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Special Appeal (D) No. 589 of 2016

The Committee of Management, Dadar Ashram Trust Society & Ors.
Vs.
Mahatma Gandhi Kashi Vidyapeeth, Varanasi & Ors.

WITH

Special Appeal (D) No. 628 of 2016

Committee of Management, The Dadar Ashram Trust & Anr.
Vs.
Dr. Chandrashekar Pandey & Ors.

Appearance:

For the appellants:
Mr. Radha Kant Ojha, Senior Advocate, with
Mr. Shivendu Ojha, Advocate
Mr. Indra Raj Singh, Advocate
Mr. Adarsh Singh, Advocate
Mr. Prateek Bansal, Advocate

For the respondents:
Mr. C.L. Pandey, Senior Advocate, with
Mr. Rajesh Chandra Dwivedi, Advocate

Mr. C.B. Yadav, Addl. Advocate General
Mr. Shashank Shekhar Singh, Addl. CSC
Mr. Vivek Verma, Advocate

Hon'ble Dilip B Bhosale, Chief Justice
Hon'ble Ashwani Kumar Mishra, J
Hon'ble Yashwant Varma, J

JUDGMENT

(Per Dilip B Bhosale, CJ, for himself and Yashwant Varma, J)

The questions which have been referred for the opinion of the larger Bench, are whether there can be a mandamus commanding the Authorized Controller/District Magistrate to hold election of office bearers of a

registered society contrary to the provisions of Section 25 (2) of the Societies Registration Act, 1860?; and in the facts of the case, in absence of determination of the electoral college in terms of the directions dated 03.10.2007 issued in Civil Misc. Writ Petition No. 48538 of 2007, whether there could be a direction to the Authorized Controller/District Magistrate to hold elections, more so when a second appeal is pending?

2. The reference order dated 03.10.2016 has been passed in Special Appeal (D) No. 589 of 2016 filed by three appellants, after seeking leave of this Court, against the order dated 13.07.2016 passed by the learned Single Judge in Writ – C No. 31246 of 2016. Special Appeal (D) No. 628 of 2016 has also been filed by two appellants challenging the very same order dated 13.07.2016, seeking leave of this Court under Chapter XXII Rule 5, Chapter IX Rule 10 and Chapter 10 Rules 1 and 7 of the Allahabad High Court Rules, 1952. In Special Appeal (D) No. 589 of 2016, along with the Committee of Management, one Shiva Kant Mishra is also an appellant, who claims to be the Manager/Secretary, Committee of Management, Dadar Ashram Trust Society, Village Dadar, Post Charawa Barawa, Sikandarpur, District Ballia (for short, 'the Trust'). In Special Appeal (D) No. 628 of 2016, apart from the Committee of Management of the Trust being the first appellant, one Dr. Phool Chand Singh is also an appellant, who claims to be the Manager of the Trust.

3. Both these appeals arise from the order dated 13.07.2016 passed by the learned Single Judge in Writ-C No. 31246 of 2016[1] that was filed by Dr. Chandrashekar Pandey, claiming to be the Manager of the Trust, challenging the legality of the order dated 1 July 2015 issued by the second respondent – Registrar, Mahatma Gandhi Kashi Vidyapeet, Varanasi (for short, 'the University'), requiring the concerned authority to keep the election process in abeyance. The said order was passed in pursuance of the directions issued by the first respondent – Vice Chancellor of the University. The petitioner had also prayed for a direction to the first and second respondents to hold

1 Parties are hereinafter referred to by their description in Writ-C No. 31246 of 2016

elections of the Committee of Management of the Trust as per election programme dated 18.06.2015 on the basis of the voters' list attached with the election programme for the year 2015-16. The learned Single Judge disposed of the writ petition vide order dated 13.07.2016 directing the holding of elections against which the appellants filed the instant two appeals after seeking leave of this Court.

4. For determination of the aforestated questions, it is unnecessary to state in detail the chequered history of the litigation, and a brief reference to the facts noticed in the referral order dated 03.10.2016, would suffice. The Trust is a society registered under the Societies Registration Act, 1860 (for short, 'the Act, 1860'). It runs the Sri Bajrang Post Graduate College (for short, 'the College'), affiliated to the University. It is not in dispute that elections to the Committee of Management for managing the affairs of the College were held prior to 1988 in accordance with the bye laws of the society. It is also not in dispute that in view of the dispute with respect to the rights claimed by different persons to be the lawful office bearers of its Management affecting the smooth and orderly administration of the College some time in 1988, the State Government, in exercise of its powers under Section 57 of the Uttar Pradesh Universities Act, 1973 (for short, 'the Universities Act') appointed the District Magistrate as the Authorized Controller to take over the management of the College and its properties and since then the Authorized Controller has been managing the affairs of the College.

5. It appears that a writ petition was filed by the Committee of Management of the Trust, bearing Civil Misc. Writ Petition No. 48538 of 2007 (The Committee of Management, Dadar Ashram Trust Society & Ors. Vs. The Assistant Registrar, Firms, Societies and Chits, & Ors.), seeking a direction to hold fresh elections. In the said writ petition, an order dated 03.10.2007 was passed directing the District Magistrate to determine as to who are the valid members of the general body of the society enrolled in terms of Section 15 of the Act, 1860, after issuance of public notice and after

affording an opportunity to the persons concerned of being heard. It was also provided that the District Magistrate/Authorized Controller may obtain necessary assistance from the Sub Divisional Magistrate and the Assistant Registrar of Firms, Societies and Chits, for coming to a rightful conclusion. While issuing such directions, this Court, in the order dated 03.10.2007, further observed that in case it is practically impossible to resolve the dispute in respect of valid membership of the general body of the Trust, enrolled in terms of Section 15 of the Act, 1860, the District Magistrate would be free to relegate the parties to take the remedy of a civil suit for getting their rights adjudicated and thereafter fresh election shall be held after the suit is decided. Though, such observation was made, from the facts of the case, it is clear and it is also not in dispute that no suit was instituted in terms of the order dated 03.10.2007 passed in Civil Misc. Writ Petition No. 48538 of 2007.

6. However, it has come on record that one suit was instituted in 2001 by Shri Thakur Triloki Jai Maharaj through Rahul Rai, bearing Original Suit No. 35 of 2001 (Shri Thakur Triloki Jai Maharaj through Rahul Rai Vs. Dr. Chandra Shekhar Pandey & Ors.). In the said suit, the plaintiffs sought a permanent injunction against the defendants claiming ownership rights over the properties mentioned in the plaint. The said suit came to be dismissed on 17.12.2014. Thereafter, the plaintiff preferred an appeal before the Additional District Judge, Ballia, being Appeal No. 3 of 2014, which was also dismissed vide order dated 13.08.2015. Being aggrieved by the judgment of the appellate court, the plaintiff preferred Second Appeal No. 16 of 2015 before this Court, which, we are informed, is still pending consideration for the purposes of interim order as well as admission.

7. In this backdrop, the petitioner made an application before the District Magistrate/Authorized Controller to get the fresh elections held in view of the dismissal of the said suit. The District Magistrate in turn issued directions to the Sub Divisional Magistrate to do the needful. The Sub Divisional Magistrate accordingly published the election programme on

18.06.2015. The aggrieved party approached the Vice Chancellor of the University with a prayer to stop the election process, that was set in motion by the Sub Divisional Magistrate, pending hearing and final disposal of the suit. The Vice Chancellor passed an order on 01.07.2015 asking the Sub Divisional Magistrate to keep the election programme in abeyance.

8. The petitioner – Dr. Chandrashekar Pandey, against the order of the Vice Chancellor dated 01.07.2015, preferred Writ – C No. 31246 of 2016, in which the order dated 13.07.2016 was passed by the learned Single Judge, which is the subject matter in both the appeals. When Special Appeal (D) No. 589 of 2016 was placed before the Division Bench, it passed the reference order dated 03.10.2016, whereas by an order dated 18.1.2016, another Division Bench directed Special Appeal (D) No. 628 to be connected with Special Appeal (D) No. 589 of 2016.

9. In the course of hearing of Special Appeal No. 589 of 2016, it appears, the petitioner placed before the Division Bench, the order dated 20.08.2016 passed in Special Appeal No. 514 of 2016 (C/M Bajrang Mahavidyalaya Dadar Ashram Sikandarpur & Anr. Vs. Dr. Chandrashekhar Pandey & 4 Ors.), where under the order of the learned Single Judge dated 13.07.2016, which is also the subject matter of the instant special appeals, came to be affirmed. The Division Bench, having noticed the order dated 20.08.2016 passed in Special Appeal No. 514 of 2016, observed that the learned Single Judge, while deciding the writ petition vide order dated 13.07.2016, overlooked the statutory provisions of Section 25 (2) of the Act, 1860, reading of which, clearly shows that if the elections are not held within the time fixed under the bye laws, then a meeting of the general body can be convened by the Registrar presided over by him and elections can be held only by the Registrar. Having so observed, the Division Bench, in the reference order, further observed that so long as Section 25 (2) of the Act, 1860 stands in the statute, there cannot be a mandamus by this Court directing any other authority to hold elections of a registered society, as it would run contrary to law. Having so observed, the questions, as formulated

in the first paragraph of this order, are referred for consideration of the larger Bench.

10. Before we proceed further, it would be relevant and also necessary to notice that the questions, as were raised before the Division Bench while dealing with Special Appeal No. 589 of 2016, based on the provisions contained in Section 25 (2) of the Act, 1860, were not raised before the Division Bench dealing with Special Appeal No. 514 of 2016. In other words, no arguments as such were advanced, based on the provisions contained in Section 25 (2) of the Act, 1860. It further appears from the order dated 20.08.2016 that the arguments advanced before the Division Bench in Special Appeal No. 514 of 2016 were centered around the order of the learned Single Judge dated 03.10.2007 passed in Civil Misc. Writ Petition No. 48538 of 2007. The Division Bench, having noticed the order dated 03.10.2007, observed that elections, as noted in the order, are liable to be held in terms of the direction issued by this Court as far back as in 2007.

11. Before we have a glance at Section 25 (2) of the Act, 1860, it would be necessary to observe that it is not in dispute that the appointment of the Authorized Controller under Section 58 of the Universities Act, was made by the State Government, not because the elections of the Committee of Management were not held within the time specified in the rules/bye laws of the Trust, but in view of the dispute in respect to the rights claimed by different persons to be the lawful office bearers of its Management, as contemplated by sub-section (iii) of Section 57 of the Universities Act. It may also be noticed that the appointment of the Authorized Controller was made some time in 1988 and the Authorized Controller is continuing, perhaps by orders passed by the State Government from time to time in exercise of the powers conferred on it under sub-section (1) of Section 58, till this date. It is, thus, clear that as of today, it cannot be stated that election of office bearers of the Trust were not conducted/held within the time specified in the rules/bye laws of the Trust, by the Committee of Management, as required thereunder and, therefore, the Authorized

Controller was appointed. In other words, we would like to examine whether the provisions of sub-section (2) of Section 25 of the Act, 1860 are attracted in the present case and, if so, whether this Court can issue a mandamus to the Authorized Controller to hold election of the Committee of Management of the College. While dealing with this question, we would also have to consider the question whether, in a situation like the one which has fallen for our consideration in the present case, it is only the Registrar/Assistant Registrar, to whom a mandamus can be issued to hold elections of the Committee of Management of the College and that under any circumstances, no such directions can be issued to the Authorized Controller/District Magistrate.

12. Section 57 of the Universities Act, insofar as the questions that fall for our consideration are concerned, provides that if the State Government receives information in respect of any affiliated or associated college, other than a college maintained exclusively by the State Government or a local authority, that any dispute with respect to the right claimed by different persons to be lawful office bearers of its Management has affected the smooth and orderly administration of the college, it may call upon the Management to show cause why an order under Section 58 appointing an Authorized Controller should not be made. It also provides that where it is in dispute as to who are the office bearers of the Management, such notice shall be issued to all persons claiming to be so. Section 58 of the Universities Act provides that if the State Government, after considering the explanation, if any, submitted by the Management under Section 57, is satisfied that any ground mentioned in that Section exists, it may, by order, authorise any person to take over, for such period not exceeding two years, as may be specified, the management of the college and its property to the exclusion of the Management and whenever the Authorized Controller takes over the management of such college and its property, he may, subject to such restrictions as the State Government may impose, have in relation to the management of the college and its property, all such powers and authority as

the management would have if the college and its property were not taken over under this sub-section. There are three provisos which collectively empower the State Government to extend the period of the Authorized Controller appointed under sub-section (1) even beyond the period of five years, till the Management has been lawfully constituted. In the present case, no elections since the appointment of the Authorized Controller have been conducted. The Authorized Controller continues to hold charge till this date.

13. Section 25 of the Act, 1860 deals with disputes regarding election of office bearers. Sub-section (1) of Section 25 may not be relevant for our purpose and, hence, without making further reference thereto, we would like to reproduce sub-sections (2) and (3) of Section 25 for better appreciation of the submissions advanced by learned counsel for the parties and for addressing the questions, more particularly the first question, that falls for our consideration:

> "**25. Disputes regarding election of office-bearers**: (1).....
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> (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 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.
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> (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.
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> *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."

14. From bare reading of sub-section (2), it appears to us that there are three situations in which the Registrar is empowered to call a meeting of the general body of such society for electing an office bearer or office bearers, and such meeting shall be presided over by him or by any officer authorized by him in this behalf, and the provisions in the rules of the society relating to meetings and elections shall apply to such a meeting and elections with necessary modifications. The three situations which are contemplated by this provision are (i) where by an order made under sub-section (1), an election is set aside; (ii) where an office bearer is held no longer entitled to continue in office; or (iii) 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. Admittedly, in the present case, we are not concerned with the first two situations and, according to the appellants, it is the third situation which is attracted and as a result thereof, it is only the Registrar who is competent to call a meeting of the general body for electing office bearers in a meeting presided over by him or by any officer authorized by him, and to hold the elections. Learned counsel for the appellants submitted that under any circumstances, having regard to the language employed in sub-section (2) of Section 25 of the Act, 1860, the Authorized Controller cannot be allowed to conduct elections since he is not legally authorized to do so and if, at all, it is held that this Court can issue a mandamus for holding elections, such a mandamus can be issued to the Registrar/Assistant Registrar only and he alone can call a meeting of the general body and hold elections in accordance with the provisions in the rules of the society relating to meetings and elections, as may be with necessary modifications. On the other hand, it was contended that even the third situation, as contemplated by sub-section (2) of Section 25 has not arisen since, in the present case, it cannot be stated that the office bearers of the society failed to hold elections within the time specified in the rules of that society. It was submitted that, in the present case, the dispute with respect to the right claimed by different persons to be lawful office bearers of its Management prompted the State Government to appoint an Authorized Controller and, in

any case, it cannot be stated that the appointment of the Authorized Controller was made, since the office bearers did not hold elections within the time specified under the bye laws. Without admitting that it is only the Registrar, who can hold election in such a situation, it was submitted that the Registrar failed to exercise his powers under this provision and hold elections, as a result of which the affairs of the Committee of Management are being performed by the Authorized Controller since 1988, and if the proposition of law, tried to be canvassed, is accepted, the elections will not be conducted for another few years, and that would also amount to curtailing the extraordinary powers of this Court under Article 226 of the Constitution. In the circumstances, it was submitted that this Court was justified in issuing a writ of mandamus directing the Authorized Controller to hold elections.

15. In the present case, it is not in dispute that the Authorized Controller was appointed by the State Government in exercise of the powers under Sections 57 and 58 of the Universities Act, and since then he has been holding charge of the Committee of Management of the College. It is also not in dispute that neither the Registrar, at any point of time during this period, nor the Authorized Controller either took any steps or made any efforts to hold the election of office bearers of the Committee of Management. Further, it is also not in dispute that the Registrar, insofar as the questions that fall for our consideration are concerned, was authorized to call a meeting of the general body of such society for electing such office bearers, if he was satisfied that election of office bearers of a society had not been held within the time specified in the rules of that society, and that he did not exercise such powers. Furthermore, it is not in dispute that the bye laws of the Trust provide for such an election after every three years and within the time stipulated therein. The time to hold elections after expiry of the term of the last elected body got over long back, i.e. before 1988 and, at no point of time, did the Registrar make any effort or exercised his powers conferred under sub-section (2) of Section 25 of the Act, 1860 to call a meeting of the general body for electing office bearers of the Committee of

Management as contemplated therein.

16. As is evident from the referral order, the Division Bench was of the view that so long as Section 25(2) of the Societies Registration Act, 1860 existed on the statute book no mandamus could have been issued by the Court directing any authority other than the Registrar to hold elections of registered societies. It was further observed that a mandamus so issued would be contrary to law. It is based upon the said conclusions that the first question has been framed for our consideration.

17. In our considered view, the conclusion reached by the Division Bench is based upon the assumption that Section 25(2) is firstly of a mandatory character, and secondly that the same confers exclusive jurisdiction and authority on the Registrar alone. Here it becomes pertinent to note that the powers exercisable by the Registrar in terms of sub-section (2) by the very nature of the power conferred is apparently directory in nature. The power conferred on the Registrar becomes exercisable upon him being satisfied that an election of office bearers of a society has not been held within the time specified under its rules or bye laws. The provision then prescribes that upon such satisfaction being arrived at, the Registrar "**may**" call a meeting of the general body of such society for election of its office bearers. It becomes further relevant to note that all further actions that the Registrar takes from this point onwards has to be in accordance with the provisions of the rules of the society relating to meetings and elections. The very language of the provisions indicates that the power vested in the Registrar under sub-section (2) is directory and permissive. Sub-section (2) in our considered opinion, is neither couched in mandatory terms nor is it liable to be interpreted in a manner where we may be compelled to hold that the Registrar must necessarily convene a meeting of the general body of the society immediately upon the term of the erstwhile committee having come to an end or fresh elections having not been held. This we so hold in light of the fact that there may be varied circumstances in which elections of office bearers of a society may not come to be held within the time specified under

its rules. It cannot be said that in all situations where elections of office bearers of the society have not been held, the same is attributable to a deliberate default on the part of the existing office bearers. A stark example is the present case itself where on account of the appointment of the Authorised Controller as far back as in 1988, the elected office bearers stood removed and were unable to hold any elections whatsoever. These and other similar situations may result in elections of office bearers not being held within the time specified under the rules of the society. It is in this sense that we have found the powers of the Registrar to be directory and permissive. On a thoughtful consideration of the nature of the power conferred, the circumstances in which it is liable to be exercised, it is apparent that sub section (2) confers a discretionary power upon the Registrar to convene a meeting of the general body of the society. Our conclusion on this aspect is further buttressed by the use of the word "**may**" in sub-section (2) insofar as the power of the Registrar to convene a meeting of the general body is concerned.

18. The second assumption on which the conclusion of the Division Bench appears to rest is the understanding that the Registrar was conferred with exclusive **"jurisdiction"** and authority to convene a meeting of the general body. This assumption in our considered view is clearly misplaced when one reads sub-section (3) of Section 25 which is in the following terms:

> "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."

As would be evident from a reading of sub-section (3), the power and jurisdiction of any other authority or person to call a meeting for the purpose of elections stands eclipsed only in a situation where a meeting has already been called by the Registrar under sub-section (2). In fact sub-section (3) recognises that a meeting for the purposes of elections may in fact be convened by any other authority or by any other person. The power of that

other authority or person to convene such a meeting stands taken away only if the Registrar has assumed jurisdiction and taken steps under sub-section (2) to convene a meeting.

19. The theory of exclusive jurisdiction being vested in the Registrar is not compatible for other reasons also. In the case of degree colleges affiliated to a University, the State Government as well as the affiliating University statutorily exercise a certain degree of control over its affairs. As is evident from a reading of Sections 57 and 58 of the Universities Act, the State Government has been conferred the power to remove the management and appoint an Authorised Controller. By virtue of the legal fiction engrafted in Section 58, the Authorised Controller in fact assumes the mantle and form of the management itself. Upon being so appointed the Authorised Controller is conferred with all powers and authority which the management would ordinarily have. Be that as it may, the appointment of an Authorised Controller is primarily intended to bee an interim measure. The provision envisages his continuance only till such time as the management is not lawfully constituted. If the conclusion recorded by the Division Bench be the correct position in law we do envisage a stalemate coming into play where the Authorised Controller continues to exercise powers of management in a situation where the Registrar fails to exercise the discretionary powers vested in him under Section 25(2). To hold that the conclusion recorded by the Division Bench represents the correct position in law would mean that neither the State Government nor the Director of Education under Section 58 (5) of the Universities Act can direct the Authorised Controller to hold elections and lawfully constitute the management of the college. It is for this reason that we do not find any exclusive jurisdiction or authority being vested in the Registrar for the purposes of convening a meeting of a general body of a society.

20. An affiliated college by its very nature and character is not merely a society. Consequent to its affiliation with the University under the provisions of the Universities Act it becomes subject to the provision of the

aforementioned enactment as well as the Statutes and Ordinances of the affiliating University. It in this sense that the society consequently assumes a dual personality. It is not disputed that the management of an affiliated college has been defined to mean one which is duly recognised by the University. The affiliating University deals with the college represented by its committee of management and not the society. The plurality of character of such an institution clearly does not lend credence nor would we be justified in holding that the Registrar alone, in such circumstances and with reference to this category of societies, has exclusive jurisdiction and authority in such matters.

21. As noticed above, the Division Bench has proceeded on the basis that a direction to any authority to hold elections in the face of Section 25(2) would run contrary to law. This, as we have noted above, is based on the assumption of **"jurisdiction"** being exclusively vested in the Registrar. While it is true that the word "jurisdiction" is a coat of many colours, it is primarily employed to convey the entitlement of an authority to enter upon an enquiry. The word "jurisdiction" is used with reference to the right of an authority or body to decide and determine. With reference to a Court or a Tribunal, it would be liable to be construed as meaning the legal authority to administer justice in accordance with and subject to the limitation imposed by law upon the judicial authority. The principles laid down by courts governing issues of lack and/or excess of jurisdiction cannot be said to be applicable or attracted to the powers which the Registrar exercises under Section 25(2). It is apposite to bear in mind that the Registrar while exercising powers under Section 25(2) is not acting as an adjudicatory authority. He is neither determining nor deciding rights of contesting parties. The only power vested in him by sub-section (2) is to convene a meeting of the general body of the society upon being satisfied that elections have not been held within the time prescribed by the rules of the society. In the course of exercising such powers the Registrar is really not deciding a lis. In view of the above, the principles of "jurisdiction" as ordinarily understood is also

not attracted.

22. We may further note that the mandamus which was issued in 2007 was itself upon a learned Single Judge finding that no elections had been held for decades together. Additionally, the Court was faced with a situation where the Registrar also had failed to exercise powers conferred by Section 25(2). If such a situation does arise before the Court, a direction to the Authorised Controller or any other authority to hold elections and duly constitute the management of a society cannot be said to be an order contrary to law or without jurisdiction.

23. While arriving at the above conclusions, we have also borne in mind the nature of the power that this Court exercises by virtue of Article 226 of the Constitution. The power conferred by this Article on High Court has been described as plenary and extraordinary. In **Dwarka Nath Vs. ITO, AIR 1966 SC 81**, the width and amplitude of this power was recognized in the following words:-

> "**4.** We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads:
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> > "…every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."
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> **This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found**. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate

> the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, **High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country**. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. **To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels**. This interpretation has been accepted by this Court in T.C. Basappa v. Nagappa, 1955-1 SCR 250 : (AIR 1954 SC 440) and Irani v. State of Madras, 1962-(2) SCR 169: (AIR 1961 SC 1731).*"*
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> (emphasis supplied)

Since then the extraordinary power conferred upon this Court has been recognised as empowering it to strike down legislation, question proclamations, quash criminal proceedings, award damages and to be exercised *ex debitio justitiae*. As a superior constitutional court the Court also acts as a court of equity ensuring that the cause of justice is advanced, competing interests balanced and mould or nuance the relief in order to ensure that a just and equitable quietus is reached. In **Ramesh Chandra Sankla Vs. Vikram Cement, (2008) 14 SCC 58,** this aspect stands highligted by the following observations:-

> "**98.** From the above cases, it clearly transpires that **powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project**. As observed by this Court in *Shiv Shankar*

> *Dal Mills* v. *State of Haryana*[2] courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience."
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> (emphasis supplied)

24. Recently, a Constitution Bench of the Supreme Court was called upon to consider whether the courts could issue a writ directing an investigation to be undertaken by the Central Bureau of Investigation (CBI) without the consent of the State Government as statutorily required. Dealing with the aforesaid issue, the Constitution Bench in **State of W.B. Vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571**, observed as follows:-

> "**51**. The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Articles 32 and 226 respectively. Dr. B.R. Ambedkar described Article 32 as the very soul of the Constitution—the very heart of it—the most important article. By now, it is well settled that the power of judicial review, vested in the Supreme Court and the High Courts under the said articles of the Constitution, is an integral part and essential feature of the Constitution, constituting part of its basic structure. Therefore, ordinarily, the power of the High Court and this Court to test the constitutional validity of legislations can never be ousted or even abridged. Moreover, Article 13 of the Constitution not only declares the pre-Constitution laws as void to the extent to which they are inconsistent with the fundamental rights, it also prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Therefore, judicial review of laws is embedded in the Constitution by virtue of Article 13 read with Articles 32 and 226 of our Constitution.
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> **57.** As regards the powers of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. **The High Courts are authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or**

2 (1980) 2 SCC 437 : (1980) 1 SCR 1170

authority, including any Government to enforce fundamental rights and, "for any other purpose". It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, **the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well i.e. for enforcement of any legal right conferred by a statute, etc**.

58. In *Tirupati Balaji Developers (P) Ltd.* v. *State of Bihar*[3] this Court had observed thus: (SCC p. 14, para 8)

> "*8*. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts both are courts of record. The High Court is not a court 'subordinate' to the Supreme Court. In a way the canvas of judicial powers vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and *for any other purpose* while the original jurisdiction of the Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential elections or inter-State disputes which the Constitution does not envisage being heard and determined by High Courts."

It ultimately recorded its conclusions in the following terms:-

> **"68.** Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:
>
> (*iii*) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or

3 (2004) 5 SCC 1

> curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. **As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution**. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".
>
> **69.** In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

25. For the aforesaid reasons also we are of the considered view that the direction issued by the Court to the Authorised Controller to convene and hold a meeting of the general body cannot be described as being contrary to law.

26. In view of the above, we answer question (a) in the affirmative to the extent that a mandamus can be issued to the Authorised Controller/District Magistrate to hold elections of office bearers of a registered society. Our answer to this question must be read in light of the conclusions recorded earlier that such a direction would not be contrary to the provisions of

Section 25(2) of the Societies Registration Act, 1860. Insofar as the second question formulated by the Division Bench is concerned the same does not give rise to any question of law and appears to be an issue of fact relating to the merits of the disputes raised in this special appeal. We therefore, return the reference insofar as question (b) is concerned leaving it open for decision to the Division Bench which shall hear the special appeal itself.

JUDGMENT

(Per Ashwani Kumar Mishra, J)

27. I have the benefit of perusing the majority opinion authored by Hon'ble the Chief Justice upon the question referred for consideration by this Larger Bench. However, with utmost respect, I have not been able to agree with it, and thus, I intend to express my dissenting opinion.

28. The Dadar Ashram Society, Village Dadar, Post Charwa Barwa, Sikandarpur, Baillia (hereinafter referred to as the 'society') is a society registered under the provisions of Societies Registration Act, 1860 (hereinafter referred to as the 'Act of 1860'). The society is governed by the provisions of its bye-laws, which contains provision for holding periodical elections. It is admitted that periodical elections to constitute Managing Committee of society has not been held after 1988. The society runs a degree collage (hereinafter referred to as the 'educational institution'), which is affiliated to Mahatma Gandhi Kashi Vidyapeeth, Varanasi, a university incorporated under the provisions of the U.P. State Universities Act, 1973 (hereinafter referred to as the 'Act of 1973').

29. Under the Act of 1973, the educational institution affiliated to the university is to be managed by a Managing Committee, or other body charged with managing the affairs of that collage and recognized as such by the university. Section 2(13) of the Act of 1973, which provides for such course, is reproduced:-

> “2(13). 'management' in relation to an affiliated or associated college, means the managing committee or

> other body charged with managing the affairs of that college and recognized as such by the University;
>
> Provided that in relation to any such college maintained by a Municipal Board or a Nagar Mahapalika, the expression 'management' means the education committee of such Board or Mahapalika as the case may be and the expression 'Head of the Management' means the chairman of such committee."

30. In case of educational institution affiliated to university, the Managing Committee is the Managing Committee of the society. It is not in dispute that no Managing Committee of society exists which could be recognized by the university. An Authorized Controller has been working in the educational institution since long. It is in this context that a Writ Petition No.48538 of 2007 came to be filed before this Court, challenging an order passed by the Vice Chancellor, which required the Authorized Controller to either himself hold the elections or to nominate anyone else for getting the elections held and inform the university accordingly. This Court on 3.10.2007 disposed off the matter with following observations:-

> "..... Vice Chancellor has not at all directed as to under what provision elections are to be held, however, direction to hold elections in accordance with law, is clearly implicit in itself that elections are to be held strictly as per provisions as contained under the bye-laws of the society registered under the Societies Registration Act, 1860 from amongst the valid members of the general body of the society, who have been enrolled in terms of Section 15 of the Societies Registration Act, 1860. In this background, it has been agreed that for holding free and fair elections of the Committee of Management of the society, the District Magistrate shall look into registered bye-laws as per which elections have to take place and as per which affairs of the institution are to be run and managed. The District Magistrate shall also determine as to who are the valid members of the general body of the society enrolled in terms of Section Section 15 of the Societies Registration Act, 1860. The District Magistrate shall issue public notice in this regard and thereafter, after hearing each one of the respective claimants, determine the issue mentioned above and shall see that elections

> are held strictly in consonance with the provisions as contained under the registered bye-laws of the society from amongst the valid members of the general body of the society. In case situation is such that it is practically impossible to resolve the dispute, then the District Magistrate would be free to relegate the parties to civil suit for getting their rights adjudicated. Thereafter fresh elections shall be held after civil suit is decided. District Magistrate shall conclude the proceedings as per guidelines mentioned above, and in this process he may take assistance of the concerned Sub-Divisional Magistrate and the Assistant Registrar, Firms, Societies and Chits, for coming to rightful conclusion, preferably within next four months."

31. The Authorized Controller in terms of the order passed by the writ court found that intricate legal issues arise in determining claim of membership, inasmuch provisions of Indian Trust Act, 1882, as well as testament falls for interpretation which can only be adjudicated by a civil court. This order of Authorized Controller/District Magistrate, Ballia, dated 18.8.2008, although has been challenged in pending Writ Petition No.58418 of 2008, but no interference with it has been made by this Court. It is also admitted that no civil suit has been filed for adjudication of rival claims of membership. A suit for injunction by one of the factions had been instituted in the year 2001 i.e. Original Suit No.35 of 2001, claiming ownership right over the properties mentioned in the plaint. This suit got dismissed on 17.12.2014 and an appeal preferred against it has also failed on 13.8.2015. A second appeal is pending before this Court on the question of admission. The issue of membership has thus not been gone into by the civil court, yet.

32. It transpires that parties approached the District Magistrate for conducting elections of Managing Committee on the ground that pending civil proceedings have concluded and the Authorized Controller directed the Sub Divisional Magistrate to proceed. The Sub Divisional Magistrate has then proceeded to publish election schedule on 17.6.2015. It is at this stage that an application was made before the Vice Chancellor of the University for stalling the election process as the issue of membership was not yet

settled, and the Vice Chancellor directed the ongoing election proceedings to be stayed. The Registrar of the University issued a consequential order on 1.7.2015. It is this order which got challenged before the learned Single Judge in Writ Petition No.31246 of 2016. This petition has been disposed off on 13.7.2016, giving rise to filing of three special appeals. The first Special Appeal No.514 of 2016 has been dismissed by the Division Bench on 20.8.2016. The Division Bench in subsequent special appeals being Special Appeal (D) No.589 of 2016 and Special Appeal No.628 of 2016 has doubted correctness of the directions issued by the learned Single Judge on 13.7.2016 and that is how the matter has been placed before us. The issue in substance is as to which of the authorities had the jurisdiction to hold elections for constituting the Managing Committee of the society?

33. It is the society registered under the provisions of the Act of 1860, which has established educational institution and is charged with the responsibility of managing the institution. The society elects a Managing Committee in accordance with its bye-laws. The bye-laws of society has been framed in accordance with the provisions contained under section 2 of the Act of 1860 after the society itself was formed as per section 1 of the Act of 1860. The Act of 1860 provides for registration of society, renewal of its certificate after every five years and annual list of managing body to be filed before the Registrar under section 4 of the Act of 1860. Section 4-A provides that every change in the rules of society or change of address shall be sent to the Registrar within 30 days of the change. By virtue of amendment introduced in the Act of 1860, the list of members of society is also required to be filed under Section 4-B with the Registrar at the time of registration or renewal of society. Section 15 of the Act defines 'member' of a society. Section 22 provides power to the Registrar to call for information. Jurisdiction is also vested in the Registrar by virtue of section 24 to conduct investigation in the affairs of the society. Section 25 thereafter provides for manner of resolution of dispute of office-bearers of society, by providing for an Election Tribunal. Section 25(2), which is relevant for our purpose, shall

be referred to a little later. The Act also provides for penalties to be imposed under section 27 due to failure to perform duties conferred under the Act, as well as procedure to determine penalty as well as compounding of offence. From the scheme of Act, it is apparent that the Act of 1860 is a self-contained Code, which provides for registration of literary, scientific and charitable societies. All aspects of the society from the stage of its constitution, registration, membership, election, possessing of property, resolution of dispute of office-bearers and members, are all covered by the Act, and to that extent it is a special law dealing with the societies registered under the Act.

34. The society having established an educational institution affiliated to university incorporated under the Act of 1973, has to interact with the authorities of the university in the matter of regulating the educational institution itself. The university would also need to know as to who are the persons authorized to act on behalf of the society, since it is a juristic person. It is with this intent that section 2(13) of the Act of 1973 contemplates grant of recognition by the university to the Managing Committee of the society, charged with managing the affairs of the college. Such recognized Managing Committee constitutes management in terms of section 2(13) of the Act of 1973. The management performs its functions which are assigned to it under the Act of 1973. This includes appointment of teachers, managing the assets and properties of the educational institution etc. Chapter XI of the Act of 1973 contains provision relating to regulation of degree colleges. The entire chapter is reproduced for the purposes of ascertaining the object and extent of control to be exercised under the Act of 1973 over the management:-

> “CHAPTER XI
>
> REGULATION OF DEGREE COLLEGES
>
> **56. Definition.-** In this Chapter, unless the context otherwise requires-
>
> (a) 'property' in relation to an affiliated or associated college, includes all property, movable and immovable, belonging to or endowed wholly or partly for the

benefit of the college, including lands, buildings (including hostels), works, library, laboratory, instruments, equipment, furniture, stationery, stores, automobiles and other vehicles, if any, and other things pertaining to the college, cash on hand, cash at bank, investments, and book debts and all other rights and interests arising out of such property as may be in the ownership, possession, power or control of the college and all books of account, registers, and all other documents of whatever nature relating thereto, and shall also be deemed to include all subsisting borrowing, liabilities and obligations of whatever kind of the college;

(b) 'salary' means the aggregate of the emoluments including dearness or any other allowance for the time being payable to a teacher or other employee after making permissible deductions.

57. Power of the State Government to issue notice.- If the State Government receives information in respect of any affiliated or associated college (other than a college maintained exclusively by the State Government or a local authority)-

(i) that its Management has persistently committed wilful default in paying the salary of the teachers or other employees or the college by the twentieth day of the month next following the month in respect of which or any part of which it is payable; or

(ii) that it Management has failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the maintenance of academic standards in relating to the college or has appointed or retained in service any teacher in contravention of the Statute or Ordinances [or has failed to comply with the orders of the Director of Education (Higher Education) made on the basis of the recommendation of the Uttar Pradesh Higher Education Services Commission under the Uttar Pradesh Higher Education Services Commission Act, 1980] or

(iii) that any dispute with respect to the right claimed by different persons to be lawful office-bearers of its Management has affected the smooth and orderly administration of the college; or

(iv) that its Management has persistently failed to provide the college with such adequate and proper accommodation, library, furniture, stationery,

laboratory, equipment, and other facilities, as are necessary for efficient administration of the college; or

(v) that its Management has substantially diverted, misapplied or misappropriated the property of the college to the deteriment of the college;

it may call upon the Management to show cause why an order under section 58 should not be made:

Provided that where it is in dispute as to who are the office-bearers of the Management, such notice shall be issued to all persons claiming to be so.

58. Authorized Controller. - (1) State Government after considering the explanation, if any, submitted by the Management under section 57 is satisfied that any ground mentioned in that section exists, it may, by order, authorize any person (hereinafter referred to as the Authorized Controller) to take over, for such period not exceeding two years as may be specified, the Management of the college and its property to the exclusion of the Management and whenever the Authorized Controller so takes over the Management, he shall, subject only to such restrictions as State Government may impose, have in relation to the Management of the college and its property all such powers and authority as the Management would have if the college and its property were not taken over under this sub-section:

Provided that if the State Government is of opinion that it is expedient so to do in order to continue to secure the proper Management of the college and its property, it may, from time to time, extend the operation of the order for such period, not exceeding one year at a time, as it may specify, so however, that the total period of operation of the order, including the period specified in the initial order under this sub-section does not exceed five year.

Provided further that if at the expiration of the said period of five years, there is no lawfully constituted Management of the college the Authorized Controller shall continue to function as such, until the State Government is satisfied that the Management has been lawfully constituted;

Provided also that the State Government, at any time, revoke an order made under this sub-section.

(2) Where the State Government while issuing a notice under Section 57 is of opinion, for reasons to

be recorded, that immediate action is necessary in the interest of the college, it may suspend the Management, which shall thereupon cease to function, and make such arrangement as it thinks proper for managing the affairs of the college and its property till further proceedings are completed:

Provided that no such order shall remain in force for more than six months from the date of actual taking over the Management in pursuance of such order:

Provided further that in computation of the said period of six months, the time during which the operation of the order was suspended by any order of the High Court passed in exercise of jurisdiction under Article 226 of the Constitution or any period during which the Management failed to show cause in pursuance of the notice under Section 57, shall be excluded.

(3) Nothing in sub-section (1), shall be construed to confer on the Authorized Controller the power to transfer any immovable property belonging to college (except by way of letting from month to month in the ordinary course of management or to create any charge thereon) except as a direction of receipt of any grant-in-aid of the college from the State Government or the Government of India.

(4) Any order made under this section shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or in any instrument relating to the management and control of the college or its property:

Provided that the property of the college and any income therefrom shall continue to be applied for the purposes of the college as provided in any such instrument.

(5) The Director of Education (Higher Education) may give to the Authorized Controller such directions as he may deem necessary for the proper management of the college or its property, and the Authorized Controller shall carry out those directions.

59. Clause 58 not applied to minority colleges.- Nothing contained in Section 58, shall apply to a college established and administered by a minority referred to in clause (1) of Article 30 of the Constitution of India.

> **60. Duty to deliver possession to the Authorized Controller.-** (1) Where an order has been passed under Section 58 in respect of a college, every person in whose possession or custody or under whose control any property of the college may be, shall deliver the property to the Authorized Controller forthwith.
>
> (2) Any person who on the date of such order has in his possession or under his control any books or other documents relating to the college or to its property shall be liable to account for the said books and other documents to the Authorized Controller and shall deliver them up to him or to such person as the Authorized Controller may specify in this behalf.
>
> (3) The Authorized Controller may apply to Collector for delivery of possession and control over the college or its property or any part thereof, and the Collector may take all necessary steps for securing possession to the Authorized Controller of such college or property, and in particular, may use or cause to be used such force as may be necessary."

35. Section 56 defines 'property' of the educational institution as consisting of movable or immovable as well as other properties of the educational institution specified therein. Sub section (b) defines 'salary' as aggregate emoluments including dearness and other allowances payable to a teacher or other employee after making permissible deductions. Section 57 confers jurisdiction upon the State Government to issue notice to the management if it receives information that Management of the affiliated college has persistently committed default in paying salary; or the Management has failed to appoint teaching staff; or that any dispute with reference to the right claimed by different persons to be willful office bearers of its Management has affected the smooth and orderly administration of the college; or has persistently failed to provide the college with adequate facilities required for efficient administration; or Management has substantially diverted, misapplied or misappropriated the property of the college to the deteriment of the college, it may call upon the management to show cause as to why an authorized controller be not appointed. The State Government after consideration of explanation, if any, submitted by the

Management under section 57, if it satisfies that ground exists as mentioned in that section, it may appoint an Authorized Controller to take over such management for a period not exceeding two years to be specified. It is relevant to observe that power to appoint Authorized Controller can be exercised if necessary ingredients of section are made out, notwithstanding the fact that a recognized Managing Committee exists otherwise. The first proviso confers power to the State Government to extend term of Authorized Controller from time to time, not exceeding one year at a time, so that the period does not exceed five years. The second proviso contemplates that even after expiration of said five years, if there is no lawfully constituted management of the college, the authorized controller shall continue to function until the State Government is satisfied that the management has been lawfully constituted. The legislature has purposely employed the expression in second proviso to allow the Authorized Controller to continue, so long as the State Government is not satisfied that Management has been lawfully constituted. In case intent of the legislature was to confer jurisdiction upon the authorized controller to conduct elections himself, such a power could have been vested in it. In my opinion this was purposely not done as the Managing Committee has to be constituted in accordance with the provisions contained in the Act of 1860, and the Act of 1973 is not the appropriate Act/legislation for the purpose. The satisfaction of the State Government that a Managing Committee has been lawfully constituted refers to constitution of Managing Committee in accordance with law. The law for the purpose is the Act of 1860, which provides for establishment, constitution and regulation of society. It is only when a Managing Committee has been validly constituted under its provisions that such Authorized Controller shall cease to function. The power of Director of Education to issue direction to the Authorized Controller under sub-section (5) of section 58 has also to be read in the context of statutory scheme alone. It is for the object of proper management of the college or preservation of its property that the Authorized Controller shall carry out such directions. Once the constitution of Managing Committee is not enumerated specifically in

the Act to be the concern under the Act of 1973, and a separate enactment exists for the purposes i.e. Act of 1860, it is the authority under the relevant enactment who can be commanded to act and the Authorized Controller cannot be called upon to perform such work, as it does not fall within its jurisdiction.

36. I am inclined to take such view, as in my opinion, the provisions of the Act of 1860, and that of the Act of 1973, operate in entirely distinct fields, and there is no overlapping, so far as constitution of Managing Committee of the Societies is concerned. Hon'ble Supreme Court in ***Jaipur Shahar Hindu Vikas Samiti Vs. State of Rajasthan and others***, reported in (***2014) 5 SCC 530*** had an occasion to deal with the provisions of Rajasthan Public Trust Act, 1959, which are somewhat similar, and after analysing the provisions of the Act, the Apex Court has been pleased to observed as under in paragraph 37 of the judgment.

> "*37. A detailed examination of the Act reveals that it is a self-contained Act. We have thoroughly examined the Sections and each and every provision of law that is relevant for the purpose of the case on hand and find that the Act has provided appropriate mechanism:*
>
> *(a) to deal with the registration of a public trust;*
>
> *(b) making of entries in the register, their correction and inquiry, if any;*
>
> *(c) duties of auditor and inspection of balance sheet by any person interested in such public trust;*
>
> *(d) application by any person seeking directions from the Assistant Commissioner to appoint a new working trustee on the ground that the properties of the trust are not being properly managed or administered;*
>
> *(e) power of the Assistant Commissioner to ask for explanation of the working trustee about the administration of the trust; and*
>
> *(f) in case of mismanagement, power of the State Government to appoint a new committee of management etc.*"

37. The statutory scheme shows that the provisions of Act of 1860 are self-contained, and a special law for the purpose, which confers exclusive

jurisdiction upon the authorities constituted under the Act, and would not admit of any abdication of jurisdiction dehors the provisions of 1860 Act.

38. Turning to section 25 of the Act of 1860, it is to be observed that sub-section (1) deals with manner of resolution of doubt or dispute of an office bearer. Sub-sections (2) and (3) of Section 25 reads as under:-

> "***25. Disputes regarding election of office-bearers****-(1) …....*
>
> *(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 meeting of the general body of such society for election 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 meeting 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.*"

39. Sub-section (2) admits of three contingencies: (i) when the election of officer bearer is set aside; (ii) an office bearer is held no longer entitled to continue in office; and (iii) where 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, in which he may call meeting of the general body of society for electing office-bearer or office-bearers. In a case, where it is found that no elections have been held within the time specified in the rules of that society, the Registrar is empowered to call for a meeting of general

body, and shall preside over it or authorized anyone else for the purpose. Once it is found that elections to constitute Managing Committee of society is not held within time, it is the Registrar who has to intervene under the legislative scheme. I am in respectful agreement with the views expressed by Hon'ble the Chief Justice, based upon the conjoint reading of sub-sections (2) and (3) that Registrar is not under a mandate to call for meeting of general body, in every case where the term of office bearers has expired, inasmuch as there can be various circumstances in which the meeting held even after the term has expired could be upheld, and a meeting need not be immediately called by the Registrar upon expiry of term, for justifiable reasons. However, that is not the eventuality required to be dealt with here. The question is as to when the Managing Committee has not been constituted much after the expiry of its term, and a grievance is raised before a court of law, what ought to be the course to be followed, needs examination? There is nothing on record to indicate that Registrar has been approached in the matter, and despite it, he has failed to act. Failure or inaction on part of the Registrar cannot be assumed, unless specifically demonstrated on record. Even if the Registrar has failed to act, it would be open for a writ court to issue a direction to the Registrar to perform its statutory obligation, in terms of the scheme of the Act. Extreme cases, warranting departure from such course, in exercise of extraordinary jurisdiction cannot be ruled out. There is nothing on record to show that any such direction was issued to the Registrar in the past, or that such power has proved illusory so as to examine the feasibility of an alternative course to be followed, in exercise of jurisdiction under Article 226 of the Constitution of India. I am conscious that powers under Article 226 are wide enough to deal with mischief in a given case, but such eventualities are not to be presumed, at the first instance, especially when the scope of provision itself is to be examined as per the statutory scheme. The question is not of limits of exercise of jurisdiction under Article 226 of the Constitution of India, but is of proper exercise of power, in accordance with law. Law is settled that if an Act requires a particular thing to be done in a particular manner, all other

courses stand barred (see *Taylor Vs. Taylor, (1876) 1 Ch D 426*, as followed in *Nazir Ahmed Vs. King Emperor, AIR 1936 PC 253; State of Uttar Pradesh Vs. Singhara Singh, AIR 1964 SC 358; and Prabha Shankar Dubey Vs. State of Madhya Pradesh, AIR 2004 SC486*). It is equally settled that writ court will ordinarily not issue direction to an authority to perform an act, which is contrary to law, nor will authorize conduct of an act contrary to law. No new forum can be created, either. It is settled that court cannot confer jurisdiction apart from, and contrary to the provisions of statute.

40. The use of expression 'may' employed in sub-section (2) of section 25 is also not determinative, inasmuch the word 'may' or 'shall' have to be construed in the context of the scheme of Act as well as purpose underlying the legislation. The proposition laid down by the Apex Court in ***D.K. Basu vs. State of West Bengal, (2015) 8 SCC 744***, in para 13 to 16 is apposite, and therefore, reproduced:-

> "**13.** A long line of decisions of this Court starting with *Sardar Govindrao* v. *State of M.P.*[4] have followed the above line of reasoning and authoritatively held that the use of the words "*may*" or "*shall*" by themselves does not necessarily suggest that one is directory and the other mandatory, but, the context in which the said expressions have been used as also the scheme and the purpose underlying the legislation will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied by the duty to exercise the same.
>
> 14. In *Official Liquidator* v. *Dharti Dhan (P) Ltd.*[5] this Court summed up the legal position thus: (SCC p. 171, paras 7-8)
>
> > "*7.* In fact, it is quite accurate to say that the word 'may' by itself, acquires the meaning of 'must' or 'shall' sometimes. This word, however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a

4 AIR 1965 SC 1222
5 (1977) 2 SCC 166

> certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.
>
> 8. Thus, the question to be determined in such cases always is whether the power conferred by the use of the word 'may' has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word 'may' indicates that annexes any obligation to its exercise but the legal and factual context of it."

15. So also, this Court in *N.D. Jayal* v. *Union of India*[6] interpreted the provisions of the Environment (Protection) Act, 1986 to mean that the power conferred under the Act was not a power simpliciter, but, was a power coupled with duty. Unless the Act was so interpreted, sustainable development and protection of life under Article 21 was not possible, observed the Court. In *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*[7] this Court held that the scheme of the statute is determinative of the nature of duty or power conferred upon the authority while determining whether such power is obligatory, mandatory or directory and that even if that duty is not set out clearly and specifically in the statute, it may be implied as correlative to a right. Numerous other pronouncements of this Court have similarly addressed and answered the

6 (2004) 9 SCC 262
7 (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784

issue.

16. It is unnecessary to refer to all those decisions for we remain content with reference to the decision of this Court in *Bachahan Devi* v. *Nagar Nigam, Gorakhpur*[8] in which the position was succinctly summarised as under: (SCC pp. 383-84, paras 18-21)

> "18. It is well settled that the use of the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force. *As a general rule, the word 'may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words 'may', 'shall' and 'must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances*.
>
> *19. '17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute* under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or "may" depends on conferment of power. [Depending upon the] context, "may"

8 (2008) 12 SCC 372

> does not always mean may. May is a must for enabling compliance with provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes [his] duty to exercise [that power]. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.'*
>
> *20*. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretional and 'shall' is obligatory, the connotation is not inelastic and inviolate. Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'.
>
> *21*. The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of the words 'may' and 'shall' is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."
>
> (emphasis supplied)

The above decision also dispels the impression that if Parliament has used the words "may" and "shall" at the places in the same provision, it means that the intention

> was to make a distinction inasmuch as one was intended to be discretionary while the other mandatory. This is obvious from the following passage where this Court declared that even when the two words are used in the same provision the Court's power to discover the true intention of the legislature remains unaffected: (*Bachahan Devi case*[9], SCC p. 384, para 22)
>
> > "*22. '9.* … Obviously where the legislature uses two words "may" and "shall" in two different parts of the same provision prima facie it would appear that the legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive.'**
> >
> > The power of court to find out whether the provision is directory or mandatory remains unimpaired.""

41. The direction issued to the Authorized Controller to hold election of Managing Committee of society, disregarding the power of Registrar under section 25(2) would not be proper for the following reasons:-

> (i) It would amount to conferring jurisdiction upon Authorized Controller, which is not vested in it under the Act of 1973.
>
> (ii) The jurisdiction conferred upon the Assistant Registrar, by virtue of Section 25(2) of the Act of 1860 shall stand by-passed.

42. The writ court cannot issue a direction, which has the effect of conferring jurisdiction upon an authority, which is not vested in it by law, nor can issue a direction, so as to deny exercise of jurisdiction by an authority, which is so vested in it by law. It is for the legislature to create forum, and once such forums have been constituted, the writ court would ordinarily not issue a direction permitting a different course.

43. It appears that learned Additional Advocate General appearing for the State of Uttar Pradesh, being conscious of such statutory scheme has, therefore, taken the stand before us that a direction could have been issued by the writ court, only to the Registrar for holding election under Section

9 Bachahan Devi v. Nagar Nigam, Gorakhpur, (2008) 12 SCC 372

25(2) of the Act, and such a direction could not have been issued to the Authorized Controller for the purpose. It is otherwise interesting to note that in the present case, the Authorized Controller has further delegated its power, and has directed the Sub Divisional Magistrate to conduct election, which is even otherwise not permissible in law. It is further apparent that competent authorities under the Act of 1860 have not yet resolved the issue of membership, nor the civil court has ruled on it, and therefore, to permit the Sub Divisional Magistrate, as Delegatee of the Authorized Controller, to publish election programme would amount to elections being rendered a farce.

44. At this stage, I may also draw distinction between the Authorized Controller appointed under the Act of 1973, and the Authorized Controller appointed in respect of educational institutions recognized under the provisions of the U.P. Intermediate Education Act, 1921. Section 16-C of the Act of 1921 provides for framing of a scheme of administration to manage an institution. Section 16-CC provides that such scheme shall not be inconsistent with Third Schedule, which provides for procedure for constituting the Committee of Management as per scheme of administration by holding periodical elections. The Committee of Management of the institution is a distinct body. The scheme of administration also contains a provision that in case elections are not held within time, the Authorized Controller shall be appointed, who shall get the elections held to constitute the Committee of Management of the institution. It is in that context that a Full Bench of this Court in ***Committee of Management, Pt. Jawahar Lal Nehru Inter College, Bansgaon and another Vs. Deputy Director of Education, Gorakhpur Region, Gorakhpur and others,*** *reported in* ***[(2005) 1 UPLBEC 85]***, observed as under while answering the reference:-

> *"38. Accordingly, we answer the questions as follows :*
>
> *(1) …...*
>
> *(2) …...*
>
> *(3) Where the Regional Deputy Director of Education finds that the election of both the rival*

> *Committees arc invalid, he is not required to decide the question of actual control to recognize one or the other Committee of Management, and instead he shall, where the Scheme of Administration provides for appointment of an Administrator (Prabandh Sanchalak), appoint an Administrator with the direction to hold elections expeditiously in accordance with the Scheme of Administration, and where there is no such provision in the Scheme of Administration he shall appoint an Authorised Controller who shall expeditiously hold elections to the Committee of Management and shall manage the affairs of the institution until a lawfully elected Committee of Management is available for taking over the Management.*"

45. There is a distinction between an educational institution recognized under the Act of 1921, as well as an educational institution affiliated to an University, incorporated under the Act of 1973. In respect of the educational institution recognized under the Act of 1921, specific power vests by virtue of scheme of administration in the Authorized Controller to conduct elections, and that is why directions are issued by writ court to the Authorized Controller to hold election. The situation is different in respect of an educational institution affiliated to an University, incorporated under the Act of 1973. The Act of 1973 does not provide for a separate scheme of administration nor any such scheme has been placed on record conferring jurisdiction upon the Authorized Controller to hold elections of society for managing the educational institution, and therefore, no provision exists permitting the Authorized Controller to conduct elections to constitute Managing Committee. The body charged with the responsibility to manage such educational institution is the society, registered under the Act of 1860, and the exclusive provision to regulate it, so far as its valid constitution is concerned, vests in the authority constituted under the Act of 1860. The university incorporated under the Act of 1973 can always depute any officer or the Authorized Controller to remain present at the time of holding of election, so as to be satisfied about validity of election for the purposes of

exercising jurisdiction under section 2(13) of the Act of 1973, but there exists no jurisdiction with the Authorized Controller to conduct election of society to the exclusion of jurisdiction of Registrar under section 25(2) of the Act of 1860.

46. In view of the discussions aforesaid, I am inclined to hold that no mandamus can be issued commanding the Authorized Controller/District Magistrate, appointed under section 58 of 1973 Act, to hold election of office bearers of a society registered under the Act of 1860, to the exclusion of jurisdiction conferred in Registrar by virtue of section 25(2) of the Act of 1860, and a direction can be issued under Article 226 of the Constitution of India, accordingly.

47. Since the determination of members, who are entitled to vote, is a *sine qua non* for holding a valid election, as such, without getting the issue of membership resolved in accordance with the Act of 1860, no direction can be issued to the Sub Divisional Magistrate for holding election. Even if a direction is issued to the authority constituted under the Act of 1860 to conduct elections, the issue of membership shall have to be resolved, taking aid of amended provision contained in section 4-B & 15 of the Act of 1860, subject to conclusive determination of the issue by a civil court.

December 16, 2016
AHA
Ashok Kr./Anil

(Dilip B Bhosale, CJ)

(Ashwani Kumar Mishra, J)

(Yashwant Varma, J)