

(2008) 04 AHC CK 0017
In the Allahabad High Court
Case No : C.M.W.P. No. 20609 of 2008

Brij Bhushan Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 6 AWC 5879

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : T.P. Singh and Siddharth Nandan, for the Appellant; P.K. Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri T. P. Singh, learned senior counsel assisted by Sri Siddharth Nandan for the Petitioner and the standing counsel.

2. This petition has been filed by the Petitioner claiming himself to be a life member of the society-Mahant Rameshwar Das Shiksha Prasara Samiti, which runs an educational institution namely Mahant Rameshwar Das Higher Secondary School at Ambergarn, Tehsil Moth, district Jhansi.

3. According to the averments made in the writ petition, a committee of management was constituted to manage the affairs of the institution under the scheme of administration. After the death of Sri Ram Das Dixit, Manager of the committee of management on 31.10.1998, no elections were held for constituting the committee of management. The institution was thereafter being run by the authorised controller appointed from time to time.

4. It is claimed by the Petitioner that since the president, treasurer, vice-president of the committee of management pre-deceased Ram Das Dixit, he was nominated as an acting president and on his request, the authorised controller was being appointed from time to time. Though the Petitioner claims to be

continuing acting president, no documents are available on the record to establish as to who nominated the Petitioner as acting president in absence of general body and members of the committee of management.

5. It is averred in the writ petition that the authorised controller made every effort to finalise the list of members of the society but the same could not be drawn, as such on a query made by the Assistant Registrar, Firms, Societies and Chits, Jhansi Division, Jhansi, the then authorised controller submitted his report dated 21.12.2004, from which it appears that no documents are available for verification of the members of the society. In paragraph 9 of the writ petition, it is averred that agenda register, information register, minutes of the meeting, receipt book are also missing and there is no authentic list on the basis of which election could be conducted.

6. It also appears from the record that one Sri Atma Ram Dubey, who is claimed by the Petitioner to be working as a clerk in Government aided Adarsh Inter College, Moth, Jhansi, claiming himself to be life member/Deputy Manager of the Committee of Management filed Writ Petition No. 60437 of 2007, for an order for holding the elections. The aforesaid writ petition was disposed of vide order dated 7.12.2007, which reads as under:

Heard Sri R.K. Ojha, learned Counsel for the Petitioner and Sri Ghanshyam Dwivedi, learned standing counsel.

The grievance of the Petitioner is that the authorised controller has been appointed in the year 1998 and since then he is continuing and is not holding the election of the committee of management in accordance to the provisions of the scheme of administration.

By means of present petition, he seeks direction to hold the election. Learned standing counsel submitted that the Joint Director of Education, Jhansi Region, Jhansi, may be directed to look into matter and issue a necessary direction to hold the election.

In view of the above, Joint Director of Education, Jhansi Region, Jhansi is directed to look into matter and in case if there is no impediment authorised controller may be directed to hold the election in accordance to the scheme of administration expeditiously preferably within a period of two months. With the aforesaid observation, the writ petition stands disposed of.

7. As per direction in the aforesaid writ petition, the elections appear to have been held on 11.1.2008, in which the Petitioner also claimed himself to be a strong contender. Thereafter, the elections dated 11.1.2008 were recognized by the Joint Director of Education. The Petitioner has come up in this writ petition praying for quashing of the order dated 17.1.2008 recognizing the committee of management headed by Respondent No. 4-Sri Atmaram Dubey as well as a direction in the nature of mandamus directing the Respondent No. 4 not to function as Manager of the Committee of Management said to have been elected

in pursuance of election dated 11.1.2008. A further direction has also been sought for commanding the Respondent No. 2-Joint Director of Education, Jhansi Region, Jhansi not to attest signatures of Respondent No. 4 in pursuance of the order dated 17.1.2008.

8. Contention of learned senior counsel Sri T.P. Singh for the Petitioner is that in his objection, the Petitioner had raised a specific point that there are relatives of Respondent No. 4 in the committee of management, as such the election held by Respondent No. 4-Atmaram Dubey is fake and he being a clerk in a Government aided college, cannot be an office bearer in the committee of management according to provisions of the scheme of administration. Other grievance of the Petitioner is that without deciding his objection, the Joint Director of Education has approved the committee of management.

9. Undisputed facts are that neither there is any documents which could establish as to who are the valid members of the society nor any other record is available from which membership of the society could be verified. The Petitioner has been enjoying the position as acting President claiming to have been nominated by the committee of management of Sri Ram Das Dixit since deceased. It is also not disputed that the Petitioner had been writing letters for appointment of authorised controller but why he made no efforts for holding elections immediately after death of late Ram Das Dixit, is not clear. It appears that the Petitioner somehow wanted to have the control of the college in his hands as acting President behind the facade of appointment of the authorised controller.

10. It is settled law that an authorised controller cannot remain appointed in the institution for indefinite period, hence it was incumbent upon the Petitioner who claims himself to be acting President or the authorised controller to hold elections on the first available opportunity which appears not to have been done for reasons best known to them.

11. The recognized committee of management has now come in the office after about 20 years by holding elections on 11.1.2008 pursuant to the order of the High Court dated 7.12.2007. This Court is therefore not inclined to interfere with the matter to the assistance of the Petitioner who according to averments made in paragraph 12 of the writ petition claimed himself to be a strong contender in the elections held on 11.1.2008.

12. Sri T.P. Singh, learned senior counsel for the Petitioner has placed reliance on Annexure-2 which shows that the Petitioner had been nominated as "KARYAVAHAK ADHYAKSH" and relied upon its paragraph 1, which reads as under:

other language

13. Reliance placed by the Petitioner upon paragraph 1, does not prove his case that in fact he was appointed as "KARYAVAHAK ADHYAKSH", as it was to be done by the committee of management or the general body of the members. Any

other meeting in which some person has come to take charge as Principal of the college does not help his case in any way.

14. It may also be noted that after the election dated 11.1.2008 having been held in which a new committee of management has come into office, the Petitioner no longer remains acting President or "KARYAVAHAK ADHYAKSH" and cannot file writ petition claiming himself to be a life member as admittedly there are no documents to support his locus standi of being a life member.

15. In the facts and circumstances that the committee of management has already been recognized after about 20 years and is functioning, it would not be proper for this Court to relegate the matter again in the bliss of uncertainty by directing the Joint Director of Education to decide the representation of the Petitioner. If the Petitioner is aggrieved by the election held on 11.1.2008 and the order passed by the Joint Director of Education recognizing the committee of management, he has an alternative efficacious remedy to challenge the same in a suit in the civil court where the dispute whether fake committee of management has been elected and recognized or whether the members of the committee of management are relatives and as such are disqualified in terms of the scheme of administration, can only be adjudicated on the basis of oral and documentary evidence which may be adduced by the parties.

16. Since the Petitioner has alleged that the committee of management headed by the Respondent No. 4-Atmaram Dubey, which has come into power, is a fake committee and neither he or other members are qualified to constitute the committee of management, it requires adjudication of question of facts which is not feasible in the writ jurisdiction.

17. For the reasons stated above, the writ petition is dismissed on the ground of alternative efficacious remedy by way of a suit so that all questions of fact are settled once and for all after they are decided on the basis of oral and documentary evidence which may be adduced by the parties. It is however provided that any observation made in the body of the judgment will not prejudice case of the either party in case suit is filed. No order as to costs.