

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CWP No. 122 of 2009

Reserved on: 6.9.2011

Date of Decision: 30.9.2011

Mount Shiwalik Educational Society ...Petitioner.

Versus.

State of H.P and others. ...Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting? Yes.

For the petitioner: **Mr.G.C.Gupta, Sr. Advocate with
Mr. Pawan Kumar Sharma, Advocate.**

For the Respondents No. 1 & 2: Mr. Vivek Thakur, Addl. A.G.

For the Respondent No.3: Mr. Lalit Kumar Sharma, Advocate.

Deepak Gupta, J.

1. By means of this petition, the petitioner has challenged the order dated 27th September, 2008 passed by respondent No.2 and further prayed that respondent No.2 be directed to hand over the possession of the management of the school to the petitioner-Society.
2. The petitioner-society was registered under the Societies Registration Act, 1860. It is alleged that Shri Kartar Singh Saini was the founder

Chairman of the said society. The society allegedly started a school under the name and style of Mount Shivalik Public High School, which is affiliated to the H.P. Board of School Education. On 21st May, 2004 an agreement was entered into between Mount Shivalik Public School, Una through its Manager and Sanskrit Kalyan Mahan Vidyalya, Una whereby the Manager of the school agreed to merge the assets with those of Sanskrit Kalyan Mahan Vidyalya and further permitted the said Sanskrit Kalyan Mahan Vidyalya to run the school. This agreement was signed on behalf of respondent No.2 by Shri Hari Kishan.

3. On 17.4.2007 one Shri Satyabhushan Shastri, Founder Chairman of a body known as Kalyan Mount Shivalik Public School filed a complaint against the petitioner-society. On this complaint, the Deputy Commissioner wrote the following letter to the SDO(Civil) Una :-

"Please find enclosed herewith a copy of application received from Shri Satyabhushan Shastri, Freedom Fighter son of Bawa Lachhman Dass, Manav Kalyan Satsang Mandal, Lachhman

Bhawan, Congress Gali, Bawa lachhman Dass Marg (Main Bazar) Una.

You are requested to hear the applicant personally and suggest him some solution if possible or advise him to seek remedy in competent court of law in the matter please."

4. A bare perusal of this letter shows that the Deputy Commissioner directed the SDO to hear Shri Satyabhushan Shastri in person and suggest him some solution, if possible or advise him to seek remedy by filing appropriate petition in a Court of law. Instead of doing so, the SDO issued notice to the petitioner-society and after hearing the parties and holding an inquiry held that Kalyan Mount Shivalik Public School Shiksha Prabandh Samiti, Una was registered on 20.6.2003 after the consent of both the parties and by this agreement the Mount Shivalik Education Society had merged with the Kalyan Sanskrit Mahavidyalya Siksha Samiti. He also held that the word 'Kalyan' had wrongly been removed from the title of the school and submitted the report to the Deputy Commissioner who thereafter ordered that the control and management of the affairs of

the school would be with respondent No.3 society and not with the petitioner.

5. This order has been challenged in this Court and one of the basic grounds of challenge is that no such order could have been passed by the authorities. It is not disputed by the parties that pursuant to the promulgation of the H.P. Societies Registration Act, 2006 (hereinafter referred to as the Act), the parties are now governed by the said Act. The question which arises is what is the jurisdiction of the Collector in regard to the Society.

6. In terms of H.P. Societies Registration Act, 2006 the Deputy Commissioners are the Collectors/Registrars under the Act.

Section 39 of the Act reads as follows:-

"Enquiry by the Registrar:

39.(1) The Registrar may, on his own motion or on an application made under sub-section (2), either by himself or by a person authorized by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a Society.

(2) An enquiry under sub-section (1) shall be held on the application of –

(a) a majority of the members of the Governing body of the Society; or

(b) not less than one-third of the total number of members of the society."

7. The other provision which empowers the Registrar to entertain disputes is Section 42, which reads as follows:-

"42.(1) In the event of any dispute arising among the Governing body or the members of the Society or its employees in respect of any matter relating to affairs of the Society, any member or Governing body or employee or ex-employee or ex-member of the Society may refer the dispute to the Registrar for decision, who may either decide the dispute himself or refer such dispute to any other officer for disposal.

(2) Dispute for the purpose of sub-section(1) shall also include matters relating to claim by or against the Society and any matter arising in connection with the election of Governing body."

8. Section 39(1) provides that Registrar may on his own motion or on an application made under sub-section (2) either by himself or by a person authorized by him hold an enquiry into the constitution, working and financial conditions of a Society. Sub-section (2) provides that an inquiry in terms of sub-section(1) shall be held only when an application is filed by a majority of the members of the Governing body of the society or not less

than 1/3rd of the total number of members of the Society.

9. There is some dispute as to whether the application contemplated under sub-section (2) has to be supported by an affidavit or not but without going into this aspect of the matter, the Registrar can take action under Section 39(1) either on his own motion or on the basis of an application filed by a majority of the members of the governing body of the society or at least 1/3rd of the total number of members of the society. Admittedly, in this case only Shri Satyabhushan Shastri had filed the application and therefore, the application would not be one within the meaning of Section 39(1). It would be pertinent to mention that during the course of hearing of this petition on 15th March, 2011 this Court had passed an order directing the District Magistrate, Una to file an affidavit as to what is the source of the power which he had exercised in this case. The District Magistrate in his affidavit dated 18th April, 2011 stated that he had exercised the powers under Section 39 and 42 of the Act.

10. In case we peruse Section 42 carefully, it only covers the following disputes, namely, disputes arising amongst the Governing body of the society; disputes between members of the society; or disputes between the employees and the society relating to the affairs of the society in which case any member or governing body or its employee or ex-member of the society may refer the dispute to the Registrar for decision who may either decide the dispute himself or refer such dispute to any other officer for disposal.
11. It has been strenuously argued by Shri G.C.Gupta, learned Senior Counsel for the petitioner that the dispute in the present case is not covered by Section 42 since it is not a dispute regarding management. I am not deciding this question at this stage. However, the section clearly lays down that the dispute should either be decided by the Registrar himself or he may refer such dispute to any other officer for disposal. The order passed by the Collector on the application filed by Shri Satyabhushan Shastri has been quoted hereinabove. It does not show that the

Collector had referred the dispute for decision to the SDO. All that the Collector had directed that the SDO should hear the complainant and suggest him a solution, if possible or advise him to seek remedy in a competent Court of law. This by no stretch of imagination can be said to be a reference of a dispute by the Registrar to any other officer.

12. In the present case neither the Deputy Commissioner decided the dispute himself nor did he make any valid reference to the SDO(Civil), therefore, on this short ground it can be said that the action under Section 42 was not valid.

13. In view of the above discussion, I am of the considered opinion that no action under Section 39 could have been taken since there was no properly constituted application before the Registrar in terms of Section 39(2) of the Act and no dispute under Section 42 of the Act was properly referred to the SDO (Civil). Therefore, the impugned order is inherently without jurisdiction and void ab initio and the entire proceedings of

SDO (Civil) are nonest and void. The same are accordingly quashed with all consequences and the Deputy Commissioner is directed to restore status qua ante as existing on the date when the application was filed before him. Since this Court has not expressed any view on the issue whether the dispute is covered under Section 42 or not, the Registrar, if he so desires, after giving notice to the parties shall first decide whether the dispute raised by Shri Satyabhushan Shastri is a dispute covered under Section 42 or not. If he comes to the conclusion that such dispute is covered by Section 42, he may either decide the same himself or refer the dispute to some other officer for disposal in accordance with law. Needless to say that any party aggrieved by the order can approach this Court. The writ petition is disposed of in the aforesaid terms. No costs.

30th September, 2011.
TM

(Deepak Gupta)
Judge.