
(2010) 09 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 43615 of 2009

Arjun Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 6 AWC 6193

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : Shailendra, for the Appellant; S.S. Chauhan, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri Shailendra, learned Counsel for the Petitioner, learned standing counsel for the State-Respondents and Sri S.S. Chauhan, learned Counsel for the Respondents No. 5 and 6.

2. Learned Counsel for the Respondents were granted time to file counter-affidavit by the order dated 21.8.2009 and although more than one year has passed no counter-affidavit has been filed. Sri S.S. Chauhan, learned Counsel for the Respondents No. 5 and 6 prays for further time to file counter-affidavit which is strongly opposed by Sri Shailendra saying that by the impugned order the Petitioner is suffering and the Respondent is adjourning the matter by taking time, therefore, the matter be heard.

3. In view of the aforesaid submission of learned Counsel for the parties the matter has been heard and is being decided today itself with their consent.

4. The Petitioner claims himself to be a member of the general body of the Society which is running the institution Janta Inter College, Nagal, Saharanpur and is also the complainant against the Committee of Management elected on 6.11.2008.

5. Sri Shailendra has submitted that the Regional Level Committee by the impugned order dated 12.6.2009 has not complied with the directions issued by the Division Bench in Special Appeal No. 1565 of 2008. Arjun Singh v. State of U.P., decided on 7.11.2008 alongwith Writ Petition No. 54055 of 2003. His second submission is that having not considered the detailed objection filed by the Petitioner relating to the election, electoral college and the persons who participated in the election, the Regional Level Committee could not have rejected the objections of the Petitioner or approved the election of the Committee of Management. His other submission is that although in the impugned order the objections of the Petitioner have been referred to in quite some detail but none of them has been considered and hence also it is a case where the Regional Level Committee has not applied its mind to the objections made by the Petitioner and has illegally passed the impugned order. He further states that the Regional Level Committee was required to see the correctness or incorrectness of the order dated 6.11.2008, passed by the District Inspector of Schools but it has failed to do so and in effect it has only considered the procedural aspect of the election alleged to have been held on 6.11.2008.

6. Sri S.S. Chauhan, learned Counsel for Respondents No. 5 and 6 has referred to the directions issued by the Division Bench in the order dated 7.11.2008 and states that the same has been duly complied with in the impugned order and insofar as the objections of the Petitioner relating to events from the year 1980-81 upto date are concerned they were neither subject-matter of consideration by the Division Bench nor they were required to be considered by the Regional Level Committee.

7. In rejoinder Sri Shailendra has submitted that admittedly one Sri Vinay Kumar is claimed to have been inducted in the general body on 14.2.1975 at which time he was a minor having been born on 22.10.1960 and, therefore, once it was established that Sri Vinay Kumar was not eligible for membership or to hold any office of the Committee of Management for the reason of being a minor, any subsequent claim of membership made by him in the absence of fresh membership would not cure the illegality whereby Sri Vinay Kumar was clearly disqualified and, therefore, the impugned order has illegally held that after 34 years of membership of Sri Vinay Kumar the objections cannot now be entertained.

8. Having considered the submission of learned Counsel for the parties and perused the record, it would be appropriate to quote the relevant portion of the Division Bench judgment dated 7.11.2008 which has been referred by learned Counsel for both the parties:

"The issues based on the report submitted by the District Inspector of Schools are correct or not and as to valid electoral college has participated in the elections or not and further as to whether the elections have been held in accordance with the scheme of administration in our opinion can be raised and examined by the Regional Level Committee after the elections are over. It is

needless to emphasize that any elections of the Committee of Management of an Intermediate College cannot be given effect till approval is granted by the Regional Level Committee. We are further of the considered opinion that the District Inspector of Schools was not justified in restraining the holding of fresh elections inasmuch as any objections qua the membership etc. can always be examined by the Regional Level Committee at the first instance. We accordingly set aside the order of the District Inspector of Schools dated 11.10.2008.

We have been informed that fresh elections of the Committee of Management have already been held during the pendency of the present special appeal. In the facts and circumstances of the case we permit the Appellant to file such objections in respect of the elections so held before the Regional Level committee, within two weeks alongwith a certified copy of this order. The Regional Level Committee shall also take into consideration, the objection raised while deciding the legality or otherwise of the elections, after affording opportunity of hearing to the Committee of Management, the Appellant as well as to the elected office bearers, by means of a reasoned speaking order. The aforesaid exercise may be completed within two months from the date the objections are so filed.

So far as the report of the District Inspector of Schools is concerned, it is left open for the authority to take appropriate action in accordance with law."

9. Before proceeding to consider the respective submissions an understanding of the Division Bench order would be necessary. It appears that the District Inspector of Schools by an order dated 11.10.2008 had stayed the elections. The Division Bench set aside such order. It also appears that the District Inspector of Schools by an order dated 6.10.2008 had made an electoral college for the purpose of election. The Division Bench held that the issues based on the report submitted by the District Inspector of Schools are correct or not, can be raised and examined by the Regional Level Committee after the elections are over and further after the elections are over the parties may file objections in respect of the elections before the Regional Level Committee which shall take into consideration the objections raised while deciding the legality or otherwise of the elections after affording opportunity of hearing.

10. It is during pendency of the special appeal that the elections were held on 6.11.2008. The Petitioner filed objections on 18.3.2009 and the said objection was required to be examined by the Regional Level Committee.

11. In the impugned order passed by the Regional Level Committee the objections of the Petitioner have been detailed. The objection as such has not been filed alongwith the writ petition, however, a perusal of it as has been noted in the impugned order indicates that it was in the form of a written submission dated 26.11.2008. The said written submission runs into as many as 19 paragraphs which refers to the list of members of the general body from 1978-79 onwards and details the case set up by the Petitioner regarding the current

electoral college by stating that it was wrongly constituted by the District Inspector of Schools order dated. 6.10.2008. It also stated that no elections have been held for the past 15 years and there was no proof of 93 members membership and since the new members were enrolled in violation of Clauses 5 (5) and 9 (5) of the Scheme of Administration the impugned order has illegally omitted to consider such objections.

12. The Regional Level Committee was required to examine such objections. What the Regional Level Committee has done is quoted hereunder:

13. A reading of the aforesaid reasoning given by the Regional Level Committee indicates that Sri Vinay Kumar is alleged to have been a minor in the year 1975 but was accepted as a member of the general body and elected as Manager from time to time continuously for 34 years and no objection regarding his membership was raised either earlier or even during the present election proceedings hence after 34 years such objection relating to Sri Vinay Kumar cannot be entertained. While considering this reasoning given by the Regional Level Committee it will be seen that the Petitioner is raising issues of the time of entry of Sri Vinay Kumar in the general body of the Society. At any earlier time there was no objection. There was no objection for 34 years and even when the present election was to be held no such objection relating to Sri Vinay Kumar being a minor in 1975 was raised. Such an issue regarding the validity of membership of Sri Vinay Kumar in the year 1975 is an issue which is a disputed question of fact where the Petitioner claims that he was not inducted as a valid member and the Respondent-Committee claims that he was a valid member. There is no cogent evidence available before this Court in the form of duly proved or undisputed documents so as to arrive at a definite conclusion on this disputed question of fact.

14. A reference to the certificate dated 20.6.1996 and list of minor members filed as Annexure-1 to the writ petition indicates that they are photostat-copies and the list is unsigned and, therefore, such documents upon which the Petitioner is relying requires positive proof which cannot be done in writ proceedings, particularly, when they are denied. Consequently, If the Petitioner was aggrieved by the induction of Sri Vinay Kumar as a member of the general body in the year 1975 or as an office bearer of the Committee of Management on the basis that his original membership of the year 1975 was invalid he ought to have sued for a declaration or appropriate relief from the competent forum which is definitely not under Article 226 of the Constitution of India at this stage after 34 years.

15. Therefore, when the Regional Level Committee has opined that it will not entertain such objection relating to the year 1975 after Sri Vinay Kumar has continued un-objected for 34 years, it has not committed any error in law. Moreover, the special appeal order dated 7.11.2008 required consideration of the election held during pendency of the special appeal.

16. It is here that Sri Shailendra refers to the order dated 7.11.2008, passed by the Division Bench. As already stated, the Division Bench did not set aside the order dated 6.10.2008, passed by the District Inspector of Schools but only provided that the issue based on that report whether it is correct or not and whether valid electoral college has participated in the election or not and whether the election has been held in accordance with the scheme of administration or not can be raised and examined by the Regional Level Committee after the elections are over. There is no stipulation in the aforesaid observations to enable the Regional Level Committee to rake up issues of the year 1975, i.e., more than 34 years back and hence uphold the objections of the Petitioner. The Division Bench was concerned with the present election and it also set aside the order dated 11.10.2008 of the District Inspector of Schools who had stayed the election. Consequently, we can only read that which is written and not that which is not written in the judgment of the Division Bench. Therefore, the objection of Sri Shailendra relating to the recitation made by the Regional Level Committee, as quoted above, cannot be accepted and is rejected.

17. Insofar as the second objection is concerned, it relates to the finding of membership of the Society and the election proceedings recorded by the Regional Level Committee which is self-explanatory as quoted hereunder:

18. A perusal of the aforesaid finding indicates that the term of the committee of Management had expired and prior thereto the Manager had written a letter dated 11.07.2008 for approval of the members of the general body. The district Inspector of Schools received the objections against the same and he appointed an Enquiry Officer, the enquiry was concluded and report dated 1.10.2008 was submitted. The report formed the basis of the decision dated 6.10.2008 of the District Inspector of Schools constituting the electoral college of 542 members for holding of the elections. The elections appear to have been duly publicized and held under an Observer appointed by the Authorities wherein Sri Vinay Kumar obtained 402 votes for the post of Manager and Sri Mange Ram Verma obtained 405 votes for the post of President, it is also recited that the Petitioner filed his nomination to fight the election of President and obtained only 22 votes against which averments have been made in paragraph 30 of the writ petition by saying that the Petitioner filed nomination but subsequently he decided not to contest the same because the election had been earlier stayed on 11.10.2008.

19. Insofar as the aforesaid finding of the Regional Level Committee is concerned, it is primarily based on the electoral college fixed by the District Inspector of Schools by his decision dated 6.10.2008. That decision was never set aside and, therefore, when the election had been held the Regional Level Committee was considering whether the elections were held in accordance with the Scheme of Administration and the law. Clearly, a plea that in 1975 Sri Vinay Kumar could not be inducted as member could not be raised by the Petitioner and was not to be examined by the Committee. However, it was raised by the Petitioner and it was examined by the Committee and hence in the absence of

any substantial evidence or reasons to hold that these findings of the Regional Level Committee are Illegal, a contrary finding of fact cannot be recorded by this Court.

20. The Authorities under the relevant Acts and Rules relating to Educational Institution are required to consider the claims relating to an election alleged to have been held. It also takes into account any objections filed before It. Such Authorities record their conclusions based upon the documents produced before it and on the basis of findings of facts It records. Even these findings of facts are recorded not on proof of evidence as required under the Evidence Act but on their satisfaction of the evidence available before them. Such findings of fact are in turn invariably subject in issue before the writ court. Therefore, the rights of Management of Educational Institutions are decided, when there are factual disputes raised, by the competent authority not upon proof of evidence in accordance with the provisions of the Evidence Act. That is so because the Evidence Act is not strictly attracted at that stage. But when the issue of a factual dispute is raised further upon challenge to the orders passed by the Educational Authorities it surfaces before the Court. A Court has to adjudicate the grievance raised before it. It has to record its findings on evidence. The evidence, if it is disputed, has to be first made admissible before it is either relied upon or not believed. When valuable statutory and legal rights of a person are under consideration by the Court then the consideration has to be in accordance with law. The law requires evaluation of only such evidence as is admissible. That may not be required to be done in writ proceedings in view of its jurisdiction and the procedure applicable to writ proceedings. Hence, an adjudication of disputed questions of fact by placing reliance on evidence not proved and disputed, by the writ court only on the basis of averments made in the affidavits of the parties may in some cases not be an appropriate writ Issued for protecting the valuable statutory and legal rights of any parties to the proceedings.

21. This Court is flooded with writ petitions raising issues of Management of Educational Institutions. Rival claims are put forward for control of the Management. Committees of Management are elected and required to be recognized under the Societies Registration Act for the purpose of registering them and under the relevant statutes governing the Educational Institution for approval, recognition, payment of salary etc. It is the Government which provides financial aid and hence the authorities of the State have involvement in the affairs of the institution. The scramble seen for taking control of the management of these educational institution is between private persons. There are occasions galore where the authority under the Societies Registration Act has registered the claim of one set of election set up and the Educational Authorities have approved the election set up by another claim relating to the same educational institution for election of the same period. These claims are nearly always based on factual disputes of the electoral college and membership issues as also on allegations of fraud and forgery even in election proceedings. Such factual issues are decided by the authorities competent to do so whereafter the

spill over of the factual dispute travels to the High Court in writ petitions under Article 226 of the Constitution of India. In writ jurisdiction the Court does not have any mechanism to ensure a strict standard of proof for documents relied upon by one party and seriously disputed by the other party. The claims therefore are required to be adjudicated solely based on disputed evidence. In a writ petition only on the basis of disputed averments and disputed annexures the writ court cannot record a positive finding of fact nor can it convincingly set aside a finding of fact based on disputed evidence. The writ court is not the appropriate forum for such adjudication.

22. It is settled law that the writ court cannot enter into the prohibited arena of deciding seriously and highly disputed questions of fact. Writ petitions are filed relating to such disputed questions of fact after an order is passed by the Educational Authorities of the State in matters relating to the Management of Educational Institutions. A writ petition can be entertainable against an order passed by the Educational Authorities of the State but a writ petition so filed cannot normally be maintainable when serious issues of highly disputed questions of facts are raised or involved therein. There is a vast difference in the decision making process of the Educational Authorities of the State in matters relating to disputes of Management of Educational Institutions and that of a Court of law. Hence, even in those matters where the orders of the authority have been given finality under a statute it has been held that a civil suit cannot be barred for the reason that the statutory authority whose decisions have attained finality by virtue of the statute could not evaluate the evidence before them as is required under laws for a proper adjudication of the dispute. The Authority did not possess the mechanism or the power for taking proceedings for proof of evidence. Therefore, also the writ jurisdiction cannot be made a perpetual reservoir for parking writ petitions involving seriously and highly disputed questions or issues of facts.

23. For the aforesaid reasons, the submissions advanced by Sri Shailendra on the aforesaid issues do not find favour with the Court. The writ petition has no merit and it is accordingly dismissed.

No order is passed as to costs.