoted herein below:-

“28. There shall be an All India Samrakshak Sabha, The All India council and the executive committee the tenure of which shall be five years. The All India Samrakshak Sabha shall consist of distinguished Patrons, Patrons, and Life members of the Association. The management of the affairs of the Association shall vest in the Executive Committee of the Association subject to the general control and supervision of the all India Council of the Association. All the properties of the Association shall vest in the trustees, except such cash money as may be released by the Trustees to meet the recurring expenses of the Association. The executive Committee shall manage the different departments of the Association through different subcommittees appointed for the purpose. Such sub committees may consist of persons who are not members of the executive committee or members of the Association.

29. The meeting of the Samrakshak Sabha shall be held at least once in every five years or whenever considered necessary by the Chief Secretary, joint Chief Secretary or on the request of at least seven members of the Samrakshak Sabha in writing to the Chief Secretary to call the meeting.

30. The notice of the meeting of the Samrakshak Sabha shall be issued by the Chief Secretary or joint Chief Secretary or General Secretary, three weeks before the date fixed for the meeting.

35. The member of the All India Council other than the disciple of Bhagwan Maharshi Swami Gyananandji Maharaj, the representative of Sri Bharat Dharm Mahamandal, and Shree mahamaya Trust shall be elected every five years by the All India Samrakshak Sabha at its meeting specially called for the purpose either at Varanasi, the head quarter or at any other place in India considered suitable by the General president, Chief Secretary or General Secretary.

49. The meeting of the All India Council shall be held at least once every years and also whenever the Chief Secretary of the Executive Committee think necessary and also whenever any five member of the All India Council desire to call such a meeting. The notice of the meeting may be issued by the Chief Secretary or the Joint Chief Secretary or any office-bearer of the Executive Committee. Fourteen days notice of the meeting will be given to the members of the Council.

59 The General Secretary, and in his or her absence the joint General Secretary shall be authorised to receive, deposit or draw money from Banks under her or his signature. She or he shall represent the Association in all matters of importance and shall exercise the power of general control over the offices and all departments of the Association. She or he will represent the Association in courts of law, either personally or through secretaries authorised by her or him.

61. The meeting of the Executive Committee shall be held at least six times in the year and also whenever considered necessary by the General Secretary and also whenever any five members of the Executive Committee request the General Secretary to call the meeting. The notice of the meeting shall be issued by the General Secretary or the Joint General Secretary or Departmental Secretaries. Three days notice of the meeting shall ordinarily be given to the members but in cases of urgency 24 hours notice will be sufficient.

The issue before the Court is as to whether it is required on the part of Assistant Registrar to refer the matter before the Prescribed Authority under Section 25(1) of the Act, 1860 or not, therefore, Section 25(1) of the Act, 1860 is being quoted hereinbelow:-

“25. Dispute 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 bearers of such society, and may pass such orders in respect thereof as it deems fit:”

I have perused the MoA as well as Rules and Regulations of Association.

Rule 28 of Rules and Regulations of Association comprises three bodies (i) All India Samarakshak Sabha (ii) All India Council of the Association (iii) Executive Committee of the Association. In hierarchy, Samarakshak Sabha is the apex body and thereafter All India Council and Executive Committee.

Rule 29 of Rules and Regulations of Association provides power to

Chief Secretary or Joint Chief Secretary to convene the meeting of Samrakshak Sabha.

Rule 49 of Rules and Regulation of Association provides power to convene the meeting of All India Council to the Chief Secretary or Joint Chief Secretary or any office bearers of the Executive Committee.

From perusal of the Rules mentioned hereinabove as well as complete MoA & Rules and Regulations, it is apparently clear that there is no provision and procedure for holding the election. Therefore, the authority, who is having power to convene the meeting can also convene the meeting for holding the election in lack of specific provision of election in the MoA as well as Rules and Regulations of Association.

So far as contention of learned Senior Advocate with regard to findings have not been challenged is concerned, there is no factual issue involved in the present case. The only issue is as to whether, who is having authority to convene the meeting in lack of specific provision to hold the election.

In such facts of the case, there is no occasion to challenge the finding so recorded by the Assistant Registrar discarding the election set up by the petitioner. Court is of the view that Chief Secretary and Joint Chief Secretary are having power to convene the meeting. Assistant Registrar proceeded to record his findings beyond the provisions of MoA & Rules and Regulations of Association, therefore, such finding is not required to be challenged and judgment of Apex Court in the case of *Life Insurance Corporation (supra)* would not come in rescue of respondent no.3.

So far as another submission about the non-joinder of the parties is concerned, that is having no relevance in the present case. Before the respondent no.2, two rival sets of elections were placed for recognition under Section 4(1) of Act, 1860 upon which respondent no.2 has passed

impugned order and non suited the election of petitioner no.2 recognizing the election of respondent no.3. Once the impugned order goes, automatically it would have consequential effects of removal of office bearers recognized under Section 4(1) of Act, 1860, therefore, judgment of *Avtar Singh Hit (supra)* is also not helping the respondent no.3.

In the present case, when the dispute arose between the petitioner no.2 and respondent no.3, ultimately a joint meeting was held on 3.12.2021 duly signed by petitioner no.2 and respondent no.3 alongwith several other members and resolved to constitute 5 members Committee to lookafter the election work having names of Dr. Shashi Kant Dixit-respondent no.3, Devi Prasad Pandey, Padam Bhusan, M.C. Srivastava & K.P. Agarwal. As it was alleged that even after that respondent no.3-General Secretary is not calling the meeting for redressal of different grievances, therefore, Sri H.N Pandey, Joint Chief Secretary of Samrakshak Sabha has called meeting of All India Council of Association on 4.2.2022 and Joint General Secretary of All India Council, namely, Vinod Kumar Pandey has called a meeting of Executive Committee on 29.1.2022. No confidence motion was passed against the respondent no.3 and accordingly, informed to respondent no.2 also.

Thereafter, respondent no.3 has also convened the meeting of Samrakshak Sabha on 18.2.2022 alongwith agenda of election. Pursuant to earlier notice of meeting dated 21.1.2022, meeting was held on 4.2.2022, which was duly attended by President of All India Council and other members alongwith Joint General Secretary, namely, Dr. Vinod Kumar Pandey. It is observed that in personal interest respondent no.3 after knowing the agenda of meeting dated 21.1.2022 has declared five years election schedule vide notice dated 23.1.2022 with approval of all India Council and also publish the date and program in the newspaper. In the resolution no.2 of the said meeting, the conduct of respondent no.3

was depreciated with the specific finding that knowing this fact that on 18.2.2022, there is marriage ceremony of daughter of President and Joint General Secretary despite that date of meeting was fixed on 18.2.2022. In the resolution no.2, they have also suspended the removal of respondent no.3 from the post of General Secretary or Chief Secretary, but suspended his powers and exercising the power of Rules 30 and 59 of the Rules and Regulation of Association empowered the Sri Hari Narayan Pandey, Joint Chief Secretary and Vinod Kumar Pandey, Joint General Secretary to conduct the election of respective bodies. They have also decided to hold the election on the same date i.e. 18.2.2022 declared by respondent no.3 with the change of time and place. Election was declared to take place at 12:30 at Mahamandal Buildings, Lahurabir, Varanasi as provided in Clause 2 of MoA in place of 3 pm at Arya Kanya Mahila P.G. College.

After the meeting dated 4.2.2022, dispute of valid election arose as two sets of elections of office bearers of Samrakshak Sabha of Association have taken place, one as per program declared by respondent no.3 vide notice dated 23.1.2022 at Arya Mahilla P.G., College, Varanasi. The said election was held at 3 p.m. on 18.2.2022 whereas another election was held on the same date i.e. 18.2.2022 as decided by the meeting of All India Council dated 4.2.2022 at Mahamandal, Lahuru, Varanasi at 12.30 pm. Further, on 5.3.2022 again two sets of elections have been held for All India Council and its office bearers and another about the office bearers of Executive Committee on 11.3.2022.

Now, the issue before the Assistant Registrar, is as to whether after going through the proposals recognize one of the election under Section 4(1) of Act, 1860, or to refer the matter before the Prescribed Authority under Section 25(1) of Act, 1860.

There is no dispute on the point that in the MoA as well as Rules and Regulations, there is no specific provision to hold the election and

only provision is about convening the meeting and undisputedly, apart from General Secretary, Joint General Secretary is also having power to hold the election and further in hierarchy, All India Council is a body above to Executive Committee, which has taken decision to hold the election on the same date fixed by the respondent no.3 vide notice dated 23.1.2022. There is also no dispute on the point that prior to meeting dated 4.2.2022, no meeting of Samrakshak Sabha was held, which is apex body than the All India Council, therefore, any decision taken by All India Council is having binding effect. In the said meeting, the agenda of meeting dated 23.1.2022 has also been considered with detail reasons, but ignoring the same, respondent no.3 has also conducted the election.

As there is no specific provision in the MoA as well as Rules and Regulations of Association to hold the election, which is only having provision to convene the meeting and undisputedly, respondent no.3 as well as Sri Hari Narain Pandey Joint Chief Secretary are having power to convene the meeting and convened the same also on 4.2.2022. Therefore, it cannot be said that power to hold the election is only vested with the respondent no.3, who is holding the post of Chief Secretary of Samrakshak Sabha and General Secretary of All India Council. Respondent no.3 and Sri Hari Naryan Pandey are holding the post of Chief Secretary and Joint Chief Secretary in the apex body of the Association and having absolute power to convene the meeting. As alleged, respondent no.3 was not convening the meeting, Sri Hari Narain Pandey, Joint Chief Secretary has convened the meeting. The said meeting of All India Council was held on 4.2.2022 in which decision to hold the election was taken. It cannot be said that meeting so called by Joint Chief Secretary is without having authority.

Once it is undisputed from the MoA and Rules and Regulation that respondent no.3 and Sri Hari Narayan Pandey are having power to

convene the meeting, there is no occasion for the respondent no.2 to check the validity of election and it is required on his part to refer the matter to the Prescribed Authority under Section 25(1) of Act, 1860.

I have perused the paragraph 24 of the judgment of this Court in the case of ***Shailendra Singh (Supra)*** relied by both the parties. The relevant paragraph of the said judgment is being quoted hereinbelow:-

“24. The powers conferred under the aforesaid Sections clearly demonstrate that the Registrar is the principal Executive Officer to exercise his power in respect of the affairs of the Society. Thus, his power under Section 4 cannot be divested only on the ground that under Section 25 he has the authority to refer the dispute pertaining to election and continuance of office bearers and, accordingly, even if some frivolous dispute is raised in respect of the election or continuance of the office-bearers, the same should be mandatorily referred. If there is a dispute of two parallel groups of the society, the Registrar can always examine whether the persons of rival group, who have raised the dispute, are member of the society or not. He can record his prima facie satisfaction in this regard as to who has the authority to convene the meeting and hold elections; persons who have participated are valid members of society; elections have been held as per bye-laws of society and if he is satisfied that the dispute is genuine and it is a dispute inter se between the members of the society, then he can refer the dispute to the Prescribed Authority.”

From perusal of the same, it is clear that if there is a dispute of two parallel groups of the Society, Assistant Registrar can record his prima facie satisfaction in this regard as to who has the authority to convene the meeting and hold the election. So far as present case is concerned, in the MoA as well as Rules and Regulations of Association, there is no procedure prescribed to hold the election accept the tenure of the election as well as name of office bearers. It is also undisputed that both rival groups are valid member of Association, which is also requirement of judgement of ***Shailendra Singh (Supra)*** to see the same. Therefore, it is only required on the part of Assistant Registrar to examine, who is having authority to convene the meeting and in case respondent no.3 and Joint General Secretary both are having authority to convene the meeting, there is no occasion for him to go through the validity of the election and only

option before him was to refer the matter before the Prescribed Authority under Section 25(1) of Act, 1860, therefore, order is bad and liable to be set aside.

Therefore, under such facts and circumstances as well as law laid down by this Court, the writ petition is **allowed** and impugned order dated 28.6.2022 passed by the Assistant Registrar-respondent no.2 is hereby quashed. Respondent no.2 is directed to refer the matter to Prescribed Authority within two weeks alongwith election proposals of both the rival groups. Prescribed Authority is further directed to take final decision in the matter maximum within six weeks thereafter after affording opportunity of hearing to petitioner, respondent no.3 and all other concerned, if any.

Order Date :- 20.10.2022

Junaid