
(2012) 05 AHC CK 0074
In the Allahabad High Court
Case No : C.M.W.P. No. 27344 of 2012

Ahmad Rasheed and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c), 30

Citation : (2012) 5 AWC 4778

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ramesh Kumar Shukla and Anil Sharma, for the Appellant;

Judgement

Arun Tandon, J.—It is not in dispute that the elections of the Committee of Management of Bijnor Inter College, Bijnor were last held on 16th August, 1998. The elections were granted recognition on 9th September, 1998. The dispute pertaining to the subsequent elections pleaded lastly travelled up to High Court in Special Appeal No. 1752 of 2010. The Division Bench of this Court disposed of the special appeal by issuing following directions:

Accordingly, in view of the above agreed position between the parties, we dispose of this appeal by modifying the order of the learned single Judge that the election of the Committee of Management of the institution shall be held under the supervision of the District Magistrate, Bijnor through the valid members of the Society.

So far as the management of the affairs of the institution is concerned, the same will abide by the order dated 1st September, 2010 passed by the Joint Director of Education, till the new Committee is constituted and takes charge.

The list of valid members, after due verification, will be prepared within six weeks, as directed by the learned single Judge, and thereafter elections shall be held, within one month from the said date by the Election Officer.

The appeal stands disposed of.

2. This Court may record that prior to the order of the Division Bench of this Court dated 27.10.2010, the Joint Director of Education had appointed Shri Hakeem Naseem-Ur-Rahman, the outgoing President of the Committee of Management, as the nominated person for getting the fresh elections held, reference page 123 of the paper-book. According to the petitioners, the term of such nominated person/Authorized Controller can be three months only.

3. In the light of the directions issued by the Division Bench of this Court as aforesaid, the list of valid members after due verification was to be prepared within six weeks. Thereafter, the elections were to be held within one month to be notified by the Election Officer.

The petitioners claimed to be enrolled as life members by the earlier nominated person Shri Ikbal Ahmad.

4. The issue with regard to the finalization of the electoral college came be considered by the District Magistrate as directed, who in turn authorized the Sub-Divisional Magistrate to oversee the elections.

The Sub-Divisional Magistrate under the order impugned after referring to the judgment of the High Court in the case of Rajendra Pal Singh Vs. District Inspector of Schools, Jalaun and others, , has held that a nominated person/Authorized Controller has no competence to enroll new members to the General Body.

Therefore, such enrolment of the petitioners as life members has been held to be illegal. It has been held that there is only one surviving" life member of the General Body. Therefore, in such circumstances a letter may be written to the Director of Education to appoint a person for enrolling new members.

It is against this order, the present writ petition has been filed.

5. Two questions have been raised in the present petition, (a) If a person has been appointed to hold the fresh elections, he gets the competence to enroll new members and (b) in the facts of the case, there being only one surviving life member, the nominated person/Authorized Controller had to induct new members in the General Body" so that valid elections could take place.

6. Heard Shri Anil Sharma, advocate assisted by Shri R.K. Shukla, advocate on behalf of the petitioners and learned standing counsel on behalf of the State-respondents.

7. It may be mentioned at the very outset that a Division Bench of this Court has held that the Authorized Controller has no competence to enrol new members reference Ranbir singh Vs. District Inspector of Schools, Jalaun at Orai and others, .

The Hon''ble Supreme Court of India in the case of Smt. Damyanti Naranga Vs.

The Union of India (UOI) and Others, , has held that no member can be inducted except with the consent of the members of the voluntary Association as that of the present one.

8. In view of the legal position so explained, this Court has no hesitation to record that neither the Authorized Controller nor the nominated person has any right to enrol new members to the General Body for the purposes of holding fresh elections of the Committee of Management.

9. The right available to an association of persons belonging to minority section, which runs minority institutions is more sacrosanct, wherein the right to form the association stands protected not only under Article 19 (1) (c) but also under Article 30 of the Constitution of India.

10. This Court may further record that the powers, which have been conferred upon the nominated person/Authorized Controller under the scheme of administration, i.e.. Chapter IV Clause 5, proviso reads as follows:

11. It is apparently clear that after the term of five years of the earlier Committee of Management expires then the President of the outgoing Committee of Management gets a limited right to get fresh elections of the Committee of Management held and in case he fails to get fresh elections held then the Deputy Director of Education can appoint a person for the purposes of holding fresh elections. It is, therefore, clear that the right, which is conferred upon the nominated person is only to hold fresh elections. All other rights under the scheme of administration especially those pertaining to enrollment of new members is not conferred or transferred upon such nominated person/Authorized Controller.

12. Reference may also be had to the Clause I of Chapter II, which confer a right upon the General Body to accept or not to accept a person as member with a further provision that in case of dispute, the decision of the President shall be final.

13. Admittedly, as on date the General Body comprises of only one member and there is no President. Therefore, the question of enrolment of new members in accordance with the scheme of administration does not arise. As already noticed above, the nominated person/Authorized Controller has not been conferred any power under the scheme of administration to enrol new members. The Sub-Divisional Magistrate appears to be legally justified in recording a finding that the enrolment of new members by earlier nominated person was apparently illegal. Similarly, there cannot be any directions by the Joint Director of Education for authorizing any other person to Induct new members to the General Body.

14. However. In the opinion of the Court the only remedy for the petitioners to file a civil suit for intervention In the matter so as to come over the peculiar situation, which has arisen in the Institution for want of valid members of the General Body and it is for the competent civil court to frame a scheme as may be

permissible under the law. Writ petition is disposed of with a direction upon the Education Authorities to not to enrol any new member to the General Body of the institution except under orders of a competent civil court.