
(2010) 09 AHC CK 0387

In the Allahabad High Court

Case No : Special Appeal Nos. 1270 and 1271 of 2010

Anand Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0387

Hon'ble Judges : R.K.Agrawal, J and Rajesh Chandra, J

Final Decision : Dismissed

Judgement

Rajesh Chandra, J.—Since both these special appeals arise out of the judgment and order dated 03.05.2010 passed by learned Single Judge and the facts are similar in both these special appeals, these are being decided by this common judgment. Special Appeal No. 1270 of 2010 (Anand Singh and another V/s. State of U.P. and others) is being treated as a leading case and its facts are given below:

2. This special appeal no. 1270 of 2010 has been filed by the appellant respondent namely Anand Singh and Binda Devi Patel against the judgment and order dated 3rd May, 2010, passed by Single Judge in Civil Misc. Writ Petition No. 30472 of 2008, by which the learned Single Judge has quashed the order dated 23.06.2008 passed by the Joint Director of Education holding the election, held by respondent no. 5, Committee of Management, Janta Inter College Kanta, District Chandauli on 25.11.2007, in which the respondent no. 6, Murahu Singh was elected as manager of the institution, as invalid.

3. In brief, the facts of the case are that the Committee of Management, Janta Inter College Kanta, District Chandauli, through its manager Murahu Singh and Murahu Singh as Manager of the College (hereinafter referred to as petitioners) filed Civil Misc. Writ Petition No. 30472 of 2008 alleging therein that Janta Inter College Kanta, District Chandauli, run by a society known as Janpad Uchchattar Madhyamik Vidyalaya Kanta, Varanasi, a society registered on 18.08.1952 is a duly recognised college and is governed by the provisions of U.P. Intermediate

Education Act 1921 and Regulations framed thereunder. The college receives grantinaid only up to the level of High School and no aid is provided for running Intermediate Classes. Since the Institution is receiving grantinaid the provisions of U.P. Act No. 24 of 1971 are applicable to it.

4. The petitioners further alleged that the previous election of the Committee of Management of the Institution was held on 18.11.2004 in which the petitioner no. 2, Murah Singh was elected as manager. The District Inspector of Schools (D.I.O.S.) vide letter dated 25.11.2004 forwarded the papers relating to the election to the Joint Director of Education for being placed before the Regional Committee. The Regional Committee being satisfied with the election so held granted approval to the said election vide letter dated 02.12.2004. The Joint Director of Education as well as the D.I.O.S. communicated the said order of the Regional Committee to the petitioners. The term of the Committee of Management was three years.

5. According to the petitioners, the D.I.O.S. at the behest of present appellants, Anand Singh and Smt. Binda Devi Patel made a recommendation to the Joint Director of Education, Varanasi Region, Varanasi, for taking action against the petitioners under the provisions of the U.P. Act No. 24 of 1971. The Joint Director of Education issued a show cause notice to the petitioners of which proper reply was given by the petitioners. After considering the reply given by the petitioners, the Joint Director of Education issued an order dated 13.09.2006 directing the D.I.O.S. to decide the matter in the light of reply submitted by the petitioners. The D.I.O.S. then made a recommendation to the Joint Director of Education on 09.01.2007 for superseding the petitioner no. 1, Committee of Management under Section 6 (3) of U.P. Act No. 24 of 1971, whereupon a show cause notice was again issued to the petitioners by the Joint Director of Education on 02.08.2007. The petitioners then submitted a reply to the show cause notice vide letter dated 21.08.2007 and another letter dated 25.09.2007. However, the Joint Director of Education proceeded to pass an order on 29.09.2007 superseding the Petitioner Committee of Management under Section 6 (3) of U.P. Act No. 24 of 1971.

6. Feeling aggrieved by the said order dated 29.09.2007 the Petitioner Committee of Management filed writ petition no. 50438 of 2007 wherein vide interim order dated 10.10.2007 the operation of the aforesaid order dated 29.09.2007, passed by the Joint Director of Education, was kept in abeyance. As a result of this interim order the Petitioner Committee of Management continued to manage the affairs of the Institution.

7. The petitioners further alleged that since the term of the Committee of Management of the College was coming to an end in November, 2007, proceedings for holding fresh elections were initiated and the D.I.O.S. vide his order dated 06.11.2007 granted permission to the petitioner for holding fresh elections. At the request of the Committee of Management, the D.I.O.S. vide his order dated 23.11.2007, appointed the Accounts Officer as an observer. The

election of the Committee of Management was held on 25.11.2007 under the aegis of the observer and the entire papers relating to the election of the Committee of Management were sent to the D.I.O.S. for being transmitted to the Joint Director of Education, Varanasi Region, Varanasi, for placing before the Regional Committee. The D.I.O.S. forwarded the papers to the Joint Director of Education along with his report dated 16.01.2008. However, before an order could be passed by the Regional Committee in the matter pertaining to the grant of recognition to the newly elected Committee of Management, the D.I.O.S. proceeded to pass an order dated 27.03.2008 directing single operation of the account without giving any notice or opportunity of hearing to the Petitioner Committee of Management. The only reason assigned by the D.I.O.S. while passing the aforesaid order was that although the election of the Committee of Management was held on 25.11.2007, the same has not been recognised by the Regional Committee and therefore, the Petitioner Committee was not authorised to function.

8. Feeling aggrieved by the aforesaid order dated 27.03.2008, the Petitioner Committee of Management filed writ petition no. 17832 of 2008 before the Allahabad High Court on 07.04.2008. In this writ petition the High Court by passing interim order stayed the operation of the order dated 27.03.2008 passed by D.I.O.S. The Court further directed the Joint Director of Education to pass appropriate orders with regard to the objections of the present appellants. After the aforesaid direction the Regional Committee proceeded to decide the matter and passed an order dated 23.06.2008 mentioning therein that the Petitioner Committee of Management, which had been elected on 25.11.2007 cannot be recognised. The Regional Committee then appointed Principal of the Government Inter College, Ramnagar, Varanasi as Prabhand Sanchalak of the Institution. The Regional Committee did not recognize the Petitioner Committee of Management on the ground that the matter pertaining to Management was pending consideration before the Allahabad High Court, the D.I.O.S. was not justified in granting permission to it for holding fresh election, the election of 2001 of the Committee of Management had not been recognised by the Regional Committee, the recognition was obtained in the year 2004 by the Petitioner Committee of Management by concealing facts and that the dispute pertaining to the parent body is pending consideration before the Competent Authority.

9. The petitioner alleged that the order of the Joint Director of Education passed on 19.09.2007 superseding the management under Section 6 (3) of U.P. Act No. 24 of 1971 was kept in abeyance by Hon"ble the Allahabad High Court vide order dated 10.10.2007, hence, the Petitioner Committee continued to manage the affairs of the Institution and in these circumstances the Petitioner Committee was fully authorised to hold fresh elections. The D.I.O.S. did not commit any illegality in permitting the Petitioner Committee to hold the elections. So far as the election of the year 2001 is concerned, the same was held on 17.11.2001 and came to be recognised by the D.I.O.S. vide order dated 20.11.2001. In pursuance of the said order Petitioner Committee continued to manage the

affairs of the Institution. In respect of the said elections of the year 2001 Anand Singh had filed an objection on 11.02.2002 before the Joint Director of Education who called for a report of the D.I.O.S. with regard to those objections. The D.I.O.S. then submitted his report on 08.08.2002 and after considering the said report the matter was consigned to records by the Joint Director of Education. The Committee of Management which was elected in the year 2001 then continued to manage the affairs of the Institution and completed its term. Thereafter, fresh election was held in the year 2004 which was recognised by the Regional Committee vide order dated 02.12.2004. The petitioner further alleged that in cases where there is no dispute in the management the D.I.O.S. is authorised to pass an order granting recognition to the Committee of Management which is elected. The Committee of Management which was elected in the year 2001 was thus recognised by the D.I.O.S. and completed its full term without any objection from any corner. The Regional Committee has not mentioned in its report as to what facts were concealed by the Petitioner Committee in obtaining recognition in the year 2004. The fact is that the entire papers were submitted to the D.I.O.S. which were forwarded by him to the Joint Director of Education and thereafter the recognition was granted by the Regional Committee vide order dated 02.12.2004. So far this observation made by the Regional Committee, is concerned that the dispute regarding parent body is pending consideration before the Competent Authority, no such dispute is pending. It is only Chaudhary Rudradev Singh and Chaudhary Anand Singh who are litigating with the Committee of Management of the Institution since the year 1996 on the ground that the Institution is being run by a body known as Kanta Jamindar Shiksha Trust Samiti. The said body has neither been registered under the Societies Registration Act nor under Indian Trust Act. The dispute raised with respect to the Managing body of the society had been referred to the Prescribed Authority and was decided in favour of the petitioner on 17.08.1998. The rival claim set up by the respondents no. 5 and 6 has rightly been rejected by the Regional Committee as these persons were not authorised to hold election as it is only the outgoing committee i.e. Petitioner Committee who is entitled to hold elections. The petitioner then prayed that the order dated 23.06.2008 passed by the Regional Level Committee, Varanasi Region, Varanasi may be quashed and a direction may be issued to the respondents not to interfere in the peaceful functioning of the Petitioner Committee in any manner.

10. The counter affidavit was filed by one Chaudhary Gajanan Pratap Patel who is son and pairokar of the respondent no. 6 Binda Devi Patel. In the counter affidavit it has been averred that the U.P. Government issued a Government Order dated 19.12.2000 which lays down that the matters relating to the election of Management Committee are to be entertained by Regional Committee consisting of Joint Director of Education, Deputy Director of Education(Secondary) and District Inspector of Schools of the District concerned. After the year 1998 the election of the Committee of Management was to be held in the year 2001 with the permission of Regional Committee but the petitioner

Murahu Singh fabricated some false papers regarding election alleged to have taken place in the year 2001 and did not forward the same for the approval of Regional Committee. The alleged Manager was required to show cause but no satisfactory explanation was given by him. In this background it is clear that the election of the Committee of Management held in the year 2001 was illegal being in contravention of the Government Order dated 19.12.2000, and as such the life of the Committee of Management came to end in the year 2001 itself and the Committee became functus officio and was not empowered to hold any election in the year 2004. The petitioner by concealing facts submitted fake papers regarding election dated 18.11.2004 and obtained approval dated 02.12.2004 from the D.I.O.S. playing fraud upon him. It was in this background that the Competent Authority had appointed an authorised controller on 29.07.2007 but that order was stayed by the Allahabad High Court in Writ Petition No. 50438 of 2007. The respondent Anand Singh had obtained an order from the High Court on 10.10.2007 for an opportunity of hearing being given to Anand Singh by the authorities concerned. It has further been alleged that the grant of permission by the D.I.O.S. to the petitioner to hold election of Committee of Management on 25.11.2007 was illegal. The fact is that the actual election had taken place on 31.07.2007 in which Smt. Binda Devi was elected as Chirman and the respondent Anand Singh as Manager of the Committee. According to the respondent Anand Singh, both the rival Committees forwarded their papers before the authorities concerned for approval on which the D.I.O.S. had submitted his report and the Regional Committee after examining the entire facts and circumstances recorded a finding of fact that the election of the year 2001 as well as the election of 2004 and 2007 allegedly held by Petitioner Committee of Management were totally illegal and in contravention of law and that the Committee of Management is not competent to look after and maintain the College. The Regional Committee proceeded under Section 16 (D) of U.P. Intermediate Education Act 1921 and appointed authorised controller. According to the respondents no. 5 and 6 the Regional Committee after giving justified reasons has passed the order which does not suffer from any illegality or irregularity.

11. The learned Single Judge after hearing the parties and on perusal of the papers submitted by the parties has held as under.

"After having heard the submissions advanced by learned counsel for the parties and perused the material brought on record as well as the impugned order I am of the view that the submissions made by learned counsel for the petitioner have substance and are liable to be accepted whereas the submissions made on behalf of respondent nos. 4 and 5 have no force at all.

It is indisputed that the election of the committee of management of the institution held in the year 2001 was not approved by the Regional Level Committee but the same was recognised by the District Inspector of Schools. It is further indisputed that the validity of the committee of management of the

institution elected in the year 2001 was not challenged on the aforesaid ground and the said committee of management completed its full term and held election in the year 2004 on the basis of which new committee of management of the institution was constituted which was duly approved by the Regional Level Committee. The said committee of management also completed its full term and conducted election in November 2007 for constituting a fresh committee of management of the institution. By the impugned order the election of the committee of management held in November 2007, has been disapproved only on the ground that the committee of management of the institution elected in the year 2001 had not been approved by the "Regional Level Committee.

In my opinion the reason given in the impugned order for disapproving the election of the committee of management of the institution held on 21.11.2007 is totally misconceived and is untenable. The Regional Level Committee while considering the claim of the petitioners for approval of the election of the committee of management of the institution held on 21.11.2007 was required only to examine whether the said election satisfied the following requirements:

- 1.that the election has been held by the outgoing committee of management;
- 2.the election has held within a period of three years one month from the date of previous election;
- 3.the election has been held in accordance with the scheme of administration;

There is nothing on record which may indicate that the election of the committee of management held in November 2007, in which petitioner no. 2 was elected as manager, did not fulfill any of the above noted requirements.

There is no material on record substantiating the argument made by learned counsel for petitioner that the election for constituting the committee of management of the institution held in the year 2004 was held after the prescribed period of limitation.

For the aforesaid reasons the impugned order cannot be sustained to the extent it disapproves the election of the committee of management of the institution constituted by the petitioner.

After having carefully gone through the impugned order I am of the view that the reasons given in the impugned order for disapproving the election of the committee of management of the institution conducted by the respondent nos. 4 and 5 are well founded and cannot be faulted with.

In view of the above, the writ petition is allowed. The order 23.06.2008 passed by the Joint Director of Education, Respondent No. is quashed to the extent it holds the election held on 25.11.2007, by outgoing committee of management for electing the committee of management of the institution in which petitioner no. 2 was elected as manager of the institution to be valid."

12. It is this order dated 03.05.2010 passed by the Single Judge which has been

impugned in this Special Appeal. The other Special Appeal No. 1271 of 2010 has been filed by Committee of Management Janta Inter College Kanta, District Chandauli, through its manager Chaudhary Anand Singh and by Smt. Binda Devi challenging the judgment and order dated 03.05.2010 passed by the Single Judge in Civil Misc. Writ Petition No. 32341 of 2008.

13. In appeal we have heard Sri Ashok Khare, learned senior advocate appearing on behalf of appellants and Sri P.S. Baghel, learned senior advocate appearing on behalf of contesting respondents.

14. Learned counsel for the appellants vehemently argued that the learned Single Judge has committed an error of law in not considering this fact in its right perspective that the Committee of Management which was elected in the year 2001 had not been recognised by the Regional Level Committee and the recognition given by D.I.O.S. was not valid in the eye of law. His contention is that since the Committee of Management of the year 2001 was not recognised, hence, that Committee was not entitled to conduct any election either in year 2004 or in the year 2007.

15. Learned counsel for the respondent nos. 5 and 6 replied that the learned Single Judge has not committed any illegality in passing the impugned judgment and he has rightly held that the nonapproval of the election of the Committee of Management of the Institution held in the year 2001 by the Regional Level Committee was merely an irregularity and not any illegality and further that the Committee of Management of the year 2001 had completed its term without any objection from any corner. The Committee of Management of the year 2001 had validly elected the Committee of Management of the year 2004 which was recognised by the Regional Level Committee subsequently. This Committee of Management of the year 2004 held elections for the new Committee of Management within the stipulated period and as per the Scheme of Administration, hence, the Regional Level Committee ought not to have refused the recognition to the newly elected Committee of Management in the year 2007 and in this way the order of the Regional Level Committee has rightly been set aside by the learned Single Judge.

16. We have given out thoughtful consideration to the arguments submitted by the learned counsel for the parties and we are of the opinion that the learned Single Judge has not committed any illegality in passing the impugned judgment and order.

17. It is an admitted fact that the Committee of Management elected in the year 2001 was not recognised by the Regional Level Committee and was recognised by the D.I.O.S. vide his order dated 30.11.2001. The present respondent nos. 5 and 6 have alleged in their writ petition no. 30472 of 2008 that Anand Singh had filed an objection on 11.02.2002 before the Joint Director Education with respect to the election held in 2001 and then a report was called from the D.I.O.S. The D.I.O.S. then submitted the report on 08.08.2002 and considering the said

report, the matter was consigned to the records by the Joint Director of Education. The present appellants have not denied these allegations in the counter affidavit filed by them in the said writ petition no. 30.472 of 2008. It is thus apparent that the elections of the year 2001 were objected to by Anand Singh before Joint Director Education but nothing illegal was found therein and the Committee of Management of the year 2001 completed its full term without any obstacle. It is also an admitted position that the Committee of Management of the year 2001 successfully conducted election of the Committee of Management for the year 2004 and that Committee of Management was recognised by the Regional Level Committee vide order dated 02.12.2004. Thus this Committee of Management of the year 2004 was a validly constituted Committee of Management having been recognised by the Regional Level Committee. This Committee also completed its full term without any objection from any corner. Although, this Committee of Management of the year 2004 was superseded by the Joint Director Education vide order dated 29.09.2007 but that supersession was not on the ground that the election of the Committee of Management is illegal or is not in accordance with law. The supersession was made on some other points and that order of supersession was stayed by this Court in writ petition no. 50438 of 2007 vide order dated 10.10.2007. After that stay order the Committee of Management of the year 2004 also completed its full term. The Committee of Management of the year 2004 which was outgoing Committee of Management held elections on 25.11.2007 after seeking permission from the D.I.O.S. and that too under the supervision of the observer appointed by the D.I.O.S. The papers relating to this election of the year 2007 were forwarded to the Regional Level Committee but the Regional Level Committee refused to recognise the newly elected Committee of Management vide order dated 23.11.2007 on the ground that the election of the Committee of Management which took place in the year 2001 was not in accordance with law. This order of the Regional Level Committee is patently incorrect. The elections of the year 2007 were held by the outgoing Committee of Management and these elections took place within the stipulated period and in accordance with the Scheme of Administration. The outgoing Committee of Management of the year 2004 was a recognised Committee of Management and had the approval of the Regional Level Committee. In these circumstances Regional Level Committee could not have denied the recognition to the newly elected Committee of Management of the year 2007 on the ground that the election of the Committee of Management of the year 2001 was not in accordance with law. The irregularity in the constitution of the Committee of Management of the year 2001 automatically came to an end as soon as the Committee of Management of the year 2004 came into existence after approval by the Regional Level Committee. Now the Regional Level Committee is estopped from raising the same issue in the year 2008 after the election of the Committee of Management of the year 2007. Once the Committee of Management of the year 2004 was approved and recognised by the Regional Level Committee, it does not lie in the mouth of the Regional Level Committee to hold that the Committee of the Year 2007 is invalid

because its Constitution in the year 2001 was not valid.

18. We are thus satisfied that the learned Single Judge has rightly held that the order of the Regional Level Committee refusing recognition to the newly elected committee of Management of the year 2007 was illegal and has rightly been set aside by the Single Judge.

19. Learned counsel for the appellants then tried to argue that after the supersession of the Committee of Management of the year 2004 by the Regional Level Committee vide order dated 29.09.2007, the matter was pending before this Court in writ petition no. 50438 of 2007, hence, in these circumstances the D.I.O.S. was not authorised to grant any permission dated 06.11.2007 for holding fresh elections by the Committee of Management of the year 2004.

20. We have considered over this argument and we feel that the same is not tenable. This Court in writ petition no. 50438 of 2007 had not passed any order to the effect that the next election will not be held by the Committee of Management of the year 2004. This Court had only stayed the order of the Regional Level Committee dated 29.09.2007. Since there was no stay order of the High Court and the term of the Committee of Management of the year 2004 was going to expire, hence, the D.I.O.S. did not commit any illegality in granting permission to the outgoing Committee of Management to hold elections for a fresh Committee of Management in accordance with law. Thus the above said argument is rejected.

21. Learned counsel for the appellants argued that the Regional Level Committee as well as learned Single Judge committed manifest error of law in holding that the elections conducted by the Committee of Management, Janta Inter College Kanta, District Chandauli through its Manager Chaudhary Anand Singh are invalid. His contention is that the said elections had been held in accordance with the Scheme of Administration of the Institution as well as the provisions of U.P. Intermediate Education Act, 1921 and the Rules framed thereunder. We have given our considered thought to this argument and we find that it is meritless. The committee of Management of which Chaudhary Anand Singh is the alleged Manager was never recognised by the Regional Level Committee nor accorded its approval to such elections, hence, any elections held by this Committee are illegal. The Regional Level Committee has not committed any illegality in not according sanction to this Committee of Management of which the election allegedly took place on 31.07.2007 and in which Smt. Binda Devi was elected as Chairman and Anand Singh as the Manager.

22. No other point was argued in the appeals.

23. In view of the above discussion we are satisfied that there is no merit in the appeals and the same are liable to be dismissed.

24. The appeals are dismissed.

25. Let a copy of this judgment be kept on the file of Special Appeal no. 1271 of

2010.