
(2013) 04 AHC CK 0090

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 66069 of 2012

Bhairo Prasad Tripathi and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 6 ADJ 243 : (2013) 4 ALJ 448 : (2013) 98 ALR 817 : (2013) 5 AWC 4476 : (2013) 2 UPLBEC 1287

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : G.K. Singh, V.K. Singh and Neeraj Shukla, for the Appellant; Indra Raj Singh, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Two sets of elections of Committee of Management of Sri Swamy Krishnanand Inter College, Bilwar, Jaunpur were set up, first by Sita Ram Tripathi as Manager dated 28.3.2010 and the other by Bhairo Prasad Tripathi as Manager of the same dated. The Regional Level Committee under the order dated 14.9.2010 has held that the elections set up by Sita Ram Tripathi were legal and valid while those of Bhairo Prasad Tripathi were illegal. This order was challenged before this Court by means of Civil Misc. Writ Petition No. 60082 of 2010 by Bhairo Prasad Tripathi. In the said writ petition an interim order was granted resulting in an order of the District Inspector of Schools in favour of Bhairo Prasad Tripathi. The order of the District Inspector of Schools was challenged by means of a separate petition by Yagya Narain Singh the President of the Committee of Management with Sita Ram Tripathi as Manager, by means of Civil Misc. Writ Petition No. 22782 of 2011.

2. Both the writ petition were decided under the common judgment and order dated 21.7.2011. The order of the Regional Level Committee dated 14.9.2010 was set aside and it was directed that a Prabandh Sanchalak shall be appointed in the institution for holding fresh elections from the list of members of the

general body after finalizing the same. This order stands affirmed by the Division Bench of this Court with the dismissal of Special Appeal No. 1490 of 2011 and No. 1491 of 2011.

3. It is, therefore, no more in dispute that the elections of the Committee of Management have to be held by the Prabandh Sanchalak finalising the electoral college.

4. Fresh elections were held by the Prabandh Sanchalak. In the said elections 400 members enrolled in the meeting held on 27.12.2009 as claimed by Bhairo Prasad Tripathi were excluded from the electoral college. The paper pertaining to the elections were transmitted to the District Inspector of Schools. The District Inspector of Schools vide order dated 7.4.2012 disapproved the elections on the ground that non-participation of 400 members was bad and this resulted in the elections being rendered illegal. This order was subjected to challenge by means of Civil Misc. Writ Petition No. 22997 of 2012 by the Committee of Management with Sita Ram Tripathi as the Manager. The writ petition was allowed vide order dated 16.5.2012 and the matter was remanded to the Regional Level Committee for taking a fresh decision in respect of the elections by means of a reasoned order, after affording opportunity to the parties concerned.

5. The Regional Level Committee under the order impugned had framed two issues for determination after affording opportunity of hearing to the parties:

(a) Whether the exclusion of 400 members from the electoral college was valid or not.

(b) As to whether non-renewal of registration of the Society would material effect the elections.

So far as the first issue is concerned, the Regional Level Committee under the order impugned dated 1.12.2012 has recorded that such issue stands decided under the judgment and order of the High Court passed in Civil Misc. Writ Petition No. 60082 of 2011 decided on 21.7.2011 against which Special Appeal No. 1490 of 2011 and No. 1491 of 2011 were filed which have been dismissed. It has, therefore, been held that the said 400 members cannot be said to be the valid members of the general body. Consequently, their exclusion from the list of members of the general body was upheld.

6. The second issue is not of much relevance as none of the parties are aggrieved by the decision on the same.

7. Counsel for the petitioner challenging the finding recorded by the Regional Level Committee on issue No. 1 contends that at no point of time the Regional Level Committee or the High Court had determined the correctness or otherwise of the enrollment of 400 members. He points out that under the order dated 14.9.2010 of the Regional Level Committee the elections set up by Bhairo Prasad Tripathi which included the said 400 members was set aside only on the ground that number of persons who had participated in the elections had not been

disclosed and further the elections held in violation to the approved scheme of administration. It is his case that no finding was recorded either way in respect of enrollment of 400 members. He further submits that the High Court while deciding writ petition No. 60082 of 2010 vide judgment and order dated 21.7.2011 had held that the issue as to whether Yagya Narain Singh, the President had participated in the meeting held on 27.9.2009 and dated 27.12.2009 or not is essentially an issue of fact. The High Court went on to set aside the order of the Regional Level Committee and directed that fresh elections may be held by the Prabandh Sanchalak after finalizing the list of members of general body. The Hon'ble High Court has not decided the issue either way. It logically follows that the issue with regard to the membership of 400 members was left open to be examined by the Prabandh Sanchalak. If the Prabandh Sanchalak had excluded these 400 members and a grievance was raised before the Regional Level Committee, it was the duty of the Regional Level Committee to examine the correctness or otherwise of the general body so determined by the Prabandh Sanchalak instead of refusing to examine the said issue on the plea that it stands decided under the order of the Regional Level Committee dated 14.9.2010 and thereafter under the order of the High Court dated 21.7.2011 against which Special Appeals, referred to above, were filed. He submits that there has been complete non-application of mind qua the legality of the elections held by the Prabandh Sanchalak.

8. Shri Indra Raj Singh, counsel for the respondent disputes the contention so raised. He, in reply, submits that once the High Court in its order dated 21.7.2011 has recorded that there is a dispute of fact as to whether Yagya Narain Singh, the then President had presided over the meeting dated 27.9.2009 wherein 400 new members are claimed to have been enrolled, the Regional Level Committee is justified in recording that the said issue stands decided against the petitioner inasmuch as on the aforesaid finding of the High Court under order dated 21.7.2011, the only remedy available to these 400 members was to file a civil suit. He further contends that since these 400 members have not approached this Court at any stage for enforcement of their right to participate in the elections, it is not open to the petitioners to contest their right on the plea that exclusion of 400 members was illegal. He further submits that the Prabandh Sanchalak after hearing learned counsel for the parties did record a finding that these 400 members were not validly enrolled and the order of the Prabandh Sanchalak dated 27.11.2011, wherein he has determined the electoral college has not been challenged, therefore, it has become final between the parties.

9. I have heard learned counsel for the parties and have gone through the records of the present writ petition.

10. This Court may first deal with the basic objection that the order passed by the Prabandh Sanchalak determining the electoral college dated 27.11.2011 had become final and therefore, the issue of exclusion of 400 members needs no examination by this Court.

11. The contention appears to be misconceived inasmuch as the District Inspector of Schools under his order dated 7.4.2012 had specifically disapproved the elections which were held after excluding these 400 members. Therefore, it cannot be said that the order of the Prabandh Sanchalak determining the electoral college had become final. Moreover it is pointed out that against the determination of the electoral college Civil Misc. Writ Petition No. 74281 of 2011 was filed by the present petitioner which was dismissed with the observation that the determination of the electoral college can always be challenged after the elections is over. The objection taken is, therefore, rejected.

12. The issue which has hotly been contested before this Court is as to whether under the earlier order of the Regional Level Committee dated 14.9.2010, holding the issue of enrollment of 400 new members in the meeting dated 27.9.2009 was finally adjudicated or not. Relevant portion of the order dated 14.9.2010 at page 100 of the paper book and reads as follows:

Prashasan Yojna Mein Varnit Pravidhano Ke Anusar Prakaran Ke Parikshan Se Yah Sthiti Prakash Mein Aayi Ki Shri Bhairo Prasad Tripathi Ke Prabandhakatva Mein Dinank 28.3.2010 Ko Gathit Prabandh Samiti Ke Chunav Mein Vigat Prabandh Samiti Ke Adhyaksh Shri Yagya Narain Singh Ki Koi Sahbhagita Nahin Rahi Hai. Atah Chunav Sambandhi Karyavahi Prashasan Yojna Ke Pravidhano Ke Vipreet Hai. Chunav Adhikari Ki Aakhya Mein Yah Ullekh Nahi Kiya Gaya Hai Ki Kul Kitne Sadharan Sabha Ke Sadasyon Ki Upasthiti Mein Ukt Chunav Sambandhi Karyavahi Sampann Ki Gayi Hai Tatha Sadharan Sabha Ke Sadasyon Ki Upasthiti Sambandhi Koi Sakshaya Bhi Prastut Nahin Kiya Gaya Hai. Is Prakar Sampurna Karyavahi Kagji Hone Ke Karon Manya Karne Yogya Nahin Hai.

13. So far as the order of the High Court dated 21.9.2011 is concerned, suffice is to reproduce the paragraph at page 110 of the paper book which reads as follows:

In the present case, factual situation which has emerged as far as petitioners are concerned, petitioner No. 2 is saying that meeting of the Committee of Management was called on 27.9.2009 and Committee of Management unanimously passed resolution to make new member and also to be published in the daily newspaper. Petitioners have also stated that it was published on 30.9.2009 and 400 persons deposited membership fee and become member. Thereafter, on 27.12.2009 list of the member was duly approved in the meeting dated 27.12.2009 wherein it was clearly and categorically mentioned that said meeting in question dated 27.9.2009 and 27.12.2009 was duly presided over by the Committee of Management of Yagya Narain Singh, who was present. Shri Yagya Narain Singh appeared before the Regional Level Committee and made categorical statement of fact that at no point of time he has ever presided over the said meeting and had never held the said meeting. Regional Level Committee has considered the matter and has found that once the incumbent under whose Presidentship election has been held, has himself disowned the meeting and in this background, election set up by petitioner has been disapproved then in such

a situation such finding of fact is not at all liable to be interfered with while exercising writ jurisdiction, as all these questions are essentially question of fact, as to whether Yagya Narain Singh had participated in the meeting or not, Regional Level Committee has given disapproval to the election as set up by the petitioner on this premises, and once such finding of fact has been returned, and there is material in support of the same then such finding of fact does not warrant any interference.

14. From a simple reading of the aforesaid part of the order of the Regional Level Committee and the order of the Single Judge referred to above, I am of the considered opinion that the issue as to whether 400 members had been validly enrolled or not had not been finally adjudicated. No doubt the High Court held that the question as to whether Yagya Narain Singh participated in the meeting dated 27.9.2011 and 27.12.2009 were issues of fact which cannot be determined in a writ jurisdiction but at the same time while deciding the writ petition, the Prabandh Sanchalak directed to be appointed was asked to determine the electoral college afresh. The High Court did not decide the issue either way.

15. It is no doubt true that participation of Yagya Narain Singh in the meeting dated 27.9.2011 is essentially an issue of fact but such issues of fact can always be examined by the Regional Level Committee on a dispute being raised. The Regional Level Committee has to enter into the said issue and to decide as to whether enrollment of these 400 members in the meeting dated 27.9.2009 was established from records or not. Merely because it is stated that Yagya Narain Singh not having participated in the meeting dated 27.9.2009, it cannot be ipso fact inferred that enrollment of 400 members was illegal. Material document had to be examined by the Regional Level Committee qua the method of enrollment of their participation in future meetings etc. The plea that the petitioner cannot spouse the cause of these 400 members also has no substance inasmuch as the petitioner has contested the elections and from the day one has been contending that these 400 members had been wrongly excluded from the electoral college, materially effect the elections.

16. I have no hesitation to record that under the order of the Regional Level Committee dated 14.9.2010 as well as under the order of the High Court dated 21.9.2011, the issue of membership of 400 members was not finally adjudicated. All issues were left open to be decided by the Regional Level Committee, as indicated above. In view of the aforesaid this Court finds that there has been complete non application of mind to the basic issue as to whether these 400 members were validly excluded from the electoral college by the Prabandh Sanchalak or not and as to whether their exclusion vitiates the elections held or not. Accordingly, the order dated 1.12.2012 is hereby quashed. The writ petition is allowed. The matter is remanded to the Regional Level Committee to re-determine the issue, as indicated above, after affording opportunity of hearing to the parties concerned, by means of a reasoned speaking order, preferably within four weeks from the date a certified copy of this order is filed before the Regional

Joint Director of Education.