
(2010) 09 AHC CK 0544
In the Allahabad High Court
Case No : Special Appeal No. 1375 of 2010

Bhajan Singh	Vs	APPELLANT
The State of U.P. and Others		RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)

Citation : (2010) 09 AHC CK 0544

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri P.C. Pathak, learned Counsel for the petitioner-appellant. Shri Ashok Khare, Senior Advocate appears for the contesting respondent.
2. The petitioner-appellant is aggrieved by the judgment of learned Single Judge dated 26.7.2010, by which the writ petition was dismissed on the ground, that as a single member of the general body, the writ petition filed by the petitioner challenging the elections of the Committee of Management of the educational institution, could not be entertained.
3. The facts giving rise to this Special Appeal are that the petitioner is a life member of the general body of the society. The last undisputed elections of the Committee of Management were held on 5.6.2006. Under the Scheme of Administration of the institution though the term of the office bearers and members of the Committee of Management is three years, but if within a period of three years and one month, the newly elected office bearers and members do not take charge, then the earlier office bearers cease to function and the Deputy Director of Education has to appoint an Authorized Controller.
4. In this case the elections were not held upto 04.7.2009, on which the District Inspector of Schools, by his order dated 1.2.2010, directed single operation of

accounts.

5. The elections were held much after the period of three years and one month. The petitioner-appellant claiming to be the life member of the society filed a representation on 29.4.2010 before the District Inspector of Schools prior to holding of the elections. He raised a grievance about the membership of the general body stating that out of list of 787 members of the general body, only 172 members are authorised to vote and the rest of the members have not been validly enrolled. In this objection the petitioner did not raise any issue, that the election after three years and one month of the term of the outgoing Committee of Management, could only be held by the Authorized Controller. After the election results were accepted and signatures were attested by the District Inspector of Schools, the petitioner filed representations on 29.4.2010; 22.5.2010 and 31.5.2010 again without raising any such objection, that the election could only be held by the Authorized Controller and filed the Writ Petition No. 42339 of 2010, which was dismissed, giving rise to this Special Appeal.

6. Learned Judge has held that the petitioner did not raise any objections to the competence of the outgoing Manager to hold the elections, and further a single member of the general body, who did not participate in the elections, has no right to challenge the elections in a writ petition under Article 226 of the Constitution of India. He relied upon judgment in *Bhagwan Kaushik v. State of U.P. and Ors.* (2006) 2 UPLBEC 1372.

7. Shri P.C. Pathak, learned Counsel for the appellant submits that Clause 8 of the Scheme of Administration provides that elections should be held within three years, but if the period of three years and one month expired and the elections were not held, and newly elected office bearers and members do not take charge, the earlier office bearers cease to function and the Deputy Director of Education has to appoint an Authorized Controller to manage the affairs of the institution and hold the elections. He submits that out of 787 members of the general body, 615 were illegally enrolled. The District Inspector of Schools could not have recognised such elections.

8. Shri Ashok Khare, Senior Advocate, appearing for respondent No. 4, would submit that before expiry of the term of three years a meeting of the Committee of Management was held on 31.5.2009 for taking steps to hold elections. The District Inspector of Schools granted approval on 19.6.2009. The order was challenged in Writ Petition No. 33181 of 2009 by the Committee of Management with Shri Satish Kumar. After the writ petition was dismissed on 7.7.2009, the election schedule was issued by the Election Officer on 6.4.2009, and the elections were held. The petitioner did not raise any objections with regard to the holding of the elections by the outgoing Committee of Management and that even otherwise, he has no right to file a writ petition as he had not contested the elections.

9. Shri P.C. Pathak, learned Counsel for appellant has cited a judgment in *Ratan*

Kumar Solanki v. State of U.P. and Ors. 2010 (1) ADJ 262 (DB) in which this Court had considered the question of law with regard to the maintainability of the writ petition by a member of the general body at great length and had considered the earlier judgments of this Court in Dr. P.P. Rastogi and Others Vs. Meerut University and Another, and Smt. Vimla Devi v. Deputy Director of Education, Agra Region, Agra and Ors. 1997 (3) ESC 1807 and Bhagwan Kaushik v. State of U.P. and Ors. 2006 (2) ADJ 631. The Division Bench held in paragraph 24 as follows:

24. What is discernible from the above discussion is where the right of an individual is affected or infringed, and, he has no other effective remedy, if such rights of the individual concerned are borne out from the statute or the provision of bye-laws etc. having the flavour of statute, a writ petition at his instance may be maintainable subject to attracting the condition where the Court may decline to interfere namely availability of alternative remedy, delay, laches etc. but where a legal right of an individual is not directly affected, a writ petition expounding the cause of the collective body or other members of the collective body would not be maintainable at the instance of an individual who himself is not directly affected. We may add here that in a given case, if it is found that an election was held by an imposter and he is supported by DIOS or other educational authorities, such an action of DIOS as also the election can be challenged by the individual member since it cannot be said that he is not a person aggrieved but whether a writ petition at his instance would be maintainable or he can challenge the election by filing a civil suit etc., would be a different aspect of the matter and has to be considered in each and every case considering the facts, relevant provision and other relevant aspects of the matter.

10. The Division Bench, thereafter considering the facts of the case, found that Shri Ratan Kumar Solanki-the petitioner in that case had contested the elections. He had made a complaint of certain irregularities to the District Inspector of Schools. After getting the report of the Authorized Controller and recording prima facie satisfaction the District Inspector of Schools, had directed recount of votes, but that the elections were recognised without the recount. In such circumstances, it was held that the petitioner cannot be said to be a person, who was not aggrieved or has no locus standi.

11. This Court is already over-burdened with the writ petitions filed by the rival Committees of Management, or the members, who have taken part in the elections, and did not succeed, in the matters arising out of thousands of educational institutions across the State. Every year thousands of writ petitions are being filed. In fact every election of the Committee of Management of education institution is challenged in the High Court, on the question of its recognition by the Regional Deputy Director of Education (now the Regional Level Committee), u/s 16A(7) of the U.P. Intermediate Education Act, 1921. A single Judge has been assigned determination relating to only such matters. The valuable time of the Court for deciding important questions of law to reduce

inequities and injustice in the society, is spent in resolving disputes between rival groups to gain control over the educational institutions for the purpose of access to the funds provided by the State Government. In most of the cases the Courts find that the elections are set up only on papers, without holding election meetings.

12. If the individual members of the general body of the educational society not directly affected by the election results, are also allowed to file objections and to challenge the elections, the fight for gaining control over the school funds will flood the High Courts with litigation. The election may be challenged by members of the general body separately after raising objections before the educational authorities, and thereafter filing writ petitions on variety of grounds.

13. We may add here that an individual member in such case, is not without remedy. He may file a suit challenging the elections, to enforce his right of association guaranteed u/s 19(1)(g) of the Constitution of India.

14. The Special Appeal is dismissed.